Ngari v Kariru (Environment & Land Case 28 of 2014) [2025] KEELC 4095 (KLR) (23 May 2025) (Judgment)

Neutral citation: [2025] KEELC 4095 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYERI

ENVIRONMENT & LAND CASE 28 OF 2014

JO OLOLA, J

MAY 23, 2025

BETWEEN

PETER KARURI NGARI ..... PLAINTIFF

AND

PETER IRUNGU KARIRU ..... DEFENDANT

JUDGMENT

Background

1. By a Plaint dated 24th February 2014, Peter Karuri Ngari (hereinafter "the Plaintiff") prays for a permanent order of injunction restraining the Defendant whether by himself, his servants and/or agents from entering in, demolishing structures, erecting any new structures or in any other way trespassing and/or interfering with the Plaintiff's quiet possession of land parcel No. Muhito/Gaturia/1716.

2. The prayers arise from the Plaintiff's contention that on 14th November, 2013, he entered into a sale agreement with the Defendant for the sale of all that parcel of land known as Muhito/Gaturia/1716 registered in the Plaintiff's name. It is the Plaintiff's case that the Defendant paid a sum of Kshs. 190,000/= out of the agreed purchase price of Kshs. 240,000/= and that the balance was to be settled upon transfer.

3. The Plaintiff further avers that the completion period for the agreement was to be within ninety (90) days unless the same was mutually extended. It is the Plaintiff's case that despite several verbal and written demands to the Defendant, he has refused to comply but is carrying on development and constructing on the suit property.

4. The Plaintiff avers that he drew a Cheque for Kshs. 171,000/= in favour of the Defendant but the Defendant refused to collect the same after breaching the terms of the contract.

5. Peter Irungu Kariru (the Defendant) is opposed to the grant of the orders sought. In his Amended Defence and Counterclaim dated 25th March, 2015, the Defendant denies that any demands were made to him and that he had refused to heed. The Defendant avers that payment of the balance was subject to the parties herein attending the land control board for its consent to transfer which has not been done. The Defendant further denies that the Plaintiff wrote any cheque in his favour and/or that he was advised to collect the same.

6. The Defendant denies that he has breached the sale agreement and by his counterclaim prays for an order to issue for the Plaintiff to specifically perform his part of the contract by having the suit property transferred to the Defendant's name.

7. At the trial herein both the Plaintiff and the Defendant testified as the sole witnesses in support of their respective cases.

Analysis and Determination

8. I have carefully perused and considered the pleadings filed herein, the testimonies of both the Plaintiff and the Defendant herein as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties herein.

9. By his suit herein, the Plaintiff has sought for a permanent order of injunction restraining the Defendant from entering, demolishing structures erecting any new structures or in any other way interfering with the Plaintiff's quiet possession of land parcel No. Muhito/Gaturia/1716.

10. It is the Plaintiff's case that on 14th November, 2013 he did enter into a sale agreement with the Defendant for the sale of the suit property measuring 0.049 Ha at a consideration of Kshs. 240,000/=. The Plaintiff told the court that the Defendant paid the sum of Kshs. 190,000/= upon execution of the agreement and that the balance of Kshs. 50,000/= was to be settled upon transfer of the title.

11. It was further the Plaintiff's case that the completion period for the transaction was 90 days but the Defendant had despite many demands refused to comply therewith even though the Defendant continued to carry out construction on the land.

12. On his part, the Defendant denies that the Plaintiff had made any demands for him to complete the payment and that he had refused to do so. It is the Defendant's case that the balance was to be paid upon the parties attending the land control board and obtaining the consent to transfer the land. He told the court that the same had not been done and by his counterclaim prays for an order to issue compelling the Plaintiff to specifically perform his part of the contract.

13. From the material placed before the court, it was evident that the parties herein entered into a sale agreement on 14th November, 2013 with the Defendant as the purchaser of the suit property from the Plaintiff. Paragraph 2 and 3 of the said agreement provided as follows:

> "2. The purchase price shall be Kenya Shillings Two Hundred and Forty Thousand Only (Kshs. 240,000/=) which sum the purchaser shall pay a deposit of Kenya Shillings One Hundred and Ninety Thousand (190,000/=) upon execution of this sale agreement, receipt whereof the vendor hereby acknowledges, and the balance of Kenya Shillings Fifty Thousand Only (Kshs. 50,000/=) shall be paid upon execution of transfer documents and upon obtaining consent from the Land Control Board; and

3. The vendor undertakes to execute the transfer documents and obtain consent from the Land Control Board."

14. On the other hand, Clause (C) of the special conditions of the Agreement provided as follows:

> " C. The completion date shall be within 90 days from the date of execution of this agreement but this may be extended by mutual consent having reasonable regard to the nature and circumstances of the transaction."

15. Testifying at the trial herein, the Plaintiff told the court he had prepared everything within the stipulated period but the Defendant had failed to appear before the Land Control Board. In support of his case, the Plaintiff produced a copy of an application for consent executed by himself on 11th December, 2013, a transfer of land form dated 15th January, 2014; and a receipt of Kshs. 1,000/= being payment for Land Control Board consent dated 7th January 2014.

16. It was also evident that the Plaintiff had through Messrs. Gathara Mahinda & Company Advocates written a letter to the Defendant dated 1st February, 2014 informing the Defendant that he was delaying the completion of the transaction as he had failed to appear before the Land Control Board despite requests made to him to do so by the Plaintiff.

17. While the Defendant denied receipt of the demands made by the Plaintiff to appear before the Land Control Board, he did concede at the trial that he was aware that the completion period for the agreement was within 90 days from the date of execution. He did not state what measures he took to ensure the Plaintiff obtained the required consent and transfer within the stipulated period.

18. In the premises I am persuaded that the Plaintiff has proved his case on a balance of probabilities. Since the Defendant had taken possession of the land and built some structures thereon, I think it is only fair that the Defendant be granted time to remove the same. Accordingly, I hereby enter judgment for the Plaintiff in the following terms:

    a. The Defendant's Counterclaim is hereby dismissed.

    b. The Plaintiff shall henceforth refund the deposit paid for the suit property to the Defendant.

    c. The Defendant has 30 days from today within which to remove any buildings and/or structures erected on the parcel of land known as Muhito/Gaturia/1716.

    d. A permanent order of injunction is hereby issued restraining the Defendant whether by himself his servants and/or agents from entering, erecting any new structures or in any other way trespassing and/or interfering with the Plaintiff's quiet possession of land parcel No. Muhito/Gaturia/1716.

    e. The Defendant shall bear the costs of this suit and of the Counterclaim.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 23RD DAY OF MAY, 2025

.....

J.O. OLOLA

JUDGE

In the presence of:

a. Ms. Firdaus Court Assistant.

b. Ms. Muthoni holding brief for Mwaura Advocate for the Plaintiff

c. Mr. Kammenji Advocate for the Defendant