

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO.200 OF 2016

JOSEPH MKALA NATHAN.....PLAINTIFF

-VS-

PETER ONYANGO ODUOUR.....DEFENDANT

JUDGMENT

1. The Plaintiff, Joseph Mkala Nathan instituted this suit by a Plaint dated 20th July 2016. The Plaintiff is seeking for judgment against the Defendant for orders directing the Land Registrar:

- a. To cancel the registration of Peter Onyango Oduor as the owner of PLOT NO.312/392 MN 1 CR 35288.**
- b. Register and issue a Certificate of Title to the Plaintiff as the legal owner of PLOT NO.312/392 MN 1 CR 35288 acquired by virtue of purchasing.**
- c. An order directing the Deputy Registrar of this court to sign the transfer forms on behalf of the Defendant.**
- d. Any other remedy and or relief that the court may deem fit and just to grant.**

2. The Plaintiff's case is that both the Defendant and the Plaintiff used to work in Bamburi Cement Limited and were members of Bamburi Wananchi Cooperative Sacco and that they both purchased plots through the said Sacco. That the Defendant acquired title **NO.312/392/MN 1 CR 35288** which upon retiring sold to the Plaintiff on 21st January 2006 for a consideration of Kshs.157,000 which the Plaintiff paid in full. The Plaintiff avers that the Defendant handed him the original certificate of title of the suit plot and before transfer went back to his rural home which is unknown to the Plaintiff. the Plaintiff further avers that he is unable to have the property transferred and registered in his name as he cannot obtain the documents required by the Land Registrar to effect the transfer and his efforts to trace the Defendant have been unsuccessful. The Plaintiff states that the only details he has for the Defendant are the names, Peter Onyango Odour, ID No [Particulars Withheld] and PIN No [Particulars Withheld].

3. Pursuant to leave granted by the court the defendant was served with summons to enter appearance by substituted service through advertisement in the Daily Nation Newspaper of 1st August 2017 but did not enter appearance or file defence. Upon request by the Plaintiff, interlocutory judgment was entered against the Defendant on 8th January, 2018. The suit proceeded for formal proof on 21st May 2018 when the Plaintiff testified and did not call any witness.

4. The Plaintiff adopted the contents of his witness statement filed on 21st July 2016 and reiterated the contents of the Plaint. He states that the Defendant and himself are retirees of Bamburi Cement Limited where they were also members of Bamburi Wananchi Sacco Society Limited. That while in service the said Sacco acquired land which it subdivided and sold to its members. That the Defendant acquired **PLOT NO.312/392/MN 1** which immediately upon retirement sold it to the Plaintiff for Kshs.157,000 which was paid in full. The Plaintiff states that before the transfer was effected, the Defendant suffered from some chronic illness which persisted for some time and without the Plaintiff's knowledge, the Defendant relocated to his rural home in Nyanza in the year 2010. The Plaintiff further states that his efforts to trace the Defendant or his relatives have been futile and he is unable to have the Plot transferred into his name without the requisite documents from the defendant. The Plaintiff produced the Certificate of Title of the Suit Property in the name of the defendant as well as the sale agreement, confirmation letter, deed plan, application for postal search, receipt and certificate of postal search. He also produced KRA PIN Certificate of the defendant and his passport.

5. The court has carefully considered the evidence on record. The issue that calls for determination is whether the Plaintiff has proved his case on a balance of probability and therefore entitled to the orders sought. The Plaintiff has tendered documentary evidence that show that he purchased the suit property from the defendant. The Plaintiff has also shown the court the documents including the certificate of title in the defendant's name. The Plaintiff has stated that he paid the Defendant the purchase price in full but the defendant left for an unknown destination before executing the transfer documents in favour of the Plaintiff. The Plaintiff's evidence remains uncontroverted. I find the evidence on record sufficient to prove that the Plaintiff is entitled to the reliefs sought.

6. The upshot of this is that this court is satisfied that the Plaintiff has proved his case on a balance of probabilities. Judgment is entered for the plaintiff as prayed in the plaint.

Delivered, signed and dated at Mombasa this 18th September, 2018.

C. YANO

JUDGE