



**Tara Properties Limited v Tenet (Environment and Land Case
E019 of 2023) [2025] KEELC 5558 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5558 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E019 OF 2023
LC KOMINGOI, J
JULY 24, 2025**

BETWEEN

TARA PROPERTIES LIMITED PLAINTIFF

AND

MOSES TENET DEFENDANT

JUDGMENT

1. By the Plaint dated 1st March 2023, the Plaintiff, a limited liability company registered under the *Companies Act* claims that on 18th December 2014, it executed an agency agreement with the Defendant as the vendor of ten (10) acres from L.R. No. Kajiado/Lorngosua/4100 for Kshs. 3,000,000. The Plaintiff made a deposit of Kshs. 500,000 and continued to make periodic payments amounting to Kshs. 2,300,000. Thereafter they asked for the Mother Title from the Defendant to effect subdivision of the ten acres. The Defendant handed them the Mother Title but went ahead and coerced the surveyor to give it back. He then went ahead to make subdivisions giving rise to parcels Kajiado/Lorngosua/8803 and 8804. He further subdivided parcel Kajiado/Lorngosua/ 8804 to give rise to parcels Kajiado/Lorngosua/8881 and 8882 measuring 10 acres. This subdivision was effected on behalf of a third party, in total breach of the agreement between them.
2. The Plaintiff filed a complaint dated 18th December 2019 before the Director of Criminal Investigations and produced documents in relation to the transaction. Further, through a letter dated 18th February 2020 addressed to the Land Registrar, the Plaintiff sought to place a caution on parcels; Kajiado/Lorngosua/8881 and 8882 which was done. The Registrar then ordered mediation between the parties. However, the Defendant frustrated the mediation process by denying existence of an agreement between them and or receiving any money.
3. The Plaintiff particularised fraud, malice and non-performance of the contract by the Defendant as: Maliciously taking the title deed from the surveyor. Contracting with a third party for the sale of 10 acres which was to be transferred to the Plaintiff. Acting in bad faith by denying existence of a contract



between them or receiving money from the Plaintiff. Agreeing to sell 10 acres to the Plaintiff being aware that he had made a subdivision in favour of another party. Failing to hand over the 10 acres to the Plaintiff despite having received 85% of the purchase price.

4. It thus sought for:
 - 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 as was agreed in the agency agreement dated 18th December 2014 within a time frame to be limited by the Court.
 - ii. Alternatively, 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. General damages for hardship suffered by the Plaintiff as the Court may deem just and fit to grant.
 - iv. Interest on (iii)
 - v. Costs of this suit.
 - vi. Any other reliefs that the Hon. Court may deem just to grant.
5. The Defendant who was duly served with pleadings and summons to enter appearance neither entered appearance nor filed a defence.

Evidence of the Plaintiff

6. PW1, Janette Kabiru Rubadiri, a director of the Plaintiff adopted her witness statement dated 1st March 2023 as her evidence in chief and produced her bundle of documents as exhibits. She stated that she met the Defendant sometime in 2014 as they were desirous of purchasing ten (10) acres of land. They entered a sale agreement and made payment of Kshs. 2,300,000 for the same but the Defendant failed to transfer the land to them. Instead, he filed a false report indicating that the plaintiff was taking his land and the Director of Criminal Investigations ordered the Plaintiff's surveyor to release the title deed. The Defendant later subdivided LR No; Kajiado/Lorngosua/4100 and sold ten acres to one James Ng'ang'a. They then registered a caution on 23rd September 2020. They therefore seek the defendant to be compelled to transfer 10 acres of his parcel to them as agreed.
7. At the close of the oral testimony, the Plaintiff tendered their final written submissions.

Submissions of the Plaintiff

8. On whether there was a valid sale agreement between the Plaintiff and the defendant and if the same was breached, counsel submitted that there was evidence that the parties entered an enforceable contract as per Section 3(3) *Law of Contract Act*, Section 38 *Land Act* and Section 44 *Land Registration Act*. Therefore, the Defendant was in breach of contract for not availing completion documents as was held in *South Tetu Hotels & Bars Limited v Thuo & another* [2023] KEELC 21359 (KLR). The defendant also acted fraudulently by accepting money sent to him by the Plaintiff and not delivering the land purchased. Counsel submitted that the Defendant also had the caution placed by the Plaintiff removed without evidence of how this was possible. The Plaintiff was therefore entitled to the orders sought against the Defendant.



Analysis and Determination

9. have considered the pleadings, the evidence on record, the written submissions, and the authorities cited. I find that the issues for determination are:
 - i. Whether the Plaintiff is entitled to the reliefs sought;
 - ii. Who should bear costs of the suit?
10. The Plaintiff's case is that it entered into an agency agreement with the Defendant dated 18th December 2014, whereby the defendant was to sell ten (10) acres of his parcel; Kajiado/Lorngosua/4100 for a consideration of Kshs. 3,000,000. The Plaintiff claims that it paid Kshs. 2,300,000 but the defendant frustrated the transfer process by sub-dividing the parcel and transferred it to a third party instead of them. As a result, they placed a caution against the subdivisions claiming purchaser's interest.
11. The Plaintiff has come to this court seeking the relief of specific performance against the Defendant, together with general damages, interests and costs of the suit.
12. To support its claim, the Plaintiff produced the agency agreement dated 18th December 2014 duly signed and executed by the parties as well as witnesses. There is evidence of payment of Kshs. 2,300,000 in cheques, bank transfers and mobile money (M-Pesa) transfers between 18th December 2014 and 22nd February 2019.
13. On 18th February 2020, the Plaintiff wrote to the Kajiado Land Registrar seeking cancellation of mutation for ten (10) acres and order the Defendant to produce title deeds in his possession. On 13th October 2020, the Kajiado Land Registrar held a meeting to discuss the caution placed by the Plaintiff against LR Nos; Kajiado/Lorngosua/8881 and 8882 where he found that the Plaintiff had a good case and if the dispute is not resolved, then the caution would be maintained until parties move Court for further orders.
14. The Green card for Kajiado/Lorngosua/8881 measuring approximately 4.05ha shows that it was opened on 2nd July 2019 and registered in the Defendant's favour. A caution was placed against it on 3rd March 2020 by the Plaintiff claiming purchaser's interest. The Caution was lifted on 22nd July 2021 through a Court order in Chief Magistrate's Court at Kajiado case No. E019 of 2021. And on 10th January 2022 the title registered in favour of James Maina Ng'ang'a and a title deed issued on the same date.
15. The green card for Kajiado/Lorngosua/8882 measuring approximately 11.199Ha shows that it was opened on 2nd July 2019 and registered in Defendant's favour. A Caution was placed against it on 3rd March 2020 by the Plaintiff claiming purchaser's interest. The Caution was lifted on 22nd July 2021 through a Court order in Chief Magistrate's Court at Kajiado case No. E019 of 2021. On 25th October 2021, the title was closed on subdivision to new numbers 9715-9717 respectively.
16. The plaintiff has proved that there is a valid agreement for the sale of ten (10) acres.
The Plaintiff has paid Kshs.2,300,000/= out of the agreed Kshs.3,000,000/=. This is a substantial amount.
17. I find that the Plaintiff is entitled to an Order of Specific Performance.
18. The upshot of the matter is that the Plaintiff has proved its case as against the Defendant on a balance of probabilities.
19. Accordingly Judgement is entered for the Plaintiff as against the Defendant as follows;



- a. That an Order of Specific Performance is hereby issued compelling the Defendant to effect transfer of Ten (10) acres to the Plaintiff within Sixty (60) days from the date of this Judgement. In Default the Deputy Registrar of this court do execute the necessary documents to effect the said transfer.
- b. That the balance of Kshs.700,000/= be paid to the Defendant within sixty (60) days from the date of this Judgement.
- c. That costs of this suit be borne by the Defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24TH DAY OF JULY 2025.

L. KOMINGOI

JUDGE.

In the Presence of:

Ms. Nthusa for the Plaintiff.

N/A for the Defendant.

Court Assistant – Mutisya.

