



REPUBLIC OF KENYA



KENYA LAW
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**Mungai v Kuria & another (Environment & Land Case 718 of 2017)
[2022] KEELC 2484 (KLR) (31 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 2484 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 718 OF 2017**

BM EBOSO, J

MAY 31, 2022

BETWEEN

LEORNARD NYAHUTHA MUNGAI PLAINTIFF

AND

PAUL MUKUI KURIA 1ST DEFENDANT

KILIMAMBOGO HOUSING DEVELOPERS 2ND DEFENDANT

JUDGMENT

1. The plaintiff initiated this suit against Paul Mukui Kuria through a plaint dated 23/8/2017. The plaint was subsequently amended on October 23, 2019 and Kilimambogo Housing Developers was joined as a 2nd defendant. He sought the following verbatim reliefs against the defendants:
 - a. That the plaintiff has a right to plot number 235 Kivulini Block M as per the sale agreement.
 - b. A permanent injunction restraining the defendant from in any way interfering with the plaintiff's land.
 - c. An order for the plaintiff for the eviction of the defendant from the plaintiff's land and compensation for damages including the Kshs. 10,500 fine at the Makongeni Police Station.
 - d. And in the alternative and without prejudice to (a), (b) and (c) an order compelling the defendants to compensate the plaintiff for the loss of the property at current market value and for damages suffered.
 - e. Interest and costs of the suit.
2. The plaintiff's case was that through a sale agreement dated 7/6/2013, the 2nd defendant sold to him a parcel of land that was described in the sale agreement as Thika Municipality Kivulini Block M Plot No 235. The agreed purchase price was Kshs 400,000. On the day of executing the agreement, he paid



- to the 2nd defendant Kshs 300,000. The balance [Kshs 100,000] was to be paid within three months. He subsequently paid the balance. He did not fence the land immediately. After about two years, he was informed that someone was building on the land. He decided to fence the land. When he went to the land to fence it, he encountered the 1st defendant who informed him that he had purchased the land from the 2nd defendant. His efforts to get assistance from the police and from the DCI did not bear fruits. He sought assistance from Kituo Cha Sheria and initiated this suit.
3. The 1st defendant filed a defence dated 21/9/2017. His case was that through a sale agreement dated 4/5/2016, M/s Kilimambogo Housing Developers [the 2nd Defendant] sold to him a parcel of land which was described in the sale agreement as Thika Municipality Block 29/662 Plot No 235, measuring 40x80 at Kshs 400,000. He paid the agreed purchase price in full. He immediately took possession of the land and started developing the land. In July 2016, his mason called him to tell him that an elderly man had visited the land claiming that it belonged to him. He added that the plaintiff attempted to disrupt the ongoing construction by covering the septic pit, prompting his mason to report the matter to the Makongeni Police Station.
 4. The 2nd defendant neither filed a defence nor tendered evidence in the suit. Consequently, the suit against the 2nd defendant is undefended.
 5. At the hearing, the plaintiff testified as PW1. He outlined his case as summarized above. He added that he had gone to many offices, trying to get a solution to the issue but all had been in vain. He produced plot certificate No 562 issued to him by the 2nd defendant; receipt dated 7/6/2013 for Kshs 300,000 issued to him by the 2nd defendant; an undated receipt serial number 973 for Kshs 100,000 issued to him by the 2nd defendant; bank deposit slip for Kshs 100,000 deposited into the 2nd defendant's account at the Co-operative Bank, Thika Branch; and sale agreement dated 7/6/2013.
 6. The defendant testified as DW1. He similarly outlined his case as summarized above. He added that when he learnt that the 2nd defendant was selling plots, he went to their offices and he was shown the plots on the subdivision plan. He was also shown the plots register indicating those that had been sold, together with details of the purchasers; and those that were available for purchase. Among the available plots was plot No 235 [the suit property]. He was subsequently shown the plot on the ground and he expressed interest to buy it. They negotiated and settled on a purchase price of Kshs 400,000 which he paid to the bank account provided by the 2nd defendant. The money was received by the 2nd defendant. The 2nd defendant issued to him a plot certificate. Later, he was asked to pay an additional sum of Kshs 100,000 for processing of the title, which he paid to the 2nd defendant. He decided to develop the plot. While developing the plot, he learnt that the plaintiff was claiming to own the same plot. This prompted him to go to the 2nd defendant's office to establish what the problem was. The 2nd defendant advised him that he was the only *bonafide* purchaser of the plot and asked him to tell the plaintiff to go to their offices to have the matter sorted out if indeed there was a problem of double allocation. The second defendant further advised him that they were ready to give the plaintiff another plot. He produced: (i) sale agreement dated 4/5/2016; (ii) deposit slip; (iii) receipt for Kshs 400,000 issued by the 2nd defendant; (iv) plot certificate No 863; (v) plot certificate No 828 and receipt for Kshs 600,000.
 7. The plaintiff filed written submissions dated 23/11/2021 through the firm of Alosa & Associates Advocates. The defendant filed written submissions dated 3/12/2021 through the firm of J K Kinyua & Co Advocates. I have read the said submissions.
 8. I have considered the parties' pleadings, evidence and submissions. I have also considered the relevant legal framework and jurisprudence. Parties did not agree on a common statement of issues to be determined in this suit. Having considered the parties' pleadings, evidence and submissions, the



following are the key issues that fall for determination in the suit: (i) Whether the 2nd defendant sold to the plaintiff the suit property in this dispute; (ii) Whether the 2nd defendant similarly sold the suit property to the 1st defendant; (iii) Is the plaintiff entitled to the remedies set out in the plaint, in the circumstances of this case? and (iv) What order should be made in relation to costs of this suit? I will make brief sequential analysis of the four issues. Since issue number 1 and issue number 2 are intertwined, they will be disposed together.

9. Both the plaintiff and the 1st defendant contend and have tendered evidence establishing that they purchased the suit property from the 2nd defendant. The 2nd defendant has not denied receiving purchase price from the two parties. The 2nd defendant has similarly not denied selling the suit property to the two parties. What emerges is that the 2nd defendant either negligently or knowingly sold the suit property to the two parties. The second defendant subsequently issued receipts to the two parties acknowledging payment of purchase price by the two parties. Similarly, the 2nd defendant issued plot certificates to the two parties. The conclusion I make from the evidence before court is that both the plaintiff and the 1st defendant purchased and paid for the suit property.
10. On the appropriate relief, the evidence tendered indicates that the plaintiff did not take actual possession of the suit property. On his part, the defendant took possession upon purchase and has carried out substantial developments on the suit property. He has paid money for processing of the title. It is not known at what stage the titling process has reached.
11. Taking the above factors into account, the appropriate relief available to the plaintiff, in the circumstances, is an award of compensation against the 2nd defendant, equivalent to the purchase price which the plaintiff paid to the 2nd defendant. The 2nd defendant will pay interest on the said purchase price from the day when the last instalment was paid to the 2nd defendant. The 2nd defendant will bear costs of this suit.

Summary of Findings and Disposal Orders

12. In summary, the court makes the following findings:
 - i. It is the finding of this court that the 2nd defendant entered into a land sale agreement dated 7/6/2013 with the plaintiff pursuant to which the 2nd defendant received from the plaintiff the full purchase price of Kshs 400,000.
 - ii. It is the finding of this court that the 2nd defendant similarly entered into a land sale agreement dated 4/5/2016 with the 1st defendant pursuant to which the 2nd defendant received from the 1st defendant the full purchase price of Kshs 400,000.
 - iii. Although the plaintiff was the first one to enter into a sale agreement, with the 2nd defendant, he did not take immediate possession of the suit property. the 1st defendant having taken immediate possession and developed the land, the appropriate relief to grant the plaintiff is compensation equivalent to the purchase price paid to the 2nd defendant together with interest at court rate from 5/8/2013 [the date when the 2nd defendant issued to the plaintiff a plot certificate] till payment in full. The 2nd defendant will bear costs of this suit.
13. In the end, the court makes the following disposal orders:
 - a. The 2nd defendant shall pay the plaintiff compensation equivalent to the purchase price in the sum of Kshs 400,000 together with interest at court rate from 5/8/2013 till payment in full.
 - b. The 2nd defendant shall bear costs of this suit.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 31ST DAY OF MAY
2022**

B M EBOSO

JUDGE

In the Presence of: -

Mr Alosa for the Plaintiff

Mr Maina for the 1st Defendant

Court Assistant: Ms Lucy Muthoni

