



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 184 OF 2015**

**JOSEPH MBAU KURIA**

**PAUL KARIUKI MUTHEMBA** (suing for and on behalf of

**ONE O TWO (102) SELF HELP GROUP).....PLAINTIFF**

**VERSUS**

**MWANZO DEVELOPMENT CO. LIMITED...DEFENDANT**

**JUDGMENT**

1. In the Plaintiff dated 10<sup>th</sup> July, 2014, the Plaintiff alleged that at all material times, the Defendant was the registered proprietor of land known as Mavoko Town Block 3/5057 (*the suit land*); that the Defendant caused the suit land to be sub-divided into several portions and that the Defendant sold to them one of the said portions vide an Agreement of Sale of 2<sup>nd</sup> April, 2012.
2. The Plaintiff has averred that after paying the purchase price, the Defendant offered to refund the said purchase price but the Defendant's cheque was dishonoured; that an order of specific performance should issue and that in the alternative, the Defendant should refund to the Plaintiff Kshs. 930,000 being the all-inclusive sum in lieu of the purchase price. The Plaintiff is also seeking for interest on the said amount at the rate of 20%.
3. The Defendant filed a Defence in which it averred that it refunded to the Plaintiff part of the purchase price amounting to Kshs. 130,000, including what was paid by way of cheque and that the Plaintiff has been re-paid the entire amount.
4. When the matter came up for hearing, the Defendant's representative was not in court. The matter proceeded for hearing in the absence of the Defendant.
5. The Plaintiff's Treasurer, PW1, informed the court that the Plaintiff was registered as a Self Help Group with the Ministry of Gender, Children and Social Development on 2<sup>nd</sup> October, 2008; that in April, 2012, the Plaintiff decided to buy from the Defendant the suit land for Kshs. 950,000 and after paying the Defendant Kshs. 800,000, the Defendant's Director rescinded the Agreement.
6. It was the evidence of PW1 that in addition to the Kshs. 800,000 that the Plaintiff paid to the Defendant, the Plaintiff paid a further sum of Kshs. 180,000 as survey fees and that the Defendant has only managed to refund them Kshs. 50,000.
7. The Plaintiff's advocate submitted that Clause 7 of the Sale Agreement of 2<sup>nd</sup> April, 2012 provided that in the event the Vendor defaults in meeting its obligations, the purchaser was entitled to a refund of the purchase price together with interest and that the Plaintiff is entitled to a refund of the purchase price.
8. The evidence before this court shows that on 2<sup>nd</sup> April, 2012, the Plaintiff entered into an Agreement of Sale of a portion of land known as Mavoko Town Block 3/5057 with the Defendant. According to the Agreement, the purchase price for the said land was Kshs. 950,000 which was to be paid in two instalments.
9. The Agreement provided that the first instalment of Kshs. 800,000 was to be paid on the date of signing the Agreement, with the balance being paid within sixty (60) days and upon obtaining the necessary Land Control Board consent.
10. Although the Defendant was supposed to actualize the transaction by obtaining the consent of the Land Control Board to sub-divide and sell the land, that never happened.
11. The Defendant did not controvert the evidence of PW1 that out of the Kshs. 800,000 that the Plaintiff paid him as the purchase price, the

Defendant only refunded Kshs. 50,000. The Defendant also did not rebutt the Plaintiff's evidence that it was paid Kshs. 180,000 as survey fees, which survey was not conducted.

12. Considering that the Defendant has never obtained the consent of the Land Control Board to sub-divide and sell the suit land, the Defendant should refund to the Plaintiff the sum of Kshs. 930,000. That is what Section 7 of the Land Control Act provides.

13. For those reasons, I allow the Plaintiff's suit as follows:

**a. The Defendant to refund to the Plaintiff a sum of Kshs. 930,000.**

**b. The Defendant to pay interest on the above amount at court rates from the date of filing this suit until payment in full.**

**c. The Defendant to pay the costs of the suit.**

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2019.**

**O.A. ANGOTE**

**JUDGE**