



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 336 of 2018

EMILIUS MUCHORA NDERITU.....PLAINTIFF

VERSUS

JOYCE NJOKI MWANGI alias

JOYCE NJOKI KARIMI.....DEFENDANT

JUDGEMENT

1. The Plaintiff entered into an agreement with the Defendant on 5/6/2006 for the sale of the land known as Nairobi/Block 110/502 (“the Suit Property”) at the agreed consideration of Kshs. 1,650,000/= which was to be paid in installments. The Plaintiff admitted that he paid the balance of the purchase price to the Defendant outside of the time agreed upon. The Defendant did not serve any completion notice.

2. The Plaintiff filed suit on 14/1/2009 when he discovered that the Defendant had attempted to sell the Suit Property to Mr. and Mrs. Wachira in November 2007. The Plaintiff claims that the Defendant was charged with the offences of fraud over the sale of the Suit Property contrary to Section 318 (c) of the Penal Code and obtaining money by false pretenses contrary to Section 313 of the Penal Code. The Plaintiff filed suit seeking an order of specific performance to compel the Defendant to complete the sale in respect of the Suit Property, general damages and costs of the suit.

3. The Defendant filed a defence on February 2009 in which she denied the Plaintiff’s claim. She admitted that she was charged with a criminal offence in **Nairobi Chief Magistrates Criminal Court Case No. 116 of 2008** but that she had not been convicted. She denied that the Plaintiff had suffered any loss or prejudice by her actions and maintained that the Plaintiff had not made up a case for the court to issue orders of specific performance.

4. A hearing notice was served on the Defendant’s advocates M/s King’oo Wanjau and Company Advocates but she did not attend court when this matter came up for hearing. Only the Plaintiff gave evidence.

5. The Plaintiff stated that in 2006 he decided to invest in a residential plot in Thome Area, Nairobi. He asked his friends to scout around for a plot for him. Two of his friends showed him a quarter acre plot on Stream Drive Road and introduced him to Joyce Karimi who was the owner of the plot. The Plaintiff knew the seller having worked with her at the University of Nairobi. The Plaintiff did a search on the land which confirmed that the Defendant was the registered owner of the plot as at 31/5/2006. He entered into the sale agreement dated 5/6/2006 with the Defendant, who was described as Joyce Njoki Mwangi alias Joyce Njoki Karimi in the agreement for the sale of the Suit Property. The purchase price was agreed at Kshs. 1,650,000/=.

6. The Plaintiff stated that pursuant to the sale agreement, he paid a total of Kshs. 1,740,000/= to the Defendant. He made the payments as follows:

- 5/6/2006 cash in the sum of Kshs. 495,000/=
- 25/8/2006 cheque for Kshs. 505,000/=
- 10/11/2006 cheque for Kshs. 300,000/=
- 1/12/2006 cheque for Kshs. 360,000/=.

The Plaintiff further paid Kshs. 50,000/= and 30,000/= on 3rd and 7th April 2007 respectively. He stated that the Defendant failed to deliver the completion documents after he had paid the full purchase price.

7. Sometime at the end of September or beginning of October 2007, the Plaintiff was informed by the workers on the Suit Property that

some unknown person had gone to view the suit land. In early October 2007 the Plaintiff was informed that a stranger had been on the suit land and he followed him and caught up with him. He informed the Plaintiff that his name was Wachira Nduhiu and that he had bought the suit land from the Defendant and had already paid the sum of Kshs. 1,200,000/= for the land.

8. The Plaintiff produced copies of the sale agreement, a copy of the title deed, the search and the Plaintiff's advocates letter of 23/7/2007. He also produced a copy of the caution that he caused to be registered against the Suit Property on 12/10/2007 claiming a purchaser's interest in the suit land. He also produced a copy of the agreement dated 5/10/2007 that the Defendant entered into with Wachira Nduhiu and Alice Wambui Watunu over the sale of the Suit Property. The purchase price under this agreement was Kshs. 1,900,000/=. He produced a copy of the charge sheet in the criminal case, copies of the cheques, his bank statements and correspondence from the bank in respect of the banker's cheques. He produced a copy of the acknowledgement executed by the Defendant in June 2006 acknowledging receipt of Kshs. 495,000/=.

9. He also produced a copy of the judgement in **Nairobi Chief Magistrates Court Criminal Case No. 116 of 2008** confirming that the Defendant was convicted under Section 215 of the Criminal Procedure Code on the counts of fraud on sale of property contrary to Section 318 and on the count of obtaining money by false pretenses. The judgement was delivered by V. Wakumile, Senior Resident Magistrate on 11/6/2012.

10. The issue for determination is whether the court should grant the orders sought by the Plaintiff. The suit was filed at the High Court as Nairobi HCCC No. 12 of 2008. It was transferred to the Environment and Land Court (ELC) on 23/7/2018.

11. The Plaintiff has proved that he entered into an agreement for the sale of the Suit Property with the Defendant and paid the purchase price in full. The Defendant contended in the defence which she filed that the Plaintiff breached the terms of the agreement without giving particulars of the breach. She did not lead any evidence of the breach.

12. The Plaintiff also relied on the judgement in the criminal case in which the Defendant was convicted of the offence of fraud in relation to the sale of the Suit Property to other persons after receiving the sale proceeds from the Plaintiff.

13. Based on the evidence adduced, the Plaintiff has proved his case on a balance of probabilities and is entitled to the orders he seeks. The court grants prayer (a) of the plaint and awards the Plaintiff the costs of the suit.

Dated and delivered at Nairobi this 4th day of November 2019

K.BOR

JUDGE

In the presence of: -

Ms. L. Ngaira holding brief for Mrs. Wanjau for the Plaintiff

Mr. V. Owuor- Court Assistant

No appearance for the Defendant