



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO 201 OF 2018

PETER OCHIENG ODUNDO1ST PLAINTIFF

MARGARET WANJIRU ODUNDO.....2ND PLAINTIFF

- VERSUS-

SAVANNA DEVELOPMENT COMPANY LTD..... DEFENDANT

JUDGMENT

1. The plaintiffs brought this suit on 26/4/2018 through a plaint dated 12/4/2018. They sought the following verbatim orders against the defendant:

- a. A declaration that the plaintiffs are the bona fide purchasers of the suit property and are entitled to a transfer thereof in their favour.**
- b. An order of permanent injunction be issued restraining the defendant by itself or by its agents and/or servants from selling advertising for sale, letting, charging or mortgaging or in any way interfering with the suit property.**
- c. An order compelling the defendant to perform its part of the agreement by accepting the remaining balance of Kshs 500,000/- from the plaintiffs and in exchange thereof to hand over to the plaintiffs all documents as are or would be necessary to transfer the suit property into the plaintiffs' names and/or into the names of the plaintiffs' nominee.**
- d. In the alternative and without prejudice to (b) above, the honourable court to direct the Deputy Registrar of the court to execute such documents as will be necessary to effect transfer of the suit property to the plaintiffs.**
- e. General damages for breach of contract**
- f. Cost of this suit**
- g. Any such and further relief as this honourable court may deem appropriate.**

2. The plaintiffs' case is that, through a sale agreement dated 3/4/1998, they purchased from the defendant, House Number 512, designated as Title Number **Nairobi/Block 82/5506**, located in Savanna Estate, Phase IV, Nairobi. The agreed purchase price was Kshs 1,900,000. The plaintiffs paid Kshs 1,400,000, leaving a balance of Kshs 400,000 payable on completion and upon the defendant procuring and providing the plaintiffs with completion documents. They contend that they have always been ready, able and willing to complete the sale transaction by paying balance of the purchase price. It is the plaintiffs' case that whereas the defendant granted them vacant possession of the suit property in 1998, and they have remained in possession throughout, the defendant has breached the agreement in the sense that it has failed/refused/neglected to provide the necessary completion documents to facilitate completion of the transaction. Consequently, they seek the above orders.

3. The defendant filed a statement of defence dated 30/5/2018 through the firm of Njeru Nyaga & Co Advocates. It admits selling House Number 512 to the plaintiffs. It also admits receipt of Kshs 1,400,000. It adds that it has been ready and willing to complete the transaction but the transfer has been frustrated by a mix-up in the survey records at the Department of Surveys in that **House Number 512** and **House Number 512A** were assigned the same land reference number by the Department of Surveys, to wit, **Nairobi/Block 82/5506**. As a result of the mix-up, a title bearing the same reference number was prepared for **House Number 512A** and issued to **John Wachira** and **Jane Muthoni Wachira** who are the owners of House **Number 512A**.

4. Hearing of this suit proceeded on 20/1/2020. The plaintiffs led evidence by one witness, Peter Ochieng Odundo – PW1. He adopted his written statement dated **12/4/2018**. His testimony was a more detailed outline of their case as summarized above. He added that they were granted vacant possession on 22/4/1998 and they have had the suit property since then but the defendant has failed to avail completion documents. He further stated that they requested for a rates invoice from the Nairobi City County Government and the invoice bore the names of John Wachira and Jane Muthoni Wachira. He added that their attempts to obtain an official search in respect of Title Number **Nairobi/Block 82/5506** have been in vain because the Land Registry has always demanded that they produce a copy of the lease yet the defendant has not given to them the lease. He urged the court to grant the prayers set out in the plaint.

5. Though served with a hearing notice, the defendant did not attend the hearing and did not lead any evidence.

6. In her brief oral submissions, Ms Njeri Onyango, counsel for the plaintiffs stated that the defendant had at paragraphs 5 and 6 of its defence admitted the plaintiffs' claim. She added that the plaintiffs' evidence was uncontroverted. She urged the court to grant the prayers set out in the plaint.

7. I have considered the parties' respective pleadings, together with the plaintiffs' evidence and submissions. The defendant does unequivocally admit the plaintiffs' claim. The only explanation it has tendered is that, there was a mix-up at the Department of Surveys in that two distinct properties, House Number 512 and House Number 512A, share the same land reference number, Nairobi/Block 82/5506. The Land Registrar subsequently processed and issued Title Number Nairobi/Block 82/5506 in the names of John Wachira and Jane Muthoni Wachira. The duo are said to be the owners of House Number **512A**.

8. In light of the admission and the averments by the defendant, the single issue for determination in this suit is whether the prayers sought in the plaint are appropriate in the circumstances.

9. The plaintiffs purchased the suit property way back in 1998. They were given vacant possession in 1998 and they have had it since then. The only reason why they are in court is that the defendant has failed to procure completion documents to facilitate transfer of the suit property. Looking at the contract, it was the duty of the defendant to provide the completion documents. If a mix-up happened at the Department of Surveys, leading to a scenario where two distinct properties share the same land reference number, it is the duty of the defendant as the proponent of the sub-division scheme, and as the developer, to liaise with the Department of Surveys and resolve the mix-up without any prejudice to the plaintiffs' right to the property which they purchased in 1998. Regrettably, the defendant has neglected to do that. This suit would not have been necessary if the defendant had discharged its contractual obligations in the above manner.

10. The plaintiffs sought general damages but they neither led evidence on quantum nor made submissions on that limb of their claim. There was nonetheless evidence of breach of contract. In the circumstances, I will only award the plaintiffs nominal damages for breach of contract, which I hereby assess at Kshs 300,000.

11. Consequently, I will allow the plaintiffs' claim and issue the following orders in tandem with the prayers sought in the plaint:

a. It is declared that the plaintiffs are the bona fide purchasers and are entitled to a transfer of the suit property, House Number 512, situated in Savanna Estate, Phase IV, Nairobi, designated in the Sale Agreement dated 3/4/1998 as Title Number Nairobi/Block 82/5506 and alleged by the defendant to share the same survey reference number with House Number 512A.

b. An order of permanent injunction is hereby issued restraining the defendant by itself or by its agents and/or servants against selling, advertising for sale, letting, charging, or mortgaging or in any way, interfering with the said property.

c. An order is hereby issued compelling the defendant to perform its part of the agreement by accepting the balance of Kshs 500,000 in exchange with all necessary completion documents to facilitate transfer of the property into the names of the plaintiffs or nominee of the plaintiffs.

d. Should the defendant fail to avail completion documents within sixty days from the date of service of this order, the Deputy Registrar of this court shall execute all documents necessary for issuance of appropriate survey documents and for processing of title in the names of the plaintiffs or their nominee, and all attendant costs shall be borne by the defendant and shall in the first instance be recovered from the balance of the purchase price

e. The defendant shall pay the plaintiff nominal damages of Kshs 300,000 for breach of contract.

f. The defendant shall bear costs of this suit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14TH DAY OF MAY 2020.

B M EBOSO

JUDGE

In the presence of:-

Ms Linet Kerubo holding brief for Mrs Jane Njeri Onyango for the Plaintiffs

