



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
ENVIRONMENT AND LAND CASE NO. 24 OF 2013

THOMAS BUKHEBI WANJALA.....PLAINTIFF

VERSUS

SIMON PETER MUNAYI.....1ST DEFENDANT

SALOME FILISTA MAKOKHA WAKALA.....2ND DEFENDANT

RULING

The plaintiff herein Thomas Bukhebi Wanjala had problems with his children school fees in August 2009. He had no reliable income. He resolved to sell a portion of 1.5 acres of his land North Wanga/Kholera/599. The land was still in his father's home the late Wanjala Mangoli.

He met the defendants who were husband and a wife. An agreement was reached in writing on 15/8/2009 to sell the 1 ½ acres for Kshs.270,000.

A down payment was made of Ksh.190,000/- leaving a balance of Kshs.80,000/-.

[1]. The plaintiff used part of the money to file Kakamega High Court Succession case No.707 A 2009. He obtained the grant on 14th April 2011. He never mentioned during the confirmation of the grant that the beneficiaries of LR No. N.Wanga/Kholera/599 included the defendants herein as purchasers.

He has filed this suit for orders that the agreement between the parties dated 15/8/2009 be declared null and void and that the defendants be compelled to pay the damages for breach of contract and costs of the suit.

[2]. The defendants filed a defence and counterclaim. They stated that the plaintiff filed Succession cause in Kakamega High Court without involving the defendants. They set out the particulars of Breach of contract on the part of the plaintiff. They deny that there is no remedy known in law as general damages for breach of contract and that the plaint does not raise any reasonable cause of action.

The defendants argue that the sale agreement became void after the expiry of 6 months for lack of the necessary land control consent and the purchase price is payable as a Civil debt. They counterclaimed for Ksh.190,000/- as refund of purchase price plus interest and costs.

[3]. The plaintiff filed a notice of motion dated 8th May 2014 praying for orders that the plaint be amended to remove the claim for general damages for breach of contract. Further that the counterclaim be struck out with costs and judgement be entered against the defendant for Ksh.190,000/-.

[4]. There is no doubt that the plaintiff entered into an agreement for sale of his land, when he was in trouble with school fees of his children. He infact used part of the purchase price to file Kakamega High Court Succession Case No.707 of 2009. He did not involve the defendants in that case. This transaction was subject to land control consent. He did not apply for the same to enable the defendants to obtain consent to transfer the 1 ½ acres to the defendants. He now wants to have the defendants Counterclaim to be dismissed and he be awarded Ksh.190,000/- that the plaintiffs paid to him.

In other words, he wants to ride on the defendants back all through. Indeed, it was his idea to sell the land to raise the school fees of his children. He also used the money to file Succession Cause to succeed his father's property. All at the defendants expense! This is abuse of the process of the Court process of the highest order. This Court cannot condone or countenance such behavior.

This application is without merit and shall be dismissed with costs to the defendants.

This suit shall be fixed for hearing on merit forthwith, and at the earliest opportunity.

DATED at BUNGOMA this 9th day of July, 2015

S. MUKUNYA

JUDGE