

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

LAND & ENVIRONMENT CASE NO.44 OF 2014

JOHN N. SITATI.....PLAINTIFF

VERSUS

MOSES M. WALUBENGO.....DEFENDANT

JUDGEMENT

[1] The Plaintiff's claim against the defendant is that on 1st November, 2004 he voluntarily entered into an agreement with the defendant for the sale of 1 acre of land from the plaintiff's parcel of land Ndivisi/Muchi/661 at an agreed purchase price of Ksh.80,000 which he paid in full and on receipt of the said purchase price the defendant gave him vacant possession and the plaintiff has occupied that land since.

[2] The plaintiff avers that the defendant has since declined to facilitate the transfer of the land to the plaintiff and he now prays for an order from the Court directing the defendant to transfer one acre from Ndivisi/Muchi/661 to the plaintiff. He also seeks the costs of the suit and interests.

[3] The defendant filed a statement of defence on 15th of September 2014 and argued that the land sale agreement was rendered null and void for all purposes by the provisions of land control Act and that the Plaintiff is only entitled to a refund of the purchase price. He set out the particulars that;

(a) the land sale agreement was never signed by the defendant's joint tenant one Patrick Kisaka.

(b) that the title is charged to the standard Bank Limited to secure a loan facility.

(c) that the land sale agreement became null and void for all purposes.

[4] This case was fixed for hearing on 30/9/2015, a hearing notice was served on the defendant's advocate Kraido & Company in their offices in Bungoma at Bungoma Teachers Plaza on 7/8/2015 for hearing on 30/9/2015. On the day of hearing only the plaintiff attended. He gave evidence how he purchased the land in the year 2004 and paid the full purchase price of Kshs.80,000/- vide an agreement of sale dated 1/11/2004. He produced the agreement for sale and the acknowledgement of the purchase price. He said that he never attended the Land Control Board for the requisite consent because the defendant refused to do so.

He stated that he lives on the land with his children since 2004. He requested the Court to assist him get the title deed.

[5] The plaintiff in this case purchased the land on 1st November 2004 and paid the purchase price all at once. He has lived on the suit land since that date. It is now 11 years since the occupation of the one acre out of Ndivisi/Muchi/661. When the defendant entered into an agreement with the plaintiff on 1st November 2004, the plaintiff took his money Kshs.80000 as purchase price, put the plaintiff into possession of the entire one acre of his land Ndivisi/Muchi/661 and allowed him to stay therein for a period of eleven (11) years from then till now, a constructive trust was created in favour of the plaintiff. This trust was not subject to Land Control Board consent. Any subsequent charge to any bank of land parcel Ndivisi/Muchi/661 was subject to the said trust of the said one acre.

[6] I find that one acre in the land Ndivisi/Muchi/661 which has been occupied by the plaintiff from 1st November 2004 has been held by the plaintiff pursuant to a constructive trust in favour of the plaintiff. That, that trust should be determined and land parcel Ndivisi/Muchi/661 should be subdivided so that the one acre occupied by the plaintiff should be hived off so that the plaintiff herein obtains a title for the said one acre thereof.

The plaintiff shall have the costs of this suit and interests of the same from the date of judgement herein.

It is so ordered.

DATED at BUNGOMA this 2nd day of December, 2015

S.N. MUKUNYA

JUDGE