

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC NO. 148 OF 2017

HARUN CHITIAVI WASHIYA PLAINTIFF

VERSUS

PETER MULA WANAMAMBI DEFENDANT

JUDGEMENT

The plaintiff avers that on 13th March 2014 entered into a mutual agreement with the defendant for purchase of a portion of land measuring approximately 0.08 Ha from the parcel of land S.KABRAS/CHEMUCHE/3314 registered in the names of the defendant. The plaintiff avers that he paid the agreed purchase price of 100,000/= (Kshs. One hundred thousand shillings) on the same date and the defendant was to give him the agreed share. The plaintiff avers that however the defendant refused and or denied to allocate the said share of land. The plaintiff avers that as a consequence thereof the Defendant was charged before the Principal Magistrate Court at Butali vide the Criminal Case No.400 of 2015. The Plaintiff avers that upon hearing all witnesses and considering evidence on record the Defendant was found guilty of but he agreed to allocate the plaintiff the said parcel and as a result was committed on a probation sentence accordingly on 5th October 2016. The plaintiff therefore claims against the defendant is that he transfers the agreed portion from the parcel S/KABRAS/CHEMUCHE/3314 failure to which the deputy registrar be allowed to sign the transfer papers. Reasons wherefore the plaintiff prays for judgment against the defendant for:

- a) That the defendant be compelled to sign transfer papers and he transfers a portion measuring approximately 0.08 ha from parcel S.KABRAS/CHEMUCHE/3314 failure to which the deputy registrar be allowed to sign the said papers.
- b) Costs of this suit.
- c) Any other relief this Honorable court deems fit to grant in the circumstances.

PW1 testified that he is residing and working for gain at Kimang'eti sub location within the Republic of Kenya. That he purchased apportion from the defendant on land parcel No.S/KABRAS/CHEMUCHE/3314 9 PEx1 is the sale agreement). That the Defendant refused to transfer the said portion from the land No.S/KABRAS/CHEMUCHE/3314. That he complained at Malava police station and the defendant agreed to transfer the said parcel however he has remained adamant. The plaintiff avers that as a consequence thereof the Defendant was charged before the Principal Magistrate Court at Butali vide the Criminal Case No. 400 of 2015. The Plaintiff avers that upon hearing all witnesses and considering evidence on record the Defendant was found guilty of but he agreed to allocate the plaintiff the said parcel and as a result was committed on a probation sentence accordingly on 5th October 2016 (PEX2 proceedings of Butali Court). That prays to this court to order the defendant transfer the said share failure to which the deputy registrar be allowed to sign the said transfer papers. PW2 witnessed the sale agreement and corroborated PW1's evidence.

DW1 the defendant admits that he sold land to the plaintiff and that it is the latter who has not gone for his land.

This court has carefully considered the plaintiff's and the defendant's case. The plaintiff gave evidence that on 13th March 2014 entered into a mutual agreement with the defendant for purchase of a portion of land measuring approximately 0.08 Ha from the parcel of land S.KABRAS/CHEMUCHE/3314 registered in the names of the defendant. The plaintiff avers that he paid the agreed purchase price of 100,000/= (Kshs. One hundred thousand shillings) on the same date and the defendant was to give him the agreed portion. The plaintiff avers that however the defendant refused and or denied to allocate the said portion of land. The defendant confirms that the sale took place and he has not refused to give the land to PW1. I find that the plaintiff's case is not opposed and the plaintiff has proved his case on a balance of probabilities. I therefore grant the following orders;

1. That the defendant is to sign transfer papers and he transfers a portion measuring approximately 0.08 ha from parcel S.KABRAS/CHEMUCHE/3314 failure to which the deputy registrar be allowed to sign the said papers.
2. Costs of this suit to be borne by the defendant.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 17TH DAY OF MAY 2018.

N.A. MATHEKA

JUDGE