



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT (ELC) NO.188 OF 2010

LOUIS KANINA KANYONYO.....PLAINTIFF/APPLICANT
VERSUS
STEPHEN NJUGUNA KABA.....DEFENDANT/RESPONDENT

RULING

1. By a notice of motion dated 2nd July, 2010, Louis Kanina Kanyonyo who is the plaintiff in this case, seeks orders that judgment be entered in his favour as against the respondent for the sum of Kshs.70,000/= plus interest thereon at the rate of 12% per annum from 28th February, 1993 until payment in full. Stephen Njuguna Kaba who is the defendant has sworn a replying affidavit in which he concedes that the sum of Kshs.70,000/= should be refunded to the plaintiff. The defendant however objects to the payment of interest maintaining that under Section 6 and 7 of the Land Control Act Cap 302, the money is recoverable as a debt, and that Section 22 of the same Act criminalizes any further demand.

2. Counsel for the parties confined their address to this court to the issue of interest only. It was submitted by counsel for the plaintiff that interest is payable from the date the defendant received the money until payment in full. Counsel referred to Section 26 of the Civil Procedure Act which gives the court unfettered discretion to award interest. Reliance was also placed on *HCCA No.45 (Meru) of 2008. Esther Nkatha vs Karani*.

3. For the defendant, it was contended that interest should be payable from the date of filing suit. This is because the defendant has always admitted receiving the money and his wish to refund the money. It was submitted that although Section 6 and 8 of the Land Control Act allows payment of interest, the interest cannot be from date of receipt of the money, because the Limitation Act provides a limitation of six years. The court was therefore urged to award interest from the date of filing suit.

4. I have given due consideration to this application. I have also considered the submissions made by parties' counsel. It is not disputed that the plaintiff paid the defendant a sum of Kshs.70,000/= as part payment in respect of an agreement for sale of land parcel No.Loc 1 Kigio/254. It is also not disputed that the transaction became void pursuant to Section 6 of the Land Control Act, and that the sum of Kshs.70,000/= is payable to the plaintiff by the defendant in accordance with Section 7 of the Land Control Act. The plaintiff has claimed interest on the sum of Kshs.70,000/= from 28th February 1993 until payment in full. Nonetheless, according to paragraph 3 and 5 of the plaint, the payment of Kshs.70,000/= was made pursuant to the agreement of sale entered into on 16th December, 1994. This is confirmed by the plaintiff in paragraph 4 and 5 of his affidavit sworn in support of this application. Therefore, there is no justification for the interest claimed from 28th February, 1993.

5. Secondly, the money received by the plaintiff was recoverable from the defendant as a debt. This means that the cause of action for recovery of this money accrued immediately the transaction became void which was 6 months after the date of agreement, i.e. from 17th June, 1995. However, the plaintiff filed this suit on 6th April, 2010. Technically, the plaintiff's claim in respect of interest from the date of agreement is caught up with limitation. However, since the defendant admits the plaintiff's claim for refund of Kshs.70,000/=, the defendant's admission has given the plaintiff's claim a new lease of life.

6. I therefore order that the defendant shall pay interest on the sum of Kshs.70,000/= from the date of filing suit. Accordingly, I give judgment in favour of the plaintiff for the sum of Kshs.70,000/= together with interest thereon at the rate of 12% from the date of filings suit. The plaintiff shall also have

costs of the suit.

Dated and delivered this 10th day of November, 2010

H. M. OKWENGU
JUDGE

In the presence of: -

Advocate for the plaintiff/applicant absent

Nyaanga H/B for Kabiru for the defendant/respondent

B. Kosgei - Court clerk