



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. SUIT NO. 391 OF 2009

REV. ELKANA SALAMBA & REV. JOTHAM

(Suing as TRUSTEES OF PENTECOSTAL ASSEMBLIES

OF GOD-KENYA).....PLAINTIFFS

VERSUS

FRANCIS NDUNG'U MUNGAL.....1ST DEFENDANT

PETER LALO OUTA T/A ACADEMY.....2ND DEFENDANT

ECOBANK KENYA LIMITED.....3RD DEFENDANT

JUDGEMENT

1. The Plaintiffs who are the registered trustees of Pentecostal Assemblies of God, Kenya, filed suit on 7/8/2009 seeking a declaration that Satellite Pentecostal Church is the beneficial owner of 0.05 ha out of Dagoretti/Riruta/4120 having purchased it from the 1st Defendant in 2001. They seek an order directing the Registrar of Lands to cancel the 2nd Defendant's title registered on 12/5/2009 and another order cancelling the charge in favour of Eco Bank Limited; an order directing the 1st Defendant to complete subdivision and cause a transfer of 0.05 ha portion to the trustees of the Church; an order directing the 2nd Defendant to pay the monies advanced by the 3rd Defendant when the 2nd Defendant used the title over the suit land as security for the loan; a permanent injunction to restrain the Defendants or their agents from interfering with the Plaintiff's quiet possession of its portion of the suit land and an award of general damages. In the alternative, the Plaintiffs seek an order for a refund by the 1st Defendant for the sum of Kshs. 620,000/= together with interest at 25% per month compounded monthly from 1/5/2001 until payment in full and general damages together with the costs of the suit.

2. The 2nd Defendant denied the Plaintiffs' claim and filed a counterclaim in which he avers that he is the proprietor of Dagoretti/Riruta/4120. He sought payment of Kshs. 40,000/= as rent payable in respect of the premises and sought the eviction of the Plaintiffs from the suit premises together with the costs of the suit.

3. The case was heard by Lady Justice Nyamweya in 2011 and 2013. Elkana Salamba, a pastor in the Plaintiff church and a trustee gave evidence. The church purchased the land measuring 0.05 ha which is part of Dagoretti/Riruta/4120 from the 1st Defendant vide an agreement dated 11/1/2011, a copy of which he produced, which names Satellite Pentecostal Church as the purchaser.

4. The purchase price was agreed at Kshs. 620,000/=. The sum of Kshs. 300,000/= was to be paid on execution of the agreement and the balance was to be paid on 10/4/2001. The 1st Defendant was to process the subdivision and issuance of title in respect of the portion measuring 0.05 ha to the church. The purchaser was not to put any permanent structures on the land until it paid the full purchase price and the transfer was effected to its name. The completion date was 10/4/2001.

5. The 2nd Defendant entered into a tenancy agreement with the Plaintiff to lease the Suit land at a monthly rent of Kshs. 2000/=. The 2nd Defendant is alleged to have colluded with the 1st Defendant to have the plot transferred to the 2nd Defendant.

6. The Plaintiffs' witnesses testified that the church took possession of the land and fenced it. They put up temporary structures made of iron sheets to be used as Sunday school classes, a gate and an office for the pastor. They stated that the 1st Defendant was paid the full purchase price and he promised to get the title issued to the church but never did. Peter Ludu, a member of the Plaintiff church who was a trustee of the church from May 1999 to February 2002 stated that the church paid the last instalment around September 2001. The church learnt that the 2nd Defendant had bought the land when it received a letter dated 30/4/2009. The witnesses confirmed that Satellite Pentecostal Church

does not have its own certificate and uses that of Pentecostal Church of Kenya. The witnesses confirmed that the 1st Defendant had made an offer to refund the sum of Kshs. 620,000/= which the Plaintiff paid to the 1st Defendant.

7. The court has looked at the acknowledgement executed by the 1st Defendant on 22/5/2009. It states that the 1st Defendant acknowledged payment of Kshs. 620,000/= for the purchase of plot no. 4120 which was no longer available. He agreed to refund that sum to the Plaintiff after sitting down with the previous members and the new members and reaching an agreement.

8. The Plaintiffs called a valuer to give evidence. The valuer produced a copy of the valuation report dated 8/6/2011. The market value of the plot measuring 0.05 ha as at that date was given as Kshs. 2,620,000/=.

9. The 1st Defendant gave evidence. He denied knowing the Plaintiff but conceded that he entered into a sale agreement with the board of the Assemblies of God Church in 2001 for the sale of land in Riruta Satellite. He faulted the church for not paying the purchase price by April 2001 as a result of which he decided to sell the land to the 2nd Defendant. He confirmed that he was selling two parcels of land to the church and that he transferred one parcel to the church. He refused to go to the land control board to obtain consent in respect of the second parcel of land when the church failed to make payments in accordance with the agreement.

10. He indicated that he was ready and willing to return the church's money. He maintained that the parties were different and that if Satellite Pentecostal Church, which he dealt with were to ask for the refund of the money paid to him, he would refund it. He stated that that it was Satellite PAG who put up the structures on the suit land. He stated that he received the last payment from the church in January 2002. He maintained that he notified the church of his intention to sell the property and he obtained the consent of the Land Control Board to transfer the suit land to the 2nd Defendant.

11. The issue for determination is whether the court should grant the orders sought in the plaint or the 2nd Defendant's counterclaim. The 3rd Defendant was discharged from the proceedings on 31/10/2016 by consent of the parties. The Plaintiff indicated in its submissions that it had abandoned prayers C, D, E and F of the plaint and was only pursuing prayers A, B, G, H and I.

12. The 2nd Defendant in its submissions denied dealing with the Plaintiffs and maintained that it dealt with Satellite Pentecostal Church when he leased the suit premises prior to purchasing the land from the 1st Defendant. He relied on the certificate of official search done in September 2008 which showed that the 1st Defendant was the registered owner. He maintained that the Plaintiff has no proprietary interest over the land and that he had acquired a valid and indefeasible title over the entire parcel of land known as Dagoretti/Riruta/4120 measuring 0.1 ha.

13. The 1st Defendant denied dealing with the Plaintiff in his submissions. He dealt with Satellite Pentecostal Church and claimed that the Plaintiff is unknown to him. The 1st Defendant denied that there was a nexus between the Plaintiff and Satellite Pentecostal Church with whom he entered into a sale agreement. He submitted that having failed to obtain the consent of land control board within 6 months of the date of transaction, the agreement became void and the consideration paid was recoverable as a debt from the person it was paid to.

14. The 1st Defendant further urged that that the Plaintiffs claim was barred by the Limitations of Actions Act and that the Plaintiffs had slept on their rights for a period of nine years. Section 7 of the Limitation of Actions Act provides that actions for the recovery of land have to be filed within twelve years from the date the cause of action accrued. The Plaintiffs' claim was filed within time. The 1st Defendant acknowledged being indebted to Satellite PAG Church in written on 22/5/2009 and undertook to refund the purchase price.

15. The Plaintiff submitted that it is authorised to sue concerning the suit land which is vested in the Trustees pursuant to the Trust Deed dated 25/8/2000. Clause 2.1 of the Trust Deed states that the General Council of Pentecostal Assemblies of God Kenya assigns to the Pentecostal Assemblies of God Kenya the properties registered in the name of Pentecostal Assemblies of God Kenya which is referred to as trust property. Another Trust Deed dated 24/9/2009 was registered in January, 2012. It also grants to the trustees the properties registered in the name of Trustees Pentecostal Assemblies Kenya.

16. Based on this, the court is satisfied that the Plaintiffs have the legal mandate to sustain this suit since Satellite PAG Church is a member of Pentecostal Assemblies of God which is duly registered as a society.

17. The 1st Defendant admitted transferring the whole parcel of land to the 2nd Defendant after receiving the full purchase price for half the portion from the Plaintiffs. The 2nd Defendant failed to prove its case on a balance of probabilities. It is dismissed with costs to the Plaintiffs.

18. The court finds that the Plaintiffs have proved their case on a balance of probabilities and grants prayer I of the plaint, which was sought in the alternative, against the 1st Defendant with interest at court rates from 1/5/2002 until payment in full. The Plaintiff is awarded general damages in the sum of Kshs. 2 million being the difference between the purchase price of Kshs. 620,000/= and the market value of the land and improvements of Kshs. 2,620,000/= as at June 2011.

Dated and delivered at Nairobi this 6th day of December 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Muturi holding brief for Mr. Farah for the Plaintiffs

Mr. Mukeli holding brief for Mr. Ombwayo for the 2nd Defendant

Mr. V. Owuor- Court Assistant

No appearance for the 1st Defendant