



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 38 OF 2017

MUNYUA GACHUHI.....1ST PLAINTIFF

MBURU NDUU.....2ND PLAINTIFF

VERSUS

MICHAEL NDIWA KIMTAL.....DEFENDANT

JUDGMENT

1. The plaintiffs filed this suit on **2/3/2017** seeking orders of a declaration that **Plot No 56 Kapkoi Settlement Scheme** belongs to them and the defendant has no proprietary interest in it, an alternative order that the trust do terminate and the title deed issued to the defendant herein be cancelled and the title be issued in the names of the plaintiffs and the register be rectified, and lastly, an injunction restraining the defendant/defendant from effecting the transfer of **Plot No. 56 in Kapkoi Settlement Scheme** into his name.

2. An interim order of injunction was issued by this court on **2/3/2017** when the matter came up on the hearing of an application for an interim injunction under certificate of urgency. That order was extended twice in the absence of the defendant who, despite service never entered appearance or filed any defence to the suit or the application for interim injunction dated **1/3/2017** in the suit. That application and the suit are unopposed.

3. I am satisfied that the defendant was served as described in the affidavit of service sworn by Concephter Oduor, the process server on **9/3/2017** and filed in the record on **16/3/2017**.

4. The plaintiff's case is that they purchased the **Plot No. 56 in Kapkoi Settlement Scheme** in **1991** and that they have been in possession ever since. The plaintiffs have learnt that the defendant has now obtained a discharge and is in the process of registering himself as the owner of the land. They therefore plead that they would be prejudiced in the event the land was so registered in the defendant's name.

5. The 1st plaintiff testified on behalf of both plaintiffs on **25/10/2018** and adopted his written statement filed in the record. He produced an agreement dated **19/10/1991** vide which the defendant sold the land to the plaintiffs; a charge dated **27/5/1991**, a letter of offer dated **27/5/1991**, and a payment receipt dated **27/5/1991**.

6. From the oral evidence and the documents produced I am persuaded that the suit land was allocated to the defendant and that he sold the same to the plaintiffs.

7. I find that the plaintiffs have proved their claim on a balance of probabilities. I therefore enter judgment for the plaintiffs against the defendant as prayed in prayers **(a), (b), (c)** and **(d)** of the plaint dated **1/3/2017**.

Signed, dated and delivered at Kitale on this **3rd** day of **December, 2018**.

MWANGI NJOROGE

JUDGE

3/12/2018

Coram:

Before -Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Munialo for plaintiffs

N/A for the defendant

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

3/12/2018