



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 157 OF 2017

ENOS ANGOYA LWUGI.....PLAINTIFF

VERSUS

NICHOLAS MWALE LUMEZANI.....1ST DEFENDANT

ISAAC WEPUKHULU FUCHAKA2ND DEFENDANT

JUDGEMENT

1. In the plaint dated 25/9/2017, the Plaintiff prays for judgement against the Defendants jointly and severally for:

- (i) **An order of eviction of the Defendants from Title No. Kitale Municipality Block 17/Bidii /611 measuring 0.586 hectares.**
- (ii) **Costs.**
- (iii) **Interest on the costs.**
- (iv) **Any other relief this Honorable Court may deem fit to grant.**

2. According to the plaint the plaintiff's case is that he is the proprietor of **LR No. Kitale Municipality Block 7/Bidii/611** measuring **0.586 Ha** or thereabouts. He sold the land to the defendant on or about **20/3/2008** for **Kshs. 530,000/=** and the defendant paid **Kshs. 427,200/=** thereof leaving a balance of **Kshs. 102, 800/=** which sum was to be paid within one month from that date. The plaintiff avers that the defendant failed to honour the second instalment and no consent of the Land Control Board was obtained. The 1st defendant thereafter purportedly sold the land to the 2nd defendant. It is the plaintiff's case that the 1st defendant did not have any valid title to pass on to the 2nd defendant and that both are now trespassers owing to the breach of agreement by the 1st defendant.

3. The 1st defendant filed his defence on **21/11/2017** in which he has denied that the plaintiff is the owner of the land. He further avers that there was a verbal agreement that the plaintiff would execute the transfer in his favour before being paid the balance which the plaintiff had failed to do. He denies ever being served with any demand letter.

4. The 2nd defendant, though served as demonstrated in the affidavit of service dated **14/11/2017**, failed to enter appearance or file defence.

5. The 1st defendant was served with the hearing notice for the hearing scheduled for **12/7/2018**. The suit proceeded to formal proof on the **12/7/2018** when the plaintiff testified as **PW1** in the absence of both defendants. The plaintiff produced the original title deed for **LR No. Kitale Municipality Block 7/Bidii/611**. It shows that the land is registered in his name and it measures **0.586 Ha**. He also produced a copy of a written agreement dated **20/3/2008** between the plaintiff and the 1st defendant and a letter of demand dated **8/2/2014**.

6. The plaintiff filed his submissions on **29/8/2018**. The defendants never filed any submissions in this suit.

7. In the light of the contents of the plaintiff's written statement, his oral evidence, the documents produced at the hearing, the nature of the defence of the 1st defendant and the want of defence on the part of the 2nd defendant, I am satisfied that the plaintiff has established that : he owns the land, that there was a sale agreement between him and the 1st defendant; that the sale agreement failed due to default on the part of the 1st defendant and that the 1st defendant has purported to give the land by unclear means to the 2nd defendant. The 1st defendant has failed to come to court to give evidence on his defence. Accordingly I find that he has no right to the land owing to the breach of the agreement dated 20/3/2008.

8. Consequently, I hereby enter judgment in favour of the plaintiff against the two defendants jointly and severally and order that the sale agreement dated **20/3/2016** between the plaintiff and the 1st defendant is hereby revoked. The 1st and 2nd defendants shall be evicted from the suit land and they shall pay the plaintiff the costs of this suit.

It is so ordered.

Dated, signed and delivered at Kitale on this **24th** day of **September, 2018**.

MWANGI NJOROGE

JUDGE

24/9/2018

Coram: Before Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Munialo for plaintiff

N/A for defendant

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

24/9/2018