



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 2320 of 2007**

**LYDIA WANJIRU KAGIRI ..... PLAINTIFF**

**VERSUS**

**FRANCIS WAITHAKA KIRIU ..... 1<sup>ST</sup> DEFENDANT**

**TERESIA WAITHIRA KIRIU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**SUMMARY JUDGMENT**

I: Background

1. This suit concerns land LR Komothai/Kibichoi 702. A sale agreement was entered into with the defendant. It was not completed because the defendant only made partial payment. He nonetheless took possession of the said land.

2. The plaintiff herein filed this suit on 29 November 2007 seeking the eviction of the defendant or alternatively the specific performance of the agreement.

3. An application dated 29.11.07 sought injunctive orders from the defendant restraining him from remaining on the land. This was actually a mandatory injunction not available in Kenya save for special circumstances.

4. Nonetheless the said parties appeared for the inter parties hearing on 18.12.07. Both opted to enter into consent that:-

“Defendant [be] allowed to pay balance of purchase price for land parcel Komothai/Kibichoi/702 for Ksh.856,500/- within 6 months and there after a transfer be made.”

5. The defendant defaulted in the payment of the purchase sum. The defendant stated that he has now a cheque. This cheque was post dated and as such no funds was available to the plaintiff. The six months has since expired.

6. The defendant claim the plaintiff failed to obtain Land Control Board consent.

II: Held

7. That the defendants admits entering into the consent, admits that he defaulted in payment of the

balance of the funds. He now wants 7 more days to pay sum referred.

8. This court hereby grants the application for summary judgment. That the defendant herein having failed to purchase

LR Komothai/Kibichoi/702 measuring 23 acres from Ksh.1.800,000/-.

9. And having failed to meet the conditions of the sale agreement to pay the balance of the purchase price on or before 18.6.08 being 6 months from the date of the consent (18.12.07). Having failed to comply with the Law society of Kenya Terms and Conditions of sale. Judgment be and is hereby entered in favour of the plaintiff and against the 1 and 2 defendants.

10 That the two defendants do give vacant possession of land. The sums paid towards the deposit of the purchase of land is forfeited according to the Law Society Agreement Terms.

11. The plaintiff/applicant will have the costs of this suit.

DATED THIS 1<sup>ST</sup> DAY OF JULY 2008 AT NAIROBI.

**M.A. ANG'AWA**

**JUDGE**

A.O. Seneti instructed by Seneti & Co. Advocates for the plaintiff

B.W. Gatheru instructed by B.W. Gatheru & Co. Advocates for the defendant.