

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
Civil Case 114 of 2011

DANIEL LUSAMAMBA KHAEMBA.....PLAINTIFF

~VERSUS~

GEOFFREY MULUNDA MUSAMALI.....DEFENDANT

JUDGMENT

The Plaintiff is the registered proprietor of land parcel no. Bungoma/Tongaren/109 measuring 6.6 Hectares. In June/July 2009 he agreed to sell to the Defendant one acre of the parcel for Ksh.320,000/=. It was agreed that the Defendant buys electrical materials and installs power for the Plaintiff and that the cost of these would be applied as part of the purchase price. The cost was Ksh.174,878/=. The sale agreement was subject to the consent of the Land Control Board which was not obtained. The transaction became null and void for all purposes. The Defendant had taken possession of the one acre. The suit was brought for his eviction and for permanent injunction to restrain him from trespassing on the land. With the failed agreement, and in any case the full purchase price was not paid, the orders shall issue as prayed.

The Plaintiff testified that he later found out that the actual cost of supplying electricity was Ksh.44,600/= and not Ksh.174,878/=. That is neither here nor there as there was no defence or counterclaim, and neither did the prayers seek that the money paid be refunded.

Costs of the suit shall be paid by the Defendant.

Dated, signed and delivered at Bungoma 10th day of October, 2012.

A. O. MUCHELULE
JUDGE