



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT CHUKA

CHUKA ELC CASE NO 226 OF 2017

DAVID KAMUNDI MURANGA.....PLAINTIFF

VERSUS

CHARLES NJAGI KANGA.....DEFENDANT

JUDGMENT

1. The plaintiff's advocate, on 7.7.2017, filed a request for judgment on admission of the claim in this suit.

2. At paragraph 3 and 4 of his defence, the plaintiff states as follows:

“3. The defendant accepts receiving Kshs.56,000/= as stated in paragraph 6 of the plaint but a restriction was put by my son on the land so I don't deny the case.

“4. The defendant is also accepting paragraphs 7,8,9,10 and 11 of the plaint as herein as I received the money for the land and I am willing to transfer the land which is occupied by the plaintiff.”

3. In his plaint dated 6th April, 2017 and filed in court on 6th April, 2017, the plaintiff prays for judgment against the defendant for orders that:

a) This court be pleased to order the defendant to transfer LR. **MUTHAMBI/LOWER KARIMBA/1604** to the plaintiff and in default thereof this court's Deputy Registrar be directed to execute all the transfer instruments to transfer the land to the plaintiff.

b) That this court be pleased to vacate and / or remove the caution or any inhibition on the disputed land to enable transfer to the plaintiff.

c) Damages for breach of contract.

d) Costs of the suit.

e) Any further or other relief this court would deem fit to grant.

4. Order 13, rule 2 of the Civil Procedure Rules states:

“Any party may at any stage of a suit, where admission of facts, either on the pleadings or otherwise, apply to the court for such judgment or Order as upon such admissions he may be

entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just.”

5. The defendant having admitted in full the plaintiff's claim and having explained why he could not transfer the suit land to the plaintiff, I am inclined not to subject him to damages. Also, although costs follow the event, I am inclined not to subject him to costs.

6. In the circumstances, it is ordered as follows:

a) The defendant to transfer **LR. NO. MUTHAMBI/LOWER KARIMBA/1604** to the plaintiff and should he default to do so, the Deputy Registrar of this court, is directed to execute all the transfer instruments needed to transfer the land to the plaintiff.

b) Any caution, inhibition or restriction placed against **LR. NO. MUTHAMBI/ LOWER KARIMBA/1604** be vacated and be removed forthwith.

Delivered in open court at Chuka this **17th day of October, 2017** in the presence of:

CA: Ndegwa

Mutani for the plaintiff

P. M. NJOROGE

JUDGE