



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KISII

CASE NO. 287 OF 2014

LAXMICHAND VIRCHAND GUDKA PLAINTIFF

VERSUS

ANDERSON ISINTA MATWETWE DEFENDANT

JUDGMENT

1. The plaintiff by a plaint dated 23rd July 2014 filed in court on 25th July 2014 avers that he purchased land parcel **Majoge/Bokimonge/2163** measuring 2.68Hectares (hereinafter referred to as “the suit property”) at an auction sale on 22nd October 2012 where the Agricultural Finance Corporation as chargee of the suit property had offered the property for sale in exercise of its statutory power of sale. The plaintiff avers the suit property was transferred to him but states the defendant who is in occupation of the property, has, despite demand being made to him refused and/or neglected to vacate from the suit property. The plaintiff by the plaint prays for judgment against the defendant for:-

(a) A declaration that the plaintiff is the legal owner of all that parcel of land known as Majoge/Bokimonge/2163.

(b) An order of eviction of the defendant, his agents and/or servants from land parcel No. Majoge/Bokimonge/2163.

(c) Any other relief that the honourable court may deem fit and expedient to grant.

(d) Costs of the suit.

2. The defendant upon being served summons filed a memorandum of appearance dated 8th September 2014 on 9th September 2014 through the law firm of Moses N. Siagi & Co. Advocates but did not file any defence. On 28th October, 2015 the court gave directions that the matter be fixed for formal proof hearing. On 28th July, 2016 the matter was listed for hearing before me when the plaintiff testified in support of his case.

3. The plaintiff during the formal proof hearing testified that he came across a newspaper advertisement in the Daily Nation on 24th September 2012 where M/s Cashcrop Auctioneers had advertised the suit property for sale through public auction. Upon contacting the auctioneers the plaintiff stated that the Auctioneers confirmed that they indeed has instructions to sell the land. The newspaper advertisement was produced as PEx1. The plaintiff further testified that he attended the public auction on 22nd October 2012 at the offices of MOCO Auctioneers in Kisii Town and that he participated in the auction sale whereby his bid to purchase the suit property at kshs. 1,700,000/= was accepted and he was declared the

highest bidder and the property was knocked down to him as the highest bidder. The plaintiff was issued with a memorandum and a sale agreement produced as PEx. 5 and 6 respectively.

4. The plaintiff further testified that he paid the full purchase price of kshs. 1,700,000/= and the suit property was subsequently transferred by the Agricultural Finance Corporation (AFC) exercising its power of sale as chargee to the plaintiff. The plaintiff tendered in evidence a bundle of copies of receipts and supporting Bankers Cheque to demonstrate payment of the sum of kshs. 1,700,000/= (PEx.7). Transfer by chargee dated 20th December 2012 was produced as PEx.8. The suit property was transferred and registered in the name of the plaintiff on 29th January 2013 as per the copy of the title deed issued on the same date produced in evidence as PEx.9.

5. The plaintiff further testified that inspite of he having been registered as the owner of the suit property and having served a demand notice to the defendant to vacate the suit property the defendant has refused and/or neglected to vacate the property rendering the institution of the present suit necessary. The plaintiff filed written submissions which as directed by the court were served on the defendant's advocates on record and on the defendant personally as per the affidavit of service sworn on 21st September 2016.

6. I have reviewed the pleadings, the evidence adduced on behalf of the plaintiff and the plaintiff's written submissions and I am satisfied that the plaintiff has proved his case on a balance of probabilities. The evidence tendered has established that the defendant charged his property **LR Majoge/Bokimonge/2163** to Agricultural Finance Corporation to secure a loan advanced to him and when he defaulted in payment the chargee in exercise of its statutory power of sale conferred under the charge offered the property for sale by way of public auction in order to recover the debt due to it. The plaintiff's bid of kshs. 1,700,000/= was accepted at the public auction sale held on 22nd October 2012.

7. The plaintiff paid the full purchase price and the property was transferred to him vide a transfer dated 20th December 2012 registered at the Lands office on 10th January 2013. The plaintiff was issued with a title deed on 29th January 2013 and henceforth he became the absolute owner of the suit property and entitled to enjoy all the rights of ownership conferred under Sections 24, 25 and 26 of the Land Registration Act, 2012.

8. The defendant was served with a Notice to Vacate the suit property dated 30th June 2014 but has not vacated. The defendant did not file any defence to the suit and did not participate in the trial and hence the plaintiff's evidence adduced orally and through the documents tendered as exhibits was uncontroverted. I accept the evidence and find and hold that the plaintiff's case is established on a balance of probability and I accordingly enter judgment in favour of the plaintiff on the following terms:-

1. A declaration be and is hereby issued that the plaintiff is the lawful and legal owner of land parcel known as Majoge/Bokimonge/2163.

2. That the defendant, his servants and/or agents are ordered to vacate land parcel Majoge/bokimonge/2163 within 30 days from the date of being served with the decree herein.

3. That in the event the defendant does not vacate as under (2) above the plaintiff shall be entitled to an order of eviction on application for the forcible eviction of the defendant.

4. The costs of the suit are awarded to the plaintiff.

Judgment dated, signed and delivered at Kisii this 25th day of November, 2016.

J. M. MUTUNGI

JUDGE

In the presence of:

N/A for the plaintiff

N/A for the defendant

Mr. Ngare Court Assistant

J. M. MUTUNGI

JUDGE