



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Civil Case 76 of 1991**

LOISE NDUMBA M'MURUNGI PLAINTIFF

VERSUS

JOSEPH MURUGU KIRAITHA DEFENDANT

JUDGMENT

The plaintiff filed this claim against the defendant seeking an order for specific performance of an agreement entered between her and the defendant for the sale of 4 acres from land parcel number *Ntumburi/382*. The plaintiff also sought for orders that the defendant would give her quiet possession of the 4 acres. Finally she prayed that the Executive Officer of this court be authorized to sign all the documents necessary to put into effect the transfer. The defendant filed a short defence to that claim simply denying the contents of the plaint and putting the plaintiff to strict proof. The case was fixed for hearing on 28th April 2010. Due to number of cases that were before me on that day, when it reached 3.10pm, I adjourned the same to 29th April 2010 for hearing and indicated that since the defendant had not attended the hearing on 28th April 2010 despite being served, the plaintiff did not need to serve the defendant for the hearing on 29th April 2010. The case was eventually heard on 29th April 2010 in the absence of the defendant. The plaintiff stated that she entered into an agreement with the defendant to buy from him 4 acres from the suit property. The suit property, she stated, was in total 12.70 acres. It was agreed that she would pay Kshs. 26,000/= for the 4 acres. She tendered in evidence an agreement which acknowledged that she paid to the defendant Kshs. 13,000/= on 5th April 1990. That agreement provided that she could make use of 2 acres until when the final transfer of the 4 acres is made and she would then pay the balance of the purchase price, Kshs. 13,000/=. She also exhibited a letter written by the defendant to the District Adduction Officer Meru District authorizing the adjudication officer to subdivide the suit property and to excise 4 acres to be registered in the name of the plaintiff. The plaintiff in her evidence stated that when she attempted to take possession as per the agreement, the defendant chased her away and when she consulted the defendant about the transaction, the defendant responded by saying that she had not bought any land from him. She therefore prayed for judgment as prayed in the plaint. The evidence of the plaintiff was uncontroverted. That being the case, the plaintiff has on a balance of probability proved that she paid to the defendant Kshs. 13,000/= out of the total purchase price. The agreement authorized her to make use of the 2 acres of the suit property. In my view, the money paid by the plaintiff to the defendant only entitles the plaintiff to acquire 2 acres out of the suit property. In her own evidence she stated that todate she has not paid the balance of the purchase price, Kshs. 13,000/=. For that reason, the judgment of this court is as follows:-

1. ***That the defendant is ordered to transfer to the plaintiff 2 acres of parcel number Ntumburi/382.***

2. *If the defendant does not transfer the said land, leave is hereby granted for the deputy registrar of this court to execute all documents necessary to transfer 2 acres of parcel number Ntumburi/382 to the plaintiff.*
3. *An order is hereby issued of injunction restraining the defendant from interfering with the plaintiff's quiet possession of the said 2 acres.*
4. *The plaintiff is awarded costs of this suit.*

Dated and delivered at Meru this 4th day of June 2010.

MARY KASANGO
JUDGE