



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC SUIT NO. 866 OF 2015**

**GURMIT SINGH BALDEV.....1<sup>ST</sup> PLAINTIFF**

**SUKHVINDER KAUR GURMIT.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**SURJIT AMARJEET INVESTMENTS LIMITED.....DEFENDANT**

**JUDGMENT**

The plaintiffs commenced this suit by way of a plaint dated 25<sup>th</sup> August, 2015 seeking the following reliefs:

- i. An order of specific performance compelling the defendant to complete the transfer of a 3 bedroomed apartment No. A2 on Plot No. 209/1588 along Okoth Aura Road (hereinafter referred to as “the suit property”) or in the alternative, the deputy registrar be mandated to execute all necessary documents required to complete the transfer of the property in favour of the plaintiffs.
- ii. In the alternative, an order for a refund of the purchase price of the suit property at the current market value.
- iii. Costs of the suit and interest.
- iv. Any other relief that the court may deem just to grant.

The plaintiffs averred that by an agreement of sale dated 8<sup>th</sup> February, 2010, the defendant agreed to sell to them the suit property at Kshs. 9,000,000/-. The plaintiffs averred that they paid the entire purchase price in accordance with the terms of the agreement and that in breach thereof, the defendant did not provide them with the requisite completion documents or take steps to transfer the suit property in their favour. The plaintiffs averred that they had been in actual possession and occupation of the suit property since the year 2011 and that the defendant was yet to transfer the suit property to them. The plaintiffs averred that as a result of the defendant’s failure to complete the agreement as aforesaid, they had been unable to utilise the suit property optimally and were unable to secure financial accommodation on the security of the property.

The defendant entered appearance through the firm of Harit Sheth Advocates on 15<sup>th</sup> October, 2015. The defendant did not file a defence within the prescribed time and the suit was set down for formal proof. At the hearing, the 1<sup>st</sup> plaintiff (PW1) adopted his statement dated 25<sup>th</sup> August, 2015 as part of his evidence in chief. He produced the documents attached to the plaintiffs’ list of documents filed in court on 11<sup>th</sup> September, 2015 together with the plaint as Plaintiffs’ Exhibit 1. PW1 stated that after filing this suit, the defendant transferred the suit property to them. He stated that they were now demanding from the defendant was a share certificate in respect of the share which they held in the defendant which they had paid for. The plaintiffs closed their case and opted to entirely rely on the evidence on record instead of making closing submissions.

I have considered the plaintiffs’ claim as pleaded and the evidence tendered in proof thereof. The defendant did not file any defence or call any evidence. The plaintiffs’ suit was therefore undefended. From the evidence of PW1, the defendant transferred the suit property to them after the filing of this suit. In the circumstances, the principal prayer that was sought by the plaintiffs in their plaint has been overtaken by events. In his testimony, PW1 told the court that what they were seeking from the court was an order compelling the defendant to release to them a share certificate for the share which they held in the defendant which is also the management company for the apartments which the suit property form part.

The court takes judicial notice of the fact that with regard to the ownership of apartments, the transfer of an interest in an apartment is completed by the transfer of a share in the management company to the apartment owner. The defendant had an obligation in the circumstances to transfer to the plaintiffs a share in the defendant company and to issue them with a share certificate in respect thereof. I am satisfied therefore that the plaintiffs are entitled to an order compelling the defendant to issue them with a share certificate in respect of the share which they hold in the defendant.

In conclusion, I hereby enter judgment for the plaintiffs against the defendant as follows:

- 1) The defendant shall forthwith issue the plaintiffs with a share certificate in respect of the share which the plaintiffs hold in the defendant company on account of their ownership of Apartment Number A2 on Plot No. 209/1588.
- 2) The plaintiffs shall have the costs of the suit.

**Delivered and Dated at Nairobi this 20<sup>th</sup> day of June 2019**

**S. OKONG'O**

**JUDGE**

**Judgment read in open court in the presence of:**

Ms. Kavuli for the Plaintiffs

N/A for the Defendant

Catherine Nyokabi-Court Assistant