



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 137 OF 2014

JOASH WAFULA MUKHWANA..... PLAINTIFF

VERSUS

LENAH NANGILA NYONGESA1ST DEFENDANT

SAMWEL KHISA BARASA..... 2ND DEFENDANT

J U D G M E N T

INTRODUCTION

1. The first defendant is mother to the second defendant. The plaintiff brought this suit against the defendants claiming the following reliefs:-

(a) Specific performance of an agreement that the plaintiff is entitled to a two metre wide access road to his plot comprised in Plot No. 13 at Nalulingo Farm measuring 1 ½ acres.

(b) A permanent injunction restraining the defendants, their agents and/or servants and/or anybody purporting to act for them or through them from blocking the access road to the plaintiff's parcel of land known as Plot No. 3 Nalulingo Farm.

(c) General damages for breach of the agreement.

(d) Costs and interest.

2. The defendants who were duly served with summons to enter appearance and file defence neither entered appearance nor filed defence. This case therefore proceeded by way of formal proof.

PLAINTIFF'S CASE

3. The plaintiff testified that the first defendant was a shareholder of **Trans-Nzoia Investments Company Ltd.** By virtue of being a shareholder, the first defendant had land at Nalulingo Farm owned by the company. On 18/3/2011, the plaintiff bought one acre from the first defendant. Again 1/4/2011 he bought half an acre from the first defendant. This made the total acres bought to be 1 ½ acres. The first defendant then transferred her shareholding in Trans-Nzoia Investment Company to the plaintiff.

4. It was agreed between the plaintiff and the defendants that the defendants were to give the defendant a two metre wide access road to enable him access the main road. This access road was created but the second defendant later came and blocked it by digging a trench across it and blocking it with thorn trees. The plaintiff reported the matter to the area chief and the local police to have the matter sorted out in

vain. He went to his advocate who wrote a demand letter after which he came to court and filed this suit.

ANALYSIS OF EVIDENCE

5. The plaintiff produced agreement dated 18/3/2011 [Exhibit 1(a)] and another one dated 1/4/2011 [Exhibit 1(b)]. The plaintiff purchased one acre on 18/3/2011 and on 1/4/2011 he bought half an acre. The agreement of 18/3/2011 was incorporated in the one of 1/4/2011. The plaintiff paid a total of Kshs.130,000/= for the 1 ½ acres. There is also a transfer from the first defendant to plaintiff [Exhibit 2]. The first defendant transferred her one acre held at Trans-Nzoia Investment Company Ltd.

6. The plaintiff produced four agreements [Exhibit 3(a) to (d)]. These agreements show that the plaintiff had been given a two metre wide road which was to be created in the year 2012 after someone who had leased land from the defendants moved out. The road was duly created but the second defendant blocked it. The agreements show that the second defendant had promised not to block it but it would appear he never kept his word.

7. The plaintiff also produced documents (Exhibit 4(a) to (e)). These documents confirm that there has been a dispute between the plaintiff and the second defendant which has been reported to the area village elders, assistant chief, chief and even to the police regarding the blockage of the access road. The plaintiff produced photographs showing the blocked road [Exhibit 5(a) and (b)]. A demand has already been given to the first defendant [Exhibit 6] but there has been no response from the defendants.

FINDINGS

8. From the evidence adduced by the plaintiff, I find that indeed the plaintiff bought 1½ acre from the first defendant. There was an agreement that the defendants were to give a two metre wide access road to the plaintiff. This road was actually created but the same has been blocked by the second defendant who is a son to the first defendant.

DECISION

9. I find that the plaintiff has proved his case against the defendants on a balance of probabilities. The defendants are hereby ordered to give an access road of two metre wide to the plaintiff as per the agreement. The defendants are hereby permanently restrained from interfering with the access road once the same is opened. There is no basis upon which general damages can be granted. The plaintiff shall have costs of this suit.

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

E. OBAGA

JUDGE

30/7/2015

COURT

Judgment delivered in court at 9.55 am in the absence of Plaintiff who was aware of today's date.

Court Assistant – Winnie.

E. OBAGA

JUDGE

30/7/2015