



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 313 OF 2012

NJIHIA NG'ANG'A GAKUUPLAINTIFF

VERSUS

ELIJAH MWANGI NJUGUNADEFENDANT

JUDGMENT

(Suit to compel defendant to transfer agricultural land or in alternative refund the purchase price; no consent of the Land Control Board; prayer for transfer rejected, but judgment entered for refund of purchase price)

1. This suit was commenced by way of plaint filed on 17 August 2012. It was pleaded in the plaint that vide an agreement dated 28 June 2007, the defendant sold to the plaintiff 2 acres out of the land parcel Nyandarua/Kirima/161 at a consideration of Kshs. 200,000/=, which was paid in full. It is pleaded that a surveyor was then engaged and the 2 acres excised, and that the plaintiff eventually settled on the land and has caused massive developments with the consent and authority of the defendant. It is pleaded that the defendant thereafter refused to execute the necessary instruments to facilitate transfer of the land to the plaintiff.

2. In the suit, the plaintiff has sought the following orders :-

(a) That the defendant be ordered to transfer 2 acres to the plaintiff out of the land parcel Nyandarua/Kirima/161.

(b) In the alternative the defendant be ordered to refund the plaintiff the consideration of Kshs. 200,000/= together with survey fees of Kshs. 2,500/= and interest at court rates from 27 June 2007 until payment in full.

(c) Costs of the suit and interest.

(d) Any other or further relief that the court may deem fit.

3. The defendant filed a very short defence and pleaded that the agreement of sale is null and void for want of consent of the Land Control Board and that the suit is time barred.

4. In his evidence, the plaintiff testified and produced the agreement of sale dated 28 June 2007. He stated that he bought the two acres of land at Kshs. 100,000/= each and paid in cash. After about 6 months the defendant came with a surveyor and carved out the 2 acres. His request for them to go and seek the

consent of the Land Control Board was met with various excuses and they never applied for consent. A demand letter was written but ignored. He asked that he be granted the land.

5. On his part, the defendant testified that he was in the process of putting together his papers only that the plaintiff got impatient. However in cross-examination, he stated that he is not going to sign the transfer because the plaintiff was in breach of the agreement. He was also of the view that the plaintiff should pay him for the use of his land for the period that he has been in occupation.

6. Neither party filed any submissions despite being given time to do so.

7. I have considered this matter. It is not contested that the two parties had an agreement to sell two acres out of the suit land at a total consideration of Kshs. 200,000/=. I have seen the agreement of 28 June 2007 which states that the money has been paid in full. In the agreement, the costs of survey and for the consent of the Land Control Board were to be shared. It is stated in the agreement that both vendor and purchaser have set aside Kshs. 10,000/= for the expenses. It is also not in contention that the parties did not apply for the consent of the Land Control Board as required by the Land Control Act (Cap 302) Laws of Kenya. This prompted the plaintiff to write a demand letter dated 28 May 2012, and another dated 13 June 2012, seeking that the defendant do complete the process within 30 days or else pay him a sum of Kshs. 329,562/= consisting of the purchase price, interest and advocate fees. Clearly this demand was ignored hence this suit.

8. The suit land is clearly agricultural land which required consent of the Land Control Board. This is provided by Section 6 (1) of the Land Control Act, which provides as follows :-

6. (1) *Each of the following transactions -*

(a) the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area;

(b) the division of any such agricultural land into two or more parcels to be held under separate titles, other than the division of an area of less than twenty acres into plots in an area to which the Development and Use of Land (Planning) Regulations, 1961 for the time being apply;

(c) the issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company or co-operative society which for the time being owns agricultural land situated within a land control area, is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act.

9. Section 7 of the same statute provides that any money paid out of a contract rendered void for want of consent of the Land Control Board, is recoverable as a debt.

10. Having not applied for consent within 6 months of the agreement, as required by Section 8 of the Land Control Act, the contract between the plaintiff and defendant became void, and the only remedy due to the plaintiff is a refund of the purchase price. I cannot therefore allow the prayer to order the defendant to transfer the two acres to the plaintiff for the agreement between the two has already been rendered void by statute. The plaintiff sought the alternative remedy of refund which is readily available to him. I have not however seen any proof of payment of Kshs. 2,500/= as survey fees.

11. I note that in his evidence, the defendant had testified that the plaintiff should pay him for using his land. But I cannot consider this request for it was never pleaded. Parties are bound by their pleadings and if the defendant wanted the court to consider this request, the same ought to have been pleaded. For want of pleadings, I cannot delve into the issue and this request, given in evidence, is rejected. I also note that in his pleadings the defendant pleaded that the suit is time barred but I do not agree. The agreement was entered into on 28 June 2007 and this suit was commenced on 17 August 2012. Six years, the limitation

period for claiming a debt had not lapsed.

12. I think I have decided all issues in this matter. I now make the following final orders :-

1. *I declare the agreement between the plaintiff and defendant entered into on 27 and 28 June 2007 for the sale of 2 acres of the land parcel Nyandarua/Kirima/161 as being null and void for want of Land Board Consent.*

2. *I enter judgment for the plaintiff against the defendant for the sum of Kshs. 200,000/= being refund of the purchase price.*

3. *I award the plaintiff interest on the sum of Kshs. 200,000/= from the date of filing suit till payment in full.*

4. *I reject the prayer for the sum of Kshs. 2,500/= for survey fees for want of proof.*

5. *I award the plaintiff the costs of this suit.*

13. It is so ordered and decreed.

Dated, signed and delivered in open court at Nakuru this 18th day of June 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :-