



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO. 158 OF 2017

KIPRUTO CHIRCHIR.....PLAINTIFF

VERSUS

HILLARY KIPKOSGEI KIBOINETT.....1ST DEFENDANT

T/A SWEETLAND CONSULTANT.....2ND DEFENDANT

JUDGMENT

By a plaint dated 28th March 2017 the plaintiff herein sued the defendant for :

1. An order for specific performance directing the Defendant to process a title deed in favour of the Plaintiff for the purchased parcel of land.
2. An order extending the period within which the parties herein can apply for and obtain consent of the Land Control Board.
3. An order compelling the Defendant to apply for and appear before the Land Control Board to obtain consent and in default thereof, the Executive Officer or Deputy Registrar of this honourable court to sign the necessary papers on behalf of the Defendant.
4. An order compelling the Defendant to sign the transfer forms to facilitate transfer.
5. Costs of this suit.

The Defendant was served with summons to enter appearance but only filed a memorandum of appearance through his advocate Lel & Associates Advocates. The Defendant failed to file a Defence within the stipulated time and therefore the suit proceeded by way of formal proof.

It was the plaintiff's case that he entered into a sale agreement dated 4th August 2008 for the purchase of a parcel of land measuring 0.089 Hectares being provisional plot no. 16 curved out of a parcel known as KAPTAGAT/ KAPTAGAT BLOCK 1 (UG) 278. It was further his evidence that he paid Kshs 180, 000/= upon execution of the agreement which he produced as exhibit no.1

The Plaintiff also stated that he cleared the balance of the consideration on 7th October 2008 of which the defendant acknowledged receipt as being full and final payment. He further testified that upon clearing the total purchase price he paid Title Deed processing fees of Kshs 25, 000/= as evidenced by a receipt dated 10th December 2014.

It was the Plaintiff's evidence that despite paying the agreed total purchase price in full and paying for title deed processing fees, the Defendant has refused or neglected to register the subject parcel of land being provisional plot no. 16 measuring 0.089 Hectares, curved out of a parcel known as KAPTAGAT/ KAPTAGAT BLOCK 1 (UG) 278. He therefore prayed for judgement to be entered in his favour against the defendant as prayed in the plaint.

Plaintiff's Counsel filed written submissions and reiterated the plaintiff's evidence. He cited the case of Gurder Singh Birdi & Marinder Singh Ghatora 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".

Counsel submitted that the Plaintiff in this case performed his part of the agreement by paying the total agreed consideration in full and that the defendant was to execute all the conveyancing documents so as to transfer the said parcel of land to the purchaser. He further submitted that upon payment of the consideration in full, the plaintiff moved into the suit parcel of land and carried out developments and has been living on it and enjoying quiet possession of the property to date. He finally stated that the plaintiff had proved his case against the defendant and should be granted the orders as prayed in the plaint.

Analysis and Determination

The issue 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 for the purchase of the suit parcel of land with the plaintiff. It is also not in dispute that the plaintiff paid the full purchase price together with title deed processing fees as per the sale agreement and receipts produced as exhibits in court.

It was also a term of the agreement that the defendant would execute the conveyancing documents to enable the plaintiff be registered as owner which term was breached by the defendant.

The defendant was served with the summons to enter appearance but only filed a memorandum of appearance without a defence. He was also served with a hearing notice but did not show up. The plaintiff's evidence remains uncontroverted. The plaintiff has also been in occupation of the suit land since he purchased the land.

I have considered the pleadings, the supporting documentation, the plaintiff's evidence together with Counsel's submission and I am of the view that the plaintiff has proved his case on a balance of probabilities. I have also looked at the authorities that have been cited and find them to be relevant on the issue of specific performance. I need not repeat the threshold for grant of specific performance as it has been analyzed above.

In conclusion I therefore enter judgement in favour of the plaintiff against the defendant as prayed in the plaint plus costs of the suit.

Dated and delivered at Eldoret this 13th day of March, 2018

M.A ODENY

JUDGE

Judgment delivered in open court in the absence of Mr. Bett for the Plaintiff and the defendant.

Mr. Koech: Court Assistant.