

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC NO. 212 OF 2017

TOBIAS MIRON ODHIAMBO ::::::::::::::;::::::::::::::::::: PLAINTIFF

VERSUS

ABDI HASSAN OMAR ::::::::::::::;::::::::::::::::::: 1ST DEFENDANT

FABIAN LUCINDE ::::::::::::::;::::::::::::::::::: 2ND DEFENDANT

MR. OMULLA ::::::::::::::;::::::::::::::::::: 3RD DEFENDANT

JUDGEMENT

The plaintiff's case is that, by an agreement dated 25th April, 2006, the 1st defendant sold plot No. Kakamega Municipality/Kambi Somali/20 to the plaintiff at a consideration of Ksh. 340,000/=. The plaintiff paid the whole purchase price to the 1st defendant after which, an allotment letter was issued in the name of the plaintiff. That the plot was vacant at the time of sale but later, the plaintiff erected a workers house therein. The 2nd defendant claiming to also have been sold a portion of the said plot by the 1st defendant and in turn, the 2nd defendant have hived off a piece of the said plot and leased the same to the 3rd defendant to carry out business as a garage and also damaged building materials in the suit land. The plaintiff avers that in the event the 1st defendant sold a portion of the said plot to the 2nd defendant, then such sale is unlawful and void ab initio. As a result of encroachment of the portion of the plot by the 2nd defendant and by extension the 3rd defendant, the plaintiff's right over the suit property has been adversely affected and he has suffered damage and loss. The plaintiff prays for judgment against the defendants jointly and severally for ORDERS.

1. That an eviction order do issue against the 2nd and 3rd defendants, their agents and or servants in a portion of plot No. Kakamega Municipality/Kambi Somali/20.
2. A declaration that the plaintiff is the bonafide owner of Plot No. Kakamega Municipality/Kambi Somali/20 and any subsequent agreement of sale of a portion thereof of the suit land be declared null and void.
3. General damages.
4. Cost of this suit.

PW1, the plaintiff testified that on or about the 25th of April, 2006, he entered into an agreement with the 1st defendant who agreed to sell to me Plot No. Kakamega Municipality/Kambi Somali/20 at a consideration of Ksh. 340,000/= (PEx 1). That after verifying that indeed the 1st defendant was the allottee of the said plot, he paid the whole purchase price in installments and have since completed paying the whole purchase price (PEx2). That the plot was vacant and he has since been issued with an allotment letter in his name and has built a workers house therein. That, when he visited the suit plot, he found a portion of it had been carved out by the 2nd defendant and leased to the 3rd defendant and was being used as a garage and they also had destroyed building materials that he had put therein. That the 2nd defendant purports that he bought the said portion from the 1st defendant and he is aware that the matter is also subject in a criminal trial though he is not party to it. That he cannot fully enjoy and benefit from the

whole plot as was envisaged in the agreement and have therefore suffered loss and damage.

Interlocutory judgement was entered in this case and the matter came up for formal proof. The defendants have offered no defence and the court has considered the plaintiff's case and documents adduced therein. The plaintiff's case is simple, that on or about the 25th of April, 2006, he entered into an agreement with the 1st defendant who agreed to sell to me Plot No. Kakamega Municipality/Kambi Somali/20 at a consideration of Ksh. 340,000/= (PEX 1). That after verifying that indeed the 1st defendant was the allottee of the said plot, he paid the whole purchase price in installments and have since completed paying the whole purchase price (PEX2). That the plot was vacant and he has since been issued with an allotment letter in his name and has built a workers house therein. That, when he visited the suit plot, he found a portion of it had been carved out by the 2nd defendant and leased to the 3rd defendant and was being used as a garage and they also had destroyed building materials that he had put therein. That the 2nd defendant purports that he bought the said portion from the 1st defendant and he is aware that the matter is also subject in a criminal trial though he is not party to it. That he cannot fully enjoy and benefit from the whole plot as was envisaged in the agreement and have therefore suffered loss and damage. I find the plaintiff has proved his case on a balance of probabilities as regards ownership of the suit parcel of land. However general damages have not been proved and the same will not be awarded. I therefore grant the following orders;

1. That the 2nd and 3rd defendants, their agents and or servants in a portion of plot No. Kakamega Municipality/Kambi Somali/20 are given three (3) months to vacate and in default and eviction order to issue forthwith.
2. A declaration that the plaintiff is the bonafide owner of Plot No. Kakamega Municipality/Kambi Somali/20 and any subsequent agreement of sale of a portion thereof of the suit land be declared null and void.
3. Cost of this suit be borne by the defendants.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 12TH DAY OF OCTOBER 2017.

N.A. MATHEKA

JUDGE