



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL CASE NO. 9 OF 2011

JULIUS CHARITO KANYONGO :::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

EMMANUEL M. LOUSOT :::::::::::::::::::::::::::::: DEFENDANT

JUDGEMENT

INTRODUCTION

1. The Plaintiff brought this suit against the defendant seeking an order of eviction against the defendant and his servants or agents from L.R NO. West Pokot/Chepareria/1563 (suit land). The defendant filed his defence and raised a counter-claim in which he sought for a declaration that the suit land is not in a controlled area as to require the consent of the land control board and that the plaintiff should effect transfer of the same in his favour failing which the Deputy Registrar of this court should sign transfer forms on behalf of the plaintiff. In the alternative, the defendant sought for extension of the period within which the consent of the land control board should be made.

PLAINTIFF'S CASE

2. The Plaintiff is the registered owner of the suit land. On 5/2/2001 he sold a 50 x 100 plot to the defendant at a consideration of Kshs.200,000/=. The defendant paid the entire purchase price and the plaintiff surrendered his original title to the defendant pending transfer of the sold plot to the defendant.
3. The Plaintiff testified that the agreement between him and the defendant was drafted by his son who was then in school. This was because he neither knew how to read or write. The plaintiff and the defendant appeared before the land control board for consent but the consent of the board was not granted because the defendant was claiming that he bought the entire suit land whereas the plaintiff was claiming that he sold a plot of 50 x 100 feet.
4. The Plaintiff testified that he has constructed 11 rooms on one side of the suit land and that he is not interested in transferring the suit land to the defendant. He wants the defendant to be evicted and he refunds him the purchase price.

DEFENDANT'S CASE

5. The defendant testified that he bought the suit land from the plaintiff on 5/2/2001 and paid Kshs.200,000/= for it. The two then went before the land control board for consent but the matter was deferred because the plaintiff was alleging that he sold one plot to him whereas he

was contending that he bought the entire suit land. The defendant testified that the suit land is within a market centre and does not therefore require consent of the land control board but that he has nevertheless been trying to obtain the consent of the board but which efforts have been frustrated by the plaintiff. He testified that if it turns out that the suit land falls within a controlled area, then the court should extend the period within which to apply for the consent of the land control board.

6. The defendant testified that he has put up a building which houses a butchery shop and has rental premises from which he collects rents.

ISSUES FOR DETERMINATION

(a) Did the plaintiff sell the entire suit land or part of it?

(b) Does the suit land fall within an agricultural section as to call for consent of the land control board?

(c) If the suit land falls within an agricultural area, is there need to extend the time within which the consent of the land control board should be made?

(d) Which order should be made regarding the prayers in the plaint and counter-claim?

ANALYSIS OF EVIDENCE

7. ***(a) Whether the plaintiff sold the entire suit land or part thereof:***

The Plaintiff produced a sale agreement between him and the defendant [exhibit 1]. The agreement is clear that he was selling land which was 0.07 hectares. A copy of title [exhibit 2] shows that the suit land is 0.07 hectares. When the plaintiff sold the suit land, he surrendered the original title to the defendant. There is therefore no basis upon which the plaintiff can claim that he intended to sell 50 x 100 feet plot to the defendant. If this was his intention, he should have stated so in the agreement. His claim that he does not know how to read or write cannot assist him. He had his son who knew how to read and write. His son is the one who drafted the agreement and explained it to him. No oral evidence can be given to vary or add to the agreement of 5/2/2001. The plaintiff is trying to renege on the agreement. I find that he was actually selling the whole of his land to the defendant.

8. ***(b) Whether the suit land falls within a land control area requiring consent of land control board:-***

The Plaintiff called PW2 Michael Mureithi a land adjudication officer from West Pokot. This witness testified that the suit land falls within a controlled section which requires that any dealing in land should receive consent of the land control board. He produced a letter [exhibit 4] confirming that the suit land is in an agricultural area and thus consent of the land control board is required. The parties to this suit appeared before the land control board of the area for consent but which consent was not granted. The parties would not have appeared before the board if no consent was required. The defendant produced two photographs [defence exhibit 1]. These photographs show that the suit premises is standing alone but fronts an all weather road. It is clear from the photographs that the shop is not in a market place. It is a stand alone building which is a common feature with people having plots fronting roads who put up premises for rental or business even if the area is not a market place. I therefore find that the suit land is agricultural land which required consent of the land control board.

9. ***(c) Whether there is need to extend period within which consent of the board should be***

obtained:-

The defendant produced minutes of Chepareria land control board meeting held on 15/12/2010 [defence exhibit 3]. According to these minutes, the suit land was considered vide minute No. 7 and there are remarks that the matter was deferred. There is evidence from the defendant that the matter was deferred because the plaintiff was claiming that he sold part of the suit land whereas the defendant contended that he bought the entire suit land. Under the land control Act, it is an application for consent which is supposed to be made within six months. There is no requirement that the consent must be given within six months. In the present case, the parties appear to have made an application for consent of the board. The board did not finalize the matter because the same was deferred. The board did not reject the application. It simply deferred the same. There is therefore no need for the court to extend the time. What led to the postponement of the matter was because of the rival contentions by the parties who were before the board. The issue has now been resolved by the court finding that the plaintiff sold the entire suit land. There is therefore nothing preventing the board from revisiting the postponed matter and deal with it to finality.

10. (d) Which order should be made regarding the prayers in the plaint and counter-claim;-

It is clear that the plaintiff's suit is misconceived. The plaintiff sold his entire interest in the suit land. He is only reneging on the sale probably because the value of the land has appreciated. The agreement between him and the defendant is very clear on this. On the other hand, the defendant's counter-claim cannot be granted in view of the findings hereinabove.

DETERMINATION:

11. Both the prayers in the plaint and counter claim are hereby dismissed. Each party to bear his own costs. Either party should move the Chepareria land control board for consideration of the application for consent which was deferred in view of the decision of the court as regards what interest was sold in the suit land.

Dated, signed and delivered at Kitale on this 5th day of March, 2015.

E. OBAGA

JUDGE

In the Presence of M/S Arunga for Plaintiff and Mr Ingosi for the defendant. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

5/3/2015