



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
LAND AND ENVIRONMENT CASE NO. 2 OF 2012

1. FRED JUMA WANDABUSI

2. WILBERFORCE KEITH WAFULAPLAINTIFFS

VERSUS

JAMES K.S. MUKHALEDEFENDANT

JUDGEMENT

[1] The plaintiffs filed this case claiming that the defendant herein took the plaintiff' father one Wandabusi Nyongesa Sudi now deceased to M/s Onyinkwa & Co Advocates and snatched from the said Wandabusi Nyongesa Sudi the suit land by making him sign the sale agreement and other relevant forms to transfer twelve acres of land without payment. He claims that he wants land title No. W. Bukusu/N. Mateka/1858 nullified and a fresh agreement be entered with the first plaintiff who is the administrator of the late Wandabusi aforesaid. He prayed for revocation of title No. W. Bukusu/North Mateka/1858.

[2] The defendant filed his defence on 6/6/2012. He said that Wandabusi Sudi was not illiterate. That he personally signed the agreement dated 24/8/85 and the same was properly executed before an advocate. The defendant averred that the necessary land control consent was obtained, the transfer was signed by the late Wandabusi Sudi. He averred that the suit is misconceived and is premised on misapprehension of facts. He said he has been using the land since 1985. That the boundaries were demarcated by the District Surveyor Bungoma in 1985. That he has planted sugarcane there during the lifetime of the late Wandabusi Nyongesa.

[3] During the hearing of the case, Fred Juma Wandabusi said he knew that his father sold the land to the defendant on 24/8/85 for Kshs.84,000.00 but he paid Kshs.42,000 leaving a balance of Kshs 42,000. That the said sum was to be paid on or before 31/1/97. He alleged the amount was never paid. That they were never asked to collect the amount from Onyinkwa & Co. Advocates. That his father died on 8/4/98 and that he did not receive the balance. He alleged that the defendant came into the land in the year 2000. That is the time he went to the land office and found out that the defendant had sub divided the land and transferred a potion to himself on 19/4/98 one month after his father died.

[4] The defendant said that he is the owner of land West Bukusu/North Mateka/1858 comprising of 12 acres which he purchased in 1985 for Kshs.84,000.00 He produced an agreement dated 17/8/85 made by Onyinkwa & Co. Advocates. He also produced receipts of all purchase price Ex 1, 2(a), (b), (c) and (d). He further produced a consent of the land control board, Kanduyi, for sub division of the land dated 23/2/85 as D ex 3. He also produced the minutes of the land control board as D exh 4 for transfer. The letter for consent of transfer was produced as D exh 5 and the minutes thereof dated 27/4/85 were produced as Dexh 6. He produced also the Green Card of the land West Bukusu/N.Mateka No.1868 as exh. D8. The defendant stated that after sub divisions of the land, parcel West Bukusu/N. Mateka No.

1857 remained in the name of the plaintiff's father. He produced a Green Card for the same as D Exh 9. He said he paid the balance of the purchase price through the advocates. That, that fact was confirmed through the land control minutes and the letters of consent. He finally produced a contract with Mumias Sugar Company for planting sugar on the land. He requested the court to dismiss the suit.

The issue for determination is whether the defendant has purchased the land West Bukusu/North Mateka/1858.

[5] The agreement for sale dated 24th August 1985 between the plaintiff's father and the defendant is not disputed. The said agreement stated on paragraph 6 that possession shall be given to the defendant on signing of the agreement. It was signed on 24/8/85.

The payment of the purchase price was paid as follows:

(a)	24/8/85	Kshs 43,000.00
(b)	6/4/86	Kshs. 1,000.00
(c)	23/12/86	Kshs.32,000.00
(d)	11/10/88	<u>Kshs. 9,000.00</u>
	Total	<u>84,000.00</u>

The minutes of land control board of 23/2/85 were produced and a consent thereof. Further, the minutes of 28/4/1995 for transfer and a consent thereof was produced in court. The consideration was Kshs.84,000.00 a title deed dated 19/5/98 was issued in the name of the defendant. An agreement between the Mumias Sugar Co. and the defendant to grow cane dated 15/8/2008 signed before the area chief also was produced.

[6] The defendant produced a Green Card of West Bukusu/N. Mateka/1857 showing the same having been succeeded by the plaintiffs herein in Bungoma High Court Succession Cause 3 of 2011. It shows

the plaintiff getting 10 acres and the second plaintiff getting 7 acres and the aforesaid title being crossed for sub division to pave the way for parcels W. Bukusu/S.Mateka No 2574 and W.Bukusu/S.Mateka/2575.

[7] From the foregoing, I have no doubt in my mind that the defendant bought his land West Bukusu/S.Mateka/1858 legally. He entered into a sale agreement with the owner, paid the entire purchase price Kshs.84,000.00 Attended all relevant land control boards and a transfer was done by the owner Wandabusi Sudi and a title deed issued to him and he took possession.

I dismiss the plaintiff's claim as having no merit at all with costs to the defendant.

Dated at Bungoma this 23rd day of December 2015.

S.MUKUNYA

JUDGE

Delivered in open court in present of

Gladys court clerk

Sichangi for the plaintiff present

Mr. Musumba for the defendant

Judgement read in open court in presence of the counsels.

S. MUKUNYA

JUDGE

23/12/2015