



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
HIGH COURT CIVIL CASE NO. 107 OF 2011

NURU ABDUL RAZAQ..... PLAINTIFF

- V E R S U S -

DANIEL CHARERO

MBARAK SWALEH AL-GUHUM

JULIANA KISAKADEFENDANTS

JUDGEMENT

[1] The Plaintiff claim is for 6 acres out of Land Parcel Kilifi/Mtwapa/716 measuring 12 acres . He avers that on 20th January, 1975 the first defendant was given 12 acres of land known as parcel no. 415 Mtwapa Settlement Scheme for which he paid a purchase price of Kshs. 5,000, Kshs. 5656 as settlement charges and Kshs. 25 as conveyance charges.

[2] That on 28th September 1989 the 1st defendant sold a portion of 6 acres to the 2nd defendant for Kshs. 162000 and the relevant Land Control Board gave its consent on 17th January 1990. The said consent was produced in court. That on 14th October, 1993 the second defendant sold the aforesaid 6 acres to the plaintiff herein for a consideration of Kshs. 450,000 and the relevant Land Control Board gave its consent on 29th September, 1994. The Plaintiff avers that since the purchase of the said land he has resided on the suit property. The plaintiff states that he stayed waiting for the land title from the 1st defendant who in turn claimed he was waiting for the same from the Government. The Plaintiff states that he only knew on 21st May, 2010 that the title was issued in the name of the 1st defendant as sole owner of Kilifi Mtwapa/716 comprising of 12 acres. The Plaintiff claims that the 1st defendant now claims that the plaintiff is a trespasser on the land and has started showing the land to other persons. That on 20th September 2010 the 1st defendant wrote to him offering to refund the purchase price which the plaintiff rejected.

[3] In his defence the 1st defendant merely filed a general defence and reiterated that the plaintiff was a trespasser on the suit premises. This case came up for hearing on 9th May, 2013. The 2nd defendant Barak Swaleh al-Guhum gave evidence and explained how he sold the six acres of the suit land to the plaintiff for Ksh. 450,000 and how they had an agreement in the advocates office on 14th October 1993 and how they attended the Kilifi Land Control Board for the relevant consent on 26th October, 1989. He

produced the letter of consent. He produced various documents to prove that sale. He said he bought the land from the 1st defendant, he produced his agreement with the 1st defendant and letter of consent. He said the land belongs to the plaintiff.

[4] PW2 Nuru Abdulrazak Sheikh the plaintiff explained how the suit land was bought for her by her husband from the 2nd defendant, how they made an agreement before an advocate, how the purchase price was paid and Land Control consent was obtained. She stated that she was on the land.

[5] PW3 Ghali Karim said he was the husband of the plaintiff. That he knew the land was Number 415 Mtwapa Settlement Scheme and that when he bought it for his wife from the 2nd defendant there was no title deed. He explained how the land was bought for Kshs. 450,000 how they obtained a letter of consent on 29th September 1994 and that there was nobody on the land and that his neighbour except the 1st defendant. he explained that trouble started in 2009 when people came and stated removing beacons on the land. He explained how he reported the matter to Mzee wa Mtaa and the Chief and how he wrote a letter in 2009 to the 1st defendant who did not stop interfering with the land and finally how Gichana advocate wrote to him saying his client wished to refund the purchase price to his wife and they refused that offer. He said his wife bought six acres of land and that he demanded only six acres and no more. He prayed that his wife's suit be allowed as prayed.

[6] This suit was not opposed the evidence adduced was not challenged. All the documents supporting the claim were produced in court before me. I am satisfied that the plaintiff has proved her case as is required by law. Land Control Boards consent having been granted for the sale of six acres in what is now Kilifi/Mtwapa/16 to the plaintiff, the beneficial interest therefore passed to her. She is entitled to her prayers in the plaintiff with costs.

It is so ordered.

Dated and delivered in open court at Mombasa this 14th day of February, 2014.

S. MUKUNYA

JUDGE

14.2.2014

In the presence of:

Mr. Wameyo for the plaintiff