



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE

CIVIL CASE NO. 114 OF 2007

TOM PETER MACHESO WANJALA.....PLAINTIFF
VERSUS
EVERLYNE WANGIA.....DEFENDANT

JUDGMENT

This suit was filed on 13th July, 2007 the plaintiff is seeking for an order of eviction against the defendant her agents, or servants occupying 1 acre a portion of LR Bungoma/Kabisi/539 pursuant to an agreement dated 22nd December, 2000 which the plaintiff seeks to be declared null and void for lack of the necessary land control board consents. The Summons to Enter Appearance were served upon the defendant who entered appearance in person filed a defence and counter claim on 31st August, 2007. Counsel for the plaintiff filed a list of issues and documents being the sale agreement between the plaintiff and the defendant.

The defendant was served with a hearing notice as per the affidavit of service filed on 13th October, 2010. The defendant did not attend court thus no evidence was tendered in regard to the counter claim which is hereby dismissed with costs to the plaintiff. The plaintiff gave evidence in support of his case he testified that on or about 22nd December, 2000 he entered into an agreement with the defendant to sell a portion of his property known as Bungoma/Kabisi/539 at an agreed price of Ksh. 155,000/= the defendant paid a sum of 135,000/= leaving a balance of Ksh. 20,000 which the defendant has failed and neglected to pay. The plaintiff did not obtain the consent of the land control board due to the plaintiff's failure to complete the purchase price thus the transaction became null and void after 6 months. The plaintiff urged the court to grant the orders prayed in the plaint with costs. The plaintiff's claim is not controverted he produced the sale agreement to support his claim that the defendant was unable to complete the purchase price as per the agreement. There was also no consent from the land control board for the subdivision and transfer of the property sold which lapsed after six months since the agreement was entered into. The plaintiff has been able to prove his case on a balance of probability.

Accordingly, judgment is entered for the plaintiff as prayed in the plaint. The plaintiff shall also have the costs of this suit.

JUDGMENT READ AND SIGNED THIS 29TH DAY OF OCTOBER, 2010

MARTHA KOOME
JUDGE