



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CASE NO. 701 OF 2011

CHARLES KIAI GACHERU.....PLAINTIFF

VERSUS

ESTHER GATHONI MWANGI.....1ST DEFENDANT

JOHN GAKURU MWANGI.....2ND DEFENDANT

JUDGEMENT

1. The Plaintiff entered into a sale agreement with the Defendants, who were the administrators of the Estate of the late Joseph Mwangi Gakuru, the registered owner of L.R. No. 13789, for the purchase of two plots being L.R. No. 13789/4 and 13789/5 that were to be excised from L.R. No. 13789. The purchase price was agreed at Kshs. 10 million out of which a deposit of Kshs. 5 million was to be paid on execution of the agreement and the balance was to be paid within 90 days subject to the Defendants completing the subdivision of the land and obtaining a partial discharge of charge from Consolidated Bank of Kenya Limited.

2. The Plaintiff paid the total sum of Kshs. 7,938,800/= to the Defendants which the Defendants do not dispute. The Plaintiff claims that the Defendants breached the sale agreement by failing to complete the agreement within the stipulated time and to provide the completion documents. The Plaintiff seeks a permanent injunction to restrain the Defendants or their agents from selling, offering for sale, transferring, mortgaging or in any manner dealing with the parcels of land known as L.R. Nos. 13789/4 and L.R. No. 13789/5. He also seeks an order of specific performance to compel the Defendants to complete the sale agreement dated 20/8/2008.

3. The Defendants admitted the payment of Kshs. 7,938,000/= but averred that the Plaintiff made them to acknowledge the receipt of money under duress. They contended that the Plaintiff was the first one to breach the terms of sale agreement and that he never issued a completion notice.

4. The Plaintiff testified. It was a term of the sale agreement that the Defendants would obtain a Certificate of Confirmation of the Grant of letters of administration in respect of the Estate of the late Joseph Mwangi Gakuru in **Nairobi High Court Succession Cause No. 2681 of 2007** wherein the sale of the plots to the Plaintiff would be disclosed for the court's approval. The Certificate of Confirmation of Grant was issued in February 2010 and the transfer of L.R. No. 13789 was registered in favour of the Defendants on 15/6/2010.

5. The Plaintiff paid the Defendants the total sum of Kshs. 7,938,800/=. He stated the Defendants were in breach and refused to complete the sale yet he was able, ready and willing to complete his part of sale by paying the balance of Kshs. 2,061,200/= to the Defendants. On cross examination, the witness stated that the Defendants had written to him a few days before the hearing of the suit claiming that they wanted to refund the sum of Kshs. 7,719,000/= to him. He believed that the charge to Consolidated Bank of Kenya Limited had been discharged. He informed the court that the Defendants were his aunt and cousin respectively.

6. The 2nd Defendant gave evidence. He stated that the Plaintiff defaulted on the terms of the agreement by paying the deposit in installments. He conceded that Kshs. 5 million was to be paid to the Defendants after they had fully discharged the title in respect of L.R. No. 13789 from Consolidated Bank or if they obtained a partial discharge of the two sub-plots that were to be transferred to the Plaintiff.

7. He stated that the sum of Kshs. 2,938,800 which the Plaintiff claims to have paid towards the purchase price was actually a soft loan meant for paying school fees for his younger siblings. He disowned the deed of acknowledgement relied on by the Plaintiff saying they were meant to sign it under a duress when the Plaintiff threatened them with violence if they did not acknowledge that the money deposited in the account in Consolidated Bank was part of the purchase price. He stated that they approached Ecobank with a view of it taking over the loan from Consolidated Bank when the interest became unmanageable. It was his evidence that the Plaintiff consented to having the Suit Property charged to Ecobank.

8. The issue for determination is whether the court should issue the orders sought by the Plaintiff. The court has looked at the agreement for sale. Clause 6 provided that completion would be 90 days' subject to the vendor settling the outstanding loan to Consolidated Bank; confirmation of grant of letters of administration where the sale of the two suit plots would be disclosed; and approval of the sale by the bank

for its consent to discharge the plots. The completion documents that were to be delivered to the purchaser's advocate were listed at paragraph 7 of the agreement. The Certificate of Confirmation of Grant mentioned the sale agreement and the two plots that would result from the subdivision of L.R. No. 13789. The Plaintiff also produced a copy of the letter dated 16/2/2009 requesting the Defendants to complete the sale.

9. The court is satisfied that the Plaintiff has proved his case on a balance of probabilities and that the Defendants breached the terms of the sale agreement.

10. The court grants prayers 1, 2 and 3 sought in the plaint dated 6/12/2011.

Dated and delivered at Nairobi this 3rd day of October 2018.

K. BOR
JUDGE

In the presence of: -

Ms. Mburu holding brief for Ms. Eyase for the Plaintiff

Ms. Gachagua holding brief for Mr. Litoro for the Defendants

Mr. V. Owuor- Court Assistant