



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT OF KENYA**

**AT MILIMANI**

**ELC CASE NO. 571 OF 2015**

**JAMES WACHIRA & OTHERS.....PLAINTIFF**

**=VERSUS=**

**DR.LUCIA WANJIKU KAMAU T/NYANDUMA HORTICULTURE**

**IMPEX ENTERPRISES.....DEFENDANT**

**JUDGEMENT**

1. The defendant who trades in the name of Nyanduma Horticulture Impex Enterprises is the registered owner of LR No. 6845/151 (suitland). The defendant sub divided the suitland into 99 portions which she sold to the plaintiffs who were then issued with share certificates indicating the portions sold to them. It was agreed between the plaintiffs and the defendant that the defendant was to carry out the process of subdivision but the plaintiffs were to pay stamp duty and registration fees to facilitate issuance of title documents.

2. The plaintiffs were granted possession of their respective portions which some of them have developed and are residing in their properties. Contrary to the agreement between the plaintiffs and the defendant, the defendant started demanding that each plaintiff pays Kshs.100,000/= directly to her. The plaintiffs also learnt later that the defendant wanted to create additional plots from parcels set aside for public utilities and road reserves.

3. The plaintiffs filed this suit and the defendant filed a defence in person in which she admitted part of the plaintiffs' claim. The defendant later appointed a lawyer to act for her. The defendant's lawyer was given time to comply with order 11 of the Civil Procedure Rules but there was no compliance. The suit was fixed down for hearing. The defendant's advocate was duly served with a hearing notice but on the date of the hearing, neither the defendant nor her advocates were in court. The hearing therefore proceeded ex-parte.

4. The plaintiffs stated their case through Samson Kahui Ngure , the 32<sup>nd</sup> plaintiff. This plaintiff adopted the statement he had filed in Court. He added that each of the plaintiffs was issued with a share certificate upon completion of the purchase price. All that was remaining was for the defendant to process title documents. The obligation of the plaintiffs was to pay stamp duty and registration fees. The defendant has since declined to process the title documents and is instead demanding payment of Kshs.100,000/= from each of the plaintiffs.

5. I have looked at the documents produced by the plaintiffs. Even though not all the plaintiffs provided their documents, the defendant has admitted in her defence that she sold plots to all the listed plaintiffs. She seems to be blaming the Ministry of Lands for delay in processing the title documents. The defendant was given opportunity to prepare her documents but she did not. The Plaintiff's evidence remains uncontroverted. There is no reason why the defendant cannot carry through the process. Subdivision had been carried out. Beacons were placed on the ground. What was remaining was approval from the relevant authorities and the necessary consents after which the Ministry of Lands would communicate what fees was to be paid for registration and stamp duty after valuation of the properties. I find that the plaintiffs have proved their case against the defendant on a balance of probabilities. I enter judgement in favour of the plaintiffs in terms of prayer (a),(b),(d), and (e) of the Plaint.

Dated, Signed and delivered at **Nairobi** on this **24<sup>th</sup>** day of **October, 2017**.

**E. O. OBAGA**

**JUDGE**

In the presence of;-

Mr Mogire for Mr Orengere for Plaintiffs

Court Assistant: Steve

**E. O. OBAGA**

**JUDGE**