



REPUBLIC OF KENYA



**Sogomo v Rubber Components Limited & 2 others (Environment & Land Case E047 of 2022) [2025] KEELC 375 (KLR) (5 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 375 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E047 OF 2022**

**JM ONYANGO, J  
FEBRUARY 5, 2025**

**BETWEEN**

**RAEL JEBET SOGOMO ..... PLAINTIFF**

**AND**

**RUBBER COMPONENTS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**IBRAHIM ODHIAMBO ADERO ..... 2<sup>ND</sup> DEFENDANT**

**ROSEMARY AKOTH MUGWANA ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed suit against the Defendants claiming that she entered into 2 sale agreements dated 10<sup>th</sup> January 2011 and 11<sup>th</sup> March 2011 for the sale of 2 plots measuring  $\frac{1}{4}$  of an acre each forming part of L.R Number Eldoret Municipality Block 12/452 at an agreed purchase price of Kshs. 1,470,000 per plot. It is the Plaintiff's case that she paid the defendants a total of Kshs. 2,670,000 being part of the purchase price but they have refused to transfer the suit property to her. The plaintiff therefore seeks the following reliefs from the defendants:
  - a. An order of specific performance of the sale agreements dated 11<sup>th</sup> January 2011 and 10<sup>th</sup> March 2011 requiring the defendants to transfer the two plots forming part of L.R No. Eldoret Municipality Block 12/452 into the plaintiff's name.
  - b. In the alternative, a refund of money equivalent to the current market value of the two plots by the defendants jointly and severally.
  - c. Damages for breach of the sale agreements.
  - d. Costs and interest.



2. Upon being served with Summons to enter appearance, the Defendants entered appearance but failed to file a Defence.
3. The case was set down for hearing by way of formal proof on 14.10 2024 when the Plaintiff testified but did not call any witnesses.

### **Plaintiff's Case**

4. The Plaintiff testified as the sole witness for her case. She adopted her witness statement dated 5.9.22 as her evidence in chief. In essence she stated that she entered into two sale agreements dated 11<sup>th</sup> January 2011 and 10<sup>th</sup> March 2011 with the 1<sup>st</sup> Defendant for the purchase of 2 plots measuring  $\frac{1}{4}$  each forming part of land parcel number Eldoret Municipality Block 12/452 at an agreed purchase price of Kshs. 1,470,000 per plot. She produced the sale agreements as plaintiff's exhibits 1 and 3. She further testified that she paid the purchase of Kshs. 2,670,000 in installments as per the acknowledgment notes which she produced as Plaintiff's exhibits 2, 4 and 5. She also produced a copy of the sketch plan of the suit property (PEX7) and the Certificate of Lease dated 13<sup>th</sup> July 2003 (PEX 8) in the name of Rubber Components.
5. It was the plaintiff's testimony that despite performing her part of the agreement, the Defendants have failed to transfer the suit properties to her as they claim that there is a suit pending in court in respect of the suit property. She prayed that the defendants be compelled to transfer the suit properties to her or if they were unable to do so that they be compelled to refund her the current market value of the suit property. Pursuant to the directions of the court issued on 14.10.24, the Plaintiff produced a valuation report which indicates that the suit properties are valued at Kshs.17,000,000.

### **Plaintiff's Submissions**

6. In his submissions dated 28<sup>th</sup> November 2024 learned counsel for the Plaintiff summarized the Plaintiff's case and submitted that there exist valid sale agreements between the Plaintiff and the Defendants which meet the requirements of section 3(3) of the *Law of Contract Act*, Cap 23 of the Laws of Kenya. He submitted that the sale agreements were signed by both parties and attested by an advocate. It was his further contention that the Plaintiff had performed her part of the agreement by paying a total of Kshs. 2,670,000 out of the agreed purchase price of Kshs. 2,940,000 leaving a balance of Kshs. 270,000 which was payable upon sub-division and registration of the new numbers.
7. Counsel submitted that since the Defendants had not taken any steps to sub-divide the property and given the duration that the transaction had taken, it was only proper that the defendants be compelled to perform their part of the agreement. He relied on the case of *Reliable Electrical Engineers (K) Limited v Mantrac Kenya Limited (2006) eKLR* for the proposition that specific performance is based on the existence of a valid, enforceable and it will not be granted if the contract suffers from any defect such as failure to comply with the formal requirements or mistake or illegality which make the contract invalid or unenforceable.
8. Counsel submitted that should the court find that the alternative remedy sought in the Plaintiff is appropriate, it should direct that the defendants refund the plaintiff the amount equivalent to the current market value of the suit properties which is Kshs.17,000,000 as per the valuation report prepared by Real Appraisal Limited. In support of the alternative prayer, he relied on the case of *Solomon Ndegwa Kuria v Peter Nditu Gitau (2019) eKLR* where the court observed that it could not grant an order of specific performance as it was not clear who the registered owner of the suit property was.



## Analysis and Determination

9. Having considered the pleadings, evidence on record and the Plaintiff's submissions, the following issues arise for determination:
  - a. Whether there are valid contracts between the plaintiff and the defendants.
  - b. If the answer to (a) is in the affirmative, have the defendants breached the said contract
  - c. Is the Plaintiff entitled to the reliefs sought?
    - a. Whether there are valid contracts of sale of land between the plaintiff and the defendants
10. Section 3(3) of the [Law of Contract Act](#) provides that:-
  3. No suit shall be brought upon a contract for the disposition of an interest in land unless-
    - a. the contract upon which the suit is founded-
      - i. is in writing;
      - ii. is signed by all the parties thereto; and
    - b. the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:

Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the [Auctioneers Act](#), nor shall anything in it affect the creation of a resulting, implied or constructive trust.”
11. It was the Plaintiff's uncontroverted evidence that she entered into 2 sale agreements dated 11<sup>th</sup> January 2011 and 10<sup>th</sup> March 2011 with the 1<sup>st</sup> Defendant. The plaintiff produced the said sale agreements as Plaintiff's exhibits 1 and 2. The said agreements are duly signed by both parties and attested by an advocate as required by the provisions of section 3(3) of the [Law of Contract Act](#). It is therefore my finding that there are valid contracts for the sale of land between the plaintiff and the defendants.
  - b. Whether the defendants have breached the contract
12. The Plaintiff testified that she paid a total of Kshs. 2,670,000 by instalments and produced Plaintiff's exhibits 1-5 to show when the payments were made.
13. The acknowledgment dated 20.1.2012 indicates that the balance of Kshs. 270,000 was to be paid upon the vendor completing sub- sub-division and obtaining the leases. However, the defendants failed to sub-divide and transfer the suit properties to the Plaintiff as agreed. It is therefore clear that the defendants have breached the contract.
  - c. Whether the Plaintiff is entitled to the reliefs sought.
14. The plaintiff seeks an order of specific performance in respect of the two sale agreements and in the alternative a refund of a sum equivalent to the market value of the two plots.



15. With respect to Specific Performance, it is trite that the court's jurisdiction to grant an order of specific performance is governed by common law principles. In the case of *Reliable Electrical Engineers (K) Ltd (2008) eKLR* the court held as follows:

“Specific Performance, like any other equitable remedy is discretionary and the court will only grant it on well settled principles. The jurisdiction of specific performance is based on the existence of a valid, enforceable contract. It will not be ordered if the contract suffers from some defect, such as failure to comply with the formal requirements or mistake or illegality which make the contract invalid or unenforceable. Even where the contract is valid and enforceable, specific performance will however not be ordered where there is an adequate remedy where the claimant can readily get the equivalent of what he contracted for from another source. Even where damages are not an adequate remedy, specific performance may still be refused on the ground of undue influence or where it will cause severe hardship to the defendant.”

16. In the instant case even though there are valid sale agreements coupled with evidence of payment, the plaintiff has in her witness statement mentioned that the defendants informed her that they were unable to transfer the suit properties because there was a pending court case in respect of land parcel number Eldoret Municipality Block 12/452. This means that even if this court were to order the defendants to sub-divide and transfer the plaintiff's portion to her, the defendants may not be in a position to do so. Since the court does not act in vain, I decline to grant the order of specific performance.

17. I will now turn to the alternative prayer sought by the plaintiff which is a refund of the current market value of the suit property. The Plaintiff testified that she paid a total of Kshs. 2,670,000 leaving a balance of Kshs. 270,000. This clearly shows that she did not pay the full purchase price and therefore her claim for a refund of the purchase price based on the current market value cannot be supported. Although she sought leave of the court to file a valuation report, which leave was granted, the court is unable to rely on the said report in the absence of the proof that the plaintiff had fully discharged her obligations under the sale agreement. At any rate, it is not automatic that where a contract for the sale of land is breached, the purchaser is automatically entitled to a refund equivalent to the current market value of the suit property.

18. In the case of *Millicent Perpetua Atieno Vas Louis Onyango Otieno (2013) eKLR*, the Court of Appeal quoted with approval *Halsbury's Law of England, Volume 12, 4th Edition* at paragraph 1183 on the type and measure of damages recoverable by a purchaser upon breach by a seller of land. The Court observed as follows:

“Where it is the vendor who wrongfully refuses to complete the measure of damage is similarly, the loss incurred by the purchaser as the natural and direct result of the repudiation of the contract by the vendor. These damages include the return of any deposit paid by the purchaser with interest, together with expenses which he has incurred in investigating title, and other expenses within the contemplation of the parties, and also, where there is evidence that the value of the property at the date of repudiation was greater than the agreed purchase price, damages for loss of bargain.....”

19. This means that had the plaintiff paid the full purchase price, she would have been entitled to a return of the deposit paid together with interest as well as damages incurred in investigating title and damages for loss of bargain. However, in the instant case, the plaintiff is only entitled to a refund of the purchase price together with interest at court rates from the date of payment.



20. Accordingly, I enter judgment for the Plaintiff for the sum of Kshs 2,670,000 being a refund of the purchase price together with interest at court rates from the date of payment.

21. The Defendant shall bear the costs of this suit.

**DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 5<sup>TH</sup> DAY OF FEBRUARY 2025**

**J. M ONYANGO**

**JUDGE**

In the virtual presence of:

Mr Kibet for the Plaintiff

No appearance for the Defendant

Court Assistant: Hinga

