



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 182 OF 2015

JACOB ILANDI MATIPLAINTIFF

VERSUS

SAMUEL MATI GEDION MWINZIDEFENDANT

JUDGMENT

1. This suit was commenced by way of a Complaint dated 22nd June, 2015. In the Complaint, the Plaintiff is seeking for the following orders:

a. A declaration that the Defendant holds title to LR. 4096/119 grant No. I.R.N. 1839 in trust to the Plaintiff.

b. A mandatory injunction directing the Defendant to effect transfer of the title to LR 4096/119 grant No. I.R.N. 1839 situated in Kitui town, to the Plaintiff.

c. An injunction restraining the Defendant from laying any claim over L.R 4096/119 grant No. I.R.N. 1839 situated in Kitui town.

2. The Complaint is premised on the grounds that the Defendant is the registered proprietor of land known as L.R. No. 4096/119 (*the suit property*); that in May, 1990, the Plaintiff purchased the suit property for a total consideration of Kshs. 400,000 and that on 26th August, 2013, the Defendant accepted Kshs. 70,000 being the balance of the purchase price.

3. It is the Plaintiff's claim that the Defendant is holding the title to the suit property in trust for him and that the Defendant is under an obligation to transfer the suit property to him.

4. Although the Defendant was served with the Complaint and the Summons to Enter Appearance, he neither entered appearance nor filed a Defence.

5. The suit proceeded for hearing on 6th December, 2016.

6. The Plaintiff, PW1, informed the court that the Defendant is his elder brother; that in 1983, he was a tenant in the suit property and that in 1990, the Defendant sold to him the suit property for Kshs. 400,000.

7. PW1 informed the court that in May, 1990, he made a down payment of Kshs. 300,000 whereafter the tenancy agreement he had with the Defendant ceased.

8. It was the evidence of PW1 that he paid the balance of the purchase price on 26th August, 2013 to the Defendant, who then promised to transfer the property to him but has failed to do so.

9. The Plaintiff produced in evidence a letter dated 3rd September, 1990 authored by the Defendant. In that letter, the Defendant acknowledged receipt of the purchase price in respect of the suit property less the balance of Kshs. 70,000.

10. PW1 also produced in evidence a letter dated 26th August, 2013 which forwarded to the Defendant a bankers cheque for Kshs. 150,000.

11. It was the evidence of PW1 that he made the payment of Kshs. 150,000 to the Defendant which was in excess of the balance of the purchase as an appreciation.

12. The Defendant did not rebutt the Plaintiff's evidence.

13. Having heard the Plaintiff and considered the exhibits that were produced in evidence, I am convinced that the Plaintiff did purchase the suit property. The Defendant is therefore holding the title of the suit property in trust for the Plaintiff.

14. For those reasons, I allow the Plaintiff's claim in the following terms:

a. A declaration be and is hereby issued that the Defendant is holding title to L.R.No. 4096/119 grant No. I.R. 1839 in trust of the Plaintiff.

b. A mandatory injunction be and is hereby issued directing the Defendant to effect transfer of the title of L.R. No. 4096/119 grant No. 1839 situated in Kitui town to the Plaintiff.

c. An injunction be and is hereby issued restraining the Defendant from laying any claim over L.R. No. 4096/119 grant No. I.R. No. 1839 situated in Kitui town.

d. The Defendant to pay the costs of the suit.

DATED AND DELIVERED AT MACHAKOS THIS 3RD DAY OF MARCH, 2017

OSCAR A. ANGOTE

JUDGE