



REPUBLIC OF KENYA



**Ndungui v Wanyoike (Land Case E053 of 2023)
[2024] KEELC 7369 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 7369 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
LAND CASE E053 OF 2023
BM EBOSO, J
OCTOBER 30, 2024**

BETWEEN

DAVID KIMANI NDUNGUI PLAINTIFF

AND

GEORGE GAITHUMA WANYOIKE RESPONDENT

JUDGMENT

1. The plaintiff, David Kimani Ndungui, brought this suit through a plaint dated 25/10/2023. His case is that he is the beneficial owner of Plot No A located in a subdivision scheme relating to Land Reference Number 7497/25 (Original Number LR 7497/57), Title Number IR 119554, delineated on Survey Plan Number 275509. He contends that he purchased the said land from the defendant through a sale agreement dated 22/8/2012. He adds that he has been in possession of the land since 22/8/2021.
2. The plaintiff further contends that it was a term of the sale agreement that the defendant would ensure that the plot is surveyed and conveyed to him. He faults the defendant for failing to take action to facilitate transfer of the plot to him despite receiving “Kshs 3,500,000 of the purchase price”. The plaintiff adds that on 21/11/2021 and 14/10/2023, the defendant caused his crops and fence to be destroyed.
3. The plaintiff seeks the following verbatim reliefs:
 - a. An order compelling the defendant to complete the subdivision of Plot A measuring 1¹/₂ acres from the land known as IR 119554 being LR. No 7497/25 (Original Number 7497/15/2) Survey Plan Number 275509 as depicted in the proposed sub-division.
 - b. An order extending the time within which the parties may apply for the relevant land control board consent.



- c. That the defendant do comply with the court orders above within 21 days from the date of service of the decree and in default the Court's Deputy Registrar be authorized to execute all the necessary conveyance documents to give effect to the decree.
 - d. Damages for breach of contract.
 - e. Costs of the suit.
 - f. Interest on (d) and (e) above.
 - g. Any other further relief this honourable court may deem fit to grant.
4. On 6/12/2023, the plaintiff was granted leave to serve summons on the defendant through a notice in either The Daily Nation or The Standard Newspaper, requiring the defendant to enter appearance. The subsequently filed affidavit of service sworn on 19/2/2024 by Ambrose Muthama indicates that the defendant was served through a notice published in The Daily Nation edition of 10/1/2024. The defendant neither entered appearance nor filed a defence. Consequently, this suit was heard on 18/9/2024 as an undefended cause.
 5. At the hearing, the plaintiff testified as PW1 and closed his case. He adopted his written witness statement dated 25/10/2023. He produced the following 9 exhibits; (i) sale agreement dated 22.08.2012; (ii) copy of title; (iii) copy of proposed subdivision plan; (iv) copies of cheques; (v) payment acknowledgement dated 1st March 2013; (vi) payment acknowledgement dated 12th November 2013; (vii) payment acknowledgement dated 25th January 2022; (viii) Police OBs; and (ix) demand letter dated 16th October 2023 to the defendant. Subsequent to that, the plaintiff filed written submissions dated 9/10/2024 through M/s Ahmed Mberere & Co Advocates.
 6. The court has considered the pleadings, evidence and submissions tendered by the plaintiff. The plaintiff tendered a sale agreement executed between him and the defendant, dated 22/8/2012. He also produced copies of cheques and signed acknowledgements relating to payment of purchase price. Through a signed acknowledgement dated 25/1/2022, the defendant acknowledged receipt of a total of Kshs 3,500,000 as purchase price.
 7. Given the fact that this cause is undefended, and taking into account the above evidence, this court is satisfied that the plaintiff has discharged his burden of proof in so far as the plea for completion of the sale contract is concerned. What the plaintiff failed to prove is the basis upon which an award of damages should be made, assessed and awarded. The court cannot make/assess/award contractual damages without a proper evidential basis anchored on pleadings and evidence.
 8. In the end, Judgment is entered in favour of the plaintiff and against the defendant in the following terms:
 - a. An order is hereby issued compelling the defendant to complete the survey of Plot A measuring 1¹/₂ acres from LR No 7497/25 Title No IR 119554 as reflected in the proposed subdivision plan tendered in this suit and convey the said subdivision to the plaintiff upon the plaintiff depositing the balance of the purchase price in the sum of Kenya Shillings One Hundred Thousand [Kshs 100,000] in court within 90 days.
 - b. An order is hereby issued extending the limitation period for applying for consent of the relevant Land Control Board by five [5] months.
 - c. In the event that the defendant does not procure consent and complete conveyance of the land to the plaintiff within 60 days, the Land Registrar is hereby decreed to sign all documents



necessary to give effect to this decree, including but not limited to signing documents necessary for processing the application for Consent of the Land Control Board and for conveyance of the land to the plaintiff.

- d. The sum of Kshs 100,000 shall be released to the defendant upon conveyance of the sold land [1¹/₂ acres] to the plaintiff.
- e. The defendant shall bear costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 30TH DAY OF OCTOBER 2024

B M EBOSO

JUDGE

In the presence of:

Mr Mberere for the Plaintiff

Court Assistant: Hinga

