



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT BUSIA**

**CASE NO. 8 OF 2017**

**ROBERT OSIKE AGERI .....PLAINTIFF**

**VERSUS**

**KENNETH MULONGO OJWANG.....DEFENDANT**

**J U D G E M E N T**

1. Robert Osike sued Kenneth Mulongo Ojwang vide his plaint dated 17<sup>th</sup> January 2017 for failing to sign transfer documents in respect of a parcel of land sold to him. The plaintiff's claim is for an order compelling the defendant to sign the documents and or the deputy registrar of the honourable Court to sign the transfer documents on behalf of the defendant. He also prayed for costs of the suit.
2. The defendant filed a statement of defence on 23<sup>rd</sup> February 2017 denying selling a portion of L.R. No. Marachi/Kingadole/1249 to the plaintiff. He also denied signing the mutation forms. He admitted that he has refused to sign the transfer forms because the plaintiff frustrated the agreement. The defendant urged the Court to dismiss the suit with costs.
3. The plaintiff gave evidence on 22/10/2019. He stated that he comes from Ikonzo within Butala sub-county. He stated that the defendant sold him 1 acre of land that was to be curved out of L.R. No. Marachi/Kingandole/1249. The agreement was reduced into writing and signed on 3<sup>rd</sup> May 2016 which agreement he produced as **Pex 1**. That he paid Kshs.300,000 leaving a balance of kshs.50,000 payable in two months.
4. The witness continued that when he was ready to pay the balance, the defendant asked him to wait. Later he received a letter saying that the money he paid was forwarded to the advocate for his collection but when he went to pick the same, he found no money. He produced the documents in his list as **Pex 1 – 6**. He wants the Court to order that he be refunded his money together with costs and interests.
5. In cross-examination, the plaintiff said the defendant had refused to go pick his money. That if the defendant cannot give him the land sold he should refund monies paid to him. That they had not attended Land Control Board meeting for transferring the land to him. He was asking for more than Kshs.300,000 because he paid the surveyor and expended an additional Kshs.100,000. This marked the close of the plaintiffs' case.
6. The defendant also testified on 22/10/2019. He lives in Ivanda and is doing farming. He stated that he knew the plaintiff having sold to him a portion of land. That the plaintiff did not pay the balance of Kshs.50,000 as agreed. That he attempted to refund the plaintiff his money which the plaintiff refused to take saying he wanted the land sold. In cross-examination, the defendant admitted signing the sale agreement and receiving the sum of Kshs.300,000. He said he asked for the balance although he had no evidence of such demand. That he refused to sign the transfer forms because he was not paid the balance. That the money is with his advocate. In re-examination, the defendant maintained it is the plaintiff who breached the agreement.
7. I have considered the evidence tendered and the submissions rendered. It is not disputed that the plaintiff and the defendant entered into an agreement of sale of one (1) acre portion of land comprised in title number L.R. No. Marachi/Kingadole/1249. The agreement executed on 3<sup>rd</sup> May 2016 in clause 5 stated thus;

**“That the seller shall sign all relevant transfer documents and attend the Control Board for consent to facilitate transfer of purchased land to the buyer herein.**

**Clause b; upon breach of this agreement by either party the aggrieved party is at liberty to move to court for redress”**

8. The agreement exhibited shows the defendant without any conditions undertook to sign documents to transfer the sold portion to the plaintiff. It also allowed any aggrieved party to come to court for redress. The plaintiff presented a mutation form dated 14/4/2016 and a letter of consent to sub divide the suit land also dated 14/4/2016. The mutation showed the proposed new numbers which gives L.R. No. 2796 measuring 0.4Ha and 2795 measuring 0.65Ha. The defendant conceded that he had refused to sign the transfer documents albeit for

non-payment of his balance.

9. Although the defendant stated that he had forwarded the monies he received with his advocate, he never exhibited evidence of such nor a confirmation from the said advocate that he was holding the money. He also did not produce any letter demanding for the balance of Kshs.50,000 to counter the plaintiff's evidence that it is the defendant who was in breach of their agreement. Further in cross-examination, the defendant expressed his unwillingness to execute the transfer documents.

10. The courts do not rewrite contracts for parties. The defendant having willingly sold his land to the plaintiff has failed to offer any justification why he should not perform his part of the contract. He could not demand for the balance before signing when the agreement did not provide for that. In any event the evidence given is that he is the one who refused to receive the balance. For this reason I am persuaded to find that the plaintiff has proved his case on a balance of probabilities.

11. Accordingly I enter judgement for the plaintiff as follows;

(a) The defendant shall within 30 days of this judgment provide necessary papers and execute all documents requisite to enable the plaintiff acquire title for the one (1) acre of land sold curved out of title No. Marachi/Kingadole/1249.

(b) In default to comply with (a) above, the Deputy Registrar of this court to execute the documents on behalf of the defendant in execution of this decree.

(c) To ensure that order (b) is implementable, the county Land Registrar, Busia to process the title documents for the one (1) acre sold whether the original title for Marachi/Kingadole/1249 is availed or not.

(d) The plaintiff to meet the costs of such transfer and registration for the one (1) acre portion.

(e) Costs of this suit is awarded to the plaintiff.

**Dated, signed & Delivered at BUSIA this 29<sup>th</sup> day of April, 2020.**

**A.OMOLLO**

**JUDGE**