



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO 35 OF 2017

MICHEAL MWANGI NJOROGE PLAINTIFF

VERSUS

EMMANUEL DEE DEFENDANT

JUDGMENT

1. The Plaintiff has filed this suit against the Defendant seeking;

a) That the Plaintiff is the purchaser and owner of Reference number 21/1/37 being the premises in and conveyed by an indenture dated 20th day of November 1952 registered in volume N38 Folio 144/1 File 11890 which said parcel of land is more particularly delineated and described on plan number 49081 annexed thereto and thereto bordered red (hereinafter referred to as land registered as aforesaid in Volume N38 Folio 144/1 File 11890) and thereon bordered red together with the buildings and improvements erected thereon.

b) A mandatory injunction or order directed at the Land Registrar to reconstruct the Register on Land Reference 21/1/37 being the premises in and conveyed by an indenture dated 20th day of November 1952 registered in Volume N 38 Folio 144/1 File 11890 which said piece of parcel of land is more particularly delineated and described on plan Number 49081 annexed thereto and thereto bordered red (herein after referred to as the land registered as aforesaid in volume N38 Folio 144/1 File 11890) and thereon bordered red together with the buildings and improvements erected thereon.

c) That the Plaintiff Micheal Mwangi Njoroge be registered by the Land Registrar as the purchaser and owner of the land reference number 21/1/37 being the premises in and conveyed by an indenture dated 20th November 1952 registered in volume N38 Folio 144/1 File 11890 which said piece or said parcel of land in more particularly delineated and described on plan number 49081 annexed thereto and thereto bordered red hereinafter referred to as the Land Registered as aforesaid in volume N38 Folio 144/1 File 11890) and thereon bordered red together with the buildings and improvements erected thereon.

d) Costs of this suit.

2. The Defendant who was duly served with copies of plaint and summons to enter appearance neglected to enter appearance and/or file defence with the stipulated period. Interlocutory judgment was then entered. The matter was thereafter set down for formal proof.

3. It is the Plaintiff's case that he entered into an agreement with the Defendant to purchase the Defendant's interest in LR No. 21/1/37 by virtue of an indenture registered in volume N38 Folio 144/1 File 11890.

4. That the Plaintiff paid Kshs18,000,000/= and an indenture was drawn by M/s J.K. Muchai And Company Advocates. The Plaintiff signed by the Defendant refused to sign his part and has been evasive to date. The Plaintiff prays that the Defendant be compelled to sign the indenture.

5. I have considered the pleadings and the submissions by the Plaintiff. The Plaintiff's case is uncontroverted. He produced the agreement of sale as exhibit P1. The same is dated 23rd October 2016. It is drawn by J.K. Muchai And Company Advocates.

He also produced the indenture as exhibit P2. The same is signed by the transferee only. The Defendant who is the transfer or has not signed. The Plaintiff also produced two cash transfer forms as exhibits P3 a, 7 b respectively.

6. I am satisfied that the Plaintiff has made out a good case against the Defendant. I find that the Plaintiff has performed his part of the bargain.

I rely on the case of Manzoor –versus- Baram (2003) EA page 580 and Aziz –versus- Bhatia Brothers Limited (2001) EA where it was stated that for a party to be granted an order of specific performance he must show that;

- i) Damages are an inadequate remedy for breach of contract for sale of land.
- ii) He has performed his part of the bargain and as such he may be assisted by the court to enforce the contract against the defaulting party.

7. Accordingly, I enter judgment for the Plaintiff as against the Defendant as follows;

- a) A declaration is hereby issued that the Plaintiff is the purchaser and owner of land reference number 21/1/37 being the premises in and conveyed by an indenture dated 20th day of November 1952 registered in volume N38 Folio 144/1 File 11890 which said parcel of land is more particularly delineated and described on plan number 49081 annexed thereto and thereto bordered red (hereinafter referred to as land registered as aforesaid in volume N38 Folio 144/1 File 11890) and thereon bordered red together with the buildings and improvements erected thereon.
- b) A mandatory injunction be and is hereby issued directing the Land Registrar to construct the register on land reference 21/1/37 being the premises in and conveyed by an indenture dated 20th day of November 1952 registered in volume N38 Folio 144/1 File 11890 which said piece of parcel of land is more particularly delineated and described on plan number 49081 annexed thereto and bordered red (hereinafter referred to as the land registered as aforesaid in volume N38 Folio 144/1 File 11890) and therein bordered red together with the buildings and improvements erected thereon.
- c) That the Plaintiff Micheal Mwangi Njoroge be registered by the land registrar as the purchaser and owner of land reference number 21/1/37 being the premises in and conveyed by an indenture dated 20th November 1952 registered in volume N38 Folio 144/1 File 11890 which said piece of parcel of land is more particularly delineated and described in plan number 49081 annexed thereto and thereto bordered red (hereinafter referred to as land registered as aforesaid in volume N38 Folio 144/1 File 11890) and thereon bordered red together with the buildings and improvements erected thereon.
- d) The plaintiff shall have costs of this suit.

It is so ordered.

Dated, signed and delivered at **Mombasa** on the **9th** day of **November 2017**.

L. KOMINGOI

JUDGE

9/11/2017