



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
ENVIRONMENT AND LAND COURT
CIVIL CASE NO. 983 OF 2013

KYALO MBINDA PLAINTIFF

VERSUS

ANNE WANJIRU NDOO

MWENGA NDOO (Sued as the Administrators of the

Estate of PHILIP KILONZO NDOO).....DEFENDANTS

J U D G M E N T

In a Complaint dated 8th August, 2013, the Plaintiff herein **Kyalo Mbinda** sought for various orders against the Defendants, **Anne Wanjiru Ndo** and **Mwenga Ndo** (sued as the Administrators of the Estate of **Philip Kilonzo Ndo**).

Among the orders sought are:

- a. *That the Defendants be compelled to sign the relevant documents and obtain the relevant consents and or clearances to effect transfer of the suit properties herein to the Plaintiff and effect the said transfer within such timeline as the court deems fit.*
- b. *In the alternative and in default of (a) above an order be issued compelling the Defendants to surrender the original title documents to the Deputy Registrar of this court and the Deputy Registrar do sign the relevant documents on behalf of the Respondents in favour of the Plaintiff.*
- c. *Costs of the suit.*
- d. *Any other or further relief that this Honourable Court may deem fit and just to grant.*

The Plaintiff had averred in his Complaint that he purchased land parcels **Nos. 3/80 and 3/81 Mavoko Town Block** (herein known as the suit premises) from one **Philip Kilonzo Ndo** on or about 25th March 2004. He further averred that the said **Philip Kilonzo Ndo** died before the transaction could be completed and the two Defendants filed a **Succession Cause No. 1964 of 2005** but failed to disclose that the Plaintiff was a purchaser of the two parcels of land. He therefore objected to the confirmation of grant that was

issued on 18th June 2007.

It was his further averment that his objection was successful and the court on 19th July 2011, ordered the Defendants to transfer the suit parcels of land to the Plaintiff within 30 days failure to which the grant of Letters of Administration and confirmation of the Grant was to stand revoked.

The Plaintiff contended that the Defendants have failed and/or refused to transfer the parcel of land to the Plaintiff despite continued demand and persistence by the Plaintiff and the Defendants have continued to act in blatant disobedience of the court's order. It was the Plaintiff's prayer that the Defendants should be compelled to sign the relevant transfer forms. Further, that despite demand by the Plaintiff for Defendants to sign the said requisite documents, the Defendants have adamantly refused to comply with the request and the Plaintiff asks the court to compel the defendants to sign the relevant forms and transfer the suit properties to the Plaintiff.

Though the summons were served on the Defendants on 5th October 2013 as per the Affidavit of Service filed by **Catherine Mwikali**, a court process server, the Defendants did not enter appearance nor file their Defence. Therefore, interlocutory judgment was requested for on 22nd November 2013 and the same was entered accordingly on 27th November 2013. The suit proceeded for formal proof on 14th July 2014 and the Plaintiff gave evidence for himself and called no witness. He relied entirely on his written statement which had been filed in court on 12th August, 2013. The Plaintiff's evidence was therefore not controverted.

The Plaintiff's counsel put in written submissions which I have now carefully considered. I have also considered the list of documents filed by the Plaintiff herein. It is trite law that he who alleges must prove. There is no doubt that the two suit properties are in the name of **Philip Kilonzo Ndo**. There is no doubt that the said **Philip Kilonzo Ndo** is now deceased and the Defendants are the administrators of the his Estate. I have seen a Certificate of Confirmation of Grant and the two parcels of land are among the property to be shared out. There is also a Ruling by Justice Maranga dated 19th July 2011 which allowed the Plaintiff's objection to the Confirmation of Grant. The Defendants were ordered to acknowledge the objector's claim to the suit parcels of land also transfer the same within a period of 30 days from the date of the ruling. That Ruling was delivered on 19th July 2011. I have not seen any other Order reversing or setting aside that Ruling. The Ruling by Maranga J (as he then was) still stands. The Defendants are to transfer the said parcels of land to the Plaintiff.

The Plaintiff alleged that he bought the parcels of land from the late Philip Kilonzo Ndo. The said transaction is acknowledged by the Ruling of the court dated 19th July 2011. The Defendants are bound by the said Court's ruling. The Defendants did not appear in Court and so the Plaintiff's case is not challenged or controverted.

The Plaintiff is therefore entitled to come to court as seek for compelling order against the Defendants. The Plaintiff is willing to perform his part of the bargain but the Defendants are in breach. The court can therefore come to the aid of the Plaintiff to enforce the Court Order issued on 19th July 2011.

This was the findings in the case of **AZIZ VS BHATIA BROTHERS LTD (2001) 1 EA 7** where it was held:

“A party who has performed his part of the bargain may be assisted by the court to enforce the contract against the defaulting party”.

It is the Plaintiff's contention that the Defendants have refused and/or failed to sign the relevant documents to affect transfer despite numerous demands from the Plaintiff. Since the Defendants did not enter appearance nor file Defence, the Plaintiff's evidence is not challenged and I have no reason to doubt it.

Having now considered the available evidence, the pleadings generally and the exhibits herein, the Court finds that the Plaintiff has proved its case on a balance of probabilities and for the above reasons, the court enters judgment for the Plaintiff against the Defendants in terms of Prayers No. (a), (b) and (c) of the Plaint. Plaintiff is entitled to costs of this.

It is so ordered.

28 days Right of Appeal.

Dated, Signed and delivered this 4th day of March 2015.

L. GACHERU

JUDGE

In the presence of

.....for the Plaintiff

.....for the Defendant

Court Clerk : Kamau

L. GACHERU

JUDGE