



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO.203 OF 2015

MOSES JOHN ABIRA ORENGO..... 1ST PLAINTIFF

MESHACK ORENGO ABIRA..... 2ND PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LTD.....DEFENDANT

J U D G M E N T

1. Moses **John Abira Orengo** and **Meshack Orengo Abira**, the 1st and 2nd Plaintiffs respectively commenced his suit against **Kenya Commercial Bank**, the Defendant, seeking for the surrender of the original title deeds, for their land parcels **Kisumu/Manyatta B/426** and **Kisumu/Konya/2545**, a discharge of charge registered on the two titles duly executed, general damages for wrongful detention of the tile deeds, costs and interests. The suit papers were served on the Defendant and an affidavit of service sworn by **Julius Otieno Raminya** on 18th August 2015 filed. The Defendant did not enter appearance nor file defence and by letter dated 8th September 2015 and filed on the 16th September 2015, the Plaintiff applied for interlocutory judgment which was entered on the same date. The suit was fixed for formal proof on the 27th June 2016 when the 1st plaintiff testified as pw1 on behalf of himself and the 2nd plaintiff who is his elder brother.

2. The Testimony of the 1st plaintiff is that he borrowed Kshs48,000/= from the Defendant in 1992 which was secured on a charge on his land parcel **Kisumu/Konya/2545** and guaranteed by the 2nd Plaintiff with a charge on his land parcel **Kisumu/Manyatta B/426**. The charge on the two parcels were registered on 30th April 1992 and the loan money released or disbursed by the Defendant to him. The 1st Plaintiff testified that he completed the loan repayment in 2000 and produced a copy of the bank statement of March to April 2001 showing the bank account had been closed and a letter dated 17th August 2001 by the Defendant addressed to their advocate to the effect that the loan had been written off. The witness testified that on 3rd September 2008 he wrote to the Defendant seeking to have the title deeds released. That though counsel for the Defendant replied to the letter promising to get back to him, that never happened. The witness told the court that he did another letter to the Defendant on 25th February 2015 but on failing to get a response he instructed counsel to file this suit.

3. The issues for determination are as follows:

a) Whether the Plaintiffs have discharged their responsibilities under the loan agreement with the Defendant.

b) Whether the Defendant has any reasonable cause to continue holding the title documents belonging to the Plaintiff.

c) Whether the Plaintiff have suffered loss and damages and if so whether they are entitled to compensation.

4. The court has considered the pleadings, the oral evidence by PW1 and the documentary evidence availed as exhibits and come to the following findings;

a) That the copies of the certificate of official searches for land parcels **Kisumu/Manyatta B/426 and Kisumu/ Konya/2545** confirms that they are registered in the names of 2nd and 1st Plaintiffs respectively. That the same documents confirms that parcel **426 and 2545** were charged to the Defendant on 30th April 1992 for Kshs48,000/= and kshs.33000/= respectively.

b) That from the bank statements and correspondence from the Defendant and their legal representatives availed, the Plaintiff loan with the Defendant had run into arrears and demand notices like the two dated 27th October 1999, and 5th December 1997 issued.

c) That the 1st Plaintiff made efforts to regularize the loan account as confirmed in the letter dated 31st January 2000. The loan was formally written off by the Defendant as confirmed by their letter dated 17th August 2001 asking their legal representatives to close their file.

d) That after the loan was written off, the Defendant did not release the title documents nor discharge the charges prompting the 1st Plaintiff to do the letters dated 3rd September 2008 and 25th February 2015 before filing this suit. That the Defendant did not participate in this proceedings and the court has no way of getting their explanation if any on why the charges on the titles have not been discharged and title deeds released to the Plaintiffs years after the loan that was outstanding was written off in 2001.

e) That in view of the finding in (d) above, the court is satisfied that the Defendant has no reason not to release the two title deeds and issue the discharge of the charges registered on 30th April 1992.

f) That even though the Plaintiffs pleaded for general damages and prayed for it at the hearing, no evidence to guide on the quantum sought was availed. That considering the Defendant had written off the outstanding loan, the court is of the view that no damages should be issued.

5. That the plaintiffs have established the claim against the Defendant on a balance of probabilities and the court enters judgment as follows;

a) That the loan secured with the charges registered on land parcels **Kisumu/Manyatta B/426 and Kisumu/Konya/2545** on 30th April 1992, having been cleared and or written of in 2001, the Defendant had a duty to release the original title deeds and the respective discharge of charges duly executed for registration to the Plaintiffs.

b) That the Defendant is hereby directed to ensure the original title deeds for the parcels Kisumu/Manyatta B/426 and Kisumu/Konya/2545 and duly executed discharges of the charge registered on 30th April 1992 are released to the respective Plaintiffs forthwith.

c) The Defendant will meet the costs of this suit.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

Dated and delivered this 28th day of September 2016

In Presence of

Plaintiffs 1st present

Defendant Absent

Counsel Mr Yogo for Plaintiffs

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

28/9/2016

28/9/2016

S.M. Kibunja J.

Oyugi court Assistant

1st Plaintiff present

Mr Yogo for the Plaintiff

Court: Judgment dated and delivered in open court in presence of 1st Plaintiff and Mr Yogo for Plaintiffs.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

28/9/2016