



**REPUBLIC OF KENYA**

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

**ELC. CASE NO.146 OF 2016**

**JENNIFFER SYOKAU MUTIE .....PLAINTIFF**

**VERSUS**

**GRACE MWITHI MAUNDU.....1<sup>ST</sup> DEFENDANT**

**G.K. & D CO. LTD.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. In the Plaint dated 21<sup>st</sup> February, 2013, the Plaintiff averred that the 2<sup>nd</sup> Defendant was a lawful member of Lukenya Ranching and Farming Co-operative Society Limited and that the Defendants were allocated parcels of land by the Society and more particularly plot number 1602 which the 1<sup>st</sup> Defendant subsequently sub-divided into various sub-plots, among them plot number 1602.

2. The Plaintiff has averred that on 9<sup>th</sup> October, 2007, in her capacity as a Director of the 2<sup>nd</sup> Defendant, the 1<sup>st</sup> Defendant offered to sale to the Plaintiff the plot marked in the sub-division plan as 1602H at a price of Kshs. 346,700; that the 1<sup>st</sup> Defendant signed the Sale Agreement after being paid the 10% deposit of the purchase price and that the final payment of the purchase price was made to the Defendants on 17<sup>th</sup> January, 2008.

3. The Plaintiff finally averred that in total violation of the agreement, the 1<sup>st</sup> Defendant failed, refused and or neglected to notify the Society that she had sold the suit land to her.

4. According to the Plaintiff, the portion of land that she bought measuring approximately 1.04 acres is now part of title number Mavoko Town Block 3/6008 while a portion measuring approximately 0.27 acres is now part of title number Mavoko Town Block 3/6006.

5. The Plaintiff is seeking for numerous orders, including: a declaration that she is entitled to land measuring 1.54 acres.

6. In the Defence, the Defendants admitted that there was an agreement of 16<sup>th</sup> October, 2007 but denied that the Plaintiff took possession of the said portion and that the Plaintiff annexed a bigger portion of land than that agreed upon.

7. The matter came up for hearing on 14<sup>th</sup> March, 2017 when only the Plaintiff testified.

8. The Plaintiff, PW1, informed the court that she entered into an agreement with the Defendants on 10<sup>th</sup> December, 2007 and paid the entire purchase price on 17<sup>th</sup> January, 2008.

9. PW1 stated that she thereafter took possession of the land she had purchased, fenced it and waited to be issued with a Title Deed.

10. Although the 1<sup>st</sup> Defendant collected her Title Deeds on 12<sup>th</sup> July, 2010, it was the evidence of PW1 that she never disclosed to her the fact that she had collected the Title Deeds for Mavoko Town Block 3/6008 and 6006 and that the Title Deed for land measuring 1.54 acres should be issued into her name.

11. PW1 produced in evidence the agreement of 17<sup>th</sup> January, 2008 showing that she did purchase from the 1<sup>st</sup> Defendant land known as Plot No. 1602H measuring 1.54 acres. The Plaintiff also produced copies of the receipts showing that the 1<sup>st</sup> Defendant acknowledged receipt of the purchase price.

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

13. The Defendants have disputed that they entered into three agreements of sale with the Plaintiff, that is, the agreements dated 16<sup>th</sup> October, 2007, 10<sup>th</sup> December, 2007 and 17<sup>th</sup> January, 2008 in respect to the sale of land known as 1602H measuring 1.54 acres, Lukenya Ranching and Farming Co-operative Society Limited (*the suit land*).

14. In the Agreement of 17<sup>th</sup> January, 2008, the 1<sup>st</sup> Defendant acknowledged receipt of Kshs. 250,000 being the full and final settlement of the purchase price.

15. According to the said agreement, the 1<sup>st</sup> Defendant undertook "*to commence the process of transferring the property to the purchaser forthwith.*"

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

17. 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 1<sup>st</sup> Defendant should have facilitated the issuance of a Title Deed in favour of the Plaintiff, which she never did.

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

19. The evidence before me shows that indeed the 1<sup>st</sup> Defendant should transfer a portion of land measuring 1.54 acres to the Plaintiff.

20. For those reasons, I allow the Plaint dated 21<sup>st</sup> February, 2013 in the following terms:

***a. A declaration be and is hereby issued that the Plaintiff is entitled to 1.54 acres being the parcel of land the Plaintiff purchased from the Defendant out of original plot number 1602H, Lukenya Ranching and Farming Co-operative Society Limited.***

***b. An order be and is hereby issued compelling the 1<sup>st</sup> Defendant to transfer a total of 1.54 acres of land to the Plaintiff as per the sale Agreements 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 1.36 acres and excise such portions as may be appropriate from either title numbers Mavoko Town Block 3/6008 and Mavoko Town Block 3/6006 or both titles so as to increase the Plaintiff's land to 1.54 acres as per the sale contract.***

***d. An order be and is hereby made compelling the 1<sup>st</sup> 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 1.54 acres and sign such documents as may be necessary to transfer the same in favour of the Plaintiff and further an order compelling the 1<sup>st</sup> 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 1.54 acres.*

*f. Without prejudice to the foregoing, in default of the 1<sup>st</sup> 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 3/6008 and Mavoko Town block 3/6006 so as to excise and transfer the Plaintiff's portion measuring 1.54 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 1.54 acres spread across the 1<sup>st</sup> Defendant's title numbers Mavoko Town Block 3/6008 and Mavoko Town Block 3/6006.*

*h. Costs of this suit.*

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26<sup>TH</sup> DAY OF JANUARY, 2018.**

**O.A. ANGOTE**

**JUDGE**