



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 66 OF 1997

BOTWA FARM CO. LTD.....PLAINTIFF

VERSUS

THE SETTLEMENT FUND TRUSTEE.....1ST DEFENDANT

THE ATTORNEY GENERAL..... 2ND DEFENDANT

J U D G M E N T

INTRODUCTION

1. The plaintiff is a Limited Liability Company incorporated on **22/12/1972**. The plaintiff brought this suit against the defendants seeking the following reliefs:-
 - (a) A declaration that repossession of **L.R. No. 6109** by the first and second defendants is invalid.
 - (b) A declaration that **L.R. No. 6109** is the property of the plaintiff company and its **169 shareholders**.
 - (c) A declaration that the subdivision of **L.R. No. 6109** in **1980** and subsequent allocation to **169 shareholders** should remain so.
 - (d) A declaration that any subdivision subsequent to the one carried out in 1980 is invalid.
 - (e) A declaration that the refusal by the defendants' agents to accept the balance of the purchase price from the plaintiffs members is illegal and unlawful.
 - (f) An order that anybody who has been allocated any land by the defendants without the consent of the plaintiff be evicted from **L.R. No. 6109**.
 - (g) That the defendants, their servants and or their agents or anybody acting on their behalf be restrained from interfering with peaceful stay and enjoyment of **L.R. No. 6109** by the plaintiffs members.
 - (h) That an order canceling the title deeds issued to non members of the plaintiff be issued and the register rectified accordingly.

- (I) Costs of the suit.
2. The State Counsel from the Attorney Generals office was not present when this case proceeded. The date had been given in the presence of Mr. Wabwire a State Counsel but he was not present during the hearing. The case therefore proceeded to conclusion without the defence calling any evidence.

PLAINTIFFS CASE

3. **Alfred Ochorokodi** the Chairman of the plaintiff testified that the company was incorporated on **22/12/1972**. Its objectives were to buy land for settlement of its members. The company was allocated **1024 acres** by the **Settlement Fund Trustee**. The purchase price was **Kshs.2,000,000/=**. The company paid **Kshs.200,000/=** being **10%** of the purchase price. In 1980 the shareholders held a meeting where subdivision of the farm was discussed. The 169 shareholders were allocated land. There was also land allocated for public utilities.
4. In 1991 there were internal wrangles. Some members wanted the farm to be subdivided into three blocks to be given along tribal groupings. The company went to court and filed a case against four individuals. This was vide **Eldoret High Court Civil Case No. 49 of 1991**. The High Court held that the proposed subdivision of the farm along tribal lines was not only illegal but also unconstitutional.
5. In 1994 the company prepared a cheque for **Kshs.150,000/=** in favour of Director of Lands and Settlement but the cheque was returned to the company. The settlement office came to the farm and sub-divided the land afresh. New members were brought to the farm and have since obtained titles. The settlement office has since declined to accept any payments from the company.

ANALYSIS OF EVIDENCE

6. Though there was no evidence adduced by the defendants, there are documents filed by the defendants which are crucial to the determination of the issues being raised by the plaintiff. It is not contested that **L.R. No. 6109** was offered to the plaintiff by the first defendant. The plaintiff was expected to raise **Kshs.2,000,000/=**. The plaintiff only paid **Kshs.200,000/=** being **10%** of the purchase price. They were expected to clear the balance which they did not. On **17/12/1993**, the District Land Adjudication and Settlement Officer wrote a letter to the company calling for payment of **Kshs.3,999,276.65** being the balance of the purchase price together with accrued interest. The plaintiff did not pay the demanded amount. On **23/2/1995** the Director of Land Adjudication and Settlement wrote to the company canceling the allocation.
7. The land was allocated to the plaintiff in 1979. Sixteen years later, the plaintiff had not paid the balance of **Kshs.1,800,000/=** when they were given the opportunity to pay up the balance, they did not do so. The plaintiff only attempted to make payment of **Kshs.150,000/=** on **24/10/1994**. This cheque is said to have been returned. The plaintiff blames the then Settlement Officer at Kitale **Mr. Koskei**. The plaintiff claims that Mr. Koskei brought in members from his Nandi community who were given land at the farm. The plaintiff also claims that Mr. Koskei colluded with the then District Commissioner who was a Nandi. These claims are unsubstantiated.
8. It is common knowledge that the settlement officer allocates land upon certain conditions. These conditions include payment of 10% deposit and payment of the balance afterwards. In this case the plaintiff paid only 10% deposit. The balance was not paid. When the settlement office demanded for the balance plus accrued interest, the plaintiff did not pay. The allegation that the plaintiff was prevented from paying the balance is therefore misplaced. The plaintiff cannot have land for which they did not pay for. The allocation of the land to the plaintiff was cancelled for breach of the terms and conditions in the letter of allotment. The land was allocated to those who met conditions set by the Settlement Fund Trustees. These are the ones who have obtained titles. Their titles cannot be cancelled. I find that the plaintiff has failed to prove a case against the

defendants. The suit is hereby dismissed with costs to the defendants.

Dated, signed and delivered at Kitale on this 30th day of June, 2015.

E. OBAGA

JUDGE

In the presence of Mr. Wafula for Mr. Ngeywa for Plaintiff.

Court clerk - Isabellah.

E. OBAGA

JUDGE

30/6/2015