



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 9 OF 2016**

**JAMES KITERIE ALFAYO.....PLAINTIFF**

**VERSUS**

**WILLIAM KIPNUSU.....1<sup>ST</sup> DEFENDANT**

**THE COUNTY LAND ADJUDICATION &**

**SETTLEMENT OFFICER.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The two defendants in this suit, despite being served with summons and plaint, never entered appearance or filed any defence hence the suit proceeded *ex parte* against them.
2. The plaintiff claim is contained in the plaint dated 15/1/2016 which was filed on the same day. By that plaint, the plaintiff sought a declaration that he is the legitimate owner of the suit property formerly known as **Plot No. 80** and its amalgamation with **Plot No. 30** to form **Plot No. 36** was done irregularly, fraudulently and unlawfully. The plaint also sought an order directing the second defendant to rectify the records to reflect the plaintiff as the rightful owner of the property, and a permanent injunction restraining the defendants.
3. According to the plaint, the plaintiff's case is that he purchased 2 ½ acres of land at the **Kitalale Settlement Scheme Phase 1** on **13/7/1999** which comprised what was previously known as **Plot No.80**. However, the plaintiff, claims the 1<sup>st</sup> defendant by means of fraudulent misrepresentation induced the 2<sup>nd</sup> defendant to cause the amalgamation of Plot No. 80 with Plot No. 30 to form Plot No. 36 which was given to the 1<sup>st</sup> defendant. The particulars of fraud are well laid out at paragraph 7(a) - (c) of the plaint. By reason of that fraud, the plaintiff claims to have suffered loss and damage whose particulars are set out in paragraph 8(a) - (c).
4. At the hearing which took place on 12/3/2018, the plaintiff alone testified in his case. He stated that he bought the 2 ½ acre parcel from one Patrick Towett on 13/7/1999 for the price of Kshs.160,000/= which he fully paid that year. He produced the certified copy of the agreement as P. Exhibit 1. Towett had bought the plot from one Philip Eyanae and a certified copy of their agreement to that effect was produced as P. Exhibit 2. A certified copy of the allotment letter to Philip Eyanae was produced as P. Exhibit 3.
5. After this the plaintiff had the misfortune to build on another person's plot thinking it was Plot No. 80. It was Plot No. 38. After some litigation he was finally shown Plot No. 80. The plaintiff got to know that Plot No. 80 and Plot No. 30 had been joined together to form Plot No. 36. Plot No. 30 which had also belonged to Towett was then in the hands of the 1<sup>st</sup> defendant. The plaintiff was evicted from Plot No. 38. The plaintiff avers that he was not informed as Plot No. 80 and Plot No. 38 were being joined together and he prays the court for the orders in the plaint.
6. This suit is not opposed. I have examined the documentary evidence produced by the plaintiff including the judgment in ***Kitale ELC No. 78 of 2003 - James Kiterie -vs- Margaret Wambete***. In my opinion he has established his case on a balance of probabilities. I therefore think that his claim has merit.
7. Consequently I hereby enter judgment in favour of the plaintiff against the defendants jointly and severally and grant the prayers as sought in the plaint dated **15/1/2016**.

**Dated, signed and delivered at Kitale on this 25<sup>th</sup> day of April, 2018.**

**MWANGI NJOROGE**

**JUDGE**

**25/4/2018**

Coram:

Before: Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Waweru for plaintiff

N/A for the defendant

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**25/4/2018**