



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CASE NO. 505 OF 2017

TERCY INVESTMENTS LIMITED.....PLAINTIFF

VERSUS

NANCY KIOKO.....DEFENDANT

JUDGEMENT

1. The Plaintiff initially filed Milimani **HCCC No. 168 of 2006** seeking judgement for the sum of Kshs. 3,810,100.00 against the Defendant together with interest at the rate of 10% per month from 1/5/2006 until payment in full.

2. The Defendant owned L.R. No. 17864/9 situated in Karen (“the Suit Property”) which she agreed to sell to the Plaintiff through its director, Mercy Kanyara at the agreed consideration of Kshs. 1.6 Million vide the sale agreement dated 12/6/2005. At the time of execution of the sale agreement the Plaintiff had already paid the Defendant part of the purchase price in the sum of Kshs. 1,479,000.00 leaving a balance of Kshs. 121,000.00 which was to be paid within 6 months or upon the successful registration of the transfer in favour of the vendor. The Plaintiff claims that it deposited the sum of Kshs. 250,000.00 in a joint account and that the Defendant withdrew this sum from the joint bank account. Having taken possession of the Suit Property, the Plaintiff claims that it expended the sum of Kshs. 400,000.00 on fencing and improving the suit plot.

3. The other amounts paid by the Defendant included Kshs. 100,000.00, legal fees of Kshs. 50,000.00 and valuation fees of Kshs. 3000.00. The Defendant wrote to the Plaintiff in August 2005 stating that the Commissioner of Lands had declined to grant consent to transfer the Suit Property. The Defendant admitted receipt of Kshs. 1 Million in the letter and offered to refund it within 6 months but she failed to refund the purchase price. Clause 6 of the sale agreement provided for refund of the purchase price if the sale did not fall through by reason of the vendor’s default together with interest at the rate of 10% per month.

4. In her defence filed in court on 9/6/2006, the Defendant admitted entering into a business venture with Mercy Kanyara known as Isongu Home Makers. She denied agreeing to sell the Suit Property to the Plaintiff. The Defendant claimed that Mercy Kanyara did not give her the entire sale agreement but only caused her to execute the last page of the agreement. She claimed that any money she received from Mercy Kanyara was towards the investment in Isongu Home Makers and denied the Plaintiff’s claim.

5. Mercy Kanyara gave evidence for the Plaintiff. She produced a copy of the sale agreement. Clause 1 of the special conditions set out the mode of payment of the purchase price. She also produced the bank slips including the Bank request for swift transfer in respect of the Defendant’s daughter’s university fees in a South African college. She produced copies of receipts issued for the delivery of building materials to the Suit Property in May and June 2005. She produced a copy of the letter from the Commissioner of Lands addressed to the Plaintiff’s advocates dated 25/2/2008 confirming that no transactions would be allowed on the Suit Property since it formed part of Nyumbani Children’s Home.

6. The Defendant gave evidence. She denied being furnished with a copy of the sale agreement and maintained that the agreement she signed is different from the one produced by the Plaintiff and disputed entering into an agreement with the Plaintiff. She stated that they agreed with Mercy to terminate the agreement upon receipt of the letter from Commissioner of Lands stating that the suit land could not be transferred. She produced copies of the bank card for the joint account and the bank statement for this account for 8/6/2005 to 10/6/2005 as well as various invoices bearing dates in May, June and July 2005 which she claimed were incurred for the joint venture with Mercy. She denied that the Plaintiff’s claim is merited.

7. The issues for determination are whether there was a valid sale agreement executed between the parties and whether or not the Plaintiff paid the Defendant the sum of Kshs. 1,579, 000.00 for the purchase of the Suit Property; and whether it spent Kshs. 400,000.00 on fencing and developing the Suit Property.

8. The Defendant admits entering into a sale agreement over the Suit Property but denies that the Plaintiff was the vendor. She offered to refund the sum of Kshs. 1 Million when the Commissioner of Lands declined to give consent for the transfer of the Suit Property. The letter from the Commissioner of Lands referred to transfer to Tercy Investments. The Defendant did not demonstrate how the invoices she produced related to the Plaintiff’s claim. She did not demonstrate that the monies Mercy Kanyara paid were for the joint venture and not for

the purchase of the suit plot.

9. The Defendant did not produce the agreement she claimed that she entered into with the Mercy Kanyara to show that the terms of that agreement were different from those of the agreement produced by the Plaintiff. The court is inclined to believe that the sale agreement presented by the Plaintiff in evidence was the one the parties executed.

10. On a balance of probabilities, the court finds that the Plaintiff has proved its case and enters judgement in terms of prayers (a) and (b) of the Plaint. The Plaintiff will also have the costs of the suit.

Dated and delivered at Nairobi this 30th day of August 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Akwabu holding brief for Mr. Lutta for the Plaintiff

Mr. P. K. Wachira for the Defendant

Mr. V. Owuor- Court