



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUNGOMA.**

**ELC. CASE NO. 70 OF 2006.**

**RAPHAEL WANJALA MUCHANGA.....PLAINTIFF**

**VERSUS.**

**SAMUEL WEKESA MUCHANGA.....1<sup>ST</sup> DEFENDANT**

**TUKI WABWOBA MUCHANGA.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

[1]. The plaintiff's claim is for an order of Eviction of the defendants from land parcel Number Elgon/Chemoge/547 and for a permanent prohibitory injunction restraining the defendants by themselves, servants, agents and/or employees or otherwise however from remining or continuing in occupation of the suit land on transferring, disposing off alienating or in any manner whatsoever dealing with the suit land.

[2]. In his evidence the plaintiff said that he owns land Elgon/Chemoge/547. He said that he had a title deed in his name and produced a copy thereof in Court. He said that the original of the same was held as a security for a loan. He said that the land was sold to him by Mwalimu James Kikechi in 1984 and that he paid the purchase price in a period of three years. He produced an agreement for sale dated 02.03.1984. He also produced acknowledgements. Also produced by him was an application for consent by the Kapsokwony Land Control Board dated 26/05/1987. He said that a transfer to him was also signed.

[3] He stated that the defendants entered into his land in 1992 and have since refused to move out and vacate therefrom. He said that the defendants filed suit against him in the land Disputes Tribunal Mt. Elgon and the tribunal gave them portions of his land ruling, that he retains 10 acres. He stated that he appealed to Bungoma High Court in Appeal Case No. 12 of 2001 and the decision of the tribunal was quashed by the High Court. He said that the defendants have portions of land inherited from their late father. He went on to say that he has suffered damages from the continued occupation of the land by the defendants. He averred that he cannot cultivate his land or use it in many other ways. He prayed for orders of eviction.

[4]. The defendants filed a defence and said that the plaintiff is not an absolute owner of land parcel Elgon/Chemoge/547 but a part owner and a trustee thereof for the benefit of himself the two defendants and one Wabomba Muchanga. The defendants averred that the suit land was bought in 1966 by Michael Wamalwa, their eldest brother from one James Kikechi for their late father who at that time was living on a three acre piece of land in Sikhendu. That their father moved to that land in 1974 and that the land is occupied by his children. The defendants went on to stay. Plaintiff has 9 acres, first defendant 6 acres and second defendant 1 acre and John

Wabomba 1 acre. They said that Michael Wamalwa did not pay the purchase price in full and Muchanga Wabomba died before the full purchase price was paid. That the plaintiff paid off the balance of the purchase price and in consideration thereof, he was to be given a bigger share of the suit land. The defendants denied that they were trespassers.

[5]. The first defendant on cross examination admitted that he had filed no counterclaim. That he had not cautioned the land at the Lands office. That the land is not clan land and that it was bought. He further said that he had no proof of assisting in the purchase of the land. He said that he uses 1 acre of land. He said that the title of the land is in the plaintiffs name and there is no indication that the land is held in trust. He said that he does not live on the land. That he lives in Tongaren at Elgon/Chemoge/547. He said that he bought that land from his father.

[6]. The issue for determination is whether the suit land belongs to the plaintiff and whether he is entitled to the orders for eviction as prayed.

[7]. The purchase price of this land was agreed between the vendor James Kikechi at Kshs.20,000/= the same was paid by the plaintiff as follows;

2.3.1984 Kshs.6,500/=

18.3.1984 Kshs.2,000/=

10.4.1984 Kshs.500/=

26.11.1986 Kshs.6,000/=

14.2.1986 Kshs.2,000/=

14.2.1986 Kshs.750/=

6.3.1986 Kshs.1,000/=

Undated Kshs.1,250/=

**Total Kshs.20,000/=**

All these sums were received by the purchaser and signed by the vendor and purchaser. The original agreements for Elgon/Chemoge/547 were produced in court between the plaintiff and James Kikechi. Also produced is copy of application for Land Control Board dated on 26/5/86 between James Kikechi and Raphael Wanjala Muchanga. A letter of consent dated 26.5.1987 by the Mt. Elgon Land Control Board for transfer from James Kikechi to Raphael Wanjala Muchanga, a copy of the Title deed for Elgon/Chemoge/547 dated 27<sup>th</sup> November, 1982 and in the name of Raphael Wanjala Muchanga were produced.

[8]. There is no doubt that the plaintiff purchased this land by instalments. The Vendor acknowledged all instalments. He finally took the purchaser to the Elgon Land Control Board where he was granted a consent for transfer. He was finally issued with a title deed in his name on 27/11/1987. This land is truly his. The allegation by the defendant that this land was purchased by their late brother Michael Wamalwa who died before finishing paying the purchase price and thereafter the plaintiff finally paid the last instalments has no basis.

[9]. I am satisfied that the plaintiff bought this land by himself. This is not clan land. This land did not belong to the defendants father at all. The title is in the plaintiffs name. The defendants shall move out and vacate out of the plaintiffs land forthwith, failing which they shall be evicted therefrom by the plaintiff with the help of the court broker and officers of the nearest

police station. The plaintiff shall have the costs of this suit.

Judgment read in open Court in the presence of the Counsels.

**Dated at Bungoma this 28<sup>th</sup> day of March, 2018.**

**S. MUKUNYA**

**JUDGE**

**In the presence of:**

Joy: Court Assistant

Mr. Murunga: For Bw' Onchiri for Plaintiff

M/s Achieng: For Mr. Khakula for the defendant