



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. E7 OF 2020

MAURICE OUMA ARAO

ERIC OCHIENG OUMA

MARGARET OUMA ARAO (All suing as the REGISTERED

TRUSTEES OF THE UNITED INTERNATIONAL

LIFE MINISTRY OF CHURCHES.....PLAINTIFFS/APPLICANTS

-VERSUS-

SIMON OMOLLO AIRO.....DEFENDANT/RESPONDENT

RULING

Maurice Ouma Arao, Erick Ochieng Ouma and Margaret Ouma Arao suing as the Registered Trustees of the United International Life Ministry of Churches have sued Simon Omollo Airo claiming to be the registered trustees of the United International Life Ministry of Churches and the current registered proprietors of all that parcel of land known as LR No. 18991/9 (original number 18991/3/3 measuring approximately 1.103 hectares.

On 6th September 2016, the Plaintiffs and the Defendant entered into an Agreement for sale of Land in respect of a portion of land L.R. No. Kisumu Municipality/18991/2 measuring approximately 1.103 ha. For an agreed purchase price of Kshs. 6 million (Kshs. 6,000,000.00).

The Defendant paid a deposit of Kshs. 650,000.00 in cash and issued a personal cheque No. 000006 dated 30/09/2016 drawn on M/s NIC Bank Kisumu Branch payable to United International Life Ministry of Churches in the sum of Kshs. 350,000.00.

The said cheque was presented to the bank for payment but was unpaid/bounced for lack of sufficient funds.

The Plaintiffs have on several occasions approached the Defendant and requested him to make good the unpaid/bounced cheque but the Defendant has refused, ignored neglected and failed to make any attempts to do so to date.

The failure by the Defendant to pay the agreed initial deposit and or part payment of the agreed purchase price constitutes a breach of the terms and or conditions of the agreement for sale of land dated 6/9/2016 on the basis of which the Plaintiffs have revoked, cancelled and annulled the said agreement on grounds of breach of contract and frustration by the Defendant.

The Defendant has taken possession of the said land and the plaintiffs have decided to rescind the contract. The plaintiffs want their land back and have even reported to the police.

The plaintiffs claim against the defendant is

a) A declaration that the agreement for sale of land be and is hereby nullified, cancelled and revoked and is of no legal or contractual consequences on the grounds of breach of contract on the part of the Defendant.

b) An order permanent of injunction be and is hereby issued against the Defendant, his agents, servants, employees and or persons claiming his authority by whatever name called from entering into, trespassing into, remaining on/in all that parcel of land known as L. R. No. 18991/9 (original number 18991/3/3).

c) An order of mandatory injunction against the Defendant by himself, his agents, servants, employees and or any persons claiming his authority by whichever name called to immediately demolish, pull down and remove from within the boundaries all that parcel of land known as L.R. 18991/9 (original number 18991/3/3) all and singular the structures, buildings and or houses erected, constructed by the Defendant and in default, the Plaintiffs to demolish, pull down and remove from within the boundaries of the said parcel of land the said structures at the Defendant's expense and or cost.

d) An order of eviction of the Defendant by himself, his agents servants, employees and or persons claiming his authority from within the boundaries of all that parcel of land known as L.R. no. 18991/9 (original number 1899/3/3).

The Plaintiffs are ready to refund the defendant his money.

The Plaintiffs have also filed a notice of motion praying that pending the hearing and determination of the suit, the defendant by himself, his agents and servants, employees and or persons claiming his authority be restrained from remaining on, continuing to erect, build, construct, put up structures in and or in any other manner or by any other mode continuing to develop all that parcel of land known as L.R. no. 18991/9 (original number 1899/3/3).

The application is based on grounds that the plaintiffs are the registered owners of the suit property.

The Plaintiffs entered agreement with the defendant but the defendant's last payment vide cheque did not go through due to insufficient funds and therefore the defendant breached the agreement. The plaintiffs believe that they have a prima facie case with a likelihood of success. The issues raised are weighty and need determination. The defendants are developing L.R. no. 18991/9 (original number 1899/3/3) on the strength of an agreement on L.R 18991/2.

In response, Simon Omollo Airo, the Respondent states that on 6/9/2016, he entered into the sale agreements for purchase of two different parcels of land. The 1st sale agreement was in respect of parcel No. K/M/18991/9 and he was buying a portion of the same and the full purchase price was paid.

The second sale agreement was for K/M/18991/2 which was agreed at 6 million and was to be paid as per agreement.

In the 1st sale the plaintiff deposited the original certificate of lease for subdivision since he was buying a portion measuring 1.103 hectares. He has taken possession and has carried out development. His advocate died before subdivision and transfer.

The respondent states that the plaintiffs are seeking injunction on plot number 18991/9 (original number 18991/3/3 but relying on failure to complete purchase price in respect to L.R. 18991/2 which is a different parcel of land.

The Defendant admits that he entered into agreement with the plaintiffs for the purchase of L.R. No. 18991/2 as per the agreement.

The plaintiffs were to give quiet and vacant possession of the property immediately.

However, he was not given quiet and vacant possession.

The defendant did not however payment of Kshs. 350,000 owned by post-dated cheque as he did not get quiet and vacant possession as agreed.

I have considered the application and the response and the rival submissions and do find that the plaintiffs claim is in respect of parcel number K/M/18991/9. There is no dispute that the defendant was buying a portion of the same and paid the purchase price in full. This court wonders why the plaintiffs want to evict the defendant who has paid the purchase price in full of the portion aforesaid.

The agreement relied upon by the plaintiffs to seek for the injunction is in respect of parcel number 18991/2 and not 18991/3.

It appears that the process of submission of L.R. 141452 . L.R. 18991/9 has not been completed.

The upshot of the above is that the plaintiffs have not demonstrated a prima facie case with a probability of success. Moreover, the defendant has paid fully for the parcel of land and is likely to suffer irreparable harm if injunction is issued as prayed. Moreover, the defendant can't be evicted from the parcel of land No. L. K 18991/9 at this interlocutory stage of proceedings.

The balance of convenience tilts towards not granting injunction as the defendant who has invested in the land stands to suffer. Application is dismissed. Costs in the cause.

DATED AT KISUMU THIS 18th DAY OF MARCH, 2021

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2019.

ANTONY OMBWAYO

JUDGE