



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT OF KENYA**

**AT MILIMANI**

**ELC CASE NO. 635 OF 2016**

**EMIS INVESTMENTS LIMITED.....PLAINTIFF**

**=VERSUS=**

**ROSEMARY NYOKABI GATURU.....DEFENDANT**

**JUDGEMENT**

1. The Plaintiff is a Limited Liability Company incorporated under the provisions of the Companies Act (the company). On 30<sup>th</sup> November 2011, the Company entered into a sale agreement with the defendant wherein the defendant agreed to sell her plot No. P6006 B at Embakasi. The agreed purchase price was Kshs.886,000/=.

2. The Company paid the entire purchase price. The company officials and the defendant went to Embakasi Ranching Company Ltd where records were changed from the defendant into the company's name. This was after the company paid transfer fees of Kshs.5000/= and site visit fees of Kshs.25,000/= . The company was issued with a certificate of ownership in its name.

3. The defendant had sold the plot because she was in dire need of finances. It had been agreed that the defendant had the option of buying back the plot. The Company later offered to sell the Plot to the defendant at Kshs.4,000,000/=. The defendant accepted and a proposal on payment was made but she never bought back the plot. The defendant has refused to give the company possession.

4. The Company filed this suit against the defendant seeking an order of eviction. The defendant who was duly served neither entered appearance nor filed a defence. The hearing therefore proceeded by way of formal proof. I have looked at the documents relied on by the company. There is a sale agreement dated 30<sup>th</sup> November 2011. On 30/11/2011 the defendant was paid Kshs.468000/=. On 1/12/2011 the defendant was paid Kshs.418,000/= making a total of kshs.886,000/= which was the agreed purchase price.

5. The Company was given a share certificate after payment of transfer fees and site visit fee. There are receipts for payment issued to the company. There is also evidence that the defendant tried to buy back the plot at kshs.4,000,000/= . She undertook to make a deposit of Kshs.2,500,000/- on or before 7/4/2016 and the balance be paid on or before 7/5/2016. The defendant never fulfilled this. The evidence of the company remains uncontroverted. I find that the plaintiff company has proved its case on a balance of probability. I enter judgement for the plaintiff in terms of prayer (a) and (b) of the amended *Plaint*.

**Dated, Signed and delivered at Nairobi on this 12<sup>th</sup> day of October, 2017.**

**E.O.OBAGA**

**JUDGE**

In the presence of :

Mr Mulaku for Mr Maina for Plaintiff

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**