



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC. CASE NO. 425 OF 2009

**WAMBUA MWANGANGI .....PLAINTIFF**

**VERSUS**

**SAMUEL KAMUNYE GICHIGI .....DEFENDANT**

**JUDGMENT**

The Plaintiff filed suit vide his plaint dated 6/8/09 in which he prayed for judgment against the Defendant be entered for:-

- a. Plot No. 2.0 on L. R. NO. 209/10969 or alternative plot on LR No. 209/10969.
- b. General damages
- c. Costs of this suit.

The Plaintiff and the Defendant entered into a Sale Agreement dated 23<sup>rd</sup> August 2007 in which the Defendant agreed to sell plot No. 2.0 within L.R. NO. 209/10969 to the Plaintiff. It was indicated in the Sale Agreement that the current registered owner of L.R. No. 209/10969 was Vision Dominion Investment Limited and that the Defendant was the “beneficial owner” thereof. The full purchase price was cited as Ksh. 600,000/- which was acknowledged as having already been paid by the Plaintiff to the Defendant. It was a condition of the said Sale Agreement that the completion date was ninety (90) days from the date of signing or the date the title would issue upon subdivision of L.R. NO. 209/10969.

However, since the purchase of the parcel, the Defendant never issued the Plaintiff the title to the said parcel. On or about May 2009, the Plaintiff commenced construction on the said plot but he was informed by the Defendant that the said plot belonged to another person who had already been issued with title. When the Plaintiff approached the Defendant and inquired as to why he had sold the said plot to another person and issued him with title, the Defendant admitted that the same was disposed off by mistake and he was ready to give him another plot on the same L. R. No. 209/10969. The Defendant subsequently failed to give the Plaintiff the alternative plot of land, hence this suit.

The Defendant having been served with summons to enter appearance failed to enter appearance or file a defence resulting in interlocutory judgment being entered against him on 18/9/11 and the matter proceeded for formal proof.

The Plaintiff has established that he and the Defendant entered into a Sale Agreement for the purchase of Plot No. 2.0 on L.R. NO. 209/10969. He has also proved that he paid the Defendant the full purchase price thereof of Ksh. 600,000/-. He has established that the said plot was sold to someone else and that though the Defendant promised him an alternative plot within L.R. NO. 209/10969, this promise was not fulfilled.

Interesting to note is that the Plaintiff does not in his prayers, request for a refund of the purchase price of Ksh. 600,000/-. He instead seeks an order of specific performance compelling the Defendant to transfer to him the said plot No. 2.0 on L.R. NO. 209/10969 or an alternative plot therein.

This court declines to award the sought after order of specific performance for the reasons that the registered proprietor of L.R. No. 209/10969 is not the Defendant but a company known as Vision Dominion Investment Limited. No evidence has been adduced to show that the subject plot was transferred by the said company to the Defendant. As far as I can tell, the Defendant appears to have been a mere broker mediating in the sale of the plots on L.R. NO. 209/10969. To that extent therefore, this court declines to grant the order of specific performance.

On the request for general damages, it has been held on numerous occasions that there can be no general damages for breach of contract see *Jospeh Ongad v. Ebby Kangisha Karai (Personal Representative of Ephraim Karai, deceased) C.A. No. 239 of 1997.*

The Plaintiff did not pray for a refund of the purchase price of Ksh. 600,000/-. That is the remedy most suited to him but as he did not see it fit to request for it, this court cannot award the same.

Accordingly, this court dismisses the suit with no award as to costs.

**SIGNED AND DELIVERED AT NAIROBI ON THE 14<sup>TH</sup>**

**DAY OF JUNE 2013.**

**MARY M. GITUMBI**

**JUDGE**