



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

CIVIL SUIT NO. 94 OF 2000.

JOASH BARASA KISIANG'ANI.....PLAINTIFF

VERSUS.

BOARD OF GOVERNORS SIRAKARU SECONDARY SCHOOL....DEFENDANT

JUDGMENT.

[1]. Alfred Kisiang'ani the plaintiff herein filed suit against the Board of Governors of Sirakaru Secondary School the defendants herein and alleged that on or about 22.2.90 the defendants purported to enter into an agreement of purchase of part of Land Parcel No. Bungoma/Kabuyefwe/379 measuring approximately 1½ with one, Magadalina Makokha Kisiang'ani.

[2]. The plaintiff argues that the said land Bungoma/Kabuyefwe/379 was agricultural land and subject to Land Control. That the relevant Land Control Consent was not duly obtained.

[3]. That by the time the agreement aforesaid was entered into, the registered owner Alfred Kisiang'ani Lunalo was deceased and no administrator of his estate had been appointed by the Court.

[4]. The plaintiff avers that the defendants herein invaded the suit land and unlawfully planted crops, which act they continue to do each season denying the plaintiff's use of the said land.

[5]. The plaintiff thereof claims for an order of eviction and a permanent injunction restraining the defendants or anybody claiming through them from dealing in land parcel Bungoma/Kabuyefwe/379 in any way.

[6]. The defendants deny that by virtue of Sec. 6(3) of the Land Control Act that the agreement was a controlled transaction. They aver that the entry of the suit land is lawful and that the land was acquired legally.

[7]. The defendant in the alternative pray for a refund of Kshs.37,500/= which they claim they paid for the said land. They claim the said amount with interests.

[8]. The plaintiff in his evidence said that he filed a Succession Cause and obtained Letters of Administration of his father's Estate in the Webuye Senior Residents Magistrates Court Succession Cause No. 8 of 2006. The grant was confirmed and Land Parcel Bungoma/Kabuyefwe/379 distributed as follows;

Agnes Naliaka 0.25 Acres

Lydia Natecho 0.25 Acres

Janes Nafula 0.25 Acres

Juma Kisiang'ani Lunalo 2.5 Acres

Charles Simiyu Lunalo 2.0 Acres

John Wamalwa Lunalo 2.0 Acres

Johina Namalwa 0.5 Acres

Joash Barasa Kisiang'ani 2.5 Acres

Charles Lunalo and

Nancy Misere in trust of Japson Wanyama

Lunalo's family 2.0 Acres

Joash Barasa Kisiang'ani and

Agnes Naliaka in trust of minors

Nick Kisiang'ani Wangila and Titus Wangila 2.0 Acres

That therefore there is no land available for the defendants. The witness said that though the land is distributed it is still in the name of settlement Fund Trustees who have not released the discharge. The witness said that his mother is dead and that before she died she admitted having been paid Kshs.37,500/= by the defendants.

[9]. The defendants who were served with the hearing date never appeared. Mr. Khakula who appeared for them, said there was a new B.O.G. and a new School Head who were not properly briefed of the matter.

[10]. The issue for determination is whether the Plaintiff has proved his claim in this case.

[11]. Land parcel Bungoma/Kabuyefwe/379 is an agricultural land. Any agreement to sell a portion of the same is subject to Sec. 6 of Land Control Act and such an action becomes void for lack of the Land Control Boards Consent.

[12]. The registered owner of the suit land had died prior to the Sale. Letters of Administration had not been taken by the time the defendants entered into a Sale Agreement with the wife of the registered owner. She lacked capacity to enter into any agreement for sale. She could not pass any interests in land.

[13]. The defendants are not covered by the exception of Sec. 6(3) (a) and (b) since the transmission would have resulted in the division of the suit land into two or more titles. Secondly, the defendant is neither Government or Settlement Fund Trustees.

[14]. The wife of the deceased admitted to her son the plaintiff herein that Kshs.37,500/= had been paid by the defendants, this money that was paid for this land transaction must be recovered as a debt under Sec. 7 of the Land Control Act.

[15]. The plaintiff claim in this case is allowed. The defendants shall move out and vacate out of the suit land, if they do not do so, they shall be evicted therefrom by the court broker of this court. I do order that a permanent injunction do issue against the defendants restraining the defendants or anyone claiming under them from entering, trespassing or in any other way dealing with land parcel Bungoma/Kabuyefwe/379.

The Kshs.37,500/= paid by the defendants shall be refunded to the defendants by the plaintiff. Each party shall bear its own costs.

Judgment read in Open Court before Mr. Okwi.

Dated at Bungoma this 18th day of December, 2017.

S. MUKUNYA

JUDGE.

In the presence of:

Hon. S. Mukunya (Judge)

Court Assistant: Joy

Mr. Okwi - For Mr. Khakula for the defendant

Mr. Omukunda: For the Plaintiff