



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAROK**  
**ELC CAUSE NO. 133 OF 2017**  
**FORMERLY NAKURU ELC 353 OF 2017**

JEPHTHER OSORO OPANDE.....1<sup>ST</sup> PLAINTIFF

LABAN OPANDE.....2<sup>ND</sup> PLAINTIFF

-VERSUS-

KASONO OLE TIKANI.....1<sup>ST</sup> DEFENDANT

DOMINIC OLE TIKANI.....2<sup>ND</sup> DEFENDANT

ONDUSO JAMES OCHEGO T/A

OCHENGO ONDUSO &

COMPANY ADVOCATES.....3<sup>RD</sup> DEFENDANT

GREEN PORT LIMITED.....4<sup>TH</sup> DEFENDANT

**JUDGMENT**

By an Amended Plaint dated 22<sup>nd</sup> May, 2017 the plaintiff sought for orders:-

- (i) That the 1<sup>st</sup> and 2<sup>nd</sup> defendants are in breach of the sale agreement dated 10/11/2014
- (ii) A declaration to issue that the 3<sup>rd</sup> defendant is guilty of professional misconduct of breaching the professional undertaking that was issued to the plaintiffs' advocates
- (iii) A declaration to issue that the sale of the suit property to the 4<sup>th</sup> defendant was illegal and tainted with fraud
- (iv) Any title issued to the 4<sup>th</sup> defendant is void and its name be removed as a proprietor of Cis Mara/Oloropill/366
- (v) A permanent injunction to issue restraining the 4<sup>th</sup> defendant from entering into, dealing in any way interfering with land reference No. Cis Mara/Oloropill/366
- (vi) The 1<sup>st</sup> defendant to transfer the suit property to the plaintiff upon receipt of the balance of the agreed purchase price
- (vii) An award of general damages and compensation for the trees destroyed
- (viii) Costs of the suit

It is the plaintiffs' contention that the 1<sup>st</sup> and 2<sup>nd</sup> defendants were the registered proprietors of land parcel No. Cis Mara/Oloropill/366 and the 1<sup>st</sup> plaintiff with the instructions of the 2<sup>nd</sup> plaintiff contracted through a sale agreement dated 10/11/2014 to purchase the suit property for a sum of kshs. 1,500,000 under the following terms: -

(i) A deposit of kshs. 800,000 to the 3<sup>rd</sup> defendant being an amount owed by the 1<sup>st</sup> and 2<sup>nd</sup> defendant

(ii) The balance of kshs. 700,000 to be paid within 90 days from the date of issuance of the title to the plaintiffs pursuant to the above terms the 3<sup>rd</sup> defendant had issued a professional undertaking to release the title subject to receipt of the sum of kshs. 800,000 however, the same was not realized and in the circumstances the plaintiffs allege fraud on the part of the plaintiff and despite the plaintiff investing the suit land the plaintiff have refused to complete the transaction.

The defendants had filed a reference to the claim and admitted that they owned the suit parcel of land but denied there were any developments on the same when the 4<sup>th</sup> defendants purchased the land. the defendant further averred that the sale agreement alluded to the plaintiffs was entered into without the consent of the Land Control Board and hence the same was null and void and they further denied the allegations of fraud by the plaintiffs.

I have considered the pleadings filed by the parties and the submissions filed by the respective counsel on record this is a suit that emanates from the sale of a parcel of land that did not materialize it is not disputed that the plaintiff had entered into a sale agreement with the 1<sup>st</sup> and 2<sup>nd</sup> defendant dated 10/11/2014 which was duly executed by the parties.

It was an express term of the said sale agreement that the plaintiffs were to deposits the sum of kshs. 800,000 into the account of the 3<sup>rd</sup> defendant who was an advocate and the balance was to be paid within 90 days of the transfer of the suit. The 3<sup>rd</sup> defendant in consideration of the receipt of the sum of kshs. 800,000 did provide his undertaking to release the title documents to the plaintiffs but which he later or did not actualize the same and consequently the suit property was eventually sold to the 4<sup>th</sup> defendant.

The defendants in their submissions contend that there is no contract that is enforceable between the plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> defendants as the said defendants did not procure the consent of the Land Control Board but had later procured the said consent for the 4<sup>th</sup> defendant. The defendant also contends that the court lacked the requisite jurisdiction to enforce the professional undertaking that was given by the 3<sup>rd</sup> defendant as the same is a civil and thus outside the realm of the Environment and Land Court.

Having considered the testimony of the witness and the submissions filed it is my finding that the plaintiff has proved their case on a balance of probabilities and I find that the defendants in entering into the transaction and failing to conclude the same were out rightly insincere for reasons known to themselves.

Having found as above I do enter judgment for plaintiff against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants as follows: -

(i) That the 1<sup>st</sup> and 2<sup>nd</sup> defendants are in breach of the sale agreement dated 10/11/2014

(ii) That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants jointly and severally do refund the sum of kshs. 800,000 being the purchase price within 30 days of this judgement

(iii) That the 1<sup>st</sup> and 2<sup>nd</sup> defendants do pay the sum of kshs. 200,000 being damages for breach of contract entered into on the 10/11/2014 within 30 days of this judgement.

(iv) Costs of the suit to be borne by the defendants.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **25<sup>th</sup>** day of **January, 2021**

**Mohammed N. Kullow**

**Judge**

**25/01/2021**

In the presence of:-

CA:Chuma

Mr Macharia for the plaintiff

N/A for the defendants