



**Njoroge v Maina (Environment & Land Case 239 of 2017)
[2023] KEELC 20293 (KLR) (28 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20293 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 239 OF 2017
OA ANGOTE, J
SEPTEMBER 28, 2023**

BETWEEN

MARGARET NJOKI NJOROGE PLAINTIFF

AND

ERNEST MUNENE MAINA DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit vide a Plaint dated 6th April 2017. When this matter came up for hearing on 5th October 2021, the Plaintiff's suit was dismissed due to the Plaintiff's non-attendance and for want of prosecution. The dismissal of the Plaintiff's suit was upheld by this court in a Ruling dated 18th May 2023.
2. What remains for the determination of this court is the Defendant's Counterclaim, filed alongside the Defence on 5th May 2017? The Defendant averred in the Counter claim that he bought portion No. B of LR No.4891/345, now LR No. 4879/479 (the suit land) vide an Agreement for Sale dated 4th November 2015 between himself and the Plaintiff and her husband, Samuel Njoroge Thagichu.
3. According to the Defendant, the suit property was purchased for a consideration of Kshs. 14 million, which he paid to the Plaintiff and her husband, save for the balance of Kshs. 3,805,950 which sum is in the custody of his Advocates.
4. The Defendant averred that upon successful subdivision of L.R. No. 4894/345, a certificate of subdivision was issued for L.R. No. 4894/479. However, despite him fulfilling all the terms and conditions of the sale agreement, the Plaintiff has refused, declined or failed to sign the transfer on her part. Further, it was averred, despite being ready, able and willing to complete the sale, the Plaintiff has purported to issue a notice rescinding the sale of the suit property. The Defendant asserts that the Plaintiff has failed to disclose the reasons for the purported rescission, which was issued belatedly on 10th April 2017.



5. The Defendant averred that he is apprehensive that the completion documents are still held by the Plaintiff's Advocates M/S Lydia Gitaka & Co Advocates, through a professional undertaking; that he may suffer should the documents leave the hands of the advocates and that the Plaintiff has purported to give notice to refund the deposit paid.
6. The Defendant averred in the Counter claim that he is entitled to specific performance of the sale agreement and that he is not interested in refund of the monies paid to the Plaintiff which is in excess of Kshs. 10 million.
7. The Defendant has sought for the following reliefs in his Counterclaim:
 - a. An order declaring that the purported notice issued by the Plaintiff rescinding the Agreement for sale in respect of L.R. No. 4894/479 is illegal and unlawful.
 - b. A permanent injunction be issued restraining the Plaintiff, either by herself, her servants and/or agents, representative and/or assign and/or whomsoever acting on her behalf from selling, trespassing, alienating, entering into or in any other way taking possession of any part of that land known as L.R. No. 4894/479- Garden Estate 77.
 - c. The Defendant be granted an order of vacant possession in respect of L.R. No. 4894/479- Garden Estate 77.
 - d. An order do issue compelling the Plaintiff to sign the transfer documents in respect of L.R. No. 4897/479- Garden Estate in favour of the Defendant within the period which the court shall specify.
 - e. In default of (iv) above, the Honourable Court do authorize the Deputy Registrar High Court to execute the transfer document and/or all the other necessary and/ or relevant documents in respect of L.R. No. 4894/479- Garden Estate 77 in favour of the Defendant.
 - f. An order directing the Plaintiff to accept the balance of the purchase price in the sum of Kshs. 3,805,950/-.
 - g. Costs of the suit to be borne by the Plaintiff.
 - h. Any other relief as this Honourable Court may deem fit and just to grant.
8. In her Reply to the Counterclaim filed on 17th May 2017, the Plaintiff denied all assertions, averments and allegations made therein and put the Defendant to strict proof. The Plaintiff averred that she is under no obligation to execute the transfer since she has rescinded the sale agreement.
9. The Plaintiff further averred that the Defendant has not complied fully with the provisions of the sale agreement and that upon the refund of the deposit to the Defendant, the professional undertaking given to him and or his advocate Lydia Gitaka Advocate will automatically be spent.
10. The Plaintiff averred that the notice issued rescinding the sale was made properly and in accordance with the express provisions of the sale agreement in question without any malice at all and that the issue of specific performance does not arise as the sale agreement has been rescinded and there is nothing to perform.

Hearing & Evidence

11. The Defendant, DW1, relied on his written statement dated 5th May 2017. In his statement, he stated that according to the sale agreement between himself and the Plaintiff and her husband, the completion date was ninety (90) days from date of the execution of the Sale Agreement.



12. DW1 testified that the Plaintiff and her husband were selling a portion of their property to save their matrimonial property from being sold by M/S Leakeys Auctioneers having defaulted in their mortgage repayment to the Standard Chartered Bank (K) Ltd and that the Plaintiff showed him copies of letters written to the Nairobi City County seeking approval to sub-divide L.R. No. 4894/345 into two portions.
13. DW1 stated that he was also shown a redemption notice and a notification for sale showing that the suit property was due for sale by public auction on 10th November 2015; that the Plaintiff's advocates drew up a sale agreement for Portion B, which was to be excised from L.R. No. 4894/345 and that upon execution of the sale agreement, he paid the purchase price to enable the public auction to be called off.
14. It was the evidence of DW1 that Kshs. 9,000,000 was paid to Standard Chartered Bank (K) Ltd being the outstanding loan balance; Kshs. 300,000 to Leakey Auctioneers being their charges; Kshs. 60,000 to COG Consultant Ltd the Valuer and Kshs. 179,800 to M/S Muchemi-Oyata & Co. Advocates being their legal charges.
15. DW1 stated that upon payment of the redemption amounts, Standard Chartered Bank, through their lawyers, forwarded all security documents to the Plaintiff's lawyers, pending approval of sub-division of the suit property and the subsequent sub-division of the same into portions A and B.
16. According to DW1, as soon as the loan, auctioneers, legal and valuation charges were paid, the Plaintiff and her husband appeared to be in no hurry to conclude the Agreement for Sale; that the Plaintiff's advocates M/S Koceyo & Co. Advocates expressed frustration, and that in one of the letters, they stated that from the date of execution of the Agreement dated 4th November 2018, the Plaintiff and her husband were no longer in communication with him.
17. DW1 deposed that he additionally paid Kshs. 50,000 to the Plaintiff's advocates as legal fees on behalf of the Plaintiff and her husband; that he advanced KShs. 620,000 to the Plaintiff and her husband to pay off the rates arrears with the Nairobi City County and that it was agreed that the same would offset the balance of the purchase price.
18. Moreover, it was stated by the Defendant that he paid Kshs. 20,000 to facilitate registration of the subdivision plans, upon learning from the Plaintiff's advocates that the Plaintiff and her husband were unwilling to pay the said amount.
19. DW1 gave testimony that in February 2017, the Plaintiff's Advocates submitted to his advocates a conveyance to the suit property, registered as LR No. 4894/479; that his advocates immediately approved the same and forwarded it back to the Plaintiff's advocates for the Plaintiff and her husband's execution and that while the Plaintiff's husband executed the conveyance, the Plaintiff failed to execute the same, despite a seven day notice of completion being issued by his Advocate.
20. DW1 stated that on 29th March 2017, having received no transfer, he instructed his advocates to inform the Plaintiff's advocates that he would be taking possession of Plot B of LR No. 4894/479; that he took possession of said plot on 30th March 2017 and began fencing off the land using iron sheets and that in the process of erecting a gate, the Plaintiff and the OCS Kasarani Police Station came to the land and that the OCS requested the Plaintiff and himself to accompany her to the police station, where the Plaintiff promised to sign the transfer upon conducting a search to confirm the subdivision.
21. It was the evidence of DW1 that he later learnt that the Plaintiff had caused his fence to be brought down; that despite the Plaintiff's promise to submit the transfer on 10th April 2017, the Plaintiff issued the Defendant a notice purporting to rescind the agreement, which was dated 5th March 2017 but



delivered on 10th April 2017 and that the Plaintiff was buying time as she prepared to file this suit on 7th April 2017.

22. It was DW1's assertion that he is not interested in the refund of the money paid but is seeking specific performance of the contract; that this court ought to compel the Plaintiff to execute the transfer on her part failing which the Deputy Registrar does execute the same as well as all other relevant documents to ensure that the property vests in his name and that the balance of Kshs. 3.8 million has been with his advocates since November 2016 and can be deposited in court, or as the court shall direct.
23. In cross-examination, DW1 stated that he was to take possession of the suit property upon completion of the payment of the purchase process; that he completed the same and he gave his advocates all monies; that his advocate gave an undertaking to release the said money and that the Plaintiff has not given him the completion documents.
24. DW1 stated that the agreement did not have an exit clause; that they have never had a conflict with the Plaintiff regarding the plot and that he visited the suit property with the intention of clearing the land, which the Plaintiff was not happy about.

Submissions

25. Counsel for the Defendant submitted that the Defendant did all he could do facilitate the completion of the sale agreement, whereas the Plaintiff was using any excuse not to complete the same and that the purported rescission was served three days after this suit was filed on 7th April 2017, on 10th April 2017, and backdated to 5th March 2017 although the Plaintiff alleged in the Plaint that the agreement had been rescinded at the time of filing this suit.
26. Counsel submitted that under clause 24 of the Sale Agreement, if the purchaser was in default, the vendor was to issue a notice specifying the default and requiring the purchaser to remedy the same; that the Plaintiff has not demonstrated the Defendant's breach and that the termination notice issued on 10th April 2017 was mischievous and unlawful as it was issued after this suit was filed.
27. Counsel for the Plaintiff filed submissions dated 7th December 2021. Counsel submitted that the notice to rescind the agreement was valid; that under the sale agreement, the parties were entitled to rescind the agreement in the event of breach by either party, and that such right could be exercised at any time before completion.
28. The Plaintiff's Counsel submitted that the element of consensus ad idem applies not only at the initial stage of the agreement, but through the full course of the transaction until completion; that the consensus between the parties herein was negated by the actions of breach on the Defendant's part and that these actions include the Defendant's attempts to forcefully take possession of the suit property before completion.
29. Counsel for the Plaintiff submitted that the Defendant is seeking to benefit from their own breach by seeking possession of the land; that specific performance is an equitable remedy, which the Defendant does not deserve as his hands are soiled by his actions of breach and further, that the Defendant is not entitled to damages or to be awarded costs.

Analysis and Determination

30. Having considered the pleadings, the evidence and submissions by the parties herein, the issues for determination before this court are as follows:
 - a. Whether the Plaintiff lawfully issued the notice to rescind the agreement for sale.



- b. Whether an order for specific performance should issue.
31. The undisputed facts in this suit are that the parties entered into a sale agreement dated 4th November 2015, where the Plaintiff and her husband agreed to sell to the Defendant a portion of LR No.4891/345 portion No. B (now LR No. 4879/479 (the suit land) for a consideration of Kshs. 14,000,000.
 32. The circumstances under which the Plaintiff and her husband sold the suit property are additionally not disputed. According to the evidence, the latter had defaulted in their mortgage payments to Standard Chartered Bank (K) Ltd and the suit land was set to be auctioned on 10th November 2015 by Leakey's Auctioneers.
 33. However, the bank agreed that a portion of the charged property could be sold by the Plaintiff to offset the money that was due and owing. Consequently, the Plaintiff and the Defendant executed the sale agreement on 4th November 2015. It was agreed that out of the consideration of Kshs. 14 million, Kshs. 9 million would be paid to Standard Chartered Bank as well as the auctioneer's fees, valuation fees and legal fees. The parties further agreed that the balance of Kshs 3 million would be paid upon the successful registration and transfer of the subdivided Plot No. B of LR No.4891/345 in favour of the Defendant.
 34. Indeed, the Defendant paid a total of Kshs. 9,539,800 between 9th and 10th November 2015. This is evidenced by copies of the following cheques in the Defendant's Bundle of Documents: Kshs 9 million to Standard Chartered Bank, Kshs. 300,000 to Leakey' Auctioneers, Kshs. 60,000 to COG Consultants as valuer's fees and Kshs. 179,800 to Gacheru-Oyatta & Associates Advocates as legal charges.
 35. The Defendant also stated that he paid KShs. 620,000 towards payment of rates to the Nairobi City County directly to the Plaintiff and her husband. The Plaintiff has not challenged the validity of these payments.
 36. It is further an accepted fact that the Plaintiff's Advocate is holding the completion documents in a professional undertaking and that the Defendant's advocates are holding KShs. 3,880,950, pending the conclusion of this transaction.
 37. The Defendant has adduced correspondence between the parties' advocates, which indicates that the Plaintiff's Counsel sought the release of the Discharge of Charge and the original title documents from the Defendant's Counsel. This was on the condition that the Plaintiff's counsel would give a professional undertaking to hold these documents in trust, pending release to the Defendant of the completion documents.
 38. True to their word, the Plaintiff's Counsel only used the documents for purposes of the Discharge of Charge and to register the subdivisions.
 39. The Plaintiff's Counsel confirmed vide the letter dated 21st December 2016 that the subdivisions had been registered. They simultaneously sought a conveyance for execution, which the Defendant's advocate sent on 26th January 2017. The Defendant executed the conveyance and forwarded the same to the Plaintiff's counsel vide the letter dated 17th February 2017. The Plaintiff however failed to execute the same, and the Defendant thereafter issued a 7 days' notice of completion on 16th March 2017.
 40. On 29th March 2017, having received not received the executed transfer from the Plaintiff, the Defendant opted to issue a notice to the Plaintiff's Advocates that he would be taking possession of



the suit property on 30th March 2017. Indeed, on that day, the Defendant admits that he entered the suit property in the company of some youths who proceeded to erect an iron sheet fence.

41. It is clear that a valid contract exists between the parties. The Defendant has attached the sale agreement dated 4th November 2015 in his bundle of documents. The agreement identified the suit property, set out the consideration for the sale and was duly executed by the parties in the presence of witnesses. The agreement satisfies the conditions set out in Section 3(3) of the Law of Contract Act:

42. It is trite that a court cannot re-write a contract between parties. Parties are thereby bound by the terms therein. The role of this court is therefore to interpret the terms of the contract. This is in accordance with the Court of Appeal's decision in National Bank of Kenya Ltd vs Pipeplastic Samkolit (K) Ltd & another [2001] eKLR where it was held as follows:

“A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge.

As was stated by Shah JA in the case of Fina Bank Limited vs Spares & Industries Limited (Civil Appeal No 51 of 2000) (unreported):

“It is clear beyond peradventure that save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity's function to allow a party to escape from a bad bargain.”

43. The subject matter agreement stipulates in Clause 24 that in the instance of the purchaser's failure to comply with the terms of the contract, the vendor shall issue a 7 days' notice specifying the default and requiring the purchaser to remedy the same before expiration of the notice.

44. It is only upon the purchaser's failure to comply with the notice that the vendor may rescind the agreement and refund the balance without interest. The agreement provides as follows:

“If the purchaser fails to comply with any of the conditions hereof or the condition subject to which this sale is made including the condition relating to the completion of the sale the Vendors shall give to the Purchaser at least seven (7) days' notice in writing confirming the Vendor's readiness to complete the sale in all respect and specifying the default and requiring the Purchaser to remedy the same before the expiration of such notice AND if the Purchaser shall fail to comply with such notice the Vendor's remedy shall be to rescind this Agreement, and refund the balance without interest less 10% of the Purchase Price which shall be forfeited by the Purchaser being the Agreed liquidated damages.”

45. Clause 25 of the Agreement further states that should the vendor fail to comply, the purchaser is to issue a 7 days' notice to comply with their obligations and may thereafter rescind the agreement. In this case, the Plaintiff issued a notice to rescind the agreement dated 5th March 2017 and delivered on 10th April 2017. In the notice, the Plaintiff stated as follows:

“That due to the continuous stress that your client has put Margaret Njoki Njoroge through since execution of the agreement in 2015, and more especially the threats and abuses that your client hurled to her person in the past, she has decided to rescind the agreement.”

46. The evidence adduced by the Defendant portrays the Plaintiff as a party that eagerly entered into a contract to escape the auction of their property. However, once the said threat was staved off with the



Defendant fulfilling his part of the bargain, the Plaintiff quickly became disinterested in meeting her end of the deal.

47. This is apparent from the failure to issue a 7-day notice of default by the Plaintiff before they purported to rescind the contract. Moreover, the correspondence between the parties' advocates as well as the text messages between the Defendant, the Plaintiff and her husband shows that the Plaintiff lost interest in the transaction and had no intention of completing the same.
48. In the case of *Eldo City Ltd vs Corn Products Kenya Ltd & Another* (2013) eKLR the court held as follows:

“In my view, to uphold the position where a party can pull out of a transaction when the parties are already at consensus ad idem, will not be prudent in the world of economics. To my mind, that freedom should be limited up to the point the parties are still negotiating. Once all terms have been agreed and settled, that freedom should dissipate. Otherwise mischievous parties with no intention of selling their merchandise may engage serious purchasers in a wild goose chase knowing very well that they can pull out at any stage. I think this is not to be encouraged.”

49. The Plaintiff's Counsel submitted that the principle of consensus ad idem is not limited to the initial stages of the agreement, but through the full course of the transaction until completion. Such an interpretation would wreak havoc to transactions, and is an absurd observation by Counsel.
50. Contrary to the Plaintiff's Counsel's claim, once parties are at consensus ad idem, a contract becomes binding. Any conduct of a party that disrupts the completion of a contract constitutes breach of contract. The consequence of such breach is not to rescind the contract ab initio. Rather, a cause of action arises and an innocent party may claim for damages as a secondary obligation.
51. This position was taken by the Court of Appeal in *Mwangi vs Kiiru* [1987] eKLR, wherein it cited Chitty on Contracts, 25th Edition, volume one, paragraph 1591 on page 876, on Discharge by Breach as follows:

“One party to a contract may, by reason of the other's breach be entitled to treat himself as discharged from liability further to perform his own unperformed obligations under the contract..... The rule is usually stated as follows: Any breach of contract gives rise to a cause of action; not every breach gives a discharge from liability. Thus the questionis whether a party who admittedly has a claim for damages is relieved from further performance by the other party's breach. Secondly although sometimes the innocent party is referred to as “rescinding” the contract and the contract as being “terminated” by the breach, it is clear that the contract is not rescinded ab initio. The innocent party or in some cases both parties are excused from further performance of their primary obligations under the contract; but there is then substituted for the primary obligations of the party in default a secondary obligation to pay monetary compensation for his non performance.”

What are the consequences of such failure? Paragraph 1629 on page 897 of the same book says it may in particular cases be correct to speak of the exercise by one party of his right to treat himself as discharged as a “rescission” of the contract. However

“the fuller expression that the injured party is thereby absolved from future performance of his obligations under the contract is a more exact description of the position. Moreover, in principle, only those primary obligations falling due



after the date of discharge will come to an end; those which have accrued due at that time may still be enforceable as such.”

It would follow from the passages above that the material contract was not rescinded, that the parties were not restored to their positions ante the contract but that the contract remains in existence, future obligations come to an end giving way to new or additional remedies. The respondent was entitled to treat himself as discharged from further liability by such failure. That does not apply to the appellant, who is the party in default in the action. Paragraph 1631 of Chitty on page 900 states:

“Upon discharge the primary obligations of the party in default to perform any of the promises made by him and remaining unperformed come to an end as does his right to perform them. But for his primary obligations there is substituted by operation of law a secondary obligation to pay to the other party a sum of money to compensate him for the loss he has sustained as a result of the failure to perform the unperformed primary obligation.”

52. It is not disputed that a valid agreement existed between the parties. It is doubtless that there was a meeting of the mind with respect to the terms of the contract. However, after the contract commenced, there appeared to be a slowing down by the Plaintiff due to lack of interest in the transaction.
53. The Plaintiff has given no reason for the continued delay for more than two years in completing the transaction. It is thereby clear that the Plaintiff’s conduct frustrated the completion of the agreement even before the Defendant’s impugned actions in the year 2017.
54. The upshot is that the notice issued by the Plaintiff purporting to rescind the Sale Agreement was not lawfully issued. The Sale Agreement between the parties therefore is still valid and in existence.
55. The relief of Specific Performance is an equitable relief. In *Amina Abdulkadir Hawa vs Rabinder Nath Anand & Another* [2012] eKLR, the court cited Chitty on Contracts, 28th Edition (Sweet & Maxwell, 1999), Chapter 28 paragraphs 027 and 028 where the authors stated as follows:

“Specific performance is a discretionary remedy. It may be refused although the contract is binding at law and cannot be impeached on some specific equitable ground (such as undue influence) although damages are not an adequate remedy and although the contract does not fall within group of contracts discussed above which will not be specifically enforced. But the discretion to refuse specific performance is not arbitrary discretion but one to be governed as far as possible by fixed rules and principles.....specific performance may be refused on the ground that the order will cause severe hardship to the Defendant where the cost of performance to the Defendant is wholly out of proportion to the benefit which performance will confer on the claimant and where the Defendant can put himself into a position to perform by taking legal proceedings against the third party.....severe hardship may be a ground for refusing specific performance even though it results from circumstance which arise after the conclusion of the contract which effect the person of the Defendant rather than the subject matter of the contract and for which the claimant is in no way responsible.”



56. In *Gurdev Singh Birdi and Marinder Singh Ghatora vs Abubakar Madhubuti* CA No.165 of 1996 it was held that:

“...It cannot be gainsaid that the underlying principle in granting the equitable relief of specific performance has always been that under all the obtaining circumstances in the particular case, it is just and equitable so to do with a view to doing more perfect and complete justice. Indeed...a plaintiff must show that he has performed all the terms of the contract which he has undertaken to perform, whether expressly or by implication, and which he ought to have performed at the date of the writ in the action.”

57. In *Reliable Electrical Engineers Ltd. vs Mantrac Kenya Limited* (2006) eKLR, the court stated that: -

“Specific performance like any other equitable remedy is discretionary and the Court will only grant it on well principles”

“The Jurisdiction of specific performance is based on the existence of a valid enforceable contract. It will not be ordered if the contract suffers from some defect, such as failure to comply with the formal requirements or mistake or illegality, which makes the contract invalid or enforceable. Even when a contract is valid and enforceable, specific performance will however not be ordered where there is an adequate alternative remedy. In this respect damages are considered to be an adequate alternative remedy where the claimant can readily get the equivalent of what he contracted for from another source. Even when damages an adequate remedy specific performance may still be refused on the ground of undue influenced or where it will cause severe hardship to the defendant.”

58. Similarly, in *Thrift Homes Ltd vs Kenya Investment Ltd* 2015) eKLR, quoted with approval by the Court of Appeal in the case of *Benard Ng’ang’a Ndirangu vs Samuel Wainaina Tiras* [2019] eKLR, the court stated that:

“specific performance like any other equitable remedy is discretionary and will be granted on well settled principles. The jurisdiction of specific performance is based on the existence of a valid enforceable contract and will not be ordered if the contract suffers from some defects or mistake or illegality. Even where a contract is valid and enforceable, specific performance will not be ordered where there is an adequate alternative remedy. The court then posed the question as to whether the Plaintiff who was seeking specific performance in that case had shown that he was ready and able to complete the transaction.”

59. In this suit, it has already been established that a valid contract exists between the parties. As to the conduct of the Defendant, the facts and evidence elucidated in detail above disclose that he performed all the terms of the contract which he undertook to perform, up and till the point that the Plaintiff was expected to execute the transfer documents in his favor.

60. As the parties had contracted that the balance of the purchase price would be paid upon registration of the title in the Defendant’s favor, the sum of Kshs. 3,805,950 has remained in the custody of the Defendant’s Advocate. Moreover, this court cannot find that any undue hardship would befall upon the Plaintiff should this court order for specific performance.

61. The conduct of the Plaintiff in this transaction has indeed been wily and unethical. The said conduct does not sway this court to exercise its discretion in her favour. As was held in the case of *Bir Singh*



vs Parmar (1971) EA 209, as quoted in Simon Wahome Wachihv Iriaini Tea Factory Ltd & 2 others [2021] eKLR:

“The equitable principle that ‘a person must come to court of equity with clean hands’ means that he who approaches a court of equity must fulfill all or substantially all his outstanding obligations before insisting on their rights; the obligation to be fulfilled by the plaintiff must be owed to the defendant and it must be related to the obligation sought to be enforced; the conduct of the plaintiff is judged in relation to the relief”

62. This court therefore finds that the Defendant’s counter claim for specific performance should be allowed.
63. For those reasons, the Defendant’s counter claim is allowed as follows:
- a. An order be and is hereby issued declaring that the purported notice issued by the Plaintiff rescinding the Agreement for Sale in respect of L.R. No. 4894/479 is illegal and unlawful.
 - b. A permanent injunction be and is hereby issued restraining the Plaintiff, either by herself, her servants and/or agents, representative and/or assign and/or whomsoever acting on her behalf from selling, trespassing, alienating, entering into or in any other way taking possession of any part of that land known as L.R. No. 4894/479- Garden Estate 77.
 - c. The Defendant be and is hereby granted an order of vacant possession in respect of L.R. No. 4894/479- Garden Estate 77.
 - d. An order be and is hereby issued compelling the Plaintiff to sign the transfer documents in respect of L.R. No. 4897/479- Garden Estate in favour of the Defendant within 30 days of this judgement.
 - e. An order be and is hereby issued that should the Plaintiff fail to execute the transfer documents within 30 days, the Deputy Registrar of this court to execute the transfer document and/or all the other necessary and/ or relevant documents in respect of L.R. No. 4894/479- Garden Estate 77 in favour of the Defendant.
 - f. Costs of the suit to be borne by the Plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI ON 28TH DAY OF SEPTEMBER, 2023.

O. A. ANGOTE

JUDGE

