



Champion Kenya Limited & another v Agricultural Finance Corporation Limited (Environment & Land Case 29 of 2018) [2023] KEELC 19985 (KLR) (20 September 2023) (Judgment)

Neutral citation: [2023] KEELC 19985 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 29 OF 2018
MN GICHERU, J
SEPTEMBER 20, 2023**

BETWEEN

CHAMPION KENYA LIMITED 1ST PLAINTIFF

WESLEY J. KAMAU 2ND PLAINTIFF

AND

AGRICULTURAL FINANCE CORPORATION LIMITED DEFENDANT

JUDGMENT

1. The first Plaintiff seeks the following reliefs against the Defendant.
 - a. A declaration that a binding contract of sale of L R Loitoktok/Olkaria/550 came into effect as of 1st December 2010 between the first Plaintiff and the Defendant.
 - b. An order that the Defendant do execute a formal sale agreement in terms of its letter of November 22, 2010 pertaining to the suit land.
 - c. An injunction restraining the Defendant from transferring, disposing, alienating or in any manner parting with possession of the suit land pending the hearing and determination of this suit.In the alternative the without prejudice to prayers (a) and (b) above;
 - d. Judgment be entered in favour of the first Plaintiff against the Defendant for breach of contract for the sale for the suit land.
 - e. An order that the Defendant refunds to the 1st Plaintiff Kshs 3, 750, 000/- with interest at bank rates (23% p.a.) from November 2010 and continuing (lost interest is Kshs 6, 037, 500/-, Kshs 9, 775,000 as at 2016 February 2022) making a total of Kshs 9, 787, 500/-, Kshs 13, 525.00.



- f. Damages for breach of contract of sale of the suit land as shall be assessed and awarded by the court.
- g. Costs of this suit.
- h. Interest on (f) above at Bank/commercial rates from the date of filing of this suit and on (e) above at court rates from the date of judgment till payment in full.

This is as per the further amended plaint dated February 22, 2022.

- 2. The second Plaintiff seeks the following reliefs against the Defendant.
 - a. A declaration that a binding contract of sale of L R /Loitoktok/Okaria/550, suit land, came into effect as of 1/12/2010 between the 1st Plaintiff and the Defendant.
 - b. An order that the Defendant do execute a formal sale agreement in terms of its letter of November 22, 2010 pertaining to the suit land.
 - c. An injunction restraining the Defendant from transferring, disposing, alienating, or in any manner parting with possession of the suit land pending the hearing and determination of this suit.

In the alternative and without prejudice to prayers (a) and (b) above.

- d. Judgment be entered in favour of the Plaintiffs against the Defendants for breach of sale of the suit land.
 - e. Damages.
 - f. Damages for breach of contract of rule of the suit land, as shall be awarded by the court.
 - g. Special damages in the sum of Kshs 430, 287,500/-.
 - h. Cost of the suit.
 - i. Interest on (f) above at bank/commercial rates from the date of filing of this suit on (e) and (g) above at court rates from the date of judgment, till payment in full.
- 3. Originally, the two Plaintiffs had a joint plaint dated December 20, 2012. Their differences became clear when the first Plaintiff filed a further amended plaint dated February 22, 2022.
 - 4. The Plaintiffs' case is as follows. The Defendant is the registered owner of the suit land, which measures 159.4 hectares or 393.8 acres. On November 19, 2010 the first Plaintiff delivered a letter of intent to purchase the suit property for Kshs. 15 million. This came after the Plaintiffs received information that the Defendant had invited bid from interested buyers.
 - 5. On November 22, 2010, the Defendant offered to sell the suit land to the first Plaintiff at a price of Kshs 15 million. The first Plaintiff accepted the offer on November 26, 2010 and signed a copy of the letter of offer to signify such acceptance. He delivered the acceptance to the Defendant on November 29, 2010. The offer required the Plaintiff to deposit 25% of the purchase price within 14 days. The second Plaintiff paid the deposit which amounted to Ksh 3, 750, 500/- to the Defendant's Account No 010010xxxx at National Bank of Kenya, Harambee Avenue Branch on December 1, 2010 through Real Time Gross Settlement from his account at Paramount Bank.
 - 6. It was agreed between the Plaintiffs and the Defendant that the Defendant would prepare and deliver a sale agreement. While waiting for the sale agreement, the Plaintiffs received a letter dated July 4, 2011 which said that the offer to purchase the suit land had been cancelled for failure to meet the terms of



the said offer. The letter which was from the Defendant reached the Plaintiffs on July 29, 2011. This letter referred to an earlier letter dated April 4, 2011 allegedly sent by the Defendant to the Plaintiffs which the Plaintiffs say that they never received.

7. The parties met several times but the Defendant would not budge. Instead on December 15, 2011, the Defendant made a fresh offer to the first Plaintiff to purchase the suit land for Kshs 30,000,000/-. The Plaintiffs did not accept this second offer because it is the Defendant who breached the agreement by failure to prepare the sale agreement as expected.
8. It is the Plaintiffs case that had the Defendants not breached the agreement they would have cultivated sandalwood which is abundant in the area. They would then have sought for and obtained a licence for sandalwood exploitation. The suit land is suitable for such farming as it abuts two natural all seasonal rivers flowing from Mount Kilimanjaro. Other farming activities that the plaintiffs would have engaged in include horticultural sunflower and cash crops production. Between 2011 and 2016, the Plaintiffs would have made profits of 70,000,000/- per annum. This amounts to Kshs 420 million.

Had the Defendant prepared the sale agreement in good time, the second Plaintiff would have paid the balance of the purchase price as he had sold his house at Runda Estate for Kshs 38 million. The first Plaintiff generally associates itself with the foregoing averments. There are however two points of departure. The first one is that it was the purchaser of the suit land and the second Plaintiff was only its advocate and not its principal. Secondly, it is the first Plaintiff and not the second which paid the deposit to the Defendant.

9. In support of their case the Plaintiffs filed the following evidence.
 - i. Witness statements by John Mutwiri, Director, Champion Kenya Limited and Wesley J Kamau.
 - ii. Copy of letter by first Plaintiff dated November 19, 2010 accepting the offer to buy the suit land.
 - iii. Copy of letter of offer by the Defendant dated November 22, 2010.
 - iv. Copy of the Defendant's account details addressed to the first Plaintiff and dated November 29, 2010.
 - v. Copy of receipt for Kshs 3, 750,000/- issued by the Defendant to the first Plaintiff.
 - vi. Copy of local electronic funds transfer application form dated December 1, 2010.
 - vii. Copy of mutation form for L R LTK/OLKARIA/326 which gave rise to the suit land and L R. 551.
 - viii. Copy of the Defendant's letter dated December 21, 2011.
 - ix. Copy of valuation report dated May 4, 2017 giving the value of the suit land as Kshs 126,000,000/-.
 - x. Copy of master plan for the suit land dated December 2010.
 - xi. Copy of invoice dated December 30, 2021 by Amazon Valuers.
 - xii. Copy of sale agreement for L R 209/7785/73 Runda Nairobi.
 - xiii. Copy of petty cash voucher for Kshs 1, 100, 000/- dated December 1, 2010 signed by John Mutwiri for the first Plaintiff.



- xiv. An acknowledgment by John Mutwiri, director, Champion Kenyan Limited of receipt of Kshs 3, 750,000/- from the second Plaintiff.
10. In its written statement of defence to amended plaint; the Defendant denies that it breached any part of the agreement and avers that in the letter of offer, it was an express term of the offer that the balance of purchase price was to be paid within 90 days from the date of offer, which period was deemed to be the completion period between the 1st Plaintiff and the defendant.
11. Secondly, the Defendant avers that the preparation and/or delivery of the agreement to purchase the suit land was a condition precedent to the payment of the balance of the purchase price of Kshs 11,250,000/-.
12. Thirdly, the Defendant contends that in December, 2010, John Mutwiri was summoned to the Defendant's offices to execute the agreement for sale of the suit land but he said he could not do so as its officers were outside the Country and the first Plaintiff could not raise the balance of the purchase price.
13. Fourthly, when the time to pay the balance of the purchase price lapsed, the Defendant invoked clause 2 of the letter of offer and accordingly communicated to the 1st Plaintiff vide a letter dated April 4, 2011 which was dispatched through the last know postal address of the first Plaintiff.
14. Fifthly, it was verbally agreed that the Plaintiff would be given an extension of two months to pay the outstanding balance. When the first Plaintiff failed to pay the balance even after the extension of time, it was agreed that he would be given a fresh offer since the initial one had lapsed.
15. Finally, the Defendant blames the Plaintiff for laches and indolence from which they should not be allowed to benefit. It denies all the particulars of damages pleaded by the Plaintiffs and calls for the dismissal of their claim with costs.
16. In support of its case, the Defendant filed the following evidence.
- i. Copy of title deed for the suit land.
 - ii. Copy of undated and unexecuted agreement for sale of suit land between it and the first Plaintiff.
 - iii. Copy of letter dated April 4, 2011 informing the first Defendant of lapse of offer to purchase the suit land.
 - iv. Copy of letter dated July 4, 2011 cancelling the sale of the suit land.
 - v. Copy of register for outgoing mail.
 - vi. Copy of letter of offer issued by the Defendant to Kapiti Dairies Limited dated November 6, 2012 offering to sell the suit land.
 - vii. Copy of certificate of official search for the suit land dated February 3, 2013.
 - viii. Copy of the Law Society of Kenya Conditions of Sale.
 - ix. Other documents similar to those filed by the Plaintiff.
17. At the trial, it is only the Plaintiffs and their witnesses who testified. They were cross-examined after adducing oral evidence and producing documentary evidence. The Defendant did not call any witness even though it was given ample opportunity of doing so.



18. Counsel for the parties filed written submissions on May 30, 2013 (2nd plaintiff), July 28, 2023 (defendant) and August 1, 2023 (1st Plaintiff). The Defendant identified the following issues for determination.
 - i. Whether this court has jurisdiction in this matter.
 - ii. Whether there was any valid agreement between the Plaintiffs and the Defendant.
 - iii. Whether the Plaintiffs have established any cause of action against the Defendant.
 - iv. Whether the Plaintiffs are entitled to the prayers sought.
19. Counsel for the first Plaintiff identified the following issues.
 - a. Whether the Defendant should refund the deposit to the first Plaintiff.
 - b. Whether the refund in (a) above should be made with interest at bank rates from November 2010.
 - c. Whether the 2nd Plaintiff is entitled to the refund and interest payable to the 1st Plaintiff.
 - d. Who shall pay the costs of the suit.
20. The second Plaintiff identified the following issues for determination.
 - i. Whether this court has jurisdiction to hear this suit.
 - ii. What was the relationship between the 1st and the 2nd Plaintiffs during the process of purchase of the suit land.
 - iii. Whether there was a binding contract of sale of the suit land that came into effect on December 1, 2010 between the 1st Plaintiff and the Defendant.
 - iv. Whether the Defendant breached the said contract of sale of the suit land.
 - v. Whether the Plaintiffs are entitled to damages for breach of the contract for sale of the suit land.
 - vi. Who bears the costs and interest of this suit.
21. I have carefully considered all the evidence adduced in this case by all the parties including the witness statements, documents and the oral testimony at the trial. I have also considered the submissions by the learned counsel for the parties including the issues raised therein and the law cited. I make the following findings on the issues raised.

Firstly, on jurisdiction, I find that this court had the requisite jurisdiction to entertain the suit. A look at the plaints will show that both Plaintiffs are asking for a declaration that there was a valid agreement for the sale of the suit land and that a formal agreement be executed so that they may have title to the suit land. In short, they are seeking to use, occupy and gain title to the suit land. What they seek is at the core of this court's jurisdiction as per Article 162 (20) (b) of the *Constitution* and Section 13(1) of the *Environment and Land Court Act*.
22. On the second issue, I find that there was no valid agreement between the Plaintiffs and the Defendant. It is trite law that for a contract to be valid, there must be three ingredients namely offer by the seller, acceptance by the buyer and payment of consideration by the buyer. The offer may be made with conditions all of which the buyer must accept. In this case, the offer had a condition of payment of the full purchase price within 90 days from the date of receipt of the offer. The Plaintiffs did not pay the



full purchase price within the prescribed period. The offer lapsed before they could pay the requisite purchase price.

23. On the third of the Defendant's issues, I find that the Plaintiffs have established a cause of action against the Defendant for the refund of purchase price only and with costs for reasons that I will give later.

The fourth issue has already been determined by the above finding.

24. On the first of the first Plaintiff's issues, I find that the Defendant should refund the deposit paid but to the second Plaintiff. There are two reasons for making this finding. Firstly, in the Plaint dated December 20, 2012 at paragraph 4 it is stated as follows;

“The 1st Plaintiff avers that it was at all material times the Agent of the 2nd Plaintiff and the 2nd Plaintiff was at all material times its principal for the purposes of this suit”

At paragraphs 2 and 3 of the verifying affidavit dated December 20, 2012, John Mutwiri, the director of the first Plaintiff says the following on oath;

2. “That I have had shown to me and thoroughly read the plaint to which this affidavit is annexed”.
3. “That I verily believe that the averments contained therein are correct”.

The first Plaintiff cannot after the above averment and oath be heard to say that it was not an agent of the second defendant.

The second reason is to be found in the local electronic funds transfer application form dated December 1, 2010 where the senders name is Wesley John and Associates. If the sender was the first Plaintiff, then its details would be the ones captured in the application form.

25. On the second of the first Plaintiff's issues, I find that there should be interest at the rate of 14 per cent per annum. In making this finding I am guided by Section 27(2) of the [Civil Procedure Act](#) which caps the interest on costs at not more than 14% per annum. It would be very difficult to determine the bank rates from November 2010 to date because they keep on fluctuating and different banks have different interest rates. The interest will be backdated from December 1, 2010 when the deposit of 25% was made.

The third of the first Plaintiff's issues has already been determined by the above finding. I will decide on the fourth issue at the conclusion.

26. On the second Plaintiff's issues, I find that the first one on jurisdiction has already been decided earlier. The second issue has also been decided. The same with the third. On the fourth issue, I find the Plaintiffs are not entitled to any damages because I have already found that they are the ones in breach of the terms of the offer.

In addition to the above, one finds that the damages pleaded are not proved at all. It is pure speculation to say that the second Plaintiff would have obtained a licence for sale of sandalwood which he admits is banned. How would he have got such a licence? Where could he have sold it? How much sandalwood was available on the land? Is there a similar farm with sandalwood and is the owner thereof licenced? The same question would apply to sunflower and other cash crops. If the second Plaintiff could not raise the purchase price in the first place, could he truly have embarked on farming that would raise Kshs. 420 million? The claim for general and special damages is long in pleadings and short on evidence and raises more questions than answers. The claim for damages is very remote.



27. Finally on costs, I find that they should be awarded to the Plaintiff's. It was the unconscionable for the Defendant to refuse to refund the deposit of the purchase price after rescinding the offer. Equity would demand that the Defendant should not keep both its land and the Plaintiff's money.

For the above stated reasons, I enter judgment for the second Plaintiff against the Defendant as follows.

1. Refund of the deposit of Kshs 3, 750, 000/- with interest of 14% per annum from December 1, 2010 until the date of payment in full.
2. Costs to the Plaintiffs against the Defendant.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF SEPTEMBER, 2023.

M.N. GICHERU

JUDGE

