



Ngotho (Suing as the Legal Representative of the Estate of Ngotho Kiboi aka Benard Ngotho Kiboi - Deceased) v Chemgoren aka Hannah Soti Chemworem (Environment and Land Case E012 of 2020) [2025] KEMC 200 (KLR) (7 August 2025) (Judgment)

Neutral citation: [2025] KEMC 200 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
ENVIRONMENT AND LAND CASE E012 OF 2020
PA NDEGE, SPM
AUGUST 7, 2025**

BETWEEN

SIPHIRAH NJOKI NGOTHO (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF NGOTHO KIBOI AKA BENARD NGOTHO KIBOI - DECEASED) PLAINTIFF

AND

HANNAH SOTE CHEMGOREN AKA HANNAH SOTI CHEMWOREM DEFENDANT

JUDGMENT

Introduction

1. The Plaintiff, Shipira Njoki Ngotho, sues in her capacity as the legal representative of the estate of her late husband, Ngotho Kiboi (deceased), under a Limited Grant of Letters of Administration Ad Litem (Exhibit P5). She seeks enforcement of a land sale agreement against the Defendant, Hannah Sote Chemgoren. The Defendant was duly served with pleadings and hearing notices but failed to enter appearance or file a defense. The suit proceeded as undefended under Order 10 Rule 9 of the Civil Procedure Rules.

II. Plaintiff's Case And Evidence

A. Witness Testimony (PW1)

2. PW1 (Shipira Njoki Ngotho) adopted her witness statement (Exhibit P1), and further testified that her late husband purchased 0.34 acres (Parcel No. 2) of Nakuru Municipality Block 14/165 from the Defendant for Kshs. 150,000 on 4th September 2013. That he paid in full, took possession, and



built their family home therein. That the Defendant however refused to subdivide or transfer the land despite demands.

B. Documentary Evidence

3. The plaintiff produced the following documents as exhibits in support of her case: -
 - i. Exhibit P2: Sale Agreement (4/9/2013) confirming:
 - a. Purchase of 0.34 acres (Parcel No. 2) for Kshs. 150,000 (paid upfront).
 - b. Defendant's obligation to clear land rates and facilitate transfer.
 - ii. Exhibit P3: Addendum (13/10/2013) correcting land size to 0.34 acres.
 - iii. Exhibit P4: Certificate of Lease/Official Search Proving Defendant's ownership of Block 14/165 (leasehold, 99 years from 1991).
 - iv. Exhibit P5: Limited Grant Ad Litem (Nakuru PMC Probate No. 106 of 2020) authorizing the Plaintiff to sue.

III. Analysis And Findings

A. Validity of the Contract

4. The agreement (Exhibit P2) and addendum (Exhibit P3) comply with Section 3(3) of the [Law of Contract Act](#) in that they are in writing, signed by both parties, and witnessed by an advocate. (See, *Jackson & 3 Others v Mwangi & 2 Others* [2025] KEELC 2900). Such contracts describing parties, property, and price are enforceable.

Land Control Board Consent was not required as the land (Nakuru Municipality Block 14/165) is urban leasehold (Exhibit P4), and not agricultural. The [Land Control Act](#) does not therefore apply.

Finding: The contract is valid and enforceable.

B. Breach of Contract

5. The Defendant acknowledged receipt of Kshs. 150,000 (Clause 2, Exhibit P2), but failed to:
 - (i) Subdivide the land to excise Parcel No. 2;
 - (ii) Transfer the title to the deceased's estate.
6. Definition of Breach: "A violation of a contractual obligation by failing to perform one's promise". (See *Black's Law Dictionary*, 9th Ed., p. 213; *Shah v Gulf African Bank* [2003] KLR). The Plaintiff's evidence remains unchallenged.

Finding: The Defendant is in material breach.

C. Entitlement to Specific Performance

7. Legal Threshold
 - i. Valid Contract: Already established
 - ii. Plaintiff's Performance: Full payment (Exhibit P2); Possession and development of the land (PW1's testimony).



- iii. Inadequacy of Damages: The land is uniquely developed as the Plaintiff's family home. Damages cannot substitute the subject matter. (See *Manzoor v Baram* [2003] 2 EA 580; *Thrifty Homes Ltd v Kays Investments* [2013] KLR).
 - iv. Defendant's Capacity to Perform: The Defendant remains the registered proprietor (Exhibit P4) and can still subdivide/transfer.
8. Equitable Principles: Specific performance is discretionary but granted where:
- (a) The contract is binding;
 - (b) The claimant has performed their obligations;
 - (c) Damages are inadequate. See *Garden Singh Birdi & Another v Alubakar Madhindi*, CA No. 165/1996.
- Finding: The Plaintiff is entitled to specific performance.

IV. Final Orders

9. This court therefore grants the following orders:
- i. Specific Performance: The Defendant shall, within 90 days:
 - (a) Survey and subdivide Nakuru Municipality Block 14/165 to excise Parcel No. 2 (0.34 acres).
 - (b) Transfer the subdivided portion to The Estate of Ngotho Kiboialias Benard Ngotho Kiboi(Deceased).
 - ii. Costs: The Defendant shall pay the Plaintiff's costs of the suit (Section 27, [Civil Procedure Act](#)).

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 07th DAY OF August,2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's Counsel: Mbuthia

Plaintiff: Present

