



Kamau & another v Murimi & 4 others; Murimi & another (Interested Parties) (Environment & Land Case 134 of 2017) [2024] KEELC 3997 (KLR) (16 May 2024) (Judgment)

Neutral citation: [2024] KEELC 3997 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 134 OF 2017**

**JG KEMEI, J
MAY 16, 2024**

BETWEEN

DAVID NGUGI KAMAU 1ST PLAINTIFF

JANE WAMAITHA KINYUA 2ND PLAINTIFF

AND

CHARITY NJERI MURIMI 1ST DEFENDANT

THOMAS NICHOLAS NDUNGU MURIMI 2ND DEFENDANT

ROSE WANJIRU MURIMI 3RD DEFENDANT

JOHN MBURU MURIMI 4TH DEFENDANT

ANTHONY MACHARIA MURIMI 5TH DEFENDANT

AND

ALICE WAMBUI MURIMI INTERESTED PARTY

CHARLES NJUGUNA MURIMI INTERESTED PARTY

JUDGMENT

1. The Plaintiffs are husband and wife. They have sued the Defendants for the following orders;
 - a. A permanent injunction restraining the Defendants either directly or through their agents, servants or any other persons claiming through them from selling, transferring, alienating, trespassing into or otherwise dealing or interfering with Thika Municipality Block II/247.
 - b. A declaration that the Plaintiffs are the lawful owners of Thika Municipality Block II/247 and entitled to a transfer and title thereof.



- c. An order compelling the 1st Defendant and the Interested Parties in their capacity as personal representatives of the estate of Peter D. Murimi Kagwura to transfer Thika Municipality Block II/247 to the Plaintiffs as joint tenants in default of which the necessary transfer documents to be executed by the Deputy Registrar of the Court on behalf of the 1st Defendant and the Interested Parties.
 - d. In the alternative and without prejudice to prayers a, b and c above general damages for breach of contract, special damages as itemized in Paragraphs 12 and 13 with costs and interests until payment in full.
 - e. Costs of the suit and interests at Court rate until payment in full.
2. The 1st Defendant is the mother of the 2nd - 5th Defendants.
 3. They aver that the 1st Defendant sold her beneficial interest to them vide an agreement dated the 14/2/2014 where upon they paid a substantial part of the purchase price leaving the balance of Kshs 230,000/-.
 4. On execution of the said agreement, they were put in possession whereupon they expended monies in the renovation of the rental units. In addition, they assumed management of the properties and collected rent from the tenants in the building. The 1st Defendant surrendered the original title to them pending the process of transfer of the suit land to the Plaintiffs.
 5. That at the time of the sale the property was subject to succession proceedings in which the 1st Defendant was an administrator. That the estate was succeeded fully by way of a confirmed grant on the 11/10/2016 and the 1st Defendant was awarded the suit land to hold for herself and in trust for her household. That the 1st Defendant in collusion with the 2nd – 5th Defendants have refused to transfer the suit land to the Plaintiffs. Particulars of deceit and manipulation on the part of the Defendants was stated under para 9 of the plaint leading to loss and damage on the part of the Plaintiffs. The particulars of loss and damage are enumerated under para 13 of the Plaint.
 6. On the 11/5/18 the 1st – 5th Defendants filed their defence and denied the claim of the Plaintiffs. They contended that the 1st Defendant lacked the capacity to enter into the agreement of sale before the conclusion of the succession of their father's estate. Further they denied the particulars of deceit and manipulation, loss and damage as pleaded by the Plaintiffs and put them to strictest proof. They added that possession and occupation, if any, does not amount to ownership of the suit land. Neither does renovation and improvements, they contended. They argued that they cannot be trespassers on their own land. Lastly, they argued that the Plaintiffs have themselves to blame for purchasing land from a party who did not have capacity to transact.
 7. The Interested Parties (IPs) on the other hand, like the Defendants denied the Plaintiffs claim in their defence and counterclaim filed on the 6/3/18.
 8. That the alleged sale was illegal, void and fraudulent *ab initio* as the same was entered pre-succession and without the consent and knowledge of all the beneficiaries and administrators. Particulars of fraud and illegalities were cited under para 18 of the Defence and Counterclaim. Insisting that the Plaintiffs are in Court with unclean hands the IPs contended that the Plaintiffs were aware that the 1st Defendant had no capacity to transact and therefore disentitled to equitable remedies in that regard.
 9. In their counterclaim they sought the following orders;



- a. A declaration that the Interested Parties, being administrators of the Estate of Peter D. Murimi Kagwura are the lawful owners of Thika Municipality Block II/247 as provided for in the confirmed grant in Succession Cause No. 1399 of 2009.
 - b. Judgment against the Plaintiffs for:
 - a. Cost of this suit
 - b. Such further or other reliefs as may be appropriate in the circumstances.
10. At the hearing the Plaintiffs case was led by PW1 - David Ngugi Kamau who relied on his witness statement dated the 9/2/2018 and produced documents marked as Pex No 1-17.
 11. He stated that he and his wife entered into an agreement for sale with the 1st Defendant for the purchase of the suit land at the consideration of Kshs 1.8 Million. That he paid the total of Kshs 1,570,000/- leaving a balance of Kshs 230,000/- which was payable at the conclusion of the transfer of the land. That at the time of sale the land was still registered in the name of the deceased husband of the 1st Defendant and succession of his estate was underway. That the 1st Defendant intimated to them that he had capacity to sell the land as one of the administrators of the estate of her late husband. That the other administrators were the 1st and 2nd Interested Parties. That all the administrators were aware of the transaction and assured them that they will transfer the land on conclusion of the succession process.
 12. That on the 11/10/2016, the property was distributed to the 1st Defendant to hold for herself and her house among other properties. That the 1st Defendant refused to transfer the land to them because her children (2nd - 5th Defendants) refused. That despite demand for completion, the 1st Defendant has ignored the completion notice. Further the witnesses stated that he was put in possession of the property where he collects rent from the rental units from 2014 to date. Equally he stated that the 1st Defendant handed over possession of the original title to him on the 14/2/2014. That the Defendants have refused to cooperate to transfer the land to them hence the filing of the suit.
 13. Despite service, the Defendants and the Interested Parties failed to attend the hearing of the suit.
 14. The Plaintiffs filed written submissions which I have read and considered.
 15. The key issue for determination is whether the Plaintiffs have proven their case.
 16. The case of the Plaintiffs against the Defendants and the Interested Parties is a straight forward one. It is not in dispute that the parties entered into an agreement of sale over the suit land. The 1st Defendant was already an administrator of the estate when she engaged the Plaintiffs and the succession was ongoing. This fact was disclosed by the parties in the agreement. The agreement was subject to the confirmation of the grant in favour of the 1st Defendant which luckily was done on the 11/10/2016 and the 1st Defendant got the land among others to hold for herself and in trust for the Defendants.
 17. I have reflected on the case and it is clear that the cause of action arose after the completion of the succession of the estate of the 1st Defendant's husband. It is not in dispute that the Plaintiffs have paid substantial consideration of the purchase price and the balance was pending the transfer of the property to them. It is also not in dispute that upon the issuance of the confirmation of the grant in favour of the 1st Defendant there was nothing holding her from transferring the land to the Plaintiffs. I say so because none of the Defendants have defended the case or raised a successful rebuttal to the case of the Plaintiffs. The case of the Plaintiffs is plainly undefended.
 18. Evidence was led that the Plaintiffs were put in possession upon the execution of the agreement of sale. It is also not in dispute that some of the purchase price was paid after the conclusions of the succession



of the estate meaning that the 1st Defendant was still honouring the agreement of sale between herself and the Plaintiffs and that the Plaintiff's legitimate expectation of a transfer was affirmed. It was not disputed that the Plaintiffs were handed over the management of the rental houses therein and have been collecting rental income from the said units from 2014 to date. It was also not disputed that they expended monies for the improvement and renovation of the houses to make them rentable.

19. Arising from the above analysis of the facts, the Court finds that the sale of the land was complete and what was remaining was the formal transfer of the land to the Plaintiffs. The 1st Defendant therefore held the land in trust for the Plaintiffs having received the purchase price and therefore she cannot have the land and the money at the same time as this will amount to unjust enrichment.
20. What orders should the Court grant in the circumstances? To avoid unjust enrichment and to serve the interest of justice the Court was called upon to address its mind to the high ideals of justice and the equitable doctrine of specific performance and grant the prayer of the Plaintiffs.
21. The parameters of specific performance are set out in the case of *Reliable Electrical Engineers Ltd vs. Mantrac Kenya Limited* (2006) eKLR, where the Court stated that:-

“The Jurisdiction of specific performance is based on the existence of a valid enforceable contract. It will not be ordered if the contract suffers from some defect, such as failure to comply with the formal requirements or mistake or illegality, which makes the contract invalid or enforceable. Even when a contract is valid and enforceable, specific performance will however not be ordered where there is an adequate alternative remedy. In this respect damages are considered to be an adequate alternative remedy where the claimant can readily get the equivalent of what he contracted for from another source. Even when damages are adequate remedy specific performance may still be refused on the ground of undue influenced or where it will cause severe hardship to the Defendant.”
22. In the case of *Gurdev Singh Birdi & Marinder Singh Ghatora vs. Abubakar Madhubuti*, Civil Appeal No. 165 of 1996, the Court held that the underlying principle in granting the equitable relief of specific performance is that:

“The Plaintiff must show that he has performed all the terms of the contract which he has undertaken to perform, whether expressly or by implication, and which he ought to have performed at the date of the writ in the action.”
23. Further in the case of *Steadman v Steadman* [1976] AC 536, 540, it was observed that:

“If one party to an agreement stands by and lets the other party incur expense or prejudice his position on the faith of the agreement being valid he will not then be allowed to turn around and assert that the agreement is unenforceable.”
24. It is not in dispute that the Plaintiffs have settled the full purchase price hence performed their part of the bargain; been put in occupation and has remained so for close to 10 years; enjoyed rental income from the developments thereon; no evidence of successful rescission of the sale agreement by the 1st Defendant; no evidence of any vitiating factors to the agreement; the 1st Defendant wilfully elected not to comply with the terms of the agreement; the Plaintiffs case is unrebutted.
25. In the end the Court is satisfied that the Plaintiffs have proven their case and I enter judgement in their favour as follows;



- a. A permanent injunction be and is hereby issued restraining the Defendants either directly or through their agents, servants or any other persons claiming through them from selling, transferring, alienating, trespassing into or otherwise dealing or interfering with Thika Municipality Block II/247.
- b. A declaration be and is hereby issued that the Plaintiffs are the lawful owners of Thika Municipality Block II/247 and entitled to a transfer and the title thereof.
- c. An order compelling the 1st Defendant and the Interested Parties in their capacity as personal representatives of the estate of Peter D. Murimi Kagwura to transfer Thika Municipality Block II/247 to the Plaintiffs as joint tenants in default of which the necessary transfer documents to be executed by the Deputy Registrar of the Court on behalf of the 1st Defendant and the Interested Parties.
- d. Costs of the suit shall be in favour of the Plaintiffs.

26. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 16TH DAY OF MAY, 2024
VIA MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered online in the presence of;

1st and 2nd Plaintiffs – absent but present when Judgment date was taken

1st, 2nd, 3rd, 4th and 5th Defendants – absent

1st and 2nd Interested Parties - absent

Court Assistants – Phyllis & Oliver

