



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 131 OF 2014

MARY ANNE SILALIPLAINTIFF

VERSUS

NICHOLAS WANJALA.....1ST DEFENDANT

HAMISI ANGATIA..... 2ND DEFENDANT

J U D G M E N T

INTRODUCTION

1. The plaintiff is the registered owner of **LR. No. Kwanza/Namanjalala Block 5/1311** which is **1.75 hectares** (suit land). The plaintiff brought this suit against the defendants seeking an order of eviction against them from the suit land. The defendants who entered appearance and filed defence did not appear during the hearing of this suit. The case proceeded ex-parte after the court was satisfied that they had been served.

PLAINTIFF'S CASE

2. The plaintiff testified that she is the registered owner of the suit land having bought it from one **Justus Khaoya** in **2001**. She testified that she is a Dean of Students at Vision Institute of Professionals in Nairobi and that while she was away, the defendants invaded part of the suit land and constructed on it. She has been demanding that they move out of the suit land but that they have refused and instead are violent against her.

ANALYSIS OF EVIDENCE

3. The plaintiff produced a copy of Title [Exhibit 1] and a copy of Search [Exhibit 2]. These two documents show that she is the registered owner of the suit land. She obtained title to the suit land on **27/1/2012**. Though she testified that she bought the suit land in **2001** from Justus Khaoya, there was no evidence in form of sale agreement to confirm that she indeed bought the suit land in 2001. Though the defendants did not adduce any evidence in support of their case, they had filed documents which show that the first defendant bought **0.2** of an acre from **Justus Khaoya** on **7/5/2002**. The second defendant bought **0.4** of an acre from one **Christian Mutoro** on **10/8/2001**. Christian Mutoro had bought the **0.4** of an acre from Justus Khaoya on **27/6/2001**.

4. The plaintiff in her written submission acknowledges that the defendants bought land from Justus Khaoya but that the said agreements are now null and void for lack of consent of the land control board. This may be true but the fact remains that the plaintiff bought the land whose portion had already been sold to other persons. I think the plaintiff deliberately avoided to produce an agreement between her and Justus Khaoya perhaps because she knew she bought the suit land after the two defendants had bought part of it from the said Justus Khaoya. In her own evidence, she said that the vendor did not tell her that he had sold part of the land to other persons.
5. The defendants are already in possession of the respective portions which they bought from Justus Khaoya who later sold the same land to the plaintiff. The plaintiff has obtained title for the entire land including portions which had already been sold to the defendants. It will be unfair to order the eviction of the defendants from portions they bought merely on the ground that someone has come later and bought remaining portions held by the vendor but has obtained title for the entire parcel. To allow the plaintiff's claim will be tantamount to encouraging vendors to sell their land to a number of persons which in turn hurts innocent but weaker purchasers who are not keen on obtaining title as soon as they purchase land.

DECISION

6. I find that the plaintiff has failed to prove her case against the defendants. The same is hereby dismissed with costs to the defendants.

Dated, signed and delivered at Kitale on this 14th day of September, 2015.

E. OBAGA

JUDGE

In the presence of Mr. Ngeywa for the plaintiff.

Court Assistant – Winnie.

E. OBAGA

JUDGE

14/9/2015