



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 44 OF 2015

GEORGE KITIYO KAMARY.....PLAINTIF

VERSUS

STEPHEN LOWASIKOU MWOI.....DEFENDANT

J U D G E M E N T

INTRODUCTION

1. The plaintiff brought this suit against the defendant seeking the following reliefs:-

(a) A declaration that the agreement of 16/6/2012 is null and void for failure on the part of the defendant to pay the balance of the agreed consideration and for failure to seek and obtain the consent of the Land Control Board.

(b) A declaration that the defendant is a trespasser in the plaintiff's 20 acres comprised in Title No. West Pokot/Katikomor/1 and who should be ordered to vacate therefrom failing which he be forcefully evicted.

(c) Costs.

(d) Interest.

(e) Any other relief that this Honourable Court may deem fit to grant.

2. The defendant filed a defence and raised a counter-claim in which he sought refund of the deposit of **Kshs.300,000/=** which he had paid to the plaintiff. The defendant was initially represented by a lawyer who later ceased to act for him. A hearing notice was duly served upon the defendant but he did not attend court. The hearing therefore proceeded ex-parte.

PLAINTIFF'S CASE

3. The plaintiff testified that he is a member of **Katikomor Group Ranch** which is the registered owner of **LR. No. West Pokot/Katikomor/1** which is **572.0 hectares**. The Ranch was shared amongst the members and his entitlement is **100 acres**. On **16/6/2012**, he entered into a sale agreement with the defendant for sale of four portions of his entitlement identified as **Plot Nos. 16, 31, 36 and 32** at a consideration of **Kshs.1,200,000/=**.

4. The defendant made a down payment of **Kshs.300,000/=** on execution of the agreement. The balance of **Kshs.900,000/=** was to be paid on or before **23/2/2013**. The defendant moved in and occupied **20**

acres. The defendant did not pay the balance of the purchase price. The plaintiff went to his lawyers Ms. Chebii Cherop & Co. Advocates who wrote to the defendant intimating that the agreement between him and the defendant had been rescinded.

5. The plaintiff wrote a banker's cheque in favour of the defendant and asked him to collect it from his lawyer's office. The defendant refused to pick the cheque. The plaintiff went and cancelled it. He deposited the Kshs.300,000/= in his advocates offices and asked the defendant to collect the money but the defendant has refused to pick the 300,000/= shillings and has refused to vacate the 20 acres which he is occupying.

ANALYSIS OF EVIDENCE

6. There is no contention that the plaintiff is a member of Katikomor Group Ranch which is the proprietor of West Pokot/Katikomor/1. The plaintiff who is one of the representatives of the Ranch produced a copy of title deed [Exhibit 1]. The plaintiff produced a copy of certificate of incorporation of the Group Ranch [Exhibit 2]. The certificate of incorporation shows that the plaintiff is one of the group representatives.

7. The agreement between the plaintiff and the defendant was produced as Exhibit 3. It is clear that the defendant paid Kshs.300,000/= and he was to clear the balance of Kshs.900,000/= on or before 23/2/2013. He produced a letter written by Ms. Chebii Cherop & Co. Advocates [Exhibit 3]. This is the letter which intimated to him that the agreement had been rescinded and that he was to collect what he had paid as down payment. This letter was written on 25/4/2014.

8. A copy of the banker's cheque which the plaintiff prepared was produced as Exhibit 5. The plaintiff later deposited Kshs.300,000/= in the offices of his lawyers. He produced a copy of the receipt which was issued [Exhibit 6]. The plaintiff's advocates asked the defendant to pick the money from their offices but he has not done so.

9. The plaintiff never took the defendant to the land control board to obtain consent. The transaction between him and the plaintiff became null and void on expiry of six months from 26/6/2012. The defendant thereafter became a trespasser on the 20 acres after the agreement became null and void for want of the consent of the land control board.

DECISION

10. I find that the plaintiff has proved his case against the defendant on a balance of probabilities. I proceed to grant the following reliefs and orders:-

(i) A declaration that the agreement of 16/6/2012 is null and void for want of consent of the land control board and for failure by the plaintiff to clear the balance of the agreed consideration.

(ii) A declaration that the defendant is a trespasser in the plaintiff's land comprised in LR. No. West Pokot/Katikomor/1 and should be evicted therefrom.

(iii) An order dismissing the defendant's counter-claim. The defendant is at liberty to collect his Kshs.300,000/= from the plaintiff's lawyer.

(iv) The defendant to pay costs of the suit and counter-claim to the plaintiff.

Dated, signed and delivered at Kitale on this 7th day of November, 2016.

E. OBAGA

JUDGE

In the presence of plaintiff and Ms. Mufutu for defendant.

Court Assistant - Isabellah.

E. OBAGA

JUDGE

7/11/2016