

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

LAND AND ENVIRONMENT CASE NO. 213 OF 2014

JAMMIES NYONGESA WAFUBWA.....PLAINTIFF

VERSUS.

PATRICK MULONGO WEPUKHULU.....DEFENDANT

JUDGMENT.

[1]. Jammies Nyongesa Wafubwa the plaintiff herein filed this case and stated that he purchased Land Parcel Kimilili/Kibingei/937 from the then registered owner Elam Lusweti. He produced an agreement of Sale dated 6th May 2009 which was prepared by Onyinkwa & Co. Advocates in which the Land was bought for Kshs.37,800/=. The agreement was executed by both parties. He produced a Consent of Kimilili Land Control Board dated 6th June, 1985. He also produced a certified copy of the green card of the Land showing all the dealings in that land. He was registered as the owner on 7/6/85 and a land certificate was issued to him on 14/6/85.

[2]. The defendant herein Patrick Mulongo Wepukhulu filed a case in the Kimilili Land Disputes Tribunal No. 26 of 1995 and claimed the same land as his and he alleged that he had previously bought it for Kshs.6,000/= which he had paid up in full and taken possession of the same. He alleged that he bought it on 6th March, 1977. A decision was made by the Tribunal that the said Patrick Mulongo Wepukhulu had paid for the said land in full by 17th April 1977 and deserved to be given title of the same on 6th February 1996. On 31/7/2002, that decision was adopted as the order of the court for a second time.

On 9th May 1996 the defendant herein prepared a vesting order through a Miscellaneous application No. 12 of 1996 which vested the land from Jammies Wafubwa Nyongesa to himself. The order was advertised on the Kenya Gazette of 12/2/99 vide Gazette Notice 610 of 12/2/99. The executive officer of Bungoma Law Courts signed the transfer on behalf of the land owner on 8th May 1996. The land was transferred to the defendant on 1/2/1999 and a title deed issued to him on 24/3/99.

[3]. On 10/6/2003 the Bungoma High Court gave the Plaintiff herein Leave to Lodge an Appeal to Western Province Lands Disputes Tribunal against the Judgment of 31/7/2002. He was given 21 days to do so. He filed his appeal on time on 30th June 2003.

The appeal was never heard by the Western Provincial Land Disputes Tribunal from 30/6/2003 to upto 30/8/2011 a period of 8 years. The Land Disputes Tribunal Act was repealed by the Environment and Land Act on 30/8/2011. No one ever moved the Environment and Land Court for directions on that Appeal. The appeal has now died a natural death as a result of the repeal of Act 18 of 1980. The plaintiff instead, filed a fresh case. The old Judgment by the tribunal is still in place and is a valid Judgment of the Court.

This land was registered in the name of the defendant through the due process of the Law. There was no fraud involved at all. The Appeal processes were open to the plaintiff. He should have explored them and pursued them diligently instead of filing a parallel suit while the original Judgment appealed from is still a valid Judgment of the Court. The prayers sought by the plaintiff cannot be granted at all.

The suit is dismissed with costs.

Judgment read in Open Court in the presence of the parties.

Dated at Bungoma this 13th day of December, 2017.

S. MUKUNYA

JUDGE

In the presence of:

S. Mukunya - Judge

Chemutai: Court Assistant

Mr. Kweyu: For the Plaintiff

Defendant: Present