

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E & L CASE NO. 176 OF 2013

ANDREW KIPROP RONO.....**PLAINTIFF**

VERSUS

VITALIS SUNGUTI LIGARE..... **1ST DEFENDANT**

ISAAC KEMBOI..... **2ND DEFENDANT**

JUDGMENT

Andrew Kiprop Ronoh (hereinafter referred to as the plaintiff) has sued Vitalis Sunguti Ligare and Isaac Kemboi (hereinafter referred to as the Defendants). The plaintiff claims that at all times material to this suit, the 1st defendant was the registered owner of the parcel of land known as **UASIN GISHU/TAPSAGOI SETT. SCHEME/173** measuring approximately 7.0 Hectares whilst the 2nd Defendant was the beneficial owner of the above mentioned parcel of land.

On or about 7th March 2012 the plaintiff and 1st Defendant entered into a sale agreement of the entire parcel of land at an agreed total consideration of Kshs. 3,500,000/-. The plaintiff paid Kshs. 3,200,000/- on the same date, a sum which was transferred to the 1st defendant's account through Family Bank which money the plaintiff acknowledged receipt. That upon executing the sale agreement, the original title deed thereto was surrendered to the firm of M/s. Kiboss-Kibet & Company Advocates for safe custody to be held till the completion date. It was an express term of the contract that the completion date was to be on or before 4th January 2013, when the plaintiff would clear the final installments of Kshs. 300,000/- and in return receive the original title and other documents relevant to effect a transfer of the land. The Plaintiff avers that upon the defendant receiving the first installment of the consideration, he soon thereafter disappeared from his usual place of business despite relentless effort on the part of the plaintiff to find him, his whereabouts have remained unknown. The plaintiff further avers that he has been ready and willing to complete the transaction from May 2012 however his efforts have been frustrated by the 1st defendant who has since disappeared without trace. The plaintiff contends that currently the suit parcel of land is being utilized for agricultural purposes by the 2nd defendant whom despite being aware of the plaintiff's interest in the land is adamant to give up vacant possession. The plaintiff's claim against the 1st Defendant is for an order of specific performance, to compel him to do his part of the bargain being to hand over the original title deed and other documents to enable transfer to be effected. The plaintiff's further claims for an order of injunction to be issued restraining the 1st defendant from selling disposing of, transferring, charging, alienating or dealing with the suit land in any other manner adverse to the interest of the plaintiff. The plaintiff's claim against the 2nd Defendant is for an order of permanent injunction restraining him from continuing to till, cultivating, planting crops on the land or using the same for any other purpose.

For the above reasons the plaintiff prays for judgment against the defendant jointly and severally for ***an order of specific performance, to compel him to do his part of the bargain being to hand over the original title deed and other documents to enable transfer to be effected. The plaintiff's further claims for an order of injunction to be issued restraining the 1st defendant from selling disposing of, transferring, charging, alienating or dealing with the suit land in any other manner adverse to the interest of the plaintiff. The plaintiff's claim against the 2nd Defendant is for an order of permanent injunction restraining him from continuing to till, cultivating, planting crops on the land or using the same for any other purpose.***

In the alternative the plaintiff prays for judgment against the 1st defendant for an order of restitution and

interest at commercial rates from the date of the cause of action. The defendant never entered appearance nor filed defence. The plaintiff complied with the Civil Procedure Rules 2010 and fixed the matter for hearing on the 11th March 2015 and served a hearing notice to both defendants but the latter never appeared. I am satisfied that the defendants were aware of the existence of the suit and the hearing date.

The plaintiff testified that he bought the suit land from Vitalis Sunguti on 7/3/2012 of Kshs. 3,500,000/-. he paid Kshs. 3,200,000 at the time of the agreement and later paid Kshs. 50,000/- bringing the total deposit to Kshs. 3,250,000/- the plaintiff produced the sale agreement a certificate of search showing that the land belonged to Vitalis Sunguti. He also produced a copy of the title deed. The plaintiff testified that The 1st defendant immediately disappeared after receiving the money. Despite the fact that the matter was reported to the police no arrest has been made. The 2nd defendant is in occupation of the parcel of land in dispute.

This court finds that the land in dispute is still registered in the name of the 1st defendant. Though the agreement of sale has been produced, the plaintiff has not demonstrated to court that there was an application to the Land Control Board within the area of the suit land. No consent of the said land control board had been produced. This is contrary to the Provisions of **Section 6 of the Land Control Act** of the Laws of Kenya. **Section 7 of the Act makes provisions for refund of the purchase price.**

This court finds that the plaintiff is entitled to an order of restitution against the 1st defendant and does order that the 1st defendant does pay the plaintiff Kshs. 3,250,000/- and 20% of the purchase price as agreed in the agreement made on 7th March 2012. The other prayers are rejected. costs of the suit to the plaintiff.

DATED AND DELIVERED AT ELDORET THIS 24th DAY OF APRIL 2015.

ANTONY OMBWAYO

JUDGE