



**REPUBLIC OF KENYA**

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

**E & L CASE NO. 399 OF 2013**

**BENARD MAGIKA OYUGI.....PLAINTIFF**

**VERSUS**

**HILLARY KIPKOSGEI T/A SWEETLAND LIMITED.....DEFENDANT**

**JUDGMENT**

**Benard Magika Oyugi** hereinafter referred to as the plaintiff has sued **Hillary Kipkosgei t/a Sweetland Limited** hereinafter referred to as the defendant claiming that the defendant was at all material times the lawful owner of the piece of land known as Eldoret Municipality/Block 9/1753 measuring 0.0996 hectares or thereabouts (hereinafter referred to as the property). That by an agreement dated 12<sup>th</sup> July, 2012 between the plaintiff and the defendant, the defendant agreed to sell his interest in the property to the plaintiff at a consideration of Kshs.1,100,000/=.

That it was a term for the aforesaid agreement that the plaintiff would pay consideration to the defendant as follows:

- (a) Kshs.450,000.00 had been deposited at the signing of the agreement.
- (b) Kshs.50,000.00 to be paid on or before 20<sup>th</sup> July, 2012.
- (c) Kshs.600,000.00 to be paid on or before 15<sup>th</sup> December, 2012.

It is stated that it was a further term of the aforesaid agreement that the defendant would give vacant possession of the property to the plaintiff and that in performance of the terms of the aforesaid agreement for sale, the plaintiff has paid full consideration. That in breach, the aforesaid agreement, the defendant has failed to procure title deed in the name of the plaintiff and/or deliver possession of the property to the plaintiff. That the plaintiff has always been ready and willing to complete his part of the obligations but the defendant has failed to perform his obligations as per the said sale agreement. That as a result of the aforesaid breach of contract by the defendant, the plaintiff has suffered loss. That notice of intention to sue has been given.

The cause of action arose in Eldoret within the jurisdiction of this Honourable court. There is no other suit pending and there has never been any suit between the parties herein in regard to the subject matter hereof.

The plaintiff prays for orders that a permanent injunction be issued to restrain the defendant and/or their servants and/or agents from entering onto and/or remaining on and/or constructing on and/or using and/or transferring and/or mortgaging and/or leasing and/or in any way dealing with the property known as Eldoret Municipality Block 9/1753. Specific performance by way of transfer by the defendant of the property known as Eldoret Municipality Block 9/1753 to the plaintiff.

The plaintiff testified that he purchased the suit parcel of land known as Eldoret Municipality Block 9/1753 measuring 0.996 hectares from the defendant herein for consideration value of Kshs.1,100,000/=. That he has paid the entire amount to the defendant but the defendant failed and/or has defaulted in making good the vacant possession to him hence this suit. That he has not had quiet, peaceful and vacant possession of the suit land as the terms of the agreement dictated. That he would have made good

use/utilization of the suit land and earned some income since he intended to put up rentals from which he would have earned him Kshs.48,000/= per month beginning July, the year 2013. He had all the intentions of using the title documents to apply and get loan for construction of rental houses. He also prays for an order of permanent injunction and specific performance against the defendant. He seeks for mesne profits and/or damages and costs.

I have considered the evidence on record which is not controverted and do find that the plaintiff purchased the whole of Eldoret Municipality/Block 9/1753 from the defendant and paid a total of Kshs.1,600,000/=.

I do find that the plaintiff has proved on a balance of probabilities that he is entitled to the orders sought and therefore, I do enter judgment in terms of specific performance by way of transfer by the defendant of the property known as Eldoret Municipality Block 9/1753 to the plaintiff. I do further grant an order of a permanent injunction to restrain the defendant and/or their servants and/or agents from entering onto and/or remaining on and/or constructing on and/or using and/or transferring and/or mortgaging and/or leasing and/or in any way dealing with the property known as Eldoret Municipality Block 9/1753. Cost of the suit plus interest to the plaintiff.

**DATED AND DELIVERED AT ELDORET THIS 28<sup>th</sup> DAY OF JUNE, 2017.**

**A. OMBWAYO**

**JUDGE**