



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MACHAKOS
ELC. CASE NO. 30 OF 2016

ASHER BLESSED MUMBUA.....PLAINTIFF

VERSUS

STEPHEN NDUNDA MUNGA.....1ST DEFENDANT

DIVISIONAL INTEGRATED DEVELOPMENT

PROGRAMMES COMPANY LIMITED.....2ND DEFENDANT

DAVID ISAAC SOI.....3RD DEFENDANT

ROBERT SILA MUSA.....4TH DEFENDANT

JUDGMENT

1. In the Plaintiff dated 13th May, 2016, the Plaintiff averred that on 17th April, 2003, the 2nd Defendant entered into a Sale Agreement with him for the sale of land reference number 12715/52; that the purchase price was Kshs. 300,000 and that she paid the purchase price in full.

2. The Plaintiff's complaint is that having paid up the purchase price, the 1st and 2nd Defendants have refused to release the completion documents to her; that the Defendants are in breach of the Sale Agreement and that an order directing the Defendants to release the completion documents should issue. The Plaintiff amended her Plaintiff on 13th April, 2017.

3. In their Defence, the 1st and 2nd Defendants averred that the 2nd and 4th Defendants were representing the Plaintiff's interests and that they took the completion documents; that the 1st Defendant executed the transfer documents but could not release the mother title and that the 1st and 2nd Defendants are not in breach of the Sale Agreement as alleged by the Plaintiff.

4. The 3rd and 4th Defendants neither filed a Defence not attended court when the matter came up for hearing.

5. The Plaintiff, PW1, informed the court that she entered into an agreement of sale of L.R. No. 12715/52 plot number 10 in Syokimau Farm with the 2nd Defendant; that she paid the purchase price of Kshs. 300,000 and that pursuant to a Memorandum of Understanding dated 18th April, 2007 between the

Defendants, the 3rd and 4th Defendants masqueraded and purported to represent her interests and illegally took possession of the completion documents, including the Deed Plan of the suit land.

6. In cross-examination, PW1 stated that she was not aware of the Memorandum of Understanding between the 1st – 4th Defendants; that the 3rd and 4th Defendants are her neighbours and that she was not aware that they were her representatives in the transaction.

7. It was the evidence of PW1 that she is in possession of the Transfer that was signed by the 1st Defendant but does not have the mother title document and the Deed Plan.

8. The 2nd Defendant's director, DW1 informed the court that he entered into a Sale Agreement with the Plaintiff in respect of a portion of land of L.R. No. 12715/52; that as at the time of the sale, the land had not been sub-divided and that in the year 2007, the 3rd and 4th Defendants advised him that all the members who had bought L.R. No. 12715/52 wanted to take charge of the sub-division and subsequent transfer to the purchasers.

9. It was the evidence of DW1 that it is the 3rd and 4th Defendants who are in possession of the completion documents and that the Plaintiff is entitled to her title document.

10. None of the parties filed submissions.

11. It is not in dispute that on 17th April, 2003, the Plaintiff entered into an agreement of sale with the 2nd Defendant. The 2nd Defendant's director, DW1, admitted in evidence that indeed he signed the said agreement and received the purchase price of Kshs. 300,000.

12. The Agreement between the Plaintiff and the Defendants shows that she purchased Plot No. 10 of 12715/52. After the whole land was sub-divided, plot number 10 became to be known as 12715/8669.

13. DW1 informed the court that the 3rd and 4th Defendants represented to him as the agents of the Plaintiff and that they are the ones who pursued the issue of sub-division of the land. According to DW1, he signed the Transfer documents, including the Transfer in favour of the Plaintiff. DW1 stated that he also handed to the 3rd and 4th Defendants the original title document for the purpose of having the titles issued to the purchasers.

14. The 3rd and 4th Defendants have not denied that they are in possession of the mother title for L.R. No. 12715/52 together with the Deed Plan for L.R. No. 12715/8669.

15. Considering that the Plaintiff paid the full purchase price and she is in possession of the signed Transfer document, the 3rd and 4th Defendants should release to her the original mother title for L.R. No. 12715/52 and the original Deed Plan for L.R. No. 12715/8669 to enable her lodge the documents for registration.

16. For those reasons, I allow the Plaintiff's amended Plaint dated 13th April, 2017 in the following terms:

a. An order be and is hereby made directing the 3rd and 4th Defendants to release to the Plaintiff the original Title Deed and Deed Plan in respect of Land Reference Number 12715/52 and 12715/8669 forthwith.

b. The Defendants are restrained from by themselves, their servants, employees, agents or by whomsoever from entering into or interfering with the Plaintiff's quiet possession of L.R. No. 12715/8669.

c. The 3rd and 4th Defendants to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 13TH DAY OF APRIL, 2018.

O.A. ANGOTE

JUDGE