



County Government of Siaya v Ondiek (Environment & Land Case E009 of 2021) [2023] KEELC 21938 (KLR) (30 November 2023) (Judgment)

Neutral citation: [2023] KEELC 21938 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT & LAND CASE E009 OF 2021
AY KOROSS, J
NOVEMBER 30, 2023**

BETWEEN

COUNTY GOVERNMENT OF SIAYA PLAINTIFF

AND

**DR. CONCELLIA ONDIEK ALIAS CONCELLIA AOKO
OMUGA DEFENDANT**

JUDGMENT

1. The plaintiff, which is a county government, filed its suit dated 30/08/2021 against the defendant who was a previous administrator of the estate of Arch. Bishop Stephen Ondiek.
2. It was the plaintiff's claim that it entered into a written agreement for sale on 11/03/2016 with the defendant for the purchase of land parcel no. Siaya/Mulaha/320 (suit property) for kshs. 19,300,000/=. The plaintiff alleged it had settled this amount in full.
3. However, it later emerged that the plaintiff did not have capacity to transact over the suit property since the grant of letters of administration and confirmed grant that had earlier on been issued to her, were respectively revoked and surrendered on 27/02/2014. Consequently, the plaintiff contended the agreement for sale was void and as it were, title document over the suit property had been cancelled.
4. The plaintiff prayed for the following reliefs:
 - a. A declaration that the agreement for sale was void.
 - b. A refund of the purchase price of ksh. 19,300,000/-.
 - c. Expenses of ksh. 50,000/- .
 - d. Interest on (a) and (b) at court rates from date of filing the suit together with costs of the suit.



5. Despite service, the defendant did not enter appearance and/or file a defence and as a result, the claim proceeded as an undefended suit. The plaintiff called one witness a Mr. Walter Okello who was its Chief Officer in the department of Water, Environment and Climate Change and he testified as PW1.
6. PW1's evidence was contained in his written and oral testimonies and documents he produced as Pex1 to Pex35. He rehashed the averments made in the claim and I will not reiterate them. The plaintiff and defence's cases were closed. However, despite directions on filing of written submissions, the plaintiff did not file any and if at all they will be filed, this court will not consider them.
7. Having considered the plaintiff's pleadings, evidence and applicable law, the following issues fall for determination: -
 - a. Whether the plaintiff and defendant entered into an agreement for sale over the suit property.
 - b. If the answer to (a) is in the affirmative, whether the agreement was void and a refund of the purchase should ensue.
 - c. If the answer to (a) is in the affirmative, whether the plaintiff is entitled to special damages.
 - d. What orders should this court issue and what about costs.
8. It follows, in its analysis and determination, this court will deal with the issues in a simultaneous manner. Turning now to the 1st issue of whether the plaintiff and defendant entered into an agreement for sale over the suit property, it ensues the plaintiff's pleadings and PW1's testimony over the parcel no. in dispute were totally at variance.
9. It emanates and as disclosed in the plaint, the subject parcel no. is Siaya/Mulaha/320 which was earlier referenced in this judgment as the 'suit property'. However, from all the documents that were produced by PW1, it is blatant the bone of contention between the parties is parcel no. Siaya/Mulaha/302. Put another way, there is a discrepancy between the suit property and the property disclosed in the plaintiff's documentary evidence.
10. I say so because, the agreement for sale, title deed, Land Control Board (LCB) application and consent to transfer, transfer form, official search and gazette notice demonstrate the parties had dealings over Siaya/Mulaha/302 and not the suit property.
11. As it is, I do not know if this was an oversight, typographical error or otherwise but it ensues the plaintiff did not produce any iota of evidence showing the relationship between the parties and the suit property. In other words, the plaintiff did not produce an agreement for sale over the suit property that was capable of being voided or tender any evidence that the parties had transacted over the suit property.
12. It is settled law parties are bound by their pleadings and as a court, I am restrained from entering into the arena of litigation. The plaintiff was required to prepare its case and as it did so, the onus was on it to take steps it deemed necessary and to ensure it presented facts which supported its claim. See the decision from the Supreme Court of India in *Arikala Narasa Reddy v Venkata Ram Reddy Reddygari & Another*, Civil Appeal Nos. 5710-5711 of 2012 [2014] 2 S.C.R. which was cited with approval by the Apex court in *Raila Amolo Odinga & Another v IEBC & 2 Others* [2017] eKLR.
13. As a result, and for the reason the plaintiff's claim and evidence were not in tandem, I must find that the plaintiff did not prove its case to the required standards and to this end, I adopt the position taken



by the Court of Appeal in David Sironga Ole Tukai v Francis Arap Muge & 2 others [2014] eKLR when it stated : -

“In an adversarial system such as ours, parties to litigation are the ones who set the agenda, and subject to rules of pleadings, each party is left to formulate its own case in its own way. And it is for the purpose of certainty and finality that each party is bound by its own pleadings. For this reason, a party cannot be allowed to raise a different case from that which it has pleaded without due amendment being made.”

14. Utmost and for the reasons and finding above, I need not say more. It is my ultimate finding the plaintiff did not prove its case to the required standards and its case is hereby dismissed with no orders as to costs.

It is so ordered.

DELIVERED AND DATED AT SIAYA THIS 30TH DAY OF NOVEMBER 2023.

HON. A. Y. KOROSS

JUDGE

30/11/2023

**JUDGMENT DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
CONFERENCING PLATFORM IN THE PRESENCE OF:**

In the Presence of:

N/A for the plaintiff

N/A for the defendant

Court assistant: Ishmael Orwa

