

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

ENVIRONMENT AND LAND COURT

E.L.C NO.2 OF 2013

DEBORAH MUTHONI NJOROGE.....PLAINTIFF

VERSUS

MWANGI KAMAU.....DEFENDANT

J U D G M E N T

The plaintiff's claim is based on an agreement in writing dated 11/7/2012 between the plaintiff and the defendant where the latter agreed to sell to the former 0.6 acres of land that was to be partitioned and subdivided out of land parcel No. **Loc.2/Kangari/1346** for a consideration of Kshs.430,000/=.

The plaintiff paid a down payment of Kshs.230,000/= leaving a balance of Kshs.200,000/= that was to be paid after completion of the Land Control Board meeting and subdivision thereof.

The plaintiff took the responsibility of paying all necessary fees required by the Land Control Board but the defendant refused or failed to attend and therefore stalling the transaction.

The plaintiff instituted this suit in compliance with order 3 rule 2 and filed a statement upon which she relied and also gave her testimony.

She seeks a refund of Kshs.230,000 plus interest as agreed in clause 8 of the agreement or in the alternative the court to compel the defendant to subdivide the suit land and transfer 0.6 acres to the plaintiff as agreed.

The plaintiff produced a copy of the sale agreement, a receipt indicating that she had paid fees for the meeting of the Land Control Board, a copy of the certificate of the official search dated 13/7/12 indicating that Mr. Mwangi Kamau the defendant herein is the proprietor of the subject land, and a demand letter dated 4/8/2012.

The defendant was served with the plaint and summons to enter appearance but neither filed appearance nor defence hence the matter was listed for formal proof.

I have considered the pleadings, witness statement and the testimony of the plaintiff and do find that there was a valid contract between the plaintiff and the defendant. The plaintiff performed her obligation by paying the consideration as required in law, however the defendant breached the express terms of the contract by failing to transfer 0.6 acres to the plaintiff and therefore I do enter judgment for the plaintiff in terms of prayers (a) and (b) of the plaint. For avoidance of doubt the defendant is ordered to either refund the plaintiff the money paid as deposit plus interest as per the agreement, or a transfer of 0.6 acres out of land parcel No Loc.2/Kangari/1346. Orders accordingly.

Dated and Delivered at Nyeri this 14th day of June 2013

A. OMBWAYO

JUDGE

