



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ELDORET**

**ELC NO. 159 OF 2014**

**ANDREW KAREMI KINGORI.....PLAINTIFF**

**VERSUS**

**JOSEPH WAWERU NJOROGE.....DEFENDANT**

**JUDGMENT**

By a plaint dated 20<sup>th</sup> May 2014 the plaintiff herein sued the defendant for a declaratory order for specific performance and for the defendant to sign all the transfer forms to affect the transfer of LR. NO. NGERIA/KABONGO BLOCK 1 (KIAMBAA) 138 plus costs of the suit.

The defendant was served with summons to enter appearance but failed to do so within the stipulated period and therefore the plaintiff requested for judgement and fixed the case for formal proof. The plaintiff served the defendant with a hearing notice but he did not attend court therefore the matter proceeded *ex parte*.

It was the plaintiff's evidence that he bought the suit land in 2002 from the defendant vide a sale agreement dated 8<sup>th</sup> February 2002 which he produced as an exhibit before the court. He stated that he paid for the subdivision and was issued with a receipt dated 12<sup>th</sup> March 2002. The plaintiff further stated that they applied for the Land Control Board Consent and signed a transfer form.

It was further the plaintiff's evidence that after signing all the documents the defendant refused to surrender the original title to the Land Registrar to enable the transfer to be effected in his name.

The plaintiff testified that he did a search and found out that the defendant got a title in 2004 which search he produced as an exhibit in court. He stated that he has been asking the defendant to surrender the title to the Registrar but he has refused prompting the filing of this suit. He further stated that since he paid the defendant the purchase price in full and has been in occupation of the suit land since 2002 he asked the court to order the defendant to transfer the land to him. The plaintiff further testified that he has been cultivating the land and in 2007 he planted blue gum trees which he harvested in 2014. He produced a bundle of documents and photographs to show that he had harvested the trees from the suit land.

The plaintiff therefore prayed for judgment to be entered in his favour as per the plaint and costs of the suit.

**Analysis and Determination**

The issues for determination in this case is as to whether the plaintiff is entitled to the orders sought in the plaint. It is not in dispute that the plaintiff entered into a sale agreement with the defendant. The plaintiff's case is uncontroverted as the defendant was given a chance to rebut the plaintiff's case but did not take up the opportunity.

It is further not in dispute that the plaintiff paid the full purchase price of the suit land as per the documentary evidence adduced by the plaintiff. The plaintiff performed his part of the bargain as per the terms of the agreement but the defendant failed to fulfill his part. The plaintiff produced evidence of application to the Land Control Board for consent and a duly signed transfer form from both parties but the hitch was when the defendant refused to surrender the original title to enable a transfer be affected in his name.

I wish to cite the Gruder Singh Birdi & Marinder Singh Gatora vs. Abubakar Madhubuti, where the Court of Appeal in Civil Appeal No. 165 of 1996, held that the underlying principle in granting the equitable relief of specific performance is that, "the Plaintiff must show that he has performed all the terms of the contract which he has undertaken to perform, whether expressly or by implication, and which he ought to have performed at the date of the writ in the action"

Further, in Thrift Homes Ltd V. Kenya Investment Ltd 2015 eKLR, the court stated that,

"specific performance like any other equitable remedy is discretionary and will be granted on well settled principles. The jurisdiction of specific performance is based on the existence of a valid enforceable contract and will not be ordered if the contract suffers from some defects or mistake or illegality. Even where a contract is valid and enforceable, specific performance will not be ordered where there is an adequate alternative remedy. The court then posed the question as to whether the Plaintiff who was seeking specific performance in that case had shown that he was ready and able to complete the transaction".

It should be noted that specific performance is an equitable remedy and as a rule of equitable remedies is available at the court's discretion. The order of specific performance is however rarely granted unless the plaintiff is able to show that damages would not be an adequate remedy. In this current case the plaintiff has established by his evidence that he performed his part of the bargain and therefore he is entitled to an order of specific performance.

I have considered the pleadings, the documents in support and the plaintiff's evidence and I have come to the conclusion that the plaintiff has proved his case against the defendant to the required standard. I therefore enter judgement in favour of the plaintiff against the defendant as prayed in the plaint. The defendant to sign all the transfer forms to effect the transfer of LR NO. NGERIA/KABONGO BLOCK 1 (KIAMBAA) 138 failure of which the Deputy Registrar do sign on the defendant's behalf.

The defendant to pay costs of the suit.

**Dated and delivered at Eldoret this 14<sup>th</sup> day of March, 2018**

**M.A ODENY**

**JUDGE**

Judgment read in open court in the presence of the Plaintiff and in the absence of the defendant.

Mr. Koech: Court Assistant