



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 5463 OF 1990

MICHAEL K. GITAU.....1st PLAINTIFF

PYRAMID INVESTMENTS LTD.....2ND PLAINTIFF

VERSUS

KENYA TRIANGLE RANCHES CO., LTD.....DEFENDANT

JUDGMENT

Pyramid Investments ltd was joined as a second plaintiff on 27.2.95.

By an amended plaint filed on 15.5.91, the two plaintiffs claim shs 2,518,000 from defendant being deposit paid in pursuance to agreement of sale dated 29.4.86 which sale defendant failed to complete. Alternatively plaintiff seeks an order of specific performance of the agreement of sale.

M/S Atkison Cleasby & Satchu Advocates appear for the defendant. They have been represented in this suit by the firm of A.H. Malik and Co. Advocates.

Two advocates from the firm of A.H.H. Malik and Company Advocates attended court today. They applied for adjournment which application was refused. The two advocates then asked for leave to leave the court and the trial proceeded without them.

Mr. Paul Musinga a Director of Pyramid investments ltd gave evidence on behalf of the second defendant.

He also gave evidence on behalf of the second defendant as he holds a specific power of Attorney from first plaintiff dated dated 25.9.2001

The Agreement for sale date 29.8.86 was produced as exhibit. It shows that defendant agreed to sell to the two plaintiffs a parcel of land known as Kuranze Ranch measuring 204 375 acres at a price of shs 42,000, 000/= The Agreement shows that shs 2,518,000/= had been paid to vendors advocate upon the signing of the agreement.

In addition Mr. Paul Musinga produced documents which verify that plaintiffs infact paid shs 2,518,000/= to the defendants Advocates as a deposit.

According to the agreement and the evidence of Mr. Paul Musinga the balance of the purchase price was to be paid on or before 30.6.86 provided that the vendor shall have obtained the Title Deed of the farm. Mr. Paul Musinga testified that defendant failed to obtained the title Deed. This fact is admitted in paragraph 7 of the Defence. The letter dated 15.2.88 (Ex 5) from defendants Advocates further confirm

that defendant failed to

obtained the Title Documents The refund of the deposit paid was demanded by plaintiffs Advocates. The defendants Advocates by a letter dated 16.6.89 (Ex7) merely informed plaintiffs advocates that the deposit paid to them was paid to defendant and defendant has no money to make a refund. Defendant does not claim that the deposit is not refundable according to the Agreement.

I am satisfied that it is the defendant who failed to complete the agreement and that plaintiffs are entitled to a refund of the deposit. The order of specific performance of the Agreement cannot be given because there is no evidence that the Title Deed is now available and that all necessary consents have been given by relevant authorities.

Consequently, I allow plaintiffs suit and enter judgment for plaintiffs against the defendant for shs 2,518,000 with interest at court rates from date of filing the suit and costs of this suit.

E. M. Githinji

Judge

23.9.2002

Mr. Gatuguta for plaintiffs present