



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KERICHO

CIVIL SUIT NO. 85 OF 2013

MATHEW RONO.....PLAINTIFF

VERSUS

ALFRED CHERAMGOI.....DEFENDANT

JUDGMENT

(Suit to recover half share to land; plaintiff stating that he had an agreement with defendant to have the land shared equally once the defendant paid for the land which land was assigned to the plaintiff; no such agreement produced; even if the agreement was in existence, land was transferred about 25 years to filing of suit to a third person not party to this suit; dispute also caught up by limitation of time; 12 years for recovery of land; no material to show that the plaintiff's case is exempted from this period; suit dismissed)

This suit was commenced by way of plaint filed on 2nd December, 2013. Despite being served, the defendant did not enter appearance nor file defence. Neither did he appear at the hearing of this suit although he was served with a hearing notice.

The plaintiff's case as pleaded in the plaint, is that in the year 1984, he was allocated a share of **land number 279** at Kaitet Ranch, which land was later changed to **Kericho/Kaitet/281**, upon registration under the **Registered Land Act** (repealed). It is pleaded that the plaintiff was unable to raise the requisite fee for the share and the defendant offered to pay, on condition that they would share the land in half. It is averred that this was agreed, and that it was further agreed, that the defendant would hold the land in trust until the time that they share it. It is pleaded that the defendant breached the trust and instead sold the whole land to one Richard Kibet Kirui (not a party to this case). In the suit, the plaintiff has asked for a declaration that he is entitled to 8 acres of the **land parcel Kericho/Kaitet/281** (the suit land) or special damages .

In his evidence, the plaintiff testified that he had two shares in Kaitet Society. One share was the equivalent of 16 acres. He was only able to pay for one share, and he got hold of the defendant to make the payment for the second share. He stated that they drew an agreement. He produced a document which he said was the agreement. He testified that this share in dispute became registered as **Kericho/Kaitet/281**. He produced an official search to the said land which shows that the land is now registered in the name of Richard Kibet Kirui. He stated that when he got to know this, he summoned village elders who met on 29th January, 1984. He produced some minutes in evidence. He testified that the elders resolved that the land be shared but it never was shared. He testified that he reported the matter to the Chief and District Officer who summoned the defendant in vain. He wrote a demand letter which was ignored hence this suit. He stated that he wants 8 acres, being half share of the suit land, or its equivalent in money, which in his view is Kshs. 5.6 Million. He also stated that they had gone with the defendant to the Settlement Office to have the land transferred to him, but the defendant refused to do so.

PW-2 was Simeon Kipketer Rono. He is younger brother to the plaintiff. He testified that it is him who referred the defendant to the plaintiff to buy the land. He was also among the elders who resolved to have the land shared into two.

PW-3 was Joseph Rono. He also sat in the elders meeting of 29th April, 1984 where it was resolved that the plaintiff is entitled to half the land.

With the above evidence the plaintiff closed his case.

I have considered the matter. The case of the plaintiff is that he had an agreement with the defendant, where the defendant would pay for land due to the plaintiff, after which they would later share it equally. The plaintiff did not produce any written proof of such agreement. What he produced and he termed it an agreement is written as follows :-

I Alfred K.A Cheragoi have agreed to share my future share with Matthew K.A. Rono after having received half price of the value of the land. New documents will be made after the payment is made by M.A Rono.

Vendor Signature

Purchaser Signature

Witness Signature.

The above is in carbon copy, but there are alterations which are not in carbon copy, giving the date 4/5/1982 and ID numbers. These, to me, appear to have been inserted fairly recently and were not in the original document.

Be as it may, the above, to me, cannot pass for an agreement. It is pretty ambiguous as it is not clear what future share is being referred to in the document. Even if I am to hold that it refers to the suit land, I can see that there is a requirement for payment of half the price of the value of the land, and there is no proof that the defendant received this amount of money. There are also alterations to that document which make it to be of dubious authenticity.

But let us assume that there was actually such arrangement and that the above is the agreement; would that be enough to affirm that the plaintiff is entitled to the land ? I think not, and this is due to several factors.

First, the land is currently registered in the name of Robert Kirui. I have seen the certificate of official search and it shows that Robert Kirui became registered as proprietor on 14th November 1988. This is about 25 years before this case was filed. Robert Kirui is not a party to these proceedings, and despite me warning Mr. J.K. Rono, counsel for the plaintiff, that it would be difficult for me to cancel his title since he is not a party, Mr. Rono informed me that his instructions are to proceed with the suit as filed. Without Mr. Robert Kirui being a party, I do not see how I can cancel his title.

Secondly, the evidence before me, especially the resolution of elders, shows that the two parties were feuding over a land described as land No. 279. Although the plaintiff has averred that this is the same land as the suit land, which is registered as **Kericho/Kaitet/281**, there is really no proof that the land No. 279 is the same as **Kericho/Kaitet/281**, or was converted to be **Kericho/Kaitet/281**. Without concrete evidence, I cannot simply assume that the two are one and the same parcel.

Thirdly, the plaintiff's case is clearly out of time. Robert Kirui, even if he was a party to this case, acquired his title in the year 1988 and the 12 year limitation period granted for one to lodge a claim for recovery of land had lapsed by the time this suit was filed. The limitation period is set out in **Section 7 of the Limitation of Actions Act, CAP 22**, which provides as follows :-

The dispute between the plaintiff and the defendant is old. The plaintiff seems to have invoked a mediation by elders in the year 1984, evidenced by the resolution of 29th January, 1984. The plaintiff was also aware of the transfer of the land to the said Robert Kirui, or ought to have been aware, for he seems to have made reports to various offices of the Chief and District Officer in the years 1990, 1991 and 1992. No explanation has been given why the plaintiff opted to file his case this late, and more importantly, it has not been shown that the plaintiff ought to be exempted from the limitation period of 12 years.

If at all the plaintiff had an agreement to share the land into two, such agreement cannot be enforced due to lapse of time. With that also goes the remedy of damages for the equivalent value of the land, forget for a moment that it has not been shown to me, that the value of the 8 acres is Kshs. 5.6 Million.

The plaintiff's case, if at all it has merit, is clearly out of time.

For the above reasons, I have little option but to dismiss the plaintiff's suit. It is hereby dismissed. I however make no orders as to costs since the defendant did not deem it fit to defend the cause.

It is so ordered.

Dated, Signed and delivered on this 29th day of May 2015

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

PRESENT

Mr. Joshua Mutai holding brief for Mr. J.K. Rono for Plaintiff

No appearance for Defendant

C/A; Emmanuel