



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 463 OF 2017**

**JENNIFER MUTHONI MORIGI.....1<sup>ST</sup> PLAINTIFF**

**JANE WANJIKU HIRAM.....2<sup>ND</sup> PLAINTIFF**

**JULIA WAMBUI GAKUNGI (*Suing as***

*trustees and officials of WOMEN TRUST HOUSING*

**WELFARE ORGANIZATION).....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**HOMELANDS DEVELOPMENT INVESTORS LTD.....DEFENDANT**

**JUDGMENT**

1. In the Complaint dated 23<sup>rd</sup> November, 2017, the Plaintiffs averred that at all material times, the Plaintiffs were the registered proprietors of land known as L.R. No. 20523 Mavoko Municipality (*the suit land*); that on 28<sup>th</sup> September, 2010, the Plaintiffs agreed to sell the suit land to the Defendant for Kshs. 135,000,000 and that after paying the deposit of Kshs. 13,500,000, the Defendant was under an obligation to pay to the Plaintiffs the balance of the purchase price within ninety (90) days.
2. The Plaintiffs have further averred that the parties agreed to have the suit land transferred in favour of the Defendant upon payment of a total of Kshs. 90,000,000 with the balance of Kshs. 45,000,000 being paid upon registration of the title in favour of the Defendant.
3. It is the Plaintiffs' case that the Defendant only paid Kshs. 55,000,000 and started avoiding them; that it was a term of the agreement that should there be a breach by the purchaser, the purchaser was to forfeit 10% of the purchase price and that the Defendant has breached the agreement by failing to pay to the Plaintiffs the balance of the purchase price.
4. The Plaintiffs have prayed for an order declaring the Sale Agreement of 28<sup>th</sup> September, 2010 repudiated and for the Defendant to forfeit 10% of the purchase price to the Plaintiffs. The Plaintiffs have also sought for an order cancelling the title for L.R. No. 20523 and for a new title to be issued in their names, together with the costs of the suit.
5. The Defendant, with the leave of the court, was served with the Complaint and Summons to Enter Appearance by way of registered post. However, the Defendant neither entered appearance nor filed a Defence. The matter proceeded for formal proof on 19<sup>th</sup> February, 2018.
6. The Plaintiffs' Chairlady, PW1, informed the court that vide the minutes of 1<sup>st</sup> November, 2017, the members of the Plaintiffs' organization resolved to institute this suit.
7. PW1 stated that at all material times, the Plaintiffs were the registered proprietor of land known as L.R. No. 20523 Mavoko Municipality; that the Plaintiffs entered into a Sale Agreement dated 28<sup>th</sup> September, 2010 for the sale of the suit property with the Defendant for a consideration of Kshs. 135,000,000 and that after paying Kshs. 90,000,000, the Plaintiffs transferred the suit land to the Defendant.
8. It was the evidence of PW1 that they have made several attempts to have the Defendant pay up the balance of Kshs. 45,000,000 without success; that the agreement provides that upon the breach of the agreement, the purchaser shall forfeit 10% of the purchase price and that the Plaintiffs issued to the Defendant a notice of their intention to rescind the agreement.
9. PW1 informed the court that the Defendant's director was deported from the country after being involved in other fraud cases and that the Defendant misled them in having the suit land registered in its name before paying the full purchase price.

10. PW1 stated that the transfer and the title that was issued to the Defendant should be cancelled and the title to revert to them. According to the evidence of PW1, the Plaintiffs are ready and willing to refund to the Defendant the money that was paid to them less the 10% deposit.
11. The Plaintiffs produced in evidence the copy of the grant in respect to L.R. No. 20523, the newspaper cuttings showing the deportation of the Defendant's director from the country, the agreement dated 28<sup>th</sup> September, 2010, the minutes of the Plaintiffs and the notice to the Defendant dated 4<sup>th</sup> October, 2017.
12. The Plaintiffs' advocate did not submit. He relied on the evidence of PW1 and the documents that were adduced by the Plaintiffs.
13. By way of an agreement dated 28<sup>th</sup> September, 2010, the Plaintiffs agreed to sale to the Defendant parcel of land known as L.R. No. 20523 Mavoko Municipality for Kshs. 135,000,000. Clause 4.1 of the agreement provides that the purchaser has paid a deposit of Kshs. 13,500,000 being the 10% deposit of the purchase price. In case the Defendant is incapable of performance of the agreement, Clause 7.2 of the agreement provides that the purchaser shall forfeit ten per cent (10%) of the deposit.
14. PW1 informed the court that after paying Kshs. 90,000,000, the Defendant convinced them to transfer the suit land to it with a promise of paying the balance of the purchase price at a later date. Indeed, the copy of the grant shows that the suit land was transferred to the Defendant on 25<sup>th</sup> February, 2011.
15. The Defendant did not adduce evidence to show that the payable purchase price was not Kshs. 135,000,000. Considering that the agreement provides that the purchase price for the suit land was Kshs. 135,000,000, I find that the Plaintiffs have proved that the Defendant was in breach of the agreement of 28<sup>th</sup> September, 2010 when it failed to remit to the Plaintiffs the balance of Kshs. 45,000,000.
16. In the circumstances, I find and hold that the Plaintiffs have proved their case on a balance of probabilities. The Plaint dated 23<sup>rd</sup> November, 2017 is therefore allowed in the following terms:

***1. An order be and is hereby issued declaring the Sale Agreement dated 28<sup>th</sup> September, 2010 repudiated at the instance of the breach of the Defendant and the Defendant forfeits the 10% deposit of the purchase price to the Plaintiffs.***

***2. An order be and is hereby issued cancelling the grant/title for L.R. No. 20523 Mavoko Municipality in the name of the Plaintiffs.***

***3. A new title/grant be issued by the Chief Land Registrar in the name of the Plaintiffs forthwith.***

***4. The Defendant to pay to the Plaintiffs the costs of the suit.***

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2<sup>ND</sup> DAY OF MARCH, 2018.**

**O.A. ANGOTE**

**JUDGE**