



REPUBLIC OF KENYA



**Dumbeya v Mathenge (Environment & Land Case 519 of 2016)
[2023] KEELC 16532 (KLR) (23 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16532 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 519 OF 2016**

**A OMBWAYO, J
MARCH 23, 2023**

BETWEEN

NELSON MUTURI DUMBEYIA PLAINTIFF

AND

FELIX NJERU MATHENGE DEFENDANT

JUDGMENT

1. Nelson Muturi Dumbeya has come to this court as a plaintiff against Felix Njeru Mathenge hereinafter referred to as the plaintiff claiming by amended plaint that by an agreement made on June 30, 2010, full particulars whereof are well within the defendant's knowledge, the plaintiff lend to the defendant various sums of money which sums of money were secured by way of Land Titles Ngong/10345 and Nakuru/Temoyetta/93, the originals of which the defendant surrendered to the plaintiff.
2. Pursuant to the agreement made on June 30, 2010, the defendant executed a transfer of Land Title Ngong/Ngong/10345 and additionally executed a transfer of Land Title Ngong/10345 and additionally executed completion documents namely and application to the Land Control Board for consent.
3. By a further agreement made on May 1, 2011 the defendant herein upon transfer of Title No Ngong/Ngong/10345 to the plaintiff agreed to commence payment of rent in the sum of Kshs,106,000 thousand per month an amount the defendant commenced payment and never defaulted in such payment throughout his tenancy.
4. The defendant in the further agreement sought time till September 30, 2011 to settle the defendant's liability to the plaintiff.
5. In the further agreement dated May 1, 2011, the defendant unreservedly surrendered the title to the suit property herein for a consideration of Kshs 5 million.



6. The defendant had on April 1, 2011 executed a transfer of Nakuru/Temoyetta/93 and additionally executed an application for consent of the Land Control Board.
7. It was agreed as between the plaintiff and the defendant that the sums secured by the aforesaid Titles would be repaid by the defendant on or before the September 30, 2011 failing which the plaintiff would cause a transfer of the subject titles. The defendant executed transfer documents in favour of the plaintiff.
8. The defendant did not honor the commitment as agreed whereof LR No Ngong/Ngong/10345 was transferred to the to the plaintiffs while the plaintiff is unable to transfer LR No Nakuru/Temoyetta/93 for want of transfer documents but nonetheless the plaintiff has in his possession and custody the original Title Deed for the subject land.
9. The want of transfer documents for LR No Nakuru/Temoyetta/93 has been occasioned by the irretrievable loss and/or agents in the course of office business.
10. The plaintiff by SMS communication called upon the defendant to cause a transfer of LR No Nakuru/Temoyetta/93 whereof the defendant called upon the plaintiff to exercise patience as the defendant was committed to meeting his obligation to the plaintiff upon demand that the defendant passes by the plaintiff's office to execute the transfer documents which demand the defendant has neglected, refused or ignored to comply with.
11. The plaintiff has patiently waited for the defendant to meet his obligation to no avail and is apprehensive that limitation period for contractual obligations could set in hence the filing of this suit.
12. A draft agreement dated April 1, 2011 was given to the defendant and a further agreement dated May 1, 2021 was executed. The plaintiff undertook not to register the transfer on or before the September 30, 2011 but was at liberty to proceed and register the transfer after September 30, 2011. If the defendant would not have honored his undertaking to the plaintiff by that date.
13. The plaintiff contends that the defendant occasioned plaintiff loss and damage. the plaintiff has particularized loss and damages as follows: -
14.
 - i. At about the time when the plaintiff lend to the defendant the sum of money secured by the suit property, the plaintiff had entered into an agreement to purchase 450 Acres of land along Magandi Road, Kajiado County at a town known as Tinga Town which is 35 kilometres from Kiserian town.
 - ii. The consideration for purchase of the 450 acres of land was Kshs 50,000(Fifty Thousand) per acre all totaling Kshs 22.5 million.
 - iii. The plaintiff made a down payment of Kshs 6 million towards the purchase of Kajiando/Loodariak /411.
 - iv. The money the plaintiff hoped to use to pay the balance was lend to the defendant
 - v. The sellers of the Kijiando /Loodariak/411 property filed a miscellaneous suit at the Machakos High Court being Miscellaneous cause No 116 of 2012 Machakos seeking orders against the plaintiff arising from the breach on payment of the balance of the purchase price.



- vi. It is the plaintiff's contention that Kajiando/Looariak /411 has since appreciated in value so much so that an acre currently fetches upwards of Kshs. 1 million per acre based on the latest valuation of properties in Tinga Town, Kajiando County.
 - vii. The plaintiff further contends that he invested at about the same time Kshs 2 million in 100 Acres of land in the same locality. The said land now fetches upwards of Kshs 30 million.
 - viii. It is the defendant's contention that had the plaintiff honored his commitment to the plaintiff the plaintiff would have invested the money in Kajiando /Loodariak/411 property and would have retained balance for further investment.
 - ix. The plaintiff thus contends that the defendant's attempts to hatch a fraudulent and false narrative on the circumstances of surrender of the suit property to the plaintiff adds salt to injury, is in bad taste and unconscionable. The plaintiff thus prays for general and exemplary damages for loss of investment opportunities arising from the Defendant's breach of agreement.
 - x. The plaintiff received offer of upwards of Kshs 250,000 per acre for Kajiando/Loodariak/411 from various interested purchasers.
15. The plaintiff prays for an order directing the Land Registrar to cause a transfer of LR No Nakuru/Temoyetta/93 plaintiff, Nelson Muturi Dumbeyia. General, special & exemplary damages for lost investment opportunity in LR No Kajiando/Loodariak/411 arising from the defendant's breach of agreement. Any other or further relief that this honorable Court may deem fit and just to grant. Costs of the suit and interest on damages and costs
 16. The defendant was served but failed to enter appearance and or file defence hence all allegations by the plaintiff in the plaint are deemed to be admitted by the defendant. The plaintiff's testimony during hearing was not controverted. This court finds that the plaintiff's statement dated November 23, 2016 and adopted by the Court on March 7, 2023 as the plaintiff's evidence in chief is not controverted. The plaintiff has proved his case on a balance of probabilities and therefore he is entitled to the orders sought in the plaint amended at Nairobi on the June 24, 2022 and filed in the court on June 27, 2022.
 17. The upshot of the above is that the court grants an order directing the Land Registrar Nakuru to cause transfer of LR No Nakuru/Temoyetta/93 to the plaintiffs, Nelson Muturi Dumbeyia/93. I do decline to grant general damages special damages because they were not properly pleaded and proved. I do grant exemplary damages of Kshs 1,000,000/=. Costs of the suit to the plaintiff.

JUDGEMENT, DATED, SIGNED AND DELIVERED VIA EMAIL AT NAKURU THIS 23RD DAY OF MARCH 2023.

A O OMBWAYO

JUDGE

