

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Environmental & Land Case 110 of 2009

JOHN KARUGA WAHINYAPLAINTIFF

V E R S U S

VIOLET WANJA GATEIDEFENDANT

R U L I N G

In the motion under **Order 35 rules 1 and 2** and **Order 12 rule 6 of the Civil Procedure Rules** the Plaintiff sought summary judgment and/or judgment on admission against the Defendant. The Plaintiff's case is as follows. The Defendant is the registered proprietor of L.R. 170/36 Redhill, (Original No. 170/21/8 Kiambu) as shown in the attached copy of the Indenture of a Conveyance marked "JWK1". On 28th February, 2008 the Plaintiff entered an agreement with the Defendant to buy 5 acres of the land at the price of KShs. 8 million. A deposit of KShs. 5 million was paid. JKW2 (a) and (b)" refer. The Defendant failed to proceed with the transaction. The Plaintiff found out later that at the time of the agreement the title was mortgaged to Barclays Bank. This had not been disclosed to him. On 23rd January, 2009 ("JK3") the Plaintiff wrote to the Defendant to proceed with the sale or make refund. There was no action on the part of the Defendant. The suit was filed.

The Defendant agrees she was party to the transaction, being the registered owner of the parcel, and received KShs. 5 million of the agreed KShs. 8 million. She stated that she disclosed to the Plaintiff that the title was charged to the bank and that the understanding was that the KShs. 8 million was to go to the bank to enable the title to be discharged for the transaction to proceed. When the Plaintiff did not pay the balance of KShs. 3 million to be passed to the bank the title could not be released.

The Defendant asked that the court grants specific performance or, alternatively, allows her to look for another buyer and then subsequently refunds the said KShs. 5 million. She otherwise asked that the suit be dismissed with costs.

The Plaintiff sought the refund of the KShs. 5 million. He did not seek specific performance. There was no counterclaim for specific performance. Instead the Defendant was not averse to being allowed time to get another buyer to pay for the land to be able to refund the said KShs. 5 million. It is clear that the claim is substantially admitted. The Defendant admits she received KShs. 5 million in the transaction that has essentially failed as according to her the Plaintiff did not complete it by paying the balance of the decretal sum. According to the Plaintiff, it was not disclosed the title was charged and therefore the Defendant could not legally complete the transaction. I find that, under **Order 12 rule 6**, the whole of the claim by the Plaintiff is admitted by the Defendant in her pleading. The application is allowed with costs. Judgment is entered for the

Plaintiff against her in the sum of KShs. 5 million with interest at court rates from 28th February, 2008 to the date of full payment. Costs shall follow the event.

DATED AND DELIVERED AT NAIROBI

THIS 29TH DAY OF SEPTEMBER 2010

A. O. MUCHELULE

J U D G E