



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CIVIL CASE NO. 1088 OF 2016**

**WYCLIFFE LUKASE..... 1<sup>ST</sup> PLANTIFF**

**BETTY HABWE.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**NJIRU MIHANG'O FARMERS HOUSING SCHEME.....1<sup>ST</sup> DEFENDANT**

**LIYO CHANDO.....2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

1. The plaintiffs have filed this suit against the defendants jointly and severally seeking:-

*(a) A mandatory order restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants, their agents and or servants from entering, trespassing, further dealings, development, registration and or transfer of Plot No. 633 within MIHINGO AREA to any person, body and or any unsuspecting buyers.*

*(b) An order directing the 1<sup>st</sup> and 2<sup>nd</sup> defendant to issue title in favour of the plaintiffs and/or in the alternative the plaintiffs be refunded the purchase price at current market rates upon valuation.*

*(c) Costs of this suit and interest at the courts rate.*

2. Upon being served with copies of plaint and summons to enter appearance the defendants neglected to enter appearance and or file defence within the prescribed period. This matter then proceeded for formal proof.

3. PW1, Wycliffe Lukase Ludeki the 1<sup>st</sup> plaintiff in this case adopted his witness statement dated 7<sup>th</sup> September 2018. He told the court that he together with the 2<sup>nd</sup> plaintiff purchased Plot NO. 633 from the 1<sup>st</sup> defendant on 7<sup>th</sup> October 2014. That upon purchasing the plot they were issued with plot certificate no. 914 and Ballot NO. 756 by the 1<sup>st</sup> defendant. They paid Kshs.600,000 as consideration and a further Kshs.35,000 as fee for building plans.

4. He further told the court that they took possession of the said parcel of land. They were however surprised on 3<sup>rd</sup> September 2016 when they met the 2<sup>nd</sup> defendant at the suit premises claiming to have purchased the said parcel of land. The 2<sup>nd</sup> defendant had started developing the suit premises.

5. In support of their case the plaintiffs relied on the following documents which were produced as exhibit:- A sale agreement dated 7<sup>th</sup> October 2014 exhibit P1, plot certificate no. 914 –Exhibit P2, plot ballot no 756 – Exhibit P3, receipt for building plans-Exhibit P4, Stephen Musila Kamulu's ballot certificate-Exhibit P4, photographs exhibit P6, Bankers cheque for Kshs.500,000 Exhibit P7.

6. The plaintiffs' case is uncontroverted. The issue for determination is whether the plaintiffs are entitled to and are bonafide purchasers for value of plot no. 633. From the exhibit produced by the plaintiffs, I am satisfied that they are the bonafide purchasers for value of the said parcel of land. I am satisfied that the 1<sup>st</sup> defendant issued them with Plot Certificate NO. 914 upon payment of the full purchase price. It appears the 1<sup>st</sup> defendant later intentionally and fraudulently sold the same parcel of land to the 2<sup>nd</sup> defendant without disclosing the initial sale to the plaintiffs.

7. As stated earlier, the plaintiffs' case is uncontroverted. I find that they are entitled to the prayers sought. I find that the plaintiffs have

proved their case on a balance of probabilities as against the defendants. I enter judgment in favour of the plaintiffs as follows:-

*(a) That a permanent injunction be and is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants, their agents and or servants from entering, trespassing, further dealings, development, registration and or transfer of Plot No. 633 within MIHINGO AREA to any person, body and or any unsuspecting buyers.*

*(b) That an order be and is hereby issued directing the 1<sup>st</sup> defendant to issue title in favour of the plaintiffs. In the alternative the plaintiffs be refunded the purchase price at current market rates upon valuation.*

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

It is so ordered.

**Dated, signed and delivered in Nairobi on this 9<sup>th</sup> day of October 2019.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

.....Advocate for the Plaintiffs

.....Advocate for the Defendants

.....Court Assistant