



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 69 OF 2015

PATRICK KUNDU WEPUKHULU PLAINTIFF

VERSUS

DAVID MALENYA DEFENDANT

J U D G E M E N T

I N T R O D U C T I O N

1. The Plaintiff brought this suit against the Defendant seeking an order for rescission of sale agreement he entered into with the Defendant on 23/10/2004. He also sought for an order of eviction against the Defendant from the land which was subject of the agreement. The Defendant who was duly served neither entered appearance nor filed defence. The hearing therefore proceeded by way of formal proof.

PLAINTIFF'S CASE

2. The Plaintiff testified that he owned a piece of land **measuring quarter of an acre at Namanjalala in Trans-Nzoia County**. The Plaintiff had bought the land from one **David Malaba** who was a shareholder of **Trans-Nzoia Investment Company Limited**. On 23/10/2004 he entered into an agreement with the Defendant in which the Defendant agreed to buy the land with all improvements thereon. The purchase price was agreed at **Kshs 120,000/-**. The Defendant paid **Kshs 50,000/-** on signing of the agreement. It was agreed that the balance of **Kshs 70,000/-** was to be paid at the end of the month in which the agreement was made.
3. The Defendant refused to clear the balance of the purchase price as agreed. He went and reported him to the area chief who summoned him but the Defendant did not go. The Defendant later took him before the office of Justice and Peace operated by the Catholic Diocese of Kitale. After the matter was listened to, it was found that the Defendant was not being truthful. The parties were asked to go back but the Defendant did not. The Plaintiff was asked to file a suit in court.
4. The Defendant now prays that the agreement between him and the Defendant be rescinded and the Plaintiff refunds the purchase price to the Defendant.

ANALYSIS OF EVIDENCE

5. The Plaintiff produced the agreement between him and the Defendant as **Exhibit 6**. According to this agreement, the balance of the purchase price was to be paid at the end of **October 2004**.

There is evidence from the Plaintiff which is not controverted that the Defendant has refused to clear the balance. The Plaintiff produced a letter dated 2/5/2006 from the Justice and Peace **Exhibit 7**. This letter was informing the Plaintiff that the Defendant had been to their offices and raised issues which required to be sorted out. The meeting was to be on 17/5/2006.

6. According to the letter of 2/5/2006, the Defendant owed the Plaintiff a balance of **Kshs 25,000/-**. The agreement was clear that the balance was to be cleared at the end of **October 2004**. This therefore means that time was of essence. The property had houses on it. The Defendant has rented out some of the rooms to third parties. Despite deriving income from the property, he is not willing to pay the balance. I find that the Defendant is clearly in breach of the agreement. If the Defendant is not willing to complete his part of the bargain, I do not think that the Plaintiff is wrong to seek rescission of the same.

DECISION

7. I find that the Plaintiff has proved his case. I allow his claim with the result that an order is hereby given rescinding the agreement of 23/10/2004. The Defendant shall be evicted from the quarter plot which was the subject of the rescinded agreement. Costs of this suit to be paid by the Defendant.

Dated, signed and delivered at Kitale on this 10th day of May 2016.

E. OBAGA

JUDGE

In the presence of Mr Murgor for Plaintiff

Court Assistant – Isabellah

E. OBAGA

JUDGE

10/5/16