



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 2936 of 1996

FRANCIS W. NDEGWA.....PLAINTIFF

VERSUS

ROSE MUTHONI MBOCHA.....1ST DEFENDANT

MAGIC GENERAL CONTRACTORS LTD.....2ND DEFENDANT

JUDGMENT

This claim arises out of a Sale Agreement entered into between the Plaintiff and the 1st Defendant on 9th September 1995 in which the 1st Defendant offered to sell and the Plaintiff agreed to purchase land Parcel No. BLOCK G PLOT H4 in Nairobi comprising of 0.50 Ha or thereabouts. It was expressly provided for in the said agreement inter alia that:

- (i) The Plaintiff would pay a deposit of Shs.550,000/=.
- (ii) The balance of Shs.250,000/= would be paid upon registration of the transfer of the said parcel of land in favour of the plaintiff.

The Plaintiff duly paid the first Deposit of Shs.400,000/=. The 1st Defendant thereafter threatened to cancel the sale as she had received another offer for the property from the 2nd Defendant as the plaintiff had refused to complete the agreement and she purported to sell the suit property to the 2nd Defendant.

The Plaintiff filed this suit on 25th November 1996 and amended on 6th August 1997 seeking:

- (a) As against the 1st Defendant. Specific performance of the Sale Agreement dated 9th September 1996.
- (b) A Permanent Injunction restraining the 1st Defendant from selling, charging or disposing of the suit premises being BLOCK G PLOT NO. H4 Nairobi.
- (c) A Permanent Injunction restraining the Defendants, their servants and/or agents from interfering with the Plaintiff's occupation of the suit premises being BLOCK G PLOT NO. H4 Nairobi.
- (d) In the alternative a refund of the Shs.400,000/= being Part Payment of the purchase price together

with interest thereof at a commercial rate of 24% per annum and Shs.88,000/= being the amount spent in constructing a fence around the suit premises.

It is the Plaintiff's case that the 1st Defendant was allotted the suit premises by the Nairobi City Council through a letter of allotment dated 24th September 1992.

The 1st Defendant offered the suit land for sale and on 9th September 1995 they entered into a Sale Agreement in which it was agreed that the purchase price would be Shs.800,000/= payable by instalments as follows -Shs.140,000/= at the signing of the Sale Agreement Shs.200,000/= on 8th September 1995 and the balance of Shs.150,000/= was payable by 15th September 1995. He paid a total of Shs.400,000/= and the balance of Shs.250,000/= was to be paid after the transfer of the suit premises into the name of the Plaintiff. On or about 8th September 1995 the 1st Defendant went to him and threatened to sell the suit property to a Third Party if he did not complete the sale. She said she had got another buyer who was ready to pay Kshs.800,000/=. He tried to pay an instalment of Shs.150,000/= but the 1st Defendant declined to accept the same. The suit property was later sold to the 2nd Defendant through Sale Agreement dated 20th February 1996. The Plaintiff in his evidence further told the court that the 2nd Defendant cannot claim to be an innocent purchaser because he knew of his occupation of the suit premises and his intention to purchase the same. Later the 2nd Defendant came and pulled down the perimeter fence and put up a stone wall.

From the evidence and the Plaintiff's own admission, the suit premises had been sold and transferred to the 2nd Defendant who claims to be an innocent purchaser and without notice which claim the Plaintiff disputes because the 1st Defendant knew of his occupation and his intention to purchase the same. With that admission by the Plaintiff that the suit premises has been transferred to the 2nd Defendant and without caveat registered against the property, the 2nd Defendant can rightly claim to be an innocent purchaser without notice.

The prayer for specific performance is therefore not tenable.

But the prayer in the alternative has been proved and is available to the Plaintiff.

Accordingly I enter judgment for the Plaintiff for Kshs.488,000/= with costs and interest at 24% per annum. Interest to run from 15th September 1995 until payment in full.

Dated and delivered at Nairobi this 3rd day of May, 2007.

J.L.A. OSIEMO

JUDGE