



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**ENVIRONMENT AND LAND CASE NO. 20 OF 2013**

**ISAAC KATIBA .....PLAINTIFF**

**VERSUS**

**PETER W. MULATI.....1<sup>ST</sup> DEFENDANT**

**JACOB LOLO.....2<sup>ND</sup> DEFENDANT**

**MARY N. MULUKULU.....3<sup>RD</sup> DEFENDANT**

**JUDGEMENT**

The plaintiff's claim against the defendants is an order of eviction evicting the defendants their agents and the defendants herein. He prays that they be prevented from encroaching and interfering with the plaintiff's land parcel No. Kimilili/Kimilili/2311 and costs of the suit.

The Plaintiff gave evidence that he sold a portion of 50' x 100' to the 1<sup>st</sup> defendant for an agreed fees of Kshs.100,000.00. He states that he was paid the entire amount. He states that the 2<sup>nd</sup> defendant lives on the said plot and has developed the same. He states that he sold the second plot to the second defendant for Kshs.65,000.00. He states that he was paid Kshs.50,000.00 and that he had not paid Kshs.15,000.00.

He states that he sold to the 3<sup>rd</sup> defendant a portion of 50' x 100' for Kshs.120,000.00 which she paid up in full. He states that the balance of Kshs.15,000.00 was paid to him at Kimilili Police Station. He however said the police only gave him Kshs.9,000.00 out of the balance of Kshs.15,000.00 leaving out the balance of Kshs.6,000.00

He avers that the defendants went to the police and alleged that he had obtained that money falsely as a result of which he was kept in the police cells for 3 days.

He argues that the defendants should be evicted from his land. He states that the 1<sup>st</sup> defendant should be evicted from his land. He states that the 1<sup>st</sup> defendant has made/turned his shop into a bar where they are selling changa'a. He states that he had initially wanted to transfer the land to the defendants. That because of their actions his family members have decided that the defendants must leave.

The defendants in this case denied that they have disrespected the plaintiff. They denied that they have done anything wrong against the plaintiff. They agreed that they had purchased their respective plots from the plaintiff and paid full purchase price.

That their only mistake was to ask that he transfers the respective portions to them since they have paid the full purchase price and had been put into possession and has since developed their respective plots. They asked for the plaintiff's suit to be dismissed with costs. The plaintiff admits he was paid the entire purchase price by the defendants. He also admits that he sub divided his plots and put the defendants into full occupation in their respective plots. From his own admission the defendants have developed their plots. It cannot be said that the defendants are trespassers and/or entered the plaintiff's land illegally. They have every right to be there. The plaintiffs must complete his part of the contract and transfer those plots to the defendants. The defendants cannot be denied their rights on the allegation that they do not respect the plaintiff. For the sale to be completed they do not have to respect him. Respect is earned and

it is not a right. It cannot be made a precondition for the transfer of the plots to the defendants.

The plaintiff's claim herein is frivolous. It lacks in merit and it is hereby dismissed with costs to the defendants.

**DATED at BUNGOMA this 10th day of June, 2015**

**S. MUKUNYA - JUDGE**