

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS

Civil Case 961 of 2003

PETER NTEERE.....PLAINTIFF

VERSUS

ANDREA EMUNUEL MAKOKHA.....DEFENDANT

JUDGMENT

The plaintiff sued the defendant and sought judgment for the following orders:

- (a) That the Defendant herein do execute and deliver to the plaintiff a deed partition and surrender for the parcel known as LR NO. 12882/41
- (b) That the Defendant do all such acts and execute all such documents as may be necessary to transfer the half share of the plaintiff's known as LR NO. 12882/65. And in the alternative the Deputy Registrar High Court do execute the said documents.
- (c) That the plaintiff defendant do refund to the plaintiff the sum of Shs.38,428/= being the amount incurred by the plaintiff in the subdivision process.
- (d) That the costs of this suit be paid by the defendant in any event.

The defendant was served with summons but did not enter appearance nor file defence. The plaintiff applied and obtained interlocutory judgment and the suit was set down for formal proof.

The plaintiff in his evidence told the court that both him and the defendant purchase a property known as LR NO. 12882/41 which was transferred and registered in joint names as tenants in common in equal shares. They purchased the said property from Wangulu Enterprises. A title deed was issued

By a letter dated 11th April 1991 they jointly applied to the Town Clerk for the subdivision of the said parcel of land into two equal shares. They were granted the request for the subdivision and approval was obtained from the Commissioner of Lands and finally got the subdivision and the conditions of the said subdivision. They finally got copy of the subdivision and they later did the subdivision and had deed plans prepared for the two properties. They also received subdivision approval by the Director of City Planning dated 1st July 1991 and the approval by the Commissioner of Lands dated 5th August 1991. They had agreed to apply for subdivision. They were desirous to have separate titles each.

They needed to surrender the joint title to enable issuance of the new title. He wrote the defendant to surrender the original title but he declined to do so. In the exercise of the process of subdivision he paid Shs.11,115/= inspection fees to the Nairobi City Council, Shs.7,297/= annual rates, Shs.7,432/= access road fees, Shs.25,945/= to KP & L CO. Ltd for electricity, and Shs.15,600/= stamp duty and he is claiming half of the expenses incurred in the process.

He urged the court to order the defendant to execute the necessary documents and surrender the same

to facilitate the process of the new titles and in the event he declines to sign the same, the Deputy Registrar of the High Court do sign the said documents on behalf of the defendant to facilitate the transfer and the registration of title in the name of the plaintiff.

After considering the pleadings as well as the evidence adduced by the plaintiff and the exhibits produced I am satisfied that the plaintiff has formerly proved his claim. Consequently judgment is herein entered for the plaintiff and against the defendant as prayed in the plaint with costs and interest.

Dated and delivered at Nairobi this 12th day of October 2006.

J.L.A. OSIEMO

JUDGE