



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 16 OF 2015**

**WILFRED PKEMEI NDIEMA .....PLAINTIFF**

**VERSUS**

**ZACHARIAH KIPROTICH CHEPNGETICH..... DEFENDANT**

**J U D G E M E N T**

**INTRODUCTION**

1. The Plaintiff brought this case against the Defendant claiming the following reliefs:-

- (a) A declaration that he is the rightful owner of that parcel of land known as **Kwanza/Namanjalala Block 4 /Kapsitwet/87** measuring 5 acres.
- (b) That the Defendant do surrender the original Title Deed **No. Kwanza/Namanjalala Block 4/KApsitwet/87** to the Land Registrar Trans -Nzoia County to facilitate completion of the transaction.
- (c) That the Executive Officer of this court do sign ali Land transfer instruments on behalf of the Defendant who has refused and/or failed to surrender the original Title Deed to facilitate transfer of the land into the Plaintiff's name.
- (d) Costs of the case.
- (e) Any other relief which the court may deem fit to grant.

2. The Defendant who was duly served with summons to enter appearance and file defence neither entered appearance nor filed defence. The hearing therefore proceeded by way of formal proof.

**PLAINTIFF'S CASE**

3. THE Plaintiff testified that on 11/1/1996, he entered into an agreement with the Defendant in which the Defendant agreed to sell to him 5 acres comprised in **Plot No. 87 at Kapsitwet Farm** (Suitland). The suitland had been allotted to the Defendant by the **Provincial Land and Adjudication Officer**.
4. The consideration was **kshs 80,000/=**. The Plaintiff paid **kshs 50,000/-** on 11/1/1996. On 5/3/1997, he paid **Kshs 25,000/=**. The last installment of **kshs 5,000/=** was made on 6/10/1999. The Defendant surrendered the original allotment letter to the Plaintiff and wrote a letter to the Ministry of Lands authorising them to transfer the suitland to the plaintiff.

5. The Plaintiff later applied for consent of the Land Control Board which was duly granted. The Defendant later signed transfer in favour of the Plaintiff. The Plaintiff had the suitland valued. He paid stamp duty but the land could not be transferred to him as the Defendant refused to surrender the original title deed to facilitate transfer.

### **ANALYSIS OF EVIDENCE**

6. The plaintiff produced a sale agreement between him and the Defendant [Exhibit 1].

According to this agreement, the Defendant sold 5 acres comprised in **Plot No. 87** at **Kapsitwet Farm**. The plot had not been registered by then. The suitland was later registered in the name of the Defendant and title deed issued on 30/12/2002 as per copy of title produced as exhibit 7.

7. Prior to the suitland being registered in the Defendant's name the Defendant had surrendered the original allotment letter [Exhibit 3] to the Plaintiff and wrote a letter authorising the District Settlement officer to transfer the suitland to the Plaintiff. This letter and copy of the Defendant's ID Card were produced as exhibit 2(a) and (b) respectively.
8. Application for consent of the Land Control Board was made as per exhibit 4. Consent of the board was obtained as per exhibit 5. The Defendant signed transfer in favour of the Plaintiff as per exhibit 6. A requisition for valuation was made exhibit 8. Assessment was done as per exhibit 9. The Plaintiff paid stamp duty of Kshs 24000/= as per receipt produced as exhibit 11. The stamp duty money was paid to the National Bank as per deposit slip produced as exhibit 10.
9. The Plaintiff has taken all steps required. The land has not been transferred into his name because the Defendant has refused to surrender the original title to facilitate transfer. The Defendant has no reason not to surrender the original title. He has already signed transfer in favour of the plaintiff.

### **DECISION**

10. I find that the Plaintiff has proved his case to the required standards. I allow the Plaintiff's claim in terms of the prayers in the plaint but add that the transfer documents should be signed by the Deputy Registrar of this court and not the Executive officer as prayed for in the plaint.

Dated, signed and delivered at Kitale on this 18th day of April 2016.

**E. OBAGA**

**JUDGE**

**18/4/16**

In the presence of Mr Okara for Plaintiff.

Court Assistant – Isabellah

**E. OBAGA**

**JUDGE**

**18/4/16**