



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ELC 66 OF 2017

JOSHUA MUNYWOKI.....PLAINTIFF/APPLICANT

VERSUS

PATRICK MUKONZA NZIOKI.....DEFENDANT/RESPONDENT

JUDGMENT

1. By his plaint dated **22nd February, 2010** and filed in court on the **23rd February, 2010** the plaintiff prays for judgement against the defendant for;

a) A permanent order of injunction to restrain the defendant by himself, his agents and/or servants from alienating, cultivating, carrying out construction or in any manner whatsoever from interfering with the plaintiff's occupation of land parcel number KITETA/NGILUNI/2154.

b) A declaration that the Plaintiff is entitled to ownership of the said parcel of land registered as number KITETA/NGILUNI/2154.

c) An order directing the Defendant to effect transfer of the said parcel of land to the Plaintiff and in default the Deputy Registrar to execute any necessary documents to transfer the said plot.

d) Costs of this suit and interest.

e) Any other relief which this honourable court may deem fit in the circumstance.

2. The plaintiff has in **paragraphs 3 and 4** of the plaint averred that:-

3) That on the 25th May, 1986, the Plaintiff and the Defendant entered into a written agreement wherein the Defendant sold the plaintiff L.R NO. KITETA/NGILUNI/2154 at an agreed purchase price of Kenya Shillings fourteen Thousand only(Kshs. 14,000) and which sums the Defendant has received in full pending the formal transfer of the said parcel of land into the plaintiffs name.

4) That the Plaintiff upon payment of the full purchase price as agreed entered into and took possession of the said parcel of land which occupation the Plaintiff has held uninterrupted up to the 27th day of January, 2010, when the defendant by himself his agents and/or servants pulled down fencing posts and damaged the erected fence by the Plaintiff and without any colour of right and /or reasonable cause, started cultivating on the Plaintiffs land parcel Number KITETA/NGILUNI/2154 and has committed acts of wanton waste by cutting down trees hence denying the Plaintiff the peaceful use of the said land.

3. The claim is denied by the defendant in his statement of defence dated **23rd March, 2010** and filed in court on even date.

4. On the **4th October, 2017** this case was fixed for hearing on **10th November, 2017**. The defendants were duly served with a hearing notice as can be seen from the affidavit of service sworn on the **9th November, 2010** and filed in court on **10th November, 2017**. Consequently hearing proceeded in the absence of the defendant and his advocate.

5. The plaintiff's evidence in chief was that on **25th May, 1996**, he bought the parcel of land registered as **LR no. Kiteta/Ngiluni/2154** from the defendant and his brother at a price of Kshs. 14,000. He went on to say that he paid the purchase price and thereafter continued to enjoy quiet possession of the land in question through grazing and cultivation. It was his evidence that in the **year 2010**, the defendant forcefully entered into the said land and uprooted the fence which the plaintiff had erected and hence this suit. The plaintiff termed himself as a beneficial owner of the said **LR no. Kiteta/Ngiluni/2154**.

6. I have looked at the defence filed by the defendant herein. The defendant denies having ever entered into a written agreement with the plaintiff to sell his land **LR Kiteta/Ngiluni/2154** at the alleged price of **Kshs. 14,000**. He also denies the allegation that the plaintiff has been in occupation of the suit premises after having taken possession of the same. The defendant further maintained that the plaintiff's suit is unmaintable for want consent from the Land Control Board. He also states that if there was any contract and which he denies, then the same has become null and void. In my view, the defence cannot stand in light of the agreement in the plaintiff's list of documents the agreement which shows that the defendant agreed to sell land parcel number **2154/Kiteta/Ngiluni** at a purchase price of **Kshs. 14,000**. However it is not clear why both parties never appeared before the Land Control Board to obtain the necessary consent to transfer the land from the defendant to the plaintiff. Nevertheless, I satisfied that the plaintiff has satisfied this court on a balance of probabilities that he has a cause of action against the defendant. In the circumstances, I hereby proceed to enter judgement for the plaintiff and against in the defendant in terms of prayers (a) (b) (c) and (d) of the plaint.

7. It is so ordered.

Signed, Dated and Delivered on this 18th Day of December 2017

MBOGO C.G

JUDGE

In the presence of:

Ms Loko holding brief for Mr. Mbindyo for the plaintiff present

J.A Makau & Co. advocate for the Defendant Absent

Mr. Kwemboi Court Assistant.

MBOGO C.G

JUDGE