



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT THIKA

ELC NO. 580 OF 2017

MURIU PROPERTIES INVESTMENT LTD.....PLAINTIFF

VS

JOSEPH BONGEL.....1ST DEFENDANT

REGISTRAR OF TITLES.....2ND DEFENDANT

JUDGEMENT

1. Vide a Plaintiff filed on the 5/6/17 and amended on the 25/2/19 the Plaintiff filed suit against the Defendants seeking the following orders:
 - a. The Court grants a vesting order for Land Ref 4953/4106 survey plan No 388/197) to the Plaintiff.
 - b. In the alternative to a above an order that the Deputy Registrar be authorized to execute the transfer and any other necessary documents to effect transfer of the suit land to the Plaintiff.
 - c. An order that the Registrar of Titles do register the Plaintiff as the owner of the suit land in place of the 1st Defendant.
 - d. Costs of the suit.
2. The Plaintiff avers that it purchased the suit land from the 1st Defendant and paid the purchase price in full. That the 1st Defendant failed to transfer the suit land to it despite payment in full.
3. The 1st Defendant was served through substituted services but failed to enter appearance or file a defence.
4. The 2nd Defendant opposed the claim of the Plaintiff through its defence filed on the 11/6/2019.
5. At the hearing the Plaintiff led evidence through Raphael Maina Irungu who introduced himself as the Director of the Plaintiff. He relied on his witness statement dated the 5/6/2017 as his evidence in chief together with the list of documents marked as PEX N 1-10.
6. The witness informed the Court that the Plaintiff and the 1st Defendant entered into an agreement of sale for the purchase of the land at the sum of Kshs 2.0 Million which was paid in full. That at the time of the sale the 1st Defendant held a letter of allotment for the suit land but later processed the title. That the payments were made to the 1st Defendant variously through Mpesa, cheque and cash. That it was a term of the agreement that the balance of the Purchase price would be paid upon the handing over of the certificate of lease to the Plaintiff but later the 1st Defendant prevailed upon the Plaintiff to pay the full purchase price which was paid.
7. That thereafter the 1st Defendant failed to surrender the completion documents to the Plaintiff. That he tried to contact the 1st Defendant in vain hence the filing of the suit. That he obtained survey plans from the 1st Defendant after he caused the survey of the suit land. That when he failed to raise the 1st Defendant, he carried out a search at the lands office and obtained the copies of the lease and certificate of lease which showed that the 1st Defendant is the registered owner of the suit land. He admitted failing to submit certificate copies to the Court. He did not annex the official search to his list of documents as well. That the Plaintiff is in occupation of the suit land.
8. The 2nd Defendant did not present any witnesses in defense of the Plaintiffs claim.

9. I have read the pleadings, the evidence and the written submissions filed by the parties and the key question is whether the Plaintiff has proved its claim.

10. The background of the case is premised on a purchase and sale agreement dated the 26/11/2010 between the Plaintiff and the 1st Defendant. The subject property being sold is LR No 4953/4106 Thika. The land measures 2.5 acres. The purchase price is Kshs 2 million out of which Kshs 500,000/- was paid and the balance of 1.5 million was to be paid within a period of 120 days from execution of the agreement and upon surrender of the 1st Defendant of the certificate of lease to the Plaintiff. The purchaser was to take possession on payment of the deposit of the purchase price. In the event of default the party in default would pay liquidated damages in the sum of 20% of the purchase price and refund of expenses incurred in the transaction.

11. PW1 led evidence that the 1st Defendant was allocated the suit land by the Government of Kenya on the 18/5/1995 vide a letter of allotment dated on even date. The subject land is described as 1.0 has or 2.5 acres; a lease term of 99 years from the 1/6/1995, stand premium of Kshs 100,000/-. Unsurveyed residential Plot B in Thika Municipality.

12. I have seen the payment receipts dated the 9/5/03 13/3/03 in the sum of Kshs 120,000/- which agrees with the total sums stated in the letter of allotment aforesaid. The allotment letter is supported by the Part Development Plan dated the 31/3/1995 approved by the commissioner of Lands for plot B.

13. PW1 produced a copy of the certificate of lease for a period of 99 years from the 1/6/1995 in the name of Joseph Bongei. The land is LR No 4953/4106 which agrees with the land reference number described in the agreement of sale. It measures 1.0 has or 2.5 acres. A copy of the lease document in favour of the 1st Defendant was also produced.

14. Taking the agreement of sale, letter of allotment, the lease document and the certificate of lease I am persuaded that the land that was purchased by the Plaintiff is LR No 4953/4106. This is further fortified by the registration of a caveat forbidding registration of dealing with the land by the registrar on the 16/1/2015 under entry No 161128/2.

15. I am persuaded that the Plaintiff has proven its case against the 1st Defendant on a balance of probabilities.

16. In the end I allow the suit and enter judgement in favour of the Plaintiff as follows;

a. Prayer No a is allowed as prayed.

b. The Deputy Registrar of this Court is ordered to execute all the documents necessary to effect the transfer of the title to the Plaintiff subject to the production of a certified copy of the title duly registered in the name of the 1st Defendant.

c. If b is satisfied, the Land Registrar is ordered to register the Plaintiff as the proprietor of the suit land in place of the 1st Defendant.

d. I make no orders as to costs.

17. It is so ordered

DATED, SIGNED AND DELIVERED AT THIKA THIS 21ST DAY OF JANUARY 2021

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Mungai HB for Wandati for the Plaintiff

1st & 2nd Defendants: Absent

Lucy: Court Assistant