



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO 3353 OF 1985

LIVINGSTON NJOGU GITAU PLAINTIFF

versus

JOHN KONCHELLAH DEFENDANT

JUDGMENT

In this action, the plaintiff, Livingstone Njogu Gitau has sued John Konchella, the defendant, for *inter alia* , prayer for the relief of specific performance of contract entered between the parties on June 14, 1984, in respect of Title Ngong/Ngong 6446 the sale of a 10 acres portion of land approximately.

This action, it is noted, was filed on October 18, 1985 and the defendant was served with the summons to enter appearance together with the plaint on January 18, 1986 as detailed in the return of service filed by the process server on January 31, 1986. The defendant it is noted failed to enter appearance. At the hearing of the case it proceeded by way of formal proof. The plaintiff gave evidence on his behalf and produced numerous documents.

These are documents.

Ex 2. Receipt issued by Dhanji & Co Advocates, Nairobi in the sum of Kshs 250,000.

3. Agreement of sale entered in by the parties dated June 14, 1984

4. Land Control Regulation Letter of consent dated May 3, 1984

5. Mutation form dated April 10, 1984 signed by J Konchella

6. Mutation form dated October 4, 1984

Mrs Murugi Mugo (PW 1) an advocate of this court who is attached to the chambers of Salim Dhanji Advocates also gave evidence for the plaintiff.

She explained that her firm has acted as a share holder. They were acting for the parties. Agreement of sale was duly drawn and executed. A number of other essential documents were duly drawn and acted upon. She had personally acted in these matters for the vendor and the purchaser. Mrs Mugo also narrated to the court the events when Mr Monchella called at their chambers during 1985. He was advised to sign the transfer. He did not do so. He was unwilling to obtain the discharge of charge which HHM, Advocates were to finalise. For this reason the transfer in favour of the plaintiff was not registered. Mrs Mugo also produced certain documents from her possession pertaining to this matter. These are Ex 1 (to 5) and also includes letter of consent in respect of Title Ngong/Ngong/4179 (Ex 4) dated April 3, 1984.

Mr Odur submits that the plaintiff has established his case against the defendant and prays for the relief to be granted as stated in the plaint. I have considered all the evidence by the plaintiff and Mrs Mugo. I accept this evidence as correct account of related fact and find that Mrs Mugo's testimony as reliable and of considerable assistance to court in arriving at my judgment.

On the basis of probabilities I find that the plaintiff has proved his case and I find he did enter into an agreement of sale pertaining to Title N/Ngong 4664. I also find that he has already paid the full purchase price amounting to Kshs 250,000 to the share holders Dhanji and Co Advocates on behalf of the defendant.

I also find that the plaintiff has fully complied with all the requirements and the conditions stipulated in the agreement of sale. The plaintiff I also find is in possession of the said land since the time he signed the agreement and paid the purchase price.

The plaintiff is entitled to judgment and I find so. He has prayed for several prayers as pleaded in paragraph 8(a) to (e) of the plaint. Out of these prayers I find 8(a) more appropriate I enter judgment in favour of the plaintiff and order specific performance of contract herein by transferring a portion of land parcel No Ngong/Ngong 6446 measuring 10 acres to the plaintiff as prayed above.

(b) This relief does not now lie.

Costs of the suit is granted.

No order is made in respect of prayers 8(b) (d) (e).

Order accordingly.

Delivered at Nairobi this 4th day of October, 1986.

SHAIKH M AMIN

JUDGE