



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 179 OF 2017

EMMANUEL KAPELTOM NANGOLESIA.....PLAINTIFF

VERSUS

ELIJAH LOPEYTOM NYERIS..... DEFENDANT

JUDGMENT

1. The plaintiff's claim is contained in the plaint dated 9/11/2017 which was filed on the on 14/11/2017. In that plaint, the plaintiff the seeks the following reliefs against the defendant:-

(a) Surrender of title No. West Pokot/Keringet 'A'/2829 to the plaintiff for purpose of transfer.

(b) In the alternative, an order directing the Land Registrar West Pokot County to transfer title No. West Pokot/Keringet 'A'/2829 to the plaintiff and issue him with a new title deed.

(c) Costs of this suit.

(d) Any other relief this court may deem fit to grant in the interest of justice.

2. During the hearing of the suit this court ordered that the name of the plaintiff be amended to read "**Emmanuel Kapeltom Nangolesia**" as that is the name he gave in his evidence.

3. The plaintiff's case is that the defendant sold to him the entire land **Parcel No. West Pokot/Keringet 'A'/2829** at a consideration of **Kshs.360,000/=** which the plaintiff paid in full as per the sale agreement; that the defendant executed the transfer form for **West Pokot/Keringet 'A'/2829** and the plaintiff also signed the same and it was duly witnessed; that the defendant has refused to surrender the original title deed for **LR. No. West Pokot/Keringet 'A'/2829** to the lands office to facilitate the transfer and that fearing the defendant's mischief the plaintiff lodged a caution on **Title No. West Pokot/Keringet 'A'/2829** forbidding the registration of dealings and making of entries of the same.

4. The defendant never filed any memorandum of appearance or defence despite being served with summons and plaint and other documents on **30/11/2017** as evidenced by the affidavit of service sworn by one **Samuel Nyangau Getonto** filed on **30/01/2018**.

5. The plaintiff testified on **12/6/2018** when this suit came up for formal proof. He reiterated the contents of his plaint and produced documentary evidence in support of his case. He testified that he is a civil servant working with the Ministry Of Health stationed at Kapenguria; that on **4th July 2006** he was informed by one of his neighbours who is the defendant herein that he was selling some land.

6. He went and inspected the land and was pleased by it. Subsequently the plaintiff and the defendant went to the Chief's office where they executed an agreement. By that agreement the defendant sold two acres to the plaintiff at a consideration of **Kshs. 180,000/-** which the plaintiff paid to completion in instalments. He produced the agreement and the acknowledgement of receipt of these instalments.

7. The plaintiff testified that after payment to the defendant he disappeared and the plaintiff lodged a caution over the suit land on **24/1/2011** to protect it from further sale. He produced a copy of the caution in evidence. He also produced a copy of the demand letter written to the defendant by his advocate seeking completion of the transaction.

8. According to the plaintiff, the defendant did respond to this letter by coming to the plaintiff whereupon he asked for more money and the plaintiff gave him Kshs. 50,000/= of which he acknowledged receipt in the presence of witnesses.

9. Subsequently the parties applied for a Land Control Board's consent to transfer which was issued on the **21/3/2013**. The consent was produced as **P.Exh 5(a)** and the application for consent as **P.Exh 5(b)**.

10. After getting the consent the defendant demanded Kshs. 150,000/= more from the plaintiff in respect of the land citing the risen value of land. On 22/4/13 the parties executed another agreement vide which the plaintiff agreed to pay the defendant Kshs. 200,000/= and which amount the plaintiff paid in full. The defendant subsequently executed a transfer in the plaintiff's favour and submitted his photographs to be affixed thereon. He agreed to avail the original title within 3 days but did not do so hence this suit.

11. According to the plaintiff, all that the plaintiff needs is the original title deed to the suit land so as to enable him lodge the executed transfer and hence complete the transaction. He has constructed his house on the land and has been living on the land.

12. The evidence of the plaintiff was not controverted. The case went unopposed. I find that the plaintiff has established his claim on a balance of probabilities against the defendant and I therefore enter judgement in his favour against the defendant and issue the following orders:

(a) The defendant shall surrender to the plaintiff the original Title No. West Pokot/Keringet 'A'/2829 for purpose of surrender to the Land Registrar for destruction upon the registration of the transfer.

(b) In default the Land Registrar West Pokot County shall after issuing the requisite gazette notice notifying the public of the same, deem the original title held by the defendant in respect of West Pokot/Keringet 'A'/2829 as cancelled and he shall subsequently after 30 days of the publication of the gazette notice transfer title No. West Pokot/Keringet 'A'/2829 to the plaintiff and issue him with a new title deed.

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

It is so ordered.

Dated, signed and delivered at Kitale on this 11th day of July, 2018.

MWANGI NJOROGE

JUDGE

11/7/2018

Coram:

Before - Mwangi Njoroge Judge

Court Assistant - Picoty

N/A for the plaintiff

N/A for the defendant

COURT

Judgment read in open court in the absence of the parties who had been notified.

MWANGI NJOROGE

JUDGE

11/7/2018