



Jackson & 3 others v Mwangi & 2 others (Environment and Land Appeal E001 of 2024) [2025] KEELC 2903 (KLR) (26 March 2025) (Judgment)

Neutral citation: [2025] KEELC 2903 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND APPEAL E001 OF 2024
NA MATHEKA, J
MARCH 26, 2025**

BETWEEN

**SOLOMON MURIUKI JACKSON 1ST APPELLANT
ELVIS MUGUNA 2ND APPELLANT
LILIAN GACHERU NTARANGWI 3RD APPELLANT
JASON KIAMBI MUNGANIA 4TH APPELLANT**

AND

**SOLOMON MAINA MWANGI 1ST RESPONDENT
FRANCIS NYAGAH MUTHUA 2ND RESPONDENT
VERONICA MWIHAKI GATIHURI 3RD RESPONDENT**

JUDGMENT

1. The above named Appellants being dissatisfied with the decision of the Hon. D.N. Sure (PM) in Kangundo MCELC No. 102 of 2020 appeals to the High Court against the whole decision on the following grounds:
 1. The learned trial Magistrate erred in law by failing to apply the express provisions of the agreement to the parties and thereby arrived at a decision that was inconsistent with the evidence led.
 2. That the learned trial Magistrate erred in law and fact when she failed to grant a decree for specific performance when, in the face of and despite the available documentary evidence, she failed to find and hold that;
 - i. The Agreement for Sale and receipt of the sale consideration had not been disputed by the Respondents.



- ii. The additional sum of Kshs. 20,000 demanded by the Respondents came six (6) months after the signing of the Sale Agreement.
 - iii. The sum of Kshs. 20,000 demanded by the Respondents had already been incorporated in the sale price as per the minutes of their meeting exhibited in Court.
 3. That the learned trial Magistrate erred in law and fact when she failed to properly evaluate the evidence on record hence arriving that since other purchasers had paid the disputed Kshs. 20,000 the Appellants were also bound to pay the same.
 4. That the learned trial Magistrate erred in law and fact when she failed to grant the equitable remedy of specific performance of the Sale Agreement to the Appellants who had performed all terms of the agreement whereas the Respondents had not.
 5. That the learned Magistrate erred in law and fact by dismissing the Appellants' case thereby allowing the Respondents to escape from the bad bargain they had entered into.
 6. That the Judgment is based on vague conjectures, surmises not sure conclusion.
 7. That the learned Magistrate erred in law and fact when she failed to consider the Appellants' written submissions on record.
 8. That the learned trial Magistrate erred in law and as a result arrived at a wrong decision and in all circumstances failed to do justice to the Appellants.
 9. That the Judgment of the Honourable Court occasioned a failure of justice and/or resulted in a gross miscarriage of justice.
2. The appellants pray for the following orders;
1. The Appeal be allowed.
 2. The Judgment in favour of the Respondents be set aside and Judgment be entered in favour of the Appellants instead.
 3. The Appellants be allowed the costs of the Appeal.
3. This court has considered the evidence and the submissions therein. This is the first appeal, the primary role of the court is to re-evaluate, re-assess and re-analyze the evidence on record and decide as to whether the conclusion reached by the learned magistrate was sound, and give reasons either way. This duty was emphasized by the Court of Appeal in Mbogo and another vs Shah (1968) EA 93 where it was held that;
- “I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matter on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion. It is for the company to satisfy this court that the judge was wrong and this, in my view it has failed to do.”
4. In the trial court, the appellants averred that they entered into sale agreements with the respondents/defendants for the purchase of plots consisted of sub divisions made to parcel of land known as Donyo Sabuk/Komarock Block 1/20116. That the agreements provided that the respondents would hand over possession and transfer of the plots to the purchasers upon completion of full payment. The



appellants made the full payments but were told to pay a further Kshs. 20,000/= before the titles can be released to them.

5. The *Law of Contract Act* clearly stipulates the requirements for a valid instrument to convey an interest in land. Section 3 (3) of the *Law of Contract Act* (Cap 23 of the Laws of Kenya) stipulates that;

No suit shall be brought upon a contract for the disposition of an interest in land unless—

- a. the contract upon which the suit is founded—
 - i. is in writing;
 - ii. is signed by all the parties thereto; and
- b. the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:

6. While Section 38 (1) of the *Land Act* states,

Other than as provided by this Act or by any other written law, no suit shall be brought upon a contract for the disposition of an interest in land—

- (a) the contract upon which the suit is founded—
 - (i) is in writing;
 - (ii) is signed by all the parties thereto; and
- (b) the signature of each party signing has been attested to by a witness who was present when the contract was signed by such party.

7. In Harris JA in *Garvey v Richards* {2011} JMCA 16 the court in considering the essential components of a contract reflected the following principles:

“It is a well-settled rule that an agreement is not binding as a contract unless it shows an intention by the parties to create a legal relationship. Generally, three basic rules underpin the formation of a contract, namely, an agreement, an intention to enter into contractual relationships and consideration. For a contract to be valid and enforceable an essential terms governing the relationship of the parties must be incorporated therein. The subject matter must be certain. There must be positive evidence that a contractual obligation, born out of an oral or written agreement is in existence.”

8. The Supreme Court of United Kingdom in *RTS Flexible Systems Ltd vs Moikerei Alois Muller GMBH & Co K. G.* (2010) UKSC 14:

“The general principles are not in doubt, whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon them, by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations. Even if certain terms of economic or other significance to the parties have not been finalized, an objective appraisal of their words and conduct may lead to the conclusion that they did not intend agreement of such terms to be a precaution to a concluded and legally binding agreement.”



9. I have perused the said sale agreement and clause 1 states as follows;
- “The vendor will sell and the purchaser will purchase the parcel of land referred to in clause 2 above at the agreed total consideration of Kenya shillings four hundred and ninety five thousand (Ksh.s 495,000) only being consideration of Kenya shillings four hundred and ninety five thousand for one parcel of land measuring 50 by 100 feet.”
10. Clause 6 of the said agreement goes on to provide that;
- “The vendor agrees and covenants to hand over possession and transfer of the plots to the purchaser upon payment in full.”
11. The respondent does not dispute entering these agreements but states that there was an additional transfer fee of Kshs. 20,000/=. This was agreed in a meeting of all members and they all paid except the plaintiffs/applicants herein. That they called a members meeting who agreed and minutes were taken. That the additional amount had not been anticipated as the plots could not be transferred directly to the members but had to first be transferred to the officials of the group as per the directions of Lands office in Machakos.
12. It is a longstanding principle of law that parties to a contract are bound by the terms and conditions thereof and that it is not the business of the Courts to rewrite such contracts. In *National Bank of Kenya Ltd vs Pipe Plastic Samkolit (K) Ltd (2002) 2 E.A. 503, (2011) eKLR* the Court of Appeal at page 507 stated as follows;
- “A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved.”
13. In *Pius Kimaiyo Langat vs Co-operative Bank of Kenya Ltd (2017) eKLR* the Court of Appeal further stated that;
- “We are alive to the hallowed legal maxim that it is not the business of Courts to rewrite contracts between parties, they are bound by the terms of their contracts, unless coercion, fraud or undue influence are pleaded and proved.”
14. If the members agreed, then they should have signed further contracts or addendums for them to be enforceable. As it stands minutes of meetings held would not be sufficient. I find that the full purchase price was Kshs. 495,000/= and not Kshs. 515,000/=.
15. The plaintiffs sought specific performance of the sale agreements or payment of damages in lieu. In *Thrift Homes Ltd vs. Kenya Investment Ltd 2015 eKLR*, the court stated that;
- “specific performance like any other equitable remedy is discretionary and will be granted on well settled principles. The jurisdiction of specific performance is based on the existence of a valid enforceable contract and will not be ordered if the contract suffers from some defects or mistake or illegality. Even where a contract is valid and enforceable, specific performance will not be ordered where there is an adequate alternative remedy. The court then posed the question as to whether the Plaintiff who was seeking specific performance in that case had shown that he was ready and able to complete the transaction.”
16. The Court has carefully perused the sale agreement produced as Exhibits by the plaintiffs’ and noted that the same is in writing and is signed by the parties. It thus met the requirements of Section 3(3) of



the Contract Act. Further the agreement for sale contains the names of the parties, the description of the property, the full purchase price and the conditions thereto. I find that the sale agreements confirm that the same are a valid sale agreements which are enforceable by the parties. In the case of Nelson Kivuvani vs Yuda Komora & Another, Nairobi HCCC No.956 of 1991, the Court held that;

“the agreement for sale of land which contains the names of the parties, the number of the property, the purchase price and the conditions attached thereto, the obligations, express or implied, of each of the parties and signed and witnessed by two witnesses who signed against their names amount to a valid contract.”

17. On whether or not the defendant breached the agreement for sale, Black’s Law Dictionary, 9th Edition, Page 213, defines a breach of Contract as;

“a violation of a contractual obligation by failing to perform one’s own promise, by repudiating it, or by interfering with another party’s performance. A breach may be one by non-performance or by repudiation or by both. Every breach gives rise to a claim for damages and may give rise to other remedies. Even if the injured party sustains no pecuniary loss, or is unable to show such loss, with sufficient certainty, he has at least a claim for nominal damages.”

18. In the case of Shah vs Guilders International Bank Ltd (2003)KLR the Court in considering the terms of the parties contract stated;

“The parties executed the same willingly and they are therefore bound by it.”

19. In the instant case the agreement is clear that the purchase price was Ksh. 495,000/= . The defendants were paid in full as per the agreements and this was not disputed but they failed to transfer the property to the plaintiffs hence the defendants is in breach of the agreement. I find that the payment of the purchase price was completed way back in 2019 and the plaintiffs/applicants are entitled to specific performance. It is the finding of this court that there is a breach of contract on the part of the defendant in this case. I find that the trial magistrate erred in law and in fact when she failed to grant a decree of specific performance. I find that the plaintiffs/ appellants have proved their case on a balance of probabilities and the appeal succeeds. Consequently, I grant the following orders;

1. An order of specific performance directed to the defendants/respondents compelling them to procure and deliver to the plaintiffs plots in land parcel Number Donyo Sabuk/Komarock/ Block 1/20116•
2. An order directing the defendant to release to the plaintiff, all transfer documents alongside the relevant title documents to plots in land parcel Number Donyo Sabuk/Komarock/ Block 1/20116 within the next 60 days from the date of this judgement.
3. Costs of the suit and appeal to the plaintiffs/appellants.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 26TH DAY OF MARCH 2025.

N.A. MATHEKA

JUDGE

