



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT AND LAND COURT**  
**ELC. NO. 865 OF 2015**

**ERIC MUMO MUTISYA..... APPLICANT**

**VERSUS**

**DONWOODS COMPANY LIMITED.....RESPONDENT**

**JUDGMENT**

This suit was commenced by way of Originating Summons and Supporting Affidavit dated 9<sup>th</sup> September 2015 and filed on 10<sup>th</sup> September 2015 in which the Applicant sought for the following orders:

1. That this court be pleased to grant a vesting order for Land Reference No. 7785/1108 (the “suit property”) to the Applicant;
2. That the Deputy Registrar of this court be authorized to execute the transfer and any other necessary documents to effect the transfer;
3. That the Registrar of Lands do register the Applicant as the owner of the suit property in the place of the Respondent; and,
4. That costs be in the cause.

The grounds upon which the Applicant sought to rely were set out on the face of the Originating Summons. The Applicant further relied on his Supporting Affidavit sworn by him on 9<sup>th</sup> September 2015 in which he averred that on 10<sup>th</sup> July 2015 he purchased the suit property from the directors of the Respondent at a purchase price of Kshs. 9 million. He annexed a copy of the Sale Agreement between him and the Respondent dated 10<sup>th</sup> July 2015 marked “E1”. He further averred that prior to that he had carried out a search on the suit property at the Lands Office where he confirmed that the suit property belongs to the Respondent. He annexed the search results and marked it “E2”. He further averred that he conducted a search of the Respondent at the company’s registry and confirmed that the Directors of the Respondent are a Mr. Joseph Chege Kiige and Mr. Joseph Mwangi Wanjohi. He annexed the search results and marked them “E3”. He further indicated that the Respondent through its Directors named above executed the transfer forms in favour of the Plaintiff which he annexed marked “E4”. He further averred that despite payment and execution of the documents required to transfer the suit property into his name, the Respondent’s directors refused to surrender to him the original title of the suit property. He added that in order to transfer the suit property into his name, he is required to surrender the original title thereto for cancellation. The transfer forms marked “E3” contain a statement in which the Directors of the Respondent acknowledge receipt of Kshs. 9 million as the purchase price for the suit property. Further, the Applicant annexed a letter dated 17<sup>th</sup> July 2015 from the Respondent acknowledging receipt of the

entire purchase price for the suit property and promising to deliver the original title by 18<sup>th</sup> July 2015, a promise they did not keep.

Despite being duly served with a hearing notice by way of registered post, the Respondent did not attend court for the hearing of this Originating Summons. They also did not file any papers in response. The hearing therefore proceeded ex parte with the Applicant being directed to file written submissions. The same were filed on 23<sup>rd</sup> October 2015.

### **Determination**

This suit is brought under Order 37 Rule 3 of the Civil Procedure Rules, 2010 which provides as follows:

**“A vendor or purchaser of immovable property or their representatives respectively may, at any time or times, take out an originating summons returnable before the judge sitting in chambers for the determination of any question which may arise in respect of any requisitions or objections, or any claim for compensation or any other question arising out of or connected with the contract of sale (not being a question affecting the existence or validity of the contract).”**

In this suit, the Applicant seeks for the court to enforce his Sale Agreement dated 10<sup>th</sup> July 2015 entered into between him and the Respondent. He has made the case that he has complied fully with all of his obligations therein including payment of the entire purchase price of Kshs. 9 million. He has also demonstrated that the Respondent has acknowledged receipt of this sum of money in the transfer executed by the two directors of the Respondent and also in the Respondent’s letter dated 17<sup>th</sup> July 2015. The Applicant’s case is that this notwithstanding, the Respondent has failed to release to him the original title to the suit property to enable him to lodge the completion documents at the Lands Office to effect the transfer of the suit property into his name. In light of the foregoing, I find no difficulty in arriving at the conclusion that the Applicant has proved his case against the Respondents who did not respond to the Applicant’s claim. Accordingly, I hereby order as follows:

1. This court hereby grants a vesting order for Land Reference No. 7785/1108 (the “suit property”) to the Applicant;
2. The Deputy Registrar of this court is hereby authorized to execute the transfer and any other necessary documents to effect the transfer;
3. The Registrar of Lands is hereby ordered to register the Applicant as the owner of the suit property in the place of the Respondent; and,
4. Costs shall be in the cause.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13<sup>TH</sup> DAY OF MAY 2016.**

**MARY M. GITUMBI**

**JUDGE**