



Case Number:	Land Case 63 of 2018
Date Delivered:	09 Dec 2019
Case Class:	Civil
Court:	Environment and Land Court at Kitale
Case Action:	Judgment
Judge:	Mwangi Njoroge
Citation:	Jane Namalwa (Suing in her capacity as the duly appointed attorney of Delia Nafula Mukhwana) v Christopher Kipsang Mosong [2019] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Trans Nzoia
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application 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 KITALE**

**LAND CASE NO. 63 OF 2018**

**JANE NAMALWA (Suing in her capacity as the duly appointed attorney of**

**DELIA NAFULA MUKHWANA.....PLAINTIFF**

**VERSUS**

**CHRISTOPHER KIPSANG MOSONG.....DEFENDANT**

**JUDGMENT**

1. By a plaint dated **12/7/2018** and filed in court on the same date the plaintiff sought the following orders against the defendant:-

**a. An order of specific performance to issue against the defendant compelling her to execute and/or cause to be executed all the relevant instruments of transfer and applications for consent so as to cause a portion measuring Nought Decimal Two Five (0.25) of an acre of that land known as Plot No. 22 Natwana ADC Farm forming part of Land Reference No. 8158/2 to be transferred into the name of one DELIA NAFULA MUKHWANA.**

**b. An order directing the defendant to surrender the road reserve on the suit land to the purchaser, DELIA NAFULA MUKHWANA to enable her to access her portion of land easily.**

**c. Costs of the suit.**

**d. Any other relief this court may deem just to fit to grant.**

**The Plaintiff's Case**

2. According to the plaint and the evidence of the plaintiff the plaintiff purchased **0.25 acres** from the defendant. That portion of land was to be carved out of the defendants land referred to as **Plot No. 22 Natwana ADC Farm**, which is a portion of a larger parcel **LR No. 8158/2**. The consideration was **Kshs.165,000/=** which Delia paid in full on execution of the sale agreement dated **7/3/2015**. It was an express term of the agreement that upon payment of the purchase price in full the vendor would execute the relevant instruments of transfer to ensure that the purchased portion is transferred into Delia's name but the vendor has not done so to date. Further the vendor has failed to provide access to the plot by way of creating a road for the purchaser. It is averred that attempt to resolve the dispute amicably has failed hence the suit.

3. Only the plaintiff testified in her case. She adopted her statement filed alongside her plaint and produced a Power of Attorney granted to her by **Delia Nafula Mukhwana** dated **9/5/2018** registered at the Lands Registry as **P/A/69182** on **12/6/2018**. She also produced the original sale agreement dated **7/3/2015** as **P. Exhibit 2**. A copy of a letter from the Senior Chief Moi's Bridge Location was produced as **P. Exhibit 3**. A demand letter dated **8/5/2017** addressed to the defendant was produced as **P. Exhibit 4**. She stated that since she purchased the land she cannot access it for the purpose of development. Upon giving that evidence the plaintiff closed her case.

**The Defendant's Defence**

4. The defendant filed memorandum of appearance on **1/8/2019** and the defence on **14/8/2018**. However though served, the defendant and his advocates never attended the hearing.

#### **DETERMINATION**

5. I have considered the plaint and the evidence given by the plaintiff as well as the documents produced in this case. I find that the plaintiff has proved her case on a balance of probabilities against the defendant. I therefore enter judgment in favour of the plaintiff against the defendant in terms of prayers No. **(a)**, **(b)** and **(c)** of the plaint dated **12/7/2018**.

**Dated, signed and delivered at Kitale on this 9<sup>th</sup> day of December, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**9/12/2019**

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the Plaintiff

N/A for the Defendant

#### **COURT**

Judgment read in open court.

**MWANGI NJOROGE**

**JUDGE**

**9/12/2019.**



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