



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 669 OF 2012

GEORGE ADUOL OKOTH.....PLAINTIFF

=VERSUS=

PEREZ WELLINGTON JOSEPH ODERO.....DEFENDANT

JUDGEMENT

1. The plaintiff has filed this suit against the defendant seeking:-

(i) An order of specific performance that the defendant procures and/or effects the transfer of title to the plaintiff and registration of the land in the plaintiff's name within a time frame to be limited by the court.

(ii) An order of specific performance that the defendant do deliver the documents of proprietorship/ownership and/or title of the land to the plaintiff and any other documents pertaining to the land that would be necessary to transfer and have the property registered in the plaintiff's name.

(iii) Repayment of the sum of Kshs 10,000.00 and legal fees of Kshs 150,000.00.

(iv) General damages.

(v) Costs of this suit.

(vi) Interest on (iii), (iv) and (v).

(vii) Any further or other relief the honourable court may deem just to grant.

2. Upon being served with copies of plaint and summons to enter appearance, the defendant entered appearance and filed a statement of defence dated 20th November 2012. He also filed a notice of preliminary objection.

3. The defendant was served with a hearing notice for 27th November 2018. He neglected and/or refused to attend. The court was satisfied that he had been served and ordered that the matter proceeds exparte.

4. It is the plaintiff's case that in 2005 he bought a plot from the defendant for a consideration of Kshs.200,000. A sale agreement was drawn upon the defendant receiving the purchase price. The plaintiff produced the sale agreement as exhibit P1. The defendant has failed to transfer the suit property to the plaintiff despite asking the plaintiff to send him a further Kshs.10,000 for the process. He produced the deposit slip for Kshs 10,000/- as exhibit P3. He also produced a certificate of official search as exhibit P2 and a recent one dated 2nd November 2018 as exhibit P4. He then instructed his advocate to write a demand letter to the defendant. It was produced as exhibit P5. He prays that the defendant be compelled to effect the transfer of the suit property in his favour.

5. The plaintiff called one witness. PW2 Jonathan Fondo confirmed what the plaintiff told the court. He told the court that the plaintiff paid the defendant Kshs. 200,000 being full purchase price for the plot. He also signed the sale agreement (exhibit P1) as a witness. He also confirmed that the plaintiff has developed the plot.

6. The plaintiff's case has not been controverted. He told the court that he was in occupation. He has put up rental houses on the plot.

7. I have gone through the statement of defence dated 20th November 2012. The defendant admits that he sold the plot to the plaintiff. That

he is willing to transfer the same to the plaintiff except that he has misplaced and/or lost the title deed. He is in the process of obtaining another one. In my view the entire defence is an admission of the plaintiff's claim

8. I note from the prayers in the plaint that the plaintiff seeks general damages. He told the court that upon execution of the sale agreement he took possession and he has been in occupation to date. He said he has put up rental houses on the plot. Surely he must be earning some income from the said plot. What damage has he suffered? I find that the court was not guided on this issue and decline to award any general damages. The plaintiff also seeks a refund of Kshs 150,000 being legal fees. The same was not proved by way of receipt or in any other way. I decline to award the same.

9. I find that the plaintiff has proved his case as against the defendant on a balance of probabilities. I enter judgment in his favour as follows:-

(a) An order of specific performance is hereby issued compelling the defendant to effect transfer and registration of LR NO. SUNA EAST/WASWETA I/6207 in favour of the plaintiff within ninety (90) days from the date of this Judgment.

(b) In the alternative, an order of specific performance is hereby issued compelling the defendant to deliver the documents of proprietorship/ownership and/or title of the land LR NO. SUNA EAST/WASWETA I/6207 to the plaintiff and any other documents necessary to transfer and have the property registered in the plaintiff's name

(c) In default, the Deputy Registrar do sign the necessary documents to enable LR NO. SUNA EAST/WASWETA I/6207 be transferred or registered in the plaintiff's name.

(d) Refund of Kshs.10,000/-.

(e) Cost of the suit and interest.

It is so ordered.

Dated, signed and delivered in Nairobi on this 3RD day of APRIL 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendant

.....Court Assistant