

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
ENVIRONMENT AND LAND COURT
CIVIL CASE NO.76 OF 2011

ANASTASIA WAMBUI NGARI.....PLAINTIFF

VERSUS

BONIFACE MAKARI MIANO.....DEFENDANT

J U D G M E N T

The plaintiff sued the defendant for breach of a sale agreement by refusing or neglecting to remove his wife from land title **No.NAYNDARUA/MBUYU/62** comprising of seven acres which the defendant had sold to the plaintiff. It was an express or implied term of the sale agreement that the defendant would give the plaintiff vacant possession of the said land.

When the matter came for formal proof, the plaintiff abandoned all the prayers save prayer (a), being an order for the defendant, his servants, spouse and or agents to deliver vacant possession of the said land to the plaintiff.

The plaintiff, a teacher at Gatheru primary school testified that the defendant sold her the parcel of land **No.NYANDARUA/MBUYU/62** measuring seven acres. The agreement was made on 8/1/2008. The plaintiff paid a consideration of Kshs.**385,000** in 4 installments of Kshs.**150,000** on 4/2/2008, another **150,000** on a date he did not specify. On 26/1/2009 he paid the defendant Kshs.**30,000** and on 21/5/2010 he paid the last installment of Kshs.**55,000**.

After paying the amount, the land was transferred to her whereupon she obtained title.

Unfortunately, when she went to fence the suit land in July 2010, she met a woman who claimed to be the defendant's wife and therefore claimed to have owned the land jointly with the husband. The plaintiff did not know her and therefore sued the defendant. Before suing the defendant she wrote to him asking for vacant possession but the latter did not reply. The plaintiff prays that he be given vacant possession.

Having read the plaint and considered the evidence adduced by the plaintiff, I do find that the plaintiff entered into an agreement of sale of land with the defendant at a consideration of Kshs.385,000 in respect of **MBUYU/NYANDARUA/62** measuring 7 acres or thereabouts. I have perused the sale agreement and confirmed that it was agreed *inter alia* that the vendor was to give vacant possession to the purchaser and the purchaser was to take possession thereof upon transfer.

The purchaser (plaintiff) paid the purchase price of Kshs.385,000 as agreed, however, the defendant in breach of the clear terms of agreement failed to give the plaintiff vacant possession of the property.

The upshot of the above is that the defendant is in breach of the clear terms of agreement, therefore this court orders him, his servants, relatives and/or agents or anybody living on the suitland to deliver vacant possession of the said land to the plaintiff. Since the plaintiff has abandoned the other prayers, the court makes no findings on the same.

Dated and Delivered at Nyeri this 28th day of June 2013

A. OMBWAYO

JUDGE