



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 144 OF 2016

DAVID MSEE SAMUEL.....PLAINTIFF

VERSUS

GRACE MWITHI MAUNDU1ST DEFENDANT

G.K. & D CO. LTD2ND DEFENDANT

JUDGMENT

1. In the Plaint dated 21st February, 2013, the Plaintiff averred that the Defendants were the owners of parcel of land known as plot number 1602G which they were allocated by Lukenya Ranching and Farming Co-operative Society Limited (*the Society*).
2. The Plaintiff has averred that the Defendants sold to him the said land vide an agreement dated 24th July, 2000; that the Defendants wrote to the Society and confirmed that they had sold to him the said land measuring 2.4 acres and that the 1st Defendant unlawfully proceeded to obtain Title Deeds in her name for land known as Mavoko Town Block 3/6008, 6006, 6010 and 6009, which titles included the suit land.
3. According to the Plaintiff, a portion measuring 1.85 acres is now part of Mavoko Block 3/6009 while a portion measuring approximately 0.4 acres is part of title number Mavoko Town Block 3/6010.
4. The Plaintiff is seeking for a declaration that he is entitled to 2.4 acres being part of title number Mavoko Town Block 3/6009 and 6010 and an order compelling the Defendants to excise 2.4 acres out of the two titles and transfer them to the Plaintiff.
5. In the Defence, the Defendants admitted the existence of the agreement of 24th July, 2000 but averred that the Plaintiff breached the said agreement by annexing land that was bigger than what had been agreed upon.
6. The matter came up for hearing on 14th March, 2017 when only the Plaintiff testified.
7. The Plaintiff, PW1, informed the court that he entered into an agreement with the Defendants on 24th July, 2000 and paid the entire purchase price on 15th August, 2000.
8. PW1 stated that he thereafter took possession of the land he had purchased, fenced it and waited to be issued with a Title Deed.
9. Although the 1st Defendant collected her Title Deeds on 12th July, 2010, it was the evidence of PW1

that she never disclosed to him the fact that she had collected the Title Deeds for Mavoko Town Block 3/6008, 6006, 6009 and 6010 and that the Title Deed for land measuring 2.4 acres should be issued into his name.

10. PW1 produced in evidence the agreement of 24th July, 2000 showing that he did purchase from the 1st Defendant land known as Plot No. 1602G measuring 2.4 acres. The Plaintiff also produced copies of the receipts showing that the 1st Defendant acknowledged receipt of the purchase price.

11. The Plaintiff's advocate submitted that the Defendants have admitted the validity of the agreements that they entered into with the Plaintiff and that the Plaintiff proved the particulars of fraud that were committed by the Defendants.

12. The Defendants have not disputed that they entered into an agreement of sale with the Plaintiff, that is, the agreement dated 24th July, 2000 in respect of the sale of land known as 1602G measuring 2.4 acres, Lukenya Ranching and Farming Co-operative Society Limited (*the suit land*).

13. According to the said agreement, the 1st Defendant undertook "*to commence the process of transferring the property to the purchaser forthwith.*"

14. The Agreement further provided that the Plaintiff was at liberty to occupy and develop the said land.

15. Having not denied the terms of the Agreements, and having sold to the Plaintiff a piece of land whose size and location was defined, the 1st Defendant should have facilitated the issuance of a Title Deed in favour of the Plaintiff, which she never did.

16. Instead, she caused Title Deeds for portion numbers Mavoko Town Block 3/6006, 6008, 6009 and 6010 to be issued in her name on 21st June, 2010.

17. The evidence before me shows that indeed the 1st Defendant should transfer a portion of land measuring 2.4 acres to the Plaintiff.

18. For those reasons, I allow the Plaint dated 21st February, 2013 in the following terms:

a. A declaration be and is hereby issued that the Plaintiff is entitled to 2.4 acres being the parcel of land the Plaintiff purchased from the Defendant out of original plot number 1602G, Lukenya Ranching and Farming Co-operative Society Limited.

b. An order be and is hereby issued compelling the 1st Defendant to transfer a total of 2.4 acres of land to the Plaintiff as per the sale Agreement between the parties herein.

c. An order be and is hereby issued compelling the Defendants jointly and severally to transfer the land currently occupied by the Plaintiff and well fenced on the ground now measuring approximately 2.4 acres and excise such portions as may be appropriate from either title numbers Mavoko Town Block 3/6009 and Mavoko Town Block 3/6010 or both titles so as to increase the Plaintiff's land to 2.4 acres as per the sale contract.

d. An order be and is hereby made compelling the 1st Defendant to sign the necessary application for consent of the Land Control Board to sub-divide the above parcels of land and excise a total of 2.4 acres and sign such documents as may be necessary to transfer the same in favour of the Plaintiff and further an order compelling the 1st Defendant to attend before the relevant Land Control Board to obtain the said consents to sub-divide and transfer the said land.

e. An order be and is hereby made extending the time within which the parties herein are required to obtain the consent of the Land Control Board for the sub-division and transfer of the

Plaintiff's portion measuring 2.4 acres.

f. Without prejudice to the foregoing, in default of the 1st Defendant complying with prayers (b) (c) and (d) above within sixty (60) days, an order be and is hereby issued authorizing the Deputy Registrar of this Court to sign such documents as may be necessary including application for consent of the Land Control Board to sub-divide and transfer the said portion, Mutation forms, transfer of land forms or any such documents that may be necessary to facilitate the sub-division of title numbers Mavoko Town Block 3/6009 and Mavoko Town block 3/6010 so as to excise and transfer the Plaintiff's portion measuring 2.4 acres.

g. A permanent injunction be and is hereby issued restraining the Defendants jointly and severally, their respective servants or agents from offering for sale, selling, alienating, disposing off, transferring, charging, leasing or in any manner whatsoever dealing or interfering with the Plaintiff's peaceful use, enjoyment, possession or rights over her portion of and measuring 2.4 acres spread across the 1st Defendant's title numbers Mavoko Town Block 3/6009 and Mavoko Town Block 3/6010.

h. Costs of this suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26TH DAY OF JANUARY, 2018.

O.A. ANGOTE

JUDGE