



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 118 OF 2014

DANIEL MASIRIR..... PLAINTIFF

VERSUS

JOHNSON LOWASIRENG DEFENDANT

J U D G M E N T

INTRODUCTION

1. The defendant is currently registered as owner of **LR. No. West Pokot/Kapsangar/413** (suitland). Before the title was issued to the defendant, the defendant's name had been entered in the **Kapsangar Land Adjudication Section** as owner of **Plot No. 413**. The plaintiff brought this suit against the defendant seeking to have the adjudication register rectified and the defendant's name removed and replaced with his name and a permanent injunction issued restraining the defendant and his servants or agents from interfering with the suitland.

PLAINTIFF'S CASE

2. The plaintiff testified that in **2004**, he agreed to buy the suitland which was **4 ½ acres**. He agreed with the defendant that the purchase price per acre was to be **Kshs.35,000/=**. He paid the entire purchase price but he did not take possession because the defendant went underground for two years.

3. When the defendant appeared, the plaintiff caused him to be arrested and taken to an administration police camp. The defendant then vowed not to go on with the sale. The defendant demanded that the plaintiff adds him money. Since the plaintiff did not want to lose the land, he agreed to give the defendant **Kshs.100,000/=**. An agreement was prepared where the purchase price was increased to **Kshs.257,000/=**. He cleared paying the agreed purchase price.

4. There is a time the defendant asked the plaintiff to give him a copy of the agreement which they had signed. The plaintiff went to the local shopping centre to photocopy the agreement. He was accompanied by the defendant. They found that there was no power. He left the agreement there so that it could be photocopied once there was power. When he went later to collect it, he found that the defendant had taken it. This aroused him. He decided to go to the lands office to check the status of the land. He found that the defendant had registered the land in his name yet he had sold the land to him. This is what made him to file this suit seeking to have the register cancelled so that he can be registered in place of the defendant.

DEFENDANT'S CASE

5. The defendant testified that on **9/5/2006**, he agreed to sell his **4 ½ acres** to the plaintiff at

Kshs.60,000/= per acre. The total amount was supposed to be **Kshs.270,000/=**. The defendant stated that he does not know how to read. When he later took the agreement to his son, his son told him that according to the agreement, the purchase price was **Kshs.257,000/=**. He had been paid and the balance was **Kshs.40,000/=**.

6. The defendant states that the balance was supposed to be **Kshs.53,000/=** and not **Kshs.40,000/=**. That he has never been paid the balance. The plaintiff caused him to be arrested and placed in cells for two days. He was forced to sign an agreement. He contends that since the plaintiff did not complete paying for the land and that since there was no consent of the land control board given, the transaction became null and void and that he was therefore free to have the land registered in his name.

ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION

7. There is no contention that the defendant had agreed to sell his **4 ½ acres** to the plaintiff. According to the plaintiff, the purchase price was **Kshs.35,000/= per acre**. This was according to the agreement entered into in **2004**. The plaintiff did not produce this agreement of **2004**. Evidence from the plaintiff is that after he paid the agreed sum, the defendant dodged him and went underground for two years.

8. The plaintiff looked for him and had him arrested. The defendant demanded that he be given more money. The plaintiff added him **Kshs.100,000/=**. An agreement was then prepared and signed on **9/5/2006** [Plaintiff Exhibit 1]. According to this agreement, the purchase price is indicated as **Kshs.257,000/=**. The price per acre was indicated as **Kshs.60,000/=**. A simple calculation shows that the total purchase price for the **4 ½ acres** is **Kshs.270,000/=**. It is indicated that the plaintiff paid **Kshs.157,000/=**. The balance of **Kshs.100,000/=** was to be made on **15/5/2006**.

9. The issues which emerge for determination are firstly whether the plaintiff cleared paying the purchase price. Secondly whether the transaction received the consent of the land control board and thirdly whether there was any fraud involved in the registration of the land in the defendant's name.

Whether the plaintiff cleared the purchase price

10. There is no clear evidence on how payment was made. The plaintiff did not produce the agreement of **2004**. He alleges that according to the agreement of **2004**, the price per acre was **Kshs.35,000/=**. The total should be **Kshs.157,500/=**. The plaintiff did not adduce any evidence on how he paid this money. The plaintiff stated that he caused the defendant to be arrested. The defendant demanded additional money. He claims to have added him **Kshs.100,000/=** to make it **Kshs.257,000/=**. There is no evidence when this was done.

11. According to the agreement of **9/5/2006** [Plaintiff Exhibit 1], the purchase price was **Kshs.257,000/=**. The plaintiff paid **Kshs.157,000/=** and the balance of **Kshs.100,000/=** was to be made on **15/5/2006**. In the agreement of **9/5/2006** each acre was to cost **Kshs.60,000/=**. This would have come to **Kshs.270,000/=**. Though the plaintiff claims to have cleared the purchase price, there is no evidence that he did that.

12. There is another agreement which was produced by the defendant [Defence Exhibit 1]. According to this agreement, the purchase price was **Kshs.257,000/=**. The plaintiff paid **Kshs.217,000/=** and there was a balance of **Kshs.40,000/=**. There is no evidence that the balance of **Kshs.40,000/=** was cleared. The defendant claimed that he was coerced into signing this agreement. This agreement does not bear any date. The defendant's allegations are true because the plaintiff in his evidence said that he caused the defendant to be arrested. It is therefore clear that the defendant was coerced into signing the agreement.

13. The agreement was drafted in a way which did not show the correct amount. The plaintiff has not shown that he cleared the purchase price. I therefore find that he did not clear the purchase price.

Whether the transaction received the consent of the Land Control Board

14. The land in issue falls in an agricultural area. There was need for consent of the land control board to be obtained. There is no evidence that the consent was sought and obtained. If this was not done, the transaction therefore became null and void on expiry of six months from the date of the agreement. Such agreement cannot confer any rights upon the plaintiff. The only remedy available to the plaintiff is to seek refund of the purchase price.

Whether there was fraud involved in the registration of the 4 ½ acres in the defendant's name

15. It was incumbent upon the plaintiff to prove that there was fraud involved in the registration. There was no evidence of fraud given by the plaintiff. Contrary to the allegations that the defendant falsely presented himself as the true owner of the land, it is actually the plaintiff who wanted to take advantage of the illiteracy of the defendant to defraud him. The agreement was drafted in a manner which was against the interest of the defendant. There is no clear evidence that the entire purchase price was paid. As the plaintiff did not complete paying for the land, the defendant was free to have it registered as owner of the same. There was no fraud involved. It is the plaintiff who wanted to have his way through coercion.

DECISION

16. I find that the plaintiff has failed to prove his case to the required standards. The same is hereby dismissed with costs to the defendant.

Dated, signed and delivered at Kitale on this **25th** day of **April, 2016**.

E. OBAGA

JUDGE

In the presence of Mr. Chebii for Defendant and Mr. Teti for M/s. Arunga for Plaintiff.

Court Assistant – Isabellah.

E. OBAGA

JUDGE

25/04/2016