

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 317 OF 2017

STANLEY KIMANYANO KIKUYU.....PLAINTIFF

VERSUS

ZIBEON MAKONGE.....DEFENDANT

JUDGEMENT

Briefly this case is that, on or about 28th October, 2005, the plaintiff entered into a land sale agreement with the defendant for sale of a portion of the L.R. No. S/Maragoli/Lugovo/166 measuring 0.03 Ha at a consideration of Ksh. 160,000/= (one hundred and sixty thousand only). That plaintiff states upon his payment of Ksh. 160,000/= land board forms were filled and he attended land board together with the defendant and thereafter survey process was carried out where sub-divisions of L.R. No. S/Maragoli/Lugovo/166 into L.R. No. S/Maragoli/Lugovo/1802 and 1803. That L.R. No. S/Maragoli/Lugovo/1802 measuring 1.28 ha belongs to the defendant and L.R. No. S/Maragoli/Lugovo/1803 measuring 0.03 Ha belongs to the plaintiff. The plaintiff states that the defendant blatantly/deliberately refused to surrender the old title Deed at the lands office in order to issue him with his title which is L.R. No. S/Maragoli/Lugovo/1803. The plaintiff further avers that the defendant is the registered as the owner of the remaining L.R. No. S/Maragoli/Lugovo/166 and he does not see any reason for denying him his share of land. The plaintiff states that the defendant's action ab initio frustrate his efforts to demand his 0.03 ha of land from the L.R. No. S/Maragoli/Lugovo/166. That on or about the year 2008, the plaintiff avers that he filed a civil suit at the Senior principal Magistrate's court at Hamisi whereby the matter has pending for nine years since the defendant never appeared to court and is claiming that he has lost his site. That the plaintiff that was directed by the Resident Magistrate Hamisi Law Court that the law Court has no power to determine this matter and therefore he should take the matter to the High Court of Kenya at Kakamega which has jurisdiction to determine this matter. The plaintiff further states that the defendant hitherto refused to effect transfer of his 0.03 Ha of land from L.R. No. S/Maragoli/Lugovo/166. The plaintiff's prayer to court against, the defendant is for a declaration that he is a bonafide beneficiary of 0.03 Ha of land from the L.R. No. S/Maragoli/Lugovo/166. The plaintiff prays for judgment to be entered against the defendant for.

1. A declaration that the plaintiff is a bonafide beneficiary of a portion of land measuring 0.03 Ha from the L.P. No. S/Maragoli/Lugovo/166.
2. Costs.
3. Relief/Remedy this Hon. Court shall deem just and expedient to grant.

This court has considered the plaintiff's case and submissions herein. Despite the defendant being served he never attended court or file and documents in opposition. On 28th October, 2005, the plaintiff entered into a land sale agreement with the defendant for sale of a portion of the L.R. No. S/Maragoli/Lugovo/166 measuring 0.03 Ha at a consideration of Ksh. 160,000/= (one hundred and sixty thousand only). That plaintiff states upon his payment of Ksh. 160,000/= land board forms were filled and he attended land board together with the defendant and thereafter survey process was carried out where sub-divisions of L.R. No. S/Maragoli/Lugovo/166 into L.R. No. S/Maragoli/Lugovo/1802 and 1803. That L.R. No. S/Maragoli/Lugovo/1802 measuring 1.28 ha belongs to the defendant and L.R. No. S/Maragoli/Lugovo/1803 measuring 0.03 Ha belongs to the plaintiff. The plaintiff has produced the sale agreement, application for consent, mutation form, and search certificate as exhibits. His evidence has not been challenged. I find that the plaintiff has proved his case on a balance of probabilities and I grant the following orders;

1. A declaration that the plaintiff is a bonafide beneficiary of a portion of land measuring 0.03 Ha from the L.P. No. S/Maragoli/Lugovo/166.
2. Costs to the plaintiff.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 20TH DAY OF SEPTEMBER 2018.

N.A. MATHEKA

JUDGE