



**Bramble v Sirma (Environment & Land Case 61 of 2016)
[2022] KEELC 3170 (KLR) (31 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3170 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 61 OF 2016**

MD MWANGI, J

MAY 31, 2022

**IN THE MATTER OF LAND KNOWN AS L.R NO. 23148, IR NO.
87387**

BETWEEN

HELLEN WANGU BRAMBLE PLAINTIFF

AND

JEREMIAH K ARAP SIRMA DEFENDANT

JUDGMENT

Background

1. The Plaintiff by an Originating Summons (O.S) dated 27th January 2016 filed on 28th January 2016 seeks for orders that the defendant's caveat lodged against the Plaintiff's Title L.R No. 23148 I.R 87387 (suit property) be removed. The Plaintiff further prays for the costs of the suit.
2. The Defendant opposes the Plaintiff's suit by way of a replying affidavit sworn on 19th July 2019 and a further affidavit sworn on 23rd march 2022.

The Plaintiff's Case

3. The brief facts of this case as explained in the supporting affidavit sworn by the Plaintiff on 14th January 2016 are as follows: -
 - a. The Plaintiff is the registered proprietor of the suit property.
 - b. On or about 16th December 2014, the Plaintiff entered into a sale agreement with the Defendant in respect of the suit property whereby the Defendant was to purchase the same for the sum of Kshs. 38,000,000/=



- c. The Defendant however defaulted in payment of the purchase price and the Plaintiff rescinded the said agreement.
- d. The Plaintiff thereafter realized that the Defendant had lodged a caveat over the suit property on or about the 26th May 2015 alleging a purchaser's interest over the suit property.
- e. The Defendant filed HCCC 20/2016 on 26th January 2016 claiming seeking to enforce the agreement for sale of the suit property and damages for breach of contract amongst other prayers.
- f. The Defendant's suit, HCCC 20/2016 was however struck out on 27th December 2018.
- g. The Plaintiff states that in his reply to this OS, the Defendant is raising the same issues that he had raised in HCCC 20/2016.
- h. The Plaintiff avers that he Defendant has no lawful claim against her whatsoever. His suit HCCC 20/2016 was struck out and the caveat placed over her title in unlawful.

The Defendant's Response.

4. In his response, the Defendant agrees entering into an agreement with the Plaintiff in respect of the suit property. He avers that he paid a sum of Kshs. 8,000,000/= leaving a balance of Kshs. 30,000,000/=.
5. The Defendant further alleges that the Plaintiff's rescission of the agreement between them was unprocedural and unlawful since it was the Plaintiff who had failed to secure approved building plans for the structure on the suit property. The remedy of rescinding the agreement for sale was therefore not available to the Plaintiff.
6. The Defendant avers that the Plaintiff should have refunded him the sum of Kshs. 8 million paid in pursuance of the agreement. He argues that the caveat should remain in place until the Plaintiff refunds him the said sum of Kshs.8 million, or withdraws the purported notice of completion and rescission.
7. It is the Defendant's case that considering the circumstances of their agreement with the Plaintiff, it is fair, just and equitable that he be restored to the pre- contractual position by being refunded the sum of Kshs.8 Million.

Direction's by the Court.

8. On 10th February 2022, the court after perusing the record noted that directions had been given way back on the 10th October 2017 by Hon. Justice Mary Gitumbi that the matter be disposed of by way of affidavit evidence. The same court had further ordered parties to file their written submissions.
9. The Defendant did not comply with the earlier directions of the court. This court extended the time for the Defendant to file his submissions. The court too expunged from the record, the statement of Defence and Counter-claim and all other documents filed by the Defendant without leave of the court. The Defendant was however granted leave to file a further affidavit, which he did.
10. The Plaintiff had filed her submissions way back on 27th March 2018. The Defendant on his part filed his submissions on 14th April 2022. The court has had the opportunity to peruse the submissions of both parties.



Issues for Determination

11. Having perused the pleadings filed in this case, and the submissions of the parties, the only issue for determination in the opinion of this court is whether the caveat lodged by the Defendant against the title to the suit property should be removed.

Analysis and Determination.

12. In her submissions, the Plaintiff more or less reiterates what she had already stated in her pleadings.
13. The Plaintiff submits that the Defendant had filed the case, HCCC 20/2016 is not in dispute. In the said suit, the Defendant had sought amongst other orders, to enforce the agreement with the Plaintiff dated 16th December 2014 in respect of the suit property (L.R No. 23148, I.R No. 87387. He had sought for orders that, "...the Defendant (the Plaintiff in this case) be directed to comply with the terms of the sale agreement and complete the transaction." He had also sought an alternative prayer for a refund of Kshs. 8 Million with interest and an award of damages for loss of business opportunities.
14. The Plaintiff submits that the Defendant's case, HCCC 20/2016 was struck out after the court found that the Defendant herein had not complied with the terms of the agreement.
15. The Defendant on his part, in his submissions has submitted on the issue of the validity of the rescission notice issued to him by the Plaintiff as well as on the issue of whether he is entitled to a refund of the sum of Kshs. 8 million.
16. Those are issues that are not before this court. What the Defendant is doing is inviting this court to sit in judgement over the decision made in Nairobi HCCC 20 of 2016 (Jeremiah Kipkurui Sirma v Hellen Wangu Bramble). The decision was made by Hon. Justice Mwongo on 24th November 2017 striking out the suit against the Plaintiff with costs.
17. I repeat once more that the only issue before me is whether the caveat lodged by the Defendant should be removed.
18. The Defendant in his submissions at paragraphs 27 to 29, in justifying why the caveat should not be removed, submits that the Plaintiff is in breach of the contract and has refused to refund him the sum of Kshs. 8 million or withdraw the invalid notice of rescission of their agreement. It is the Defendant's submission that the Plaintiff is therefore not entitled to the order for the removal of the caveat lodged against her parcel of land known as L.R No. 23148, I.R 87387.
19. The Caveat, which is the subject matter of this suit was lodged by the Defendant in May 2015. That is exactly 7 years ago.
20. The East African Court of Appeal in 1969, in the case of *Boynes v Gathure* (1969) EA 385 held that the primary use of a caveat is merely give the caveator temporary protection. The court noted that;

"A caveat is intended to serve a twofold purpose: on the one hand, it is intended to give the caveator temporary protection and on the other, is intended to give notice of the nature of the claim to the person whose estate in the land is affected and the world at large."
21. Again in the case of *Segirinya Gerald v Mutebi Innocent* HCMA No. 81 of 2016, the court restated the position that:

"The primary objective of a caveat is to give the caveator temporary protection. It is not the intention of the law that the caveator should relax and sit back for eternity without taking



positive steps to handle the controversy, so as to determine the rights of the parties affected by its existence.”

22. This court in the case of *Mary Njeri Kariuki & 7 others v Mary Mugure Daniel Kariuki* (2022) eKLR observed that a caveat/caution should only serve as a temporary measure that should not be used to deprive the Applicant of his right to his property indefinitely.
23. The gist of all the above cited authorities is that the purpose of a caveat is only to allow time for the caveator to apply to the court to enforce or determine his/her interest in the land.
24. In this matter, the Defendant had filed Nairobi HCCC 20/2016 seeking to enforce his rights. The same however was struck out but he has continued to maintain the caveat over the suit property. This court finds that it is unfair and unreasonable for the Defendant to continue to maintain the caveat over the Plaintiff's title.
25. This court therefore allows the Plaintiff's prayer in the Originating Summons and orders that the caveat lodged by the Defendant against the Plaintiff's title L.R No. 23148 I.R 87387 be removed forthwith.
26. This order should be effected by the Land Registrar, Nairobi.
27. The court further grants the Plaintiff the costs of this suit.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF MAY 2022.

M.D MWANGI

JUDGE

In the Virtual Presence of:-

Mr. Bob Otieno for the Defendant

No appearance for the Plaintiff

Court Assistant: Hilda

M.D MWANGI

JUDGE

