



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 97 OF 2017

JOSEPH KARIUKI NJUGUNA.....1ST PLAINTIFF

ESTHER WANJIKU NDUNGU2ND PLAINTIFF

VERSUS

MWANZO DEVELOPMENT CO. LTD.....DEFENDANT

RULING

1. In the Application dated 6th March, 2017, the Plaintiffs are seeking for the following orders:

a. That an order to issue compelling the Machakos District Registrar to register a restriction and/or caution over the suit properties.

b. That an order of injunction do issue directed at the Defendant either by itself, its servants, its agents and/or whomsoever acting under its instructions from disposing, selling, offering for sale, sub-dividing, charging, transferring, or in any way interfering with the suit properties Title Nos. Mavoko Town Block 2/2506 and Mavoko Town Block 2/2537 (Plot Nos. 378 and 379 JKIA phase 5) pending the hearing and determination of this case or further orders of the court.

c. That the Honourable Court be pleased to issue an order of permanent mandatory injunction compelling the Defendant to transfer the suit properties to the 1st Plaintiff namely Joseph Kariuki Njuguna and in default, the Deputy Registrar of this Honourable Court do execute transfer documents.

d. That Honourable Court be pleased to grant any other order and relief that it may deem fit and just to grant.

e. That the costs to this Application be provided for.

2. The Application is supported by the Affidavit of the 1st Plaintiff who has deponed that he is the bona fide owner of land known as Mavoko Town Block 2/2506 and 2537 which he purchased for Kshs. 400,000 from the 2nd Plaintiff.

3. The 1st Applicant deponed that the 2nd Plaintiff purchased the said land from the Respondent as plot numbers 378 and 379 JKIA phase 5; that the Respondent has declined to transfer the suit properties to the 2nd Plaintiff and that the actions of the Respondent are illegal and without justification.

4. In response, the Defendant's Director deponed that the 2nd Plaintiff purchased plot numbers 378 and 379 and was issued with letters of allotment; that the 2nd Plaintiff has not completed paying the purchase price and that the suit properties are registered in favour of the Defendant.
5. According to the Defendant, it has never entered into any agreement with the 1st Plaintiff and that the suit properties are distinct from plot numbers 378 and 379 JKIA Phase 5.
6. The Defendant's Director finally deponed that he has no knowledge of the any agreement between the Defendant and the 1st Plaintiff.
7. The 2nd Plaintiff deponed that she bought plot numbers 378 and 379 from the Defendant; that she later came to learn that the said plots were later on given land reference numbers Mavoko Town Block 2/2506 and 2537 and that after paying the purchase price, she sold the said plots to the 1st Plaintiff.
8. The Plaintiffs' advocate submitted that the Defendant has acted contrary to the law by not transferring the suit properties to the 2nd Plaintiff; that the Defendant has admitted selling the said land to the 2nd Defendant and that there is evidence that the entire transfer fees was paid by the 2nd Plaintiff.
9. The Defendant's counsel on the other hand submitted that the 1st Plaintiff has no cause of action as against the Defendant; that the 1st Plaintiff's cause of action lies against the 2nd Plaintiff and that plot numbers 378 and 379 are different from the suit land.
10. It is not in dispute that the Defendant sold to the 2nd Plaintiff plot numbers 378 and 379 JKIA Phase 5. Indeed, after the said sale, the Defendant issued to the 2nd Plaintiff the letters of allotment dated 9th May, 1996 and ownership certificates dated 5th November, 1996.
11. It would appear that the two plots were surveyed and allocated fresh numbers. The Plaintiffs have annexed the certificate of official searches showing that the Title Deeds for the suit properties were issued to the Defendant on 15th April, 1997.
12. Although the Defendant has deponed that plot numbers 378 and 379 are different from the suit properties, the Defendant has not annexed any map to show that indeed the said parcels of land are different.
13. Indeed, the agreement that was entered into between the 2nd Plaintiff and the Defendant dated 31st July, 2011 shows that Plot Nos. 378 and 379 were part of a bigger piece of land known as L.R. No. 2/126. If indeed plot numbers 378 and 379 were distinct from the suit land, then the Defendant should have produced the sub-division scheme of L.R. No. 2/126 to enable the court determine the location of L.R. No. 2/126 viz-a-viz plot numbers 378 and 379. It did not do so.
14. Considering that the purchase price for the two suit properties was Kshs. 400,000, which was paid, the Plaintiffs have established a prima facie case with chances of success.
15. I say so because the Defendant acknowledged in its letter dated 28th April, 2016 that the only amount that the 2nd Plaintiff owed the Defendant was "*the transfer fee and the Surveyor's fees.*" The letter does not allude to the payment of the balance of purchase price.
16. Considering that the agreement was clear that the 2nd Plaintiff was entitled to the land upon paying the purchase price, and in view of the ownership certificate that the Defendant issued to the 2nd Plaintiff, the interests in the suit land passed to the Defendant.
17. The two Plaintiffs having sued the Defendant, it does not matter that there was no privity of contract between the 1st Plaintiff and the Defendant. The Defendant ought to transfer the suit land to the 2nd

Plaintiff to enable her transfer it to the 1st Plaintiff.

18. For those reasons, I allow the Plaintiffs' Application dated 6th March, 2017 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23RD DAY OF NOVEMBER, 2017.

O.A. ANGOTE

JUDGE