



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 174 OF 2014**

**WILFRED DAVID KWEMOI SIMATWA.....PLAINTIFF**

**VERSUS**

**DORCAS MUNABI SAIKWA.....DEFENDANT**

**JUDGMENT**

1. By a plaint dated **17/9/2014** and filed in court on **3/12/2014**, the plaintiff sought the following orders against the defendant:-

**a. A declaration that the plaintiff is the rightful owner of a portion measuring two (2) acres of the land known as Plot No. 145 situated at Saboti within Trans-Nzoia County and therefore the defendant be compelled to surrender a further One Decimal Two (1.2) acres of the suit land to the plaintiff to ensure that the defendant is put in occupation of his two (2) acres.**

**b. General Damages for loss of user.**

**c. Costs of the suit.**

**d. Any other relief this Honourable court may deem just to fit to grant.**

**The Plaintiff's Case**

2. According to the plaint the defendant sold the plaintiff part of her entitlement measuring **2 acres** in a plot of land at an agreed consideration of **Kshs. 250,000/=**. The plot of land hosting the defendant's entitlement is only known as **Plot 145** situated within Saboti within Trans Nzoia. However, contrary to the agreement the defendant has only put the plaintiff in possession of only **0.8 acres** instead of **2 acres**. The plaintiff therefore claims the balance of **1.2 acres**.

**The Defendant's Defence**

3. The defendants filed her defence on **9/1/2015**. Her defence is suit is time barred, that the agreement was null and void for want of a land control board consent.

4. Vide an application dated **15/2/2017** the defendant's Counsel Ms. Teti & Company sought that that he be granted leave to cease from further acting for the defendant herein. The application was allowed on **7/3/2017**.

**The Plaintiff's Evidence**

5. The suit came up for hearing on **24/9/2018**, **Wilfred David Kwemoi Simatwa**, the plaintiff testified. He adopted his statement in this suit dated **17/9/2014** and filed in court record as his evidence-in-chief. That statement replicates the contents of the plaint which have been analysed hereinabove.

**6. PW2, Stephen Chenonge Kirui** testified on the same date and adopted his statement dated **17/5/2017** as his evidence-in-chief in this suit. His evidence is that the agreement entered into between the plaintiff and the defendant is genuine and that he witnessed the execution of the same.

**7. PW3, Jonathan Baraza Naibei** testified on **24/9/2018** and adopted his statement dated **17/5/2017** as his evidence-in-chief in this suit. His evidence is that he also witnessed the execution of the agreement between the plaintiff and the defendant.

8. The defendant never called any evidence in support of her defence in this suit. The plaintiff's evidence is therefore not controverted.

**CONCLUSION**

9. In my view the plaintiff has proved his claim against the defendant on a balance of probabilities. I therefore enter judgment in favour of the plaintiff against the defendant and issue the following orders:

**(a) An order that the defendant shall surrender a further One Decimal Two (1.2) acres of the suit land to the plaintiff to ensure that the defendant is put in occupation of his two (2) acres within 30 days of this order.**

**(b) An order that in default the agreement between the plaintiff and the defendant is hereby annulled for breach by the defendant and in that event the defendant will refund the plaintiff the full sum of Ksh 250,000/= as well as the valued and quantified cost of all the plaintiff's developments on the land within 30 days of the expiry of the date of default in order (a) hereinabove.**

**(c) The defendant shall bear the costs of this suit.**

**Dated, signed and delivered at Kitale on this 29<sup>th</sup> day of January, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**29/01/2019**

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the plaintiff

N/A for the defendant

**COURT**

Judgment read in open court.

**MWANGI NJOROGE**

**JUDGE**

**29/01/2019**