



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 104/2016

RIDAH MBUYA MUSUNGUPLAINTIFF

VERSUS

PATRICK WAKASALA WANYONYIDEFENDANT

J U D G E M E N T

1. The Plaintiff in this case is acting in person. She filed this suit against the Defendant seeking for an order that the Defendant do transfer 1.06 acres out of his land described as **Plot No Mt. Elgon/616**. The Defendant who was duly served with summons to enter appearance and file defence neither entered appearance nor filed defence. The hearing therefore proceeded by way of formal proof.

PLAINTIFF'S CASE

2. The Plaintiff testified that in 2005 she and her late son one **SYLVESTER WAKOLI INGOSI** contributed money and came to Kiminini where they bought 1.06 acres from the Defendant. They paid kshs 189,000/-. Her son who has since died built a five roomed house for her on the portion she had bought. She took possession and had been living on the land since then. She produced a copy of the sale agreement exhibit 1.

ANALYSIS OF THE EVIDENCE

3. The Plaintiff's evidence was not controverted. A look at the agreement dated 28/10/2005 at the top shows that the purchaser was **SYLVESTER SHIKOLI INGOSI**. However at the middle of the same agreement the purchasers are shown to be **SYLVESTER SHIKOLI I** which I presume to be **INGOSI** and **RIDAH MBUYA MUSUNGU** the plaintiff herein.
4. The sale was duly witnessed before the area assistant chief as per the stamp on it. From the agreement it is clear that the entire purchase price was paid on the date the agreement was made. What in essence the plaintiff is seeking is an order of specific performance of the agreement.
5. It is not clear from the pleadings whether Plot Known as **Mt Elgon/616** is registered or not. However be that as it may, the agreement shows that the plot was jointly bought by two persons at least from what is shown in the middle where the name of the deceased is shown alongside that of the plaintiff as purchasers. Upon the death of the Plaintiff's son, the entire land automatically reverted to the plaintiff since they were joint purchasers. As the purchase price was fully paid, I find that the plaintiff's claim is well founded.

DECISION

6. I order that the Defendant do sign documents to transfer 1.06 acres to the Plaintiff failing which the Deputy Registrar of this court should sign all documents to ensure that 1.06 acres is transferred to the Plaintiff. The plaintiff shall have costs of this suit.

Dated, signed and delivered at Kitale on this 6th day of April 2016.

E. OBAGA

JUDGE

In the presence of Plaintiff.

Court Assistant – Isabellah

E. OBAGA

JUDGE

6/4/16