



Gaetan & 2 others v King'ori Estates Ltd & 2 others (Environment & Land Case E039 of 2021) [2022] KEELC 14616 (KLR) (26 October 2022) (Judgment)

Neutral citation: [2022] KEELC 14616 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E039 OF 2021**

A NYUKURI, J

OCTOBER 26, 2022

BETWEEN

**HATAGEKIMANA GAETAN 1ST PLAINTIFF
CATHERINE WANJIKU NG'ANG'A 2ND PLAINTIFF
CHARLES KAGAI MWANGI 3RD PLAINTIFF**

AND

**KING'ORI ESTATES LTD 1ST DEFENDANT
PETER G N NG'ANG'A 2ND DEFENDANT
SYOKIMAU FARM LIMITED 3RD DEFENDANT**

JUDGMENT

Introduction

1. By a plaint dated March 22, 2021, the plaintiffs herein sought judgment against the defendants jointly and severally for the following orders;
 - a. An order of specific performance for the defendants to transfer to the plaintiffs their respective plots namely LR No 12715/14262 (original no 12715/502/11), LR No 12715/14254 (original no 12715/502/3) and LR No 12715/14258 (original no 12715/502/7) excised from title number 12715/502.
 - b. An order to the effect that in default of the Defendants transferring to the plaintiffs their respective plots excised from title number 12715/502, the Deputy Registrar of the honourable court be authorised to execute all documents and instruments of Transfer so as to give effect to the order of specific performance.



- c. An order of permanent injunction restraining the Defendants from threatening to evict, take possession of the suit property namely LR No 12715/14262 (original no 12715/502/11), LR No 12715/14254 (original no 12715/502/3) and LR No 12715/14258 (original no 12715/502/7) (Title Number 12715/502) from the plaintiffs, alienating, transferring, and/or whatsoever dealing with the suit property in a manner prejudicial to interests/rights of the plaintiff.
 - d. Any other further relief(s) the honourable court may deem fit to grant
 - e. Costs of the suit.
2. The plaintiffs averred that the 1st and 2nd Defendants purchased part of Parcel LR No 12715/502 from the 3rd defendant but failed to have the title thereof issued in their names. That subsequently, the 1st and 2nd defendants subdivided LR No 12715/502 into 16 sub plots which they sold to different persons, including the plaintiffs but failed to transfer the same to the respective purchasers.
 3. Further, that the plaintiffs purchased plots LR No 12715/14262 (original no 12715/502/11), LR No 12715/14254 (original no 12715/502/3) and LR No 12715/14258 (original no 12715/502/7) (suit property) respectively and performed their part of the bargain by undertaking subdivision, paying for issuance of deed plans, stamp duty and registration of fees for title documents but the defendants failed to effect transfer of the suit property to the plaintiffs.
 4. According to the plaintiffs, upon purchase, the 1st and 2nd defendants put the plaintiffs in possession of the suit property whereof they have developed their respective plots.
 5. The plaintiffs stated that 11 owners of sub plots in LR No 12715/502 sued the defendants *vide* Machakos HCC no 262 of 2010, Peter Mathuji & others v Kinyora Estates Ltd & Peter GN Nganga; wherein a judgment was entered in favour of the plaintiffs.
 6. The 1st and 2nd defendants filed a statement of defence dated August 3, 2021 wherein they admitted entering into a land sale agreement with the plaintiffs for purchase of sub plots excised from Title no 12715/502 situated within Athi River in Machakos County. They admitted that the plaintiffs fulfilled their part of the agreements and that they subsequently took possession and developed the purchased plots.
 7. They denied being in breach of the land sale agreements and stated that the plaintiffs in Machakos HCC no 262 of 2010 have no role to play in these proceedings and should not therefore be involved in the same. They maintained that the reliefs sought by the plaintiffs were baseless and ought to be dismissed.

Plaintiffs' Case

8. PW1, Hategekimana Gaetani, relied on his witness statement filed in court on April 26, 2021 and adopted it as his evidence in chief. He testified that *vide* an agreement dated January 29, 2010, he purchased a plot being LR No 12715/502/11 from the 1st and 2nd defendants which plot was excised from LR No 12715/502. He stated that the 1st and 2nd defendants had purchased Parcel no 12715/502 measuring 5 acres from the 3rd defendant, but failed to transfer it to their names. That the two defendants subdivided the said property into sixteen subplots which they sold to different people including the 1st plaintiff.
9. He stated that he paid the full purchase price, took possession of the purchased property and developed the same by putting up two residential houses. According to PW1, the 1st and 2nd defendants had



- agreed to release to him all the completion documents including signed transfer documents by the 3rd defendants in his favour but failed to honour their promise.
10. Further that the 1st and 2nd defendants sold the subplots of LR 12715/502 to other persons but 11 of those purchasers sued them in Machakos HCC no 262 of 2010, where they sought to compel the defendants to transfer the purchased properties in their name and, that judgment was passed by this court in their favour. The witness sought for orders that the 3rd defendants be compelled to sign transfer in his favour and in default, the Registrar of this court to sign the same.
 11. He produced sale agreements, deed plans, copy of the original title deed for LR No 12715/502, photographs showing developments by the plaintiffs on the suit property, judgment in Machakos HCC no 262 of 2010 and an order issued in that suit on March 3, 2021.
 12. PW2, Charles Kagai Mwangi, adopted his witness statement filed on April 26, 2021 as his evidence in chief. He testified that he purchased Parcel LR No 12715/14258 from the defendants at a consideration of Kshs 380,000/- which he paid in full and took possession of the purchased property and proceeded to develop the same. That the defendants failed to transfer the purchased property to him and others who had purchased the plots subdivided from LR 12715/502 which led to 11 other owners to successfully sue the defendants for transfer of their purchased properties. He relied on the documents produced by PW1.
 13. PW3, Catherine Wanjiku Ng'ang'a, adopted her witness statement dated March 22, 2021. She testified that she purchased LR No 12715/14258 from the defendants. That the said parcel had been excised from LR 12715/502/502. That she paid a consideration of Kshs 380,000/-, took vacant possession of the purchased property and proceeded to develop it.
 14. She complained that although she had performed her part of the agreement, the defendants had failed to effect transfer in her name. she stated that the defendants' refused to transfer purchased properties to other purchasers led to filing of Machakos HCC no 262 of 2010 which was decided in favour of those purchasers. That marked the close of the plaintiff's case.
 15. Despite service, the defendants neither filed witness statements nor testified in defence. Therefore, the defence case was marked as closed, whereupon the plaintiffs sought for judgment.

Analysis and Determination

16. I have considered the pleadings and the testimony of the plaintiffs carefully. The issue that arise for determination is whether the plaintiffs are entitled to the prayers sought.
17. It is not in dispute that the plaintiff's purchased the suit property from the 1st and 2nd defendants paid in full consideration, took possession and developed the suit property. It is also not in dispute that the suit property has not been transferred to the plaintiffs.
18. Under article 40 of the *Constitution*, every person has the right to acquire and own property of any description and in any part of Kenya. Purchase is one way of acquiring property. As the plaintiffs have demonstrated by production of sale agreements that they lawfully acquired the suit property by way of purchase, having paid the full purchase price, their right to property is protected under the law.
19. I have perused the sale agreements and attendant documents between the plaintiffs and the 1st and 2nd defendants. It is clear that the plaintiffs purchased the suit property and paid the entire consideration in full. The 1st and 2nd defendants also agreed to ensure that the plaintiffs are issued with the title deeds of the purchased property. Since the defendants have failed to transfer the suit property to the plaintiffs



and or ensure that the plaintiffs are issued with the title documents, they are in flagrant breach of the terms of their respective sale agreements.

20. As the law protects the rights of a purchaser, it is my considered view that the plaintiffs are entitled to have titles for their respective properties, as the 1st and 2nd defendants have admitted receiving the full consideration from the plaintiffs.
21. The defendants have not disputed the plaintiff's claim. I note that the plaintiffs have developed the suit property as demonstrated in the photographs produced in evidence. It is therefore only fair that they are issued with title documents for their respective plots.
22. In the premises, I am satisfied that the plaintiffs have proved their case as against the defendants on a balance of probabilities and I enter judgment for the plaintiffs against the defendants jointly and severally in the following terms;
 - a. An order be and is hereby made for specific performance for the defendants to transfer to the plaintiffs their respective plots namely LR No 12715/14262 (original no 12715/502/11), LR No 12715/14254 (original no 12715/502/3) and LR No 12715/14258 (original no 12715/502/7) excised from title number 12715/502.
 - b. An order be and is hereby made to the effect that in default of the defendants transferring to the plaintiffs their respective plots excised from Title Number 12715/502, the Deputy Registrar of this honourable Court is hereby authorized to execute all documents and instruments of transfer so as to give effect to the order of specific performance.
 - c. An order be and is hereby issued of permanent injunction restraining the defendants from threatening to evict, taking possession of the suit property namely LR No 12715/14262 (original no 12715/502/11), LR No 12715/14254 (original no 12715/502/3) and LR No 12715/14258 (original no 12715/502/7) Title Number 12715/502) from the plaintiffs, alienating, transferring and or whatsoever dealing with the suit property in a manner prejudicial to the interests/rights of the plaintiffs.
 - d. The costs of the suit are awarded to the plaintiffs.
23. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 26TH DAY OF OCTOBER, 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the Presence of;

Ms. Musa for plaintiffs.

No appearance for defendants.

Court Assistant – Josephine

