



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO 158 OF 2016

LAWRENCE MWADZOMBO MPATE.....PLAINTIFF

VERSUS

ROBERT KAMBU MAKURI.....DEFENDANT

JUDGMENT

1. The Plaintiff has filed this suit against the Defendant for;

a) An order compelling the Defendants to furnish the Plaintiff with all the completion documents which are listed in paragraph 6 (i-x) hereinabove which documents are necessary for all that parcel of land known as Kilifi/Pangani/710 to be transferred to the Plaintiff failure to which the Deputy Registrar be authorized to obtain all the said completion documents and sign the transfer for and on behalf of the Defendant.

b) An order of permanent injunction to issue against the Defendant stopping the Defendant and/or his authorized agents, assigns and servants from trespassing and/or encroaching and/or entering and/or selling and/or transferring to a 3rd party and/or alienating all that parcel of land known as Kilifi/Pangani/710 and or interfering with the Plaintiff's right to quiet possession thereof and/or dealing with it in any manner whatsoever.

c) Costs of the suit and interest at court rates.

d) Any other relief or order the Honourable Court deems fit to grant.

2. Upon being served with copies of plaint and summons to enter appearance the Defendant entered appearance in person on 11.7.2016. He also filed a statement of defence dated 25.7.2016.

3. On the 25.4.2017, a date for hearing was taken in court in the presence of both parties.

4. On the 26.9.2017 when the matter was called out, the Defendant was not present. The file was placed aside upto 11:00am when the same proceeded ex-parte.

5. It is the Plaintiff's case that he bought land parcel number Kilifi/Pangani/710 from the Defendant. He produced the sale agreement as exhibit P1. He said he paid Kshs.187,000/= as the purchase price. The balance of Kshs.38,000/= was to be paid after the transfer had been effected. He was given a go ahead and a permission by the Defendant to plough the said land. He told the court that he is in possession to date. He referred the matter to the area chief. He produced the letters from the chief as exhibits P2, P3 and P4. He produced a certificate of official search and the receipt as exhibits P6. A demand letter from the Plaintiff's advocate to the Defendant is exhibit P7 and the reply from the Defendant as exhibit P8.

The Plaintiff prays that the Defendant be compelled to transfer the land to him.

6. I have considered the pleadings, the evidence on record and the submissions of counsel. The issue for determination is whether the Plaintiff has established a case against the Defendant on a balance of probabilities.

7. In his statement of defence, the Defendant admits he sold the land to the Plaintiff.

8. The Plaintiff's case is uncontroverted. He is in possession. The Defendant has breached the agreement by refusing to effect transfer in

favour of the Plaintiff. I am guided by the case of William Kazungu Karisa –versus- Cosmas Angote Chanzero (2006) eKLR where it was held that;

“The basic rule of the law of contract is that parties must perform their respective obligations in accordance with the terms of contract executed by them.”

9. I find that the Plaintiff has proved his case against the Defendant on a balance of probabilities.

I enter judgment in his favour as against the Defendant as follows;

a) An order is hereby issued to compel the Defendant to furnish the Plaintiff with all the completion documents listed in paragraph 6 (i-x) which documents are necessary for all that parcel of land known as Kilifi/Pangani/710 to be transferred to the Plaintiff failure to which the Deputy Registrar be authorized to obtain all the said completion documents and sign the transfer for and on behalf of the Defendant.

b) An order of permanent injunction is hereby issued against the Defendant stopping the Defendant and or his authorized agents, assigns and servants from trespassing and/or encroaching and or entering and or selling and or transferring to a 3rd party and or alienating all that parcel of land known as Kilifi/Pangani 710 and or interfering with the Plaintiff's right to quiet possession thereof.

c) Costs of the suit and interest at court rates.

It is ordered.

Dated, signed and delivered at Mombasa on the 21st day of February 2018.

L. KOMINGOI

JUDGE

21/2/2018