



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC. CASE NO. 207 OF 2011

ROSAMOND BAKARI PLAINTIFF

VERSUS

MAJOR TOM MBOYA DEFENDANT

JUDGMENT

By a Plaint dated 16th March 2011, the Plaintiff filed suit against the Defendant praying for judgment to be entered against the Defendant for:

- a. An order directed to the Defendant to execute the Assignment of Lease in respect of Apartment No. E5, Block E erected on Land Reference Number 1/1161 (hereinafter referred to as the “Suit Property”) in favour of the Plaintiff within 30 days of service in default of such execution the Deputy Registrar, High Court to execute the said Assignment of Lease in place of the Defendant;
- b. An order directed to the Defendant to vacate the Plaintiff’s property;
- c. Mesne profit in favour of the Plaintiff; and,
- d. Cost of this suit.

By a Sale Agreement dated 1st July 2004 between the Plaintiff and Defendant jointly and Sandalwood Developers Limited, the Plaintiff and Defendant agreed to jointly purchase the Suit Property from the said developer company. It was an agreement between the Plaintiff and the Defendant at the time of entering into the agreement that each would contribute equally towards the purchase herein. The Defendant delayed in raising his contribution and by a written agreement dated 21st September 2004 between the Plaintiff and the Defendant, it was agreed that the Plaintiff pays the balance in full and the Defendant would refund the Plaintiff his share. Pursuant to that agreement, the Plaintiff settled the entire balance with the Developer and by a lease dated 29th September 2005, the Suit Property was registered in the names of the Plaintiff and Defendant jointly. The Plaintiff has on several occasions requested the Defendant to refund her his portion of the purchase price of the Suit Property to no avail. Further, the Defendant occupied the Suit Property since the date of purchase without paying any rent. Sometime in 2009, the Defendant and Plaintiff agreed that since the Defendant was unable to raise his share of contributions, the Defendant would assign his share of ownership of the Suit Property to the Plaintiff. However, the Defendant declined to sign the Assignment of Lease prepared by the Plaintiff’s Advocates.

Despite being served with summons to enter appearance, the Defendant failed to enter appearance and to file a defence resulting in interlocutory judgment being entered against him. The matter then proceeded

for formal proof.

The Plaintiff testified to having paid the entire purchase price amounting to Kshs. 7,500,000/- for the Suit Property despite the agreement that the Defendant would contribute half of this portion to entitle him to be an equal owner of the Suit Property. It is evident that the Defendant only paid Kshs. 500,000/- towards the purchase of the Suit Property, leaving the Plaintiff to pay Kshs. 7,000,000/-. The Plaintiff also testified that the Defendant lived in the Suit Property from the date of purchase until the beginning of the year 2013. The Plaintiff stated that she had abandoned prayer No. 2 of her Plaint as the Defendant had now vacated the Suit Property. The Plaintiff testified that the Defendant did not pay her any rent for the duration of time he occupied the Suit Property.

This is a relatively straightforward case in which the Plaintiff has proved that she did indeed pay a total of Kshs. 7,000,000/- towards the purchase of the Suit Property. It is evident that the Defendant only contributed the sum of Kshs. 500,000/- towards this purchase price, despite having agreed with the Plaintiff that he would pay half the purchase price. To date, he has not honoured that obligation and has in fact enjoyed dwelling in the Suit Property without paying any rent since 2005 to 2013.

In light of this, I find that the Plaintiff has proved her case on a balance of probabilities. I therefore enter judgment in her favour as prayed in her Plaint save for the prayer for mesne profits. I consider that the Defendant's contribution of Kshs. 500,000/- catered for his occupation of the Suit Property.

It is so ordered.

SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF JULY 2013

MARY M. GITUMBI

JUDGE