



REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT AT KISUMU

ELC NO. 7 OF 2019

SUKHDEV SINGH MANGAT.....PLAINTIFF

VERSUS

SPRINGWEST (K) LIMITED DEFENDANT

JUDGMENT

The Plaintiff filed this suit against the Defendant seeking the following orders:

- (a) A declaration that the transfer to the suit property known as Land Reference Number 5450 situate North East of Kisumu Municipality of what was then known as Nyanza District comprising 172.7 acres and registered under Title Number I.R/7363/1 was done irregularly and in breach of the sale agreement between the Plaintiff and the Defendant.
- (b) An order for cancellation of the entry on the title deed to the suit property and transferring the same to the Defendant and a further prayer that the title to the said property be reverted to the Plaintiff.
- (c) Costs of this suit.

The Plaintiff claims that by agreement dated 28th October 2014, the Plaintiff agreed to sell to the Defendant and the Defendant agreed to buy all that property known as Land Reference Number 5450 situate North East of Kisumu Municipality of what was then known as Nyanza District comprising 172.7 acres and registered under Title Number I.R/7363/1 (the suit property).

That it was an express term of the agreement that the purchase price for the suit property was Kshs. 850,000/= per acre working out to a total of Kshs. 146,795,000/=. That it was further agreed that at the time of signing of the agreement, the Defendant was to pay a sum of Kshs. 14,679,500/= being a 10% deposit and the balance of the purchase price was to be paid on or before the completion date on the 28th February 2015.

That the Defendant paid to the Plaintiff a deposit of Kshs. 19,000,000/= and, on the strength of assurances from the Defendant and their lawyers that the balance of purchase price would be paid in time as set out in the agreement on the 6th of January 2015, the Defendant then rushed to register the transfer of the said property in favour of the Defendant. That since then and despite the registration of the transfer and assurances by the Defendant that they would pay the balance of Kshs. 127, 795,000/=: the Defendant has failed, refused and/or declined to pay the balance of the purchase price. That by reason of the breach of the terms of the agreement, the Plaintiff has been dispossessed of his property.

Despite proper service, the Defendant neither entered appearance, filed a defence nor called evidence. The matter proceeded for formal proof on 19th November 2019, at which the Plaintiff reiterated his pleadings and produced the following as evidence: copies of the sale agreement, transfer document and letters in the form of completion notices from the Plaintiffs Advocates to the Defendant.

Issues for Determination

1. Whether the Plaintiff has proved his case

The Plaintiff has sufficiently proven that he and the Defendant entered into an agreement for the sale of the suit parcel and that the agreement was subject to the LSK Conditions of Sale 1989. That Clause vii) of the agreement provided that upon failure to pay the balance of the purchase price and upon a 21 day notice of completion issued to the Defendant, the Defendant shall be at liberty to cancel the agreement and forfeit the deposit paid.

The Plaintiff has proved on the balance of probabilities that the Defendant failed to pay the balance of the purchase price despite registering

the transfer in his favour.

2. Relevant orders

The orders sought by the Plaintiff are justified and therefore ought to be granted. The upshot of the above is that the court grants the plaintiff a declaration that the transfer to the suit property known as Land Reference Number 5450 situate North East of Kisumu Municipality of what was then known as Nyanza District comprising 172.7 acres and registered under Title Number I.R/7363/1 was done irregularly and in breach of the sale agreement between the Plaintiff and the Defendant and an order for cancellation of the entry on the title deed to the suit property and transferring the same to the Defendant and a further the title to the said property to revert to the Plaintiff. Costs of this suit to the plaintiff.

DATED, DELIVERED AND SIGNED THIS 28th DAY OF **APRIL, 2020**.

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

This judgment is hereby delivered to the parties by electronic mail due to the measures restricting court operations due to COVID -19 pandemic and in light of directions issued by the Honourable Chief Justice on 15TH March 2019 and with the consent of the parties.

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE