

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

Civil Case 24 of 2005

CLEMENT KONGO AMUKATI PLAINTIFF

VERSUS

DIFINA ITUKU BULETI DEFENDANT

JUDGEMENT

The Plaintiff sued the defendant claiming for an order that he be declared to be the owner of Plot NO. ISUKHA/SHISWA/1073. The Plaintiff's contention is that he bought the above Plot from the late ALEX BULEDI SHIHAIJI in 1973. The defendant is the wife of Alex Buledi Shihaji and she came to own the property as the administratrix of the deceased.

The Plaintiff testified that he bought the said plot 1073 in 1973 for a consideration of Kshs.2,100/=. He produced the sale Agreement as proof to the sale transaction. Parties went to the Land Control Board for consent at Ikolomani and consent was granted. Minutes indicating that parties went to the Control Board were produced. The Plaintiff also produced receipts for payment for the transaction to the Land Registrar dated 16/1/1976. He also produced the area map for Isukha Location which shows that on the ground there are two plots namely SHISWA/ISUKHA/1072 and 1073. The Plaintiff further contends that he has been in occupation of Plot No.1073 since 1973.

The Plaintiff produced an extract from the Kakamega District Land Registry which shows that the land was registered in the name of ALEX BULEDI SHIHAIJI on 7th August, 1973. On 15th July, 2003 the defendant, DIFINA ITUKU BULETI was registered as the owner in pursuance to Succession Cause No. 251 of 2002. The original plot No. is given as ISUKHA/SHISWA/577 measuring 1.30 Hectares or thereabout. The defendant was issued with a title deed on 15th July, 2003.

From the evidence adduced and the documents produced by the Plaintiff, I am satisfied that the Plaintiff bought a portion of Plot No. ISUKHA/SHISWA/577 from the original owner ALEX BULEDI SHIHAIJI. The parties were granted consent to sub-divide the plot and indeed the same was sub-divided and created plot numbers ISUKHA/SHISWA/1072 and 1073 with the Plaintiff occupying the latter plot.

The defendant herein came to own the property through Succession. The Estate of Alex Buledi Shihaji was indebted to the plaintiff herein whose interest ought to have been included as he is one of the creditors. It therefore follows that the Plaintiff's interest has to be taken into account and he ought to be given his property.

This suit proceeded ex parte as the defendant, although served, did not attend court on the hearing day.

I do find that the Plaintiff has proved his case against the defendant. The registration of plot No. ISUKHA/SHISWA/577 shall be cancelled and two separate plots namely Plot No. ISUKHA/SHISWA/1072 and 1073 to be created. The Plaintiff to be registered as the proprietor of Plot No. ISUKHA/SHISWA/1073 and the defendant to be registered as the proprietor of Plot No. ISUKHA/SHISWA/1072. The area map for Isukha Location namely diagram No. 7 to be used as a guide in determining the exact extent of each of the above two parcels. Each party shall meet his own costs. It is so ordered.

Delivered, dated and signed at Kakamega this 15th day of October, 2009.

SAID J. CHITEMBWE

J U D G E