



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 339 OF 2017**

**MARILYN INDOMBERA AYIEKO.....PLAINTIFF**

**VERSUS**

**SAMAROSE INVESTMENTS LTD.....DEFENDANT**

**JUDGMENT**

1. In the Plaintiff dated 3<sup>rd</sup> August, 2017, which was amended on 23<sup>rd</sup> August, 2017, the Plaintiff averred that on 11<sup>th</sup> October, 2014, she entered into a Sale Agreement with the Defendant for the purchase of land known as Mavoko Block 2/477; that she paid to the Defendant Kshs. 350,000 and that the Defendant was to transfer the said land to her within ninety (90) days.
2. The Plaintiff finally averred that the Defendant has refused to complete the transaction and that an order of specific performance should issue. In the alternative, the Plaintiff is seeking for a refund of the purchase price, being Kshs. 350,000 and general damages.
3. Although the Defendant was served with the Summons to Enter Appearance, it neither entered appearance nor filed a Defence. The matter proceeded as undefended.
4. In his evidence, the Plaintiff, PW1, reiterated the averments in the Plaintiff. The Plaintiff produced in evidence the Agreement of Sale dated 11<sup>th</sup> October, 2014; the bank's deposit slip for Kshs. 330,000 and the demand notice that was served upon the Defendant.
5. In his submissions, the Plaintiff's advocate submitted that from the adduced evidence, the Defendant is in breach of the Sale Agreement of 11<sup>th</sup> October, 2014; that the Plaintiff should be awarded interest on the purchase price and that general damages of Kshs. 100,000 should be awarded to the Plaintiff.
6. The Defendant has not disputed the Plaintiff's averments that it entered into an Agreement of Sale with the Plaintiff. From the Agreement of Sale dated 11<sup>th</sup> October, 2014, the purchase price in respect of the suit land is shown to be Kshs. 350,00. The Defendant acknowledged having received a deposit of Kshs. 20,000 on the signing of the Agreement.
7. In addition to the deposit of Kshs. 20,000 that was acknowledged by the Defendant, the Plaintiff produced in evidence the bank slip of Family Bank dated 27<sup>th</sup> October, 2014. The bank slip shows the deposit of Kshs. 330,000 in the Defendant's account.
8. The Plaintiff did not produce evidence to show that the suit land is registered in favour of the Defendant. There is also no evidence to show that the consent of the Land Control Board for the transfer of the land, which is agricultural, was sought for and obtained within six (6) months. Section 6(1) (a) of the Land Control Act provides as follows:

***“(1) Each of the following transactions that is to say—***

***a) the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area;***

***b) the division of any such agricultural land into two or more parcels to be held under separate titles, other than the division of an area of less than twenty acres into plots in an area to which the Development and Use of Land (Planning) Regulations, 1961 (L.N. 516/1961) for the time being apply;***

***c) the issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company or co-***

***operative society which for the time being owns agricultural land situated within a land control area, is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act.”***

9. In the absence of a copy of the Title Deed showing that the suit land is registered in favour of the Defendant, and in the absence of the consent of the Land Control Board, the order for specific performance cannot issue. However, the Plaintiff is entitled to a refund of the purchase price from the date that the deposit of Kshs. 330,000 was made until payment in full.

10. For those reasons, I allow the Plaintiff's Plaint dated 3<sup>rd</sup> August, 2017 as follows:

***a) The Defendant to refund the Plaintiff a sum of Kshs. 350,000.***

***b) The Defendant to pay interest on the above sum at the rate of 12% per annum from 27<sup>th</sup> October, 2014 until payment in full.***

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

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 14<sup>TH</sup> DAY OF JUNE, 2019.**

**O.A. ANGOTE**

**JUDGE**