



**Mutia v Jelagat & another (Environment & Land Case
104 of 2020) [2022] KEELC 3494 (KLR) (4 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3494 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 104 OF 2020**

M SILA, J

MAY 4, 2022

BETWEEN

RUTH SYOMBUA MUTIA PLAINTIFF

AND

JUSTINE JELAGAT 1ST DEFENDANT

BEATRICE BUTENDE T/A IGARE AUCTIONEERS 2ND DEFENDANT

RULING

1. The application before me is that dated 26 October 2021 filed by the plaintiff. The application is seeking the following orders :-
 - i. This Honourable Court be pleased to order the plaintiff/applicant's case to be re-opened and heard for purposes of including the correct title number for the property in dispute.
 - ii. This Honourable Court be pleased to grant the plaintiff leave to amend the plaint for the purposes of including the correct title number for the property in dispute.
 - iii. This Honourable Court be pleased to recall the plaintiff witness number 1, Ruth Syombua Mutia for further examination in chief, cross-examination and re-examination respectively for the purposes of adducing the correct title document for the property in dispute.
 - iv. Costs of this application be in the cause.
2. The background is that through a plaint filed on 12 August 2020 the plaintiff pleaded to have been a tenant of the defendant in the property described as Land Parcel Number CR 29883 Subdivision Number 9952 (the suit property) since the year 2017 before the defendant agreed to sell the suit property to the plaintiff at the amount of Kshs. 14,000,000/= through a sale agreement dated 23 April 2018. She avers to have paid some money leaving a balance of Kshs. 7,000,000/= and it was agreed that the plaintiff would complete a house that was on the property and deduct the costs thereof from the



purchase price. The plaintiff filed suit because the defendant sent an auctioneer, the 2nd defendant, to levy distress for rent. She contends that given the purchase agreement, there is no longer a landlord/tenant relationship. In the suit, she has asked for orders of specific performance and a declaration that she is no longer tenant of the defendant. Together with the plaint, the plaintiff filed an application for injunction, to restrain the defendant from distressing for rent and interfering with her possession of the suit property pending hearing of the case. I allowed the application through a ruling dated 5 November 2020. Thereafter, the main suit was set down for hearing on 18 October 2021.

3. On the day, the plaintiff gave evidence in absence of the defendants who did not appear. She testified inter alia that the defendant had agreed to sell to her the suit property which she had earlier rented from him. She stated that the property is in Mtwapa and is Plot No. 3083. She did testify that what was written in the sale agreement was a different plot (meaning the plot CR No. 29883 Subdivision No.9952) which she stated was located in Shanzu. She was categorical that she has no interest in the Plot CR No. 29883 (which is what is in the plaint) but her interest is in the Plot No. 3083 Mtwapa. She testified that if she cannot get the plot then she should get a refund. After her evidence, Ms. Musyoki who appeared for the plaintiff, closed the plaintiff's case and sought to file submissions. I closed the hearing of the matter and directed for written submissions to be filed and further directed that the case be mentioned on 10 November 2021 to confirm the filing of submissions. It is before that date that this application was filed.
4. I have already pointed out that the application seeks amendment of the plaint and for the plaintiff's case to be re-opened so that she may adduce additional evidence. The application is based on grounds inter alia that it has come to the attention of the plaintiff that the correct plot that she was purchasing is Plot No. MN/III/3083-3094 and not Land Parcel No. CR 29883 Subdivision Number 9952. She thus wants to amend the plaint to have the correct property in the plaint. Nothing was filed by the defendant to oppose the motion.
5. It appears to me that the plaintiff wishes to amend the pleadings so as to have the correct description of the property that she was purchasing put in the plaint. From what I gather, it is her position that the current plaint has the wrong property pleaded. I have no reason to deny her the opportunity to plead the correct property. It follows that if the plaint is amended, the same must be served and the case will need to be heard afresh, now with the correctly described property in issue. However, I have looked at the draft amended plaint but I see that what is sought to be pleaded is inter alia specific performance to the property "Land Parcel Number CR 29883 Subdivision Number 9952 Land Parcel Number MN/III/3083-3094." I am a bit at a loss here, because within this application, it is the assertion of the plaintiff that the reference to the Plot Number CR 29883 Subdivision Number 9952 is erroneous. I wonder why it is still being pleaded in the draft amended plaint. The plaintiff cannot have it both ways. She must make clear what property it is that she is claiming. She cannot on one hand state that there is an erroneous description in the plaint yet again plead what she has asserted is erroneous and seeks to correct.
6. I will allow the application in so far as leave to amend and leave to re-open the case is sought. However, I reject the draft amended plaint for reason that it is ambiguous on the property that the plaintiff is seeking. Leave is granted to amend but let it be clear and unequivocal what property the plaintiff seeks specific performance to. The amended plaint be filed within the next 14 days and be served in the usual manner. I will give further directions on the hearing of the case once the amended plaint is served.
7. I make no orders as to costs since the defendant did not oppose the motion.
8. Orders accordingly.

DATED AND DELIVERED THIS 4 DAY OF MAY 2022



**JUSTICE MUNYAO SILA
JUDGE, ENVIRONMENT AND LAND COURT
AT MOMBASA**

