



REPUBLIC OF KENYA

High Court at Nairobi (Milimani Commercial Courts)

Environmental & Land Case 225 of 2010

PAUL NJOROGE WAIHARO.....PLAINTIFF

VERSUS

JOEL NGUGI NJOROGE.....DEFENDANT

JUDGMENT

By a Plaint dated 11/5/2010 the Plaintiff prayed that Judgment be entered against the Defendant for:

- a) A declaration that Land Reference Number 13673/1515 legally belongs to the Plaintiff and the same should be transferred to the Plaintiff.
- b) An order that Title Deed Number 13673/1515 issued to the defendant be cancelled forthwith.
- c) An order that Thika District Land registrar be ordered to effect the transfer of Land Reference Number 13673/1515 to the Plaintiff herein.
- d) Costs of the suit
- e) Any other relief the Court may deem just to grant in favor of the Plaintiff over the Defendant.

The Plaintiff stated that the Defendant is his brother-in-law and that sometimes in the year 2004, he purchased 4 plots at Daykio Plantation at Mwihoko and registered one plot Land Reference Number 13673/1515 (*hereinafter referred to as the suit property*) in favour of the Defendant on the understanding that the Defendant would pay a sum of Kshs. 200,000/- being the value of the suit property. The Plaintiff averred that the Defendant refused to settle the agreed amount of Kshs. 200,000/- despite several letters of demand to either settle the amount or transfer the suit property to him.

The Plaintiff averred that this dispute was heard and determined by the Land Disputes Tribunal in Cause No. 52/2008 wherein in its award dated 17/9/2008 the tribunal ruled that the Plaintiff was the rightful owner of the suit property. The award was filed at the Resident Magistrate's Court at Thika and adopted as an order of the Court. The Plaintiff averred that the order and decree issued by the Resident Magistrate could not be enforced for reasons that the said Court lacked jurisdiction to enforce the award as the suit property is registered under CAP 281 Laws of Kenya.

The Plaintiff went on to state that the aforementioned notwithstanding, the Defendant on 13/8/2008 admitted in writing that he had withdrawn any of his claims on the suit property but that the Defendant has since refused, ignored and/or declined to sign the transfer form in his favor. The Plaintiff stated that this Honorable Court has jurisdiction as the suit property is situate at Githurai 45.

Despite service of the Plaintiff upon the Defendant, the Defendant did not enter appearance nor file a defence to the Plaintiff. A Process Server, Samson Ndegwa Thuku swore an Affidavit of Service on 2/7/2010 and deposed that the Defendant was pointed out to him by the Plaintiff. The Defendant in person received of the summons and the plaintiff but declined to acknowledge receipt of the same. The Plaintiff thus proceeded to request for judgment under O. IX A R. 6 of the Civil Procedure Rules on 14/7/2010. An interlocutory judgment was entered on 8/10/2010 and directions given that the matter be fixed for formal proof.

The matter came up for formal proof on 29/11/2012 when the Plaintiff took the stand and gave a sworn statement. The Plaintiff reiterated the contents of the Plaintiff and produced the following documents as exhibits in support of his claim:

- i) Decree from the Chief Magistrate's Court at Thika issued on 11/3/2009 – P. Ex. 1
- ii) Thika Land Tribunal Award dated 17/9/2008 – P. Ex. 2
- iii) Admission in writing by Defendant dated 13/8/2008 – P. Ex. 3
- iv) Title of the Suit Property issued on 7/11/2006 – P. Ex. 4

In civil cases the standard of proof is that on a balance of probabilities. The Plaintiff narrated how the suit property ended up being registered in the Defendant's name and that the sole reason was on the understanding that the Defendant would pay him Kshs. 200,000/- being the purchase price of the suit property. The Plaintiff annexed the proceedings and award of the Thika Land Disputes Tribunal together with an admission in writing in which the Defendant affixed his thumb print. In the award, the tribunal stated that the Respondent (the Defendant herein) brought a letter dated 13/8/2008 in which the Defendant withdrew all the claims in respect of the suit property. This evidence tallied with what the Plaintiff testified in Court. Despite being served with the pleadings herein, the Defendant failed to enter appearance or file a defence and therefore the Plaintiff's evidence was uncontroverted.

This Court therefore grants the following orders:

- i) A declaration that Land Reference Number 13673/1515 belongs to the Plaintiff.
- ii) Title Deed Number 13673/1515 issued to the defendant be and is hereby cancelled forthwith.
- iii) The Thika District Land Registrar be and is hereby ordered to effect the transfer of Land Reference Number 13673/1515 to the Plaintiff.
- iv) Costs of the suit be borne by the Defendant.

Dated, signed and delivered this 19th day of March 2013

L.N. GACHERU

JUDGE

In the Presence of:-

.....For the Plaintiff

.....For the Defendant

.....Court Clerk