



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 93 OF 2014

CHARLES WAFULA S. SAKWA PLAINTIFF

VERSUS

MOSES SAKWA WAFULA.....1ST DEFENDANT

LUHYA ESTATES LIMITED.....2ND DEFENDANT

J U D G M E N T

1. The plaintiff is a brother to the first defendant. The second defendant is a limited liability company whose business among others was purchase of land for distribution among its shareholders. The plaintiff was a shareholder of the second defendant where he had **seven shares**. Each share was equivalent to **two acres**.
2. The plaintiff brought this case against the defendants seeking an order of cancellation of title in respect of **LR. No. Kwanza/Kwanza Block 3/Luhya/87** which is in his name and that of the first defendant and for an order that the first defendant do surrender the title which he is holding. The defendants who were duly served with summons to enter appearance neither entered appearance nor filed defence. The case therefore proceeded by way of formal proof.

PLAINTIFF'S CASE

3. The plaintiff testified that he is a shareholder of the second defendant. In or around **1980**, he acquired seven shares at the second defendant. He was issued with a share certificate in his name. He produced a copy of share certificate as Exhibit 1. Each share was equivalent to two acres. He was therefore entitled to fourteen acres.
4. *For one to obtain title he had to get clearance from the company. Unknown to the plaintiff, the first defendant,*
who is a younger brother of the plaintiff who was staying with him went to the second defendant and obtained clearance in respect of the fourteen acres due to the plaintiff. The first defendant then proceeded to the lands office where he obtained title for the fourteen acres in the joint names of himself and the plaintiff.
5. The plaintiff went to the lands office Kitale where he did an official search which showed that title had been issued in his name and that of the first defendant. He produced a copy of official search as Exhibit 2. The plaintiff contends that he never acquired the shares at the second defendant with his brother and that it was wrong for the second defendant to issue a joint clearance certificate. The first defendant has since been keeping the title deed and the plaintiff's efforts to access it have been in vain. It is on this basis that the plaintiff is seeking for the orders mentioned hereinabove.

ANALYSIS OF EVIDENCE

6. The plaintiff has demonstrated that he is a shareholder with the second defendant. The share certificate was issued on **1/1/1980** in his sole name. A title deed was issued in the joint names of the plaintiff and the first defendant on **11/2/2014**. The plaintiff wrote a demand letter to the defendants complaining that the second defendant had issued a clearance certificate to the first defendant which enabled him to obtain title in his name and that of the plaintiff. The two defendants never responded to the demand letter. When the two defendants were served with summons to enter appearance and file defence, they neither entered appearance nor filed defence. The evidence of the plaintiff therefore remains uncontroverted.

DISPOSITION

7. It is clear that the defendants colluded to have the title issued in joint names when the share certificate was not in the joint names. I find that the plaintiff has proved his case against the two defendants on a balance of probabilities. The plaintiff is the sole owner of land known as **Kwanza/Kwanza Block 3/Luhya/87**. The title deed issued in the joint names of the plaintiff and first defendant shall be cancelled and the same issued in the name of the plaintiff. The first defendant shall return the title deed he is holding to the plaintiff. The two defendants shall pay costs of this suit to the plaintiff.

Dated, signed and delivered at Kitale on this 28th day of October, 2015.

E. OBAGA

JUDGE

In the presence of M/s Munialo for Plaintiff.

Court Assistant - Omulindi.

E. OBAGA

JUDGE

28/10/15