



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 59 OF 2013

RICHARD KIPROTICH KENDUYWO..... PLAINTIFF

VERSUS

DANIEL MUCHANGA NYUKURI DEFENDANT

J U D G M E N T

INTRODUCTION

1. The plaintiff is the administrator of the Estate of his late father **Sawe Bargelo Barjok** who died on 21/9/2004 (deceased). The plaintiff brought this suit against the defendant seeking orders of eviction from **Plot No. 2964** at **Tuwan Farm** as well as orders restraining the defendant from interfering with **Plot No. 2963** at the same farm.
2. The deceased was a shareholder of Tuwan Farm Limited and had several parcels of land within the farm.

PLAINTIFF CASE

3. The deceased and the defendant entered into an agreement on **9/11/1988** in which the deceased agreed to sell the the defendant a plot measuring **80ft x 80ft** at a consideration of Kshs.22,000/= Tuwan Farm was initially a farming area which was later converted into a residential area through assistance from World Bank. The defendant bought the **80ft x 80ft** plot from the deceased before the farm was subdivided.
4. When the farm was subdivided, the portion from where the deceased had sold a plot to the defendant yielded five plots. This is after the deceased surrendered a portion of his plot for public utilities. The deceased's block yielded **Plot Nos. 2960, 2961, 2962, 2963** and **2964**. The defendant's **80ft x 80ft** plot yielded **2 ½ plots**. The two full plots fell on **Plot Nos. 2960** and **2961**. The half plot fell on **Plot No. 2962**. The defendant asked the deceased to sell to him the remaining half plot which fell on **Plot No. 2962**. By an agreement dated **30/3/1992**, the defendant bought the half plot forming part of **Plot No. 2962** at a consideration of **Kshs.10,000/=**. The defendant now became the owner of **Plot Nos. 2960, 2961** and **2962**.
5. The defendant later started claiming that he had bought a plot measuring **100ft x 100ft** which is equivalent to a quarter an acre. The defendant also claimed that he had bought **Plot No. 2963**. The defendant proceeded to put up rental houses on **Plot No. 2964** and is now laying claim to **Plot No. 2963** which is occupied by the plaintiff's younger brother.

DEFENDANT'S CASE

6. The defendant testified that on **9/11/1988**, he bought a quarter an acre from the deceased. The plot was unsurveyed by then. In 1992 Tuwan Farm Limited started subdividing the farm. The $\frac{1}{4}$ an acre he bought yielded four plots. The deceased approached and offered to sell him one plot which had remained. Through an agreement dated 30/3/1992, the defendant bought Plot No. 2963 at a consideration of Kshs.10,000/=. He paid the deceased a down payment of Kshs.2,000/= and the balance of Kshs.8,000/= was paid later on 9/9/2000.
7. The defendant put up rental houses on one of the plots. A dispute arose as to the size of plot bought by the defendant. The dispute was taken before officials of Tuwan Farm. The officials went to the ground and took measurements. They found that the defendant's land was **100ft x 100ft** and not **80ft x 80ft** as indicated in the agreement. The agreement he had entered into with the deceased was then changed to reflect **100ft x 100ft**. He was later issued with a share certificate for five plots.

ISSUES FOR DETERMINATION

8. I have gone through the evidence adduced by the plaintiff and his witnesses as well as the defendant's evidence and his witnesses. The issues which emerge for determination are firstly; what size of plot was bought by the defendant on 9/11/1988? Secondly; was there a variation of the agreement of 9/11/1988 as regards the acreage? Lastly; is the defendant entitled to five plots?
9. The plaintiff contends that the defendant bought a plot measuring **80ft x 80ft** vide agreement dated **9/11/1988**. The defendant on the other hand contends that he bought a plot measuring **100ft x 100ft** which is equivalent to a quarter of an acre. The plaintiff produced a coupon copy of the agreement of **9/11/1988 [Plaintiff Exhibit 2]**. This agreement clearly shows that the defendant bought a plot measuring **80ft x 80 ft**. The defendant produced the original of the agreement of **9/11/1988 [Defence Exhibit 1]**. This agreement has been altered. $\frac{1}{4}$ has been added and the **80ft x 80ft** has been altered to read **100ft x 100ft**.
10. Though the defendant claims that the alterations were made on 20/8/2001, those who were present including the deceased and one of his sons never endorsed the minutes or the alleged changes to the agreement. If there were any genuine changes to the agreement of 9/11/1988, then both the original and coupon copy would have been changed. In this case, it is only the original copy of the agreement kept by the defendant which was altered. The coupon copy held by the deceased was not changed.
11. The plaintiff claims that the deceased's sons started disturbing him after the demise of the deceased. This is not true. The deceased died on 21/9/2004 as per the date of death on the limited grant issued to the plaintiff on 9/5/2013. The defendant has produced minutes dated **20/8/2001 [Defence Exhibit 4]** in which it is purported that there was correction of the size of the plot bought by the defendant. The defendant cannot again claim that the dispute started after the deceased had died.
12. The defendant produced a sale agreement dated **30/3/1992**. According to the defendant, he was purchasing **Plot No. 2963**. A look at the agreement **[Defence Exhibit 2]** shows that the plot number was inserted later and the handwriting is different from the rest. What was being sold is a few yards. This is the remainder of the half plot which fell on **Plot No. 2962**. The yards have been clearly shown and it cannot be that it was **Plot 2963** or a whole plot which was being sold.

DECISION

13. The plaintiff has proved that the defendant bought three plots. The defendant's claim to five plots has no basis and I find that the plaintiff has proved his case against the defendant on a balance of probabilities. An eviction order is hereby given ordering the defendant to move from **Plot No. 2964** and stop interfering with **Plot No. 2963**. The defendant shall pay costs of this suit to the plaintiff.

Dated, signed and delivered at Kitale on this **7th** day of **July, 2015**.

E. OBAGA

JUDGE

In the presence of M/s. Bett for Mr. Kaosa for Plaintiff and the defendant.

Court Clerk – Winnie.

E. OBAGA

JUDGE

7/7/2015