



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT

AT NAIROBI

ELC NO. 222 OF 2015

**MARTHA NJERI MBENE (Suing for and on behalf of the
estate of James Monari Bosire – deceased)..... PLAINTIFF**

VERSUS

THE STATUTORY MANAGER,

UNITED INSURANCE COMPANY LIMITED.....DEFENDANT

JUDGMENT

The plaintiff brought this suit against the Defendant and on 10th March 2015 seeking the following reliefs:

- i. A declaration that the Plaintiff is entitled to the suit property.
- ii. An order directing the Defendant to transfer the suit property to the Plaintiff.
- iii. Costs of the suit.
- iv. Any other relief the court may deem fit to grant.

In her plaint dated 5th March 2015, the Plaintiff as averred as follows. The Plaintiff is the legal representative of the estate of James Monari Bosire deceased (hereinafter “the deceased”) while the Defendant is the Statutory Manager of United Insurance Company Limited which is under statutory management. At all material times, the deceased was an employee of United Insurance Company Limited (hereinafter referred to only as “the Defendant”). In the course of his employment with the Defendant, the Defendant offered to sell to the deceased a parcel of land known as LR. No. Kajiado/Kaputei North/15666 (hereinafter “the suit property”) at a consideration of Kshs. 110,000 and on other terms and conditions that were set out in the agreement for sale dated 17th November 2004. The purchase price for the suit property was to be made by the deceased in 24 equal monthly installments of Kshs. 4,583.35 which amount was to be deducted from the deceased’s salary at the end of every month.

It was a term of the said agreement for sale that the Defendant would transfer the suit property to the deceased once the deceased had completed the payment of the purchase price. The deceased paid the purchase price for the suit property in full in 12 monthly installments of Kshs. 9167.00. However, before the property could be transferred to the deceased, the Defendant was placed under statutory management.

The deceased unsuccessfully followed the issue of the transfer of the suit property with the Defendant before he died on 22nd November 2005. The Plaintiff after obtaining grant of letters of administration in respect of the estate of the deceased made a demand upon the Defendant to transfer the suit property to her but the Defendant refused to do so leaving her with no alternative but to bring this suit.

The Defendants were served with the summons to enter appearance but failed to do so. On 19th June 2015, interlocutory judgment in default of appearance was entered against the Defendant in favour of the Plaintiff. The matter was thereafter set down for formal proof on 19th January 2016 when the Plaintiff gave evidence and closed her case without calling any witness.

In her evidence, the Plaintiff told the court that she is the widow and legal representative of the estate of the deceased. She stated that the deceased was employed by the Defendant as a security officer and that in the course of his employment he entered into an agreement with the Defendant for the purchase of the suit property at a consideration of Kshs.110,000/= which the deceased paid in full. She stated that the Defendant refused to transfer the suit property to the deceased and subsequently to her even after receiving the purchase price in full. The Plaintiff produced as exhibits among others, the deceased's letter of employment with the defendant dated 6th April 2014, Sale Agreement dated 17th November 2004, copies of pay slips showing the deductions which were made towards the purchase price, various correspondence exchanged with the Defendant, a copy of the deceased's death certificate, a copy of Grant of Letters of Administration in respect of the estate of the deceased dated 5th February 2008 and a copy of certificate of official search on the register of the suit property. The Plaintiff urged the court to grant the reliefs sought in the plaint.

I have considered the Plaintiff's claim against the Defendant as pleaded and the evidence that was adduced by the Plaintiff in proof thereof. As I have stated earlier in this judgment the Defendant did not defend the suit. That means that all the averments contained in the plaint are not controverted. The evidence that was adduced by the Plaintiff was also not challenged. There is no dispute that the deceased entered into an agreement for sale of the suit property with the Defendant on 17th November 2004 at a consideration of Kshs.110,000/=. It was a term of the said agreement for sale that the Defendant would transfer the suit property to the deceased once the deceased had paid the purchase price in full. I am satisfied from the material before me that the deceased fulfilled his part of the agreement by paying the purchase price in full to the Defendant. Having fulfilled his part of the bargain, the deceased was entitled to have the suit property transferred to him.

The Defendant did not defend the claim herein. In the circumstances, no explanation or reason was put forward to justify the Defendant's refusal to transfer the suit property to the deceased. In the absence of such explanation, the only conclusion this court can make is that no valid reason existed that could justify the Defendant's inaction. It is my finding therefore that the Defendant breached the agreement for sale that it entered into with the deceased and that the Plaintiff is entitled to a remedy. The Plaintiff has sought specific performance of the agreement for sale. In the absence of any evidence that the same cannot be granted, there is no reason why the court should deny the Plaintiff the relief. The other reliefs sought by the Plaintiff are consequential in nature.

In the final analysis, I am satisfied that the Plaintiff has proved her claim against the Defendant on a balance of probability. Consequently, judgment is hereby entered for the Plaintiff against the Defendant in terms of prayers (i) and (ii) of the plaint dated 5th March 2015. The Plaintiff shall have the costs of the suit.

Delivered and Dated at Nairobi this 2nd day of August, 2016

S. OKONG'O

JUDGE

In the presence of

Mr. Mwariri for the Plaintiff

N/A for the Defendant

John Court Assistant