



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CASE NO. 1534 OF 2013

GEORGE WACHIRA

KIHOI.....PLAINTIFF

VERSUS

**ROSE NJOKI KAMAU.....1ST
DEFENDANT**

**CITY CHICKEN & EGGS DEALERS CO-OPERATIVE SOCIETY LIMITED.....2ND
DEFENDANT**

JUDGEMENT

1. The Plaintiff entered into an agreement with the 1st Defendant on 7/10/2013 for the purchase of L.R. No. Nairobi Block 122/31 (“the Suit Property”) at the agreed consideration of Kshs. 5,050,000.00 which sum he paid to the 1st Defendant. This was based on the letter the 2nd Defendant’s Secretary had written to the Commissioner of Lands stating that the 1st Defendant owned this piece of land. The Plaintiff filed this suit when the 2nd Defendant failed to transfer the Suit Property to him, claiming special damages of Kshs. 5,050,000.00 against both Defendants with interest at the rate of 17% per annum. He seeks a declaration that he is the legal owner of the Suit Property and a permanent injunction to restrain the Defendants from dealing with the Suit Property. In the alternative, the Plaintiff seeks to be allotted an alternative plot of equal market value together with general damages and costs of the suit. Both Defendants were served but only the 2nd Defendant filed its defence on 28/7/2015.

2. The 2nd Defendant denied the Plaintiff’s claim and denied issuing the letter to the Commissioner of Lands which the Plaintiff claimed he relied on when he purchased the suit land from the 1st Defendant. The 2nd Defendant claimed that the letter was fraudulently authored by its former Secretary without the company’s authority. The 2nd Defendant averred that the Plaintiff failed to conduct a search which would have shown that the Suit Property had been allocated to a third party and not the 1st Defendant hence the 2nd Defendant had no authority to transfer this land.

3. The Plaintiff and the 2nd Defendant each called one witness to testify in the case. The Plaintiff testified that he perused the 2nd Defendant’s register and was satisfied that the 1st Defendant owned the suit land according to the records held by the 2nd Defendant. This was buttressed by the letter of 3/10/2014 written by the 2nd Defendant confirming that the plot belonged to the 1st Defendant and that she had authority to obtain the title deed to the land. The Plaintiff paid the full purchase price to the 1st Defendant and produced a copy of the sale agreement dated 7/10/2013 that he entered into with the 1st Defendant. The 1st Defendant was required to facilitate the registration of the land in the buyer’s name.

4. The Plaintiff produced a copy of the letter dated 3/10/2013 on the 2nd Defendant’s notepaper addressed to the Commissioner of Lands which stated that the 1st Defendant owned the suit land and urged the Commissioner to assist her secure the title deed.

5. The 2nd Defendant’s witness maintained that Ibrahim Maingi who signed the letter lacked authority to sign the letter and that the Secretary had purported to transact on the Suit Property by writing the letter to the Commissioner of Lands without the requisite authority of the 2nd Defendant’s committee. The 2nd Defendant wrote to the Commissioner of Lands on 2/11/2013 denouncing the letter which had confirmed that the 1st Defendant owned the Suit Property. The witness produced a copy of the 2nd Defendant’s by-laws.

6. Parties filed written submissions which the court has considered together with the evidence adduced. The Plaintiff submitted that he is the legal owner of the land because he complied with the requirements for the purchase of the land and claims to be a *bona fide* purchaser who

bought the Suit Property without notice that some third party had a right to or interest over the suit land. He submitted that the Secretary who wrote the letter on which he relied had the authority of the 2nd Defendant.

7. The court agrees with the 2nd Defendant's submission that the Plaintiff failed to prove that he did a search with the 2nd Defendant which confirmed that the 1st Defendant owned the suit land. The Plaintiff did not produce any evidence to show that the Suit Property was registered in the name of the 1st Defendant when he bought it from her and paid the full consideration for it. The 2nd Defendant had allotted the suit land to a third party, and not the 1st Defendant.

8. The Plaintiff ought to have pursued his claim against the 1st Defendant who he entered into the sale agreement with and to whom he paid the consideration of Kshs. 5,050,000.00.

9. The court finds that the Plaintiff has failed to prove his claim against the 2nd Defendant, it is dismissed with costs to the 2nd Defendant.

10. The court enters judgement for the Plaintiff against the 1st Defendant for Kshs. 5,050,000.00 together with interest at court rates and costs of this suit.

Dated at Nairobi this 23rd day of January 2019.

K. BOR

JUDGE

In the presence of: -

Ms. S. Opiyo holding brief for Mr. Kiprono for the 2nd Defendant

Mr. V. Owuor- Court Assistant

No appearance for the Plaintiff and 1st Defendant