



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT NAKURU

Civil Appeal 167 of 1995

ABSOLOM JOHN NGUREAPPELLANT

AND

MARGARET WAMBUI NGUGIRESPONDENT

(Appeal from a Judgment of the High Court of Kenya at Nakuru (Justice Rimita) dated the 19th day of September, 1994

IN

H.C.C.C. NO. 121 OF 1981)

JUDGMENT OF THE COURT

This is an appeal by the unsuccessful defendant from a decision of the superior court (Rimita, J.) delivered on September 19, 1994 whereby he gave judgment in favour of the plaintiff for specific performance and damages and dismissing the defendant's counter-claim.

The plaintiff's claim against the defendant was in respect of two parcels of land which she bought from the defendant under two separate agreements each dated December, 29, 1979. One agreement was in respect of Plot 54, situate at Dundori Trading Centre of Nakuru District, at an agreed price of K. Shs. 40,000/= and another one in respect of L.R. NO. 11098/64 situated at Lanet, also in Nakuru District, at an agreed price of K.Shs.25,000/=.

The learned trial Judge found as a fact that the purchase price of K.Shs.40,000/= and K.Shs.25,000/= respectively, were paid. The execution of the agreement was not in issue either on the pleadings or otherwise. Accordingly, the learned judge found in favour of the plaintiff.

The defendant appealed to this court on several grounds but the main ground and the one on which the whole appeal was founded was the submission that the agreement in respect of the property at Lanet was condition precedent to the agreement signed on the same date in respect of Plot Number 54 at Dundori.

We have accordingly considered all the material that was placed before the learned trial judge and the submissions made on behalf of the appellant. We are satisfied that the two agreements although

made on the same day were separate and independent of each other. Indeed, no condition precedent is expressed as it could well have been. On the evaluation of the evidence before us we are satisfied that there was no merit in this ground of appeal.

Two other ancillary grounds were argued before us to the effect that the plaintiff had not fulfilled her part of the agreements with respect to each of the two plots and that payment of the balance of the purchase price for the property was made in breach of the agreement as to terms of payment. We are satisfied that the payment was not disputed and, even if it was made in breach of the agreed terms, it was nonetheless accepted. We do not find that the learned judge erred in any way as was complained. The plaintiff fulfilled her part of the agreement in respect of both plots and was entitled to the orders made by the judge. That being so, it followed that the defendant's counterclaim was bound to be dismissed, as indeed it was.

For the reasons above stated, we do not find that the learned trial judge erred in any way whatever. His judgment does not call for any interferences by this Court. The appeal, therefore, is dismissed with costs.

Dated and delivered at Nakuru this 14th day of March, 1997

A.M. AKIWUMI

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JUDGE OF APPEAL

A. A. LAKHA

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JUDGE OF APPEAL

S. E. O. BOSIRE

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Ag. JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR