

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO.81 OF 2012

HELLEN NASAMBU WANYONYIPLAINITFF

VERSUS

WILBERFORCE AMBWEREDEFENDANT

J U D G M E N T

1. The plaintiff is the registered owner of LR.No. Kwanza/Namanjalala Block 5/175(suit land). The plaintiff brought a suit against the defendant claiming the following reliefs:-

- a) A declaration that she is entitled to exclusive and unimpeded right of use, possession and occupation of the suit land.
- b) Eviction order and a permanent injunction restraining the defendant or any other persons from interfering with the suit land.
- c) General Damages for trespass
- d) Costs
- e) Any other or further relief the Honourable Court May deem appropriate to grant in the circumstances.

PLAINTIFF'S CASE

2. The plaintiff testified that she bought 150 Shares in a Land buying company called Trans-Nzoia Investment Company Limited. She paid Kshs.2500/- and Kshs.175/- on 1.11.1990 vide two receipts produced as exhibit 1(c) and (b) respectively. She also paid Kshs.660/= on 24.9.1991 which receipts she produced as exhibit 1(d). On 28.3.1992 she paid Kshs.1660/= vide receipt No.702 exhibit 1(a). These amounts were for purchase of shares and survey fees. On 30.6.1992, she was issued with a share certificate exhibit 2. she later processed and obtained title for the suit land. She produced title deed issued on 10.10.2011 as exhibit 3. She took possession of the suit land in 1993 after she fenced the same.
3. In or around 2000, there was a dispute between her and one Alice Sitawa Mululu (Alice) who was also a shareholder of Trans- Nzoia Investment Company Limited. Alice was claiming that she had been allocated the same plot. The dispute went before the local chief who referred it to the District Officer. It was resolved that the plaintiff's plot was plot No.175 whereas Alice's Plot was Plot No. 168.
4. In 2012 the defendant came into the suit land and claimed that he had bought it from Alice. The defendant went ahead to put up a structure on the property which prompted the plaintiff to make a report to the local chief and Kitale Police Station who advised her to sort out the issue in court. The plaintiff called PW 2 Ronald Senwenja Walubengo who was the Secretary of Trans-Nzoia Investment Company Limited. (The company) This witness testified that that the company owned LR.No.2048 which was later subdivided and shareholders of the company were given their respective plots .
5. PW2 testified that there was a dispute between the plaintiff and Alice regarding their respective

plots. He as Secretary of the company wrote to the Area Chief who had raised the issue of the dispute confirming that the plot in dispute had been allocated to the plaintiff. This letter dated 29.4.2000 was produced as exhibit 4. On 13.3.2001 the Chairman, Secretary and Treasurer of the company wrote to the District Officer confirming that the plaintiff was allocated plot 175 and Alice was allocated plot 168. This letter was produced as exhibit 5 by PW2.

DEFENDANT'S CASE

6. The defendant testified that he bought the suit land from Alice Sitawa Mululu on 24.6.2002. He produced the agreement between him and Alice as defence exhibit 1. He testified that he took possession then and has been in possession to date. He testified that Alice died in 2007. He produced a share certificate issued to Alice (defence exhibit 2). The defendant produced receipt dated 20.11.1989 for Kshs.1,000/= defence exhibit 3 and one dated 23.3.1991 defence exhibit 4. The share certificate and the two receipts were issued to Alice. The defendant contends that the plaintiff obtained title in a fraudulent manner. He contends so because according to the plaintiff's documents, she was paying for 5 acres whereas she obtained title for 2.4 acres. The defendant further contends that the plaintiff has not demonstrated that he is supposed to be on plot no.168.
7. I have gone through the pleadings and evidence adduced by the plaintiff and the defendant herein and the issues which emerge for determination are as follows:-
 - a) Who was allocated plot No.175.
 - b) Whether the plaintiff obtained title to the suit land fraudulently.

ANALYSIS OF EVIDENCE

8. There is no contention that both the plaintiff and Alice were shareholders of the company. There is also no contention that the defendant bought some land from Alice. According to the agreement between the defendant and Alice, Alice was selling 2.4 acres comprised in plot No. 175. This agreement was made on 24.6.2002. It is important to note that as at the time Alice was selling land to the defendant, there was already a dispute as to who was allocated plot No.175 and 168. The dispute was between the plaintiff and Alice. It was resolved by 2001 that the plaintiff's plot was Plot No.175 and Alice's Plot was plot No.168. It is clear that Alice went ahead to sell plot No.175 to the defendant well aware that the dispute regarding the same plot had been settled in favour of the plaintiff. Alice had been informed that her plot was No.168. She was therefore wrong to proceed to sell Plot No.175 which belonged to the plaintiff.
9. The officials of the company had settled the issue between the plaintiff and Alice. This is confirmed by their letter to the District Officer produced as Plaintiff exhibit 5. PW2 who was Secretary to the Company was one of the Signatories to the said letter. He came and testified before court that plot No.175 belonged to the plaintiff and that Plot No.168 belonged to Alice. There was an argument by the defendant that the plaintiff had paid for 5 acres and that she could not be registered for 2.4 acres. This argument stemmed from the fact that the plaintiff had 150 shares and Alice had 50 shares. I do not think that this can be used as a basis to justify the defendant's argument that the plaintiff ought to have been registered for 5 acres. If the allocation was done on the basis of shares then the plaintiff was to have more than 7 acres. This is assuming that if 50 shares could yield 2.4 acres it then follows that 150 shares could yield more than 7 acres.
10. Allocation of land was done by the company officials. One of the officials of the company has testified that it is the plaintiff who was allocated plot 175. Alice who sold land to the defendant had been allocated plot No.168. I therefore find that plot No.175 belongs to the plaintiff. The defendant had claimed in his defence that the plaintiff obtained her title in a fraudulent way. There was no evidence of fraud adduced by the defendant contrary to the defendant's allegations, the plaintiff had demonstrated that she was allocated plot No.175. She went ahead to obtain title for the plot she was allocated. It is common knowledge that once land is subdivided, a shareholder cannot get the exact acreage which she applied for. This is because during subdivision, there must be provision for roads and other Public utilities such as schools, dams and dips where applicable. There was evidence from the plaintiff that her acreage was reduced due to

provision for public utilities. The plaintiff paid for her shares in 1990. Alice paid for her shares in 1989. There is evidence from PW2 that subdivision was done between 1990 and 1996. It is therefore not possible that either plaintiff or Alice would have known their exact entitlements as at the time they paid for their shares. I therefore find that there was no fraud in the manner the plaintiff obtained her title deed.

DETERMINATION

11.I find that the plaintiff has proved her case against the defendant on a balance of probabilities. I consequently grant the following reliefs:-

- a) A declaration that the plaintiff is entitled to unimpeded right of use, possession and occupation of LR.NO. Kwanza/Namanjalala Block 5/175.
- b) An eviction order against the defendant or any one claiming under him from LR.NO. Kwanza/Namanjalala Block 5/175.
- c) A permanent Injunction restraining the defendant or anyone claiming under him from interfering in any way with LR.No. Kwanza/Namanjalala Block 5/175.
- d) Costs of this suit.

The prayer for general damages is declined as there was no basis laid for the same.

Dated, Signed and Delivered at Kitale on this 4th day of May 2015

SIGNED

E. OBAGA

JUDGE

Court

Judgment delivered in open court at 10.10 a.m in the absence of Parties who were aware of today's date.
Court Clerk Isabella.

SIGNED

E. OBAGA

JUDGE

4.5.2015