



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC CASE NO. 632 OF 2013

ALBANUS KIOO MUSYOKI PLAINTIFF

VERSUS

JOSEPH KYENGO MUNYWOKI 1ST DEFENDANT

ZAWERIA WANJIRU KIHARA 2ND DEFENDANT

JUDGMENT

By a plaint filed herein on 19th July 2013, the plaintiff sought the following orders against the two defendants:-

- a. ***A permanent injunction restraining the defendants, whether by themselves, their agents successors or assigns from selling, transferring, disposing or in any other way offering the four (4) acres of Murang'a/Ithanga/Phase – 11/166 to any other party except by way of transfer to the plaintiff***
- b. ***An order of specific performance compelling the 1st defendant to transfer 4 acres of Murang'a/Ithanga/Phase – 11/166 in favour of the plaintiff***
- c. ***Costs of this suit plus interest***
- d. ***Any other or further order that the Honourable Court may deem just and expedient.***

The plaint was filed by the plaintiff on behalf of his late father's Estate having obtained letters of administration ad litem in October 2011 and also having obtained leave in Misc. Civil Application No. 596 of 2012 (Nairobi) to file this suit out of time. The basis of this claim revolves around four agreements dating from 14th February 1993 to 4th February 1994 by which the 1st defendant sold to the plaintiff's father a total of four (4) acres of land out of parcel No. Murang'a/Ithanga/Phase 11 – plot No. 166 at a total consideration of Ksh. 55,000/= which the plaintiff's father paid in installments but by the time the plaintiffs father died in 2001, the transfer of the property into his names had not been done. Then in 2007, the plaintiff discovered that the 2nd defendant had purchased part of the portion of the land measuring ½ acre. That gave rise to this suit.

Though served with plaint and summons, neither of the two defendants filed any appearance or defence and on 19th September 2013, interlocutory judgment was entered against them and this matter was listed for formal proof on 15th July 2014 when the plaintiff testified and produced documentary evidence in support of his claims.

In his testimony, the plaintiff produced a limited grant issued in Succession Cause No. 2005 of 2011 at Nairobi (Exhibit 2) authorizing him to file this suit. He also produced an order issued in Nairobi Misc.

Application No. 596 of 2012 (Exhibit 1) granting him leave to file this suit out of time. He produced four agreements (Exhibits 3(a) to 3(d) showing that between February 1993 and February 1994, his late father purchased a total of four (4) acres of land from the 1st defendant out of parcel No. Murang'a/Ithanga/Phase II – plot No. 166. However, by the time the plaintiff's father died, the transfer of those 4 acres into his names had not been done. Instead, the 1st defendant sold a portion of that land to the 2nd defendant.

As indicated earlier, no defence was filed by either of the two defendants. The plaintiff's case is therefore un-controverted. The documentary exhibits speak for themselves. Leave was granted to plaintiff to file this suit out of time by the High Court in Nairobi. Believing the plaintiff's un-contested evidence as I do, I am satisfied that he has proved his case as required in law.

I accordingly enter judgment for the plaintiff as prayed in paragraphs (a), (b) and (c) of his plaint filed herein on 19th July 2013.

B.N. OLAO

JUDGE

7TH NOVEMBER, 2014

7/11/2014

Before

B.N. Olao – Judge

Mwangi – CC

Mr. Abubakar for Mr. Nyakiangana for Plaintiff – present

Defendant – absent

COURT: Judgment delivered in open Court this 7th day of November, 2014

Mr. Abubakar for Mr. Nyakiangana for Plaintiff present

Defendant absent

Right of appeal explained.

B.N. OLAO

JUDGE

7TH NOVEMBER, 2014