



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 150 OF 2017

JOHN NYONGESA NDEREMA PLAINTIFF

VERSUS

JOHN MAKOKHA NYONGESA.....DEFENDANT

JUDGMENT

1. The plaintiff filed this suit vide a plaint dated 12/9/2017 which seeks the following orders against the defendant:-

- (a) An order of specific performance requiring the defendant herein to give vacant possession and/or transfer half an acre from plot number 20 Marinda Farm to the plaintiff herein;
- (b) General damages;
- (c) Costs of this suit
- (d) Any other relief this court may deem fit and just to grant.

THE PARTIES PLEADINGS

The Plaintiff's Case

2. According to the plaint the plaintiff and the defendant entered into a written sale agreement on or about 28/5/2013 vide which the defendant sold half an acre of land from plot number 20 Marinda Farm (the suit land) at the consideration of Ksh 100,000/= which sum the plaintiff paid in full upon the execution of the agreement.
3. The plaintiff pleads that as the land was still in the name of the defendant's late father, the defendant undertook to lodge succession proceedings to facilitate transfer. It was a term of the agreement that the defendant would cede vacant possession to the plaintiff upon execution of the agreement. However the defendant has failed refused and/or neglected to give vacant possession and or transfer the suit land to the plaintiff as per the agreement hence this suit.

The Defendant's Case

4. The defendant though served never filed his defence and the suit proceeded to hearing ex-parte.

THE EVIDENCE OF THE PARTIES

The Plaintiff's Evidence

5. The plaintiff testified on 29/11/2018 and adopted his statement filed in the record. He produced the agreement between him and the defendant as PExh 1 and a copy of a demand notice to the defendant as PExh 2.

DETERMINATION

6. I have examined the agreement between the parties. It is executed by the parties and attested to by four witnesses in the presence of the advocate who drew it. The terms in that agreement are as restated by the plaintiff in the plaint and in his oral evidence and his written statement.

7. Consequently, I find that the plaintiff's claim has merit. I therefore enter judgment in favour of the plaintiff as prayed in **prayers (a)** and **(c)** the plaint dated **12/9/2017**.

Dated, signed and delivered at Kitale on this 29th day of January, 2019.

MWANGI NJOROGE

JUDGE

29/01/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bororio for the plaintiff

N/A for the defendant

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

29/01/2019