



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 1557 OF 2014

KANYUA JOHN GITHUNGURI.....PLAINTIFF

VERSUS

PATRICK MUNYI.....DEFENDANT

JUDGEMENT

1. Through the plaint dated 18/12/2014, the Plaintiff seeks specific performance of the agreement dated 19/1/1996 wherein he claims the Defendant sold to him for valuable consideration, Plot No. 211 in land reference number 7659/6 Mutirithia wa Andu Company (“the Suit Property”). The Plaintiff avers that the Defendant originally owned the Suit Property before selling it to the Plaintiff, by virtue of being a member and shareholder of Mutirithia wa Andu Company.

2. The Plaintiff stated that after the sale, he obtained all the share documents from the Defendant. The Plaintiff averred that the Defendant may have colluded with the officials of Mutirithia wa Andu Company and fraudulently obtained a clearance certificate to process the title to the Suit Property, knowing very well that he had disposed of the Suit Property to the Plaintiff hence he did not exist in the company’s records as a member. He particularised the Defendant’s alleged fraud as receiving and acknowledging payment of the purchase price but refusing to facilitate the transfer of the Suit Property to the Plaintiff; colluding to deprive the Plaintiff of the suit plot despite handing over the share certificate of ownership to him; obtaining title to the Suit Property using false documents of membership which were revoked after the sale to the Plaintiff; and refusing to surrender the original title to the Plaintiff for registration of the transfer in his favour.

3. The Plaintiff also contended that the Defendant intended to offer the Suit Property for sale to third parties to his detriment. The Plaintiff seeks to be declared as the *bona fide* purchaser for value of Plot No. 211 in L.R No. 7659/6 Mutirithia wa Andu Company and a permanent injunction to restrain the Defendant, his servants or agents or anybody acting or claiming through him from selling, alienating, transferring, charging, leasing or in any manner interfering with the Suit Property. He also prays for an order of specific performance directed to the Defendant to surrender the title to the Suit Property to the Chief Land Registrar and execute all necessary papers to facilitate the transfer of the Suit Property to the Plaintiff, and in the alternative, an order directed to the Deputy Registrar of the court to execute all necessary transfer papers.

4. The court notes that on 17/4/2015, the Plaintiff was granted leave to serve the Defendant by means of substituted service by publication of an advertisement in either the *Daily Nation* or the *East African Standard* newspapers. The court is satisfied that the Defendant was duly served, but he did not enter appearance or file a defence. On 22/7/2015, the court granted the Plaintiff a temporary injunction restraining the Defendant by himself, his agents, servants or otherwise from selling, disposing of, alienating, transferring, charging, leasing or in any manner dealing with the Suit Property pending the determination of this suit.

5. The court directed the Plaintiff to file written submissions and dispensed with the need for the Plaintiff to give evidence since the Defendant did not appear in the suit nor did he file a defence. The court would look at the plaint together with the Plaintiff’s documents and deliver its judgement. The Plaintiff submitted that he had been in occupation of the suit land since 1996 but does not have title to it and that he could not trace the Defendant.

6. Through the agreement dated 19/1/1996, the Defendant agreed to sell plot number 211 in L.R. number 7659/6 Njiru to the Plaintiff at the agreed price of Kshs. 70,000/= which the vendor acknowledged receipt of. The agreement stated that the land was in the Defendant’s name in the books of Mutirithia wa Andu Company Limited through share certificate number 3055. The vendor was to cause the plot to be transferred to the purchaser in the books of Mutirithia wa Andu Company Limited or at the registry of lands and was to facilitate the transfer of the plot to the purchaser. The purchaser was to take possession of the plot upon execution of the agreement. Both parties executed the sale agreement.

7. The Plaintiff produced a copy of share certificate number 3055 for plot number 211 as well as copies of letters exchanged between his advocates and Mutirithia wa Andu Company Limited regarding the issuance of a title to him. Mutirithia wa Andu Company Limited indicated in its letter of 12/7/96 that the title would be issued to the allottee, the Defendant in this case and that it would be up to the Plaintiff to make arrangements with the Defendant to effect the transfer to his name.

8. The Plaintiff also produced a copy of the letter from Mutirithia wa Andu Company Limited dated 1/10/1998 addressed to the Defendant which forwarded the lease over plot number 211 phase 3 Nairobi Block 114/190 for his execution. The address given is in England. The Defendant in an undated handwritten letter wrote to Mutirithia wa Andu Company Limited confirming that he was still residing in Middlesex, England and that the lease over plot number 211 phase 3 could be forwarded to him for execution.

9. Mutirithia wa Andu Company Limited wrote to the Defendant on 5/2/2000 complaining that it had neither received the lease back nor any communication from him. In that letter, the company urged the Defendant to respond urgently. It is not clear what transpired subsequently until September 2014 when this suit was filed.

10. The plot number, which is indicated in the sale agreement as plot number 211 in L. R. number 7659/6 Njiru seems to have changed to Nairobi Block 114/190. The Plaintiff did not produce a search to confirm in whose names Nairobi Block 114/190 is now registered.

11. The court has considered the submissions filed by the Plaintiff and is satisfied that the Plaintiff has proved his case on a balance of probabilities. The court grants the prayers sought in the plaint dated 18/12/2014.

Dated and delivered at Nairobi this 24th day of April 2019

K.BOR

JUDGE

In the presence of:-

Mr. V. Owuor- Court Assistant

No appearance for the Plaintiff and the Defendant