



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAKAMEGA**

**ELC CASE NO. 58 OF 2013**

**GRACE AFWANDI LUGAL.....PLAINTIFF**

**VERSUS**

**MR. ISAAC LUREKHO MICHKA.....DEFENDANT**

**JUDGEMENT**

The plaintiff claim against the defendant is an eviction order against the defendant from land parcel No. Kakamega/Lwandeti/659 a plot measuring 60 x 60 ft with the developments therein, general damages, costs and interest. The plaintiff states that it was on 19<sup>th</sup> November 2000 when she sold a piece of plot measuring 60 x 60 ft. square including a semi-permanent house, toilet and fence wire out of Kakamega/Lwandeti/659 at a price of Ksh. 42,500/= and the defendant was to take up ownership of the portion with the developments therein. That the defendant paid an initial deposit of kshs. 15,000/= leaving with him a balance of Ksh. 27,500/= and was take possession of payment of the same before the expiry of the month of February 2001. The defendant has illegally entered the plot and occupied the house without the consent of the plaintiff. Despite the demand drawn and served to the defendant who have ignored or denied to behave well making the necessity of this action. The plaintiff is requesting for judgment to be entered against the defendant for:-

- (a) Eviction order.
- (b) General damages for breach of agreement.
- (c) Costs of the suit.
- (d) Interest.
- (e) And any other relief the Court may deem just and fit to grant.

DW1 the defendant testified that he bought the plot Kakamega/Lwandeti/659 a plot measuring 60 x 60 ft from the plaintiff at a price of Ksh. 42,500/= and the defendant was to take up ownership of the portion with the developments therein. That the defendant paid an initial deposit of Kshs.15,000/= leaving with him a balance of Ksh. 27,500/=. The plaintiff never returned for the balance and before the Chief, it was agreed he would pay the balance with interest but the plaintiff later refused. DW2 the said Chief at the material time confirmed that the litigants went before him on the 13<sup>th</sup> June 2011 and agreed that the defendant would pay the balance with interest in two installments (DEx 2,3&4 are the agreements). She later refused to take the money. DW3 a witness to the sale agreement corroborated the defendant's case.

This court has carefully considered the evidence and submissions therein. The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows:

*“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”*

Section 26 (1) of the Land Registration Act states as follows:

*“The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except –*

- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or

b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

The law is clear that, the Certificate of Title issued by the Registrar upon registration shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner and the title of that proprietor shall not be subject to challenge except – On the ground of fraud or misrepresentation to which the person is proved to be a party; or Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

This court in considering this matter referred to the case of Elijah Makeri Nyangw’ra –vs- Stephen Mungai Njuguna & Another (2013) eKLR where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. The Judge in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows:-

*“-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.”*

It is a finding of fact the plaintiff and two others are the registered proprietors of L.R No. Kakamega/Lwandeti/659. The plaintiff stated that she is a co proprietor of L.R No. Kakamega/Lwandeti/659 having had part of the plot distributed to her vide Kakamega High Court Succession No 24 of 2010 with her specific share being the 60 x 60 ft being occupied by the defendant. It is not in dispute that the defendant testified that he bought the plot from land parcel No. Kakamega/Lwandeti/659 measuring 60 x 60 ft from the plaintiff for at a price of Ksh. 42,500/= and the defendant was to take up ownership of the portion with the developments therein. It is also not in dispute that the defendant paid an initial deposit of kshs.15,000/= leaving a balance of Ksh. 27,500/=. DW2 the said Chief at the material time confirmed that the litigants went before him on the 13<sup>th</sup> June 2011 and agreed that the defendant would pay the balance with interest in two installments (DEx 2,3&4 are the agreements). She later refused to take the money. I find that it is the plaintiff who frustrated the sale agreement and not the defendant. The plaintiff changed her mind about the sale and now seeks an eviction order. In her original plaint dated 21<sup>st</sup> February 2013 she sought an alternative of payment of the plot at the current market price of kshs 350,000/= then amended her plaint on the 31<sup>st</sup> October 2017 to seek eviction only. I find that the plaintiff has failed to prove her case on a balance of probabilities and I dismiss it costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 24<sup>TH</sup> DAY OF JUNE 2020.**

**N.A. MATHEKA**

**JUDGE**