



Onchonga & 84 others v Ndungu (Environmental and Land Originating Summons 51 of 2020) [2023] KEELC 20955 (KLR) (24 October 2023) (Judgment)

Neutral citation: [2023] KEELC 20955 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 51 OF 2020

CA OCHIENG, J

OCTOBER 24, 2023

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF SPECIFIC PERFORMANCE OF A CONTRACT OF SALE OF LAND REFERENCE NO. 7340/1293

BETWEEN

ANDERSON OBIERO ONCHONGA & 84 OTHERS PLAINTIFF

AND

ANN WAIRIMU NDUNGU DEFENDANT

JUDGMENT

1. Through an Originating Summons dated the 2nd July, 2020, the Plaintiffs seek the following Orders against the Defendant:
 1. That the Defendant Ann Wairimu Ndungu be ordered to complete the contract of sale of Land Parcel Number LR No 7340/1293 by obtaining all the necessary clearances and executing the transfers to the Plaintiffs within thirty (30) days of this order.
 2. That in default the Deputy Registrar of the Honourable Court do execute any documents and instruments as may be necessary to effect the transfers and the Chief Land Registrar to issue title deeds to the Plaintiffs forthwith.
 3. That the Defendant to pay the costs of this Originating Summons.
2. The Defendant opposed the instant Application and filed a Replying Affidavit where she deposes that the Plaintiffs have sued her in respect to LR No 7340/1293 while the suit plots to wit the 169 plots emanate from is LR No 7340/ 15 and hence the suit is incompetent and fatally defective rendering it unsustainable in the premises. She contends that the ownership certificates relied on relate to LR No 7340/15 and as such orders sought against her would be in vain if granted by reason of lack of capacity to comply. She argues that there is no justifiable reason why the instant case was instituted as she has



been requesting the Plaintiffs to pay for the processing of their titles like the others, but to no avail. She explains that the claimed plots were allegedly sold to the Plaintiffs by Urutagwo Mwiruti Women Group in which she is an official and it would be an exercise in futility to sue her as an individual minus the other officials and the company. Further, that it would be impossible for her to effect such orders. She states that the costs of processing the titles was Kshs 75,000 each when they were handling the initial batch, but may have increased. She reiterates that the suit is statute barred by limitation of time given that the suit plots were sold between 2002 and February 2009 and the Court has no jurisdiction to grant the orders sought. She insists that the suit herein is bad in law and Plaintiffs are non-suited, hence it should be dismissed with costs.

3. The matter proceeded for hearing where the Plaintiffs called one witness but the Defendant's did not avail any witness.

Evidence of the Plaintiffs

4. PW1 Anderson Obiero Onchonga adopted the averments in his Supporting Affidavit as evidence in chief. He made reference to paragraph 4 of the Defendant's Replying Affidavit and sought for the Court to compel the Defendant to process title to property sold to the Plaintiffs. He testified that they wanted the Defendant to hand over the 'mother title' to them since they did not trust her. It was his testimony that they had been on the suit land for nineteen (19) years since they purchased the same from the Defendant. Further, that they had engaged the Defendant to give them titles but she had been inconsistent with the monies she seeks from the Plaintiffs for processing the said titles. He stated that some people had paid the monies the Defendant sought but she did not process their titles.

Analysis and Determination

5. Upon consideration of the instant Originating Summons including the respective Affidavits, testimony of the witness, exhibits and Applicants' submissions, the only issue for determination is whether the Plaintiffs are entitled to the Orders as sought in the aforementioned Originating Summons.
6. The Plaintiffs in their submissions reiterated their averments as per the Originating Summons and Supporting Affidavit and made reference to paragraph 4 of the Defendant's Replying Affidavit where she admitted she sold them land and stated that she had been requesting the Plaintiffs to pay for the processing of titles but they had not. They contended that this was an unequivocal admission. They further submitted that their testimony was uncontroverted.
7. It is not in dispute that the Plaintiffs have been on the suit land between 15 – 20 years. The Plaintiffs claim to have purchased their various plots from the Defendant who has declined to transfer the same to them. I have perused the documents annexed to the Originating Summons and note that the Plaintiffs were issued with Share Certificates from an entity called Urutagwo Mwiruti Women Group where the Defendant was the Chairperson. Further, there are receipts for payment of the purchase price. I note as per the Title Processing Agreement between Urutagwo Women Group and Nyagaka Mashini & Others in respect to LR No 7340/15 which was annexed to the Replying Affidavit, it confirms at paragraph one (1) that the Defendant is the Chairperson for the aforementioned women group. At paragraph 3 it indicates thus:

"Ms Annie Wairimu Ndungu undertakes that she is the rightful owner and has the legal authority to process the title deeds and to enter into this transaction. Further, she confirms that the land in question is free from any encumbrance."



8. The Defendant further acknowledges in the said Agreement that on 25th May, 2012 she received copies of Plot ownership certificates. I note as per the letters dated the 10th August, 2012 and 20th September, 2012 which were filed by the Defendant, LR No 7340/15 was subdivided into two. I note the Plot ownership Certificates and receipts which were produced by the Plaintiffs' indicate LR No 7340/15.
9. From the Replying Affidavit, the Defendant argues that the Plaintiffs have sued her in respect to LR No 7340/1293 but the suit plots emanated from LR No 7340/15. The Plaintiffs have explained that though the Plot Certificate bear Plot No 7340/15, but in 2012, the Defendant processed a Title Deed for one of the purchasers namely Nyagaka Machini thereby subdividing LR No 7340/15 into two being LR 7340/1293 in her name and 7340/1294 in the purchaser's name. I note the Defendant admitted her indebtedness to the Plaintiffs at paragraph 4 of her replying affidavit where she stated thus:

"That there is absolutely no justifiable reason why this case was commenced as I have been requesting the Plaintiffs to pay for processing of their titles like the others to no avail."
10. Order 13 Rule 2 provides as follows:

Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just."
11. In the case of *Guardian Bank Limited v Jambo Biscuits Kenya Limited* [2014] eKLR it was held that:

"The principle applicable in judgment on admission is that the admission must be very clear and unequivocal on a plain perusal of the admission. The admission in the sense of Order 13 Rule 2 of the *Civil Procedure Rules* is not one which requires copious interpretations or material to discern. It must be plainly and readily discernible."
12. See also the following decisions: *TSS Investments Ltd v Blackstone Trading Company Ltd* (2022) eKLR and *Express Automobile Kenya Limited v Kenya Farmers Association Limited & another* [2020] eKLR.
13. Based on the facts before me while relying on the legal provisions cited above and associating myself with the decisions I have quoted and applying them to the circumstances at hand, I find that the Defendant's admission of her indebtedness to the Plaintiffs' is unequivocal and discernible.
14. In the foregoing, I find that the Plaintiffs have proved their case on a balance of probability and will enter Judgment in their favour as per the prayers sought in instant Originating Summons.
15. I will proceed to make the following final Orders:
 - i. That the Defendant Ann Wairimu Ndungu be and is hereby ordered to complete the contract of sale of Land Parcel Number LR No 7340/1293 by obtaining all the necessary clearances and executing the transfers to the Plaintiffs within sixty (60) days from the date hereof.
 - ii. That in default the Deputy Registrar of the Environment and Land Court, Machakos do execute any documents and instruments as may be necessary to effect the transfers and the Chief Land Registrar to issue Title Deeds to the Plaintiffs forthwith.
 - iii. The Plaintiffs will be responsible for transfer fees.
 - iv. The costs of the Originating Summons is awarded to the Plaintiffs.



DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 24TH DAY OF
OCTOBER, 2023

CHRISTINE OCHIENG

JUDGE

