



REPUBLIC OF KENYA



**Karuri v Muchiri (Environment & Land Case 68 of 2017)
[2025] KEELC 545 (KLR) (14 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 545 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 68 OF 2017**

JO OLOLA, J

FEBRUARY 14, 2025

BETWEEN

SUSAN WANGU KARURI PLAINTIFF

AND

JOSEPH NDUNGU MUCHIRI DEFENDANT

JUDGMENT

1. By a Complaint dated 19th April, 2017 as filed herein on 20th April, 2017, Susan Wangu Karuri (the Plaintiff) prays for a declaration that the Defendant has breached the sale agreement dated 8th December, 2011 and for orders of eviction of the Defendant from the 2 acres occupied in Land Parcel No. Gatarakwa/Gatarakwa Block III/1069.
2. It is the Plaintiff's case that she entered into a sale agreement with the Defendant for the sale of the 2 acres that were to be carved out of the said LR No. Gatarakwa/Gatarakwa Block III/1069 at a consideration of Kshs. 300,000/=. The Plaintiff avers that the Defendant paid the sum of Kshs. 150,000/= and the balance was to be paid upon the Plaintiff obtaining the consent to transfer.
3. The Plaintiff further avers that before she could obtain the consent, the Defendant became hostile and constructed a house and started cultivating the same property. It is the Plaintiff's case that the sale has become null and void after the parties failed to obtain Land Control Board consent and she is ready to refund the Defendant his deposit as it is the Defendant who breached the agreement.
4. But in his Statement of Defence dated 8th September, 2017, Joseph Ndung'u Muchiri (the Defendant) denies that he is in breach of the sale agreement. The Defendant asserts that when he entered into the sale agreement, the Plaintiff had informed him that she had already obtained consent to subdivide the land on 24th April, 2017 and that the Defendant's resultant parcel was number 1546 which was yet to be registered with the Lands Office.



5. It is the Defendant's case that the balance of the purchase price was to be paid after the Plaintiff obtained consent to transfer but the Plaintiff has never done so.
6. As a result, the Defendant urges the court to dismiss the Plaintiff's case and for the court to issue orders of specific performance of the Sale Agreement.

Analysis and Determination

7. I have carefully perused and considered the pleadings filed herein, the testimony of the witnesses and the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates that were representing the parties.
8. By her suit as filed herein, the Plaintiff has urged the court to declare that the Defendant has breached the sale agreement executed between herself and the Defendant on 8th December, 2011. The Plaintiff further urges the court to order the eviction of the Defendant from the two acre portion of the parcel of land known as Gatarakwa/Gatarakwa Block III/1069 that was the subject of the sale agreement.
9. It is the Plaintiff's case that the purchase price for the two acres was agreed at Kshs. 300,000/= and that the Defendant paid a sum of Kshs. 150,000/= on the date of execution of the agreement. According to the Plaintiff the Defendant was to take possession of the land and to pay the balance of the purchase price upon the Plaintiff obtaining consent to transfer the land.
10. It was further the Plaintiff's case that before they could obtain the consent, the Defendant became hostile, constructed a temporary house on the land and thereafter began cultivating the same. According to the Plaintiff, having failed to obtain the Land Control Board Consent within three (3) months they needed to renew the sale agreement as the one they had executed had become null and void. She asserts that she is ready to refund the Defendant the deposit paid and take back her land as it is the Defendant who had breached the sale agreement.
11. While admitting that he occupies and utilizes the 2 acres of land pursuant to the sale agreement, the Defendant denies that he is in breach of the agreement. On the contrary, the Defendant asserts that it is the Plaintiff who has breached the same by failing to obtain the consent to transfer the land into his name. According to the Defendant the balance of the purchase price being Kshs. 150,000/= was to be paid to the Plaintiff upon her obtaining the consent to transfer and not earlier. The Defendant denies being hostile to the Plaintiff and asserts that he took vacant possession of the two acres of land in accordance with the provisions of the sale agreement.
12. Testifying in support of her case when this trial commenced, the Plaintiff told the court that the sale agreement required the Defendant to pay the balance of the purchase price upon the land being surveyed. She told the court that despite the land being surveyed sometime in the year 2015 in the presence of the Defendant, the Defendant had refused to date to pay the balance.
13. The Plaintiff further told the court that according to the sale agreement, any party who breached the terms of the agreement was required to surrender 50% of the amount so far paid. In that regard, she told the court that having realized that the Defendant was in default, she drew out a cheque of Kshs. 75,000/= being 50% of the sum of Kshs. 150,000/= that had been paid as a deposit to her and sent the same to the Defendant.
14. The Plaintiff told the court that when the Defendant refused to accept the money, she proceeded to have the title for the 2 acres of land processed into her own name and she retains the title to-date.
15. From the material placed before the court, it was apparent that the two acres of land that the Plaintiff decided to sell were to be carved off a parcel of land known as Gatarakwa/Gatarakwa Block III/1069.



That parcel of land was at some point registered in the names of Charles Muraya and Joseph Gathege Thuo. The two having agreed to sell a portion of the land to one Francis Kihagi Waigwa had by then obtained the Land Control Board Consent to sub-divide the land to carve out the 2 acres being sold. It was Francis Kihagi Waigwa who then sold 2 acres of his portion to the Plaintiff.

16. As it turned out, the Plaintiff also decided to sell the sub-division before it could be registered in her name. In recognition of the unfinished process, clauses 3 and 4 of the Agreement dated 8th December, 2011 provided as follows:
 3. That pursuant to Kieni West Land Control Board Consent to Sub-divide Gatarakwa/ Gatarakwa Block III/1069 dated 24.4.2007 the same was sub-divided and the vendor's parcel became No. 1546 on the mutation forms although the same has not been registered with the Land Office (Copy attached).
 4. That the vendor will facilitate sub-division and transfer subject to her piece being transferred to him (sic) by Francis Kihagi Waigwa.”
17. That being the case, it was evident that the Plaintiff herein was under a duty to ensure the subdivision was registered in the Lands Office and to obtain the requisite consent to transfer the suit land to the Defendant. During her cross-examination at the trial, the Plaintiff told the court she could not remember if she filed any forms applying for the Land Control Board Consent.
18. That appeared to me to be a grave omission on the Plaintiff's part. Contrary to her assertions during the trial that the Defendant was required to pay the balance of the purchase price upon the land being surveyed, there was no such requirement in the Agreement she had executed with the Defendant. Instead, clause 2 of the Agreement provided as follows:-
 2. That the balance of Kshs. 150,000/= shall be paid to the vendor having obtained consent to transfer the said parcel of land to the purchaser.”
19. Clearly, the payment of the balance of the purchase price was pegged to the Plaintiff obtaining the consent to transfer the land to the Defendant. She has not provided any evidence that she obtained the same. In fact, she does not even recall having applied for the same and it is strange that she would accuse the Defendant of breaching the agreement on that account.
20. Again, contrary to the Plaintiff's assertion that the Defendant had prematurely taken possession of the two acres of land before paying the balance of the purchase price, it was clear that there was no such requirement under the Agreement. Clause 5 thereof gave the Defendant immediate vacant possession of the suit premises on the date the parties executed the sale agreement.
21. It was the Defendant's testimony that immediately upon taking possession he had developed the land, built a house thereon on which his mother resides and was cultivating the rest of the land. Having lawfully entered the land and developed the same pursuant to a valid Sale Agreement whose terms he is ready to fulfil to-date by paying the balance of the purchase price, I was unable to find any valid reason why the Defendant should be evicted from the land.
22. It follows that I am not persuaded that the Plaintiff has proved her case on the required standard. The suit against the Defendant had absolutely no basis and I hereby dismiss the same with costs to the Defendant.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 14TH DAY OF FEBRUARY, 2025

In the presence of:



- a. Firdaus the Court Assistant.
- b. No appearance for the Plaintiff
- c. Mr. Karanja holding brief for Ndirangu Advocate for the Defendant

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J.O. OLOLA

JUDGE

