



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLC/E031/2024

SAMUEL NJUGUNA MACHARIAPLAINTIFF
VERSUS
FRANCI WAWERU NGONDI.....DEFENDANT

JUDGMENT

(1)The Plaintiff seeks the following reliefs against the Defendant.

- (a) **The Court be pleased to enlarge time within which the Land Control Board consent may be applied for and/or obtained.**
- (b) **An order directing the Defendant to obtain the consent of the Land Control Board to subdivide and later transfer a portion measuring 1/8 of an acre out of Land title No. Loc.15/Kangure/2386 and execute all relevant documents, from and or instruments of the suit land to the Plaintiff.**

In the alternative, if the Defendant refuses to obtain the consent of the Land Control Board to subdivide and later transfer a portion measuring 1/8 of an acre out of land title No. Loc. 15/Kangure/2386 and execute all relevant documents, from and or instruments of the suit lad to the Plaintiff.

In the alternative, if the Defendant refuses to obtain the consent of the Land Control Board to subdivide and later transfer a portion measuring 1/8 of an acre and or execute any relevant document for transfer, the Plaintiff be at liberty to apply and/or obtain the consent of the Land Control Board and the Deputy Registrar of the Court or relevant officer of the Court be authorized to sign any relevant documents for the Land Control Board and the appearance of the Defendant at Kiharu Land Control Board be dispensed with should the Defendant fail to appear on the appointed land control board sitting.

- (c) **An order for the Defendant to give vacant possession of the land. In the alternative judgment be entered for the Plaintiff against the Defendant for Kshs.**

150,000/= being the amount paid to the Defendant by the Plaintiff for the sale/purchase of the suit land, interest and costs.

(d) Costs and interest of the suit.

(2) The Plaintiff's case is as follows.

Firstly, on 2-10-2020 he and the Defendant entered into a sale agreement where the Plaintiff was to buy a portion of land measuring 1/8 acre from L.R. No. Loc.15/Kangure/2386. The purchase price was Kshs. 150,000/=. The Plaintiff paid the full purchase and paid a further Kshs. 30,000/= to the Defendant for the subdivision of the land. Secondly, the Defendant did not perform his part of the agreement. The Plaintiff tried to settle the matter amicably through the area chief but the Defendant would not budge. The Defendant also refused to refund the purchase price. When everything failed, the Plaintiff filed this suit.

(3) The Defendant entered appearance vide a memorandum of appearance dated 13-2-2025 but he did not file a defence. The court referred the case to the Court Annexed Mediation Program but the report from the mediator is to the effect that the Defendant did not turn up for any mediation session even though he was given reasonable time to attend.

(4) In support of this case, the Plaintiff filed the following evidence.

(a) Witness statement dated 16-10-2024.

(b) Copy of title deed for L.R. No.Loc.15/Kangure/2386.

(c) Copy of certificate of official search.

(d) Copy of sale agreement dated 2-10-2020.

(e) Copy of demand letter dated 21-5-2024.

(f) Copy of application for consent of the Land Control Board.

(g) Copy of receipt No.6196710.

(5) The case proceeded by way of formal proof on 24-3-2026 whereupon the Plaintiff testified on oath and produced the exhibits filed earlier on.

(6) Having carefully consider all the evidence adduced in this case by the Plaintiff, I find that the following issues arise.

- (i) **Whether the parties entered into a sale agreement.**
- (ii) **Whether the Plaintiff fulfilled his part of the bargain.**
- (iii) **Whether the Defendant fulfilled his part of the agreement.**
- (iv) **What remedies are available to the Plaintiff.**

(7) On the first issue, I find that the parties entered into a sale agreement dated 2-10-2020. The said agreement was duly witnessed by two witnesses namely Simon Irungu Waweru and Paul Waiganjo Njuguna. It was drawn by J.K. Kinyua and Company advocates.

(8) As for the second issue, I find that the Plaintiff performed his part of the sale agreement by paying the agreed purchase price. The Plaintiff's evidence in this regard is uncontroverted. In the same vein regarding the third issue, I find that the Defendant did not subdivide his land to facilitate the transfer of 1/8 of an acre to the Plaintiff as per the agreement. He also failed to defend the suit or turn up for the mediation session even though he was given adequate opportunity of doing so. I find that he is therefore in breach of the sale agreement.

(9) Looking at the remedies available to the Plaintiff, I find that the sale agreement dated 2-10-2020 did not provide for specific performance. The option of compelling the Defendant to transfer the 1/8 of an acre to the Plaintiff is not available because it is not in the agreement. The default clause in relation to the seller is at paragraph 9 of the sale agreement. It provides as follows.

“ That should the seller fail to honour this agreement to its full conclusion, he shall refund the money paid so far to him plus 50% penalty per annum thereon.”

I find the words, “*plus 50% penalty per annum thereon,*” to be vague. It does not say 50% of what amount. I find it vague and unenforceable.

(10) In the absence of any clear default clause in the sale agreement, I find that it is fair and just to issue the following orders.

(1) The Defendant to refund Kshs 180,000/= with interest at Court rates from the date of the sale agreement to the date of refund in full.

(2) Costs and interest thereon to the Plaintiff.

Dated, Signed and Delivered virtually at Murang'a this 28th day of April, 2026.

**M.N. GICHERU
JUDGE.**

Delivered physically in the presence of; -
Court Assistant – Jackline
Plaintiff – Present