



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO. 94 OF 2014

1. SHARIFF ALI SAGAAF

2. AHMED SUHEL.....PLAINTIFFS/APPLICANTS

=VERSUS=

DOROTHY N. CHOME.....DEFENDANT/RESPONDENT

R U L I N G

1. In the Application dated 22nd May, 2014, the Plaintiff is seeking for the following orders:

(a) That this Honourable Court be pleased to order that the Defendant, her servants, and/or agents be restrained from alienating, selling, transferring or in any way dealing with plot No. 178 Tezo Roka Settlement Scheme No.484 pending hearing and determination of the suit.

(b) Costs of this application.

2. The Application is premised on the grounds that the Respondent has refused to transfer the title to the Applicant although the Applicant purchased the same from him in 1991.

3. According to the 2nd Applicant's Affidavit, the Respondent is likely to transfer the suit property to a third party.

4. According to the Defendant's Replying Affidavit, the Applicant made a down payment of the purchase price leaving a balance of Kshs.30,000 which was to be paid after the Land Control Board consent had been given; that the Applicant never completed the transaction and that it is 23 years since the date of the agreement.

5. According to the Defendant, the consent for the Board was not obtained and he is willing to refund the deposit that was paid by the Applicant.

6. The parties' advocates filed brief submissions, in which they reiterated their clients' respective cases. I have considered those submissions and the documents annexed on the Affidavits.

7. The Plaintiffs' claim is for specific performance.

8. The Plaintiff has not denied that indeed the consent of the board was required before the suit property could pass to him.

9. According to the agreement dated 4th June 1991, the balance of the purchase price was to be paid by the Plaintiff after the Consent of the Board is granted.

10. Section 6(1) and 8 of the Land Control Act provides that the Consent of the Land Control Board must be obtained within six months of the making of an agreement of agricultural land before a sale can be effected.

11. If the consent of the Board is not obtained, the agreement becomes void and the purchaser is only entitled to a refund of the money paid.

12. It is trite law that an order of specific performance cannot be granted where the agreement of sale is unenforceable. The agreement between the Plaintiffs and the Defendant being void for want of consent is unenforceable.

13. The editors of **Chitty on Contract, 30th Edition, Volume One at paragraph 27-003** observe as follows:

“The jurisdiction to order 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 formal requirements or mistake or illegality which makes the contract invalid or unenforceable.”

14. In the absence of the Consent of the Board. I find and hold that the Plaintiffs have not established a prima facie case with chances of success, in so far as their claim is for specific performance. In the circumstances, the Plaintiffs' application for an order of injunction fails.

15. The Application dated 22nd May, 2014 is hereby dismissed with costs.

Dated and delivered in Malindi this 15th day of May, 2015.

O. A. Angote

Judge