



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 225 OF 2009

SAMUEL KIMONDO THEURIPLAINTIFF

VERSUS

MWANGANGI MUTULA MUTUADEFENDANT

JUDGMENT

1. In his Plaintiff dated 17th July, 2009, the Plaintiff averred that at all material times, the Defendant falsely represented himself as the owner of a parcel of land number 12715/163, Syokimau Farm; that the Defendant misrepresented that he had the capacity to sell the land to the Plaintiff and that on 13th February, 2009, the Plaintiff and the Defendant entered into an Agreement in which the Defendant agreed to refund to the Plaintiff the sum of Kshs. 5,340,000 which the Plaintiff had paid to the Defendant as purchase price of the suit land.
2. The Plaintiff's claim is for breach of the Agreement alluded to above and in particular for refund of Kshs. 5,340,000 together with interest and the costs of the suit.
3. In his Defence, the Defendant averred that in the year 2007, the Plaintiff approached him to assist him with the transfer of plot number 12715/163 in his favour; that the Plaintiff made payment for the said plot to Syokimau Farm Limited and also paid rates to then Municipal Council of Mavoko and that the Plaintiff made the said payments without involving the Defendant. It is the Defendant's averment that plot number 12715/163 was duly registered in favour of the Plaintiff and that he never agreed to refund to the Plaintiff Kshs. 5,340,000 as alleged.
4. This matter proceeded for hearing in the absence of the Defendant. Indeed, the Defendant never filed any Witness Statement contrary to the provisions of the law and the directions of the court.
5. The Plaintiff, PW1, informed the court that he entered into a Sale Agreement of 23rd January, 2007 with the Defendant for the purchase of plot number L.R. No. 12715/164, Syokimau Farm; that he paid to the Defendant the purchase price of Kshs. 4.3 million and that when he moved on the suit land, the real owner of the land, Dickson Kinaro Kahoro, emerged.
6. It was the evidence of PW1 that when he reported the issue to the police, it emerged that the title document that the Defendant had given him was a forgery and that other than the Kshs. 4.3 million that he had paid as the purchase price, he had incurred further expenses in respect of legal fees, land rent, rates, transfer fees, stamp duty fees amongst others all totaling to Kshs. 5,340,000.
7. It was the evidence of PW1 that on 13th February, 2009, the Defendant agreed to refund the sum of Kshs. 5,340,000 and that he was to make the first deposit of Kshs. 2.5 million within four (4) months. However, it was the evidence of PW1 that the Defendant never made good his promise.
8. PW1 produced in evidence the copy of the title in respect of L.R No. 12715/163 in the name of Dickson Kinaro Kahoro; the Sale Agreement between himself and the Defendant dated 23rd January, 2007 and the Agreement of 13th February, 2009. Neither the Plaintiff's nor the Defendant's advocate filed submissions.
9. The uncontroverted evidence before me shows that the Plaintiff entered into an Agreement of Sale dated 23rd January, 2007 between himself and the Defendant. According to the said Agreement, the Defendant agreed to sale to the Plaintiff Plot No. 12715/164 measuring five (5) acres for Kshs. 4.3 million. The Agreement shows that the Defendant was paid a deposit of Kshs. 300,000 and the balance of the purchase price was to be paid within six (6) months. The Plaintiff paid to the Defendant the entire purchase price.
10. However, it later transpired that the Defendant never had a genuine title for the suit land. Instead, the suit property was registered in the name of one Dickson Kinaro Kahoro who was registered as the proprietor of the land on 8th December, 1988.
11. When the issue of the forged title was reported to the police, the Defendant agreed to refund to the Plaintiff Kshs. 5,340,000 which

comprised the purchase price together with the other expenses that the Plaintiff had incurred in having the land transferred to him. The Agreement that the Plaintiff entered into with the Defendant dated 13th February, 2009 shows that the Defendant agreed to refund the entire sum of Kshs. 5,340,000 within four (4) months. However, he has never paid the said sum.

12. Considering that no evidence was called to show that the Defendant never signed the Agreement of 13th February, 2009 in which he agreed to refund the said sum, or evidence to show that indeed the suit land is registered in favour of the Plaintiff and not Dickson Kinaro Kahoro, I find and hold that the Plaintiff has proved his case on a balance of probabilities.

13. For those reasons, I allow the Plaintiff's Plaint dated 17th July, 2009 as follows:

a. The Defendant to refund to the Plaintiff the sum of Kshs. 5,340,000.

b. The Defendant to pay to the Plaintiff interest on the said sum at court rates from the date of filing this suit until payment in full.

c. The Defendant to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 8TH DAY OF FEBRUARY, 2019.

O.A. ANGOTE

JUDGE