

REPUBLIC OF KENYA

High Court at Kitale

Environmental & Land Case 6 of 2012

THOMAS RASUGU OGAMBA.....PLAINTIFF

VERSUS

GEOFFREY NYAKUNDI NDOCHA.....DEFENDANT

J U D G M E N T

The Plaintiff Thomas Rasugu Ogamba brought this suit against the Defendant Geoffrey Nyakundi Ndocha seeking an order for specific performance compelling the Defendant to sign a discharge in his favour at the Settlement Fund Trustee offices Kitale failing which the Deputy Registrar to sign the same on his behalf. The Plaintiff also claims a refund of Ksh. 10,000 being travelling expenses given to the Defendant to facilitate his travel from Nairobi to Kitale. The defendant was duly served with summons to enter appearance and file defence but he did not do so. The hearing therefore proceeded by way of formal proof.

During the hearing, the Plaintiff testified that in the year 2006, the Defendant who comes from his home area offered to sell his land at Kapomboi Settlement Scheme to him. On 19th October, 2006, they entered into a Sale Agreement whereby the Plaintiff bought Plot No. 403 at Kapomboi Settlement Scheme at a consideration of 750,000 which sum was fully paid at execution of the agreement. The Sale Agreement was produced as *exhibit 1*. The Defendant took the Plaintiff to the Land Control Board where consent to transfer the land was granted. Letter of consent was produced as *exhibit 2*. The Defendant duly signed transfer in favour of the Plaintiff. Transfer was produced as *exhibit 3*. When the Plaintiff went to lodge the documents at the Settlement Fund Trustee so that the land could be transferred to him, he was informed that the Defendant was required to sign a discharge before the land could be transferred to his name. The Plaintiff then approached the Defendant who was then residing in Nairobi and asked him to go to Kitale and sign the discharge in his favour. The Defendant became evasive. At one time the Defendant told the Plaintiff that he did not have fare to Kitale. The Plaintiff gave him Kshs. 10,000 through a lawyer as his travel costs. The Defendant signed an acknowledgment for the Shs 10,000 and further committed himself to travel to Kitale for purposes of facilitating transfer of the sold land into the Plaintiff's name. The acknowledgment was produced as *exhibit 5*.

The Defendant never travelled to Kitale to facilitate transfer as promised. The Plaintiff wrote a demand letter to the Defendant through his lawyer asking him to meet his obligations but the Defendant did not do anything necessitating the filing of this suit.

I have carefully considered the evidence adduced by the Plaintiff as well as the documents produced in support of the claim. The Plaintiff's evidence is uncontroverted. The Plaintiff has proved by evidence that the plot in issue which is 10 acres belonged to the Defendant and that the Defendant sold it to him in 2006. Land Control Board consent was duly granted. The land fell under the jurisdiction of Settlement Fund Trustee who had to have a discharge duly filled by the allottee before the same could be transferred to the Plaintiff. The Defendant has refused and or neglected to sign the discharge. The Plaintiff went out of his way to facilitate the Defendant to come to Kitale and sign the discharge but the Defendant took the money but refused to travel to Kitale. I find that the Plaintiff has proved his case on a balance of probabilities. An order is given compelling the Defendant to sign a discharge of charge for plot No. 403 Kapomboi Settlement scheme at the relevant offices failing which, the Deputy Registrar of this Court should sign the discharge on his behalf. The Defendant shall also refund Kshs. 10,000 to the Defendant with interest at Court rates from the time of filing this suit. The Plaintiff shall also have costs of this suit.

Dated, signed and delivered in Open Court on this 13th day of May, 2013.

E. OBAGA

JUDGE

In the presence of Mr. Abari for Plaintiff.

Court Clerk: Koskey.

E. OBAGA

JUDGE

13/05/2013