



**Lelei v Tarus (Environment & Land Case 87 of 2019)  
[2023] KEELC 16781 (KLR) (13 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 16781 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 87 OF 2019**

**EO OBAGA, J**

**APRIL 13, 2023**

**BETWEEN**

**FRANCIS KIPKOECH LELEI ..... PLAINTIFF**

**AND**

**STEPHEN KEINO TARUS ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the Defendant in which he sought the following reliefs:-
  - a. That the (5) acres of LR No. Kondoo Settlement scheme/487 belonging to the Plaintiff be transferred to the Plaintiff forthwith.
  - b. That a vesting order do issue the (5) acres compromised in the suit parcel of land LR No Kondoo settlement scheme/487 in the plaintiff.
  - c. That the Defendant be ordered to sign the requisite transfer documents in favour of the Plaintiff for the five acres comprised in LR No Kondoo settlement scheme/487 and/or in the alternative the Deputy Registrar be allowed to sign the said documents on his behalf.
  - d. A declaration that the partnership between the parties has irretrievably broken down and should be dissolved.
  - e. A declaration that the joint ownership in land parcel Kondoo settlement scheme/487 approximately measuring 7 acres be severed and converted to ownership in common.
  - f. That the honourable court do issue an order that the suit property Kondoo settlement scheme/487 approximately measuring 7 acres be subdivided into 5 acres to the Plaintiff and 2 acres to the Defendant accordingly.
  - g. That a vesting order do issue to sanction the issuance of individual titles at law.



- h. An order of specific performance.
    - i. That a refund of the Kshs 62, 642/= and other expenses adding up to Kshs 50,000/= to the Plaintiff by the Defendant.
  - j. General damages.
  - k. Cost of the suit.
  - l. Any other relief that this honorable court may deem fit and just to grant.
2. The Plaintiff is an uncle of the Defendant. On 18/5/1994, the Plaintiff and the Defendant agreed to pool resources for the purchase of LR. No Lainguse/Kiptega/01' Leinguse/487 which was owned by Ngere Mabati Irungu. The land measured 7 acres. The Plaintiff raised Kshs 175,000/= and the Defendant raised 75,000/= The purchase price was Kshs 250,000/=.
  3. The Plaintiff was entitled to 5 acres and the Defendant 2 acres in accordance with the amount contributed. As the land was within Kondoo Settlement Scheme, there were dues owed to the Settlement Fund Trustee (SFT). The amount owed to the Settlement Fund Trustee had to be cleared before the parties could be given a discharge of charge.
  4. The Plaintiff asked the Defendant to pay his share to the SFT in accordance to what he had contributed. The Defendant refused to cooperate forcing the Plaintiff to clear what was owed to the Settlement Fund Trustee alone.
  5. The Plaintiff testified that the defendant beat him up and chased him away and that he is utilizing the entire 7 acres.
  6. The Defendant who was duly served neither entered appearance nor filed a defence. The hearing therefore proceeded ex-parte. The Plaintiff called two witnesses who testified that they were aware about the purchase of the suit property by the Plaintiff and the Defendant. The two witnessed the sale between the Plaintiff and the Defendant on the one part and Ngere Mbatia Irungu on the other part.
  7. Even though the Defendant did not defend this suit, the Plaintiff was bound to prove his case to the required standards. The land was under the Settlement Fund Trustee which had been given to Ngere Mbatia Irungu. As at the time Ngere Mbatia Irungu sold the land to the Plaintiff and the Defendant, he had not cleared what he owed the Settlement Fund Trustee.
  8. The Plaintiff claims to have paid KSHs 10,000/= as outright purchase of the land. He also testified that he cleared all what he owed Settlement Fund Trustee. According to the Settlement Fund Trustee, the outstanding amount as at 28/7/2016 was Kshs 149,775.83/= This as per Plaintiff exhibit 5.
  9. On 28/9/2017, the County Land Adjudication and settlement officer, Uasin Gishu wrote a letter to the Chief Lainguse Location informing him that the Plaintiff had paid a sum of Kshs 219, 250/= which was due to the Settlement Fund Trustee. He required the Chief to prevail upon the Defendant to reimburse the Plaintiff a sum of KSHs 62,642/=. He also asked the Chief to ask the Defendant to go to the settlement office to sign a discharge and pay survey fees to enable processing of two separate titles after subdivision. This letter was produced as exhibit 6.
  10. There is no explanation given how the sum of Kshs 149,775.83 which was due to Settlement Fund Trustee rose to 219,250 which was now proportionally shared by the County Land Adjudication and Settlement officer, Uasin Gishu. There is also no evidence that the Plaintiff paid Kshs 219, 250/= to the Settlement Fund Trustee. There was no receipt produced.



11. In the Plaintiff's submissions, the Plaintiff states that he paid the balance due to Settlement Fund Trustee through Kenya Commercial Bank. There is a bank in slip for KCB in the file. This document was not produced as an exhibit. However, it shows that Kshs 56,220/= was paid by the Plaintiff. The purpose for which it was paid is not clear as the receipt is too faint to be read.
12. The Plaintiff is also praying for Kshs 50,000/= being expenses which have not been explained. In the submissions by the Plaintiff, the Plaintiff claims a sum of Kshs 112,642 which includes expenses incurred in following the process of conveyancing and issuance of title for the land. The title has not been processed. One cannot claim for what he has not incurred. The law regarding special damages is that they have to be pleaded and proved. The claimed amount has not been pleaded and proved.
13. The only amount which the Plaintiff proved is the sum of Kshs 10,000/= being outright purchase. The law is clear that one cannot claim general damages in addition to quantified damages. In any case, the plaintiff did not adduce any evidence to show that the Defendant is utilizing the whole land as to call for damages for trespass.
14. The sum of Kshs 10,000/= is to be shared in accordance with the acres due to each of the parties. This will therefore work as follows: - 10,000/= divided by 7 acres = 1429. The Defendant shall therefore reimburse the Plaintiff a sum of Kshs 2,858/= being what he should have contributed for his two acres.
15. I therefore enter judgement for the Plaintiff as follows: -
  1. An order that LR No Lainguse/Kptega/01' Leinguse/487 at Kondoo Settlement Scheme be subdivided so as to give 5 acres to the Plaintiff and 2 acres to the Defendant.
  2. The Defendant is hereby ordered to sign all documents necessary to effect the subdivision and registration of individual titles in the proportion in (1) above failing which the Deputy Registrar of this court to do so on his behalf.
  3. Any charges which may be required to effect transfer and registration be paid proportionately but if the Defendant does not pay, the Plaintiff to pay the same and recover the same from the Defendant as a civil debt.
  4. The Defendant to reimburse the Plaintiff a sum of Kshs 2,858/= with interest at court rates from 18/5/1994.
  5. The Defendant shall pay the costs of this suit.

**DATED, SIGNED and DELIVERED at ELDORET on this 13<sup>th</sup> day of April, 2023.**

**E. O. OBAGA**

**JUDGE**

In the virtual absence of Plaintiff's counsel who was aware of the date of delivery of judgement.

Court Assistant –Kimathi.

**E. O. OBAGA**

**JUDGE**

**13<sup>th</sup> APRIL, 2023**

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