



REPUBLIC OF KENYA



KENYA LAW
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Registered Trustees, Kenya Assemblies of God v Samuel (Environment & Land Case 235 of 2013) [2022] KEELC 13580 (KLR) (19 October 2022) (Judgment)

Neutral citation: [2022] KEELC 13580 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 235 OF 2013**

JO OLOLA, J

OCTOBER 19, 2022

BETWEEN

REGISTERED TRUSTEES, KENYA ASSEMBLIES OF GOD PLAINTIFF

AND

NAOMI JAPHET SAMUEL DEFENDANT

JUDGMENT

1. By a Complaint dated 12th November, 2013 but filed herein on 20th December 2013, the Registered Trustees, Kenya Assemblies of God (the Plaintiff) prays for Judgment against the Defendant for:
 - (a) An order that the Defendant specifically performs the terms of the contract;
 - (b) Alternatively, the Defendant be ordered to pay the Plaintiff the sum of Kshs.730,000/-;
 - (c) Costs of an incidental to this suit;
 - (d) Interest on (b) and (c) at Court rates from the date of filing suit until payment in full.
2. Those prayers are borne out of the Plaintiff's contention that at all times material to this suit, the Defendant was the proprietor of Plot No. Kilifi/Roka/565. On 30th January 2004, the Defendant and the Plaintiff entered into a Sale Agreement for purchase of a portion of the said parcel of land measuring approximately 50 by 70 feet at Kshs.80,000/-. The plaintiff paid a deposit of Kshs.30,000/- upon execution of the Agreement.
3. The Plaintiff avers that the Defendant thereafter undertook to process the Title Deed for the said portion sold to the Plaintiff after which the balance of Kshs.50,000/- was to be paid to the Plaintiff. Subsequently the Plaintiff took possession of the portion of land purchased from the Defendant and proceeded to construct a Church thereon. The Plaintiff accused the Defendant of breaching the contract and demanding that the Plaintiff vacates the suit land after it developed the same.



4. But in her written Statement of Defence, Naomi Japhet Samuel (the Defendant) denies that she was the proprietor of the suit property and/or that the parties entered into an Agreement for the sale thereof and/or that a down payment was made to herself. She further denies that she undertook to process a title deed for the Plaintiff and/or that a balance of the purchase price was to be paid later.
5. The Defendant further denies that the Plaintiff is entitled to the sum of Kshs.730,000/- as compensation and avers that the sum sought is misconceived and without any legal basis.
6. In the alternative, the Defendant states that if there was any contract, which is denied, then it is the Plaintiff who is in breach thereof having refused, declined and/or failed to pay the said balance besides forcibly taking possession of a different portion which was basically rental land not meant for sale.
7. Further the Defendant asserts that the only structure on the entire parcel of land is a dilapidated temporary structure which is likely to crumble down anytime and is totally valueless and the claim for compensation is inconceivable and over ambitious. In addition the Defendant asserts that if the Plaintiff insists a deposit for rent was made, the same is not recoverable as it is the Plaintiff which is in default.

The Plaintiff's Case

8. The Plaintiff called one witness who testified in support of the Church's case at the trial.
9. PW1 – Rev. Joshua Ouma Songa is a retired Bishop of the Kenya Assemblies of God Church. He told the Court he now resides in Likoni where he still serves as a Pastor of the Church. PW1 testified that he knew the Defendant way back in the year 2003 when they were looking for a place to build their Church in Chumani Area.
10. PW1 told the Court that on 30th January 2004, the Plaintiff entered into a Sale Agreement with the Defendant and one Raymond Kalama Kadoro for the purchase of a portion of Plot No. Kilifi/Roka/565. The said portion was 50 by 70 metres and the purchase price was Kshs.80,000/-. PW1 told the Court the Plaintiff paid a deposit of Kshs.30,000/- while the balance was to be paid when the title deed for the portion they had bought was ready.
11. PW1 further testified that the Agreement was signed by the Defendant and the said Raymond Kalama Kadoro as well as one Francis Thuku and himself. There were also three (3) other witnesses for both the buyer and the seller. PW1 told the Court that on 21st October, 2010 the Defendant wrote to her through an Advocate claiming that the Plaintiff is a monthly tenant on the premises. He told the Court the Plaintiff stands to suffer damages unless the Defendant transfers the land she had sold to themselves. He further told the Court they had since built a Church on the land whose value is about Kshs.1 million.
12. On cross-examination, PW1 told the Court they did not conduct a search at the lands office and that they never saw the title before purchasing the land. He told the Court they were praying for damages of Kshs.420,000/- which was the estimate they have of the value of the land. They had however not done any valuation on the land.

Defence Case

13. The Defendant opted to close her case without calling any oral or other testimony in support of her defence.



Analysis and Determination

14. I have accordingly carefully considered the pleadings filed herein, the sole testimony of the Plaintiff's witness as well as the evidence adduced at the hearing hereof. I have similarly perused and considered the rival submissions placed before me by the Learned Advocates representing the parties herein.
15. The Plaintiff Church is seeking an order that the Defendant herein be compelled to specific performance of the terms of the contract between them dated 30th January 2004. In the alternative the Plaintiff urges the Court to order the Defendant to pay unto them the sum of Kshs.730,000/- being damages for the breach of the contract, the costs of developments including installation of water in the premises as well as a refund of the deposit paid of Kshs.30,000/-.
16. In support of those prayers, the Plaintiff told the Court that they did enter into a Sale Agreement with the Defendant on 30th January 2004 by which Agreement the Defendant agreed to sell a portion of land measuring 50 by 70 feet that was to be excised from the Defendant's parcel of land known as Kilifi/Roka/565. The Plaintiff told the Court that upon execution of the Agreement they paid a deposit of Kshs.30,000/- and that the balance of the purchase price being Kshs.50,000/- was to be paid to the Defendant once she processed the Title Deed for the portion of land sold.
17. The Plaintiff accused the Defendant of breaching the said Agreement by refusing to process the title as agreed and subsequently demanding that the Plaintiff moves out of the land on which it has now erected a church for worship by its members.
18. In her Statement of Defence, the Defendant denied the existence of the Agreement and/or that she had sold any land to the Plaintiff. It was further her case that if the Plaintiff had made any deposit to herself, the same may have been a deposit of rent which was however not recoverable since the Plaintiff was the one in default.
19. While the Defendant generally denied the existence of the Agreement, the Plaintiff produced in evidence a copy of an Agreement executed between itself on the one hand as the purchaser and the Defendant together with one Raymond Kalama Kadoro on the other hand as the vendors. The hand-written Agreement witnessed by several witnesses and executed before the Roka Area Location Chief One Julius P. Ziro provided in part as follows:

“Conditions: The buyer will pay 30,000/- shs. down payment to enable the saler (sic) to process the title deed in the name of Kenya Assemblies of God Registered Trustees, P. O. Box 67014, Nairobi.

The balance will be paid when the title deed is ready.”
20. Arising from the foregoing, it was clear to me that the Defendant and the said Raymond Kalama Kadoro executed an Agreement to sell the land to the Plaintiff. That much is further clear from a letter dated 15th April, 2013 authored by the Defendant's Advocates on record Messrs Ombachi Moriasi & Company Advocates wherein in response to a demand letter by the Plaintiff's Advocates that they cease interfering with the Plaintiff's portion of land and take steps to obtain the title deed as agreed, the Advocates responded in the relevant part thus:

“That the purported contract between your client and ours is void ab initio and entered into out of a bilateral mistake and by fraudulent misrepresentation by your client who knew very well that the portion that was intended to be sold to them is the one at the back of Plot No. Kilifi/Roka/565 and not the plot where they are currently worshipping as the same is a



subject matter of lease commencing in they year 2004 owed Kshs.9,000/- (sic) and to which she herewith demands.

Our further instructions are therefore to ask your client to take up their rightful plot shown by our client and unconditionally clear the agreed balance of Kshs.50,000/- and do vacate the leased portion with immediate effect failure to which our client shall take action against them.”

21. As it were, the Defendant had a chance to submit the purported lease agreement between herself and the Plaintiff and to demonstrate that the portion on which the Plaintiff has now erected its Church was not the rightful portion sold to them. She however deliberately chose not offer any testimony in support of her pleadings.
22. In the submissions filed by her Advocates on record, the Defendant now submits that there was no valid sale Agreement as the suit property is registered in the name of her husband one Japhet Samuel Kadoro who is said to be deceased. It is further the Defendant’s case that no Letters of Administration have been taken out for the estate of the deceased and that therefore any purported dealing with the suit property amounted to intermeddling in the estate of the deceased contrary to Section 45 of the Law of Succession Act, Cap. 160 Laws of Kenya.
23. Those submissions are as strange as they can get. Throughout her 12 paragraph statement of Defence, the Defendant does not make reference to the property having belonged to anyone else other than herself. Indeed, no title in the name of the said Japhet Samuel Kadoro had been exhibited by the Defendant and there was no evidence of his death or when it happened. Those submissions were therefore unuseful to her case as was her decision not to testify herein.
25. By choosing not to testify, the evidence of the Plaintiff that it had entered into a valid sale Agreement for the purchase of the portion of land that was to be excised from Plot No. Kilifi/Roka/565 remains uncontroverted. The same applies to the testimony of the Plaintiff that it has since put up a Church thereon built almost at the tune of Kshs.1 million. As it were the Plaintiff has been in possession of the portion of land measuring 50 by 70 feet since the Sale Agreement was executed some 17 years ago on 30th January, 2004.
26. From the correspondence placed before me, it was apparent that the Plaintiff has always been ready and willing to meet its part of the bargain. The contract signed between the parties herein was valid and enforceable and given the developments brought on the suit land by the Plaintiff and the period of time it has taken on the land, I did not think that there was any adequate alternative remedy that would suitably compensate the Plaintiff other than an order of specific performance.
27. In the premises I am persuaded that the Plaintiff has proved its case to the required standard and I hereby make orders as follows:
 - (a) The Defendant is hereby directed to execute the necessary documents to enable the Plaintiff obtain title in its name for the portion of land measuring 50 by 70 feet to be excised out of Plot No. Kilifi/Roka/565 within 45 days from today.
 - (b) In default the Deputy Registrar of this Court to execute any necessary documents and instruments to enable the portion of land measuring 50 by 70 feet to be excised from Plot No. Kilifi/Roka/565 and to be registered in the name of the Plaintiff.
 - (c) The Plaintiff to pay the sum of Kshs.50,000/- being the balance of the purchase price to the Defendant immediately upon execution of the documents and instruments of transfer.
 - (d) Each party shall bear their own costs.



JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI VIA MICROSOFT TEAMS THIS 19TH DAY OF OCTOBER, 2022.

In the presence of:

Mr. Odhiambo for the Plaintiff

Ms Garama holding brief for Nyachiro for the Defendant

Court assistant - Kendi

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J. O. OLOLA

JUDGE

