



**Mwangi v Nzuri Company Limited (Environment & Land Case  
213 of 2013) [2023] KEELC 147 (KLR) (19 January 2023) (Judgment)**

Neutral citation: [2023] KEELC 147 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 213 OF 2013  
OA ANGOTE, J  
JANUARY 19, 2023**

**BETWEEN**

**JOSEPH SULEIMAN MWANGI ..... PLAINTIFF**

**AND**

**NZURI COMPANY LIMITED ..... DEFENDANT**

**JUDGMENT**

1. This suit was commenced by way of a plaint dated February 5, 2013. In the plaint, the plaintiff averred that by way of an agreement dated February 8, 2007, the defendant bought from him two parcels of land known as LR number 3859 and 3860 (the suit properties) for Kshs 238,125,000/-.
2. The plaintiff averred in the plaint that the defendant failed to pay the purchase price within the stipulated time and that the defendant sought for an order to rescind the sale agreement and for cancellation of all entries in respect to the suit properties.
3. In the statement of defence, the defendant admitted that indeed he entered into a sale agreement with the plaintiff on February 8, 2007 in respect to the two suit properties; that it was a term of the agreement that he pays the 10 % deposit of the purchase price on January 19, 2007 and January 22, 2007, which he did, and that it was a further term of the agreement that the balance of the purchase price was payable on condition that all suits filed against him by the squatters in respect to the suit properties were determined by the court in his favour (the plaintiff).
4. The defendant averred that as at the time of signing the agreement, there was an ongoing suit against him being HCCC No 266 of 2005; that in that suit, the plaintiff and others were prohibited from dealing with the suit properties and that the defendant was under no obligation to pay the plaintiff the balance of the purchase price in view of the said suit.
5. The defendant also filed a counter claim in which he averred that it is entitled to a refund of the deposit of Kshs 23,812,500; with interest and for rescission of the sale agreement of February 8, 2007.



6. When the matter came up for hearing on May 17, 2022, neither the plaintiff nor his advocate were in court. Consequently, the court dismissed the plaintiff's claim with costs and proceeded to hear the defendant's counter claim.

### **Hearing and evidence**

7. The defendant's director, DW1, informed the court that on February 8, 2007, the plaintiff and the defendant entered into an agreement for sale in respect of sub-division number 3 of portion No 121 (Land Office No 3859 (original No 1613) and sub-division No 4 of portion No 121 (Land Office No 3860) (original No 1614), City of Nairobi (the suit properties).
8. DW1 informed the court that it was a term of the agreement that the purchase price of the suit properties was Kshs 238,125,000; that Kshs 23,812,000 being 10% of the purchase price was payable immediately upon execution of the agreement and that a further sum of Ksh 23, 812,500 was to be paid to the plaintiff within 90 days after execution of the agreement.
9. According to DW1, the balance of the purchase price of Kshs 190, 500,000 was to be paid to the plaintiff within 14 days of registration of the suit properties in favour of the defendant and that the defendant settled the deposit of Kshs 23,812,500 vide two cheques dated January 19, 2007 and January 22, 2007 for Kshs 15,000,000 and 8,812,500/- respectively.
10. It is the defendant's case that special condition 1 of the agreement provided that the plaintiff was selling the suit properties on condition that all the suits filed by the squatters against the plaintiff had been fully determined by the court in his favour and that in breach of the said condition, there was an ongoing suit being HCCC No 266 of 2005, Belgo Holdings Limited vs John Armstrong Njogu and others.
11. It was the evidence of DW1 that the said suit was well within the plaintiff's knowledge; that the plaintiff intentionally withheld this information from him and that in the said suit, there was an injunction prohibiting the plaintiff from dealing with the suit properties in any manner.
12. It was the evidence of DW1 that there also existed another suit being HCCC No 507 of 2003 (OS) wherein the applicants had laid claim over the suit properties by way of adverse possession and that judgment had been entered in favour of the applicants on September 23, 2003.
13. In conclusion, DW1 informed the court that the breach of the agreement of sale was solely attributed to the plaintiff; that the defendant is entitled to a refund of the deposit of Kshs 23, 812,500 pursuant to clause 7 and 9 of the agreement and that the plaintiff fraudulently misrepresented that he had a proper title to the suit properties.
14. The defendant's counsel filed submissions and reiterated the evidence produced by DW1, which I have summarized above. The plaintiff's advocate did not file submissions.

### **Analysis and determination**

15. The validity of the sale agreement between the plaintiff and the defendant is not contested. Indeed, it is not in contention that the defendant paid to the plaintiff a sum of Kshs 23,812,000 being the 10% of the purchase price of the two suit properties. These payments were made by way of two cheques for Kshs 15,000,000/- and 8,812,000 dated February 19, 2007 and January 22, 2007.
16. The copies of the two cheques, which appear to have been issued before the agreement of February 8, 2007 was signed, were produced in evidence.



17. According to the sale agreement of February 8, 2007, which was produced by the defendant, a further sum of Kshs 23,812,500 was to be paid by the defendant within 90 days from the date of the agreement. However, before the lapse of the said 90 days, the court in HCCC No 266 of 2005 issued an injunction against the plaintiff herein and six others from dealing with the suit properties until the suit was heard and determined.
18. From the evidence adduced, by the time the plaintiff and the defendant were executing the sale agreement of February 8, 2007, there were ongoing suits against the plaintiff, being HCCC No 266 of 2005 and 507 of 2003. In fact, in HCCC No 507 of 2003 (OS), a judgment had been entered in respect of the suit properties on September 23, 2003, in favour of the applicants therein.
19. The information on the existence of the two suits was intentionally withheld by the plaintiff by the time he entered into the agreement of February 8, 2007 with the defendant. Having discovered the existence of the suits, and in particular the order of April 27, 2007 in HCCC No 266 of 2005, which prohibited the plaintiff herein from dealing with the suit properties, the defendant was entitled to refuse to settle the subsequent deposit and the balance of the purchase price.
20. Indeed, the reading of the special condition shows that the plaintiff covenanted that 'all suits filed against the vendor by squatters and other persons claiming adverse possession or having any other claims against the properties have been fully determined by the court in favour of the vendor,' a statement that was false.
21. That being the case, it follows that the defendant herein was entitled to rescind the sale agreement pursuant to special condition No 7 which provided as follows:
  - ' 7.0 In the event that any of the matters required to be completed or done by the vendor and or the purchaser by a specified date have not been completed or done (in the reasonable opinion of either) by such date the purchaser and or the vendor shall in its sole discretion have the right to either.
  - 7.1 Rescind this agreement and in the case of the purchaser demand from the vendor the refund forthwith of all monies paid by the purchaser to the vendor pursuant hereto together with interest on such sums from the date hereof to the date of such refund (together with all accrued interest) in full at the rate of fifteen per cent (15% per annum or that the vendor transfers such portion of the properties as determined with reference to special condition 3 above; or in the case of the vendor charge interest on the amount unpaid at the specified date at the same rate until payment actual payment.'
22. Having found that the plaintiff misrepresented to the defendant that he could sell the suit properties; and having held that the plaintiff was in breach of the sale agreement of February 8, 2007, it is the finding of this court that the defendant is not only entitled to rescind the sale agreement, but is also entitled to a refund of the deposit paid together with interest at the rate of 15% per annum as stipulated in special condition number 7.1 of the sale agreement.
23. For those reasons the defendant's counter claim is allowed as follows:
  - a. The sale agreement of February 8, 2007 between the plaintiff and the defendant is hereby rescinded.
  - b. The plaintiff to refund the defendant the sum of Kshs 23,812,500.
  - c. The plaintiff to pay the defendant interest on the above sum at the rate of 15% per annum from February 8, 2007 until payment in full.



d. The plaintiff to pay the costs of the suit and the counter claim.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 19<sup>TH</sup> DAY OF JANUARY, 2023.**

**OA ANGOTE**

**JUDGE**

**In the presence of;**

Mr Kokobe for Plaintiff

Mr Mungai for Defendant

Court Assistant - June

