



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**HIGH COURT CIVIL CASE NO. 38 OF 2007**

**JACKSON N. WATOSIA.....PLAINTIFF**

**VERSUS**

**PETER SAENYI.....DEFENDANT**

**JUDGEMENT**

[1]. The Plaintiff filed this case and stated that in early 1980 he entered into an agreement with the defendant whereby the defendant was to pay school fees for the plaintiff son Joseph Watosia and that the plaintiff was to give the defendant equivalent land to the sum paid as school fees for his son. He states that the defendant did not pay the said school fees for the said son. That he without any colour of right and/or authority in 1980 trespassed onto a portion of the suit land measuring 3 acres and started carrying developments thereon causing the plaintiff irreparable loss.

[2]. He claims that since that was an agricultural land, the agreement became void for the reason that it was oral and therefore invalid and that also the same is void for not receiving the relevant Land Control Board's consent within six months of the same as required by Law and that the continuous occupation of the 3 acres by the defendant is illegal and contrary to section 22 of the Land Control Act Cap.302 Laws of Kenya.

He therefore asks for a declaration that the plaintiff is the sole owner of Kimilili/Kamukuywa/1034 and that the defendant is a trespasser therein and that the Court should issue an order for eviction against the defendant plus costs of the suit.

[3]. The defendant filed a defence and denied the averments of the plaintiff. He averred that, to the contrary, he purchased the three acres for Kshs.7,500 and obtained Land Control Boards consent. In his statement of defence the defendant stated that in 1980 he was teaching at Nakalira Primary School when the plaintiff wanted to sell 3 acres of land. That he went to the plaintiff accompanied by Reuben Wanyonyi Zackary Matere, Jacob Khaoya and Paul Mukite.

That the plaintiff showed the defendant where he wanted to sell a portion of land to the plaintiff. Accompanied by his brothers Lawrence Situma, David Wafula, Waswa Matosia drew an agreement prepared by one Jacob Khaoya in the presence of area Mukasa Richard Wafubwa. Whereupon he paid Kshs.1220. He said the total purchase price was agreed at Kshs.7500 on 4/2/1980.

He gave a tabulation of the balance paid until the total Kshs.7500 was fully paid. He said that they went to the Land Control Board on 5/3/1982 when the plaintiff was told to produce his wife and children.

The Land Control Board differed the transaction since the seller did not go to the board with his family members. The transaction was approved on 5/3/1982. That thereafter he refused to sign the transfer

forms. That the defendant on 18/8/2006 reported the plaintiff to the D.O. Kimilili but he still refused to sign the transfer.

[4]. During the hearing the plaintiff said he knew the defendant. That he had a written agreement filed on 21/5/2015. That Kimilili/Kamukuywa/1034 is his land. He denied any knowledge of the agreement of 4/12/1980. He however admitted that Jacob Khaoya was a clerk. That he wrote an agreement for 3 acres out of Kimilili Kamukuywa/1034. He said that he had an agreement with the plaintiff to pay school fees for his son at Chasamisi High School and that after four years, he would sell his land. On cross examination by his Counsel, he said he had an agreement with the defendant but the defendant paid only Ksh.1700. The plaintiffs 1<sup>st</sup> witness was his son. He said they live on the same land with the defendant. He produced a letter from Chasamisi High school. He admitted that he attended the Land Control Board with his father in 1981 and that the D.O. deferred the granting of the consent. Plaintiff witness No.2 Jacob Khaoya said that he knew the plaintiff and the defendant. He said he wrote the agreement on 4/2/80. He acknowledged two payments from the defendant to the plaintiff all totaling 1,750 and said he knew no other payments.

The Defendants produced agreements for 4/2/80, 6/2/80, 3/4/80, 30/4/80, 13/5/80, 30/6/80, 29/7/80, 30/10/80, 1/11/80, 9/9/81, 29/9/81 and 30/9/81 showing payment for Kshs.7500/=.

He also produced application for Land Control Board dated 27/6/81 and a consent dated 5/3/82 for subdivision and transfer of Kimilili/Kamukuywa/1034 from Jackson Nangendo Watosea to Peter Charles Saenyi for a consideration of Kshs.7,500 by the Kimilili Land Control Board. The defendants witnesses Reuben Wanyonyi, said he wrote the agreement of 1/12/80 and was a witness for payment of Kshs.850. The issue for determination is whether the defendant purchased the suit land from the plaintiff or whether he entered the same through pretences that he could pay the plaintiffs son school fees.

[5]. There is ample evidence to show that the defendant purchased this land from the plaintiff. There were several agreements in writing for the purchase and payment of Kshs.7500 the purchase price. The Land Control Board of Kimilili gave its consent on 5/March 1980 for subdivision of Kimilili/Kamukuywa/1036 and transfer of three(3) acres thereof to the defendant. At that point, the beneficial interest in the said three acres passed on to the defendant. The transfer of the said three acres was sought but the plaintiff flatly refused to sign the transfer forms. Transfer of title is a ministerial act that cannot affect the interests on the three acres that had already passed on to the plaintiff. The plaintiff has been in occupation since 1980 to-date. The plaintiffs claim herein is without any merit. I dismiss the same with costs to the defendant. The plaintiff shall subdivide his land Kimilili/Kamukuywa/1034 and transfer three(3) acre to the defendant. The defendant will be given the side that he currently occupies. If he fails to do so within 45 days, the defendant shall do so and demand ½ the costs of survey fees from the plaintiff.

The Executive Officer of this Court will sign the transfer forms in case the plaintiff refuses to do so.

The costs of the suit shall be to the defendants.

Judgment read in open court in the presence of the defendant.

**DATE at BUNGOMA this 6<sup>th</sup> day of April, 2017.**

**S.N. MUKUNYA**

**JUDGE**

**In the presence of:**

Court Assistant: Chemutai

Plaintiff: Absent

Defendant: Present