



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 392 OF 2017**

**MACKAY WETUMBILE NANDWA.....PLAINTIFF**

**VERSUS**

**JOSEPH ABONG'O ETABALE.....DEFENDANT**

**JUDGEMENT**

The plaintiff avers that he entered into a land sale agreement with the defendant for purchase of a portion of land measuring 2 acres on L.P. No. Marama/Lunza/2290 at a consideration purchase of Kshs.140,000/= which was paid in full. The plaintiff further avers that upon completion of the payment of the full purchase, he assumed ownership and cultivates the land to date. The plaintiff alleges that later he discovered that the defendant had already previously sold the same portion that he bought to another person. The plaintiff further alleges that the defendant was sued by the previous buyer in Mumias vide RM CC 196/2005 and judgement/verdict was issued that the defendant to pay Kshs.48,830/= being the decretal sum. The plaintiff avers that the defendant approached and pleaded with him to assist in paying the decretal sum of Kshs.48,830/= since the L.P. No. Marama/Lunza/2290 was due for sale by Kuronya Auctioneers having been served with notification of sale to satisfy the decretal sum. The plaintiff further avers that Kuronya Auctioneers demanded further Kshs.30,000/= as their costs. The plaintiff prays for judgement against the defendant for:-

1. The District Land Surveyor be ordered for transfer 3 ½ acres of land from the L.P. No. Marama/Lunza/2290 and issue title deed in the name of the plaintiff.
2. Costs
3. Relief/remedy the court may deem just to grant.

This court has considered the plaintiff's case and the submissions therein. The defendant was served but failed to enter appearance or file any defence and the matter proceeded exparte. The defendant testified that he entered into a sale agreement with the defendant to purchase of a portion of land measuring 2 acres on L.P. No. Marama/Lunza/2290 at a consideration purchase of Kshs.140,000/= which was paid in full. The plaintiff further avers that where completion of the payment of the full purchase, he never took possession. The plaintiff testified that later he discovered that the defendant had already previously sold the same portion that he bought to another person. The plaintiff further alleges that the defendant was sued by the previous buyer in Mumias vide RM CC 196/2005 and judgement/verdict was issued that the defendant to pay Kshs.48,830/= being the decretal sum. The plaintiff avers that the defendant approached and pleaded with him to assist in paying the decretal sum of Kshs.48,830/= since the land parcel No. Marama/Lunza/2290 was due for sale by Kuronya Auctioneers having been served with notification of sale to satisfy the decretal sum. The plaintiff further avers that Kuronya Auctioneers demanded further Kshs.30,000/= as their costs. He paid the auctioneers all the costs. He produced the notification of sale, sale agreement and land transfer documents as exhibits. No evidence has been adduced to confirm the ownership of the suit parcel of land parcel No. Marama/Lunza/2290. This is crucial evidence that is missing and this court cannot make a determination of a parcel of land of which ownership has not been established. The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows:

*“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”*

The said proof of ownership cannot be established in the instant case. I find that the plaintiff has failed to prove his case on a balance of probabilities and I dismiss it with no orders as to costs as the same was not defended.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 17<sup>TH</sup> DECEMBER 2019.**

**N.A. MATHEKA**

**JUDGE**