



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC CASE NO. 364 OF 2017

(FORMERLY NAIROBI ELC CASE NO. 200 OF 2010)

JEPOTHMA ZILION LTD.....PLAINTIFF

VERSUS

JOEL OTIENO SABAYA.....DEFENDANT

JUDGMENT

In the Plaintiff dated **30th April, 2010**, the Plaintiff averred that on **25th April, 2008**, he purchased a residue of lease comprising of **4.8 hectares of L.R. No. 10823/25**, Thika, together with all the improvements on the land; that he paid a deposit of **Kshs. 360,000/=** and that the balance was payable within 120 days or upon delivery of the Title Deed by the Defendant to him.

The Plaintiff further averred that in the meantime, it paid the entire purchase price of **Kshs. 3,800,000/=** and that the Defendant has declined to complete the transaction. The Plaintiff is seeking for an order of specific performance and for an order of Perpetual Injunction to issue. Although the Defendant was served with the Summons to Enter appearance, he neither entered appearance nor filed a Defence. The matter proceeded for hearing without the Defendant.

The Plaintiff's Managing Director, P.W.1, informed the court that he entered into a sale agreement with the Defendant on **25th April, 2008** for the purchase of **L.R. No. 10823/25** (the suit land); that by **11th June, 2008**, the Plaintiff had made payment of **Kshs. 3,800,000/=** which amount was in excess of the agreed purchase price of **Ksh, 3,600,000/=** and that the Plaintiff took possession of the suit land.

P.W.1 produced in evidence the Sale Agreement dated **25th April, 2008** and the copies of the Bankers Cheques that were used to off-set the purchase price. The Plaintiff also produced in evidence the letter dated **5th August, 2009** addressed to the Defendants. In the said letter, the Plaintiff's Advocate asked for the completion documents from the Defendant's advocate.

The evidence before this court shows that the Defendant agreed to sell to the Plaintiff a parcel of land known as **L.R. No. 10823/12/4** for **Kshs. 3,600,000/=**. The Plaintiff's Director produced evidence showing that the Plaintiff paid the said purchase price and called for the completion documents from the Defendant.

Considering that the Plaintiff complied with the Sale Agreement of **25th April, 2008**, the Defendant is under an obligation to transfer the suit land to the Plaintiff. In the circumstances, I find that the Plaintiff has proved its case on a balance of probabilities.

For those reasons, I allow the Plaintiff's Plaintiff dated **30th April, 2010** in the following terms:

a. An Order of Specific performance be and is hereby issued, directing the Defendant to deliver to the Plaintiff the Grant or Certificate of Lease for L.R. No. 10823/25 (Original Numbers 10823/12/4), Thika, together with all the requisite completion documents for the purpose of having the suit land transferred to the Defendant.

b. A Perpetual Injunction be and is hereby issued restraining the Defendant, his servants, agents, assigns, personal representatives and/or any persons claiming under him from entering, interfering, obstructing, alienating and in whichever manner, other than doing acts in consonance with completion of the sale transaction, with L.R No. 10823/25 (Original Number 10823/12/4 Thika together with the building and improvements erected and being thereon.

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

Dated, signed and delivered at Thika this 6th day of December, 2018.

In the absence of the Plaintiff and Defendant

Court Assistant: Diana

O.A ANGOTE

JUDGE

6/12/2018