



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC SUIT NO. 754 OF 2012

CREST PROPERTIES LIMITED.....1ST PLAINTIFF

CORONATION BUILDERS (1974) LIMITED.....2ND PLAINTIFF

VERSUS

FIRST QUANTUM HOLDINGS LIMITED.....DEFENDANT

JUDGEMENT

1. By a plaint dated 25th October 2012 and Amended on 22nd July 2013 the plaintiffs seek judgment against the defendant for:-

(a) A permanent injunction do issue restraining the defendant/respondent by itself, its agents servants or any of them whatsoever from alienating, selling, disposing the said property LR Number 209/8786/2 Industrial Area, Nairobi and LR No. 209/9482 Dandora, Nairobi, until further orders of this court.

(b) A declaration and finding that the transfer of the plaintiffs property known as LR Number 209/8786/2 Industrial Area Nairobi and LR NO. 209/9482 Dandora, Nairobi was fraudulent and illegal.

(c) An order for specific performance of the Agreement for sale against the defendant over the suit property LR Number 209/8786/2 Industrial area Nairobi and LR No. 209/9482 Dandora Nairobi.

(d) Cancellation of the transfer of property LR Number 209/8786/2 Industrial Area, Nairobi and LR No. 209/9482 Dandora Nairobi in favour of the defendant First Quantum Holdings Limited.

(e) Damages for breach of contract.

(f) Cost of this suit.

2. The defendant was duly served by way of substituted service by advertisement in the Daily Nation Newspapers of 26th June 2013. The defendant neglected to enter appearance and/or file defence within the prescribed period, the matter then proceeded for formal proof.

3. PW1 Prahlad Singh Bhangra, the general manager of the plaintiffs testified on 29th July 2019. He adopted his witness statement dated 18th November 2013 and the list of documents dated 18th November 2013. He told the court that the suit properties LR No. 209/8786/2 Industrial Area Nairobi and LR No. 209/9482 Dandora, Nairobi belong to the plaintiffs. That the plaintiffs had agreed to sell the two properties to the defendant at Kshs.61,500,000/-. The defendant only paid Kshs.15,500,000/-. The said cash was paid to the plaintiffs by Mr. Caroli Omondi who is a director of the defendant. He relied on the sale agreement dated 16th August 2010. It is further the plaintiff's case that the suit properties were sold to a third party without their consent. He further told the court that Mrs. Sethi could not have signed the transfer as she was out of the country at the time. That the balance of the purchase price was not paid. He prays that the plaintiffs do get back their said properties or the balance of the purchase price.

4. In support of their case, the plaintiffs relied on the further list of documents dated 18th November 2013 and the list of documents dated 25th October 2012. PW1 produced an Agreement for sale dated 16th August 2010. A copy of the title deed for LR No. 209/8786/2, a demand letter form M/s Mwangi & Guandaru Advocates dated 2nd September 2011. In their further list of documents PW1 also produced an official search on IR No. 56191/1 and LR No. 209/9482.

- A demand letter from M/S Mugambi Mungania & Co. Advocates dated 22nd March 2013.
- Lease for IR No. 66182 and LR No. 209/8786/2.
- Certificate of incorporation of Expo Plastic Limited.
- Application for search dated 26th July 2013.
- A letter to the registrar of titles dated 5th September 2013.

5. The plaintiffs, called another witness. PW2 Irene Mutahi, the Principal Land Registrar in charge of the central land registry Nairobi produced the original file in respect of LR No. 209/8786/2. She told the court that the registered owner is English Press Limited. That they became owners on 12th August 2014. She produced a copy of transfer from First quantum Holding to English Press Limited for Kshs.120,000,000/- Caroli Omondi and Peter Ochola signed on behalf of First Quantum Holdings Limited on 10th July 2014. She further told the court from the records the 1st plaintiff transferred the suit property to the defendant on 18th November 2011 for a consideration of Kshs.32,000,000 H. S. Sethi and Pamela Sethi signed on behalf of the 1st plaintiff before Maurice Otieno Omuga Advocate. She further told the court that LR No. 809/9482 is registered in the name of First Quantum Holdings Limited on 18th November 2011 for a consideration of Kshs.4, 500,000/-. It was previously owned by the 2nd plaintiff. The directors, H. S. Sethi and Pamela Sethi signed for the 2nd plaintiff. PW2 further told the court that the current marked value can be assessed by a valuer.

6. In paragraph 10 of the Amended Plaintiff, the particulars of fraud on the part of the defendant are given as follows:-

(a) Forging the signature of Mrs. Pamela Sethi, a director of Crest Properties Limited and Coronation Builders [1974] Limited in the transfer documents so as to effect the transfer of LR No. 209/8786/2 Industrial Area, Nairobi and LR No. 209/9482 Dandora Nairobi.

(b) Effecting the transfers of LR No. 209/8786/2 Industrial Area Nairobi and LR No. 209/9482 Dandora, Nairobi without payment of the purchase price.

7. It is the plaintiffs' case that the defendant paid Kshs. 15,500,000 out of the agreed Kshs.61,500,000/- The balance has not been paid. The defendant fraudulently transferred the suit properties to itself without paying the full purchase price. They also did this by forging the signature of one of the directors of the 2nd plaintiff Mrs. Pamela Sethi. The plaintiffs' case has not been controverted. The particulars of fraud set out in paragraph 10 of the amended plaintiff have not been challenged.

8. The plaintiffs have maintained that they did not sign the said transfers in respect of the two suit properties. PW1 stated that the fraudulent transfer was executed by the defendant, in collusion with the joint Advocate Mr. Maurice Otieno Omuga who was holding the titles to the suit properties as a stakeholder. It is noted that one of the suit property has been transferred to a third party.

9. There is no doubt that there existed a contract between the plaintiffs and the defendant for the sale of the suit properties for Kshs. 61,500,000. Only Kshs.15,500,000 was paid leaving a balance of Kshs.46,000,000. The defendant has not paid this amount. This constitutes a breach of the said agreement. The plaintiffs are entitled to general damages. The court was not guided on quantum. I award Kshs.500,000/- which I think is reasonable.

10. I find that the plaintiffs have proved their case against the defendant in a balance of probabilities. Accordingly judgment is entered in favour of the plaintiffs as against the defendant as follows:-

(a) A permanent injunction is hereby issued restraining the defendant, by itself, its agents, servants, or any of them whatsoever from alienating, selling, disposing the said property LR No. 209/8786/2 Industrial Area, Nairobi and LR No. 209/9482 Dandora Nairobi.

(b) That a declaration is hereby issued that the transfer of the plaintiff's property known as LR No. 209/8786/2 Industrial Area Nairobi and LR No. 209/9482 Dandora was fraudulent and illegal.

(c) That an order for specific performance is hereby issued to compel the defendant to pay the balance of the purchase price being Kshs.46,000,000/- together with interest at court rates with effect from November 2011 until payment in full.

In the alternative an order is hereby issued for cancellation of the transfer of the property LR No. 209/8786/2 Industrial area Nairobi and LR No. 209/9482 Dandora Nairobi.

(d) General damages for breach of contract Kshs.500,000/-.

(e) Costs of the suit and interest.

It is so ordered.

Dated, signed and delivered in Nairobi on this 28TH day of MAY 2020.

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L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiffs

No appearance for the Defendant

Kajuju -Court Assistant