



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kariuki v Amuko (Environment & Land Case 957 of 2017)  
[2022] KEELC 15021 (KLR) (24 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 15021 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 957 OF 2017  
MN GICHERU, J  
NOVEMBER 24, 2022**

**BETWEEN**

**EUNICE MUENI KARIUKI ..... PLAINTIFF**

**AND**

**GIDEON NDANYI OSIAGO AMUKO ..... DEFENDANT**

**JUDGMENT**

1. Eunice Mueni Kariuki, the plaintiff herein, seeks the following reliefs against the defendant, Gideon Ndanyi Osiago Amuko.
  - (a) Kshs 650,000/= being the amount of money paid to the defendant by the plaintiff for the purchase of land.
  - (b) General damages for breach of contract.
  - (c) Costs of this suit and interest on the sum of Kshs 650,000/= from the date of payment until payment in full at court rates.
  - (d) Any other relief that this court may deem fit to grant.
2. The plaintiff's case is as follows. On December 14, 2011, she and the defendant entered into an agreement for sale of one acre of land in Kajiado County to be excised from LR Kajiado/ Kaputiei/36690 measuring 4.05 hectares. The purchase price was Kshs 650,000.  
The defendant was to give the plaintiff vacant possession of the one acre immediately she paid the entire purchase price within 30 days of the agreement which was end of February, 2012. The defendant did not give vacant possession as expected hence this suit.
3. In support of her case, the plaintiff filed the following evidence.
  - (i) A witness statement dated December 8, 2017.



- (ii) Copy of sale agreement dated December 14, 2011.
  - (iii) Copy of title deed for LR KJD/Kaputiei-north/36690 dated September 3, 2010.
  - (iv) Copy of letter dated January 28, 2016 demanding action from the defendant towards completing the transaction.
  - (v) Copy of letter dated February 2, 2016 demanding a refund of the purchase price.
  - (vi) Copy of demand letter dated February 5, 2016.
  - (vii) Copy of payment receipt from postal corporation of Kenya showing postage from the plaintiff's advocate to the defendant on February 8, 2016.
4. The defendant, through counsel on record filed a statement of defence dated April 5, 2018. The defendant admits that he received the purchase price from the plaintiff as averred. However, he encountered difficulties because on the date of the agreement with the plaintiff, he himself had not obtained the title deed from Fast Land Developers. There was delay due to a succession cause that was ongoing.
- Even though the defendant was diligent, he was let down by his advocate to such an extent that he had to report him to Advocates Complaint Commission. He kept the plaintiff updated on the progress he had made. He therefore says he has not refused to avail the title deed but has been forced by the circumstances surrounding Fast Land Developers to be in the situation that he now finds himself.
5. At the trial on November 4, 2021, both parties testified by adopting their witness statements and documents. They were then cross-examined by the adverse party.
- Counsel for the parties filed written submissions on January 11, 2022 and May 20, 2022 respectively.
6. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, documents and the oral testimony at the trial.

I have also considered the submissions by learned counsel for the parties, the issues raised therein as well as the case law cited.

Since the defendant does not deny receiving the purchase price, I find that the only issue to be decided is whether he has given any explanation as to why he should refund the purchase price together with interest and costs.

On this singular issue, I find that the defendant cannot avoid refund of the purchase price together with the other prayers.

At clauses 5 and 6 of the agreement dated December 14, 2011, it is provided as follows,

- 5) The property is sold with vacant possession.
- 6) The property shall be given possession upon completion or earlier payment of the purchase price in full'.

I believe the second word in clause 6 should be purchaser not property.

I find that, whatever the difficulties the defendant faced, he is bound to refund the purchase price together with interest at court rates from the dates that he received the two installments from the plaintiff.

It would be unconscionable for him to keep the money when he has not given the plaintiff vacant possession of the land that he covenanted in the agreement of December 14, 2011.



For the above reasons, I enter judgment for the plaintiff as prayed for in the plaint. The prayer for general damages is not allowed because none have been proved.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**MN GICHERU**

**JUDGE**

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