



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 43 OF 2014

KENNEDY SIMIYU WEKESA PLAINTIFF

VERSUS

ANNA NANJALA MUKHEBI DEFENDANT

JUDGEMENT

INTRODUCTION

1. The Plaintiff brought this suit against the defendant seeking among other orders specific performance. The defendant who was duly served with summons to enter appearance neither entered appearance nor filed defence. The plaintiff proceeded by way of formal proof.

PLAINTIFF'S CASE

2. The plaintiff testified that on 31/8/2004, he entered into a sale agreement with the defendant in which the defendant sold to him 0.2 of an acre at a consideration of Kshs.52,000/= . The plaintiff paid the entire purchase price but the defendant has refused to transfer the said land to him.
3. The 0.2 of an acre was to be excised from LR NO. Trans-Nzoia/Emoru/156 owned by the defendant. The plaintiff had tried to have the land transferred to him through the former Provincial Administration in vain.

ANALYSIS OF EVIDENCE

4. The plaintiff produced a green card (exhibit 3) showing that the defendant is the registered owner of LR NO. Trans-Nzoia/Emoru/156. He also produced a sale agreement (exhibit 1) which shows that he purchased 0.2 of an acre from the defendant. He paid the entire purchase price upon signing of the agreement.
5. The plaintiff had lodged a caution on the title on 2/9/2010 to protect his interests. He produced a copy of the caution as exhibit 2.

THE LAW

6. For one to succeed in a claim for specific performance one has to show that there was a sale agreement between him and the defendant and that the plaintiff had either fully met his obligations under the agreement or that he was willing to fulfill his part of the agreement. In the

present case, the plaintiff has shown that he had an agreement for sale. He paid the entire purchase price on 31/8/2004. He is therefore entitled to an order of specific performance.

DECISION

7. Having found that the plaintiff entered into a sale agreement with the defendant for 0.2 of an acre, he is entitled to the said 0.2 of an acre. An order of specific performance is hereby issued compelling the defendant to sign all documents necessary to ensure that the 0.2 of an acre is transferred to the plaintiff failing which the Deputy Registrar of this court should do so on behalf of the defendant.
8. That plaintiff was categorical that he does not want costs from the defendant. I therefore make no order as to costs.

Dated, signed and delivered at Kitale on this 16th day of July, 2014.

E. OBAGA

JUDGE

In the presence of plaintiff. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

16/07/2014