



**REPUBLIC OF KENYA**

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

**ELC NO. 366 OF 2017**

**PHILIPH KIVUVA NZIOKA.....PLAINTIFF**

**VERSUS**

**BEATRICE SAMWEL.....1<sup>ST</sup> DEFENDANT**

**ESTHER SAMWEL.....2<sup>ND</sup> DEFENDANT**

**MARY KILONZO.....3<sup>RD</sup> DEFENDANT**

**MARY NTHENYA SAMWEL.....4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1) By his plaint dated 12<sup>th</sup> September, 2013 and filed in court on even date, the Plaintiff prays for judgment against the Defendants jointly and severally for:

**a) An order of specific performance to compel the Defendants to honour the terms of the agreement dated 9<sup>th</sup> September, 2011 by showing and transferring to the 100" x100" ft. Where the 2<sup>nd</sup> Defendant resides and the Defendants and or their agents and or servants be restrained by an order of permanent injunction from interfering with and or transferring with and or transferring, selling and or alienating 100" x100" ft from land along Njukini - Chumvi Road (where the 2<sup>nd</sup> Defendant resides) measuring 100" x 100" ft or deal with it in any manner whatsoever.**

**b) Costs of the suit.**

**c) Any other relief this honourable court may deem fit and just to grant.**

2) The matter proceeded as undefended suit. During the hearing, the Plaintiff adopted his witness statement dated 12<sup>th</sup> September, 2013 as his evidence. He also produced the document indicated in his list of documents as PEX Nos. 1, 2, 3 and 4 respectively.

3) Briefly stated the Plaintiff's evidence was that he bought a portion of suit property from the family of the Defendants in the year 1988. That they have made supplementary agreement culminating in the one dated 9<sup>th</sup> September, 2011. In the agreement, the Defendants were to show and transfer to the Plaintiff a portion of land measuring 100 feet by 100 feet out of piece of land situated at Njukini along Njukini – Chumvini. That to date, the Defendants have refused to show him the land in question despite the consideration of Kshs. 230,000/= having been paid to them. .

4) A perusal of the first agreement (PEX NO. 1) shows that the land in question is at Njukini Farmers Co-operative Society. Esther Kile who is the second Defendant is said to reside in the said parcel of land.

5) There is a share number 501 at the Co-operative Society but there is no indication of whose owner it is. This raises doubt as to whether or not the Defendants had the capacity to enter into a sale agreement with the Plaintiff

6) since there is nothing to show that the land is said to be family land and yet it is in a Co-Operative Society's land.

7) It is clear that the first agreement was entered into 30 years ago. The agreement dated 9<sup>th</sup> September, 2011 (PEX No. 4) shows that the Plaintiff had initially dealt with Samuel Kile who probably was the shareholder of share number 501. There is no evidence of share number 501 having ever been transferred to the nominees of Samuel Kile assuming that the latter is deceased. It would appear that the Defendants have been sued in their personal capacity instead of being sued as the legal representatives of Samuel Kile if he is deceased. In the

circumstances, my finding is that the Plaintiff has not satisfied this court that he has a cause of action against the Defendants. I therefore, proceed to dismiss suit.

**SIGNED, DATED and DELIVERED at MAKUENI this 3<sup>RD</sup> day of DECEMBER, 2018.**

**MBOGO C.G,**

**JUDGE**

**IN THE PRESENCE OF;**

1) No appearance for the Plaintiff but had notice of 30/11/2018.

2) Mr. Kwemboi Court Assistant.

**MBOGO C.G, JUDGE**

**3/12/2018**