

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MACHAKOS

Civil Case 54 of 2009

GIKONYO WA KANG'U PLAINTIFF /APPLICANT

versus

KOMAROCK BUILDING DEV LTDDEFENDANT/RESPONDENT

RULING

1. The Originating Summons dated 4.9.2008 is premised in the provisions of Order XXXVI Rule 3 of the Civil Procedure Rules and the Applicant seeks orders that the Respondent do pay to the Applicant the balance of the purchase price for the sale of L.R.No. 44416 (L.R. No. 12715/180 situated north-west of Athi-River) plus interest at 15% per annum or in the alternative that he should deposit that sum in court.
2. From the Supporting Affidavit sworn on 4.9.2008 and the grounds in support of the summons, the Applicant is the registered proprietor of the suit land. That sometime in 2007, the Respondent entered into the land without lawful cause and later purported to sub-divide it with intention to sell portions of it to third parties. When the Applicant discovered those actions, he initially took offence but in April 2008, he opted to accede to the Respondent's request to purchase the land at a total price of Kshs. 9,180,000/= and a Sale Agreement to that effect was executed on 29.4.2008. That in part compliance thereof, the Respondent paid Kshs. 918,000/= as 10% deposit and was to complete the transaction by 1.8.2008 but failed to do so.
3. The Applicant's concern is that the Respondent has already settled third parties on the land and he may suffer irreparable damage if the transaction is not completed.
4. The Respondent only entered appearance through M/S Egessa & Co. Advocates on 18.9.2008 but I see no response to the issues raised and therefore I deem the summons as unopposed.
5. In the Sale Agreement dated 29.4.2008 the Respodnent committed itself inter-alia to

complete the sale transaction by 1.8.2008. It has failed to do so and only paid 10% of the purchase price. It is obligated to pay the balance as failure to do so would only occasion all parties, including third parties, unnecessary hardship and probably protracted litigation. The penalty for failure to pay the purchase price as agreed was 15% interest.

6. The above being the case, the prayers in the summons are warranted and I will grant prayers 1 and 3 thereof.

7. Orders accordingly.

ISAAC LENAOLA

JUDGE

Countersigned and delivered at **Machakos** this **12th** day of **March 2010**.

H.P.G. WAWERU

JUDGE