

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC NO. 405 OF 2010

NAHASHON

MACHARIA.....PLAINTIFF

V E R S U S

CHARLES SHIKANGADEFENDANT

J U D G M E N T

Interlocutory judgment was entered against the Defendant on 23rd September 2010 when he failed to enter appearance or file defence. The matter proceeded by way of formal proof and therefore the evidence of the Plaintiff was not controverted.

The Defendant was allocated (Exhibit 3) plot cornership No. Cs – 55 in Umoja I/Umoja Inner core, measuring about 0.035 Hectares by the City Council of Nairobi which on 18th July 2008 he sold to the Plaintiff for KShs. 1,300,000/= vide a Sale Agreement (Exhibits 1, 5 and 6) which they signed and were witnessed. The Plaintiff has so far paid KShs. 610,000/= and has the balance of KShs. 690,000/= deposited with his advocate ready to be passed on to the Defendant when the plot is registered in his name. The transaction was to be completed 90 days from 30th November 2009 but the Defendants did honour his part of the bargain.

It was Defendant's responsibility to pay outstanding rates to the Council. He did not and so the Plaintiff paid. The Plaintiff paid a further KShs. 50,000/= to the Defendant so that he could go and process the lease document.

The suit was filed for specific performance of the Agreement plus costs and interest. I find the Plaintiff has performed his contractual obligation and is ready and willing to pay the balance of the purchase price but that the Defendant has not fulfilled his part. An order of specific performance hereby issued against the Defendant to transfer all that parcel of land known as No. CS-55 in Umoja 1/Umoja Innercore upon the deposit of the balance of KShs. 690,000/= into court by the Plaintiff for onward transmission to him upon the transfer. If the transfer is not effected in 21 days following the deposit the City Council and the Deputy Registrar of this court will sign all the necessary papers to effect the order. Costs shall be paid by the Defendant.

DATED, PRONOUNCED AND DELIVERED AT NAIROBI THIS 24TH DAY OF MARCH 2011

A. O. MUCHELULE

J U D G E