

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 377 OF 2014

JOSEPH KIPROTICH ANDATI:.....PLAINTIFF

VERSUS

AMOS KIPCHIRCHIR KIRWA:.....DEFENDANT

JUDGMENT

Joseph Kiprotich Andati (*hereinafter referred to as the plaintiff*) has sued Amos Kipchirchir Kirwa (*hereinafter referred to as the defendant*). The plaintiff avers that at all material times prior to this suit, the defendant was the legal owner of that parcel of land known as **L.R NO PIONEER/ NGERIA BLOCK 1 (EATEC)/ 339** measuring 1.0 acres or thereabout. On or about the 15th of August 2007, and by dint of a written sale agreement, the defendant sold to the plaintiff the aforesaid parcel of land for an agreed total consideration of Ksh.250,000/= which sum the the plaintiff paid Ksh.187,500/= as a deposit and later cleared the balance of Ksh.62,000/= in full settlement thereof. Pursuant to the execution of the said sale agreement, the plaintiff did take immediate possession of the said parcel of land and put up some temporary structure thereon. The Plaintiff pleads further that it was a fundamental term and condition of the sale agreement that the Defendant would execute all the necessary documents of conveyance so as to transfer the said suit parcel of land to the Plaintiff. The Plaintiff laments that to date the Defendant has failed, refused and/or neglected to so transfer the parcel of land to the plaintiff and/or execute necessary documents of conveyance and transfer in favor of the plaintiff hence breaching the Agreement dated 15.8.2007.

The plaintiff particularly claims that the defendant failed to abide by the terms and vendor's obligation under the Sale Agreement dated 15.8.2007 and to execute the necessary document of transfer of Land L.R No. PIONEER?NGERIA BLOCK 1(EATEC)339 measuring 1.0 acres. Moreover, by failing and/or refusing to pay outstanding land rent and rates due and owing at the time of the execution of the Sale Agreement dated 15.8.2007 in respect of the said parcel of land. Handing over vacant possession of the said parcel of land but declining to apply and/or attend the KESSES/KAPSABET Land Control Board to transfer the suit subject parcel of land in favor of the plaintiff contrary to the terms and obligation of the suit sale Agreement dated 15.8.2014. Lastly, by accepting Kshs.250,000/- being full payment of the consideration from the Plaintiff but failing to meet his obligations to transfer ownership of the suit parcel of land to the Plaintiff as agreed and the plaintiff pleads for an order of specific performance of the sale agreement.

The plaintiff prays for an order of specific performance compelling the Defendant to execute all necessary documents of transfer and conveyance so as to transfer land parcel L.R. NO. PIONEER/NGERIA BLOCK (EATEC)/339 measuring 1.0 acres to the plaintiff and costs of this suit. The defendant was duly served with summons to enter appearance but failed to enter appearance and/or defence hence interlocutory judgment was entered as prayed.

The matter came for hearing on 17th December 2015 and the plaintiff testified that in 2007 he wanted to buy 1 Acre piece of land within Eldoret Township and/or its environs to build a house and settle in. He was introduced to the Defendant by his late cousin Joash Ambale who prior to his death was engaged in buying and selling land within Eldoret. That in the same year his said Deceased Cousin introduced him to the Defendant when he was still at Kenindia Insurance at Kenindia Plaza Oginga Odinga Street and the Defendant Amos Kipchirchir Kirwa went to the office after he had gone to inspect the suit land L.R. NO. PIONEER/NGERIA BLOCK (EATEC)/339. That when he viewed the land it was about 1.0 Acres and vacant, safe for development within the neighborhood. They agreed the terms and proceeded to draw the

Sale Agreement at Mburu Maina & Company Advocates Offices on the 15th August 2007. That the terms of the Sale Agreement are as per Agreement dated 15th August 2007. He did pay to the defendant the consideration amount as agreed in the sale Agreement being Kshs.187,500/- cash paid to the Defendant. The balance of Kshs.62,500/- would have been paid upon the Defendant sub-dividing the land, obtaining Consent to transfer and finally effecting transfer of the 1.0 acres in the plaintiffs favor. The transfer was to take place within the same year 2007 consequently the plaintiff on 4th April, 2008 and 7th April, 2008 did pay Kshs.5,000/- to Valley Map Surveyors for sub-division and beaconing of the 1.0 acre suit parcel of land. He did take immediate possession of the land as per the Sale Agreement upon execution of the Agreement by fencing and digging up a bore hole, pit latrine and cultivating the same. The defendant has failed to transfer the suit parcel of land in his favour to date. The plaintiff produced the sale agreement indicating that he took possession on 18.8.2007. Section 3 (3) of the Law of Contract Act Cap 23 Laws of Kenya provides that;

No suit shall be brought upon a contract for the disposition of an interest in land unless—

(a) the contract upon which the suit is founded—

(i) is in writing;

(ii) is signed by all the parties thereto; and

(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party;

I have considered the evidence on record which is ***uncontroverted*** that there is an agreement between the plaintiff and the defendant dated 15th Day of August 2007 in respect of L.R. NO. PIONEER/NGERIA BLOCK (EATEC)/339.. The plaintiff is the purchaser while the defendant is the vendor and do find that the plaintiff has proved that he paid. He did pay to the defendant the consideration amount as agreed in the sale Agreement being Kshs.187,500/- cash paid to the Defendant. The balance of Kshs.62,500/- would have been paid upon the Defendant sub-dividing the land, obtaining Consent to transfer and finally effecting transfer of the 1.0 acres in the plaintiffs favor. The transfer was to take place within the same year 2007 consequently the plaintiff on 4th April, 2008 and 7th April, 2008 did pay Kshs.5,000/- to valley map surveyors for sub-division and beaconing of the 1.0 acre suit parcel of land. He did take immediate possession of the land as per the Sale Agreement upon execution of the Agreement by fencing and digging up a bore hole, pit latrine and cultivating the same. The defendant has failed to transfer the suit parcel of land in his favour to date his case on a balance of probability and do grant judgment in terms of an order of specific performance compelling the defendant to execute all necessary documents of transfer and conveyance so as to transfer land parcel L.R. NO. PIONEER/NGERIA BLOCK (EATEC)/339 measuring 1.0 acre to the plaintiff. Costs of the suit and interest at court rates is granted to the plaintiff.

DATED AND DELIVERED AT ELDORET THIS 2ND DAY OF JUNE, 2016.

ANTONY OMBWAYO

JUDGE