



Case Number:	Environment and Land Court Case 364 of 2017 (Formerly Nairobi ELC Case No. 200 of 2010)
Date Delivered:	06 Dec 2018
Case Class:	Civil
Court:	Environment and Land Court at Thika
Case Action:	Judgment
Judge:	Oscar Angote
Citation:	Jepothma Zilion Ltd v Joel Otieno Sabaya [2018] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Kiambu
Docket Number:	-
History Docket Number:	-
Case Outcome:	Plaint allowed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC CASE NO. 364 OF 2017

(FORMELY NAIROBI ELC CASE NO. 200 OF 2010)

JEPOTHMA ZILION LTD.....PLAINTIFF

VERSUS

JOEL OTIENO SABAYA.....DEFENDANT

JUDGMENT

In the Plaintiff dated 30th April, 2010, the Plaintiff averred that on 25th April, 2008, he purchased a residue of lease comprising of 4.8 hectares of L.R. No. 10823/25, Thika, together with all the improvements on the land; that he paid a deposit of Kshs. 360,000/= and that the balance was payable within 120 days or upon delivery of the Title Deed by the Defendant to him.

The Plaintiff further averred that in the meantime, it paid the entire purchase price of Kshs. 3,800,000/= and that the Defendant has declined to complete the transaction. The Plaintiff is seeking for an order of specific performance and for an order of Perpetual Injunction to issue. Although the Defendant was served with the Summons to Enter appearance, he neither entered appearance nor filed a Defence. The matter proceeded for hearing without the Defendant.

The Plaintiff's Managing Director, P.W.1, informed the court that he entered into a sale agreement with the Defendant on 25th April, 2008 for the purchase of L.R. No. 10823/25 (the suit land); that by 11th June, 2008, the Plaintiff had made payment of Kshs. 3,800,000/= which amount was in excess of the agreed purchase price of Ksh, 3,600,000/= and that the Plaintiff took possession of the suit land.

P.W.1 produced in evidence the Sale Agreement dated 25th April, 2008 and the copies of the Bankers Cheques that were used to offset the purchase price. The Plaintiff also produced in evidence the letter dated 5th August, 2009 addressed to the Defendants. In the said letter, the Plaintiff's Advocate asked for the completion documents from the Defendant's advocate.

The evidence before this court shows that the Defendant agreed to sell to the Plaintiff a parcel of land known as L.R. No. 10823/12/4 for Kshs. 3,600,000/=. The Plaintiff's Director produced evidence showing that the Plaintiff paid the said purchase price and called for the completion documents from the Defendant.

Considering that the Plaintiff complied with the Sale Agreement of 25th April, 2008, the Defendant is under an obligation to transfer the suit land to the Plaintiff. In the circumstances, I find that the Plaintiff has proved its case on a balance of probabilities.

For those reasons, I allow the Plaintiff's Plaintiff dated 30th April, 2010 in the following terms:

a. An Order of Specific performance be and is hereby issued, directing the Defendant to deliver to the Plaintiff the Grant or Certificate of Lease for L.R. No. 10823/25 (Original Numbers 10823/12/4), Thika, together with all the requisite completion documents for the purpose of having the suit land transferred to the Defendant.

b. A Perpetual Injunction be and is hereby issued restraining the Defendant, his servants, agents, assigns, personal representatives and/or any persons claiming under him from entering, interfering, obstructing, alienating and in whichsoever manner, other than doing acts in consonance with completion of the sale transaction, with L.R No. 10823/25 (Original Number

10823/12/4 Thika together with the building and improvements erected and being thereon.

c. The Defendant to pay the costs of the suit.

Dated, signed and delivered at Thika this 6th day of December, 2018.

In the absence of the Plaintiff and Defendant

Court Assistant: Diana

O.A ANGOTE

JUDGE

6/12/2018



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