



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ELC NO 320 OF 2017

PETER MUIU KALIUKA PLAINTIFF

VERSUS

JOSEPH MUTETI NGULI DEFENDANT

JUDGMENT

1. By his plaint dated 22nd May, 2017 and filed in court on 1st August, 2017 the plaintiff prays for judgment against the defendant for ;

- a) **That the sale transaction between the plaintiff and the defendant in respect of land title reference No. Makueni /Kilongo/2833 be and is hereby nullified.**
- b) **That the defendant do stop cultivating the suit land forthwith.**
- c) **The defendant do pay mesne profits for use of the suit land for the period he has cultivated it.**
- d) **That the defendant do meet costs of this suit.**
- e) **Any other remedy that this court may deem fit.**

He has averred that the defendant breached the sale agreement in respect of land parcel number Makueni/Kilongo/2833.

2. The matter proceeded as undefended suit after the defendant failed to enter appearance and to file his defence despite having been served with summons on the 14th September, 2017 as can be seen from the affidavit of service sworn at Kilungu on the 18th September, 2017 and filed in court on the 11th December, 2017.

3. At the hearing, the plaintiff adopted his undated witness statement filed in court as his evidence.

His evidence was that sometime in the month of January, 2013 the defendant expressed his desire to purchase his land. The plaintiff went on to say that he agreed to sell his land parcel number Makueni/ Kalongo/2833 to the defendant for the sum of Kshs. 250,000. The defendant paid a deposit of Kshs. 40,000 and promised to clear the balance before the end of 2013. He also sought and got permission from the plaintiff to cultivate on the suit land. Todate the defendant is yet to clear the balance despite persistent reminders from the plaintiff. The defendant has continued to cultivate on the suit land.

4. The plaintiff produced a copy of title deed for LR Makueni/Kilongo/2833, certificate of official search, chief's notice to vacate land, chief's summons a copy of title number Makueni/Kilongo/5202 and demand notice as PEX No. 1 to 6 respectively.

5. The plaintiff demands for Kshs. 50,000 being mesne profits per year for 4 years from the defendant.

6. In his written submission dated 15th February, 2018 and filed in court on this 16th February, 2018 the plaintiff's counsel urged the court to find that the plaintiff has proved his case against the defendant and therefore proceed to enter judgement as prayed.

7. From the evidence on record, it seems that the plaintiff and the defendant entered into an oral sale agreement in respect of LR Makueni/Kilongo/2833. Under section 3(3) a(i), (ii) and (b) of Law of Contract Act Chapter 23 of the Laws of Kenya, it is mandatory for a contract for the disposition of an interest in land to be in writing and signed by all the parties and to be attested by a witness for each party. The above requirement was not followed by the parties herein. In my view the oral contract between the plaintiff and the defendant is for all practical purposes null and void notwithstanding the fact that the defendant did not fulfill his side of the bargain. The defendant has continued to cultivate on the said land parcel number Makueni/Kilongo/2833 thereby deriving profits from it. The defendant has overstayed

his welcome by 4 years and in my view the sum of Kshs. 50,000 sought by the plaintiff for each year that the defendant has cultivated on the suit land is reasonable.

8. Having evaluated the evidence on record, I am satisfied that the plaintiff has a cause of action against the defendant. I, therefore, proceed to enter judgment for the plaintiff and against the defendant as hereunder:-

a) That the sale transaction between the plaintiff and the defendant in respect of land title reference No. Makueni /Kilongo/2833 be and is hereby nullified.

b) That the defendant do stop cultivating the suit land forthwith.

c) Mesne profits at the rate Kshs. 50,000 per year for 4 years

d) Any other remedy that this court may deem fit.

Dated, signed and delivered at Makueni this 21st Day of June, 2018

MBOGO C.G

JUDGE

In the presence of :

The plaintiff and in the absence of his counsel.

Mr. Kwemboi Court Assistant

MBOGO C.G, JUDGE

21/6/2017