



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 92 OF 2013

KATANA MRANJA ANGORE.....PLAINTIFF

VERSUS

EZEKIEL K. MASHA.....DEFENDANT

JUDGMENT

1. By this Plaint dated 5th June 2013, Katana Mranja Angore (the Plaintiff) prays for Judgment against Ezekiel K. Masha (the Defendant) for:-

(a) A declaration that the agreement for sale of Ngomeni Squatter Settlement Scheme/961 made between the Plaintiff and the Defendant is null and void by operation of law, for failure to obtain requisite Land Control Board consent; and on account of breach on the part of the Defendant;

(b) An order of ejectment is issued so as to eject the Defendant from Ngomeni Squatter Settlement Scheme/961, and peaceably restore possession of land and crops thereof on the Plaintiff;

(c) An injunction do issue, to permanently bar the Defendant by himself or through his agents, servants, employees or workmen or otherwise howsoever from entering upon, remaining at, or otherwise using, wasting or harvesting the coconut and other crops on Ngomeni Squatter Settlement Scheme/961, or otherwise turning such harvested crops into money, except for the exclusive benefit of the Plaintiff;

(d) Punitive damages and mesne profits for loss of use of Ngomeni Squatters Settlement Scheme /961 and farm produce harvested therefrom, for the entire period of the hearing and determination of this suit, and/or until possession and exclusive use of the said land is restored to the Plaintiff; and

(e) The costs of this suit are borne by the Defendant in any event.

2. Those prayers arise from the Plaintiff's averments that he is the registered owner and is possessed of the suit property measuring approximately 1.9 Ha and situated at Sharishari area, Garite-Gongoni in Kilifi County. It is the Plaintiff's case that by an oral agreement made between himself and the Defendant on 22nd August 2004, he attempted to sell his land to the Defendant for an agreed consideration of Kshs 120,000/-.

3. The Plaintiff asserts that the Defendant only paid a sum of Kshs 80,000/- leaving a balance of Kshs 40,000/- unpaid to-date. The Plaintiff avers that other than the Defendant's breach, the parties to the sale agreement have never applied for and or obtained the requisite letter of consent from the Land Control Board for the area and that the sale is thus null and void for all purposes.

4. From the record, it is apparent that the Defendant filed a Notice of Appointment of Advocates through Messrs Ogero Ogeto & Company Advocates and even filed a Replying Affidavit to a Notice of Motion application dated 5th June 2013 filed by the Plaintiff. The Defendant did not however file any formal Statement of Defence nor did he participate in the trial.

5. Testifying as the sole witness at the trial herein, the Plaintiff told the Court that he is the registered owner of the suit property. Sometime in the year 2004, he had entered into an agreement for sale of the suit property to the Defendant at a consideration of Kshs 120,000/-. The Defendant paid the sum of Kshs 60,000/- on 22nd August 2004 and also settled a debt the Plaintiff owned a third party in the sum of Kshs 20,000/=.

6. The Plaintiff testified that the Defendant has never paid the balance of Kshs 40,000/- to-date despite various demands made to him. The

Plaintiff urged the Court to formally declare the agreement as illegal, null and void as the parties failed to obtain the requisite Land Control Board Consent.

7. The Plaintiff further told the Court that at the time of the attempted sale, he had planted coconuts and other crops on the land .The Defendant who has never planted any trees on the land has been harvesting and selling the Plaintiff's crops. The Plaintiff asserted that he used to make between Kshs 10,000/- and Kshs 15,000/- every month from the proceeds from the land and urged the Court to compensate him for the time the Defendant has been using the same.

8. I have perused and considered the pleadings filed herein, the sole testimony of the Plaintiff and the evidence adduced at the trial.

9. It is the Plaintiff's case that sometime in the year 2004, he attempted to sell his parcel of land known as Ngomeni Squatters Settlement Scheme 961 and measuring approximately 1.9 Ha to the Defendant at a consideration of Kshs 120,000/-. On 22nd August 2004, the Defendant paid a deposit of Kshs 60,000/-. The Defendant also settled a debt the Plaintiff owed to a third party in the sum of Kshs 20,000/- leaving a balance of Kshs 40,000/- unpaid.

10. The Plaintiff told the Court that the balance remains outstanding to-date and that as a result of the breach neither himself nor the Defendant applied for the requisite letters of consent from the Malindi Land Control Board.

11. The Plaintiff is further aggrieved that the Defendant has been harvesting his cash and other crops on the suit land long after he breached the Agreement and the Plaintiff offered to refund the sums of money he had paid.

12. While he neither filed a formal Statement of Defence nor participated in the trial herein, the Defendant had by a Replying Affidavit filed herein on 20th June 2013 in response to the Plaintiff's application dated 5th June 2013 denied the Plaintiff's assertions and stated that he had in fact paid the Plaintiff more money than stated in the Sale Agreement.

13. At paragraph 4 of the said Replying Affidavit the Defendant asserts that other than the Kshs 80,000/- acknowledged by the Plaintiff, he had indeed paid the Plaintiff in cash the sum of Kshs 10,000/- and two heifers valued at Kshs 5,000/- each on various dates between March 2004 and October 2004 bringing the sum paid by himself to Kshs 175,000/-.

14. I was unable from the material placed before me to find a copy of the acknowledgment slip of the deposit of Kshs 60,000/- which the Plaintiff states was paid to him on 22nd August 2004. However from the annexures to the Defendant's Replying Affidavit aforesaid, it was apparent that the first payment made to the Plaintiff was the sum of Kshs 65,000/- paid to him on 23rd March 2004.

15. The annexures further reveal that a sum of Kshs 10,000/- was paid to the Plaintiff on 15th April 2004 and a further payment of Kshs 20,000/- was made on 13th October 2004. That would bring the total sum paid to the Plaintiff to Kshs 95,000/- and not Kshs 80,000/- as asserted by the Plaintiff. There was no evidence of any payment made through heifers and the balance of Kshs 25,000/- therefore remained unpaid.

16. Be that as it may, it was apparent from the material placed before me that the suit property is agricultural land. Section 6 of the Land Control Act, Cap 302 of the Laws of Kenya provides that any transaction in agricultural land is void for all purposes unless the Land Control Board for the land area or division in which the land is situated has given its consent in respect of that transaction in accordance with the Act. It is further a requirement that such consent be given within six (6) months of the transaction between the parties.

17. Under Section 7 of the Act, if the consent is not sought and obtained, then any money or other valuable consideration paid in the course of the transaction is recoverable as a debt by the person who paid it from the person to whom it was paid.

18. In the circumstances herein, it was not denied that the parties neither applied for nor obtained the consent of the Land Control Board in respect to the sale of the suit property. The sale transaction was accordingly void by dint of Section 6 of the Land Control Act as submitted by the Plaintiff.

19. However while the Plaintiff sought to be paid punitive damages as well as mesne profits, I did not think that the circumstances herein warranted any such payments. At any rate, while the Plaintiff asserted that he used to make between Kshs 10,000/- and Kshs 15,000/- a month from the proceeds from the suit property, no evidence of such proceeds or receipts of payments were placed before me.

20. Accordingly and being satisfied that the Plaintiff has proved his case to the required standard, Judgment is hereby entered for the Plaintiff in terms of Prayer 'a', 'b' and 'c' of the Plaintiff.

21. The Plaintiff will also have the costs of this suit.

Dated, signed and delivered at Malindi this 23rd day of January, 2020.

J.O. OLOLA

JUDGE