



REPUBLIC OF KENYA



KENYA LAW
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**Njeri v Guchora (Civil Appeal E006 of 2020)
[2023] KEHC 2116 (KLR) (1 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2116 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E006 OF 2020**

JM CHIGITI, J

MARCH 1, 2023

BETWEEN

CHARLES NJOROGE NJERI APPELLANT

AND

JOSEPH KARAMO GUCHORA RESPONDENT

(Arising Chief Magistrates Court at Gatundu Civil Case Number 104 of 2019)

JUDGMENT

Brief Background

1. On or about April 6, 2017 the Respondent agreed to purchase a parcel of land known as Chania/ Ngorongo/2343 measuring approximately 0.3843 Ha at Kshs 700,000/- from the Appellant through a sale agreement with the Appellant who was selling a property.
2. The Respondent herein, who was the Plaintiff in Chief Magistrates Court at Gatundu, Civil Case Number 104 of 2019, filed a suit by way of a Plaint on April 1, 2019 wherein he sought for:
 - a. Judgment on the admitted amount of Kshs 232,000/- during the criminal proceedings.
 - b. Judgment on the amount disputed by defendant of Kshs 12,200 in favour of the plaintiff.
 - c. A declaration that the defendant was in breach of the sale agreement dated 6th April and thus the Plaintiff is entitled to 100% per annum from the date the amount was received by the defendant.
 - d. Costs of the suit and interest from the date of filing the suit.
3. In response, the Appellant herein, being the Defendant in Civil Case Number 104 of 2019, filed his Defence and Counter-Claim on November 25, 2019; where he conceded to the existence of the sale agreement, but maintained that it was the Plaintiff who breached it (sale agreement) by failing to pay



- the balance of Kshs 500,000/-, placing a caution on the suit property, and making a complaint to the police which complaint resulted to the Defendant being charged with the offence of obtaining money by false pretense contrary to Section 313 of the *Penal Code*.
4. The Appellant denied the particulars of the breach of contract pleaded in the Plaint and in his counter-claim prayed for:
 - a. An order that due to the breach of contract, the Plaintiff has forfeited and/or lost all the money already paid to the Defendant as per clause 12(2) of the sale agreement.
 - b. An order compelling and or directing the Land Registrar for the removal of the caution.
 - c. Mesne profits.
 - d. Costs of the Counter-claim and the suit and interest at Court rates.
 5. After hearing of the case, the trial learned Magistrate rendered its judgment on November 4, 2020 in favour of the Plaintiff and ordered:
 - i. That the Defendant shall refund to the Plaintiff a sum of Kshs. 232,000/= with interest at court rates from April 6, 2017 until payment in full.
 - ii. That upon full satisfaction of the decree herein, the defendant shall move the court for removal of the caution placed on the suit property.
 - iii. That the defendant's Counter-claim is dismissed with costs to the Plaintiff.
 - iv. That the Plaintiff is awarded the costs of the suit and interest thereon at court rates.
 6. Aggrieved by the Judgment of the learned Magistrate, the Appellant lodged the Memorandum of Appeal dated November 12, 2020, raising the following grounds:
 1. That the learned trial Magistrate erred in law and in fact by finding that the Appellant breached the contract; between the parties dated 6/4/2017, through his own admission in the criminal proceedings in Gatundu Chief Magistrate's Court, Criminal case No. 1061 of 2017 on 14/3/2018, when there was no such admission.
 2. That the learned trial Magistrate erred in law and in fact by finding that the Appellant breached the: sale agreement by stating that he was not willing to sell the suit property and would refund the purchase price already paid, contrary to the evidence before the Court, which was that by this time the contract had already been breached by the Respondent failing to pay the balance of the purchase price as agreed, by placing a caution on the land on 24/5/2017 and by: causing the Appellant to be arrested and charged in Court for obtaining money by false pretenses.
 3. That the learned trial Magistrate erred in law and in fact by finding that the Appellant breached the sale agreement by declining to receive the balance of the purchase amount and yet there was no evidence to prove the same.
 4. That the learned trial Magistrate erred in law and in fact by dismissing the Appellant's Counter Claim, without any reason and or justification or at all.
 5. That the learned trial Magistrate erred in law and in fact by directing and or ordering that the Appellant do refund the Respondent Kshs. 232,000 with interest at Court rates from 6/4/2017 thereby revoking and or rewriting the contract between the parties and contrary to the evidence on record.



6. That the learned trial Magistrate erred in law and in fact by failing to take into account the evidence and submission by the appellant which led to wrong conclusion and finding.

Analysis And Determination:

7. The issues for determination:
 - A. Does this court have jurisdiction?
 - B. Can the prayers sought in the appeal be granted?
8. I have gone through the witness statements, their submissions and the lists of documents as filed by the parties. They confirm the fact that the cause of action flows from a land sale transaction for Chania/ Ngorongo/2348.
9. I have also perused the sale agreement and the title of the suit property. It is clear in mind that this dispute revolves around the issue of the sale of land.
10. The Respondents sought a relief for an order compelling and or directing the Land Registrar for a removal of the caution.
11. In the judgment the trial magistrate confirmed that the cause of action is one of land ownership and breach of contract. The sale agreement, the undertaking and the title confirm beyond doubt that this is a land dispute.
12. Article 162 5 (1) of the *Constitution* provides that the superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause(2).
 - “(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-- Article 162 (b) the environment and the use and occupation of, and title to, land.”
13. Section 13(1) of the *Environment and Land Court Act, 2011* provides that the Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the *Constitution* and with the provisions of this Act or any other written law relating to environment and land.
 - “(2) In exercise of its jurisdiction under Article 162 (2) (b) of the *Constitution*, the Court shall have power to hear and determine disputes relating to environment and land, including disputes— (a) Relating to environmental planning and protection, trade, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) Relating to compulsory acquisition of land;
 - (c) Relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) Any other dispute relating to environment and land.”
14. The appeal touches on disputes and a judgment that is related to a land ownership issue emanating from land sale contract.



15. Section 13(1) of The *Environment and Land Court Act, 2011* donates the exclusive jurisdiction to the Environment and Land Court to hear and determined appeals from the subordinate court when it comes to Environment and Land related suits.

Disposition:

16. Section 13(1) of the *Environment and Land Court Act, 2011* provides that the Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the *Constitution* and with the provisions of this Act or any other written law relating to environment and land.
17. This court lacks jurisdiction to hear the appeal. This in effect settles the 1st issue. The court that has the requisite jurisdiction to determine this Appeal is the Environment and Land court.
18. The court cannot attend to the 2nd issue which in the circumstances must fall by the side.

Orders:

19. The appeal is hereby dismissed with costs to the respondent.

SIGNED AND DELIVERED AT KIAMBU THIS 1ST DAY OF MARCH, 2023.

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J. CHIGITI (SC)

JUDGE

