



REPUBLIC OF KENYA



KENYA LAW
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**County Government of Embu v Njuki (Environment and Land Appeal
E011 of 2021) [2025] KEELC 6622 (KLR) (1 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6622 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E011 OF 2021**

AK BOR, J

OCTOBER 1, 2025

BETWEEN

COUNTY GOVERNMENT OF EMBU APPELLANT

AND

BONIFACE RUNJI NJUKI RESPONDENT

*(An Appeal arising from the judgment of Hon M.N Gicheru, Chief
Magistrate, delivered on 21/6/2021 in Embu Civil Case No. 170 of 2018)*

JUDGMENT

1. This appeal arises from the judgment of Hon M.N Gicheru, Chief Magistrate, delivered on 21/6/2021 in Embu Civil Case No. 170 of 2018, which the Respondent, Boniface Runji Njuki instituted seeking judgment for the sum of Kshs. 7,000,000/= with interest at commercial rates of 24% per annum from 26/2/2016 until payment in full together with costs of the suit.
2. The Respondent's case was that on 1/2/2016, he entered into an agreement with the Appellant vide which he was to sell his land known as Mbeere/Kirima/2884 (the suit land) to the Appellant at the agreed consideration of Kshs. 7,000,000/=. He averred that it was a term of the agreement that the Appellant would pay him the consideration in full once he obtained consent from the Land Control Board (LCB) for the transfer of the suit land and upon his executing the transfer forms in favour of the Appellant. He averred that he obtained the LCB consent on 26/2/2016 and thereafter executed the transfer forms but the Appellant failed, neglected or refused to pay him the sum of Kshs. 7,000,000/= as agreed.
3. The Respondent averred that clause 7 of the agreement provided that he was not to offer the suit land for sale or to charge it upon execution of the agreement which term he complied with. That based on that clause, he could not deal with the suit land in any way whatsoever.



4. The Appellant filed a defence and denied that it entered into an agreement for the purchase of suit land for Kshs. 7,000,000/=. It asserted that the agreement was entered into without its authority or consent and added that at no time did it advertise for procurement any land at Kiritiri Market or at all and that the legal process for procuring land was not followed in this case. It maintained that the documents annexed in support of the Respondent's suit were illegal, fraudulent and drawn without its knowledge or authority.
5. The Appellant went on to add that on discovering the alleged fraud, it refused to pay the sum claimed. It argued on a without prejudice basis that the alleged purchase process was grossly exaggerated and unreasonable and that payment of the sum claimed would amount to theft of public resources. The Appellant pointed out that the Respondent did not transfer the suit land to the Appellant and that he was still registered as the owner, and could not therefore claim the purchase price for his own property which the Appellant neither owned nor had any interest in.
6. During the hearing before the trial court, parties chose to rely on their witness statements and documents without tendering oral evidence. The Respondent's evidence according to his written statement was that sometime in 2015, the Appellant expressed interest in purchasing his land. That he was asked to quote a price and he offered to sell the land at Kshs. 10,000,000/=. However, when the District Valuer visited the land, he valued it at Kshs. 7,000,000/=. He averred that on 23/9/2015, the Negotiation Committee of the County Government of Embu held a meeting to discuss various issues among them the purchase of the suit land. That the Committee recommended that the land be purchased at Kshs. 7,000,000/= and based on this, he entered into the sale agreement with the Appellant.
7. He stated that the agreement was drawn by Njeru Ithiga & Co. Advocates whom he also appointed as his Attorney for the transaction vide the Power of Attorney dated 1/2/2016. That he obtained the relevant consent and executed the transfer forms. He averred that his Attorney received a payment voucher from the Appellant on 14/6/2017, which was approved on 28/6/2017 but cancelled on 4/8/2017. He revoked the Power of Attorney and appointed Ngoruri Blueline Enterprises Ltd as his Attorney to receive the sale proceeds from the Appellant but the Appellant refused to pay him.
8. The Respondent produced a certified copy of the title deed for the suit land, a valuation report prepared by the District Land Valuer, Minutes of the County Government of Embu dated 23/9/2015, the agreement for sale, application for consent and the LCB consent. He also tendered in evidence the Power of Attorney dated 26/7/2017, payment voucher, purchase order dated 14/6/2017, revocation of the Power of Attorney dated 26/7/2017, Power of Attorney dated 1/2/2016 and demand letter dated 8/6/2018.
9. The Appellant did not file any written statement or documents in support of its defence.
10. In its judgment, the trial court found that there was a legally binding agreement between the Appellant and the Respondent dated 1/2/2016 and that it was duly executed by both parties, with the Appellant being represented by Engineer Stephen Njiru, the Chief Officer Lands Water and Natural Resources. Further, that the agreement was stamped by the Embu County Government. The Learned Magistrate found that no cogent evidence was presented to displace the evidence of the Respondent, and that the Appellant was estopped from denying its officer's actions as it was never pleaded that Engineer Njiru lacked authority.
11. The trial court found that the Respondent fully performed his part of the agreement and that no evidence was tendered to prove performance of the contract on the part of the Appellant. Further, the court found that the remedy sought by the Respondent was available because it was the parties'



- original intention and that was not for the Respondent to find out if the Appellant had complied with the Public Procurement and Assets Disposal Act, 2015 before offering to purchase the suit land as that was an in-house issue for the Appellant to deal with. The court entered judgment for the Respondent as prayed for in the plaint.
12. Being aggrieved by that decision, the Appellant filed a memorandum of appeal and faulted the trial court for finding that there was a legally binding agreement despite proof that due process under the Public Procurement Act was not followed. The trial court was also faulted for failing to consider the fact that the suit land was never transferred to the Appellant and that the Respondent still held the title. The Appellant argued that the trial court misinterpreted the Public Procurement and Disposal Act in favour of the Respondent. It also faulted the court for finding that the Respondent was entitled to the remedies sought and failing to evaluate the Appellant's draft defence and submissions, and giving undue weight to the submissions of the Respondent thereby arriving at a wrong finding.
 13. The Appellant urged the court to allow the appeal, set aside the trial court's judgment and award him the costs of the appeal.
 14. The appeal was canvassed through written submissions. The Appellant submitted that it did not give its authority, consent, or advertise for the procurement of land in Kiritiri. It contended that as a public entity established under Article 176 of *the Constitution* and the *County Governments Act*, it was bound by Article 227 of *the Constitution*, which stipulates that when a State organ or any public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost effective. Further, that it was also bound by the Public Procurement and Assets Disposal Act of 2015 and the Asset Disposal Regulations, 2006 that were applicable at the time. It argued that Section 91 of the Public Procurement and Assets Disposal Act specified that open tendering was the preferred method of procurement of goods and any alternative method had to comply with that Act.
 15. The Appellant added that Regulations 9 and 10 prescribed the procurement process, which included initiation by the user department and forwarding to the procurement unit. The procuring department is required to establish a tender committee to follow the tendering process, including advertisements, after which other committees such as the evaluation and technical committees would take over the process. The Appellant maintained that the Respondent failed to demonstrate through evidence, that the procurement process was followed. It argued that the Minutes of the Negotiation Committee produced by the Respondent were vague and that under Regulation 58, negotiations could only begin after the tender committee had approved the successful proposal. It contended that the Respondent did not show that he made any proposals, which were approved by the tender committee.
 16. Further, the Appellant submitted that the Respondent's failure to comply with the procurement laws or show that due process was adhered to meant that he willingly engaged in an illegal contract and that such a contract was unenforceable. The Appellant cited *Ethics & Anti-Corruption Commission v Vulcan Lab Equipment Limited (2020) eKLR*, where the Court of Appeal held that contracts violating the Public Procurement and Assets Disposal Act, 2015 were invalid, unenforceable and could not be given effect by the courts.
 17. The Appellant added that the argument by the Respondent that the issue of compliance with the Public Procurement and Assets Disposal Act was an in-house matter for the Appellant was unsustainable because the Respondent had an equal responsibility to ensure that there was compliance with the Act, and cited *Royal Media Services versus Independent Electoral and Boundaries Commission and 3 others (2019) eKLR* in support of that contention. The court was invited to find



- that the impugned contract was marred by illegality and should not have been upheld by the trial court. It urged this court to allow the appeal and set aside the judgment of the trial court.
18. The Respondent submitted that there was a valid sale agreement between the parties and that the Appellant was in clear breach of that agreement. He contended that the argument by the Appellant that it never advertised for procurement and that the legal process for procurement was not followed was baseless. He submitted that Section 91 of the *Public Procurement and Asset Disposal Act, 2015* gave direct procurement as one of the methods of procurement and that Section 103 provided that a procuring entity could use direct procurement as long as the intention was not to avoid competition and where the goods, works or services were only available from a particular supplier or contractor and no reasonable alternative or substitute existed. He cited Section 104 of the Act, on the procedure for direct procurement.
 19. The Respondent submitted that the Appellant needed land for a market and that the suit land, which is in Kiritiri Town, was suitable for that purpose. He urged that this was a fit case for direct procurement. He submitted that if the Respondent had lost interest in the suit land he could not sell, charge or in any way deal with the land as it belonged to the Appellant. It was his contention that the Appellant never tendered any evidence to rebut his claim and neither had the Appellant rescinded the agreement. He maintained that he performed his part of the agreement and transferred the suit land to the Appellant and that the Appellant was under an obligation to pay him the agreed consideration. He urged the court to dismiss the appeal.
 20. The issue for determination is whether the appeal has merit and whether this court should set aside the decision of the trial court. The Appellant's case is that the trial court erred in upholding an agreement that was tainted with illegality, as the procurement process prescribed under the *Public Procurement and Asset Disposal Act 2015* was not followed. It maintained that there was no evidence of advertisement or that it made any proposals which were approved by the tender committee and that the alleged contract could not bind it. Further, it argued that since the land was never transferred, the Respondent remained the registered proprietor and could not claim the purchase price for property that still belonged to him.
 21. The Respondent's case is that the agreement he entered into with the Appellant is valid and enforceable, and that he performed his obligations by obtaining the relevant consent, executing the transfer documents in favour of the Appellant, and refraining from dealing with the suit land as stipulated in the agreement. He maintained that the Appellant was estopped from denying the validity of the agreement, and that the law provided for direct procurement under Sections 103 and 104 of the Act, which according to him justified the process that was used to acquire the suit land. In his view, the suit land was uniquely suited for the Appellant's intended purpose and was acquired properly through direct procurement.
 22. Section 91(1) of the *Public Procurement and Asset Disposal Act, 2015* provides that open tendering is the preferred method of procurement of goods, works, and services, with subsection 2 permitting the use of an alternative procurement procedure only if that is allowed and if it satisfies the conditions set out under the Act. Section 104 gives the procedure for direct procurement, requiring the issuance of a tender document, the appointment of an ad hoc evaluation committee, securing of appropriate approvals, and the execution of a written contract signed by both parties.
 23. In this case, the Respondent only produced the agreement dated 1/2/2016 and the minutes of the Negotiation Committee dated 23/9/2015. He did not provide any evidence that a tender document was issued before the negotiations commenced, nor did he demonstrate that the necessary approvals were obtained for the purchase of the suit land. It is unclear how the Respondent's land was identified



for acquisition and the circumstances under which he was invited or allowed to offer the suit land for sale to the Appellant. The process of acquisition of the suit land by the Appellant as a public entity, did not comply with the legal requirements, which renders the impugned agreement incapable of enforcement.

24. The trial court erred in arriving at the finding that the agreement dated 1/2/2016 was legally binding and enforceable between the Appellant and the Respondent. The judgment of the trial court is set aside. Each party will bear its costs for the appeal and the suit before the magistrates' court.

DELIVERED VIRTUALLY AT EMBU THIS 1ST DAY OF OCTOBER 2025.

K. BOR

JUDGE

In the presence of: -

No appearance for the Appellant

Ms. P. Kimathi holding brief for Mr. D. Okwaro for the Respondent

Court Assistant- Diana Kemboi

