



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 56 OF 2015

CHARLES SAMSON NYAINDI ATINAPLAINTIFF

VERSUS

BENJAMIN KECHUI.....DEFENDANT

J U D G E M E N T

INTRODUCTION

1. The defendant is the registered owner of LR No. Sinyerere/ Sitatunga/Makunga/238 measuring 25 acres. The plaintiff is a purchaser of 2.5 acres comprised in the above title. The plaintiff brought this suit seeking an order of this court directing the County Surveyor to go to the ground and ascertain the extent of the portion he is occupying. The defendant who was duly served with summons to enter appearance and file defence neither entered appearance nor filed a defence. The hearing therefore proceeded by way of formal proof.

PLAINTIFF'S CASE

2. The plaintiff testified that he entered into a sale agreement with the defendant in which the defendant sold to him 2.5 acres. The agreement was entered into on 2/5/2003. He took possession and has been in possession to date. In or around 2014, the defendant started claiming that the plaintiff was occupying more land than he had purchased. This prompted plaintiff to call both private and Government surveyors to ascertain what portion of land he was occupying. Each of those surveyors came up with varying acreages. The first Surveyor was brought in in December 2014. He found that the plaintiff's portion was 1.89 acres. A second Surveyor was brought in on 2/2/2015. He found that the portion occupied by the plaintiff was 2.6 acres. A third surveyor came on 13/2/2015. He found that the portion occupied by the plaintiff was 1.7 acres. On 26/2/2015 a Government surveyor in company of a private one found that the land was 1.6 acres. On 9/5/2015 another surveyor came in and found that the portion was 2. acres. Finally on 17/3/2015, a Government surveyor went to the ground and found that the portion occupied by the plaintiff was 1.8 acres.

ANALYSIS OF EVIDENCE

3. It is not in contention that the plaintiff bought 2.5 acres from the defendant. A sale agreement [Exhibit 2] was produced. The plaintiff is contending that he is occupying less land than he bought. The defendant appears to be contending that the plaintiff is occupying more land than he bought. The two contending parties have brought in surveyors who have been giving varying acreages. This depends on which party is calling the surveyor. When the surveyor is called by the defendant, the acreages seems to be more. When the surveyor is called by the plaintiff, the

acres seem to go down. There is something seriously wrong in the manner these surveys have been carried out. The plaintiff produced a schedule of the dates when the surveyors went to the ground, their names and findings [Exhibit 3].

DECISION

4. There is need for a Government surveyor in this case a county Surveyor to go to the ground and carry out a survey which will conclusively settle the issue herein. I find that the plaintiff has established his case. I therefore make the following orders;-

(1) That the County Surveyor do proceed to LR No. Sinyerere / Sitatunga /Makunga 238 and ascertain the acreage which is occupied by the plaintiff.

(2) Should it turn out that the plaintiff is occupying less than 2.5 acres, the shortfall should be given to him by the defendant or alternatively the defendant should compensate the plaintiff for the shortfall in monetary terms.

(3) The costs of the survey to be borne by the plaintiff.

(4) I make no order as to costs of the suit given the peculiar circumstances of this case.

Dated, signed and delivered at Kitale on this 9th day of March 2016.

E. OBAGA

JUDGE

9/3/2016

COURT: Judgement signed in open court at 2.35 pm in the absence of Plaintiff and his lawyer who were aware of the date of judgement. Plaintiff can read judgement at the registry.

Court Assistant – Omulindi

E. OB