



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

**Civil Case 1342 of 2005**

**ESTHER KATILE MUTISO.....  
.....PLAINTIFF**

**VERSUS**

**AGNES SILANTOI SHONKO.....DEFENDANT**

**JUDGMENT**

By a Sale Agreement dated 29<sup>th</sup> November 2002, the defendants offered and the plaintiff agreed to purchase land parcel No. KAJIADO/KITENGELA/9988 jointly owned and registered in the names of the Defendants at purchase price of Ksh.220,000/=. The plaintiff paid the defendants and receipt thereof was acknowledged in writing for the full purchase price of Sh.220,000/= for the purchase of the said parcel of land on or about 13<sup>th</sup> February 2003 together with an additional sum of Kshs.10,000/= advanced to assist the defendants to process the transfer of the said parcel of land in favour of the plaintiff. At all material times, it was the agreement and understanding of the parties to the sale dated 29<sup>th</sup> November 2002 that the defendants would transfer land parcel LR NO. KAJIADO/KITENGELA/9988 to the plaintiff and give vacant possession thereof immediately upon payment of the full purchase price, but the defendants deliberately failed and/or refused to honour their contractual obligation to transfer the said parcel of land and give vacant possession thereof to the plaintiff despite their receipt of full payment of the purchase price on 13<sup>th</sup> February 2003.

Despite demands made and notices of intention to sue having been given, the defendants ignored and/or refused to make appropriate amends hence this suit.

The plaintiff filed this suit on 31<sup>st</sup> October 2005 seeking judgment against the defendants jointly and severally for the refund of full purchase price of Sh.230,000/= damages for breach of contract as well as costs of the suit and interest. The defendants were served with summons but failed to enter appearance and file defence. The plaintiff applied for interlocutory judgment which was entered on 15<sup>th</sup> March 2006 and the suit was set down for hearing by way of formal proof.

The plaintiff in her evidence told the court that she had desirous of purchasing land and she was informed that the defendants had land for sale. She made arrangements to meet the defendants and she was able to do so. The land was identified as L.R. NO. KAJIADO/KITENGELA/9988 which was registered in the names of the defendants. They agreed at the purchase price of Shs.220,000/=. This Sale Agreement was reduced into writing and signed by both the plaintiff and the defendant on 29<sup>th</sup> November 2003. The defendants and the plaintiff appended their signatures to the Sale Agreement as well as their Identical Card numbers respectively. The Sale Agreement was witnessed. Daniel Mutiso Ndivo and Phillip Shoko who also appended their signatures to the Sale Agreement as well as their Identical Card numbers. She paid the defendants the full purchase price plus an extra Shs.10,000/= to assist the defendants process the transfer of the suit land to the plaintiff.

The defendants acknowledged receipt of the full purchase price signing and appending identical card numbers to the agreement. The plaintiff produced in evidence the payment receipts and the acknowledgements of payment by the defendants as Exhibits 1-4. She also produced demand letter dated 29<sup>th</sup> July 2005 as exhibit 5. She urged the court to enter judgment in her favour for Shs.230,000/= plus costs and interest at 20% per annum calculated at Shs.180,000/=. She also sought damages for breach of

contract for Shs.100,000/=. She called one witness PW2 Daniel Mutiso NDIVO who is her father to testify. He told the court that the plaintiff wanted to purchase some land. He got information that the defendant had some land which they intended to sell. He had known the defendants before. They reside at Kitengela where he also resides. She identified the suit land to him which was LR NO. KAJIADO/KITENGELA/9988.

He informed the plaintiff and a meeting was arranged whereby the plaintiff met the defendants and the purchase price was agreed at Sh.220,000. The Sale Agreement was reduced into writing and signed by both the plaintiff and the defendants who signed the same and appended their identical card numbers to the Sale Agreement. He witnessed the Sale Agreement by appending his signature to the Sale Agreement as well as his identical card numbers. He also witnessed all the payments for the purchase of the suit land which were acknowledged by the defendants in his presence by appending their signatures as well as their identical card numbers.

The plaintiff also paid the defendants a further sum of Shs.10,000/= to assist them process the transfer of the suit land to the plaintiff.

The plaintiff had obtained interlocutory judgment. She has formally proved her case as follows:

- (a) A refund of the purchase price of Shs.230,000/= plus interest calculated at Shs.180,000/=
- (b) Damages for breach of contract assessed at Shs.100,000/=

Accordingly there shall judgment for the plaintiff and against the defendants jointly and severally for Shs.510,000/= plus interest and costs of the suit.

Dated and delivered at Nairobi this 27<sup>th</sup> day of July 2006.

**J.L.A. OSIEMO**

**JUDGE**