



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**ENVIRONMENT AND LAND CASE NO. 76 OF 2014**

**MOSE ANGWENYI.....1ST PLAINTIFF**

**CHARLES AWATA MOGAKA.....2ND PLAINTIFF**

**VERSUS**

**VERONICA KWAMBOKA NYAKERAMBA.....DEFENDANT**

**J U D G M E N T**

**INTRODUCTION**

1. The first plaintiff is a brother in-law of the defendant. The defendant was married to the younger brother of the first plaintiff who has since died. The second plaintiff is a purchaser of **Plot No. 27 at Geta Farm** in Tranz- Nzoia County (Suit land). The plaintiffs brought this suit against the defendant seeking for orders of eviction against her and her agents on the ground that she is a trespasser on the suit land. They also sought for an order of permanent injunction restraining the defendant and her agents from trespassing or dealing in any manner with the suit land.

**PLAINTIFF'S CASE**

2. The first plaintiff testified that he acquired the suit land by virtue of him being a member of North Kisii Central Farmers. He testified that he acquired the suit land in 1977. In 1986, he brought his mother and his other siblings to stay on the suit land after his father died. In 1999 surveyors came to the farm and subdivided it. He was given 1.8 acres.

3. In 2007 his brother the husband of the defendant fell ill. He asked him to come from Kisii to Kitale where he could receive treatment. His brother came to Kitale and started treatment. After he became well, he asked him to go and stay on the suit land. Two sons of his brother died and were buried on the suit land. When his brother died later on, he was also buried on the suit land. It it after the death of his brother that he asked the defendant to move to Kisii as she could not sustain herself with her children.

4. Before his brother died he had been hospitalized at Cherangany Nursing Hospital where he incurred a huge bill. He later sold the suit property to the second plaintiff to offset the hospital bill.

5. The second plaintiff testified that he bought the suit land from the first plaintiff on 17/2/2014. He produced a sale agreement exhibit 1. Before he bought the land, the first plaintiff told him that his sister in-law the defendant herein was staying on the suit land. He went to an advocate who wrote a demand letter asking the defendant to move out of the suit land but she refused to move out.

## DEFENDANT'S CASE

6. The defendant testified that the suit land belonged to her late father in-law **Joshua Angwenyi**. She was married to **Poel Misaro Angwenyi** who has since died. She was married in 1996. she stayed with her husband in Nairobi for four years. In 2000 they relocated and settled on the suit land where she has lived since then. Her two children died and were buried on the suit land. Her husband was too buried on the suit land after he died in 2012.

7. In February, 2014 she received a demand letter asking her to vacate the suit land as the same had been sold. She produced the demand letter as defence exhibit 1. She went to the area chief who referred her to the Assistant County Commissioner's Office. The Assistant County Commissioner wrote a letter to the chief asking him to ensure that she stayed on the land until the issue of the suit land was resolved. She produced the letter as defence exhibit 2.

8. The defendant called **DW2 John Angwenyi** her brother in-law who testified that the suit land was bought by his father Joshua Angwenyi. This witness testified that the first plaintiff who is his brother is not called Joshua. He testified that Joshua Angwenyi is his father and that the first plaintiff is called Mose Angwenyi. He further testified that the first plaintiff swore a false affidavit claiming that he is also known as Joshua Angwenyi. He testified on how he was informed that his elder brother the first plaintiff wanted to sell the land. He went to Cherangany Police Station where they recorded statements. They were referred to the Assistant County Commissioner's Office. The first plaintiff was summoned twice but he failed to turn up.

9. The defendant also called **DW3 Jeremiah Mayaka Mogi**. This witness was the chairman of **Geta Farm** with effect from **20/12/1981**. He testified that Geta Farm was **2266 acres**. In **1982** it was subdivided into **886 portions** and given to the members. **Joshua Angwenyi** the father of the first plaintiff was allocated **Plot No. 27**. He testified that he knew Joshua Angwenyi and that the first plaintiff is not the one who was given the suit land. He testified how the defendant and her husband came and settled on the farm.

## ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION

10. The issues which emerge for determination are firstly whether the first plaintiff is also known as Joshua Angwenyi and secondly whether he is the owner of the suit land. The first plaintiff's identity card, bears the names Mose Angwenyi. From the copy of his ID Card, it is clear that he took out the identity card on 27/9/1996. This is a second generation identity card. The first plaintiff claims to have acquired the suit land in 1977. In his evidence he testified that he was initially known as Mose Angwenyi but in 1974 while in Mombasa, he was baptized and given the name Joshua. According to the documents filed in court, the person who made payments to North Kisii Central Farm is one Joshua Angwenyi. The payments were made between 1977 and 1981. One such document is a temporary settlement card in the name of Joshua Angwenyi. In this document there is Identity Card No. [particulars withheld]. The first digits on the document are the Identity Card Numbers of the first plaintiff. It is common knowledge that the First Generation Identity Cards were first issued to Kenyans in 1979. There is no way the first plaintiff would have been issued with an identification card prior to 1979. The ID number on the temporary settlement card was clearly superimposed on the card.

11. If the first plaintiff was baptized and given the name Joshua in 1974 as he claims, why didn't he acquire the ID card using the name Joshua?. While being cross examined by the defendant, the first plaintiff stated that he has a son called Joshua Angwenyi. He also conceded that the defendant has a son called Joshua Angwenyi. His other brothers too have sons bearing the name Joshua Angwenyi. The first plaintiff's father died in 1984. His son and sons of other brothers were named after their grandfather. It is therefore not true that the first plaintiff is the one called Joshua Angwenyi. The name Joshua Angwenyi belongs to his father.

12. There is evidence from the Chairman of Geta Farm that Joshua Angwenyi is the one who was allocated Plot No. 27. This witness was chairman from 1981. He testified that he knew Joshua

Angwenyi and that it is Joshua Angwenyi who was allocated Plot No. 27 at Geta Farm. The first plaintiff came to court and swore a false affidavit on 17/2/2014 in which he claimed that he is also known as Joshua Angwenyi. This is the same day on which he sold the suit land to the second plaintiff. The suit land did not belong to the first plaintiff. The suit land belonged to Joshua Angwenyi who is the father to the first plaintiff. It is therefore family land and the defendant cannot be evicted from the same.

13. The first plaintiff claimed that his father was called **Misaro Kerama Nyarae**. His brother John Angwenyi (DW2) testified that Misaro Kerama Nyarae was their uncle who died without children. It is not contested that the first plaintiff's father was called Angwenyi. How can he then claim that his father is Misaro Kerama Nyarae. Where has the name Angwenyi disappeared to? It is clear that the first plaintiff is out to defraud his other brothers. The first plaintiff called his mother as his witness. This witness gave contradictory evidence. On the one hand she claimed that the suit land belonged to the first plaintiff. On the other hand she claimed that when the defendant's husband was sick, the first plaintiff approached her and asked her to agree to sell part of the suit land in order to raise funds for the payment of the hospital bill. She alleged that the defendant refused and this is why the first plaintiff decided to sell the entire suit land so as to force the defendant out of the suit land. If indeed the suit land belonged to the first plaintiff, why was it necessary to seek the consent of the defendant before selling it? I found the evidence of the first plaintiff's mother to be full of lies. She was out to assist his son to chase away the defendant who had lost her husband.

### **DECISION**

14. Having found that the first plaintiff is not the called Joshua Angwenyi and that the suit land does not belong to him, I find that the suit against the defendant cannot be sustained. The same is hereby dismissed with costs to the defendant.

**Dated, signed and delivered at Kitale on this 10th day of June, 2015.**

**E. OBAGA**

**JUDGE**

In the presence of both plaintiffs and defendant's representative.

Court clerk – Isabella.

**E. OBAGA**

**JUDGE**

**10/6/2015**