



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CAUSE NO. 2 OF 2015**

**ISAAC MIHADIA AKOMODIA.....PLAINTIFF**

**VERSUS**

**ELIZABETH M'MBONE.....DEFENDANT**

**JUDGMENT**

*Isaac Mihadia Akomodia*, hereinafter referred to as the plaintiff has sued *Elizabeth Mmbone*, hereinafter referred to as the defendant claiming that on or about the year 2001, one Isaac Mihadia Akomodia the plaintiff herein purchased a portion of land measuring 0.0809 ha from all that parcel of land referred to as Lugari/Lukuyani Block 1 (Vihiga) 235 measuring 1.210 ha from the defendant herein Elizabeth Mmbone.

That it was a term of the agreement that upon completion of the balance, the defendant was to ascertain that the plaintiff had acquired a title deed for the same. The plaintiff avers that in total disregard of the contractual agreement between himself and the defendant, the defendant has refused to perform her own part of signing transfer documents to ascertain that the plaintiff is registered as the owner of the above stated parcel of land as agreed. That despite demand and notice of intention to sue, the defendant has refused to make amends.

He admits that the honourable court has the relevant jurisdiction to hear and entertain this matter which relates to land and confirms that there is no suit pending in any court or anywhere else between the parties over the same subject matter. The plaintiff pray for orders compelling the defendant to honour her part of the agreement and sign transfer forms to enable the plaintiff be registered as the owner of the said parcel of land.

The plaintiff further prays that in default, the court may order that the Executive Officer and/or Deputy Registrar of the court do sign on the relevant transfer forms and Land Control Board form in place of the defendant to ascertain that the said parcel of land is transferred in favour of the plaintiff and Costs of the suit plus interest.

The defendant was served, he failed to enter appearance and filed defence and therefore interlocutory judgment was entered. When the matter came up for hearing, the plaintiff stated on oath that he is a Clinical Officer based on Nairobi and that he stays in Vihiga farm area in Soy. That he bought a piece of land from Elizabeth Mmbone in the year 2001 and paid her the whole amount but she has been reluctant to effect transfer of land to his name. That he would like the court to help him register the said piece of land in his name.

I have considered the pleadings and evidence on record and do find that though it is true that the plaintiff bought the parcel of land from Elizabeth Mmbone in the year 2001 and paid her the whole amount but she has been reluctant to transfer the land, the land is held jointly in the name of the defendant and one Benson Toy Mbulika who is not a party to this proceedings and whose consent was not obtained. Section **91(6) of the Land Registration Act** provides that **no tenant in common shall deal with their undivided share in favour of any person other than another tenant in common, except with the consent in writing, of the remaining tenants, but such consent shall not be unreasonably withheld**. The suit is therefore dismissed with no order as to costs.

**DATED AND DELIVERED AT ELDORET ON 24TH DAY OF NOVEMBER, 2016.**

**ANTONY OMBWAYO**

**JUDGE**