



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC APPEAL NO. 17 OF 2020**

**EUSTACE KARIGICHA.....APPELLANT**

**VERSUS**

**JOHN GITONGA GEOFFREY.....RESPONDENT**

*(Being an appeal from the Judgment of the Hon J. IRURA, P.M Nkubu Law Courts,*

*delivered on 22<sup>nd</sup> January 2020 in PM- ELC CASE NO. 40 OF 2017-formerly*

*MERU HCCC.NO.89 OF 2012)*

**JUDGMENT**

1. The appellant being the defendant in the trial court was sued by the respondent vide a plaint dated 14/05/2012 seeking orders of specific performance of the agreement dated 19/6/2009 and/or in the alternative refund of consideration paid with interest and liquidated damages and costs of the suit.

2. It was the respondent's case that the parties herein entered into an agreement dated 19/06/2009, for the sale of 1 acre to be excised from the appellant's parcel of land LR. NO. ABOGEETA/U-KIONGONE/1950. The respondent was given vacant possession and cleared paying the purchase price by 31/12/2009. He also made extensive developments on the suit land. However, the appellant without any justification refused to transfer the said parcel of land.

3. The appellant filed his statement of defence dated 21/06/2012 where he averred that only Kshs. 200,000 of the consideration was paid by the respondent and the said sale never received the blessings of the Divisional Land Control Board and as such the entire sale agreement is null and void. Further only 200 tea bushes were planted by the respondent and he is at liberty to uproot and shift the same elsewhere. That in February 2012 the respondent vacated the suit premises which are now utilized by defendant's family who objected to the sale and are prepared, ready and willing to refund the purchase price.

4. The matter proceeded to hearing and on 22/01/2020, the trial court entered judgment for the respondent as follows;

a) *That the plaintiff is entitled to an order of specific performance.*

b) *The defendant is to sub divide and excise 1 acre from the suit land, obtain all relevant consents and sign all relevant transfer documents within 30 days failure to which the Executive Officer shall sign all relevant documents.*

c) *The plaintiff is awarded damages of breach of contract as clearly stated in paragraph 11 of the said sale agreement amounting to Kshs. 600,000.*

d) *Costs of the suit shall be borne by the defendant.*

e) *The plaintiff is further awarded interest of 4 and 5 above.*

5. The appellant being aggrieved by the aforesaid decision filed his memorandum of appeal dated 14/02/2020 raising four (4) grounds as follows:-

**i. That the learned trial magistrate erred in law and fact in decreeing that there be specific performance of the agreement**

between the parties and simultaneously ordering the appellant to pay the respondent liquidated damages of Kshs. 600,000 when the respondent's plaint sought alternative prayers.

ii. That the learned trial magistrate erred in law by failing to find that the respondent was bound by his pleadings in decreeing that the appellant meets the main and alternative prayers thereby greatly prejudicing the appellant by exposing him to double jeopardy.

iii. That the learned trial magistrate erred in law in failing to find that in the circumstances of this case and in the absence of the parties applying for and obtaining the Divisional Land Control Board Consent within 6 months or at all and the suit land being an agricultural Land, all the respondent was entitled to was a refund of the consideration of Kshs. 300,000 paid since the agreement became null and void by operation of the law.

iv. That the judgment is legalistic and against the weight of evidence on record and the pleadings.

6. The parties by consent agreed to have the appeal canvassed by way of written submissions. To this end, the court gave directions on 3/2/2021 for the appellant to file and serve his submissions by 3/3/2021, while the respondent was to file and serve his submissions by 3/4/2021. When the matter came up on 20/4/2021, the appellant had not complied with the directions given on 3.2.2021 his counsel addressed the court as follows; "*We did not file submissions. They are however ready. We shall file them today by close of business*". The court indulged the appellant with a rider that failure to file the said submissions as prayed would attract a dismissal of the suit.

7. By virtue of the receipt invoice attached to the submissions and the Court registry stamp affixed on the face of the submissions, it is clear that the appellant did not comply with the court order and direction. Court orders are not given in vain. As such this appeal stand as dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED VIA EMAIL AT MERU THIS 21<sup>ST</sup> DAY OF JULY, 2021**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**