



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC CASE NO. 3 OF 2011

DORCAS KAPTUIYAH CHELANG'A1ST PLAINTIFF

CATHERINE SALAMA KATANA.....2ND PLAINTIFF

VERSUS

NELSON MWANZIA KIVUVANI.....1ST DEFENDANT

PRIMELAND HOLDINGS (K) LIMITED.....2ND DEFENDANT

MUNICIPAL COUNCIL OF MAVOKO.....3RD DEFENDANT

JUDGMENT

1. In the Plaint dated 7th January, 2011, the Plaintiffs averred that they have filed the suit on their own behalf and on behalf of other eleven (11) other claimants; that the 1st Defendant is the registered proprietor of parcel of land known as L.R. No. 12715/518 which has since been sub-divided and that the 2nd Defendant was the one who was authorized to sell the suit land to the Plaintiffs and the other claimants.
2. The Plaintiffs have averred that by an agreement of sale of 31st May, 2006, the 1st Defendant agreed to sell and the 2nd Defendant agreed to purchase a total of 34 plots excised from the suit land; that it was agreed that upon payment of a deposit, the 2nd Defendant would sell the said plots to third parties and that on various dates, the Plaintiffs entered into sale agreements with the 2nd Defendant for purchase of individual plots.
3. It is the Plaintiffs' case that the purchase price for each plot was Kshs. 300,000; that the Plaintiffs were granted possession of their respective plots after payment of the full purchase price and that the Defendants have failed to transfer the said land to the Plaintiffs.
4. The Plaintiffs have pleaded in the Plaint that the Defendants are in breach of contract; that a permanent injunction should issue restraining the Defendants from interfering with their plots and that an order compelling the Defendants to transfer to them the suit land should issue.
5. Although the 1st Defendant was served with the Summons to Enter Appearance and the Plaint, he neither entered appearance nor filed a Defence.
6. The 2nd Defendant averred in its Defence that it sold the sub plots of L.R. No. 12715/518 pursuant to

an agreement it had with the 1st Defendant; that it was the 1st Defendant who was obliged to formalize the sub-division at his cost and that it is the 1st Defendant who was to effect the transfer of the suit properties to the Plaintiffs.

7. According to the Defence of the 2nd Defendant, despite the 1st Defendant having been issued with Deed Plans for the sub-divisions, he has deliberately refused to release them to the Plaintiffs.

8. The record shows that on 28th February, 2017, the Plaintiffs entered into a consent with the 2nd Defendant in which the Plaintiffs claim was allowed as prayed in the Plaint with no order as to costs.

9. The said consent further provided that the matter should proceed as against the 1st and 3rd Defendants.

10. This matter proceeded for hearing on 28th March, 2017.

11. The 1st Plaintiff, PW1, informed the court that she purchased a portion of land measuring 50 X 100 feet, otherwise known as plot number 6 of L.R. No. 12715/518 for Kshs. 300,000.

12. PW1 informed the court that she entered into an agreement of sale dated 5th September, 2006 and that after paying the full purchase price, she was issued with a share certificate for the plot.

13. According to PW1, she entered into the agreement of 5th September, 2006 with the 2nd Defendant who had the authority of the 1st Defendant to sell the suit property.

14. PW1 produced in evidence the copy of the Sale Agreement, receipts showing the payment of the purchase price and the share certificate for her plot dated 25th September, 2006.

15. PW1 informed the court that the 2nd Plaintiff had the same arrangement as hers. PW1 produced the Sale Agreement, the receipts and the share certificate for plot number 31 which the 2nd Plaintiff purchased.

16. PW1 also produced the Sale Agreements, receipts and the share certificates for the following persons:

a) Dennis LukasOkello

b) Margaret MukamiNyaga

c) Nancy WairimuKibui

d) Patrick MainaNdaraya

e) Jacqueline WamboiKiboi

f) Sabina WakioMaghanga

g) Richard OumaOwuor

h) Otwani Justus Aufridus

i) Caroline Lillo Mramba

j) Phillip JumaWanyama

k) Joyce NjokiMwangi

17. It was the evidence of PW1 that the 13 claimants(*including herself*) purchased their respective plots from the 2nd Defendant after they were satisfied that the 1st Defendant had authorized the 2nd Defendant to sell the said plots.

18. PW1 produced in evidence the Agreement for Sale of L.R. No. 12715/518 that the 1st Defendant entered into with the 2nd Defendant dated 31st May, 2006.

19. It was the evidence of PW1 that even after paying the full purchase price, the 1st Defendant has refused to transfer the plots to them.

20. As I have indicated above, the 1st and 3rd Defendants did not file Defences in opposition to the Plaintiff's claim. The 2nd Defendant on the other hand conceded to the Plaintiffs' claim by filing a consent judgment on 28th February, 2017.

21. The Plaintiffs' advocate did not submit.

22. The evidence before me shows that on 31st May, 2006, the 1st Defendant entered into an Agreement for Sale of L.R. No. 12715/518 measuring 2.024Ha with the 2nd Defendant.

23. In the said Agreement, the 1st Defendant agreed to sub-divide the said land into 30.4 sub-plots measuring 50 feet by 100 feet.

24. Upon being paid the full purchase price of Kshs. 6,840,000, the 1st Defendant was under an obligation to release to the 2nd Defendant the original Title documents for L.R. No. 12715/518; the original Deed Plans for the sub plots; the duly executed transfer documents; the consent of the Commissioner of Lands and any other documents relating to the suit property.

25. The evidence before this court shows that after the Agreement of Sale of 31st May, 2006, the 13 claimants entered into separate Agreements with the 2nd Defendant for the purchase of 19 plots within L.R. No. 12715/518.

26. The 19 plots that were purchased by the 13 Plaintiffs are plot numbers 6, 31, 1, 3, 4, 5, 12, 13, 14, 15, 20, 21, 22, 23, 30, 29, 32, 33 and 34.

27. The 1st Defendant has not denied that he received the full purchase price from the 2nd Defendant. The 2nd Defendant has conceded that indeed the Plaintiffs paid for their respective plots and that they are entitled to the title documents.

28. In the circumstances, I find and hold that the thirteen (13) Plaintiffs have proved their case on a balance of probabilities as against the 1st and 3rd Defendants.

29. For those reasons, I allow the Plaintiffs' Plaint in the following terms:

a) A permanent injunction be and is hereby issued restraining the Defendants either by themselves, their servants and or agents from entering, alienating and or interfering in any way with the thirteen (13) Plaintiffs' individual plots excised from parcel of land known as L.R. No. 12715/518.

b) An order be and is hereby issued compelling the 1st Defendant to transfer to the thirteen (13) Plaintiffs listed in this Judgment the respective plots that they purchased.

c) An order be and is hereby issued directing the 1st Defendant to facilitate the issuance of nineteen (19) Certificates of Titles to the thirteen (13) Plaintiffs forthwith.

d) The 1st Defendant to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 12TH DAY OF MAY, 2017.

O.A. ANGOTE

JUDGE