



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 428 OF 2017

MOSICA PROPERTIES LIMITED.....PLAINTIFF

VERSUS

MOUREEN NDUNGE NZIOKA.....DEFENDANT

JUDGMENT

1. In the Plaintiff dated 18th October, 2017, the Plaintiff averred that vide an Agreement of Sale dated 16th December, 2015, the Defendant transferred to it a portion of land known as Donyo Sabuk/Komarock Block 1/48365 measuring 50 acres; that the Plaintiff was to pay to the Defendant Kshs. 1,800,000 per acre amounting to a total of Kshs. 90,000,000 for the 50 acres and that the Plaintiff made the requisite payment of Kshs. 9,000,000 being the 10% deposit.
2. The Plaintiff finally averred that it was a term of the contract that upon receiving the deposit, the Defendant was to sub-divide the land into two portions; that the Plaintiff was required to pay the balance of the purchase price on or before the completion date and that the Defendant has refused to complete the transaction.
3. The Plaintiff's prayer is for a refund of Kshs. 9,000,000 plus the penalty stipulated under the Agreement of Sale. The Defendant did not enter appearance or file a Defence. The matter proceeded for hearing as an undefended claim.
4. The Plaintiff's Director, PW1, informed the court that the Plaintiff entered into an Agreement with the Defendant to purchase a portion of the suit property measuring 50 acres; that it was a term of the Agreement that the purchase price of the 50 acres was to be Kshs. 90,000,000 and that upon payment of Kshs. 9,000,000 as deposit, the Defendant was supposed to sub-divide the land and have the 50 acres transferred to the Plaintiff.
5. After conducting a search, PW1 informed the court that they discovered that the Defendant had sub-divided the land into two portions and had both titles registered in her name; that the Plaintiff is entitled to a reimbursement of Kshs. 9,000,000 plus 10% of the purchase price as per the terms of the Sale Agreement. PW1 produced in evidence the copy of Sale Agreement dated 16th December, 2015 together with a copy of the RTGS transfer form. The Plaintiff's advocate did not file submissions.
6. The evidence before me shows that the Defendant was registered as the proprietor of land known as Donyo Sabuk/Komarock/48365. According to the Sale Agreement of 16th December, 2015, the Defendant agreed to sale to the Plaintiff a portion of the suit land measuring 50 acres for Kshs. 90,000,000. A deposit of Kshs. 9,000,000 was paid by the Plaintiff upon execution of the Agreement of Sale.
7. The Agreement provided that the balance of the purchase price of Kshs. 81,000,000 was to be paid on or before the completion date. The completion date was to be 90 days from the date of the Agreement or within fourteen (14) days of the successful sub-division and registration of the transfer in favour of the Plaintiff, whichever is earlier.
8. PW1 informed the court that although the Defendant sub-divided the land as agreed, she has declined to transfer the portion of the suit land to the Plaintiff as agreed.
9. The Defendant has not controverted the Plaintiff's evidence. According to Clause 13(a) of the Agreement of Sale, the Defendant was under an obligation to refund all the amounts paid by the Plaintiff within fourteen (14) days plus 10% interest of the purchase price in case she defaults. Considering that there is no evidence to show that the Plaintiff was in breach of the Agreement, this court can do no more than enforce the Agreement of Sale of 16th December, 2015. The said Agreement provides that the Defendant should refund to the Plaintiff not only the Kshs. 9,000,000 that she was paid, but also 10% interest of the purchase price. For those reasons, I allow the Plaintiff's Plaintiff dated 18th October, 2017 in the following terms:

a. The Defendant to reimburse the Plaintiff a sum of Kshs. 9,000,000.

b. In addition to (a) above, the Defendant to pay to the Plaintiff a penalty of Kshs. 9,000,000 being 10% interest of the purchase price as provided for under Clause 13(a) of the Sale Agreement of 16th December, 2015.

c. The Defendant to pay interest on the above sums at court rates with effect from the date of filing this suit until payment in full.

d. The Defendant to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 21ST DAY OF SEPTEMBER, 2018.

O.A. ANGOTE

JUDGE