

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION, MILIMANI
CIVIL CASE NO. 757 OF 2001

TITOVA ZINAIDA NJOGU.....PLAINTIFF
VERSUS
WILSON OLEDEMI OLE MUTUTUA.....DEFENDANT

J U D G E M E N T

The Plaintiff in this suit, TITOVA ZINAIDA NJOGU, has sued the Defendant, WILSON OLEDEMI OLE MUTUTUA, for a refund of Kshs.600,000/00, the same being the purchase price paid for one acre of land to be excised from land parcel L.R. NGONG/NGONG/11052, and which land the Defendant has refused or neglected to transfer to her. In his statement of defence the Defendant does not deny the sale, or that he received the consideration of Kshs.600,000/00. Instead he pleads a family dispute involving the entire ancestral land of which the land sold is part.

The Defendant did not attend court at the hearing, though his advocate was present. The Plaintiff testified and was cross-examined by the Defendant's counsel. She produced a copy of the sale agreement (Exhibit P2), having lost the original. As evidence of loss of the original she produced a police abstract (Exhibit P1). Receipt of the full purchase price of Kshs.600,000/00 is acknowledged by the Defendant in the sale agreement. As already stated, the Defendant does not deny the sale or receipt of the consideration in his statement of defence.

The available evidence clearly shows that there has been a total failure of consideration on the Defendant's part, in that, despite being paid the full purchase price, he has failed to transfer the property sold unto the Plaintiff. There is no justification for him to continue keeping both the land and the money. I will in the circumstances enter judgment for the Plaintiff in the sum of Kshs.600,000/00 plus costs and interest at court rates from the date of filing suit until payment in full. Order accordingly.

DATED, SIGNED AND DELIVERED IN OPEN COURT

THIS.....DAY OF JANUARY 2005.

H.P.G. WAWERU

JUDGE