



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 83 OF 2009

SAMMY TALAM:..... PLAINTIFF

VERSUS

ANDREW SHIMBIRO:..... 1ST DEFENDANT

HON. ATTORNEY GENERAL:..... 2ND DEFENDANT

J U D G E M E N T

INTRODUCTION

1. The Plaintiff brought this suit against the defendant seeking the following reliefs:-
 - (i) A declaration that the proceedings before Kwanza Land Disputes Tribunal are null and void and the subsequent decree and eviction orders against the plaintiff vide Kitale Chief Magistrate Land Case No. 111 of 2007 be nullified and set aside.
 - (ii) An order of eviction against the defendant from the plaintiff's 4 acres at Mogoiywet farm Plot No. 63.
 - (iii) Costs of the suit.
2. The history of this suit can be traced to some three agreements for sale involving the parties to this suit. A lady by name Clara Jeptalam owned 36 acres of land comprised in Plot No. 63 at Mogoiywet farm. The lady had a son called Antony Kipyego Arap Rop. On 28/9/2004 Clara Jeptalam sold 3 acres to the plaintiff at Kshs.300,000/=. The Plaintiff paid Kshs.240,000/= on 29/9/2004 and the balance of Kshs.60,000/= was cleared on 4/3/2005. On 17/1/2005 Clara's son Antony Kipyego Arap Rop sold one acre to the defendant at Kshs.100,000/= which amount was paid in full on the same day. On 21/6/2005, Anthony sold to the plaintiff the same acre he had earlier on sold the defendant. The plaintiff chased away the defendant's sister who was taking care of the one acre on behalf of her brother. This prompted the defendant to file a case against Antony Kipyego Arap Rop and his wife before Kwanza Land Disputes Tribunal.
3. The Tribunal summoned Antony and his wife as well as the plaintiff but none of them appeared. The Tribunal went ahead to hear the dispute in the absence of the defendants and the plaintiff. The Tribunal ruled that the defendants should organise to excise one acre for the defendant and that the plaintiff who had invaded the one acre belonging to the defendant should be evicted.

PLAINTIFF'S CASE

4. The Plaintiff testified that on 28/9/2004 he bought 3 acres from Clara Jeptalam. On 21/6/2005 he bought one acre from Clara's son Antony Kipyego. He took possession of the three acres in 2004. In 2007 he received information that someone by the name Andrew Shimbiro was claiming the same land. In 2009 some unknown people cut down 1.1 acres of his maize. He was informed that whoever had cut down his maize had a court decree. He later learnt that it is the defendant who was executing a decree issued in Kitale Chief Magistrate's court Land Case No. 111 of 2007. He contends that the decree had ordered for his eviction from one acre yet he was not party to the suit. He contends that he lawfully bought the one acre. He testified that he brought this suit because he was late in appealing against the decree adopting the verdict of the Tribunal as Judgement of the court.

DEFENDANT'S CASE

5. The defendant testified that he bought one acre from Antony Kipyego Arap Rop on 17/1/2005. He took immediate possession after paying Kshs.100,000/=. He then asked his sister to take care of the land as he was away in Nakuru. His sister cultivated the land in 2005 and 2006 before the plaintiff claimed the same one acre. When the dispute over one acre arose, he filed a suit against Antony Kipyego and his wife at Kwanza Land Disputes Tribunal. The Tribunal summoned both Antony Kipyego and his wife as well as the plaintiff but none of them appeared. The Tribunal then ruled that Anthony and his wife should give out one acre for him and that the plaintiff who had invaded the land should be evicted from the one acre. The plaintiff was evicted from the one acre but he has since gone back and is the one in possession. The defendant attempted to regain his land but he was assaulted by the plaintiff who is still in possession of the land.

ISSUES FOR DETERMINATION

6. The first and the second defendant put forward the following issues for determination.
 - (a) Whether this is the right forum.
 - (b) Whether the plaintiff has locus standi to institute the present proceedings.
 - (c) Who should be condemned to pay costs.

The plaintiff contends that he filed this suit because he was late in challenging the verdict of the Kwanza Land Disputes Tribunal. The verdict of the Tribunal was made in accordance with the provisions of the Land Disputes Tribunal Act of 1990 (now repealed). The said Act provided for ways of challenging the verdict of the Tribunal. Those who could challenge the Tribunal verdict are ones who were parties. The plaintiff in this case was not a party to the dispute filed at the tribunal. The members of the Tribunal decided to summon him because it emerged that he was claiming the same land which had been bought by the claimant in the dispute before the Tribunal. This alone did not make him a party and he could neither appeal to the Provincial Land Disputes Appeals committee nor file an appeal to the High Court on points of law.

7. As the plaintiff was not a party to the dispute before the Kwanza Land Disputes Tribunal, he cannot purport to nullify the proceedings of the Tribunal and even if he were to be a party, he cannot seek to nullify the Tribunal proceedings through a suit. The manner in which a Tribunal decision could be attacked was clearly stated in the said Act. An aggrieved party could either prefer an appeal to the Provincial Land Disputes Appeals committee or Appeal to the High Court against the decision of the Tribunal on points of law. An aggrieved party also had the option of filing an application for Judicial review.
8. The Tribunal verdict was adopted as judgement of the court vide Kitale Chief Magistrate land Case No. 111 of 2007. No appeal was preferred from that decree. As I have found that the plaintiff was not a party to the dispute before the Tribunal, he cannot purport to have the same

proceedings nullified through a process not in accordance with the Land Disputes Tribunal Act of 1990 or any other lawful processes as Judicial review. This finding disposes of issues number one and two herein above.

DETERMINATION

9. The plaintiff was seeking to evict the defendant from his 4 acres. The evidence adduced shows that there is only one acre in dispute. It is the defendant who was the first one to buy the land. The plaintiff came to buy the same one acre later. It is clear that the plaintiff's suit is misconceived. The same is hereby dismissed with costs to the defendants.

Dated, signed and delivered at Kitale on this 15th day of April, 2015.

E. OBAGA

JUDGE

In the Presence of Mr Wafula for Plaintiff. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

15/4/2015