



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 146 OF 2013**

**SAMMY KIBET CHESONGOL.....PLAINTIFF**

**VERSUS**

**JACOB AGENGO ANZIGALE *alias* MANASE AGENG'O ANZIGALE.....DEFENDANT**

**JUDGMENT**

1. In the plaint dated 28/10/2013, the plaintiff sued the defendant seeking the following orders:-

**(a) An order of specific performance against the defendant to effect transfer of LR No. 5335/37 to the plaintiff.**

**(b) A mandatory injunction to compel the defendant to deliver all the completion documents to the plaintiff and execute all documents and acts as necessary for the effectual transfer of LR. No. 5335/37 to the plaintiff.**

**(c) Costs of the suit**

**(d) Any other or further relief that this Honourable Court may deem fit and just to grant.**

1. Though there is an affidavit of service showing that the defendant was served with the summons to enter appearance, plaint and a notice of motion in this suit, the defendant did not enter appearance or file any defence and the hearing of this suit proceeded *ex parte* on **19/10/2017**.

2. According to the plaint and the evidence of the plaintiff the plaintiff's case is that: he and the defendant entered into an agreement on 27/2/2010 for sale in which the defendant agreed to sell to the plaintiff all that land known as **LR. No. 5335/37 measuring 3 acres** situate at Kitale Municipality in Trans-Nzoia County (herein referred to as the suit property). The purchase price was agreed to be **Kshs.150,000/=** which the plaintiff paid in full in several installments.

3. After the execution of the said agreement the plaintiff took possession of the suit property, started farming thereon and also made several other developments thereon.

4. By the taking of possession the plaintiff avers the defendant acknowledge the plaintiff's interest and entitlement to the suit property but the defendant has nevertheless refused, or neglected to take any actual step towards completion of the transaction to date. The plaintiff claims that he has fulfilled all his obligations under the said agreement for sale, hence this suit.

5. The plaintiff produced three agreements for sale. **P. Exhibit 1** is an agreement for sale over the suit land dated **27/2/2010** between the plaintiff and the defendant. It shows that the plaintiff paid to the

defendant **Kshs.60,000/=** upon execution of the agreement. It shows that the purchaser has been in occupation of the property and remained in the property as at the time of the agreement. The agreement is evidently signed by both parties before an Advocate and it bears the stamp of Walter Wanyonyi & Co. Advocates.

6. **P. Exhibit 2** is an agreement dated **22/4/2011** between the plaintiff and the defendant which recites the sale agreement marked as **P. Exhibit 1** and shows that the plaintiff paid **Kshs.50,000/=** to the defendant as a further instalment towards purchase of the suit land. It is evidently executed by both parties and before an Advocate. It bears the stamp of John Walter Wanyonyi Advocate. Two persons have also attested to the agreement at its foot as witnesses.

7. **P. Exhibit 3** is an acknowledgement of receipt of **Kshs.50,000/=** paid by the plaintiff to the defendant on **21/5/2011**. It is dated **20/5/2011**. The plaintiff has further produced a Certificate of Title No. **IR60383** for Land Reference No. **5335/37** as well as the Deed Plan No. **131727**.

8. The plaintiff must prove his case even on a formal proof so as to satisfy the court that the orders sought are merited. Where he fails to do so, the court may decline to grant the orders sought.

9. The production of a copy of the original title and the deed plan and copies of agreements in respect of the suit land persuaded this court that there was indeed a transaction over the suit land between the plaintiff and the defendant.

10. I therefore find that the plaintiff has provided the necessary proof of his claim in this case on a balance of probabilities and that he is entitled to the orders sought in this suit. I therefore enter judgment for the plaintiff against the defendant as prayed in **prayer No. (a), (b) and (c)** of the plaint dated **28/10/2013**.

Dated, signed and delivered at Kitale on this **21<sup>st</sup>** day of **November, 2017**.

**MWANGI NJOROGE**

**JUDGE**

**21/11/2017**

Coram

Before – Mwangi Njoroge Judge

Court Assistant – Isabellah/Picoty

Ms. Oketch holding brief for Mr. Waweru for plaintiff

Defendant - absent

**COURT**

Judgment read in open court in the presence of counsel for the Plaintiff.

**MWANGI NJOROGE**

**JUDGE**

**21/11/2017**