



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

CIVIL CASE NO. 5 OF 2005

JOSEPH NDUNGU MAINA & OTHERS

(On behalf of 109 others).....PLAINTIFF

VERSUS

NONDAHONA RANCHING CO.

ABDI AZIZI AHMED.....DEFENDANTS

JUDGMENT

Joseph Ndungu Maina, Benson Njorio Ndome, Nephath Kimemia Mwangi, John Kioi Kimani and Eston Maina Mbui filed a representative suit on behalf of themselves and 109 others against Nondahona Ranching Co. Ltd and Abdi Azizi Ahmed, the 1st and 2nd defendants herein. The suit is expressed in the Plaint dated 12th January 2005 in which the Plaintiffs sought for judgment against the Defendants in the following terms:

(a) A declaration that a portion measuring 200 acres to be excised from L.R. No. 65777/2 Subukia, was properly purchased by the Plaintiffs through the 1st and 2nd Defendants.

(b) After the redemption of the mortgage from A.F.C. by the Administrators of the Estate of Haji Ahmed Sheikh Ali, deceased and upon the 2nd Defendant sharing out the Estate, a portion of 200 acres from the aforesaid land should be reserved for the Plaintiffs.

(c) The 200 acres now occupied by the Plaintiffs should not be interfered with.

(d) If for any reason the Plaintiffs are evicted from the 200 acres, then the Defendants should be jointly and severally held responsible for shares worth and should be ordered to refund the same plus costs of eviction.

(e) The status quo be maintained in the 200 acres in L.R. NO. 65777/2 until the suit is heard and determined.

(f) Costs of the suit.

(g) Interest on (f) above.

(h) Such further and or better relief as this court deems fit.

Despite having been served with the Plaint and the Summons, the Defendants did not enter appearance nor file a defence, hence the case proceeded for hearing *ex parte* as a formal proof.

The Plaintiffs' case was supported by the evidence of Nephath Kimemia Mwangi P.W.1). P.W.1 told this Court that the 1st Defendant sold land in form of shares through the 2nd Defendant who acted as the administrator of the 1st Defendant's land. P.W.1 stated that the plaintiffs visited the 1st Defendants offices when they saw some posters advertising the sale of its land measuring 200 acres comprised in L.R. NO. 65777/2 popularly known as the Haji Farm in Subukia within Nakuru District. P.W.1 averred that they were shown a map of the land indicating the individual subdivisions. P.W.1 produced acknowledgement receipts the Plaintiffs alleged were issued by the 2nd Defendant upon submitting payments to him. The Plaintiffs also produced ballot cards they were issued when they balloted. The Plaintiffs said they paid Ksh.70,000/= per acre which amount was inclusive of the survey fees. The Plaintiffs claimed that they moved to settle on the land upon being shown their portions but were given quit notices by the Agricultural Finance Corporation officers in 2004. The Plaintiffs they wrote a letter to the area D.C. Protesting the move by A.F.C. It is said the District Commissioner sent a district Officer who organized for a meeting with the Plaintiffs where he prepared a list of evictees. P.W.1 produced a letter dated 26th July 2006 in which the 2nd Defendant admitted receiving some of the money from the Plaintiffs. P.W.1 was able to show that the Plaintiffs had paid a total of Ksh.11,486,720/= to purchase 200 acres from the Haji Farm. On the basis of the evidence of P.W.1 the Plaintiffs urged this Court to give them judgment as prayed in the Plaint. At the close of the evidence, the Plaintiffs' counsel was given a chance to file written submissions.

I have considered the evidence and the written submissions. There is no doubt that the 1st Defendant is based in Subukia. The parcel of land known as **L.R. NO. 65777/2** measuring about 1497 acres is the subject matter of this dispute. The land is registered in the name of Haji Ahmed Sheikh Ali, deceased and is charged with A.F.C. There is evidence that one Abdi Azizi Ahmed (2nd Defendant) obtained Letters of Administration in respect of the Estate of Haji Ahmeid Sheikh Ali, deceased. It is alleged that the directors of the 1st Defendant was approached by the 2nd Defendant to sell 200 acres. The Plaintiffs have urged this Court to issue *inter alia* an order directing the status quo to be maintained. It is obvious that at the time of purchasing the land, the Plaintiffs were aware that the land in question was under a charge registered by the Agricultural finance Corporation. The Plaintiffs did not deem it fit to enjoin A.F.C. as a party to this suit. The order for maintenance of the status quo in my view is equivalent to issuing an order of injunction against A.F.C. which is not a party to this suit. I decline to grant the order. There is evidence that Letters of Administration issued to the 2nd Defendant were later revoked. It is also clear that the land transaction between the parties herein did not receive the approval of the area Land Control Board hence there is no valid agreement to issue the orders sought. The other issue is whether the Plaintiffs are entitled to a refund? The 2nd Defendant has not deemed it fit to defend the suit. There are correspondences to show that he received from the Plaintiffs a sum of Ksh.3,530,000/=. The plaintiffs are entitled to a refund from the 2nd Defendant personally. I grant the Plaintiffs the order. There is also evidence that the Plaintiffs paid a substantial sum to the 1st Defendant purporting to buy land in form of shares. By the time the Plaintiffs committed their money, the 1st Defendant had no proprietary interest over **L.R. NO. 65777/2** hence it had no land to sell in form of shares. The 1st Defendant is bound by law to refund the amount it received from the plaintiffs i.e. Ksh.11,406,750 -3,530,000 = 7,876,750. It is clear from the evidence that the Estate of the late Haji Ahmed Sheikh Ali, deceased cannot be bound by the illegal transaction between the Plaintiffs and the 2nd Defendant. The Defendants to pay costs of the suit.

Dated and delivered at Nyeri this 18th day of November 2011.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Maatwa for the Plaintiff and no appearance for Defendant.