



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO. 258 OF 2015

MICHAEL ODHIAMBO OUKO.....PLAINTIFF

VERSUS

GEORGE OCHIENG OMODHO.....1ST DEFENDANT

MARY OMODHO.....2ND DEFENDANT

RULING

1. George Ochieng Omodho and Mary Omodho, the Defendants, seek vide motion dated 10th April 2018 to have a review of orders (a) and (b) of the decree dated 5th February 2018, to reduce the balance of the purchase price from Kshs. 1,735,000/= to Kshs. 490,000/=. The application is based on the eight (8) grounds on its face and supported by the affidavits sworn by George Ochieng Omodho on the 10th April 2018 and 17th September 2018.

2. The application is opposed by Michael Odhiambo Ouko, the Plaintiff, through the replying affidavit sworn on the 20th August 2018.

3. The application was heard on the 5th December 2018 when Mr. Onyango and Achura, the learned counsel for the Defendants and Plaintiff respectively, made their oral rival submissions.

4. The following are the issues for the Court’s determination;

a) Whether the Defendants have established any of the grounds for review of the order/decre.

b) Who pays the costs.

5. The Court has after considering the grounds on the motion, affidavit evidence, pleadings, record and counsel’s submissions come to the following finds;

a) That vide the Court’s Judgement of 31st January 2018, the court in paragraph 6 (d) took into consideration all the payment of the purchase price that had been brought to its attention during the hearing as shown in the following extract;

“6 (d) That while this suit was pending in court, the 1st Defendant made a further payment to the Plaintiff of Kshs. 700,000/= bringing the outstanding indebtedness to Kshs. 1,735,000/=.....”

That though the Defendants allege that by the 5th February 2018, the balance of the indebtedness had come down to Kshs. 400,000/=. the same has been disputed by the Plaintiff. The Defendants have referred to the acknowledgement of 27th February 2017 and 31st May 2017 which the Plaintiff has disputed, alleging that the signatures attributed to him are forged. That from the foregoing, and in view of the fact that the said acknowledgements of 31st May 2017 was of a date after the close of the Defendants’ case; and that the one of 27th February 2018 was made about one month after the delivery of the Judgement; and the alleged payments were not made through the court or Defendant’s counsel on record, the court finds their existence or otherwise do not amount to an error on the face of the Judgement or decree and hence cannot be the basis of a review.

b) That the Defendants have not shown what new and important fact or evidence has been discovered that they would not have availed to the court during the hearing, and which could have made the court to come to a different decision on the amount pending

as of the date of the Judgement. That the Defendants have therefore failed to meet the legal threshold for the judgment and or the decree extracted therefrom to be reviewed.

c) That if indeed the Defendants have paid the Plaintiff the additional monies under the said acknowledgments and that he signed and now claims the signatures are forgeries, either party is at liberty to report to the Directorate of Criminal Investigations for appropriate legal processes and action.

d) That as both parties had counsel during the proceedings, the court expected that each counsel would ensure the other is involved when payments under the decree are being done which would have avoided the scenario the parties and their counsel now find themselves in.

6. That in view of the foregoing, the court finds no merit in the Defendants' notice of motion dated 10th April 2018 and the same is dismissed with costs.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 20TH DAY OF MARCH 2019

In the presence of:

Plaintiff Present

Defendants 1st Defendant present

Counsel Mr. Olel for Defendant

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE