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Judge:	Luka Kiprotich Kimaru
Citation:	William K Too v Simon K Langat [2006] eKLR
Advocates:	-
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**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**Civil Case 51 of 2003**

**WILLIAM K. TOO .....PLAINTIFF**

**VERSUS**

**SIMON K. LANGAT .....DEFENDANT**

**JUDGMENT**

The plaintiff, William K. Too, filed suit against the defendant, Simon K. Langat seeking a declaratory order of this court that he be declared to be the rightful owner of 1.5 acres out of parcel No. ***Kericho/Kapsuser/4048*** (*herein after referred to as a suit land*) or in the alternative he be declared to be the owner of the said parcel of land by adverse possession. He further sought an order of this court to compel the defendant to transfer the said suit land to him or in default thereof the executive officer of this court does signs the conveyancing documents on behalf of the defendant. The basis of the plaintiff's suit is that he claims to have purchased the said suit land from the defendant between 1978 and 1979. The plaintiff further claimed that after purchasing the said parcel of land, he took possession and planted tea on the same. In essence, he was therefore claiming that he had occupied the suit land for more than twenty five years.

The defendant filed a defence. He denied that he had sold the suit land to the plaintiff. He denied that he was the owner of the suit land. He averred that the suit land was registered in the names of Joshua Kiprop Langat and Dickson Cheruiyot Langat. He denied that the plaintiff had any proprietary rights over the suit land. He further denied that the plaintiff was entitled to ownership of the suit land by adverse possession. He urged the court to dismiss the plaintiff's suit. In reply to the defence filed by the defendant, the plaintiff reiterated that the said Joshua Kiprop Langat and Dickson Cheruiyot, as the administrators of the estate of Kiplangat Keter (*deceased*), were holding the title in respect of the suit land on behalf of the defendant.

At the hearing of the suit, the plaintiff called five witnesses in support of his case. He testified that he had purchased the suit land through various agreements which he signed with the defendant. The first agreement entered into on the 21<sup>st</sup> of September 1978, the second one was entered into on the 1<sup>st</sup> of March 1981, and another one was entered into on 28<sup>th</sup> of May 1978. In total, the plaintiff purchased 1.5 acres from the defendant. He paid a total consideration of Ksh. 11,500/= . The plaintiff produced copies of the three agreements as *Plaintiff's exhibits No. 1, 2 and 3*. The agreements were witnessed by PW2 James Kipkeino Misik, PW3 Joseph Kilel, PW4 Joseph Rono and PW5 John Kiprono Arap Cheruiyot. They all testified that they had witnessed the plaintiff purchase the suit land from the defendant. They also witnessed him pay the purchase consideration and further take possession of the suit land.

At the time that the land was sold to the plaintiff, it was registered in the name of Kiplangat Arap Keter, the father of the defendant. The suit parcel of Land was then part of parcel of land known as ***Kericho/Kapsuser/1772***. The plaintiff testified that after he had entered into the said agreements, he

took possession of the suit land and planted tea on the same. He testified that he had since occupied the suit land. He further testified that the brothers of the defendant, namely Joshua Kiprop Langat and Dickson Cheruiyot Langat applied for and were granted letters of administration to administer the estate of their deceased father. They then subdivided the parcel of land which was registered in the name of the deceased and distributed it among the sons of the deceased, one of whom is the defendant in this case. He testified that the defendant was entitled to inherit parcel No. **Kericho/kapsuser/4048** so that he could transfer the said 1.5 acres to the plaintiff.

The plaintiff testified that when the said brothers of the deceased went to the Land Control Board to give effect to the said subdivision scheme, the Belgut Land Control Board granted the consent to subdivide the said parcel of land, but denied consent to have the suit land transferred to the defendant unless and until he had transferred the portion of 1.5 acres to the plaintiff. The minutes of the Belgut Land Control Board were produced as *Plaintiff's exhibit No.4*. The mutation forms indicating the manner in which the original parcel of land belonging to the deceased was subdivided was produced as *Plaintiff's exhibit No. 7*. The plaintiff testified that, since then, the defendant had refused to have the said parcel of land transferred to him. The plaintiff therefore prayed for an order of the court to have the said parcel of land transferred to him.

The defendant called three witnesses in support of his case. He denied that he had sold the suit land to the plaintiff. He testified that at the material time he was too young to have sold the land to the plaintiff. He however conceded that his mother had given him authority to sell the land to the plaintiff in 1978 so that he could get money to pay as dowry when it was his time to get married. He conceded that after the said sale agreement of the suit land, the plaintiff took possession of the same. In the year 2002, his brothers Joshua Langat and Dickson Langat were registered as the owners of the suit land in their capacity as the administrators of the estate of their late father. He testified that the plaintiff had blocked the transfer of the said parcel of land to him.

The defendant testified that he was willing to refund the purchase consideration to the plaintiff. He was however not willing to transfer the suit land to the plaintiff. He testified that although the plaintiff had been in occupation of the suit land, he was not willing to transfer the same to the plaintiff. He recalled that the plaintiff had offered him an inducement of Ksh. 25,000/= when they had attended the Belgut land Control Board to secure his consent to have the said parcel of land transferred to the plaintiff. The defendant however declined the offer. DW2 Paul Langat and DW3 Leah Cheron Maritim, the brother and sister respectively of the defendant testified that they were not aware that the plaintiff had purchased the suit land from the defendant. They were however aware that the plaintiff had purchased a portion of land measuring  $\frac{1}{2}$  an acre from their late mother. The defendant urged this court to dismiss the plaintiff's suit with cost.

I have considered the evidence that was adduced by the plaintiff in support of this case. I have also considered the evidence that the defendant adduced in opposition to the plaintiff's suit. I have carefully read the pleadings that were filed by the parties to this suit. The issue for determination by this court is whether the plaintiff is entitled to the orders that he sought from this court to have the suit land transferred to him. Having carefully evaluated the evidence adduced by both the plaintiff and the defendant, certain facts are not in dispute in this case. It is not disputed that the plaintiff entered into several agreements with defendant where by the defendant agreed to sell certain portions of land to the plaintiff in consideration for a sum of Ksh. 11,500/=. I perused the three agreements which were produced as *Plaintiff's exhibit No. 1, 2 and 3* and I have no doubt that the said agreements were entered into and the purchase consideration paid by the plaintiff to the defendant.

Although the defendant testified that the said purchase consideration was paid to his late mother

rather than himself, upon evaluation of the evidence adduced, it is clear that the said purchase consideration was paid to the defendant and he used the same for his own benefit. Evidenced was adduced by the plaintiffs' witnesses how the defendant squandered the said purchase consideration by entertaining women. On a balance of probabilities, it is clear that the plaintiff proved that he had purchased the portion of land which the defendant was entitled to inherit from his late father's estate. At the time the agreement was entered into, the said parcel of land had yet to be excised from the parcel of land which was registered in the name of the defendant's father *i.e.* parcel No. **Kericho/Kapsuser/1772**.

It is further not disputed that the plaintiff took possession of the suit land once he had paid the purchase consideration. The plaintiff established, on a balance of probabilities that he took possession of 1.5 acres comprised of the portion of land that the defendant was entitled to inherit from his father's estate. The brothers of the defendant, namely Joshua Langat and Dickson Langat were appointed by the members of their family, to be the administrators of the estate of their late father. The two applied for and were granted letters of administration to administer the estate of their late father. In the year 2002, they subdivided the parcel of land which was registered in the name of their late father and distributed it to the beneficiaries of the deceased. Prior to transferring the respective portions to the beneficiaries of the deceased's estate, Joshua Langat and Dickson Langat had attended the Belgut Land Control Board where they had been given the consent to subdivide the said parcel of land.

The consent to transfer the other parcels of land to the other beneficiaries of the deceased's estate was granted save for the parcel of land which was due to be transferred to the defendant. The Land Control Board refused to grant the consent because the plaintiff objected to the said parcel of land being transferred to the defendant until the defendant agreed to transfer the 1.5 acre portion to the plaintiff. I believed the testimony by the defendant that the plaintiff offered him an inducement so that he could agree to have the said parcel of land transferred to him. The defendant concedes that he had sold the suit parcel of land to the plaintiff but he is unwilling to transfer the same to the plaintiff. He however offers to refund the purchase consideration to the plaintiff.

The agreement between the plaintiff and the defendant was in respect of agricultural land. It was a controlled transaction within the meaning of the **Land Control Act (Cap 302 Law of Kenya)**. According to **Section 6 (1) of the Land Control Act**, it is mandatory for the consent of the Land Control Board where the land is situate to be procured before an agreement in respect of a control transaction can be given effect to. The parcel of land in dispute in this case is registered under The **Registered Land Act (Cap 300 of the Laws of Kenya)**. It is thus an agricultural land as defined in the **Land Control Act**. The consent of the Land Control Board was required in order to give effect to the said transaction.

As stated earlier in this judgment, there is no dispute that the plaintiff did in fact enter into an agreement for the purchase of the portion of land measuring 1.5 acres from the defendant. The said agreement was in writing. The purchase consideration was paid in full by the plaintiff to the defendant. The plaintiff took possession of the suit land. The suit land was registered in the names of Joshua Langat and Dickson Langat, the administrators of the estate of the late Kiplangat Arap Keter – deceased in the year 2002 on behalf of the defendant. The plaintiff blocked the transfer of the said parcel of land now registered as **Kericho/Kapsuser/4048** to the defendant until the defendant agreed to transfer to him his portion of 1.5 acres out of the said parcel of land.

It is clear from the evidence adduced in this case that no consent of the Land Control Board was sought by the plaintiff and the defendant when they entered into an agreement in respect of an agricultural land which is within an area where transactions in respect of land is controlled. What was the effect of the failure by the plaintiff and the defendant to seek the consent of the Local Land Control Board" As was held by the Court of Appeal in the case of **Onyango & another vs. Luwayi [1986] KLR**

**513.** any transaction in respect of a parcel of land which is within a control area is void for all purposes where the consent of the Local Land Control Board was not secured. **Section 6 (1) of the Land Control Act** declares such agreements in respect of parcels of land within a controlled area to be void for all purposes unless the consent of the Land Control Board is secured within six months of the said agreements being entered into. In this case, it is clear that no consent of the Land Control Board was sought when the agreement was entered between the plaintiff and the defendant. The said transaction was therefore void for all purposes in accordance with the provisions of **Section 6 (1) of the Land Control Act**. In the circumstances of this case therefore, the orders sought by the plaintiff cannot be granted. This court cannot give effect to or enforce a void transaction.

The plaintiff's suit is therefore ordered dismissed. This court cannot grant the declaration sought by the plaintiff that he is entitled to be declared as the owner of the said parcel of land having occupied the same in adverse possession. Whereas it is true that the plaintiff has occupied the said parcel of land for a period of over 25 years, time however stopped running against the registered owner of the suit land once the same was registered in the names of the brothers of the defendant in the year 2002. The facts of this case disclose the draconian application of the provisions of the **Land Control Act**. Much as this court may sympathize with the situation that the plaintiff has found himself in, this court must enforce the law as it is. The only remedy available to the plaintiff, and which I hereby grant, is that he shall be refunded the purchase consideration of Ksh. 11,500/= by the defendant with 14% interest per annum from the date the said amount was paid to the defendant.

Having considered the circumstances of this case, it would be unfair to order that the defendant be paid costs. I would therefore make no orders as to costs.

**DATED at KERICHO this 3<sup>rd</sup> day of November, 2006.**

**L. KIMARU**

**JUDGE**



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