



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 150 OF 2017

FORMERLY NAKURU HCA NO. 46 OF 2016

JEPHTHER OSORO OPANDE.....1ST PLAINTIFF

LABAN OPANDE.....2ND PLAINTIFF

VERSUS

PETER KONANA OLE TIKANI.....1ST DEFENDANT

CHARLES KONANA TIKIANI.....2ND DEFENDANT

GREEN POT ENTERPRISES.....3RD DEFENDANT

JUDGEMENT

By a Plaintiff dated 10th February, 2016 the Plaintiff filed the instant suit and sought for Judgement against the Defendants seeking a declaration that the 1st and 2nd Defendants are in breach of Sale Agreement dated 19th March 2014, an order to declare the title issued to the 2nd Defendant null and void and cancellation of the same, an order that the Plaintiff is the absolute owner of the suit property and costs of the suit.

It is the Plaintiffs case that on 19th March, 2014 he entered into a Sale Agreement with the 1st and 2nd Defendant for the purchase of LR CIS MARA/OLORROPIL/111 for a consideration of kshs. 1,650,000 and upon entering the sale agreement he paid the sum of kshs. 500,000/as deposit and further deposited the balance of the purchase price vide the advocates of the Plaintiffs.

However, the 1st and 2nd Defendants in breach of the terms of the said agreement transferred the parcel of land to the 3rd Defendant.

The Plaintiff testified a PW1 and gave a sworn statement.

Even though the Defendants were served with summons to enter appearance and file a defence, none of them did so as a result of which the matter proceeded exparte and judgement entered against them.

I have read the pleadings filed and the testimony of PW1 and PW2 who are the 1st Plaintiff and the Advocate who was instructed to undertake the transaction and I have no reason to doubt their testimony and the issues for determination before me are:-

1. Whether the Defendants are in breach of contract.
2. Whether the title to the 3rd Defendant ought to be cancelled

Having considered the evidence before me it is not in doubt that the Plaintiffs and the Defendants entered into a Sale Agreement for the purchase of LR CIS MARA/OLORROPIL/111 measuring about 13.45 hectares but before the sale could be concluded, the 1st and the 2nd Defendant transferred the suit property in the name of the 3rd Defendant after having obtained the purchase price.

It is my finding that the Defendants are in breach of the agreement.

Having found that the Defendants are in breach, the second issue for determination is whether the cancellation of the title registered in the name of the 3rd Defendant should be done.

Section 26 of the Land Registration Act provides that a certificate of title may be challenged on grounds of fraud, misrepresentation or where the title is illegally or unprocedurally obtained. In the instant matter, I find that the 3rd Defendant's title does not fall within the ambit of the provisions of Section 26 of the Land Registration Act even though the 3rd Defendant never filed any defence. It is clear he is an innocent purchaser for a value and in the circumstance I will be reluctant to cancel the title to the 3rd Defendant since the new owner has obtained it will be impossible to enforce specific performance.

The upshot of the above is that I enter judgement for the Plaintiff against the 1st and 2nd Defendant in the following terms:-

1. That the 1st and 2nd Defendant are in breach of the sale agreement dated 19th March, 2014.
2. That the 1st and 2nd Defendant do refund the full purchase price paid to the Plaintiff with interest in terms of clause 7 of the Sale Agreement.
3. Costs of the suit.

Dated, Signed and Delivered in open court at **NAROK** on this **18th** day of **October, 2018**

Mohammed Noor Kullow

Judge

26/10/18

In the presence of:-

Ms Nchoe holding brief for Mugogo for the plaintiff

N/A for the Defendant

CA:Chuma