



**REPUBLIC OF KENYA**

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

**E.L.C. CASE NO. 198 OF 2010**

**DAVID ARADI.....PLAINTIFF**

**VERSUS**

**FREDRICK NAKHULO WAMALWA.....DEFENDANT**

**JUDGEMENT**

1. The Plaintiff entered into an agreement with the Defendant on 2/5/1998 for the purchase of an acre of land which was to be excised from the Defendant's land known as L.R. No. 1160/89 measuring 10 acres, in Nairobi. The consideration was agreed at Kshs. 2.7 million. The Defendant who is an advocate of the High Court of Kenya, acted as advocate for both the vendor and the purchaser. The Plaintiff paid the deposit of Kshs. 1 million on execution of the agreement. The agreement stated that the balance of the purchase price was to be paid on completion of the subdivision and on delivery by the vendor to the purchaser of the final deed plans and a duly executed transfer of title.
2. The Plaintiff claims that he paid the balance of the purchase price to the Defendant together with an additional sum of Kshs. 300,000/= to facilitate the subdivision exercise by the Defendant but he later learnt that the Defendant subdivided his land and transferred it to other persons and not to him. The Plaintiff seeks an order that the Defendant transfers an acre of L.R. No. 1160/89 to him or in the alternative, the sum of Kshs. 18 million which was the value of the land at the time of filing suit.
3. In his defence filed on 4/2/2011, the Defendant admitted that the Plaintiff paid him the agreed deposit but that he failed to pay the balance of the purchase price. He averred that he gave a 30-day completion notice to the Plaintiff who failed to pay the balance of the purchase price.
4. Both the Plaintiff and Defendant gave evidence in this matter and produced copies of the sale agreement. The Defendant also produced a copy of the completion notice dated 2/12/1998 which the Plaintiff denied ever receiving.
5. The Plaintiff did not adduce evidence to show that he paid the balance of the purchase price to the Defendant. He did not produce evidence of the payments of Kshs. 1.7 million and 300,000/= which he claimed he paid to the Defendant's wife.
6. The court finds that the Plaintiff has failed to prove his case on a balance of probabilities. The Defendant is directed to refund the Plaintiff the sum of Kshs. 1 million paid as a deposit together with interest at court rates from the date of filing suit. Each party will bear its own costs.

**Dated and delivered at Nairobi this 25<sup>th</sup> day of September 2018.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. Amulioto holding brief for Mr. Keyonzo for the Plaintiff

Ms. Merichi holding brief for Mr. Ngoge for the Defendant

Mr. V. Owuor- Court Assistant