



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 89 OF 2014

MESHACK OCHIENG GOGO..... PLAINTIFF

VERSUS

CHRISTINE NEKESA DEFENDANT

J U D G M E N T

INTRODUCTION

1. The plaintiff is the legal and or beneficial owner of **Plot No. 519** measuring **37ft x 55ft** at Namanjalala in Trans-Nzoia County (suit land). The plaintiff bought the suit land from **Charles Wanyonyi Wekoye** the husband of the defendant on 17/4/2014. The plaintiff filed this suit against the defendant seeking eviction orders against the defendant. The defendant who had been duly served with summons to enter appearance and file defence only entered appearance but did not file defence despite the court giving her time to do so.
2. The case was fixed for formal proof and she was duly served. She appeared during the formal proof when the plaintiff testified. The case was adjourned to another date but she did not turn up in court.

PLAINTIFF'S CASE

3. The plaintiff testified that he bought the suit land from Charles Wanyonyi Wekoye on 17/4/2014. He produced a copy of sale agreement [Exhibit 1]. He paid Kshs.150,000/= for the land together with some semi permanent rooms which were on the suit land. This was after Charles Wanyonyi Wekoye showed him a copy of an agreement between him and one Anthony Wasike dated 19/11/2010 [Exhibit 2].
4. The defendant refused to move out of the suit land to give him possession. The plaintiff called PW2 Charles Wanyonyi Wekoye as his witness. This witness testified that he bought the suit land in the year 2010. The suit land was near his father in-law's land. He constructed some semi permanent structure where he moved in with his wife the defendant in this case. His stay on the suit land became problematic because of constant harassment from his in-laws over payment of dowry. He discussed with his wife who agreed that they sell the suit land and go and settle elsewhere. It is after this agreement that he sold the suit land to the plaintiff. He used the proceeds from the sale to put up a house in Bungoma for the family. When he asked the defendant to move out of the sold property, the defendant refused to move out.
5. The plaintiff produced a demand letter written by his lawyers asking the defendant to give vacant possession of the suit land. The demand letter is [Exhibit 3]. The plaintiff's evidence is

uncontroverted. The suit land was not a matrimonial home of the defendant. She was consulted and agreed to have the property sold only for her to change her mind after her husband had been paid money and put up a house for her.

DECISION

6. It is unfair to keep the plaintiff out of the suit land which he bought. I find that the plaintiff has proved his case against the defendant on a balance of probabilities. I allow the plaintiff's claim with the result that an order of eviction is hereby issued directing the removal of the defendant from **Plot No. 519** at Namanjalala. The plaintiff shall also have costs of this suit.

Dated, signed and delivered at Kitale on this **1st** day of **July, 2015**.

E. OBAGA

JUDGE

1/7/2015

In the presence of M/s. Arunga for Mr. Kaosa for Plaintiff.

Court Clerk – Isabellah.

E. OBAGA

JUDGE

1/7/2015