



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 20 OF 2017

ELLY OBONG'O OSEWE.....PLAINTIFF

VERSUS

MOSES NDEGWA GITONGA.....DEFENDANT

JUDGMENT

1. In the Complaint dated 2nd June, 2016, the Plaintiff averred that the Defendant was at all material times the beneficial owner of L.R. No. 12715/141 measuring 2.024Ha; that the Defendant caused the said land to be sub-divided and that he appointed Railway Housing Co-operative Society (*RAHOSO*) to be the sole sale agent for the plots.
2. According to the Plaintiff, on 18th July, 2003, *RAHOSO*, acting on behalf of the Defendant, sold to Pauline Kaimenti sub-division number 26, now L.R. No. 12715/12496 and that Pauline Kaimenti sold to him the said land vide an agreement dated 7th July, 2005.
3. The Plaintiff has averred that on 13th September, 2005, the Defendant sold to him plot number 27, now L.R. No. 12715/12493 and that despite performing the agreement, the Defendant has failed, neglected and or declined to transfer the suit properties to him.
4. The Plaintiff is seeking for an order of specific performance directing the Defendant to transfer L.R. No. 12715/12496 and L.R. No. 12715/12493 to him.
5. Although the Defendant was served with the Summons and the Complaint, he neither entered appearance nor filed a Defence.
6. The matter proceeded for hearing on 10th May, 2017.
7. The Plaintiff, PW1, informed the court that he bought plot number 27, which was a sub-division of L.R. No. 12715/145 from the Defendant and paid him the entire purchase price; that he purchased plot number 26 from Pauline Kaimenti who had purchased it from the Defendant's agent and that the Deed Plans for the said plots were issued on 15th October, 2015.
8. Upon survey, PW1 informed the court that plot number 26 became L.R. No. 12715/12496 while plot number 27 became L.R. No. 12715/12493.
9. It was the evidence of PW1 that he complied with the Agreements of 13th September, 2005 and 7th July, 2005 in respect to the two plots.

10. PW1 produced in evidence the said Sale Agreements and the copies of the banker's cheques in respect of the two plots.

11. The Plaintiff's advocate filed brief submissions which I have considered. I have also considered the authorities that were filed by the Plaintiff's advocate.

12. The Defendant has not denied that indeed the suit properties are registered in his name.

13. The Defendant has also not denied that he sold the suit properties to the Plaintiff and one Pauline Kaimenti, who in turn sold her plot to the Plaintiff.

14. I have perused the Agreements that were produced by the Plaintiff in this matter together with the copies of the banker's cheque showing that the Plaintiff paid the full purchase price for the two plots.

15. In the circumstances, I am satisfied that the Plaintiff has proved his case on a balance of probabilities.

16. I therefore allow the Plaint dated 2nd June, 2016 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2ND DAY OF NOVEMBER, 2017.

O.A. ANGOTE

JUDGE