



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 174 OF 2017**

**FESTUS KIOKO KOMU.....PLAINTIFF**

**VERSUS**

**KATAMBO NDUI MWAILO.....1<sup>ST</sup> DEFENDANT**

**SOLOMON MWENDWA KUMALA.....2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

1. In his plaint filed on 11<sup>th</sup> April, 2017 and dated 6<sup>th</sup> February, 2017, the Plaintiff averred that he purchased an unsurveyed parcel of land bordering Wambua Katuku, Maleva Munyoki and Mwendwa Ngau from the Defendants; that he also purchased a path from the Defendants to access the suit land and that the Defendants have refused to give him vacant possession of the suit land.

2. The Plaintiff is seeking for a refund of Kshs.364,200/- from the Defendants with interest. In the alternative, the Plaintiff wants the Defendants to be compelled to transfer the suit land to him.

3. Although the Defendants were duly served with the Summons to Enter Appearance and the Plaintiff, they neither entered appearance nor filed a Defence. The matter proceeded for hearing on 7<sup>th</sup> February, 2018 when the Plaintiff testified.

4. The Plaintiff, Pw 1, informed the court that he entered into a sale agreement with the Defendants for the purchase of the suit land on 28<sup>th</sup> November, 2015; that he paid to the Defendants a total of Kshs.364,200/- for the land and that the Defendants have refused to vacate the land they sold.

5. The Plaintiff produced in evidence the agreement dated 28<sup>th</sup> November, 2015. The said agreement describes the suit land as the land bordering Wambua Kituku, the Plaintiff's land and the land belonging to Maleve Munyoki. The agreement was duly signed by the Defendants and the Plaintiff and was witnessed by two witnesses.

6. I have perused the said agreement. The agreement complies with the provisions of Section 3 (3) of the Law of Contract Act. In the circumstances, and considering that the Plaintiff's evidence was not controverted by the Defendants, I find and hold that the Plaintiff has proved his case on a balance of probabilities.

7. I therefore allow the Plaintiff's claim dated 6<sup>th</sup> February, 2017 as follows;

***a. The Defendants to transfer to the Plaintiff and vacate the unsurveyed parcel of land bordering Wambua Katuku, Maleve Munyoki and Mwendwa Ngau.***

***b. The Defendants are hereby restrained from entering or remaining upon the land described in (a) above.***

***c. The Defendants to pay the costs of the suit.***

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 21<sup>ST</sup> DAY OF MAY, 2018.**

**O.A. ANGOTE**

**JUDGE**