

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

IN THE HIGH COURT AT NYERI

ENVIRONMENT & LAND CASE NO. 146 OF 2013

SIMON MUTURI WAHOME.....PLAINTIFF

VS

STANLEY MAINA NGURE.....DEFENDANT

JUDGMENT

The plaintiffs claim is that at all material times relevant to the suit the defendant was the registered owner of land parcel *No. Nyeri/Waraza/1922* measuring 5 acres or thereabout which has since been subdivided into two portions of 3 acres and 2 acres being parcel No. *Nyeri/Waraza/2069* and *Nyeri/Waraza/2070*. On or around the 30th day of September 2009 the plaintiff and the defendant entered into a written sale agreement where the plaintiff was buying and the defendant was selling 2 acres out of his entitlement in Land Parcel No. NYERI/WARAZA/199 at an agreed price of Ksh.320,000/= (three hundred and twenty thousand only).

On the material day the defendant received Ksh.35,000/- (thirty five thousand only) in addition to Ksh.235,000/- (two hundred and thirty five thousand) which he had received earlier and acknowledged receipt of the total amount of Ksh. 270,000/= (two hundred and seventy thousand only) upon execution of the agreement dated 30th September 2009. The defendant has further received from the plaintiff Ksh30,000/= (thirty thousand only leaving a balance of Ksh. 20,000/= (twenty thousand only) The plaintiff took possession of the 2 acre of land which had already been surveyed immediately upon execution of the agreement and has remained there to date and has extensively developed the land.

That the original land which was a subject matter in Nyeri Succession cause No. 797 of 2009 in the estate of plaintiff's deceased father was shared among beneficiaries and the defendant got his share of the land measuring 5 acres or thereabout which Land Parcel No. *Nyeri/Waraza/1922*. On or around the 14th day of June 2012 the 1st defendant obtained land control board consent for subdivision of the aforesaid parcel of land into two portions of 2 acres and 3 acres respectively. The 1st defendant has refused to apply for Land Control Board consent for transfer of 2 acres to the plaintiff and execute transfer documents in favour of the plaintiff for parcel No. *Nyeri/Waraza/2070*.

The plaintiff's claim against the defendant is for transfer of 2 acres in Land Parcel No. NYERI/WARAZA/2070 or in the alternative refund of the amount already paid as purchase price and 20% per annum of the same as damages for breach plus the value of the developments on the ground. The plaintiff avers that he is ready and willing to pay the balance of the purchase price which now stands at Ksh.20,000/= (twenty thousand only) upon the defendant obtaining Land Control Board consent for transfer.

The defendant herein was served with summons to enter appearance and a plaint and having failed to enter appearance or file defence within the stipulated period by law. Interlocutory judgment was entered against the defendant and case fixed for formal proof.

The plaintiff's case was that he had an agreement with the defendant where the plaintiff was buying and defendant was selling land registration No. *NYERI/WARAZA/1922* measuring 5 acres which has been divided in land parcel Nos 2069 and 2070.

The agreement was signed by the plaintiff and defendant and witnessed by Charles Murangu and Amos Mwangi Muturi and Lucy W. Hungi for the plaintiff. For the seller defendant herein, It was signed by Samuel Ngunyi and Charles Murage and Purigy Nyawira Maina and others. The plaintiff paid the consideration of Kshs. 370,000/-

I have considered the evidence on record and do find that this suit succeeds only on the alternative prayer of refund of the amount already paid as purchase price and 20% per annum of the same as damages for breach plus the value of the developments on the ground.

DATED AND SIGNED AT ELDORET THISDAY OF..... 2015

OMBWAYO ANTONY

JUDGE

DELIVERED AND SIGNED AT NYERI THIS 3RD DAY OF FEBRUARY ,2015

LUCY WAITHAKA

JUDGE