



**REPUBLIC OF KENYA**

**IN THE LAND AND ENVIRONMENT COURT OF KENYA AT KAKAMEGA**

**ELC CASE NO. 523 OF 2014**

**NGOME NATALA.....PLAINTIFF**

**VERSUS**

**GEOFREY L. LUSENEKA.....DEFENDANT**

**RULING**

On the 1<sup>st</sup> March 2016 a consent judgment was entered in court in favour of the Plaintiff for the sum of Kshs. 675,000/= plus interest at court rates with effect from that day. The court further ordered that the parties submit on the issue of costs by way of filing affidavits.

The Plaintiff in his submissions stated that he sued the defendant claiming either vacant possession and title to L.R NO KABRAS/MALAVA/4088 or in the alternative a refund of the purchase price of Kshs. 675,000/=. The Plaintiff also claimed costs of this suit plus interest. The Defendant failed to fulfill his part of the agreement and has kept the purchase price paid since 2010. The Defendant should pay the legal costs since they follow the event.

The Defendant stated in his affidavit sworn on the 16<sup>th</sup> March 2016 that he sold the land to the Plaintiff who paid the full price. That before he could finalize the succession matter on the land the Plaintiff got himself a surveyor who went and surveyed the land. As a result of this unlawful survey the Defendant had to go back to court to obtain an order to rectify the survey hence he incurred additional costs.

This court has considered the submissions of both parties. From the documents annexed by the Plaintiff it is clear that the Defendant executed all the relevant documents in this transaction which showed his willingness to conclude the matter. It is also clear from the court order that he went to court to have the boundaries reset. On the 1<sup>st</sup> March 2016 a consent judgment was entered in court in favour of the Plaintiff for the sum of Kshs. 675,000/= plus interest at court rates with effect from that day. The court further ordered that the parties submit on the issue of costs by way of filing affidavits. It is not clear at this point having gone through the pleadings which party frustrated the sale agreement hence necessitating the filing of this suit. For this reasons I do order that each party bear its own costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 6<sup>TH</sup> APRIL, 2017.

N.A. MATHEKA

JUDGE