



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC PETITION NO. 250 OF 2015

STANLEY GACHOMOH KARIUKI.....PLAINTIFF

VERSUS

STEVE NJOKA & GRACE WANGARI NJOKA

(Suing as the administrators of the Estate of the

LATE EZRA HERMAN NJOKA.....DEFENDANTS

JUDGEMENT

1. The plaintiff has filed this suit against the defendant seeking:-

(a) An order for specific performance of the contract to the defendants to effect transfer of the said parcel of land in favour of the plaintiff.

(b) Costs of this suit.

(c) Any other relief that this honourable court may deem fit to grant in favour of the plaintiff against the defendant.

2. Upon being served with copies of plaint and summons to enter appearance, the defendant entered appearance and filed a statement of defence dated 3rd February 2014.

3. PW1 Stanley Gachomo Kariuki relied entirely on his witness statement dated 18th September 2013 and the bundle of documents filed on 18th September 2013. He told the court he bought two (2) acres of land from Ezra Herman Njoka (deceased) out of Land Parcel Number 3577/5 situated in Kiambu. Later the seller claimed he was occupying a bigger portion.

4. He prays that he be issued with a title deed. He also seeks costs of the suit. In support of his case he produced a demand notice dated 7th May 2013 as exhibit P1. A letter to M/S Kagwe Kamau & Karanja Advocates dated 27th June 2012 as exhibit P2 and the sale agreement as exhibit P3.

5. DW1, Stephen Kirubi Njoka the 1st defendant in the case told the court that he relied on his witness statement dated 23rd August 2017 and the bundle of documents dated 21st September 2017. He further told the court that he realized the plaintiff was occupying more than two acres. He asked him to pay Kshs. 2 million for the excess portion but he refused. He told the court the plaintiff is occupying 2.56 acres as per the survey report. That the plaintiff has failed to surrender the deed plan in order for rectification to be done. He says he needs the deed plan in order to transfer the two (2) acres to the plaintiff. He prays that the suit be dismissed with costs

6. DW2 George Karani Magondu, a surveyor, told the court that he visited the suit property and took measurements. He told the court it was not practical to find the area under water. He produced the report as exhibit -D6 .

7. The defence relied on the following documents:-

- A copy of deed plan in respect of LR No. 3577/29, measuring approximately 0.6331 Ha dated 30th November 1999.
- A copy of deed plan in respect of LR No. 3577/31 measuring approximately 0.4055 ha dated 16th November 2001.

- A copy of a letter by the defendant conveyancing advocates (Kagwe, Karanja & Karanja Advocates to the plaintiff or the estimated legal costs for transfer of LR No. 3577/31 dated 28th September 2011.
- A copy of a letter by the same advocate to the plaintiff's advocate dated 6th July 2012.
- A copy of a letter to the plaintiff's advocates on the outcome of a jointly commissioned survey by the Development survey services dated 16th November 2012.
- A copy of the survey report by the Development survey services together with survey computation or drawings dated 16th November 2012.

8. At the end of the trial parties filed written submissions.

9. I have considered the pleadings, the evidence on record and the written submissions made on behalf of the parties. The issue for determination are:-

(i) Whether the plaintiff has a good case against the defendants.

(ii) Who should bear costs?

10. The defendants rely on the survey report produced as exhibit D6 to prove their claim that the plaintiff is occupying more than two (2) acres. I have gone through the survey report. I find the same to be inconclusive. It states that:-

“It is possible that by the time the survey defined by F/R 291/64 was undertaken the river was accessible”.

When cross examined by the plaintiff's counsel DW2 admitted he could not see the beacons because of the river.

I therefore find that the defendant's claim that the plaintiff is occupying more than two (2) acres is neither here nor there.

11. I find that the plaintiff is entitled to two (2) acres he bought. He should be furnished with a title deed for the two (2) acres. The defendant should facilitate this.

12. The upshot of the matter is that the plaintiff has proved his case in a balance of probabilities as against the defendants. Accordingly judgment is entered in favour of the plaintiff as follows:-

(a) That an order for specific performance is hereby issued against the defendant to effect the transfer of two (2) acres of land in favour of the plaintiff.

(b) That the plaintiff should have costs of the suit and the interest.

It is so ordered.

Dated, signed and delivered in Nairobi on this 11th day of December 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

Ms Kiaritha for Mr. Kimani for the Plaintiff

No appearance for the Defendants

Kajuju - Court Assistant