



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 262 OF 2010**

PETER MATHUKI.....1<sup>ST</sup> PLAINTIFF  
GEORGE WAMAE.....2<sup>ND</sup> PLAINTIFF  
SILAS OMENDA.....3<sup>RD</sup> PLAINTIFF  
ANDREW NYAMWAYA.....4<sup>TH</sup> PLAINTIFF  
LENAH MUTHONI MUTUA.....5<sup>TH</sup> PLAINTIFF  
WILFRED KYEVA NDULU.....6<sup>TH</sup> PLAINTIFF  
AGNES KASIVA KYEVA.....7<sup>TH</sup> PLAINTIFF  
PHILIP NDOLO.....8<sup>TH</sup> PLAINTIFF  
DOROTHY KALEKYE MUTUA.....9<sup>TH</sup> PLAINTIFF  
VINCENT MWIGIRUA.....10<sup>TH</sup> PLAINTIFF  
DOROTHY MBANE MULONZI.....11<sup>TH</sup> PLAINTIFF

**VERSUS**

KINGORA ESTATES LTD.....1<sup>ST</sup> DEFENDANT  
PETER G.N. NG'ANG'A.....2<sup>ND</sup> DEFENDANT

**JUDGMENT**

1. In the Plaint dated 3<sup>rd</sup> December, 2010, the Plaintiffs averred that between the years 2005 and 2007, they separately entered into written agreements with the Defendants for the purchase of sub-plots which were excised from L.R. No. 12715/502 situate within Machakos County; that they fulfilled their part of the agreement and were put in possession of their respective plots and that they have since developed their portions of land.
2. The Plaintiffs averred that the Defendants have refused to perform their obligations. They have prayed for an order of specific performance to issue in respect of all the plots that were excised from plot number 12715/502.
3. In their Defence, the Defendants stated that if there is any relationship between them and the Plaintiffs, then they have complied with their obligations and that the suit was prematurely filed.
4. The matter proceeded for hearing on 30<sup>th</sup> January, 2018 in the absence of the Defendants. Except the 1<sup>st</sup> Plaintiff, who gave to his wife authority to testify, all the Plaintiffs testified in this matter.
5. All the Plaintiffs, PW1-PW9, informed the court that they purchased from the Defendants portions of land measuring  $\frac{1}{4}$  of an acre excised from L.R. No. 12715/502; that the 2<sup>nd</sup> Defendant all along held himself out as acting for the 1<sup>st</sup> Defendant and that they entered into

agreements with the 1<sup>st</sup> Defendant.

6. It was the evidence of PW1-PW9 that they paid to the Defendants the full purchase price and that they were given vacant possession of their respective plots. It was their evidence that the Defendants have declined to transfer the suit property to them. The Plaintiffs produced the agreements that they entered into with the Defendants.

7. The Plaintiffs' advocate submitted that the Sale Agreements that the Plaintiffs entered into with the Defendants shows that the Defendants acknowledged receipt of the purchase price; that the Defendants have developed their respective plots and that the Plaintiffs have proved their cases on a balance of probability.

8. The evidence before me shows that the Plaintiffs purchased portions of land measuring  $\frac{1}{4}$  an acre from the Defendants. The whole parcel of land is Land Reference Number 12715/502 situate in Machakos. According to the Defendants, they took possession of their respective portions after the said purchase.

9. The Plaintiffs did not produce evidence to show if the said parcel of land has ever been sub-divided and Deed Plans issued. If the land has not been sub-divided and Deed Plans issued, the same can only be transferred to the Plaintiffs after the said exercise has been undertaken. Considering that the Defendants did not testify in this matter, and in view of the copies of the Sale Agreements that were produced in this court, I find that the Plaintiffs are entitled to an order of specific performance.

10. For those reasons, I allow the Plaint dated 3<sup>rd</sup> December, 2010 in the following terms:

***a. An order of specific performance for the Defendants to transfer to the Plaintiffs their respective plots excised from L.R. No. 12715/502 be and is hereby issued.***

***b. The Plaintiffs to appoint and retain a licenced surveyor to sub-divide L.R. No. 12715/502 and process the Deed Plans in respect to the portions of land that they bought at the Defendants cost.***

***c. The Defendants to execute all the requisite transfer documents and surrender the original title document to the Chief Land Registrar for registration and issuance to the Plaintiffs their respective title documents.***

***d. The Defendants to pay the costs of the suit.***

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 13<sup>TH</sup> DAY OF APRIL, 2018.**

**O.A. ANGOTE**

**JUDGE**