



**Baya v Sakia Investments Limited & another (Environment & Land  
Case 4 of 2024) [2024] KEELC 991 (KLR) (28 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 991 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 4 OF 2024  
EK MAKORI, J  
FEBRUARY 28, 2024**

**BETWEEN**

**STEPHEN KAZUNGU BAYA ..... PLAINTIFF**

**AND**

**SAKIA INVESTMENTS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**REGISTRAR OF LANDS KILIFI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Application dated 17<sup>th</sup> January 2024 sought among other orders an injunction to restrain the 1<sup>st</sup> respondent from building, developing, encroaching, trespassing, subdividing, selling transferring, and or interfering with Parcel No. Chembe/Kibabamshe/209 (the suit property) till the present case is heard and determined. The OCPD or OCS Watamu to implement the orders that may be issue by this Court. Costs be provided.
2. The application was opposed. The Court directed that parties canvass the same by way of oral submissions.
3. The main grievance I can see from the applicant is that he entered a sale of the suit property with the 1<sup>st</sup> respondent at a consideration of Kshs 16,800,000/-, he was paid Kshs 300,000/- upon signing of the agreement. The balance of Kshs 16,500,000/- was to be paid on or before the 1<sup>st</sup> of August 2024 which 12 months after execution of the agreement.
4. That since the payment of the 1<sup>st</sup> deposit, the applicant has never received any further deposit instead the 1<sup>st</sup> respondent surreptitiously proceeded and transferred the land to itself and commenced subdivision and sale to other 3<sup>rd</sup> parties in total contravention of the sale agreement. The applicant thinks the 1<sup>st</sup> respondent pulled a fast on him due to his illiteracy. He now seeks injunctive order from this Court to protect his interests.



5. The 1<sup>st</sup> respondent stated that what the applicant alleged was false and did not reflect the meaning and tenor of the agreement. There were special conditions attached to the agreement which included the taking of possession immediately upon the payment of the initial deposit. Immediate transfer of the suit property upon full payment. On subdivision and sale of plots the seller agreed to the same and that he acceded to transfer of the same to effect subdivisions and sale to other 3<sup>rd</sup> parties. According to the 1<sup>st</sup> respondent ignorance did not arise.
6. According to the 1<sup>st</sup> respondent, the deal went south when the applicant saw the master plan for subdivision and sale of the suit property. It is what could have triggered his change of mind. The one-year period within which to pay the balance has not lapsed, the Court cannot issue an injunction yet.
7. Significantly at this point the Court is being asked to determine whether to issue a temporary injunction or not and who should bear costs.
8. For an injunction to be attained as held in the celebrated case of *Giella v Cassman Brown & Company Limited* [1973] E.A. 360, the following threshold has to be surmounted:
 

“The applicant should satisfy the Court that he has a *prima facie* case with a probability of success. Secondly, he stands to suffer irreparable loss or injury which cannot be compensated by damages and thirdly, if the Court is in doubt, it should decide on a balance of convenience.”
9. Firstly, this Court has to check whether the applicant established a *prima facie* case with the probability of success as held in *Mrao v First American Bank of Kenya & 2 others* [2003] KLR 125:
 

“A *prima facie* case in a civil application includes but is not confined to a ‘genuine and arguable case’. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has been infringed by the opposite party as to call for an explanation in rebuttal from the latter.”
10. And that the principles stated in the *Giella case (supra)* are to be addressed sequentially as held in *Kenya Commercial Finance Company Ltd Afraba Education Society* [2001] 1 EA 86 as cited in *Karen Bypass Estate Ltd v Print Avenue and Company Ltd* [2014] eKLR:
 

“so that the second condition can only be addressed if the first one is satisfied and when the court is in doubt then the third condition can be addressed”.
11. When I look at the sale agreement between the parties clause 4 on the payment mode is that the purchase price was Kshs 16, 800,00/-. A sum of Kshs. 300,000/- was paid initially and acknowledged by the seller. The balance of Kshs 16,500,00/ was to be paid on or before the 1<sup>st</sup> of August 2023. Clause 9 on possession was that the purchaser was to take delivery of the Plot with vacant possession upon completion and payment of the full purchase price. Clause 18 on Special Conditions provided among other provisions that the vendor agreed to transfer the plot forthwith but subject to the payment of the balance of the purchase price of Kshs 16,300,000/- which was to be paid to the vendor within one year that is on or before 1<sup>st</sup> of August 2024. The purchaser was to take possession of the plot for purposes of subdivision and sale of the subplots immediately.



12. It is not the work of the Court to amend and or breathe new terms to an agreement even where there appears to be a bad bargain. See the holding in

“Firstly, the position in law with regard to the binding nature of a contract executed willingly by the parties is now well settled. In *National Bank of Kenya Ltd v Pipe Plastic Samkolit (K) Ltd & another* [2001] eKLR, the Court of Appeal stated that:

“It was clear beyond para adventure that save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity’s function to allow a party to escape from a bad bargain.”

28. More recently, the Court of Appeal in *Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd* [2017] eKLR, after reviewing case law on the subject reiterated they that it was “alive to the hallowed legal maxim that it is not the business of Courts to rewrite contracts between parties as the said parties were bound by the terms of their contracts, unless coercion, Fraud or undue influence are pleaded and proved.”
13. In this case the terms of the agreement seem at one point to suggest that possession and transfer was immediately but upon payment of the full price (see clause 9 and 18(d) within a year. The agreement also seems to suggest the vendor had agreed with the purchaser to take possession of the property for purposes of sub-division and sale of the sub-plots (clause 18(f).
14. I see the fear of the applicant that he may at the end of the day fail to get the remaining balance if transfer to 3<sup>rd</sup> parties is to be undertaken. I also see the fear by the 1<sup>st</sup> respondent that already subdivision has been undertaken and the intended sale to other 3<sup>rd</sup> parties and the entire master plan will flop if an injunction is issued at this stage.
15. My Solomonic view and decision will be that since this agreement runs up to the 1<sup>st</sup> of August 2024, and there is a provision in the agreement for variation and further clarification on the implementation of the same (clause 16) the parties herein need to sit and iron out the mode of payment formula and completion of the purchase price on schedule so that each party will be a winner. Our Courts now provide a multi - door approach to resolving dispute pursuant to Article 159 (2)(c) of the *Constitution*:
- “alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);”
16. This spirit also goes in tandem with the *Judiciary blueprint - the Social Transformation Through Access to Justice (STAJ)* on a multi-door approach to access to justice:
- “This vision seeks to expand the doorways of justice through supporting multiple channels for addressing grievances through institutions such as Small Claims Courts, Tribunals, Alternative Justice Systems, and Alternative Dispute Resolution mechanisms.”
17. At this point then I direct that the parties in this matter should address the grievances that there are in the enforcement of the contested agreement through their advocates on record and our Court-Annexed Mediation. I see no need for an injunction at this point. The resolution of this matter will be delayed. Each party is to bear own costs for now.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 28<sup>TH</sup> DAY OF FEBRUARY 2024.**

**E. K. MAKORI**



## **JUDGE**

In the Presence of:

Mr. Nyongesa H/B for Ms. Thuku for the Applicant

Mr. Kongere for the Respondents

Court Assistant: Happy

