



REPUBLIC OF KENYA



KENYA LAW
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Ndung'u & 5 others v Lesedi Homes Limited & 2 others (Land Case E017 of 2024) [2025] KEELC 3159 (KLR) (7 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3159 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
LAND CASE E017 OF 2024
MN GICHERU, J
APRIL 7, 2025**

BETWEEN

DANCAN NDEGWA NDUNG'U 1ST PLAINTIFF
BEATRICE WAMBUI KIARIE-NGUGI 2ND PLAINTIFF
GEORGE KAIRO KIMENDE 3RD PLAINTIFF
CHARLES NJENGA 4TH PLAINTIFF
BEATRICE WAMBUI KIARIE-IGECHEA 5TH PLAINTIFF
SIMON KARANJA WAWERU 6TH PLAINTIFF

AND

LESEDI HOMES LIMITED 1ST DEFENDANT
LESEDI DEVELOPERS LIMITED 2ND DEFENDANT
BOMA LINK CONCEPTS LIMITED 3RD DEFENDANT

RULING

1. This ruling is on the notice of motion dated 17-7-2024. The motion which is by the Plaintiffs is brought under Orders 40 rules 2 and 4(1), 51 rule 1 *Civil Procedure Rules*, Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*, 13, 14, 19 and 29 of the *Environment and Land Court Act* and all enabling provisions of the law.
2. The motion seeks three(3) residual orders as follows.
 - c. An Order of injunction restraining the Defendants by themselves, their agents, servants, officers and/or any other body or entity from offering for sale, selling or dealing with the parcels of land on property comprised in title deed No. Loc.5/Kabtai/2413 whereupon house



unit numbers 01,02,04,05,12 and 16 constructed or intended to be constructed pending the hearing and determination of this case.

- e. An order of injunction restraining the 1st Defendant/Respondent either by itself, its agents, servants, officers and/or any other body or entity from transferring or undertaking or causing the transfer of the property comprised in title deed number Loc.5/Kabati/2413 to the 3rd Defendant; Boma Link Concepts Limited or its nominees or assigns pending the hearing and determination of this suit.
 - e. Costs of this application provided for.
3. The motion is based on eight (8) grounds, and it is supported by two affidavits with four (4) annexures which are sworn by the first Plaintiff. The gist of the entire motion is as follows. Firstly, the 1st Plaintiff entered into a sale agreement with the 1st Defendant for purchase of unit number 01 constructed at Almasi Green Estate on LR. No. Loc.5/Kabati/2413. Secondly, the terms of the sale agreement required the 1st Defendant to construct and complete the house unit bought by the 1st Plaintiff within a period of one(1) year from the date of execution of the agreement. Thirdly, the 1st Plaintiff paid the full purchase price as per the agreement. Fourthly, despite making the full purchase price as agreed, the 1st Defendant did not complete the construction of the house unit that the 1st Plaintiff was purchasing. Fifthly, when the 1st Plaintiff wrote to the 1st Defendant through his advocate complaining of the breach, the 1st Defendant did not respond. Sixthly, the 1st Defendant which had bought the suit land from Evan Mbuthia Gitau at the time of the agreement did not pay the full price to him. Seventhly, the 1st Plaintiff has learnt that the 1st Defendant intends to transfer the suit land to the 3rd Defendant and unless the 1st Defendant is restrained, the 1st Plaintiff and other purchasers stand to suffer irreparable loss. In fact, the 3rd Defendant has already began offering the suit land for sale to third parties. For the above and other reasons, he prays for the orders as per the notice of motion dated 17-7-2024.
 4. In opposing the motion and the entire suit, the 1st and 2nd Respondents have filed a notice of preliminary objection dated 24-9-2024 challenging the jurisdiction of this court to entertain the entire suit on the following grounds. Firstly, this court lacks jurisdiction to entertain the present suit owing to the doctrine of alternative dispute resolution. Secondly, there exists an Alternative Dispute Resolution clause in the impugned sale agreements being clause 10. Thirdly, the question of jurisdiction should be determined first before proceeding to determine the substantive issues.
 5. The only submissions that I see on record and those by the Plaintiffs' Counsel. They are dated 6-11-2024. They raise the following issues.
 - i. Whether the Plaintiffs are entitled to the injunctive orders sought in the motion.
 - ii. Whether the 1st and 2nd Defendants Preliminary Objection is merited.
 - iii. Who bears the costs of the application.
 6. I have carefully considered the motion in its entirety including the grounds, the two affidavits, the preliminary objection by the 1st and 2nd Defendants, the written submissions and the law cited therein . I make the following findings on the identified issues.
 7. I find that the preliminary objection has no merit for the following reasons.

Firstly, clause 10 of the sale agreement dated 28-2-2022 between the 1st Plaintiff and the 1st Defendant set timelines within which mediation was to commence and conclude. The time set for the mediation process to kick in is 29 days. There is evidence from the 1st Plaintiff to the effect on 11th June 2024 his advocate wrote to the 1st Defendant declaring a dispute. Since then, the 1st Defendant has not



responded to the said letter. The 1st Defendant is therefore out of the time set in clause 10 of the sale agreement. Secondly clause 10 IV of the sale agreement dated 28-2-22 provides as follows.

“Notwithstanding the above provisions of the clause, either party being aggrieved is entitled to seek preliminary or interim injunctive relief or conservatory measures from any court of competent jurisdiction pending the outcome of the mediation”.

This means that even if there was an ongoing mediation, the Plaintiffs would not be precluded from coming to court, like they did in this case. Thirdly, clause 12 of the sale agreement dated 28-2-2022 provides as follows.

“Time shall be deemed to be of essence for all the purposes of this Agreement”.

Time being of essence and the 1st Defendant having failed to respond to the Plaintiffs’ letters of 11th June 2024 declaring a dispute, the same Defendant cannot be heard to raise a preliminary objection such as the current one.

Consequently and for the reasons already given, I find the agreement dated 28-2-2022 to be null and void owing to the delay occasioned by the 1st Defendant.

8. Regarding the issue of injunctive orders, I find that the Plaintiffs have established a *prima facie* case with a probability of success because there is evidence that they paid the full purchase price for houses which have not been delivered to them. Secondly, it is deponed in the affidavit of 17-7-2024 that the same land on which the Plaintiffs money was used is being offered for sale to third parties. This will be detrimental to the Plaintiffs in that they have no guarantee of recovering their investments with the 1st and 2nd Defendants. There is no guarantee that the Defendants have the means to recompense the Plaintiffs for their investments. The Plaintiffs therefore stand to suffer loss that cannot be recovered from the Defendants.

For the above stated reasons, I find merit in the motion dated 17-7-2024 and I allow it in terms of prayers (c) and (e). Costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 7TH DAY OF APRIL, 2025.

M.N. GICHERU

JUDGE.

Delivered Online in the Presence of; -

Court Assistant – Mwangi Njonjo

Plaintiffs’ Counsel – Mr. Njenga

1st and 2nd Defendant’s Counsel – Mr Wambugu holding brief

