



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 122 OF 2015

JAMAL MOHAMED JILLO.....PLAINTIFF

VERSUS

1. JOSEPHAT MACHARIA WANJERI

2. PETER MWANGI WANJIRU.....DEFENDANT

JUDGMENT

The plaintiff brought this suit against the defendants by way of a plaint dated 2nd February 2015 seeking the following reliefs:-

- a) An declaration that the property known as Plot No. H-70 Mathare Valley belongs to the plaintiff.
- b) An order for the eviction of the defendants and all other persons residing or living on Plot No. H-70 Mathare Valley and the eviction order to be executed by Warleen Traders.
- c) Costs of the suit.

In his plaint, the Plaintiff averred as follows. The defendants are the administrators of the estate of one, Mary Wanjiru Ngugi, deceased. Prior to her demise, the deceased was the owner of all that parcel of land known as Plot No. H-70 Mathare Valley, Nairobi (hereinafter referred to as “the suit property”). On 22nd May 2013, the defendants in their capacity as administrators of the deceased sold to the plaintiff the suit property at a consideration of Kshs. 3.6million. The agreement for sale between the parties provided that the plaintiff was pay a deposit of Kshs. 1.6 million on the execution of the agreement and that the balance of the purchase price in the sum of Kshs. 2 million was to be paid on completion when the defendants were to hand over to the plaintiff the completion documents together with vacant possession of the suit property. The plaintiff paid the deposit of Kshs. 1.6 million to the defendants upon the execution of the agreement for sale. Before the completion date which was 30 days from the date of the execution of the agreement, the defendants requested for additional sum of Kshs. 1 million which amount was duly paid by the plaintiff leaving a balance of Kshs. 1 million on account of the purchase price. The suit property was successfully transferred to the plaintiff. The defendants refused however to hand over vacant possession of the suit property to the plaintiff in accordance with the terms of the agreement for sale. The plaintiff is ready and willing to pay the balance of the purchase price to the defendants on being granted vacant possession of the suit property.

The defendants were served with the summons but failed to enter appearance. On 15th May 2015, the plaintiff requested for interlocutory judgement against the defendants in default of appearance but no

judgment was entered. When the suit came up for hearing on 23rd January 2017, the plaintiff gave evidence and called two witnesses. In his evidence, the plaintiff adopted the contents of his witness statement dated 2nd February 2015 in which he reiterated the contents of the plaint which I have highlighted above. The plaintiff told the court that he purchased the suit property from the defendants on 22nd May 2013 through an agreement for sale of the same date at a consideration of Kshs. 3.6 million. He stated that he paid to the defendants a sum of Kshs. 1.6 million leaving a balance of Kshs.1 million which he was to pay on receipt of vacant possession of the suit property. He stated that whereas the 1st defendant vacated the suit property, the 2nd defendant has remained in occupation thereof and is still collecting rent from the tenants occupying the property. The plaintiff told the court that he is willing to pay the balance of the purchase price to the defendants upon receipt of vacant possession of the suit property. The plaintiff produced as exhibits the documents which were attached to his list of documents dated 2nd February 2015 which included, the agreement for sale dated 11nd May 2013, copies of bankers cheques and bank transfer transaction slip showing payment of a total sum of Kshs. 2.6 million to the defendants, a copy of a letter dated 9th October 2013 by the defendants consenting to the suit property being transferred to the plaintiff and a copy of certificate of confirmation of grant in respect of the estate of Mary Wanjiru Ngugi, deceased. The plaintiff's first witness was the 1st defendant, Josephat Macharia Wanjeri (PW2). In his evidence, PW2 corroborated the evidence of the plaintiff and supported the plaintiff's claim. He stated that the 2nd defendant is his brother and that they had sold to the plaintiff the suit property. He admitted that they had been paid Kshs. 2.6 million and that the balance of the purchase price payable was Kshs. 1 million. He stated that after receiving his share of the said sum of Kshs. 2.6 million, he vacated the suit property. He stated that it is the 2nd defendant who refused to vacate the property. He urged the court to grant the reliefs sought by the plaintiff. The plaintiff's last witness was David Macharia Nene (PW3). PW3 is an uncle to the defendants. He told the court that he was a witness when the defendants were selling the suit property to the plaintiff. He corroborated the evidence of the plaintiff and PW2 that the plaintiff had already paid to the defendants a sum of Kshs. 2.6 million and that the 2nd defendant had refused to vacate the suit property. At the close of evidence, the plaintiff's advocate informed the court that he wished to rely entirely of the evidence on record and urged the court to enter judgment for the plaintiff as prayed.

I have considered that plaintiff's claim as pleaded and the evidence that was produced by him in support of the same. The issues that arise for determination are; whether the plaintiff had entered into an agreement for sale of the suit property with the defendants, whether the defendants breached the said agreement and whether the plaintiff is entitled the reliefs sought. As I have stated at the beginning of this judgement, the defendants neither entered appearance nor filed a statement of defence. The effect of this is that all averments of fact set out in the plaint concerning the agreement for sale that the plaintiff is said to have entered into with the defendants were not controverted. The defendants did not also tender any evidence at the trial in their defence. The 1st defendant gave evidence but as a witness for the plaintiff. The evidence that was given by the plaintiff relating to the said agreement for sale was not controverted. The fact that the plaintiff had entered into an agreement for sale of the suit property with the defendants is not disputed. The terms of the said agreement are also not disputed. The same also applies to the breach by the defendant of the terms of the said agreement for sale. What the court needs to determine is the appropriate relief if any that the plaintiff is entitled to in the circumstances. The plaintiff told the court that the defendants transferred the suit property to him and that his only complaint concerns vacant possession of the suit property. The plaintiff has sought a declaration that he is the owner of the suit property and an order for the eviction of the defendants therefrom.

It is not disputed that it was a term of the agreement for sale between the plaintiff and the defendants that the defendants would transfer and give to the plaintiff vacant possession of the suit property upon receipt of the deposit amount of Kshs. 1.6 million. The plaintiff led uncontroverted evidence that he paid to the defendants a sum of Kshs. 2.6 million more than the deposit that was provided for in the agreement for sale. The plaintiff also led uncontroverted evidence that the suit property has not been handed over to him by the defendants. Although the 1st defendant who gave evidence on behalf of the plaintiff has vacated the suit property, the 2nd defendant has remained in possession and is collecting rent from the tenants on the property. The plaintiff told the court that he is ready and willing to pay to the plaintiffs the balance of

