



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC NO. 42 OF 2013

BENDERA WILSON CHARO.....PLAINTIFF

VERSUS

THEOPHILUS GARAMA JUBA.....DEFENDANT

J U D G M E N T

1. In his Complaint dated 20th March, 2013, the Plaintiff averred that he entered into a sale agreement with the Defendant for the sale of plot no. 46 Majaoni Settlement Scheme for Kshs.210,000; that he was to take immediate possession of the property and that the Defendant has breached the agreement thus this suit.
2. The Plaintiff has prayed for vacant possession of the suit property.
3. The Defendant entered appearance on 26th April, 2013 and filed a Defence on 9th May, 2013 in which he denied the Plaintiff's averments.
4. Although the Defendant was served twice with a hearing notice, he never attended court. The matter proceeded for formal proof on 23rd June, 2015 and 1st March, 2016.
5. The Plaintiff, PW2, informed the court that he entered into an agreement of sale with the Defendant for the purchase of the suit property and that the agreement was witnessed by three witnesses whereafter he gave him the letter of allotment.
6. PW2 stated that although the Defendant requested to be given two weeks to vacate the suit property, he never did so.
7. According to PW2, he paid the Defendant the entire purchase price.
8. PW1 informed the court that on the instructions of the Plaintiff, he went to the suit property to dig up the foundation.
9. After digging the foundation, PW1 stated that the Defendant put back the soil in the dug foundation.
10. The Plaintiff's advocate submitted that the Defendant is in breach of the agreement that he entered into with the Defendant and that the agreement meets the requirements of Section 3(3) of the Law of Contract Act.
11. The Plaintiff produced in evidence the agreement dated 12th April, 2010. In the agreement, the Defendant agreed to sell to the Plaintiff plot number 46 measuring 0.17 Ha for Kshs.210,000.
12. The Defendant's signature was duly witnessed by Nyachiro advocate.
13. According to the agreement, the Defendant sold plot number 46 together with semi-permanent structures standing on the land. The Defendant handed over to the Plaintiff the letter of offer that was in his possession.
14. In view of the evidence before me, I find that the Plaintiff has proved his case on a balance of probabilities. The Defendant should hand to the Plaintiff vacant possession.

15. For those reasons, I allow the Plaintiff's application dated 20th March, 2013 in the following terms:

- (a) **The Defendant to give to the Plaintiff vacant possession of plot number 46 Majaoni squatters settlement scheme.**
- (b) **A declaration be and is hereby issued that plot no. 46 Majaoni Squatters Settlement Scheme belongs to the Plaintiff.**
- (c) **The Defendant to pay the costs of the suit.**

Dated, signed and delivered in Malindi this 13th day of May, 2016.

O. A. Angote

Judge