

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 63 OF 2013

J W MPLAINTIFF

VERSUS

B WDEFENDANT

J U D G E M E N T

INTRODUCTION

1. The Plaintiff is a former husband of the defendant. The plaintiff filed this suit against the defendant seeking an eviction order against the defendant from his two plots measuring 50 x 100 situated at Mabonde area. The plaintiff also seeks a permanent injunction restraining the defendant and or her agents from interfering with his two plots. The defendant who was served with summons to enter appearance never filed defence or entered appearance. The hearing proceeded by way of formal proof.

PLAINTIFF'S CASE

2. The plaintiff testified that he married the defendant in 1999. They cohabited as husband and wife until 2005 when the defendant deserted him. She went and got married elsewhere leaving behind two children of the marriage. In the year 2011, the defendant came back and occupied a site office he had erected on the two properties. The plaintiff demanded that she moves out of the two properties but the defendant has refused to do so.

ANALYSIS OF EVIDENCE

3. The plaintiff produce a sale agreement between him and John Kibii Korir which shows that he bought two plots on 5/4/2000 at Kshs.45,000/=. The plaintiff also produced a demand letter written to the defendant asking her to move out of the property.
4. The plaintiff's evidence remains uncontroverted. The defendant deserted the plaintiff. She was married elsewhere. She came back after seven years and settled in a site office which the plaintiff had put up at the two properties. The plaintiff in his plaint claims that the two properties are not their matrimonial home. The plaintiff did not say in his evidence that he has divorced the defendant. The two remain husband and wife notwithstanding the fact that she deserted him and has now come back.

DECISION

5. I find that the plaintiff's suit is misconceived. Parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of the marriage. This is what our constitution says. It will therefore not only be unfair to order eviction of the defendant, it will also be unconstitutional. I therefore dismiss the plaintiff's case with no order as to costs.

Dated, signed and delivered at Kitale on this 17th day of July, 2014.

E. OBAGA

JUDGE

COURT: Judgement delivered at 9.07 a.m. in the absence of the plaintiff's advocate who was aware of today's date. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

17/7/2014