



Gerrit v Terakate Properties Limited (Environment & Land Case E117 of 2023) [2023] KEELC 21321 (KLR) (2 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21321 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E117 OF 2023
EK WABWOTO, J
NOVEMBER 2, 2023**

BETWEEN

JORDENS GERRIT PLAINTIFF

AND

TERAKATE PROPERTIES LIMITED DEFENDANT

RULING

1. The plaintiff moved this court vide an application dated 6th July 2023, later amended on 1st August 2023 accompanied by a supporting affidavit sworn by Jordens Gerrit seeking the following orders:
 - a. Spent...
 - b. That the Honourable Court be pleased to review its Ruling issued on 16th June 2023.
 - c. That upon review, the Honourable Court be pleased to order that the Plaintiff's suit and notice of motion application dated 22nd March 2023 are competent before Court.
 - d. That further upon review, the Honourable Court be pleased to hear and determine the Plaintiff's notice of motion application dated 22nd March 2023 on merits.
 - e. That the costs of this application be awarded to the Applicant.
2. The Application was made on premised on the following grounds;
 - a. The main compelling issues taken into consideration was that the Plaintiff sought specific performance of the Agreement dated 8th August 2006 and



27th August 2007 and therefore time barred pursuant to Section 7 of the [Limitation of Actions Act](#).

- b. However, the terms and conditions of the Agreement were that the Completion dates were 90 days from the date of the Agreements or date when the titles in respect of Plot numbers 316 and 317 were to be excised from LR No. 11329 in accordance to the sub division plan.
 - c. The Defendant became the registered property of the suit property on 11th April 2022 and it is only after this date that the Plaintiff could maintain the suit against the Defendant.
 - d. Unless the ruling is reviewed, the Plaintiff despite being in occupation would never get title documents for the two parcels. Additionally, the agreements requiring completion by the Defendant will be unenforceable and the Plaintiff will be at risk of losing its use and occupation of its rightful properties.
3. Pursuant to the directions issued by this court, the application was canvassed by way of written submissions. The Plaintiff/Applicant filed written submissions dated 15th August 2023 for consideration by the court. No written submissions nor any response was placed before this court by the Defendant.
 4. In the plaintiff's submissions dated 15th August 2023, it was submitted that the cause of action began to run after the Completion notice had been issued and breached. Relying on Section 80 of the [Civil Procedure Act](#) and Order 45 Rule 1 the [Civil Procedure Rules](#), it was submitted that the plaintiff had sufficient cause by demonstrating an error apparent on the record.
 5. The Affidavits of service dated 11th July 2023 and 29th September 2023 sworn by Jared Kuya Aseka confirmed that indeed the Defendant was served with the application, court directions and ruling notice respectively. The Defendant did not participate nor file any documents in opposition of the application.
 6. I have considered the application, evidence and submissions filed by the plaintiff. In my view, the issue that arises for determination is whether the plaintiff has demonstrated sufficient reason to warrant the review of the court's ruling delivered on 16th June 2023.
 7. The court has scrutinized the letter dated 30th January 2023 addressed to the defendant and duly received by defendant's counsel on 31st January 2023. The letter states:

“Following the passage of the Completion Dates, without payment by yourselves to provide our clients with their titles as stipulated...Do Now Take Notice that should the purchasers not receive completion documents and/or the respective titles within 21 days from the date hereof, the Purchasers shall proceed to exercise all their rights as provided in the Agreements and the law...”
 8. In this instance, the prayers sought are founded upon the existence of a Sale Agreement between the parties. Where prayers for specific performance are sought, the most crucial tenet in the determination of the dispute would be when time began to run. In this instance, the letter does suffice as a Completion Notice and as such time would begin to run when the breach by the Defendant occurred, which is sometime in February 2023.



9. I have also considered the ground of sufficient reason. In *Michael Mungai v Ford Kenya Elections & Nominations Board & Others & 2 others* [2013] eKLR, the five judge bench discussed the grounds of “sufficient reason” as follows:

“A decree or order may also be reviewed for any sufficient reason. In our opinion, sufficient reason can only be deduced from the facts and circumstances of a particular case before the court. For example, in the case of *Ngororo V Ndutha & another* [1994] KLR 402 the Court of Appeal held that any person, though not party to a suit, whose direct interest is affected by a judgment is entitled to apply for review. Such a reason can be ‘sufficient reason’ for the purposes of Order 45 Rule 1(1) for reviewing a decree or an order. An applicant must indeed place convincing evidence before a court for the court to be satisfied that there is sufficient reason to review its decision.”

10. Having considered the foregoing, it is evident that the court did not consider the contents of the letter dated 30th January 2023 in its ruling delivered on 16th June 2023. This is indeed sufficient reason that necessitates this court to review its earlier decision. In the instant case, having carefully considered the application herein and being guided by the aforementioned authority, the court finds that the plaintiff has met the threshold to warrant the grant of the orders sought.
11. In the end, this court finds that application dated 1st August 2023 is merited and the same is allowed in the following terms;
- a. The orders issued on 16th June 2023 are hereby set aside.
 - b. The plaintiff’s suit and the application dated 22nd March 2023 are reinstated for determination.
 - c. Costs to abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF NOVEMBER 2023.

E. K. WABWOTO

JUDGE

In the presence of: -

Ms. Sila for the Plaintiff/Applicant.

N/A for the Defendant/Respondent.

Court Assistant; Caroline Nafuna.

