



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 33 OF 2014

TASTA ARAP SANGWE & PARTNERS PLAINTIFF

VERSUS

AGRICULTURAL FINANCE CORPORATION DEFENDANT

J U D G E M E N T

I N T R O D U C T I O N

1. The Plaintiffs are individual members who came together and purchased three properties which were owned by a white settler who was departing the country. The farm was known as Kapkoi West Farm. The plaintiffs approached Agricultural Finance Corporation (AFC) who financed them with a loan for their use.
2. The plaintiffs offered three titles as security for the loan. The titles are LR Nos 6431, 5713 and 8416. The plaintiffs re-paid part of the loan advanced to them. The balance of the loan was waived by the AFC on instructions of the Government.
3. The plaintiffs then asked the AFC to discharge the three properties but the AFC has been adamant prompting the plaintiffs to file a suit compelling the managing director of the AFC to discharge the properties and release the titles to the plaintiffs' representative.
4. The defendant which was duly served neither entered appearance nor filed a defence. The hearing therefore proceeded by way of formal proof.

P L A I N T I F F S C A S E

5. The plaintiff through one of the partners Joshua Kaptich Arap Kirwa testified that he is one of the partners of a group of individuals calling themselves Tasta Arap Sangwe & Partners. He testified that the partners had a loan with AFC. They repaid the loan until sometime in 2002 when the AFC waived the remaining balances in their accounts.
6. The partners were asked to pay for discharge of the title. They duly paid Kshs. 500/= for that purpose. A receipt was produced as exhibit 1. The letter informing the partners of the waiver of the loan was also produced as exhibit 2. When the representatives of the partners went to claim their titles, AFC declined to release them arguing that there was a pending case in the High Court

and that the titles could only be released upon conclusion of the High Court case and an order given to that effect specifying the person to whom the titles should be released to.

ANALYSIS OF EVIDENCE

7. From the evidence adduced by the plaintiffs, it is clear that the AFC waived the entire loan outstanding. The plaintiffs paid the Kshs.500/= required for discharge. It is apparent that the AFC was not opposed to release the titles to the partners. From their letter of 26/6/2009 in response to the plaintiffs Advocates letter of 8/6/2009, they only wanted a case which was in court concluded and they be directed on who to give the titles. The two letters were produced as exhibit 4 and 3 respectively.
8. High Court Civil case No. 56 of 2003 has since been concluded and a judgement delivered on 31/10/2012. A copy of the judgement was produced as exhibit 5. The AFC was not a party to the High Court case No. 56 of 2003. This was a case involving disputes amongst the partners as regards their respective entitlements. The officials of AFC only came in as witnesses. The pendency of this case which has now been concluded will not have made the AFC not go ahead to discharge the properties and give the titles to the partners.

DECISION

9. I find that the plaintiffs have proved their case against the defendant on a balance of probabilities. An order is hereby issued ordering the defendant through its managing director to discharge LR Nos 6431, 5713 and 8416 in respect of Kapkoi West Farm and release the discharged titles to Kimeto Arap Chuma on behalf of Tasta Arap Sangwe & Partners. If for any reason the said Kimeto Arap Chuma is unable to collect the titles, the plaintiffs are at liberty to nominate any other partner to pick the titles. The plaintiffs shall have costs of this suit.

Dated, signed and delivered at Kitale on this 21st day of July, 2014.

E. OBAGA

JUDGE

In the presence of Mr Chebii for Plaintiff. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

21/7/2014