



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

Civil Case 46 of 2004

EDWARD KIPROTICH KARONEI:.....PLAINTIFF

VERSUS

JOSEPH SAMOEI:.....DEFENDANT

J U D G E M E N T

EDWARD KIPROTICH KARONEY the plaintiff herein sued the defendant **JOSEPH SAMOEI** seeking the following orders:-

- a) **An order of permanent injunction restraining the defendants, his agents servants and the defendants from entering, ploughing , planting, charging, digging, accessing, selling, partitioning, subdividing, and or interfering or dealing in any manner with the plaintiffs parcel No. NANDI/KAPTEL/1042.**
- b) **An order of cancellation of transfer of the 9400 tea stamps grown under C.N. 540028 on parcel No. NANDI/KAPTEL/1042 from the plaintiff to the defendant.**
- c) **An order that the defendant do execute transfer of Tea forms to transfer the 9400 stumps grown under C.N. 540028 on the plaintiffs parcel No. NANDI/KAPTEL/1042 to the plaintiff and in default the Honourable court to execute the Transfer of Tea Forms in place of the defendant.**
- d) **Costs of this suit with interest.**
- e) **Such other or further relief this Honourable court may deem fit to grant.**

The source of the dispute is two sale agreements entered between the defendant and the plaintiff on 17th July 1996 and 8th July 1997 for sale of land. The plaintiff is the registered owner of land **No. NANDI/KAPTEL/1042** which measures 8.89ha or 23.707 acres. Vide an agreement entered into by the two parties on 17th June 1996 the plaintiff agreed to sell to the defendant a portion of 11.7 acres. That portion was to be hired off land No. **NANDI/KAPTEL/1042**. The portion was given **No. NANDI/KAPTEL/1086**. It had 13225 Tea Plants grown under **C.N. 540024**. The agreed purchase price of that portion was Shs.915, 625/= . On that day the defendant made a down payment of shs.120, 000/= leaving a balance of shs.795, 625/= which was to be paid in full by 21st August 1996. On 24th July 1996, the plaintiff, believing that the defendant will pay the full purchase price as agreed transferred his

registration numbers **C.N. 540028** and **C.N. 540045** and 13,400 tea plants to the defendant. However, according to the plaintiff, the defendant did not pay the balance of the purchase price as agreed.

When the parties realised that the defendant was not able to pay the balance of the purchase price they mutually cancelled the agreement of 17th July 1996 and entered into a fresh agreement on 8th July 1997 where the plaintiff agreed to sell 8.3 acres being a portion of land **no. NANDI/KAPTEL/1042** to the defendant at a price of Shs.745,000/=. This portion was the one registered a **NANDI/KAPTEL/1086**. They took into account the Shs.120,000/= paid by the defendant on 17th July 1996 pursuant to the sale agreement of even date. Defendant paid further monies and together with the shs.120,000/= he paid a total of Shs.516,000/= leaving a balance of Shs.229,000/= which was to be paid by 25th October 1997. However the defendant never paid that amount. The parties therefore agreed that the plaintiff do transfer his land parcel **No. NANDI/KAPTEL/703** which had 4000 Tea plants as a final satisfaction of all the monies paid pursuant to the agreements of 17th July 1996 and 8th July 1997. This he did. The plaintiff then asked the Defendant to transfer the licence No. C.N. 540028 for the 9400 tea plants in land No. **NANDI/KAPTEL/1042** but the defendant refused and hence this suit.

The defendant though served failed to appear on the hearing date and hearing proceeded ex parte. He however had filed a defence in which he admitted entering into the sale agreements of 17th July 1996 and 8th July 1997. However he stated that he paid the purchase price in full but the plaintiff failed to transfer the land to him. He therefore put in a counterclaim seeking for a refund of Shs.745,000/= and general damages plus costs and interest.

I have considered the pleadings and the evidence of the plaintiff. There is no dispute that the two parties entered into a sale agreement for a portion of land from land **no. NANDI/KAPTEL/1042**. The plaintiff told the court on oath that defendant paid only Shs.516, 000/=. There was no evidence from the defendant over that payment and I therefore feel that the plaintiff told the truth as to the amount paid. However trouble is that the parties did not seek land Board Control consent. The land being sold was Agricultural land. S. (1) of the Land Control Act provides:-

“6(1) each of the following transactions:-

(a) The sale, transfer, lease mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within land control are;

(b)

(c)

Is void for all purposes unless the Land Control Board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act.”

The parties having failed to get consent from the board within six months of the sale agreements means that the agreements are null and void. They are not enforceable.

S.7 of Land Control Act provides that any money or consideration paid pursuant to an agreement which becomes null and void due to lack of consent can only be recovered as a debt. The defendant has put a counterclaim to recover shs.745, 000/= as a debt though the court found that only shs.516, 000/= was paid. In normal circumstances the court would order the plaintiff to refund that sum. However the plaintiff pleaded and stated in evidence that he transfer his parcel **No. NANDI/KAPTEL/703** to the defendant to satisfy the money he had paid him. Indeed the defendant in paragraph 16 of his defence admits that the plaintiff transferred to him parcel **No. NANDI/KAPTEL/703**. He however did not say what consideration he paid to have the land transferred to him. This was not a gift from the plaintiff. Plaintiff explained that he transferred that piece of land in final satisfaction of the Shs.516, 000/= paid to him by the defendant vide the two agreements. Defendant did not call any evidence to controvert that

assertion. I am therefore satisfied that the plaintiff, having transferred parcel No. 703 to the defendant do not owe him any money and as such the counterclaim fails and the same is dismissed.

The plaintiff claim for tea in land No. 1042 to be transferred to him. That land is registered in his name. He had planted the tea bushes which he later transferred to the defendant on entering the sale agreements. The court has stated that the sale agreements are null and void and by extension the transfer of the tea bushes to the defendant vide the void sale agreement is also null and void. The registration should therefore revert to the plaintiff.

From the foregoing therefore I am satisfied that the plaintiff has fully proved his claim and I enter judgment for him against the defendant and issue a permanent injunction against the defendant, his servants and/or agent restraining them from interfering or dealing in any manner with the plaintiffs land No. **NANDI/KAPTEL/1042**. I also order that he, with immediate effect transfer the registration of the 9400 tea bushes in that land to the plaintiff and if he fails to execute transfer forms the Deputy Registrar of this court do so.

I also award the plaintiff costs of the suit and those of the dismissal counterclaim.

Dated and Delivered at Eldoret on 12th day of February, 2008.

KABURU BAUNI

JUDGE

DELIVERED IN THE PRESENCE OF:-

David - C/C

Mr. Kipkosgey - For plaintiff

N/A - For defendant.