



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CIVIL CASE NO. 1331A OF 2016**

**LYDIA WAMBUI GITAU.....1<sup>ST</sup> PLAINTIFF**

**GITONGA KITHINJI MURIUKI...2<sup>ND</sup> PLAINTIFF**

**=VERSUS=**

**PATRICK KARIMERI THUKU.....DEFENDANT**

**JUDGEMENT**

1. The plaintiffs have filed a suit against the defendant seeking:-

2. It seeks order:-

***(1) Judgment against the defendant for breach of the agreement entered between the parties dated 29<sup>th</sup> October 2010 for an acre of land along Southern By pass road where current market value is between (Kshs. 20,000,000) twenty million and thirty million (Kshs 30,000,000) .***

***(2) In the alternative an order of this honourable court directing the defendant to refund to the plaintiffs the sum of Kshs two million paid to him with cumulative interest at 25% per annum of the deposit money herein from receipt to the time of payment.***

***(3) General damages for breach of the contract including the legal expenses in the criminal case particularly those of the second defendant who is an advocate of this honourable court.***

***(4) Any other relief that this honourble court may deem just and expedient.***

***(5) Costs of this suit.***

3. Upon being served with copies of plaint and summons to enter appearance the defendant entered appearance but neglected to file defence within the prescribed period. The matter proceeded ex parte. PW1 the 1<sup>st</sup> plaintiff Lydiah Wambui Gitau, told the court that the defendant informed her she was selling some piece of land along Mombasa road. They agreed on the purchase price. A sale agreement was executed. The defendant then gave her a copy of the title deed. However, a search at the lands registry showed no results. The defendant was later charged with a criminal offence. She prays that the defendant be compelled to refund the money.

4. PW2 Gitonga Kithinji Muriuki, confirmed what PW1 told the court. That the records in respect of the said parcel could not be traced at the lands registry. He produced the sale agreement as exhibit P1. They paid the defendant a deposit of Kshs 2 million. He produced the copies of cheques as exhibit P2 a and b respectively. A copy of the title deed was produced as exhibit p3. It shows that LR No. 9363/72 was registered in the names of Patrick Thuku Karimeri but the records could not be traced in the lands registry. PW2 also produced a valuation report as exhibit P4. He also prays that the defendant be compelled to refund the price with interest.

5. I have considered the pleadings and the evidence on record. It is not in doubt that the transaction was not completed. It is also clear that the plaintiff failed to do due diligence before depositing the money. They ought to have sought for a certificate of official search from the Land Registry to confirm that the suit parcel was registered in the name of the defendant.

6. I have also gone through the sale agreement produced as exhibit P1. I note that the same had no default clause. However it is not in doubt that the defendant is the one who has breached the agreement. The plaintiffs are entitled to damages.

7. All in all I find that plaintiff's case is uncontroverted. They have proved their case as against the defendant on a balance of probabilities. I enter judgment in their favour as follows:-

*(a) That an order be and is hereby issued directing the defendant to refund to the plaintiffs the sum of Kshs. 2 Million paid to him.*

*(b) That the defendant do pay to the plaintiff general damages for breach of contract of Kshs 100,000.*

*(c) That the plaintiffs shall have costs of the suit and interest.*

It is so ordered.

**Dated, signed and delivered in Nairobi on this 26<sup>TH</sup> day of MARCH 2019.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

.....Advocate for the Plaintiffs

.....Advocate for the Defendant

.....Court Assistant