



REPUBLIC OF KENYA

High Court at Malindi

Environmental & Land Case 117 of 2012

**GEORGE NDIRANGU
GEORGE KINGORI GATHOGO
ANN NYAMBURA NDERITU
ATHI LAMU SELF HELP GROUP.....PLAINTIFFS**

=VERSUS=

HAWRIITA BUCHETE ISOHO.....DEFENDANTS

JUDGMENT

1. The Plaintiffs moved this court by way of a Plaint dated 13th July 2012 and filed on 18th July 2012.
2. The Plaintiffs have averred that at all material times, the Defendant was the registered owner of land known as LAMU/HINDI/MAGOGONI/57 Measuring 6.1 Ha (the suit property).
3. The 1st to the 3rd Plaintiffs are the officials of the 4th Plaintiff, a Self Help Group duly registered.
4. The Plaintiffs have averred in the Plaint that the Defendant agreed to sale to the Plaintiffs the suit property for Kshs. 1,752,000 and that the Defendant was paid Kshs. 1,300,000 at the time of executing the sale agreement. The Defendant was paid Kshs.200,000 in cash while 1,100,000 was deposited in her bank account.
5. According to the Plaint, it was after the Defendant had been paid the purchase price that she revealed that she had an outstanding loan with the Settlement Fund Trustee and that the suit property was charged to secure the said loan. The Plaintiffs agreed to pay the said loan but the Defendant has refused to obtain consent to transfer the suit property from the Land Control Board and to sign the Transfer document.
6. The Plaintiffs are claiming for an order of specific performance directed to the Defendant to obtain the Land Control Board's consent, sign all the relevant transfer documents and supply to the Plaintiffs completion documents to facilitate the transfer of the suit property to the 4th Plaintiff.
7. The Plaintiffs have prayed in the alternative that the Deputy Registrar of the High Court be directed to execute all the relevant documents to facilitate the transfer and registration of the suit property in the name of the 4th Plaintiff.
8. The Defendant was served with the Summons to Enter Appearance, the Plaint the witness

statements and the copies of the Plaintiffs' documents on 19th July 2012. An affidavit of Service was duly filed. The Defendant neither entered appearance nor filed a defence. The Defendant was served again with the same documents on 22nd October 2012.

9. The matter proceeded for formal proof on 20th March, 2013.

10. The Plaintiffs called only one witness, PW1. George Ndirangu, PW 1, informed the court that he had the authority of the other three Plaintiffs to testify on their behalf. He informed the court that the 4th Plaintiff is a self-help group in which he is the chairman. The other two Plaintiffs are members of the Group and the same is duly registered with the Ministry of Gender, Children and Social Development. The witness produced the Certificate of Registration as Plaintiff Exhibit number 1.

11. PW 1 further testified that they decided to sue the Defendant because after they paid her the full purchase price for parcel of land LAMU/HINDI MGAGOGONI/57, she refused to attend the Land Control Board meeting at Kilifi with a view of obtaining the Board's consent to transfer the property to the Plaintiffs.

12. PW 1 produced the Sale Agreement that the Plaintiffs entered into with the Defendant as Plaintiff Exhibit number 3. The witness informed the court that the Plaintiffs have paid Kshs. 1,725,000 being the total purchase price. The Defendant passed to the Plaintiffs the original title deed after she was paid the purchase price. The original Title Deed was produced as Plaintiffs' Exhibit number 4.

13. The witness also produced as Plaintiff Exhibit 5 a withdrawal slip from Kenya Commercial Bank showing that he withdrew Kshs. 1,300,000 from his account on 10th June 2010. He deposited Kshs. 1,100,000/= on the Defendant's account and gave the Defendant Kshs. 200,000 in cash. The deposit slip was produced as Plaintiffs' Exhibit number 6. The witness produced as Plaintiff Exhibit number 7 the bank slip showing the commission that the bank charged him for withdrawing over Kshs. 1,000,000.

14. It was PW 1's evidence that they later realised that the land had an outstanding loan with the Settlement Trustee Fund whereupon they used the balance of the purchase price to clear the loan. A receipt by the Settlement Trustee Fund was issued to the Plaintiffs for Kshs. 250,000 as Plaintiffs' exhibit number 8.

15. The Plaintiffs made a further payment of Kshs. 111,000 to the Land Adjudication Settlement and an official receipt was issued. The receipt was produced as Plaintiff exhibit number 9. They paid a further Kshs. 33,680 to the Settlement Fund Trustee to clear the loan. The witness produced the official receipt for Kshs. 33,680 as Plaintiffs' exhibit number 10. A discharge of charge was prepared and the same was issued in the name of the Defendant. The said discharge was released to the Plaintiffs. The witness produced it as Plaintiff's exhibit number 11.

16. PW 1 testified that after the discharge, they asked the Defendant to sign the Land Control Board application forms but she declined whereafter they registered a caution over the property. The caution was produced as Plaintiff exhibit number 12.

17. After taking stock of all the payments, PW 1 testified that they realised they owed the Defendant Kshs. 30,320 which they deposited on her account on 11th June 2012. The deposit slip was produced as Plaintiff exhibit 13.

18. According to the witness, the Plaintiffs have since sub-divided the land amongst themselves and the Defendant did not object to the sub-division. The witness produced the sub-division plan as Plaintiff exhibit number 14.

19. The witness finalised his testimony by stating that the Defendant has been very uncooperative and prayed that this court do intervene on their behalf. He also prayed for the costs of the suit.

20. Mr. Ogeto, counsel for the Plaintiff did not make submissions.

21. The Plaintiffs claim is for specific performance. In **Malindi ELC Civil Case Number 3 of 2013; Kilifi Resorts Limited -Vs- Northern Lights Ltd.** I held as follows:

“Specific Performance grants a party to a transaction what he actually bargained for in the contract. By compelling the parties to perform exactly what they had agreed to perform, more complete and perfect justice is achieved.”

22. The Defendant in this suit agreed to sale the land at a consideration. She has not alleged that the agreement between herself and the Plaintiffs was fraudulent. In deed she has not filed any defence against the Plaintiffs claim.

23. The Plaintiffs have proved that have met all the contractual terms. In the circumstances, I find and hold that they are entitled to the order of specific performance as prayed in the Plaintiff.

24. I allow the Plaintiffs Plaintiff dated 13th July 2012. The Defendant shall pay the Plaintiffs the costs of the suit.

Dated and Delivered at Malindi this **16th** day of **May**, 2013.

O. A. ANGOTE

JUDGE