

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL SUIT NO. 26 OF 2010

RENSON NAKHAIMA BWOMEPLAINTIFF

VERSUS

TITUS WAMALWA WEKONO DEFENDANT

J U D G M E N T

The Plaintiff Renson Nakhaima Bwome brought this suit against the Defendant Titus Wamalwa Wekono seeking orders of eviction from land described as Plot No. 18 at Nangabo farm within Kwanza District. The Defendant who was duly served with summons to enter appearance and file defence neither entered appearance nor filed defence. He was also served for formal proof but never appeared.

During the hearing, the Plaintiff testified that he is a teacher by profession. In the year 2004, he bought $\frac{1}{4}$ an acre from the Defendant at a price of Kshs. 13,000. Again in 2007, he bought $\frac{1}{2}$ an acre from the Defendant at Kshs. 51,000. The Defendant was a shareholder of Nangabo Farmers Co-operative Society and was owner of Plot No. 18. On 21st December, 2007, the Defendant transferred his shareholding in the society to the Plaintiff. A transfer was duly effected and the Plaintiff became a shareholder at Nangabo Farmers Co-operative Society thereby owner of Plot No. 18.

The Defendant has however refused to hand over possession of the suit land. The Plaintiff produced a Sale Agreement dated 01/02/2004 in respect of the $\frac{1}{4}$ acre he bought at Kshs. 13,000 (*exhibit 1*). He also produced a Sale Agreement dated 17/11/2007 in which the earlier agreement was incorporated. The Plaintiff's entitlement was $\frac{3}{4}$ of an acre at Kshs. 64,000 (*exhibit 2*). He also produced a transfer of $\frac{3}{4}$ of an acre held by him at Nangabo Farmers Co-operative Society (*exhibit 3*) as well as the certificate issued to him recognizing him as owner of Plot No. 18 (*exhibit 4*).

The Plaintiff also produced a letter (*exhibit 5*) written by the Chairman of Nangabo Farmers Co-operative Society confirming that the Defendant had sold $\frac{3}{4}$ of his plot at Nangabo Farmers Co-operative Society and that he is no longer a shareholder. The Chairman has severally summoned him to the office but he has declined and or refused to heed to the summons. The Plaintiff had in 2009 demanded that the Defendant do give vacant possession of the sold land through his lawyer as per the letter dated 11/12/2009 (*exhibit 6*) but the Defendant has never complied. The evidence of the Plaintiff is uncontroverted. I find that he has proved his case against the Defendant on a balance of probabilities. The Defendant has no reason hanging on to a land he has already sold out. He should be evicted from the land as prayed for in the Plaint. The Plaintiff shall have costs of this suit.

Dated, signed and delivered in Open Court on this 10th day of July, 2013.

E. OBAGA

JUDGE

In the presence of Mr. Keter for Mr. Wafula for Plaintiff.

Court Clerk: Joan.

E. OBAGA

JUDGE

10/07/2013