



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 135 OF 2015**

**SIMON WAFULA WESUSA.....PLAINTIFF**

**VERSUS**

**NAKWANGWA CO-OPERATIVE SOCIETY LIMITED.....DEFENDANT**

**JUDGEMENT**

1. The plaintiff commenced this suit by way of a plaint dated 21/10/2015 which was later amended on 13/3/2017 and filed in court on 15/3/2017. The plaintiff prayed for an injunction against the defendant or its agents to restrain them from carrying or survey on the farm until the plaintiff is given his **four (4) acres**. He also prayed for a declaration that he is entitled to four (4) acres of land out of the land comprised in **Nakwangwa Farm**, and a refund of the purchase price at the current market value of four (4) acres of land comprised in Nakwangwa Farm. The suit was not defended.

2. The plaintiff testified on 2/3/2017 and on 23/8/2017. He stated that he was a member of the defendant Co-operative Society and that he had been issued with a Shareholder's Passbook No. 5292 which he produced as P. Exhibit 1. He averred that each shareholder was to pay **Kshs.72,000/=** whereupon he would be allocated land amounting to four (4) acres. He produced Receipts No. 340 (P. Exhibit 2) dated 12/9/1992 for **Kshs.10,000/=**. Receipt No.78 (P. Exhibit 3) dated 5/2/1994 for **Kshs.10,000/=**. Receipt No. 98 (P. Exhibit 4) dated 19/2/1994 for **Kshs.4,000/=**. Receipt No. 204 (P. Exhibit 5) dated 5/3/1994 for **Kshs.18,000/=**. Receipt No. 246 (P. Exhibit 6) dated 20/6/1994 for **Kshs.30,000/=**. All these payments were entered into the passbook produced as P. Exhibit 1.

3. Despite payment in full, the plaintiff stated, he had followed up on the allocation of land to him with no success. The plaintiff seeks orders as set out at the beginning of this judgement. Upon examination by the court, the plaintiff averred that the land is subdivided on the ground. There is no evidence brought to court that the co-operative society has any land remaining for issuance to the plaintiff. However I find that the plaintiff has proved that he was entitled to four (4) acres of land out of the Nakwangwa Multi-purpose Co-operative Society Ltd land.

4. Notwithstanding that finding this court will decline to order that he be specifically issued with the four (4) acres. This is due to the lack of any evidence regarding the situation on the ground as to the availability of the four (4) acres that he claims. The plaintiff has not attempted to explain the reason why the land is not being allocated to him. He has not availed to the court sufficient facts as to why he has not been allocated land.

5. The plaintiff has however sought a refund of the purchase price at the current market value of four (4) acres of land comprised in Nakwangwa Farm. No evidence was led as to the current value of an acre of

land in the farm to enable the court to compute the value sought. That burden lay upon the plaintiff and he has not discharged it. The only remedy that is now available to the plaintiff according to this court is an order of a refund with interest.

6. It is clear from the prayers in the plaint that the value of land has risen since the 12/2/1992 when the plaintiff committed himself to the defendant in the hope of obtaining a parcel of land. It is doubtful that the plaintiff may get four (4) acres at the price of Kshs.72,000/= now. It is not his fault. The defendant has not come to court to explain why the land is not available for allocation to the plaintiff.

7. I therefore enter judgement for the plaintiff against the defendant and order that the defendant do refund to the plaintiff the sum of **Kshs.72,000/= with interest at the rate of 12%p.a.** with effect from **12/2/1992**. The plaintiff is also awarded costs of this suit with interest thereon at court rates.

Dated, signed and delivered at Kitale on this **19<sup>th</sup> day of September, 2017.**

**MWANGI NJOROGE**

**JUDGE**

**Judgement read in open court in the presence of:-**

**Mr. Bisonga holding brief for Mr. Mbito for the plaintiff.**

**N/A for the defendant**

**Court Assistant – Isabellah.**

**MWANGI NJOROGE**

**JUDGE**

**19/09/2017.**