

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO.138 OF 2014

FRANCIS CHIRI NJOGU PLAINTIFF

VERSUS

GRACE WANJIKU CHEGE DEFENDANT

JUDGMENT

INTRODUCTION

1. The plaintiff brought this suit against the defendant seeking an order of specific performance ordering the defendant to execute all relevant document to facilitate the transfer of plot No. KaPomboi SFT 574/175 measuring approximately 5 acres failing which the Deputy Registrar of this court be authorized to sign the documents on her behalf. The defendant who was duly served with summons to enter appearance neither entered appearance nor filed defence. The hearing proceeded by way of formal proof.

PLAINTIFF'S CASE

2. The plaiting testified that on 28.6.1989 he entered into a sale agreement with the defendant in which the defendant agreed to sell her plot no.175 at Kapomboi settlement Scheme for Kshs.58,700/=. The plaintiff paid 45,000/= on execution of the agreement and was put in possession. The plot was 5 acres. The balance of the purchase price was to be paid on or before 15.12.1989. The defendant went away promising that she was to come back and collect the balance in vain. He wrote letters addressed to the defendant through the postal address given but there was no response.

3. The plaintiff thereafter decided to offset the loan account in the name of the defendant. He cleared the loan but the defendant has refused to come and transfer the land to him.

ANALYSIS OF EVIDENCE

4. The plaintiff produced a copy of the agreement for sale as exhibit 1. According to this agreement the purchase price was Kshs.58,700/=. The plaintiff paid Kshs.45,000 on 23.6.1989 the date the agreement was signed. The balance was to be paid on or before 15.12.1989. The plaintiff produced four receipts dated 20.1.2004, 23.11.2006, 3.1.2007 and 18.8.2014 for Kshs.7,000/=, 2000/=, 9,900/= and 16,100/= respectively. The total amount paid is Kshs.35,000/=. All the payments were made by the plaintiff on behalf of the defendant. The payment were infact far in excess of the balance owed to the defendant.

DETERMNATION

5. The plaintiff's evidence is not controverted. I find the same credible. The plaintiff has proved his case against the defendant as required. I therefore enter judgement for him against the defendant for an order of specific performance directing the defendant to sign all transfer documents in favour of the plaintiff in respect of plot No.574/175 Kapomboi Settlement Scheme . If the defendant fails to do so, the Deputy Registrar of this court is hereby authorized to sign all documents on behalf of the defendant. The plaintiff shall have costs of this suit.

Dated, Signed and delivered at Kitale on this 6th day of May 2015.

Court

Judgment delivered at 9.42 a.m in the absence of plaintiff who was aware of today's date. Court Clerk - Isabellah.

E. OBAGA

JUDGE

6.5.2015