



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 279 OF 2017**

**PETER ROBERT KARANJA KAROMO .....PLAINTIFF**

**VERSUS**

**SAMWEL OMWEGA AYIECHA .....DEFENDANT**

**RULING**

1. In the Application dated 15<sup>th</sup> June, 2017, the Plaintiff is seeking for the following reliefs:

*a. That an injunction do issue restraining the Defendant by himself or by his agents and/or servants or otherwise howsoever from blocking and/or obstructing access of an access road initially curved from L.R. No. Donyo Sabuk/Komarock Block 1/30696 and/or interfering with the said access road in any way until the hearing and determination of this suit.*

*b. That the costs of this Application be provided for.*

2. According to the Plaintiff, the Defendant and his son sold to him parcel of land known as Donyo Sabuk/Komarock Block 1/30696 to enable him create an access road to his adjoining land; that he paid to the Plaintiff the full purchase price for the said plot and that the said access was created and surrendered to the government.

3. It is the Plaintiff's case that the suit land is now public land and that the Defendant cannot purport to rescind the agreement he entered into with him in respect to the suit land.

4. In response, the Defendant deponed that he is the registered proprietor of the suit land; that the Plaintiff fraudulently obtained the Mutation forms, the consent to transfer the land and that he never signed the documents that have been exhibited by the Plaintiff.

5. The Defendant denied ever signing the Application for the consent of the Land Control Board transferring an access road to the Plaintiff and that in January, 2016, he had informed the Plaintiff that his family had objected to the Sale Agreement he had entered into with him; that the Plaintiff agreed to have the agreement rescinded on condition that the Defendant pay 10% of the purchase price as liquidated damages and that he refunded to the Plaintiff Kshs. 462,000 by way of a banker's cheque.

6. Although the court directed parties to argue the Application by way of written submissions, it is only the Defendant who filed his submissions. I have considered the said submissions which are a replication of the Defendant's submissions.

7. It is not in dispute that the Plaintiff entered into an Agreement of Sale with the Defendant in respect to a portion of land known as Donyo Sabuk/Komarock Block 1/30696. According to the Sale Agreement of 22<sup>nd</sup> May, 2015, the Plaintiff only purchased a plot measuring "6 metres road as a way of passage for Kshs. 420,000". The Plaintiff duly paid the purchase price.

8. The Defendant's case is that after entering into the said Sale Agreement, his family members objected to the sale and that he opted to refund to the Plaintiff the purchase price. The Defendant denied that he signed the Application for the consent of the Land Control Board and the Mutation forms.

9. The Agreement dated 22<sup>nd</sup> May, 2015 was signed by the Plaintiff and the Defendant, and the signatures of the Plaintiff and the Defendant was witnessed by two people. The said agreement therefore meets the provisions of Section 3(3) of the Law of Contract Act.

10. The Plaintiff has admitted that he received the full purchase price for the suit land. The Plaintiff has exhibited Mutation forms showing the land that was excised from the suit land and the consent of the Board. Whether the said documents were forged or not can only be determined at trial. However, the fact that there exists a valid agreement between the Plaintiff and the Defendant gives the Plaintiff a head start in the matter. Having entered into a valid Agreement of Sale and obtained the consent of the Board for the creation of a road of access, I find that the Plaintiff has shown that he has a prima facie case with chances of success. Indeed, unless the injunctive order is granted, the Plaintiff will be denied a road of access which was created in the year 2015 after the Sale Agreement was executed.

11. For those reasons, I allow the Application dated 15<sup>th</sup> June, 2017 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 20<sup>TH</sup> DAY OF APRIL, 2018.**

**O.A. ANGOTE**

**JUDGE**