



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO.312 OF 2010

ALOICE GITONGA KIURA.....PLAINTIFF

VERSUS

KOMAROCK BUILDING DEVELOPMENT

COMPANY LTD.....DEFENDANT

J U D G M E N T

Introduction

1. This suit was commenced by way of a Plaint dated 30th Jun 2010.
2. In the Plaint, the Plaintiff averred that at all material times, he was the owner of parcel of land known as plot number 209 JKIA/EMBAKASI of land reference number 12715/205 (the suit property).
3. The Plaintiff further averred that the Defendant has colluded with unknown persons to defraud him of his property by allowing for the demolition of the fence that the he had put around the suit.
4. The Plaintiff is seeking for a prohibitory injunction restraining the Defendant or his servants from selling, alienating, accessing or dealing with the suit property in any manner whatsoever. The Plaintiff has also prayed for a mandatory injunction requiring the Defendant to deliver up possession of the suit property.
5. The Defendant entered appearance through the firm of Njeru, Nyaga & Co. Advocates but did not file a Defence. The matter proceeded for formal proof on 11th February 2016.

Plaintiff's case:

6. The Plaintiff, PW1, informed the court that he purchased plot number 209/JKIA/EMBAKASI (the suit property) from Kagotho Mwangi Kagotho, PW2, through the Defendant.
7. According to PW1, Mr. Kagotho had earlier on purchased the suit property from the Defendant and issued with a Certificate of Ownership and a letter of allotment which were produced in evidence.
8. PW1 informed the court that before he paid the purchase price to Mr. Kagotho, he went to the Defendant's office and met one of the Directors who confirmed that the indeed the suit property had been sold to Mr. Kagotho by the Defendant.
9. PW1 stated that Mr. Kagotho surrendered the original Certificate of Ownership and the letter of allotment to a Mr. Mwangi, the Defendant's Director, whereafter he was told to pay a sum of Kshs.15,000 to the Defendant for the purpose of having the suit property transferred to him.

10. PW1 produced in evidence the receipts that the Defendant issued to him in respect of the transfer fees of Kshs.15,000 that he paid to the Defendant.
11. It was after the payment of the transfer fees of Kshs.15,000 and Kshs.100 for a booklet that the Defendant issued to the Plaintiff a Certificate of Ownership for the suit property in his name. The said Certificate of Ownership was produced in evidence by the Plaintiff.
12. However, according to PW1, the Defendant's agent later on demolished the fence around the suit property and amalgamated it with two other plots by fencing them.
13. PW2, Kagotho Mwangi Kagotho, informed the court that he bought the suit property from the Defendant.
14. After paying the Defendant the purchase price, he was issued with a Certificate of Ownership and a letter of allotment which he surrendered to the Defendant after selling the property to the Plaintiff for Kshs.570,000.
15. PW2 informed the court that the Plaintiff paid to him Kshs.370,000 being the purchase price through his brother in law, PW3.
16. PW3 informed the court that he is the brother in law to Mr. Kagotho.
17. According to PW3, he is the one who acted as an agent of Mr. Kagotho during the sale of the suit property to the Plaintiff.
18. PW3 stated that he is the one who showed the Plaintiff the suit property and was paid the purchase price of Kshs.370,000.
19. According to PW3, he was present when the Defendant's director facilitated the transfer of the suit property from Mr. Kagotho to the Plaintiff; that the Plaintiff was given the Certificate of Ownership by the Defendant after paying the transfer fees of Kshs.15,000 and that the Defendant has since fenced off the Plaintiff's land.
20. In his submissions, the Plaintiff's advocate relied on the evidence on record.

Analysis and findings:

21. The evidence before this court shows that the Plaintiff purchased parcel of land known as JKIA/EMB/209 from Kagotho Mwangi Kagotho, PW2, vide an agreement dated 23rd April, 2010.
22. PW2 confirmed that he was indeed paid Kshs.370,000 for the said land by the Plaintiff whereafter he surrendered the Certificate of Ownership and the letter of allotment to the Defendant to facilitate the transfer of ownership of the land to the Plaintiff.
23. PW1, PW2 and PW3 informed the court that they visited the Defendant's office and informed the Defendant's director about the transaction between the Plaintiff and Mr. Kagotho.
24. Having fully paid for the plot, the Defendant's director agreed to facilitate the transfer of ownership of the suit property from Mr. Kagotho to the Plaintiff. Mr. Kagotho had purchased the suit property from the Defendant and was awaiting the finalisation of the subdivision of the larger land and the issuance of the title deeds for the sub plots.
25. The uncontroverted evidence before me shows that the Defendant issued to the Plaintiff the Certificate of Ownership in his name after Mr. Kagotho surrendered his Certificate of Ownership and letter of allotment.
26. PW1 also produced in evidence the receipt which was issued to him by the Defendant of Kshs.15,000 being the transfer fees.
27. Having facilitated the transfer of the suit property from Mr. Kagotho to the Plaintiff, the Defendant's Directors had no right to appropriate the same land to themselves or to transfer it to anyone else.
28. The Certificate of Ownership that was issued to the Plaintiff by the Defendant in respect of the suit property was conclusive proof that the interest in the suit property had passed to the Plaintiff.
29. Consequently, the suit property belongs to the Plaintiff to the exclusion of the Defendant or any other party.
30. For those reasons, I find and hold that the Plaintiff has proved his case on a balance of probabilities.
31. I therefore allow the Plaintiff's Plaint dated 30th June, 2010 in the following terms:

(a) A Prohibitory Injunction be and is hereby issued restraining the Defendant either by itself, its servants, agents, assigns or any other person claiming through it or otherwise from

selling, alienating, disposing, accessing, developing, or in any other way dealing with parcel of land being 209/JKIA/EMBAKASI of L.R. Number 12715/205.

(b) A Mandatory Injunction be and is hereby issued requiring the Defendant either by itself, its servants, agents, assigns or any other person claiming through it or otherwise to deliver up vacant possession of plot number 209/JKIA/EMBAKASI of Land Reference Number 12715/205 to the Plaintiff.

(c) The Defendant to pay to the Plaintiff the costs of the suit.

Dated and signed in Malindi this **29th** day of February, 2016.

O. A. Angote

Judge

Dated and delivered in Nairobi this **4th** day of **March**, 2016.

L.Gacheru

Judge