



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 399 OF 2011

MURIITHI CHARLES.....PLAINTIFF/RESPONDENT

=VERSUS=

GEORGE MWANGI GICUKI & 2 OTHERS.....DEFENDANT/RESPONDENT

JUDGEMENT.

1. The Plaintiff filed this suit against the three defendants claiming the following reliefs:-

a) A declaration that the Agreement for sale between the plaintiff and the first defendant of all that parcel of Land known as plot No.V.2896, C 388 is legally and equitably valid.

b) A declaration that the defendants and/or any other person howsoever claiming under them have no right to continue being in occupation of all that parcel of Land known as plot. No.V.2896,C.388 contrary to the plaintiff's rights and interest thereon.

c) A permanent injunction restraining the defendants either by themselves, their agents, servants or in any manner howsoever be restrained from interfering with the plaintiff's quiet possession, occupation, enjoyment, ownership, legal, contractual and equitable rights and interests on all that parcel of Land known as Plot No.V 2896,C and / or claiming interests, rights or in any way dealing with or trespassing onto or continuing further trespass on the plot.

d) General damages against the 3rd defendant for trespass, unlawful inference of the plaintiff's interests and economic duress.

e) Mesne profits against the 3rd defendant and Kshs.94,750,00 for the building materials.

f) In alternative and without prejudice to the foregoing the plaintiff claims for refund of the purchase price paid to the 1st defendant.

g) Interest on (e),(f), and (g), above

h) Costs of and incidental to the suit and interest at court rates.

i) Any other remedy as the Honourable Court may deem fit and applicable in the circumstances.

2. The second and third defendants who were duly served with summons to enter appearance neither entered appearance nor filed defence. It is only the first defendant who entered appearance and filed defence. During the hearing, the first defendant's Advocates who were duly served did not attend hearing. The case against the three defendants therefore proceeded ex-parte .

3. The plaintiff testified that on 8th June 2010, he entered into a sale agreement with the first defendant who agreed to sale to him a plot known as C 388 which was within a larger property owned by the second defendant. He later went to the plot around June 2011 with an intention to develop it but he was confronted by the third defendant who claimed that the plot belonged to her.

4. I have gone through the statement recorded by the plaintiff which was adopted as his evidence. I have also gone through the documents produced by the plaintiff. This is one of the cases where some Advocates literally throw documents before the court and leave it for the Judge to make a case out of the same. For a simple case like this one the plaintiff's Advocate has prepared a list of 54 issues for determination. Some of the documents produced are not legible and some are not even signed. One cannot decipher what consideration was paid as the same was neither pleaded nor evidence of the same given. There are two sale agreements dated 8th June 2010. One of the agreements which is

signed by both the plaintiff and the first defendant does not contain the consideration. The second agreement contains a consideration of Kshs.370,000/= but it is not signed by the plaintiff who was the purchaser.

5. There are two copies of bankers cheques; one payable to the first defendant whose amount is Kshs.220,000/= ; there is another for Kshs.20,000/= payable to the second defendant. The dates when the two cheques were issued is not legible. There is no further evidence that the plaintiff completed paying the purchase price but despite these shortcomings, the first defendant is not denying that he is the one who sold a plot to the plaintiff which plot the plaintiff cannot access because the third defendant is claiming it.

6. The plaintiff testified that after purchase of the plot, the first defendant took him to the offices of the second defendant where records were changed into his name. However a look at the documents produced show that all of them are in the name of the first defendant. Whereas the plaintiff claimed that he was shown beacons after paying Kshs.5000/= and was given ago ahead to start construction after paying Kshs.20,000/= to the second defendant, the receipt for Kshs.5000/=for site visit was issued to the first defendant on 4th June 2010 even before he purchased the suit property.

7. In the statement recorded by the plaintiff on 4th August 2011, he stated that when he went to the suit plot to start construction, he was confronted by the third defendant who claimed ownership of the plot. He was confronted in June 2011. In his evidence in Court during the hearing , he stated that he had started construction and that the area chief in the company of the third defendant came and demolished what he had constructed; that as a result , he lost about kshs.100,000/=.

8. One of the documents which the plaintiff produced was a receipt for construction materials amounting to Kshs.94,750.96. The receipt is issued on 27th January 2011. The plaintiff's evidence as contained in his written statement is that he was confronted on June 2011 by the third defendant who claimed the plot. He stated in the same statement that it is the third defendant and officials of the second defendant who asked him not to construct. He cannot therefore claim as he did in court that he had already constructed and that his construction was demolished.

9. It is clear that the agreement between the plaintiff and the first defendant was casually made. This explains why the one containing the agreed purchase price was not signed by the plaintiff. The receipt issued to the first defendant on 4th June 2010 four days before the sale transaction was a cash sale receipt and it appears the first defendant may have obtained this receipt in a dubious way with a view to selling what he did not have. Neither the second defendant nor the third defendants are liable for what befell the plaintiff. It is the third defendant who should be complaining about trespass to her property.

10. There is no evidence that the second defendant did anything which would have made the first defendant to sell what he did not have. The plaintiff's own evidence is that the officials of the second defendant stopped him from constructing on the property. There is therefore no way the same officials can be blamed for what happened to the plaintiff. If the plaintiff paid Kshs.20,000/- to the second defendant, then he must have probably been conned and cannot blame that on the third defendant.

11. It is clear from the above analysis that a substantial part of the plaintiff's claim cannot succeed. The only prayer which succeeds is prayer (g) together with interest and costs thereof. What was paid as purchase price is only known to the plaintiff and the first defendant as it was not expressly stated in the prayers in the Plaint.

Dated, Signed and delivered at Nairobi on this 27th day of September 2018.

E.O.OBAGA

JUDGE

In the absence of Plaintiff who was aware of the date and time of delivery of judgement.

Court Assistant: Hilda

E.O.OBAGA

JUDGE