



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISUMU

HCC 93 OF 2012

MICHAEL AMOLO.....PLAINTIFF

VERSUS

1. DISTRICT LAND REGISTRAR

2. HON. ATTORNEY GENERAL.....DEFENDANTS

J U D G M E N T

1. By a plaint dated 21/5/2012 and filed here on 23/5/2012 the plaintiff – **MICHAEL AMOLO** – complained about a restriction placed on his land parcel No. **KISUMU MUNICIPALITY/BLOCK 9/198** (hereafter the suit property) which was hampering his right to use and/or develop the land. The plaintiff blamed this state of affairs on the two defendants – **DISTRICT LAND REGISTRAR, KISUMU** (1st defendant) and **HON. ATTORNEY GENERAL** (2nd defendant).

2. The plaintiff therefore wants an order compelling the defendants to remove the restriction. He also wants damages for trespass. Costs and interests are also claimed.

3. The defendants entered appearance and subsequently filed a defence. According to the defence filed, the plaintiffs ownership of the suit property was denied. It was also denied that a restriction had been placed.

4. The matter came for hearing several times. On 5/3/2014, the court gave the matter last adjournment. This was done after the court acceded to a request from the defendants for more time to clarify an issue. The next hearing date given was 8/5/2014.

5. On the next hearing date however, the defendants didn't turn up. This prompted the court to indicate its willingness to proceed without the defendants. But the Court's hands were full on that day and the matter was not reached for hearing. The Court therefore put it for hearing the following day – 9/5/2014.

6. The court then proceeded on 9/5/2014. The plaintiff gave a testimony which was essentially a narrative that provided the background and history of the matter. The suit land, it emerged, was advertised for sale by Kenya Railways. The plaintiff got interested and entered into a transaction with the seller resulting in the ultimate change of ownership from the seller to the plaintiff. Thereafter, the plaintiff desired to have the change in ownership reflected in Municipal Council records at Kisumu. In the course of effecting such change, he discovered that a restriction had been placed on the suit property. He got to know that the C.I.D had done so purportedly to carry out some investigations. The plaintiff then decided to sue, hence this suit.

7. In the course of hearing, the plaintiff availed the following exhibits;-

- **Plf Ex No.1: a letter from Kenya Railways explaining why it had declined to sign sale agreement and requesting that the plaintiff agree to some change in purchase price so that Kenya Railways could sign the agreement.**
- **Plf Ex No.2: Sale Agreement between Kenya Railways and the Plaintiff.**
- **Plf Ex No.3: Letter dated 15/1/2012 showing that Plot No.4 which was being sold changed to KISUMU MUNICIPALITY/BLOCK 9/198 upon being sold.**
- **Plf Ex No.4: Lease agreement.**
- **Plf Ex No.5: Lease certificate**
- **Plf Ex No.6: Municipal Council's letter to plaintiff requesting for payment of Kshs.3000/= from plaintiff being transfer fee to effect change of ownership of suit property in council's records.**
- **Plf Ex No.7: The certificate of official Search showing registration of restriction on the suit property.**
- **Plf Ex No.8: Notice of intention to sue District Land Registrar, Kisumu.**
- **Plf Ex No.9: Notice of intention to sue the A.G.**

8. In essence, the plaintiff showed well that he bought the suit property from Kenya Railways and became the new owner thereof. But the C.I.D placed a restriction on the suit property citing intention to undertake investigations. The plaintiff came to court and sued 2nd defendant on behalf of C.I.D. The land Registrar (1st defendant) was also sued. But the defendants showed laxity in prosecuting their case and the matter proceeded without them. As things stand, the plaintiff's testimony is without a rebuttal. There is really nothing standing in the way of granting the orders sought. I must point out here that even without the defendants, the plaintiff prosecuted the case well. He didn't throw caution to the wind. He gave a convincing story backed up with the necessary exhibits. But while the plaintiff showed that a restriction was placed on the suit land, and that he was the owner thereof, he didn't address the court on the issue of damages.

9. The court therefore holds that the plaintiff's case is well proved on a balance of probabilities as regards the following prayers:-

Prayer (a): Which is for removal of restriction and;

Prayer (c): Which is for costs and interests.

The plaintiff is therefore granted these prayers.

Prayer (b), which is for damages, is not granted.

A.K. KANIARU – JUDGE

29/1/2015

29/1/2015

Before A.K. Kaniaru – Judge

Diang'a – Court Clerk

Plaintiff – present

Defendant – Absent

Oyuko for plaintiff

Nyauma (AG's office) for defendant

Interpretation – English/Kiswahili

COURT: Judgment read and delivered in open **COURT.**

Right of Appeal – 30 days.

A.K. KANIARU - JUDGE

29/1/2015