



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 65 OF 2017

STEPHEN MAKET CHEMONGES PLAINTIFF

VERSUS

1. RICHARD LOTUKEI

2. SOLOMON MOHI

3. IMBOSA ANGOTE

4. ZAKAYO ANGOTE..... DEFENDANTS

JUDGMENT

1. This matter came up for formal proof on its very first day of hearing as the defendants despite having been dully served, failed to file any memorandum of appearance or defence.

2. The plaintiff's case is that he is the legal owner of Plot No. **Cherangany/Kapcherop/2773** measuring **1 ½ acres**. The same is a resultant subdivision of a larger Plot No. **Cherangany/Kapcherop/2455**. The plaintiff bought the suitland from one **Omusebe Augote** who also testified in favour of the plaintiff in this suit.

3. The defendants are the sons of PW2, Omusebe Angote. The plaintiff states that the defendants invaded the suitland and prevented the plaintiff from taking possession sometimes in the year 2015 and they have remained thereon to date.

4. The plaintiff produced as P. Exhibit 4 a copy of title to the land. It shows that it was issued on 14/3/2017 and that he is the registered owner. He also produced a copy of the registered mutation form that was registered to give rise to the plot as P. Exhibit 3. It is dated 14/3/2017. It shows that Parcel No. **Cherangany/Kapcherop/2455** was subdivided into two Parcels, No. **2773** measuring **0.55 Ha** and plot No. **2774** measuring **0.15 Ha** and a road measuring **0.05 Ha**. The same was signed on 9/2/2017 by the vendor before registration.

5. The sale agreement between PW1 and PW2 was produced as P. Exhibit 1. It shows that the plaintiff bought the land from PW2 at the consideration of **Kshs.225,000/=**. The agreement has a very strict condition that whoever fails to fulfill it is liable to refund three times the value of the monies paid. A demand notice dated 1/2/2017 was produced in evidence. It was written by the plaintiff's advocate and addressed to the defendants. The plaintiff stated that the defendants did not respond to this demand notice.

6. PW2 supported the plaintiffs claim. He admitted that he sold the suitland to the plaintiff after

distributing his other land amongst his wives. He avers that the defendants who are his sons, are entitled to and have a share in the land that PW2 allocated their mothers. He admitted that all legal processes including attending Land Control Board meeting were fulfilled. He would like the plaintiff to get his land.

7. I have considered all the contents of the plaint and the evidence of PW1 and PW2. I am convinced that the plaintiff has proved his case on a balance of probabilities. The defendants failed to appear despite being served as described in the affidavit of service sworn by one Godfrey Masinde Sitati on 26/5/2017.

8. I therefore enter judgement for the plaintiff against all the defendants jointly and severally as sought in Prayers No. **(a)**, **(b)** and **(c)** of the plaint dated 7/4/2017.

It is so ordered.

Dated, signed and delivered at Kitale on this **28th** day of **September, 2017**.

MWANGI NJOROGE

JUDGE

28/09/2017

Before – Mwangi Njoroge Judge

Court Assistant – Picoty

Ms. Mweneke holding brief for Mr. Chebii for plaintiff

N/A for Defendant

Judgement read in open court.

MWANGI NJOROGE

JUDGE

28/09/2017