



**Mutui t/a Manyi Agencies v Wambui (Environment and Land Case Civil Suit
400 of 2016) [2022] KEELC 13696 (KLR) (13 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13696 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE CIVIL SUIT 400 OF 2016**

M SILA, J

OCTOBER 13, 2022

BETWEEN

KIMANYI MUTUI T/A MANYI AGENCIES PLAINTIFF

AND

TERESIA WAMBUI DEFENDANT

JUDGMENT

(Suit by plaintiff seeking to stop the defendant from land that the plaintiff sold to her; case of the plaintiff hinged on the contention that the defendant never paid the purchase price; defendant producing ample evidence to show that she paid the full purchase price; plaintiff's case based on a falsehood that he was never paid; suit dismissed with costs)

1. This suit was commenced through a plaint filed on December 15, 2016. The plaintiff avers that he is the registered proprietor of the land parcel MS/Block II/75 and 76 located in Mtongwe Division, Mombasa County which land is subdivided into two plots No 296 and 297, awaiting final registration with the lands office. He pleaded that on February 19, 2009, he entered into a sale agreement with the defendant for the sale of the two subdivisions Nos 296 and 297 and that the defendant was to take possession upon full payment of the purchase price of Kshs 280,000/=. It is his case that the defendant only paid a sum of Kshs 40,000/= leaving unpaid a balance of Kshs 240,000/=. The plaintiff contends that the defendant has breached the contract inter alia by forcefully occupying the two plots and commencing construction before the land is surveyed and demarcated. He has also pleaded that his wife is yet to give him spousal consent to transfer the plots to the defendant. In the suit, the plaintiff seeks the following orders (paraphrased for brevity) :-
 - a. A mandatory injunction directing the defendant to stop further construction, selling, alienating, disposing and/or any adverse dealings with the disputed property.
 - b. An order terminating the sale agreement between the plaintiff and defendant.



- c. Vacant possession.
 - d. Costs and interest.
2. The defendant filed defence and pleaded that the property known as Plot MS/Block II/75 & 76 is jointly registered in the names of Dr Nino SA Cordeiro and Mirabeau Humberto Da Gama Rose, and that the plaintiff was a mere agent acting on behalf of Dr Cordeiro for purposes of disposing the property. The defendant nevertheless admitted entering into a sale agreement with the plaintiff but denied only paying the sum of Kshs 40,000/= as alleged. She averred that upon execution of the sale agreement she paid the sum of Kshs 232,000/= and later paid Kshs 30,000/= receipt of which was acknowledged. She pleaded that she only owes Kshs 20,000/= which is to be paid upon receipt of the transfer document. She denied that there was any term in the contract stipulating the time that she was to take possession. She pleaded that she started constructing a perimeter wall after the defendant showed her the plot and the beacons. She denied that there was any legal requirement for spousal consent and added that the plaintiff does not need spousal consent since he is only an agent of Dr Cordeiro who is the registered proprietor. She contended that the plaintiff lacks the necessary locus to institute the suit.
 3. The plaintiff testified that he is a retired naval officer. He adopted as his evidence a witness statement that he had recorded. In it, he stated inter alia that he is the owner of the Plots MS/Block II/75 & , which he subdivided to bring forth the two plots Nos 196 and 297, measuring 45 X 85 feet. Through the sale agreement of 19 February 2009, he sold the two plots to the defendant at Kshs 280,000/= and that a sum of Kshs 40,000/= was paid, leaving unpaid the sum of Kshs 240,000/=. He stated that the defendant forcefully entered the plot without having fully paid the balance and commenced construction. He added that he is having problems with his immediate family, regarding their consent to sell, which he has not obtained. He testified that he bought the land from Da Gama Rose advocate who was acting for the deceased land owners. Cross-examined, he testified that the sale agreement was done in name of Manyi Agencies as vendor. He mentioned that Manyi Agencies is his company. He stated that he could not give the defendant any transfer document as the land had not been transferred to him. He denied receiving any cheques in payment of the balance. Some cheques in his name were put to him but he still maintained that he was never paid anything more than Kshs 40,000/=.
 4. With the above evidence the plaintiff closed his case.
 5. In her evidence, the defendant testified that she used to work in Kajiado as a teacher until she retired in the year 2009. She then came to Mombasa and was informed that the plaintiff was selling some plots. They entered into negotiations and they agreed that she was to purchase the two plots Nos 295 and 296, at Kshs 140,000/= each, thus Kshs 280,000/= in total. On February 17, 2009, she proceeded to Kenya Commercial Bank, Kilindini Branch, and drew a banker's cheque for Kshs 232,000/= which she presented to the plaintiff. The sale agreement was subsequently executed on February 19, 2009. After signing the agreement, the plaintiff showed her the two plots and they agreed that he will provide her with the title deed. She went back to Kajiado and prepared another banker's cheque for Kshs 36,000/=. She testified that the two banker's cheques were cleared and the plaintiff also issued her with a receipt. She produced the copies of the banker's cheques. In the year 2016, she started putting up a perimeter wall and the plaintiff came to stop her. She added that on April 26, 2017 she drew a banker's cheque for Kshs 12,000/= to complete payment which cheque has not been returned. She denied signing any sale agreement showing that she had only paid Kshs 40,000/= and refuted the sale agreement displayed by the plaintiff. She had her own sale agreement which was different from that of the plaintiff which she insisted was the correct sale agreement. On the involvement of the plaintiff's family she stated that



- they had not agreement that the family would be involved. The defendant was not cross-examined as counsel for the plaintiff was not present when she testified.
6. With the above evidence, the defendant closed her case.
 7. I invited counsel to file submissions, which they did, and I have taken them into account before arriving at my decision.
 8. The case of the plaintiff is based on the allegation that the defendant breached the terms of sale of the agreement that they had. Significantly, he contends that the defendant has only paid Kshs 40,000/=, out of the purchase price of Kshs 280,000/= , and thus has no entitlement to the land. On the other hand, the position of the defendant is that she has fully paid the amount of Kshs 280,000/= and that she is entitled to receive title to the land.
 9. So what is the true position of the matter ? The evidence presented demonstrates that the true position of the matter is that the plaintiff was paid the purchase price through three banker's cheques. The first banker's cheque is dated February 17, 2009 for Kshs 232,000/=; the second banker's cheque is dated April 7, 2009 for Kshs 36,000/= ; and the third banker's cheque is that of Kshs 12,000/= of April 21, 2017. The copies of these banker's cheques were produced as exhibits by the defendant. The defendant also produced her bank statement to affirm that monies were withdrawn from her account in order to draw the banker's cheques. The contention by the plaintiff that he was not paid is a blatant lie. He himself issued a receipt when he received the first banker's cheque of Kshs 232,000/=. This is receipt No 1101 and the same indicates the banker's cheque number and the amount received from the defendant. In his evidence, the plaintiff purported to rely on an agreement which shows that only a deposit of Kshs 40,000/= was paid. The defendant denied signing this agreement and asserted that the genuine sale agreement is the one that she had, which showed that the initial payment was of the amount of Kshs 232,000/=. I am persuaded that the genuine sale agreement is that provided by the defendant and not that presented by the plaintiff. I say so because there is tangible evidence of the banker's cheque of Kshs 232,000/= and a receipt for it was issued by the plaintiff himself. The defendant produced the original of this agreement and I have no reason at all to doubt it.
 10. I find that the plaintiff's case is founded on a falsehood that he was never paid the purchase price when in fact he has been fully paid. The plaintiff also tried to hinge on claiming that he has not obtained spousal consent. Spousal consent was not a requirement in the year 2009 when the property was sold. In any event, the property was not matrimonial property but property sold in the course of business. He testified that he purchased the land and subdivided it into plots for sale. He was thus in the business of buying and selling plots and what was being sold was akin to a commodity in business. He affirmed that he operated the business through Manyi Agencies. The plaintiff is clearly clutching at straws in trying to rope in the requirement for spousal consent.
 11. There is no doubt in my mind that this is a baseless claim by the plaintiff, probably calculated at squeezing more money from the defendant. This case cannot, and does not succeed. It is hereby dismissed with costs.
 12. Judgment accordingly.

DATED AND DELIVERED THIS 13TH DAY OF OCTOBER 2022

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA

Delivered in the presence of :-



Mr Okanga for the plaintiff.

Mr Adhoch for the defendant.

Court Assistant – Wilson Rabong'o.

