



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC CASE NO. 591 OF 2013

NTHIGA CIGANA.....PLAINTIFF/APPLICANT

VERSUS

NYAGA TITIMA.....DEFENDANT/RESPONDENT

JUDGMENT

By his “*home made*” plaint filed herein on 21st May 2013, the plaintiff sought the following orders against the defendant:

- a. ***The plaintiff prays this Honourable Court to consider his claim that the defendant gives him (plaintiff) a share of five (5) acres of land from parcel No.Nthawa/Riandu/1942 as agreed.***
- b. ***Costs of this suit.***
- c. ***Any other relief that this Honourable Court could find fitting for the plaintiff’s benefit.***

The claim was based upon an agreement dated 1992 whereby the plaintiff gave the defendant Ksh.3,000 in return of which the defendant as chairman of the Irimba clan agreed to co-opt the plaintiff as a member of the clan which would entitle the plaintiff to a share of the land. However, in breach of that agreement, the defendant refused to allocate him land even after being sued in various Courts and Tribunals. Among the documents attached to his plaint are copies of two agreements dated 16th January 1992 and a search certificate showing that parcel No.NTHAWA/RIANDU/1942 is in the names of REUBEN NYAGA TITIMA. It is clear from the defendant’s defence filed herein on 11th June 2013 that he is in fact the REUBEN NYAGA TITIMA in whose names the parcel of land NTHAWA/RIANDU/1942 is registered.

In his defense, the defendant denies that plaintiff is entitled to any share in the said land adding that this dispute has been litigated in several forums including Siakago Case No 46 of 2002 and also Embu High Court Civil Appeal No 70 of 2007 as well as the Land Disputes Tribunals in Mbere and Embu.

In his evidence in chief, the plaintiff testified how in 1992, the defendant’s Irimba clan approached him to assist them with Ksh.3,000 to pay for a case and they signed an agreement (Plaintiff’s Exhibit 1) by which he was to be given 5 acres of land.

The defendant denied all this saying he never received any money and has no land to give the plaintiff.

It is clear from the search certificate attached to the plaint that the defendant is the registered owner of the parcel of land no NTHAWA/RIANDU/1942. The plaintiff produced two agreements both dated 16th January 1992 which he says are in respect to land that he was to be given in return for his Ksh.3,000. The agreements were both in Mbere language but was not translated as would have been expected. This of course is due to the fact that the plaintiff and defendant were both acting in person. I nonetheless had the

agreements translated by an officer of this court and basically, what the two agreements state is that the plaintiff was to give the Irimba clan Ksh.3,000 and in return, the clan would adopt him and give him land. Although the defendant denied all those allegations, his name and identity card number appear on the agreements which he has also signed. Other clan members have also signed the agreements and affixed their identity card number. I am satisfied that indeed the plaintiff paid Ksh.3,000 to the defendant and other members of the Irimba clan so that he could be adopted and given land.

However, the issue for determination is whether that agreement is enforceable as against the defendant. The answer is NO. This being a land transaction, the usual Land Control Board's Consent had to be obtained. There is no evidence placed before me to suggest that after the agreement was signed on 16th January 1992, the necessary consent was sought and obtained within six (6) months of the making of the agreement as provided for under **Section 6(1) of Land Control Act**. That transaction therefore became void for all purposes and there can be no orders for specific performance of the said agreement which is really the remedy that the plaintiff seeks in this suit.

Secondly, the plaintiff is seeking to enforce an agreement signed in 1992. Under **Section 4(1) of the Limitation of Actions, Act (Cap 22)**, no action founded on a contract may be brought after the end of six years from the date on which the cause of action arose. The six year limitation period expired in 1998 and there is no evidence that the plaintiff obtained leave or extension of time to file this suit outside the limitation period. The suit is hopelessly out of time having been filed in 2013.

Thirdly, under **Section 7 of the same Limitation of Actions Act**, no action may be brought to recover land after the end of twelve years from the date on which the right of action occurred. The right of action herein accrued in or about July 1992 when the land Control Board's Consent ought to have been obtained after the agreement was signed in January 1992. The twelve year limitation period expired in 2004 and this suit is therefore barred by that provision.

Finally, looking at the two agreements produced by the plaintiff (Exhibit 1), it is clear that they were between the plaintiff and the Irimba clan. The first agreement reads as follows:-

“Agreement between Nthiga Cigana and Irimba clan today

16th January 1992”

The second agreement reads as follows:

“Agreement for the land Parcel No 906 1942 consisting the following numbers 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1125, 698, 1312, 1313, 1124 between Nyaga Titima and Irimba clan. It's and agreement for the clan to adopt and give me a piece of land”

Clearly therefore, if there was any contract, it was between the plaintiff and the Irimba clan. The search certificate which the plaintiff attached to his plaint shows that the property NTHAWA/RIANDU/1942 is registered in the names of the defendant. This is the property from which he seeks this court to order that he be given five (5) acres. It is not clear when this property was registered in the names of the defendant. What is clear however is that under **Sections 27 and 28 of the Registered Land Act** under which the property is registered, that registration vests in the defendant ***“absolute ownership”*** which is only subject to the overriding interests identified under **Section 30 of the same Act**. There is no evidence that the plaintiff enjoys any of those rights or that the defendant was registered as owner in trust for the plaintiff or any other person. Although I can see a caution registered on the property in favour of the plaintiff claiming a beneficial interest, I see no such interest.

Ultimately therefore, whereas the court sympathizes with the plaintiff's predicament, there is no evidence to warrant granting him the orders that he seeks in his plaint. His claim is dismissed with no order as to costs.

B.N. OLAO

JUDGE

24TH OCTOBER, 2013

24/10/2013

Coram

B.N. Olao – Judge

CC – Muriithi

Plaintiff – present

Defendant – Present

COURT: Judgment delivered this 24th day of October 2013 in open Court

Plaintiff present

Defendant present

Right of appeal explained.

B.N. OLAO

JUDGE

24TH OCTOBER, 2013