



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC CASE NO.1161 of 2016

KENNETH NGUGI NJOROGE.....PLAINTIFF

=VERSUS=

FAMILY CITY LIMITED.....DEFENDANT

JUDGEMENT

1. The Plaintiff brought this claim against the defendant seeking the following reliefs:-

a) That this Honourable Court do grant an order of injunction to restrain and prohibit the defendant either by itself or through its servants and/or agents from subdividing, selling, transferring disposing, alienating, charging or otherwise dealing with the parcel of land comprising of L.R No.28649/104 in any other manner that is adverse to the Plaintiff's claim herein.

b) That this Honourable Court to order the defendant to specifically perform its part and the terms and obligations imposed upon it by the Agreement for sale dated 18th October,2010 and more particularly to deliver completion documents and to execute the transfer for the suit property L.R No.28649/104 to enable the Registrar of Titles to register the transfer of 10 acres in favour of the plaintiff.

c) That in default of the defendant executing the said transfer within 14 days of this Court Order the Deputy Registrar of the High Court of Kenya be authorized by this order to execute the said transfer and other attendant completion documents necessary for the Registrar of Land to register the transfer of plot known as L R No.28649/104 in favour of the plaintiff.

d) That a permanent injunction do issue forthwith restraining the defendant either by itself ,its servants and or agents from interfering with the parcel of land known as plot Number L R No.28649/104.

e) Costs of the suit.

f) Any other relief that this Honourable Court deem fit and just to grant.

2. The defendant who was duly served with summons to enter appearance neither entered appearance nor filed a defence. This case therefore proceeded by way of formal proof.

3. The defendant herein was owner of LR No.3554/7 situate at Kamiti corner in Kiambu County. The defendant through its agents Citi Villas Limited advertised the property which was to be sold upon subdivision. The plaintiff got interested in purchasing one of the properties out of the land held by the defendant.

4. The defendant's agent gave the plaintiff a letter of offer dated 21st July 2010 in which the plaintiff was to purchase one plot measuring 0.045 hectares. The purchase price was set at Kshs.1,500,000/=. The plaintiff was to pay 50% the purchase price upon acceptance of the letter of offer. The plaintiff accepted the offer and paid Kshs.750,000/= being 50% of the purchase.

5. The plaintiff and the defendant signed a sale agreement on 18th October 2010. The plaintiff was to pay kshs.250,000/= on or before 30th October 2010 and 250,000/=being the final payment on or before 30th November 2010. The plaintiff fully complied with the terms of the agreement. He took possession of the suit property where he is to date. Before registration of the subdivisions, the plot he bought was No.151. After registration it became LR No.28649/104.

6. The defendant declined to send completion documents. After the subdivisions were registered in the defendant's name, the defendant has

failed to transfer the same to the plaintiff.

7. During the hearing, the plaintiff and his wife testified and produced documents relating to this property which is the subject of the suit. I have gone through the documents. Upon signing the agreement, the defendant acknowledged that it had received Kshs.1, 000,000/=. Later the plaintiff paid **Kshs.250,000/=** by bankers cheque on 9.11.2010 and another bankers cheque of **Kshs.250,000/=** on 29th November 2010.

8. The Plaintiff produced an official search which shows that the suit property is now registered in the defendant's name. The plaintiff has already met all the terms under the agreement. The ball is now in the court of the defendant who has failed to perform its part of the agreement. This is a perfect case where the remedy of specific performance ought to be granted. I find that the plaintiff has proved his case to the required standard i.e a balance of probabilities. I enter judgement for him against the defendant in terms of prayers (a) to (e) of the plaint dated 21st September 2016.

Dated, Signed and delivered at Nairobi on this 7th day of February 2019.

E.O.OBAGA

JUDGE

In the absence of the Plaintiff's advocate who was aware of time and date of delivery of Judgement.

Court Assistant: Hilda

E.O.OBAGA

JUDGE