



**Nyakeri v Birisi & 2 others (Environment and Land Case E500 of 2023)
[2024] KEMC 177 (KLR) (28 November 2024) (Judgment)**

Neutral citation: [2024] KEMC 177 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
ENVIRONMENT AND LAND CASE E500 OF 2023
P ACHIENG, CM
NOVEMBER 28, 2024**

BETWEEN

ABEL BOGONKO NYAKERI PLAINTIFF

AND

JAMES ONDIEKI BIRISI 1ST DEFENDANT

**PRINCIPAL SECRETARY MINISTRY OF LAND, HOUSING AND URBAN
DEVELOPMENT 2ND DEFENDANT**

ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

1. The Plaintiff brought the present suit against the defendants seeking the following reliefs;
 - a. A permanent injunction restraining the Defendants/Respondents by themselves or their servants from evicting and/or interfering in any manner whatsoever with the Plaintiff/Applicant's peaceful occupation of Kibera Soweto – Apartment House No. 32 Block B2, Kibera, Soweto East Zone A, Nairobi pending the hearing and determination of this suit.
 - b. Specific performance of the contract dated 21st October 2016 by the 1st Defendant.
 - c. A declaration that property Kibera Soweto – Apartment House No. 32 Block B2, Kibera, Soweto East Zone A, Nairobi belongs to the Plaintiff.
 - d. An order directing the 2nd Defendant to issue the title in respect to Kibera Soweto – Apartment House No. 32 Block B2, Kibera, Soweto East Zone A, Nairobi to the Plaintiff being the beneficial owner.
 - e. A refund of Ksh. 2,600,000/- with 12% bank rates from 2016 to date.
 - f. Costs of the suit.



- g. Any other relief this Honourable Court may deem fit and expedient to grant.
2. It is the Plaintiff's claim that he bought Kibera Soweto – Apartment House No. 32 Block B2, Kibera Soweto East Zone A, Nairobi from the 1st Defendant on 21st October 2016. The Plaintiff took possession of the said property upon paying the full purchase price of Ksh. 1,030,000/-. The Plaintiff contends that on diverse dates in the year 2023, the 1st Defendant in cohort with his servants or agents attempted to evict the Plaintiff from the said property in which he resides with his family, necessitating the filing of the present suit.
3. The defendants failed to enter appearance and the matter proceeded for hearing ex-parte before Hon. S.A. Opande (PM) on 17th July 2024, with the Plaintiff being the sole witness. I have considered the Plaintiff's claim and the evidence tendered in support of the same. The issues for determination are as follows;
- a. Whether the Plaintiff and the 1st defendant entered into a sale agreement in respect to Kibera Soweto – Apartment House No. 32 Block B2, Kibera Soweto East Zone A, Nairobi.
- b. Whether the Plaintiff is entitled to the reliefs sought.

Whether the Plaintiff and the 1st defendant entered into a sale agreement in respect to Kibera Soweto – Apartment House No. 32 Block B2, Kibera Soweto East Zone A, Nairobi

4. The Plaintiff filed a witness statement in support of his case. Evans Nyakambi Nyangeri who connected the Plaintiff to the 1st defendant and also witnessed the transaction also recorded his statement. There is also a statement of Lilian Nelly Kemunto Mouko, the wife to the Plaintiff and Alice Nyomenda Oeri, an advocate of the High Court of Kenya who prepared the sale agreement between the parties. The Plaintiff annexed a copy of the sale agreement between him and the 1st defendant to his application dated 24th November 2023. The said agreement is dated 21st October 2016. According to the said agreement, he purchased property known as Apartment House No. 32 Block B 2 Kibera – Soweto East Zone A – Nairobi situated at Kibera Nairobi. The purchase price agreed was Ksh. 1,030,000/-. The house was also on mortgage which mortgage amount was to be cleared by the Plaintiff. According to the statement of Lilian Nelly Kemunto Mouko, the outstanding mortgage amount at the time of sale was Ksh. 1,198,900/-. The agreement was duly executed by the parties. The statement of Lilian Nelly Kemunto Mouko explains in detail how payments were made to the 1st defendant upon her taking a loan with Stima Sacco. The Plaintiff also attached documents evidencing the said payments to the 1st defendant, as well as photographs showing the handing over of the house keys to the Plaintiff. The 1st defendant did not appear in Court to challenge the evidence of the Plaintiff and his witnesses.
5. There is therefore proof that the Plaintiff purchased the suit property from the 1st defendant and he paid the purchase price. He is therefore the rightful owner of the property. It is the Plaintiff's evidence that he resides on the suit property with his family.

Whether the Plaintiff is entitled to the reliefs sought

5. The Plaintiff is entitled to the prayers for specific performance of the contract and permanent injunction as prayed. The 2nd defendant is therefore to ensure that the title to the suit property is processed in the name of the Plaintiff. In regard to the prayer for refund of Ksh. 2,600,000/- with 12% bank rates from 2016 to date, the same would only be applicable as an alternative to the order of specific performance, since the Plaintiff cannot be granted both prayers.
6. Judgment is hereby entered for the Plaintiff against the defendants as follows;



- a. A declaration is hereby made that property known as Apartment House No. 32 Block B 2 Kibera – Soweto East Zone A – Nairobi situated at Kibera Nairobi belongs to the Plaintiff.
- b. A permanent injunction is hereby issued restraining the Defendants/Respondents by themselves or their servants from evicting and/or interfering in any manner whatsoever with the Plaintiff/Applicant’s peaceful occupation of Apartment House No. 32 Block B 2 Kibera – Soweto East Zone A – Nairobi situated at Kibera Nairobi.
- c. The 1st defendant is hereby ordered to ensure specific performance of the contract entered into with the Plaintiff dated 21st October 2016 by taking all the necessary steps and signing all relevant documents towards transferring the suit property to the Plaintiff.
- d. The 2nd Defendant is hereby ordered to issue the title in respect to property known as Apartment House No. 32 Block B 2 Kibera – Soweto East Zone A – Nairobi situated at Kibera Nairobi to the Plaintiff being the beneficial owner, subject to payment of all the necessary dues.
- e. The 1st defendant shall bear the Plaintiff’s costs of the suit.

DATED DELIVERED AND SIGNED AT NAIROBI THIS 28TH DAY OF NOVEMBER 2024

In the Presence of:

Ms. Oloo h/b for Mrs. Morara for Plaintiff

1st Defendant - Absent

2nd Defendant - Absent

3rd Defendant – Absent

Court Assistant - Duncan

HON. P. ACHIENG

CHIEF MAGISTRATE

