



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC. CASE NO. 143 OF 2015

JANE WARUGURU NGUGI.....PLAINTIFF

-VERSUS-

SUMMERLAND VALLEY DEVELOPERS

COMPANY LIMITED.....1ST DEFENDANT

HELLEN WANDAKA.....2ND DEFENDANT

JUDGEMENT

1. The Plaintiff entered into an agreement with the 1st Defendant for the purchase of parcel numbers 90, 91, 99 and 100 that were to be excised from Kajiado/Kisaju/3041 situated in Kitengela, at the agreed price of Kshs. 320,000/= per plot amounting to Kshs. 1,280,000/= in total, on 1/3/2010. The Plaintiff paid the initial deposit of Kshs. 50,000/= and was to pay the balance within 6 months, which was the completion period. The Plaintiff claims that she paid the purchase price in full but the 1st Defendant refused to take steps towards the completion of the sale. The Plaintiff seeks specific performance of the agreement. In the alternative, she seeks a refund of the sum of Kshs. 1,280,000/= with interest at commercial rates, damages for breach of contract and costs of the suit.

2. The Defendants were served but did not file a defence. The Plaintiff gave evidence when this matter was heard on 23/1/2017 by Lady Justice Gitumbi. She produced a copy of the sale agreement which was executed by the 1st Defendant. The completion date under the agreement was six months from the date of the agreement, time being of essence. Completion was to take place in the office of Musinga & Co. Advocates. The 1st Defendant was to deliver the original documents for portions numbers 90, 91 and 100; duly executed transfer forms in favour of the Plaintiff and valid rates and rent clearance certificates. The agreement provided that in default of delivering the completion documents within six months, the 1st Defendant would refund the purchase price of Kshs. 1,280,000/=. The land was sold in vacant possession. She also produced copies of the receipts dated 22/10/2010 issued by the 1st Defendant for payment of Kshs. 350,000/= and 750,000/= as well as a copy of the cheque dated 12/1/2011 for Kshs. 180,000/=. A demand letter was issued to the 1st Defendant on 7/3/2013 and 5/3/2014 copies of which the Plaintiff produced in court.

3. The Plaintiff filed submissions. She argues that she has sufficiently demonstrated that she fulfilled her obligations under the agreement of sale. She relied on the case of **Gatobu M'Ibuutu Karathu v Christopher Mureithi Kubai [2014] eKLR** in which the court quoted the decision of Lesit J. in **M'nyeri M'rimunya v Humbrey Twinga and Hillary Kaara HCCC No. 113/2011** on the point that any party in default of the agreement shall pay the innocent party the purchase price being agreed damages for breach of the contract. The Plaintiff urged the court to also award the Plaintiff the valuation costs she expended of Kshs. 23,000/=.

4. The Defendants were served but did not file defence. The court has considered the plaint and the evidence together with the submissions of the Plaintiff.

5. The issue for determination is whether the court should grant the prayers sought. The Plaintiff sought damages of Kshs. 5,320,000/= based on the valuation of the Suit Property which indicated that the land was valued at Kshs. 6,600,000/= as at 26/10/2016. The court declines to grant this sum sought by the Plaintiff as general damages. The Plaintiff waited for more than 4 years before filing suit.

6. The court awards the Plaintiff general damages in the sum of Kshs. 1 million for the four plots. The court declines to award the Plaintiff the costs of the valuation since these were not pleaded in the plaint.

7. The court finds that the Plaintiff has proved her claim on a balance of probabilities and grants prayer (b) of the Plaint with interests at court rates from the date of filing suit until payment in full, together with the costs of the suit.

Dated and delivered at Nairobi this 28th day of November 2018.

K. BOR

JUDGE

In the presence of: -

Mr. J.M. Kariuki holding brief for Mrs. Mbanya for the Plaintiff

Mr. V. Owuor- Court Assistant

No appearance for the Defendants