



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 26 OF 2014

NATHANIEL LANGAT.....PLAINTIFF

VERSUS

DIRECTOR OF LAND ADJUDICATION &

SETTLEMENT.....1ST DEFENDANT

DISTRICT LAND ADJUDICATION &

SETTLEMENT KITALE.....2ND DEFENDANT

SECRETARY, NATIONAL

LAND COMMISSION.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

JUDGMENT

1. In the plaint dated 3/2/2014 and filed on 12/2/2014, the plaintiff seeks the following prayers against the defendants:-

- (a) **A declaration that the plaintiff is not indebted to the settlement fund trustees and therefore the settlement fund trustees do discharge that Plot No 2 Mutambo Scheme immediately;**
- (b) **Costs of the suit;**
- (c) **Any other or further relief the Honourable Court may deem appropriate to grant in the circumstances.**

2. According to the plaint, the plaintiff was allocated **Plot No. 2 Mutambo Settlement Scheme Kitale** (the suit land) in 1979 and by a charge dated 17/1/1979 he charged his interest in the land to the **Settlement Fund Trustees (SFT)** for the principal sum of **Kshs. 267,064.00** which accrued interest at the rate of **6.5%** per annum with effect from 6/4/1977. He defaulted but later on cleared the outstanding balance vide a cheque and was issued a receipt in 2004. However, according to the plaintiff he could not get a discharge as the file was missing. In 2005 the Settlement Fund Trustees claimed a further amount of **Kshs. 25,313** as loan arrears and he prepared a bankers cheque for the same which the SFT allegedly declined to accept purportedly on the basis that the plaintiff had cleared his arrears yet the file was still missing. Since the year 2005 the plaintiff has allegedly visited the settlement office and written numerous letters with a view of discharging his land to no avail as the file is still missing. On 5/9/2013 the defendants answered his requests with a letter alleging that the plaintiff owes the SFT **Kshs. 1,823,836/=** which continues to attract interest of **Kshs. 327** per day until cleared and the plaintiff avers that this amount is fraudulent. The plaintiff avers that failure to discharge his property contravenes his constitutional rights and restricts him from using his land for other economic purposes.

3. Upon their application the interested parties were enjoined in this suit and they filed their response to the plaint on the 8/12/2017. In that response they claim to be beneficial owners of the suit land having purchased it from the plaintiff from the 1980s in different portions, with the plaintiff's assurance that he would have the land discharged so that each interested party may get his share registered in his name. There are 181 interested parties in all.

The Evidence of the Plaintiff

4. The plaintiff testified on the 24/3/2016 and reiterated the matters in the plaint. He maintained that he has cleared what was owed to the SFT. He produced the charge document (**PEXh 2**) a copy of a cheque (**PEXh 3**) and a receipt (**PEXh 4**). He alleged that he wrote cheque (**PEXh 5**) but the same was returned to him with the SFT office informing him that his loan was cleared. He produced a copy of a letter he allegedly received demanding **Kshs. 25,000/=** as (**PEXh 6**). His advocate wrote to the National Land Commission (**PEXh 7**) and received a response (**PEXh8**).

5. On cross examination by Mr. Wabwire for the defendants he reiterated his position in his evidence in chief and added that he does not have any evidence that he repaid the loan instalments as scheduled and that he does not possess any receipts to show that he paid. He also admitted that he never at any time disputed the interest charged by the SFT on the loan and that he has no evidence to prove that the file was missing.

6. **DW1 Francis Obiria Oseko the Land Adjudication Officer, Trans Nzoia County**, testified on 30/5/2018. His evidence is that the plaintiff applied for the plot in 1977; that an allotment letter was issued to him; that a charge in favor of SFT for **Kshs. 267,064/=** was registered against the land the allottee was also given a development loan of **Kshs.22,600/=** repayable at 6.5% per annum interest within 10 years in 20 half yearly instalments and that the said loan has not been repaid. He acknowledged the payment by the plaintiff of **Kshs.430,000/=** on 11/5/2004 as being reflected in his records. However he faulted the plaintiff for not obtaining prior consent to start late repayment of the loan through a written application; there is also nothing on his record to show that the plaintiff was advised that the balance payable is **Kshs. 430,000/=**. According to DW1, the principal sum and accrued interest as at **27/10/2011** was **Kshs. 1,639,274.91/=**. He produced a loan balance statement to that effect as **DExh 6**. As at 16/8/2013 the balance was **1,839,551.26/=** as per the balance statement produced as **DExh7**. He acknowledged the communication from the plaintiff's advocates Amadi & Co., dated 5/9/2013 which was replied to vide **DExh 8** stating that the loan balance was by then **1,823,836.26/=**, and that it attracted interest of **Kshs. 327/=** per day. According to the witness the plaintiff has not cleared the interest nor raised any dispute on the balance. According to him the plaintiff had another litigation **Eldoret ELC HCCC 164 of 1992**; the letter of allotment is clear on the mode of payment and the plaintiff was well aware of the case and where the file was; that the file had not disappeared, but had been used as an exhibit in that case; he produced a letter dated 5/11/2007 in evidence of that fact. According to him the plaintiff has not attempted to repay the loan since 5/11/2007 and the loan has to be cleared before the title is discharged. The witness conceded that the SFT would not object to the plaintiff clearing the loan despite the delay.

7. The plaintiff never filed submissions in respect of the main case. The defendant filed his submissions on 10/7/2018.

Determination

Issues for determination

8. There is no dispute that the plaintiff was allotted the suit land and that he was advanced two loans. The issue for determination is whether the plaintiff has complied with the loan repayment terms and whether he has repaid the loans.

9. The evidence of the defence witness has not been controverted even in cross examination. Further the defence witness has persuaded this court that the plaintiff paid the sum of **Kshs. 430,000/=** unilaterally and without any advice from the defendants and that such payment did not clear the loan and interest which had been outstanding for many years.

10. The plaintiff admitted that he has not repaid the loans. The plaintiff indicated that part of the reason for non-repayment after the payment of the last amount on **11/5/2004** was that the file was reported missing.

11. The plaintiff never revealed to this court that there was other litigation that had been lodged being **Eldoret ELC HCCC 164 of 1992** in which the file was produced as an exhibit.

12. The defendants proved through the oral evidence of DW1 and the **DExh 9** that there was such litigation and that the file was produced therein as an exhibit and that the plaintiff was aware of that fact.

13. I see no reason why the plaintiff, being the adversely affected party, did not move the court in that case for an order of release of the file to enable his loan repayments if he was serious about repayment.

14. The only main issue in this case is therefore resolved. The plaintiff has failed to convince this court that he repaid the loan. His reasons for not repaying are dubious.

15. The plaintiff appeared to be possessed of a strong desire to take advantage of the defendants. I find this to be quite improper considering that the plaintiff has even breached the terms of the charges by disposing of the land to third parties without the involvement of the defendants and without first discharging the land.

16. His allegation that he cleared the balance of the loan in 2004 is not supported by evidence. He has not proved that the amounts that the defendants have demanded from him are fraudulent in any way.

17. If the plaintiff has sustained any loss or damage, the same is self-inflicted and can not be foisted upon the defendants' innocent shoulders. He should, unlike the proverbial donkey that kicks its benevolent master, be commending the defendants for exercising an uncommonly generous amount or restraint and for abstaining from disposing of his property to other persons for his default.

18. His feigning of ignorance of where the land file was and his failure to secure a return of the file to ensure his purportedly desired payments - in my mind is doubtful if at all he genuinely desired to repay the loans - appears to be a ruse devoid of decency which was calculated to calumniate the defendants' offices in order obtain the orders he seeks in this case. It is fortunate that good evidence was availed

by the defendants which the plaintiff did not even attempt to answer otherwise his ruse would have succeeded. This court can not condone such conduct.

What orders should issue?

19. In the final analysis I find that the plaintiff has failed to prove that he has repaid the loans or that he has any justification for his default.

20. This suit has no merit and it is hereby dismissed with costs to the defendants.

Dated, signed and delivered at **Kitale** on this **31st** day of **January, 2019**.

MWANGI NJOROGE

JUDGE

31/01/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bisonga for the plaintiff

Mr. Wabwire for the defendant

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

31/01/2019