



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

LAND AND ENVIRONMENT CASE NO. 1 OF 2015

PATRICK W. SIMIYU.....PLAINTIFF

VERSUS

JOHN K. WESAMBA.....DEFENDANT

JUDGEMENT

[1] The plaintiff in this case prays for specific performance of the first agreement between him and the parties and the subsequent agreements made subsequently by the parties herein. He also seeks general damages for breach in lieu of or in addition to specific performance.

[2] The defendant filed a statement of defence in which he denied the allegations of the plaintiff as per para 3,4,5,6,7,8,9,10 and 11 and averred that the plaintiff had not cleared the payment of Kshs.190,000.00 which the defendant had paid Charles Wanyonyi Wesambu and Hiraly Barasa Manyonge on 8/8/2013 for sugar cane harvest. He alleged that the cane was harvested by the plaintiff.

[3] During the hearing it was agreed and it was clear that the dispute was only the payment or non payment of Kshs.190,000.00. The defendant admitted everything else.

[4] There is no dispute that there was a crop of sugarcane on the farm that had earlier been planted by Charles Wesabwa and Hilary Barasa Manyonge who had leased the land from the defendant herein. The value of the cane was to be decided after harvest. The defendant was unable to pay the cane owners Charles Wesabwa and Hilary Manyonge the value of the cane which was later determined as Kshs.190,000/= On 1/6/2013 an agreement was entered between the plaintiff and the defendant where the defendant acknowledged having been paid Kshs.985,000.00 It was agreed on that agreement that the balance of Kshs.214,110/= will go towards the compensation to Charles Wesabwa who had sugarcane on the farm and the balance was to go to the defendant. This acknowledgement was signed by the defendant. It was not disputed at the hearing hereof.

[5] The plaintiff made out a cheque on 8/8/2013 in the sum of Kshs.110,000/= in favour of Charles Wanyonyi Wasabwa and a cheque in the name of Hilary Barasa Manyonge in the sum of Kshs.80,000/= on the same date. Both cheques were for shs.190,000/= Hillary Barasa Manyonge and Charles Wanyonyi Wasabwa were the owners of the cane on the land that was being purchased. There was no allegation that the cheques were for any other purpose and the two cane owners were not called by either party to dispute the fact that the cheques were for value of the cane on the land. In any case, the documents filed in court on 18/6/2013 entitled cane compensation and signed by the cane owners Charles Wanyonyi Wesabwa and Hilary Barasa Manyonge before Ocharo Kebira advocate on 8/8/2013 speaks for itself. The defendant attempted to say that he paid Kenya Shillings 190,000/= to the cane owners but he produced no

documents proving such payments. He was the one who was supposed to pay the Kshs.190,000/= to the cane owners aforesaid. He did not do so. The payment of the shs.190,000/= aforesaid is the only issue in this case. I find that Kshs. 190,000/= was paid to the plaintiff for the defendant to the cane owners. It was treated by the parties as part of the purchase price. This agreement to do so was made by the plaintiff and defendant herein. The refusal by the defendant to give out the original title to allow transfer is without a reasonable cause. The defendant having signed the agreement for sale and the other subsequent agreements, and having attended the Land Control Board to transfer the 3 acres to the plaintiff, the beneficial interest in the land has passed to the plaintiff. I therefore do order the defendant to hand over the original title to the plaintiff to assist him to transfer the land to himself failing which the Land Registrar Bungoma is advised to register the suit land without the original title.

The plaintiff prays for general damages. None of such damage was proved before me. None is awarded. However the costs of the suit shall be awarded to the plaintiffs.

Dated at Bungoma this 11th day of May 2016

S.MUKUNYA JUDGE

Ruling read in open court in presence of

C.A Nyongesa,

Mr. Were for Khakula for plaintiff

Defendant in person absent

S.MUKUNYA - JUDGE

11/5/2016