

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT BUNGOMA

ENVIRONMENT & LAND CASE NO. 42 OF 2014

CLEOPHAS WASWA.....PLAINTIFF

VERSUS.

JACINTA MALOBA.....DEFENDANT

JUDGMENT

[1]. The Plaintiff in this case Mr. Cleophas Waswa filed this case on 21st February, 2014 seeking for orders against the defendant Jacinta Maloba. The orders sought are for her eviction and that of her relatives and nominees(s) and or authorized agents from land parcel No. E. Bukusu/S. Kanduyi/7969 and 7960 and a removal of caution imposed on the land by the defendant's husband. She also asks for costs and interests thereon. The defendant was served with the pleadings whereupon the defendants instructed his counsel on record. On 8/12/2015 the defendants Counsel who had filed a notice of appointment applied for time to peruse the court file and therefore be in a position to advice his client. The prayer was granted on 21/1/2017 the plaintiff's advocate sent a letter to the counsel for the defendant for fixing a hearing date. The defendant or his counsel never attended and the date was taken ex parte. A hearing notice was served on the respondents when the case came up for hearing on 23/5/2017, the counsel for the defendant applied for adjournment on the ground that there was no pleadings filed and he blamed the counsel who had been on record for the defendant. The application was opposed. The court dismissed the application and held that it was an abuse of the process of the court and that it was not merited. The case was ordered to proceed to hearing.

[2]. The plaintiff Cleophas Wanyonyi gave evidence and stated that he relied on his statement filed in court on 21/2/2014 and asked the court to adopt the statement. He said that the lands in question E. Bukusu/S. Kanduyi/7969 and 7970 were registered in his names. He produced certified copies of the register as PExh. No. 1 and 2. He told the court that previously the land was E. Bukusu/S. Kanduyi/7816 in his names. He stated that he bought the lands from one Evans Wamalwa Muse. He produced a Green Card as PExh. No. 3. He testified that he does not use the lands and that the lands are used by the defendant. He further testified that he had a case in Bungoma High Court where one Paul Maloba Mutanda had sued him and also had sued Evans Wamalwa Muse aforesaid vide Bungoma High Court No. 59 of 2000 whereby the said Paul Maloba Mutanda had sued him and also had sued Evans Wamalwa Muse aforesaid vide Bungoma High Court No. 59 of 2000 whereby the said Paul Maloba Mutanda was claiming that land. The suit was heard and determined and the suit was dismissed with costs to the plaintiff. The plaintiff produced that Judgment as PExh. No. 4.

[3]. Further that the said Paul Maloba Mutanda filed an appeal to the Court of Appeal vide Appeal No. 274 of 2008 which appeal the said Maloba withdrew on 7th March, 2012 and costs were awarded to the respondent therein and the plaintiff herein. The ruling of the court of Appeal was produced in court as PExh. 5. The plaintiff stated that the said Paul Maloba Mutanda was the husband of the defendant herein. The plaintiff argued therefore that there was no claim therefore that could be sustained by the defendants over the said lands.

He finally stated that he had never sold the land to the defendants and/or his agents or those claiming under her. He prayed that the caution placed over the suit lands by the defendants husband be removed and that the defendants be ordered to move out and vacate the suit land with all her agents, servants and

any one claiming under her.

The plaintiff closed her case after being examined by Mr. Onkangi counsel for the defendants. After the close of the plaintiff's case, the defendant's counsel made an application to file the defence out of time and that he be given time to file a formal application. The application was opposed by the counsel for the plaintiff. The court made a ruling and rejected the application as yet another abuse of the process of the court. The case therefore closed.

Having heard the history of the case and the evidence of the plaintiff, I find that the plaintiff's claim in this case is merited. I allow the claim in the plaint as prayed with costs.

Judgment read in the presence of Mr. Murunga.

Dated at Bungoma this 4th day of October, 2017.

S. MUKUNYA

JUDGE.

In the presence of:

Court Assistants: Chemutai/Joy

Mr. Murunga for the Plaintiff

Ocharo Kebira for the defendant