



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 84 OF 2015

AYAZ AMIN MOHAMED MANJI.....1ST PLAINTIFF

ALEEM AMIN ABDUL MANI.....2ND PLAINTIFF

=VERSUS=

JANE NYIHA NJENGA.....DEFENDANT

JUDGMENT

1. By a plaint dated 19th March 2015, the plaintiffs seek judgment against the defendant for-

a. An order that the defendant is in breach of the sale agreement.

b. An order that the sale agreement between the plaintiffs and the defendant is terminated and the plaintiffs are allowed to rescind the sale agreement.

c. A refund of the plaintiff's security deposit of Kenya Shillings Two Million (Kshs.2,000,000).

d. A special damages for breach of agreement for sale of Kenya Shilings Two hundred fifty thousand eight hundred (Kshs.250,800/=).

e. General damages.

f. Costs of this suit plus interest thereon at court rates.

g. Interest on © and (d) above at court rates.

h. Any other relief as this honourable court may deem just to grant.

2. The defendant who was served by way of substituted service by advertisement in the Daily Nation Newspapers, neglected to enter appearance and or file defence within the stipulated period. Interlocutory judgment was then entered and the matter set down for formal proof.

3. PW1, Ayaz Amin Mohamed Manji, the 1st plaintiff, told the court that he wished to adopt his witness statement dated 17th March 2015. He told the court that on 1st December 2014, he and the 2nd plaintiff entered to an agreement with the defendant for the purchase of LR No. 12672/96, situated in Nairobi. The purchase price was agreed at Kshs.20,000,000/= payable upon complete transfer and registration of the property in favour of the plaintiffs. They also agreed that the deposit of 10% of the purchase price would be done in two instalments of Kshs 1,000,000. The amount was forwarded to the vendor's advocates M/S Mariaria & Co. Advocates. The amount was acknowledged by the said firm of advocates. Upon payment of the deposit the plaintiffs enquired the progress regarding the completion documents through a letter dated 13th January 2015 to the vendor's advocates. The vendor requested for thirty days to avail them. After the thirty days, the completion documents were not availed. The same were not availed despite several reminders necessitating the plaintiffs to rescind the agreement.

4. In support of their case, the plaintiffs produced the following documents as exhibits, Agreement for sale for LR No. 126721/92 – Exhibit p1; Letter dated 1st December 2014 from Diamond Trust Bank on RTGS instructions Exhibit P2; Letter dated 16th December 2014 acknowledging receipt of 5% purchase price deposit sent through RTGS exhibit P3; letter dated 2nd December 2014 requesting Diamond

Trust Bank to effect RTGS payment to the vendor's advocate exhibit P4; Letter dated 13th January 2015 for inquiry on the completion documents exhibit p5; Letter dated 19th January 2015, in reply to the inquiry on the completion documents exhibit P6; Letter dated 9th February 2015 requesting compliance with the sale agreement exhibit P7; A set of emails inquiring about the completion documents exhibit P8 and Demand letters before action exhibit p9.

5. The plaintiff's case has not been controverted. PW2, Aleem Amin Abdul Manji confirmed what PW1 told the court.

6. In paragraph 13 of the plaint the particulars of breach by the defendants are given as follows;

a. The defendant's failure and refusal to avail the completion documents to the plaintiffs within the contractually agreed period.

b. The defendant's failure to procure the completion documents within the contractually agreed period.

c. The defendant's failure to return the deposit upon rescission of the contract.

It is clear from the evidence on record that the defendant failed to perform her obligations in the contract.

7. Clause 5 of the sale agreement dated 1st December 2014 provides that:-

"5.1. The purchasers shall release the deposit being ten percent (10%) of the purchase price in two instalments and the vendor shall keep the said deposit on condition that the completion documents released to the purchaser's advocates are in good order and or authentic. The purchasers reserve their right to claim full refund of the deposit of the purchase price in the event registration fails as a result of the authenticity of any completion documents and shall use all legally viable ways to recover such sums including seeking redress in the courts of Kenya".

8. It is clear from the above clause that the purchasers (plaintiffs) are entitled to a refund of the purchase price.

9. The defendant never delivered any of the completion documents or at all. I find that the plaintiffs are entitled to damages. As the court was not guided on the quantum of damages I award Kshs.500,000/- which I think is reasonable.

10. I find that the plaintiffs have proved their case against the defendant on a balance of probabilities. I enter judgment on their favor as follows:-

a. A declaration is hereby issued that the defendant is in breach of the sale agreement.

b. An order is hereby issued that the sale agreement between the plaintiffs and the defendant is terminated and the plaintiffs are allowed to rescind the sale agreement.

c. That the plaintiffs are entitled refund of Kenya Shillings Two Million (Kshs.2,000,000) being the deposit of the purchase price.

d. Special damages of Kenya Shillings Two hundred fifty thousand eight hundred (Kshs.250,800/=).

e. General damages of Kshs.500,000.

f. Costs of this suit and interest.

It is so ordered.

Dated, signed and delivered in Nairobi on this 5TH day of MAY 2020.

.....

L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendant

.....Court Assistant