



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**E&LC NO.148 OF 2012**

**MWALIMU NATIONAL CO-OPERATIVE SACCO SOCIETY LTD...PLAINTIFF**

**VERSUS**

**JOSEPH WAMWAYI ODUNDO.....DEFENDANT**

**J U D G M E N T**

By a plaint filed here on 20/12/2012 and dated 17/12/2012, the plaintiff, **MWALIMU NATIONAL CO-OPERATIVE SACCO SOCIETY LIMITED**, asks the court to make orders for refund of Kshs.26,520,000, costs of the suit, interests, or any other just relief.

The claim is against the defendant – **JOSEPH WAMWAYI ODUNDO** – and is based on two land sale transactions that seem to have gone awry owing to defendant's lackadaisical handling of his part of the bargain and some untoward developments on the ground.

The plaint tells of two agreements – one dated 21/7/2008 and the other dated 30/12/2008 – where the parties covenanted over the sale and purchase of two parcels of land, **KISUMU MUNICIPALITY GRANT L.R 15300, IR 96243** and **KISUMU MUNICIPALITY GRANT LR 18148, IR 74153**. What followed was a series of payments to the defendant leading to the total claimed in the plaint.

According to the plaint, **KISUMU MUNICIPALITY GRANT L.R 15300, IR 96243** was to go for 19,000,000/= while **KISUMU MUNICIPALITY GRANT LR. 18148, IR 74153** had its price at 9,400,000/=.

For **KISUMU MUNICIPALITY L.R 18148, IR 74153** an amount of Kshs.9,300,000 has already been paid while Kshs.17,220,000 has already been paid for **KISUMU MUNICIPALITY GRANT L.R 15300, IR 96243**.

The agreement was that upon payment of some deposit sums the defendant was to obtain rates and rents clearance certificates for both properties to facilitate transfer. He would also pay stamp duty and registration fee.

The defendant failed to do this despite payments.

It was also alleged that the defendant was attempting to sell the properties to third parties.

It appears clear that the defendant was served and even entered appearance vide a memo dated 29/1/2013 and filed on 31/1/2013.

In spite of this however, it would appear that the plaintiff asked for interlocutory judgment on 19/2/2013,

which the court entered on the same date.

This is a liquidated claim and ordinarily would rest at the entry of interlocutory judgment. But it would appear the plaintiff noticed there was entry of appearance and therefore decided to have the matter heard. The hearing took place on 29/4/2013.

Only one witness testified. He is **DANIEL A.O. MZIGO OMOTTO**. Much of what is in the plaint was repeated during hearing. Some exhibits were also availed and it is worth mentioning them. They are:

(I) Plf EX NO.1 – a written authority to bring the case on behalf of the plaintiff

(ii) Plf EX NO.2 – Written sale agreement which has acknowledgment for receipt of Kshs.2.5million.

(iii) Plf EX NO.3 A-e: Written acknowledgement for payments made on 13/8/2008, 3/9,2008, 24/9/2008, 4/10/2008, and 7/11/2008 for parcel No.LR 18148, IR 74153.

(iv) Plf EX NO.4: Agreement for sale for LR 15300, IR 96243

(v) Plf EX NO.5A-F: Written acknowledgments for payments on 30/12/2008, 23/2/2009, 7/3/09, 8/5/09, 29/5/09 and 30/9/09 showing a cumulative total of 15,220,000/=

(vi) Plf EX NO.6 a & b: Two letters asking the defendant to refund the money paid.

(vii) Plf No.6C: Postage receipt for one of the letters in (vi) above.

It would appear that the defendant approached the plaintiff through one **JOSEPH WAMWAYI** with offers to sell the two pieces of land. The plaintiff accepted the offer and made various payments but the deal ran into legal headwinds when the defendant failed to honour the agreements and some other people emerged to claim the land.

This is a claim that is not controverted. From the evidence availed, it is well shown that the plaintiff paid various payments in a bid to purchase the two parcels of land. But the defendant has frustrated this bid and developments on the ground have not helped matters. It would appear that the defendant has become devious.

The plaintiff has lost trust in him, hence this suit.

After due consideration of what the plaint contains, the evidence availed, and the absence of rebuttal from the defendant's side, this court finds the plaintiff's claim well proved on balance.

Accordingly, the plaintiff's claim of refund of Kshs.26,520,000, costs of the suit, and interests on both refund and costs are all granted.

**A.K. KANIARU – JUDGE**

**31/7/2013**

**31/7/2013**

A.K. KANIARU – JUDGE

Roseline O. - Court clerk

No party – Present

Interpretation – English/Kiswahili

Onyango P.D for Plaintiff

**COURT:** Judgment read and delivered in open COURT

Right of Appeal – 14 days.

**A.K. KANIARU – JUDGE**

**31/7/2013**