



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC CIVIL SUIT NO. 1124 OF 2014

MICHAEL MAINA NDUGO.....PLAINTIFF

VERSUS

NTIKYA ENTERPRISES LIMITED....DEFENDANT

JUDGMENT

INTRODUCTION

1. The Plaintiff filed this suit against the Defendant seeking the following reliefs:-

a. Spent

b. A permanent injunction to restrain the Defendant its agents or servants or those claiming under it from harassing, evicting or in any way interfering with the Plaintiff's quiet and peaceful occupation and use of the suit premises plot No.1352 on LR No.8480/2 thereafter.

c. An order directing the Defendant to process and/or facilitate the transfer of the suit plot No.1352 on LR No.8480/2 into the Plaintiff's name.

d. Costs of this suit with interest at Court rates.

2. The Defendant who had filed a defence did not call any evidence as an application for adjournment was disallowed by the Court on 4th December, 2018. The Court directed that the parties do file written submissions. It is only the Plaintiff who filed his submissions on 11th January, 2019.

PLAINTIFF'S CASE

3. The Plaintiff testified and called two other witnesses before he closed his case. The Plaintiff testified that in 2011, he entered into a sale agreement with Martin Karanja Waweru (vendor) who was selling plot No 1352 (suit property) comprised in LR No. 8480/2 which is owned by the Defendant. The vendor who was in the process of relocating to the United States of America handed over all the documents relating to the suit property to him. The vendor even wrote a letter to the Defendant requesting the Defendant to transfer ownership to the Plaintiff. The Defendant is the one which had sold the suit property to the vendor.

4. The Plaintiff took possession of the suit property and started construction on the same. The Defendant's directors claimed that he was a trespasser and threatened to evict him. As the Plaintiff had spent a lot in putting up a building on the suit property, he was coerced into undertaking to pay Kshs.1,200,000/= to facilitate transfer of the suit property. When the Plaintiff wrote a letter undertaking to pay Kshs.1,200,000/= to facilitate transfer, the Defendant's directors changed their minds and demanded that he pays Kshs.3,500,000/=. The Plaintiff refused to pay the demanded sums. He moved to Court where he obtained injunction orders preserving the suit property as the dispute was pending resolution.

5. The Plaintiff maintained that his offer to pay Kshs.1,200,000/= was forced on him and this was purely because he did not want to be evicted from a property where he had put up a lot of money. He testified that he has since completed construction on the suit property where he resides and has rented out the rest to tenants.

DEFENDANT'S DEFENCE

6. In the defence filed by the Defendant on 18th September, 2014 the Defendant denied the Plaintiff's claim and stated that it had offered the suit property for sale to the Plaintiff at Kshs.3,500,000/= which the Plaintiff failed to pay. The Defendant states that the offer was made after the Plaintiff had trespassed on to the suit property and had been asked to cease the trespass but he refused.

ANALYSIS OF EVIDENCE

7. The Plaintiff's evidence was not challenged apart from cross-examination which could not even shake it. The Plaintiff's evidence was supported by PW2 Agnes Ann Wairimu Githiora who is the one who had been asked by the vendor to look for a buyer. This witness testified that she was present when the vendor signed a sale agreement with the Plaintiff. This is after the Plaintiff had gone to the offices of the Defendant where it was confirmed that the records held by the company showed that the suit property belonged to the vendor.

8. The vendor wrote a letter asking the Defendant to transfer the ownership of the suit property from his name to that of the Plaintiff. The vendor wrote his letter of 28th November, 2011. The Defendant responded to the vendor's letter by theirs of 6th October, 2011. This letter was received on behalf of the vendor on 2nd October, 2013. This letter by the Defendant which was clearly backdated purported to deny the fact that the vendor was the owner of the suit property according to their records.

9. The correspondence from the Plaintiff to the Defendant clearly show that the Plaintiff was being asked to pay more to the Defendant besides what he had paid to the vendor. The Plaintiff was in possession as at the time he was being asked to pay more money. The Plaintiff's letter of 11th July, 2014 refers to a meeting he held with Mr. Chege, a director of the Defendant whereby he had been coerced to write to the Defendant proposing to pay Kshs.1,200,000/=. In a response from the Defendant dated 5th August, 2014 the Defendant wrote proposing a figure of Kshs.3,500,000/=. The Plaintiff wrote back on a without prejudice basis and declined to accept the offer. This letter was written on 8th August, 2014.

10. The Defendant filed their defence on 18th December, 2014. There was nothing raised regarding the agreement between the vendor and the Plaintiff. In the Defendant's bundle of documents filed on 28th November, 2018 the Defendant annexed a letter dated 14th November, 2016 from the firm of Nzioki Mutua & Associates Advocates. This letter was in response to the Defendant's Advocates letter of 9th January, 2016. These two letters were referring to an agreement dated 20th April, 2004 between the Defendant and Martin Waweru Karanja. Mr. Fred Mutua of Nzioki Mutua & Associates Advocates denied having witnessed the agreement.

11. It is curious that the agreement was being denounced in 2016 but the Defendant never made any steps to subject it to investigations as the Advocate who denounced it suggested or even call the Advocate to testify. There was no indication since 2014 that the Defendant had any intention of calling the said Advocate as a witness. The correspondence which passed between the Plaintiff and the Defendant are the ones which were listed by the Defendant and are the same ones relied on by the Plaintiff. The only new document which is not relied on by the Plaintiff is the letter of 14th November, 2016 from M/s Nzioki Mutua & Associates Advocates.

12. As the Plaintiff testified and as confirmed by PW3 Samuel Njanjo Wangungu, the Defendants are taking advantage of the vendor's absence from the Country to try to armtwist him into paying a fresh for land which he had purchased from the vendor. This is evident from the correspondence between the Plaintiff and the Defendant. The question one would ask is why would one backdate a letter if the intention is not to achieve something sinister?

CONCLUSION

13. It is clear from this analysis that the Plaintiff has proved his case against the Defendant on a balance of probabilities. I allow the Plaintiff's claim in terms of prayer (b), (c) and (d) of the Plaint filed on 19th August, 2014

Dated, Signed and delivered at Nairobi on this 30th day of May, 2019.

E.O.OBAGA

JUDGE

In the presence of Mr. Njuguna for Mr. Mumia for Defendant.

Court Assistant – Hilda