



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 90 OF 2014**

**LOPUSIKUR LOTUNYO.....PLAINTIFF**

**VERSUS**

**PHILIP M. KIPTAI.....DEFENDANT**

**JUDGEMENT**

**INTRODUCTION**

1. The defendant is the registered owner of LR NO West Pokot/Keringet “A”/463 measuring 18.2 hectares (suit land). The plaintiff filed an originating summons seeking to be declared as owner of 7 acres of the suit land. The defendant who was served did not enter appearance or respond to the originating summons.

**PLAINTIFF'S CASE**

2. The Plaintiff testified that on 28/1/1985 he entered into an agreement with the defendant to purchase 7 acres from him. The agreed purchase price was Kshs.7,000/= per acre. The plaintiff also agreed to purchase a house which was on the property he bought. The price of the house was Kshs.7,856/=. The plaintiff took possession of the property upon signing of the first installment.
3. The defendant later migrated from West Pokot and settled in Kilgoris in Narok County. When the plaintiff completed paying for the suit land, he asked the defendant to transfer the land to him but the defendant did not respond to the letter which the plaintiff wrote to him.

**ANALYSIS OF EVIDENCE AND THE LAW**

4. The Plaintiff produced the agreement between him and the defendant [exhibit 1]. It is clear from the agreement that the 7 acres were to go for Kshs.49,000/=. The house on the property was to go for Kshs.7,856/=. The plaintiff paid Kshs.15,000/= on signing the agreement. The rest was paid in installment with the last installment being paid on 11/12/1985. The plaintiff produced an official search exhibit 2 (b) confirming that the defendant is the registered owner of the suit land.

**ISSUE FOR DETERMINATION:**

5. There is no contention that the plaintiff bought 7 acres from the defendant in 1985. The issue which arises for determination is whether the plaintiff has acquired the 7 acres by prescription. The law of adverse possession provides that where a person has been in occupation of land

openly, peaceful, and continuously and uninterrupted for over 12 years he can put up a claim for adverse possession. In the present case, the plaintiff was put in possession of the suit land on 28/1/1985 when he paid the first instalment. He paid the last instalment on 11/12/1985. It was expressly stated in the agreement that the defendant was to take the plaintiff before the Land Control Board. The defendant never took him before the Land Control Board. The provisions of the land control Act provide that consent of the board has to be obtained within six months from the date of the sale. If there is not consent of the Land Control Board, the transaction becomes null and void. For purposes of computation of time, there are two scenarios which can be considered. The first one is when the transaction became null and void upon expiry of 6 months from the date of sale. The second scenario is the date the plaintiff completed payment for the property. In the case of the first scenario, the transaction became void after 28/7/1985. Time started running in favour of the plaintiff from that time. It is therefore clear that the defendant's title regarding the 7 acres was extinguished after 28/7/1997. Even if we were to take the second scenario still the defendant's title stood extinguished on 11/12/1997 at the end of 12 years from the time he completed paying the last instalment.

**DETERMINATION:**

6. I find that the defendant's right to the seven acres has been extinguished and that he is holding the 7 acres in trust for the plaintiff. Consequently I make the following orders;-
  - (a) That the defendant's right to 7 acres forming part of LR NO. West Pokot/Keringet "A"/463 has been extinguished and that he is holding the 7 acres in trust for the plaintiff.
  - (b) The trust is hereby terminated and an order is issued that the two acres be excised from LR NO West/Keringet "A"/463 and the same be transferred to the plaintiff by the defendant failing which the Deputy Registrar of this court do sign all documents necessary to have the 7 acres transferred to the plaintiff.
  - c. The Plaintiff shall have costs of this suit.

**Dated, signed and delivered at Kitale on this 23rd day of April, 2015.**

**E. OBAGA**

**JUDGE**

**In the Presence of Mr Chebii for Plaintiff. Court Clerk – Kassachoon.**

**E. OBAGA**

**JUDGE**

**23/4/2015**