



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 554 OF 2014

JAMES ALEXANDER MAULO.....PLAINTIFF

VERSUS

SAMUEL NYANGWESO OLUPOLE.....DEFENDANT

JUDGEMENT

By a plaint dated 8th October 2014, the plaintiff avers that on 12/12/1976 his late father Alexander Munala purchased the whole of L.R. WEST BUNYORE/EBUSIEKWE/666 from the defendant herein and paid the consideration in respect thereof in full. The plaintiff avers that the defendant herein has refused, failed and or neglected to transfer title to the plaintiff herein and his entire family to enable them be registered as the sole proprietors. The plaintiff avers that the defendant herein has denied them access to the said land thus has made them suffer great loses and damages as they have been denied their rights of user. The plaintiff’s claim against the defendant herein is for an order compelling the defendant herein to execute all transfer documents, obtain consent of the land control board and transfer the whole of L.R. WEST BUNYORE/EBUSIEKWE/666 to the plaintiff herein failure of which the Executive officer Kakamega law Courts do sign all transfer documents on his behalf and in the alternative do refund the full consideration in respect thereof at the current market rates. The plaintiff further claims for general damages suffered as a result of the said breach of contract and loss of rights of user. The plaintiff prays for judgment against the defendant herein for:-

1. An order compelling the defendant herein to execute all transfer documents, obtain consent of the Land Control Board and transfer the whole of L.R. WEST BUNYORE/EBUSIEKWE/666 to the plaintiff herein failure of which the Executive officer Kakamega Law Courts do sign all transfer documents on his behalf and or in the alternative refund the full consideration in respect thereof at the current market rates.
2. General damages for breach of contract and loss of rights of user.
3. Costs and interest.
- 4, Any other relief this honourable court may deem just and expedient.

This court has carefully considered the evidence and the submissions herein. The defendant was served but failed to file any defence or give any evidence. Judge Maraga as he then was, in the case of Reliable Electrical Engineers Ltd & Another v Kenya Petroleum Refinery Ltd (HCC 190 of 2005), held that :

“the jurisdiction of specific performance is based on the existence of a valid enforceable contract. It will not be ordered if the contract suffers from some defect, such as failure to comply with the formal requirements or mistake or illegality, which makes the contract invalid or enforceable. In this respect damages are considered to be an adequate alternative remedy where the claimant can readily get the equivalent of what he contracted for from another source.”

It is not in dispute that by an agreement made on 12th December 1979 the plaintiff purchased from the defendant father land parcel L.R. WEST BUNYORE/EBUSIEKWE/666 at a consideration of Kenya Shillings Five Thousand Two Hundred and Fifty (Ksh. 5,250/=). Be that as it may, the provision of Section 4 (1) of the Limitations of Actions Act Chapter 22 of Laws of Kenya provides as follows;

“4 (1) The following actions may not be brought after the end of six years from the date on which the cause of action arose –

a. Actions founded on contract.

b.

c.

d.

f. Actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.’’

There is no doubt that over twenty years had lapsed from the date of the sale agreement to the date this suit was filed in 2014. No leave for extension of time to file the suit outside the six year period has been exhibited before this court. I find this suit is time barred and I dismiss the same with no orders as to costs since the same was not defended.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 28TH DAY OF FEBRUARY 2019.

N.A. MATHEKA

JUDGE