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| Case Number: | Environment & Land Case 230 of 2014 (O.S) |
| Date Delivered: | 14 Dec 2018 |
| Case Class: | Civil |
| Court: | Environment and Land Court at Machakos |
| Case Action: | Judgment |
| Judge: | Oscar Amugo Angote |
| Citation: | Francis John Musembi v Marion Njeri Njoroge [2018] eKLR |
| Advocates: | - |
| Case Summary: | - |
| Court Division: | Environment and Land |
| History Magistrates: | - |
| County: | Machakos |
| Docket Number: | - |
| History Docket Number: | - |
| Case Outcome: | Plaintiff's originating summons allowed |
| History County: | - |
| Representation By Advocates: | - |
| Advocates For: | - |
| Advocates Against: | - |
| Sum Awarded: | - |
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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 230 OF 2014 (O.S)

FRANCIS JOHN MUSEMBI.....PLAINTIFF

VERSUS

MARION NJERI NJOROGHE.....DEFENDANT

JUDGMENT

1. In the Originating Summons dated 17th December, 2014, the Plaintiff is seeking for the determination of the following issues:

a. Whether vide an Agreement for Sale dated 24th July, 2010, the Defendant sold the Plaintiff all that land known as L.R. No. 337/427 situated at Athi River Township Machakos County.

b. Whether the Defendant was paid the sale price in full.

c. Whether the Defendant voluntarily surrendered the original Certificate of Lease to the Plaintiff pending transfer.

d. Whether the Defendant gave possession of the property to the Plaintiff.

e. Whether the Defendant has refused or neglected to execute the transfer and obtain the necessary clearances and consents.

f. Whether the Defendant should be ordered to complete the sale by executing the transfer and obtaining the necessary clearances and consents within a specified period.

g. Whether the Deputy Registrar of this Honourable Court should be ordered to execute the transfer instruments in the event the Defendant declines to do so.

2. The Summons is supported by the Affidavit of the Plaintiff who has deponed that in June, 2010, the Defendant offered to sell to him a parcel of land number 337/427 situated in Athi River, Machakos County; that upon conducting due diligence, he established that the suit land was registered in the name of the administrator of the Estate of the Defendant's deceased husband and that he paid the full purchase price to the Defendant, which payment she acknowledged.

3. According to the Plaintiff, the Defendant did not provide the completion documents within the stipulated period; that the Defendant has become uncooperative; that he (*the Plaintiff*) is in possession of the land and the original Certificate of Lease and that the Defendant should be ordered to complete the sale.

4. Although the Defendant was served with the Originating Summons, he neither entered appearance nor filed a Replying Affidavit. The matter proceeded *ex-parte* by way of oral evidence on 4th October, 2018.

5. The Plaintiff, PW1, repeated in his evidence the depositions that he had made in his Affidavit which I have summarized above. PW1 informed the court that he purchased the suit land from the Defendant in the year 2010; that he paid the full purchase price of Kshs. 326,000; that the Defendant gave him the original Certificate of Lease and that the Defendant has refused to give him the rest of the completion documents.

6. The evidence before the court shows that the Defendant was issued with the Grant of Letters of Administration of the Estate of Njoroge Kaniaru. The Grant for L.R. No. 337/427 shows that the said Letters of Administration were registered against the title on

30th March, 2007.

7. The Defendant has not denied that she entered into a Sale Agreement dated 24th July, 2010 with the Plaintiff to sale the suit land for Kshs. 326,000. The Defendant has also not denied that she received the full purchase price whereafter she handed to the Plaintiff the Title document. However, she declined to hand to the Plaintiff the remaining completion documents, including the duly executed Transfer document.

8. Having read the duly signed Sale Agreement, and having heard the evidence of PW1, I am satisfied that the Plaintiff has proved his case on a balance of probabilities. For those reasons, I allow the Plaintiff's Originating Summons dated 17th December, 2014 in the following terms:

a. The Defendant is hereby ordered to complete the sale in respect of L.R. No. 337/427 situated in Athi River, Machakos, by executing the Transfer and obtaining the necessary clearance and consents within thirty (30) days of the date of service of this order.

b. In the event the Defendant declines or refuses to comply with the above order, the Deputy Registrar of this court do execute the Transfer instruments and the Chief Land Registrar or his nominee to thereafter register L.R. No. 337/427 in favour of the Plaintiff.

c. The Defendant to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 14TH DAY OF DECEMBER, 2018.

O.A. ANGOTE

JUDGE



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