



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 1506 OF 2016

MOSES NGENE MUNYIRI.....PLAINTIFF

=VERSUS=

PETER NGUKU KUNGU.....DEFENDANT

JUDGEMENT

1. The Plaintiff filed this suit against the Defendant seeking the following reliefs:-

a. That a temporary injunction do issue restraining the Defendant by himself, his servants, employees, workmen, agents, heirs personal representatives or otherwise howsoever from selling , leasing , charging , pledging , offering the title thereof as lien or any form of security , trespassing, encroaching , evicting , demolishing, conveyance, transfer, arbitrary registration or in any other manner interfering with the Plaintiff/Applicants' peaceful occupation of the portion of land on property known as land Reference Number Dagoretti/Riruta/10, Nairobi pending the inter-parties hearing of this suit;

b. That a permanent injunction do issue restraining the Defendant by himself, his servants, employees, workmen, agents, heirs personal representatives or otherwise howsoever from selling , leasing , charging , pledging , offering the title thereof as lien or any form of security , trespassing, encroaching , evicting , demolishing, conveyance, transfer, arbitrary registration or in any other manner interfering with the Plaintiff/Applicants' peaceful occupation of the portion of land on property known as land Reference Number Dagoretti/Riruta/10, Nairobi pending the hearing and determination of this suit;

c. Specific performance of the said agreements:

d. Further or alternatively , that the Registrar of lands be ordered to execute transfer documents on behalf of the Defendant:

e. Damages for breach of the said agreement:

f. A declaration that he is entitled to a lien on the said property in respect of any damages and costs:

g. Costs of this suit:

h. Any other relief the Court deems fit to grant

2. The Defendant is the son of the late William Kungu Ndwaru (Deceased) who is the registered owner of **LR No. Dagoretti/ Riruta/10** . Following the demise of the deceased, the Defendant's mother Florence Wambui Kungu took out letters of administration in respect of the estate of the deceased. As the administratrix of the estate of the deceased, she embarked on the process of subdivision of the deceased's land. Unfortunately, the Defendant's mother passed on on 19th July 2015 before the process could be completed.

3. Before the demise of the Defendant's mother, she had pointed out to the beneficiaries their respective portions. With the consent of the Defendant's mother and other beneficiaries, the Defendant's mother entered into a sale agreement with the Plaintiff for sale of a portion of land measuring 52.3 metres by 50 metres which had been earmarked for the Defendant. All the proceeds of sale were to go to the Defendant.

4. The purchase price was **Kshs.3,500,000/=**. A deposit of **Kshs.1,000,000/=** was paid and the balance was to be paid in accordance with the terms of the agreement. As at 23rd July 2013, the Plaintiff had paid a total of **Kshs.2,100,000/=**. The Plaintiff subsequently made a further payment of **Kshs.400,000/=** leaving a balance of **Kshs.1,000,000/=** which was to be cleared upon the Plaintiff receiving completion documents .

5. The date of completion was 14 days from the date of registration of transfer. The Plaintiff was put in possession of the portion which he had purchased. He proceeded to put up structures which he let out to tenants. The Defendant later purported to rescind the agreement. This is what forced the Plaintiff to file this suit. The Plaintiff states that he is ready and willing to meet his side of the agreement but that it is the Defendant who is not willing to meet his side of the bargain.

6. During the hearing, the Defendant who knew of the hearing date did not attend Court. The hearing therefore proceeded ex-parte. The Plaintiff adopted his witness statement dated 2nd December 2016 as his evidence. I have looked at the sale agreement dated 5th March 2011. At the time of execution of the agreement, **Kshs.1,000,000/=** had been paid to the Defendant. As at 23rd July 2013, the Defendant acknowledged having received Kshs. 2,100,000/=.The balance then was acknowledged to be Kshs. 1,400,000/=.The Plaintiff testified that he subsequently paid Kshs.400,000/- leaving a balance of Kshs.1,000,000/=which he is ready and willing to clear.

7. I have carefully gone through the documents produced by the Plaintiff. The evidence contained therein is uncontroverted. This being the case, I find that the Plaintiff has proved his case on a balance of probabilities. The Plaintiff is the one in possession of the portion which he purchased. He is getting profits from the structures which he constructed and leased out. There is therefore no basis for granting general damages. I therefore enter judgement for the Plaintiff against the Defendant as follows:-

a. Specific performance of the agreements

b. A permanent injunction restraining the Defendant by himself , servants, employees , workman, agents, heirs, personal representatives or otherwise howsoever from selling , leasing , charging , pledging , offering the title as lien or any form of security , trespassing, encroaching , evicting , demolishing, conveyance, transfer, arbitrary registration or in any other manner other than to the Plaintiff in any manner interfering with the Plaintiff's occupation of a portion measuring 52.3 metres by 50 metres out of LR No. Dagoretti/Riruta/10.

c. If the Defendant does not sign the necessary documents to effect transfer of 52.3 metres by 50 metres out of Dagoretti/Riruta/10, the Deputy Registrar of this Court do sign the documents on behalf of the Defendant.

d. Costs of this suit to be paid by the Defendant.

Dated, Signed and delivered at Nairobi on this 12th day of March 2020.

E.O.OBAGA

JUDGE

In the Presence of :-

M/s Kitenge for Mr Githui for Plaintiff

Court Assistant: Hilda

E.O. OBAGA

JUDGE