



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 338 OF 2008

PETER NJIRI MURACIA.....PLAINTIFF

- VERSUS -

MICHAEL MWAKIDILO THOYA.....DEFENDANT

JUDGMENT

[1] The plaintiffs claim against the defendant is as follows:-

- (a) An order of prohibition prohibiting the Land Registrar Kilifi District from registering any transaction or transferring in respect of land known as KILIFI/MADETENI/510 in favour of any person other than the plaintiff herein.*
- (b) Order of injunction restraining the defendant from committing a breach of contract for the sale of land known as KILIFI/MADETENI/510 entered into on 23rd January, 2007 between the plaintiff and the defendant.*
- (c) An order of permanent injunction restraining the defendant either by himself, his agents or servants from selling, alienating, parting with possession, transferring, subdividing, charging and/or in any other manner whatsoever interfering with the land known as KILIFI/MADETENI/510.*
- (d) An order of specific performance of the contract of sale of land known as KILIFI/MADETENI/510 executed on 23rd January, 2007.*
- (e) An order directing the defendant and/or executive officer of the court to execute documents of transfer in respect of the land known as KILIFI/MADETENI/510 in favour of the plaintiff.*
- (f) Costs of the suit and interest.*

The facts of this case are that on 23rd January 2007 the plaintiff and the defendant entered into a

contract of sale of Plot No. Kilifi/Madeteni/510 whereby the plaintiff agreed to buy the said plot of land from the defendant for Ksh. 1,800,000. The plaintiff paid Kshs. 1,445,000 to the defendant leaving a balance of Kshs. 355,000. The plaintiff said that he has been willing to pay the balance to the defendant. It is the evidence of the plaintiff that the defendant has refused, failed and neglected to complete the contract of sale and transfer the suit land to the plaintiff. The parties attended the Land Control Board at Bahari on 1st March 2007 and a consent to that transaction was granted.

[2] The defendant filed his defence, he denied the claim. He argued that the defendant's case should be a case of refund of monies paid as purchase price and a 10% penalty of the purchase price as provided in the sale agreement of 23rd January 2007. He otherwise argued that the plaintiff's case is frivolous, vexatious/or otherwise an abuse of the process of court.

[3] During the hearing the plaintiff adopted his statement filed in court on 5th August 2013. He explained how they entered into an agreement for sale of the suit land for Kshs 1.8 million and how the money was paid leaving a balance of Kshs. 355,000.00. How Land Control Consent was obtained on 1st July 2007. The title deed was produced and the transfer prepared which the defendant did not sign. The balance of the purchase price was deposited to the lawyers and the defendant was asked to collect and sign the transfer and he did not do so. That the defendant retains the money and the land. The defendant did not come to defend the case though his advocate Mr Kenga took part in the proceedings and cross-examined the plaintiff. Mr Kenga said they were not calling any witness.

[4] The parties to this agreement entered into an agreement for sale. They both willingly signed the agreement for sale willingly on 23rd January 2007. The parties went to Bahari Land Control Board and a consent to do so was granted on 1st March 2007. On 18th December Muraya Wachira & Co. Advocates wrote to the defendant to collect the balance of the purchase price of Kshs. 355,000. deposited with them. The said advocates said they had the parties identity cards, PIN certificates and photographs. The only thing left to complete this sale was signing the transfer of land.

[5] By accepting Kshs. 1,445,000 and attending the Land Control Board for consent to transfer and by handing over the identity card, PIN Certificate and photographs to the purchasers advocates, the defendant was ready and willing to transfer the suit land. In any case, once he attended the Land Control Board for consent and transfer of the suit land then the beneficial interest in the suit property was transferred to the purchaser. All that remained was for him to collect the balance of the purchase price then lying with the advocates for the plaintiffs. The fact that the balance of the purchase price was lying with the parties advocates was known to the defendant pursuant to the letter of 18th December 2007. The signing of the transfer was Ministerial and administrative. It was something that can be done by the executive officer of this court under orders of this court. I am satisfied that the plaintiff has proved his case. The reliance on clause no 11 and 12 of the agreement for sale affords no relief to the defendant. Once the Land Control consent was granted and much of the purchase price was paid and the balance was available for collection by the vendor the beneficial interest passed on to the purchaser. The defendant had done all in his power to divest himself of the suit property. *See Registered Trustee Anglican Church of Kenya Mbeere Diocese v David Waweru Njoroge [2007]eKLR.*

[6] I am therefore convinced that the plaintiff has proved his case. I grant him his judgment and order that the defendant shall sign the transfer of land parcel Kilifi Mandeteni/510 in favour of the plaintiff. The defendant shall collect the balance of the purchase price from the advocate of the plaintiff. If he does not do so within fourteen (14) days, the plaintiff shall deposit the purchase price in court for collection by the vendor at his convenience. The Deputy Registrar of the court shall sign all the necessary documents in place of the defendant and the Land Registrar Kilifi is ordered to register the land Kilifi/Madeteni/510 in favour of the plaintiff. The plaintiff shall have the costs of the suit.

**Dated and delivered in open court at Mombasa this 6th day of
November 2014.**

S. MUKUNYA

JUDGE

6.11.2014

In the presence of:

Mr. Wachira advocate for the plaintiff

Mr. Magolo advocate holding brief for Mr. Kenga advocate for the defendant