



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT EMBU

Civil Case 102 of 2007

JOSEPH MWANIKI MUCHIRA.....PLAINTIFF

VERSUS

NDIMA TEA FACTORY LTD.....1ST DEFENDANT

KIRINYAGA COUNTY COUNCIL.....2ND DEFENDANT

JUDGMENT

The Plaintiff is a businessman who sued the two defendants the case of 2nd defendant was later withdrawn on contracts for the sale of land in respect of Kirinyaga/Gathigiriri 259 measuring 20 acres and Kirinyaga/Gathigiriri/58 measuring 54 acres. The plaintiff effected transfers to the first defendant as agreed. However he was not paid purchase price Shs.13,098,000/=. The prayers in the plaint are against the first defendant for Shs.13,098,000/= with interest at the rate prevailing. The hearing of the suit was fixed for 10/12/2007. The plaintiff served hearing notice upon the first defendant and has filed Affidavit of service. On the hearing date the plaintiff appeared but the defendant failed to appear and at 11.00 a.m. counsel for plaintiff Ms Rika leading Mr. Gitau Kariuki applied to proceed as the Hearing Notice was properly served. The hearing commenced under Order IX B Rule 3. The Plaintiff gave evidence on oath in support of his plaint and produced exhibit showing agreements made and the consent of Land Control Board. He exhibited transfer forms. He said he was not paid the purchase price and a demand letter was issued by his advocate on 3/8/2004. By their letter of 9/8/2004 the Defendant started raising problems saying the land was of Kirinyaga County Council and they were not sure of the title. Before the purchase agreements were entered into the titles were clean with no restrictions or cautions. However later some caution were registered against the titles wrongly by the council but they were later removed. The plaintiff denied the counterclaim raised by Defendant and said it is baseless. Plaintiff also swore that at the time he filed the plaint commercial rate of interest was 24 % per annum and he claims the same. Plaintiff called two other witnesses to support his case. Thereafter plaintiff closed his case.

I have examined the exhibits produced by the Plaintiff, the sale agreements for the two plots and the letter of consent for each plot. There are also 2 title deeds dated 30/6/2004. The documents were delivered and acknowledged by the first Defendant on 13/7/2004 and certified copies of green cards for the plots are exhibited. The defendant did not turn up at the trial to support its defence therefore I have taken it into consideration together with counterclaim. Paragraph 4 of the defence admits the transfers in its name.

However, it is denied that the sale agreements are valid for reasons stated under paragraph 8 of Defence.

There is evidence that cautions lodged were removed. As to paragraph 8 (d) thereof there is evidence that the person named Charles Muriuki Muchira has no claim against the property.

On the issue of stamp duty it is decided by collector of Stamp Duty as to how much duty is to be paid on any transaction. I make a finding that the statement of defence is a sham meant to delay payment of the plaintiff's claims and as there is no evidence in support the same the statements of defence have no merit. As to counter claim no evidence was offered and the plaintiff does not admit the claims the same is hereby dismissed.

It is my finding then that the sale agreements are valid and the Defendant ought to pay the price claimed. It is the registered owner of property under chapter 300. I therefore enter judgment for the plaintiff against the first Defendant in sum of Shs.1,309,800/= plus interest at the rate of 24% p.a from the date of plaint until full payment.

On prayer of injunction suit has been withdrawn against the 2nd defendant.

No order is made. The defendant shall also pay costs to the plaintiff in this suit.

Orders accordingly.

Dated this 17th January, 2008.

J. N. KHAMINWA

JUDGE.

17/1/2008

Khaminwa – Judge

Njue – Clerk

Mr. Kariuki for plaintiff

Judgment read in his presence in open court.

J. N. KHAMINWA

JUDGE