

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 1009 OF 2012

CATHERINE JEPKORIR TIMBOMEI KURUI.....PLAINTIFF

VERSUS

SCOLAR JEBIWOT KORIR.....DEFENDANT

JUDGMENT

Catherine Jepkorir Timbomei Kurui, hereinafter referred to as the plaintiff has sued *Scolar Jebiwot Korir*, hereinafter referred to as the defendant. The plaintiff claims that vide the sale agreement dated 11th February, 2009, the defendant claiming to be the registered owner of that parcel of land known as Eldoret Municipality Block 9/2464 sold the same to the plaintiff at agreed consideration of Kshs.320,000/= and that it was a term of the said agreement and that the plaintiff would take possession upon signing agreement and that the defendant would facilitate transfer in favour of the plaintiff. The plaintiff states that despite having cleared the purchase price, her attempt to take possession of the suit land hit a snag when it turned out that the parcel of land earlier shown to her was third party property. The plaintiff states that efforts to have the defendant point out the actual location of the suit land have not materialized because the defendant has kept postponing the date of visit to the site where the suit land is situate. The plaintiff's claim against the defendant is for an order of specific performance compelling the defendant to point out the location of land parcel Eldoret Municipality Block 9/2464. The plaintiff further prays for an order of specific performance compelling the defendant to transfer the suit land to the plaintiff. In the alternative, the plaintiff prays for an order of rescission/revocation of the sale agreement dated 11.02.2009 and for refund of Kshs.320,000/= being the purchase price. The plaintiff further pray for costs and interest at court rates from 11th February, 2009 till settlement in full.

The plaintiff testified that on the 11th February 2009, the defendant sold to her her land parcel known as Eldoret Municipality Block 9/2364 located within S.O.S. Children Home in Eldoret town. The agreed purchase price was Kshs.320,000/= which sum was paid in full. That before buying the suit land, she conducted a search in Uasin Gishu land registry and the results indicated that the defendant owned the suit land. The defendant also gave her copies of the lease title, rates payment request and of her National Identity Card and Pin Number Certificate. She also took her to the site in which the suit land was situated and she noted that the same was vacant. She liked it and agreed to buy it. Upon clearing the purchase price, she went to the site earlier pointed out by the defendant with a view to fence the same only to find that the same had been developed by a third party. That she contacted the defendant who informed her that she had erred as to the actual location of the suit land. She further informed her that the suit land parcel was located near a swamp about 200 metres to the North of the plot earlier shown to her.

The defendant however, failed to provide the appropriate map, neither did she take her to the site in which the suit land was allegedly situated despite several promises that she would. That in May 2012, she issued her with a demand notice asking that she either points out the location of the subject land and process the transfer of the suit land or refund the purchase price within 30 days from date of the notice. In response, the defendant called her on phone in June, 2012 to apologize over her failure to finalize the transaction but has never taken any further steps to conclude the same since then. She has been constrained to seek court relieve in the terms set out in her plaint.

I have considered the evidence on record and do find that the plaintiff has demonstrated beyond reasonable doubt that she entered into a sale agreement with the defendant for part of land known as Eldoret Municipality Block 9/2464 measuring 1/8 of an acre. The agreed consideration was Kshs.320,000/=. She paid the Kshs.320,000/= but was never given the land by the defendant. The land to

be sold was not identified and therefore an order of specific performance cannot be granted as prayed but the order for a refund can be made. I do grant the alternative prayer thus an order of rescission/revocation of the sale agreement dated 11.02.2009 and for refund of Kshs.320,000/= being the purchase price plus costs and interest at court rates from 11th February, 2009 till settlement in full.

DATED AND DELIVERED AT ELDORET ON 4TH DAY OF NOVEMBER, 2016.

ANTONY OMBWAYO

JUDGE