



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC NO. 80 OF 2015

EMILY NJERI KAMAU.....PLAINTIFF

VERSUS

JAMES REMBE KAMAU.....DEFENDANT

JUDGMENT

1. The plaintiff commenced this proceedings with a plaint dated **8th June, 2015** and later amended on **16th July, 2018**. She prayed for judgement against the defendant for:

(a) An order of subdivision and transfer the portion of 50 x 100 feet only of land title No. KITALE MUNICIPALITY BLOCK 2/747 to the plaintiff

(b) An order of specific performance of the agreement aforesaid in default of which the Deputy Registrar of this court be authorized to sign subdivision and transfer documents relating to the said subdivision of land title No. KITALE MUNICIPALITY BLOCK 2/747 on behalf of the Defendant and do everything necessary to transfer the portion of 50 x 100 feet of the said land to the plaintiff.

(b) Costs.

(c) Interests on the costs.

2. According to the original plaint filed by the plaintiff she entered into an agreement with the defendant for the purchase of a plot measuring 50 feet by 100 feet for a consideration of **Kshs. 550,000/=** which was fully paid to the defendant.

3. The plaintiff avers that at the time of the agreement the defendant had only a letter of allotment to the land; according to the plaintiff, the terms of the agreement between her and the defendant were that the plaintiff would financially aid the defendant to process the certificate of lease in the defendant's name and immediately after the same was issued the defendant was to transfer the suit land to the defendant.

4. The title documents issued in the defendant's name on **5/2/2015**. The plot was is referred to as plot number Kitale **Municipality Block 2 /747** in those title documents.

5. However it is the plaintiff's case that before the issuance of the title documents to the defendant the plaintiff had taken possession of the suit land and developed it and remains in possession thereof to date. In the amended plaint she expressly states that her interest in the land that the defendant was allocated is only 50 feet by 100 feet. She prays the court for an order of specific performance of the agreement.

6. An affidavit of service sworn by one George Mumali on **16th June 2015** avers that service of the summons and plaint in this suit. Nevertheless the defendant never filed appearance or defence to the suit and it proceeded ex parte.

7. At the hearing the defendant gave her name as *Emily Njeri Ngigi*. She alone testified in her case and adopted her statement filed in court on **8/6/2015**. In that statement the plot which in respect of which the plaintiff's financial assistance was offered to the defendant is referred to as plot number **Kitale Municipality Block 2 /747**. Though that statement and the plaint share the same date, inexplicably, no mention is made of Plot No. **Kitale Municipality Block 2/732**.

8. In her evidence in chief the plaintiff averred that her share in the said plot in accordance with the agreement between her and the defendant is 50 by 100 feet only.

9. The plaintiff testified that she has built seven rental housing units on the land. She produced the original agreement between her and the defendant, an original certificate of official search for plot number **Kitale Municipality Block 2/732** and an original receipt for search fees

paid and a demand letter addressed to the defendant dated 21/5/2015.

10. This suit presents a dilemma for the court for in as much as the suit was heard ex parte the plaintiff has failed to demonstrate that the plot known as **Kitale Municipality Block 2/732** which is the subject matter of the sale agreement dated 16/2/2012 is the same as or is related to plot number **Kitale Municipality Block 2/747** against which the orders in this suit are sought. In particular there is no description of the process by which the land could have mutated from number **Kitale Municipality Block 2/732** to **Kitale Municipality Block 2/747**.

11. It may be true that the plaintiff has even had a caution lodged against the title to **Kitale Municipality Block 2/747** and that she has settled on the land and developed it, but what this court desires is proof of relationship between the two parcels. Without that this court is unable to issue any orders affecting plot number **Kitale Municipality Block 2/747**.

12. Besides, the plaintiff has not produced evidence of her payment of the outgoings in respect of the transactions that led to the registration of the land in the plaintiff's name. Finally, the plaintiff admittedly had no registered title at the time of the agreement between her and the defendant and it is not crystal clear whether the defendant had any land to sell to her.

13. I find that there is no certainty in the description of the land that plaintiff and the defendant transacted over.

14. In the final analysis I dismiss the plaintiff's suit for lack of evidence. There shall be no orders as to costs.

Dated, signed and delivered at Kitale on this 25th day of February, 2019.

MWANGI NJOROGE

JUDGE

25/2/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for plaintiff

N/A for the defendant

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

25/2/2019