



Rombey v Summerbreeze Developers Limited & another (Environment & Land Case 745 of 2017) [2023] KEELC 18607 (KLR) (6 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18607 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 745 OF 2017**

JE OMANGE, J

JULY 6, 2023

BETWEEN

ROSE POMPEO SUBE ROMBEY PLAINTIFF

AND

SUMMERBREEZE DEVELOPERS LIMITED 1ST DEFENDANT

JAMES KIPKEMEI T/A KIPTUI KIPKEMEI & CO.

ADVOCATES 2ND DEFENDANT

RULING

1. This dispute arises out of a sale agreement between the plaintiff and the 1st Defendant in respect of the suit property Apartment No B4 on LR No 2/174. The two parties executed a sale agreement by which the plaintiff was to pay Kshs 40,000,000 for the suit property. The plaintiff claims to have paid this amount to her lawyers the 2nd Defendant who only remitted Kshs 22 million leaving a balance of Kshs 18 million. The 1st Defendant on the other hand insisted that the Plaintiff did not remit the purchase price. It was the contention of the 1st Defendant that it should not be dragged into the dispute between the Plaintiff and the 2nd Defendant. The 2nd Defendant did not testify.
2. After hearing both parties the court entered Judgement in the following terms:-
 - a. That a permanent injunction is hereby issued restraining the 1st Defendant from evicting the Plaintiff from apartment B4-Summer Breeze Apartments on LR No 2/174.
 - b. That an order of specific performance is hereby issued against the 2nd Defendant to carry out his obligations.
 - c. That the Plaintiff do liaise with the 2nd Defendant to ensure that the balance of the purchase price of Kshs 18,000,000 together with interest from 24th April 2017 is released to the 1st



Defendant's Advocates within ninety (90) days from the date of this Judgment. In Default the 1st Defendant will be at liberty to use lawful means to evict the Plaintiff from the suit premises.

- d. That the 2nd Defendant shall bear costs of this suit.
3. It is this Judgement that has prompted the present application. The applicant prays for the following orders;
 - a. That this application be certified urgent.
 - b. That this honourable court do issue eviction order against the plaintiff/respondent to vacate from the subject premises forthwith in compliance with this judgment dated April 28, 2022.
 - c. That the officer commanding station, Kilimani police station or any other law enforcement agency with jurisdiction to maintain peace and ensure strict compliance with the orders issued by this honourable court.
 - d. That costs of this application be borne by the respondent.
 4. The application is supported by the affidavit of the Director of the 1st Defendant in which he depones that the court had given the plaintiff 90 days to remit the purchase price. She has failed to comply hence should now be evicted from the property. Counsel for the applicant submitted that the 90 days given by the court lapsed on August 28, 2022. The applicant only filed the present application on October 26, 2022. Counsel further submitted that the injunction was conditional on the Plaintiff ensuring that the balance of the purchase price was paid. The court cannot at this stage alter the finding of the court.
 5. The Plaintiff/ Respondent filed a Replying Affidavit in which she said that the court had found that she was only to liaise with the her advocate the 2nd Defendant whom the court found culpable for failing to remit the purchase price. She insisted that she had liaised with the 2nd Defendant hence had discharged her duty in accordance with the court order. The plaintiffs advocate did not file submissions as at the date of writing this Ruling.
 6. The only issue the court has to determine is whether the court order allowed for eviction if the balance of the purchase price was not remitted. I have considered the Judgement of the court. I note that in the first order the court granted a mandatory injunction restraining the 1st Defendant from evicting the plaintiff. In the third order the court ordered that the plaintiff do liaise with the 2nd Defendant to remit the Purchase price. The Court went further to state that in default of the 2nd Defendant remitting the purchase price, the 1st Defendant was to use all lawful means to evict the plaintiff (emphasis mine).
 7. Clearly it was the court's decision that although the 2nd Defendant was the one to pay the purchase price, it was the plaintiff who was the contracting party who was to bear the brunt of any failure by the 2nd Defendant to comply. This order has not been appealed against. This court can only then enforce the same.
 8. It is not in dispute that the 1st Defendant has not received the purchase price. The Plaintiff has no answer for him save to say she is not liable. She makes no attempt in her affidavit to detail any attempts she has made to liaise with the 2nd Defendant which could demonstrate her good faith in the matter. But even if she did the best she could the order of the court which is crystal clear was that in the event the balance was not released within 90 days, the 2nd Defendant was to use all lawful means to execute which he has.
 9. In view of the foregoing I find that the plaintiffs application has merit and is allowed in the following terms;



- a. That an eviction order do issue against the Plaintiff/ Respondent to vacate the subject premise within 30 days of service of this order upon the Plaintiff/ Respondent.
- b. That the Officer Commanding Station Kilimani Police Station do enforce law and order and maintain peace during the eviction.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 6TH DAY OF JULY 2023.

JUDY OMANGE

JUDGE

In the presence of: -

Ms. Novi for the Defendants/Respondents

Steve - Court Assistant

