



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 238 of 2004

PENINAH WAMBUI MUGO.....PLAINTIFF

VERSUS

MOSES NJARAMBA KAMAU.....DEFENDANT

J U D G M E N T

The Plaintiff, Peninah Wambui Muyo entered into an Agreement for sale of a Plot described in the said agreement as LR. No.6585/995, Nyahururu at the price of Kshs.3,500,000. The said price was for the Plot as well as all the development which we valued at Kshs.480,000/- for the plot and Kshs.3,020,000/- for the developments.

The Plaintiff paid the entire purchase price and was issued with the payment receipt duly issued by the defendant in acknowledgement of the full purchase price, in respect of Plot No.6585/992 Block 6/506 Nyahururu Municipality. The defendant however failed or neglected to effect the transfer of the plot or to deliver the vacant possession thereof to the Plaintiff. Thus the Plaintiff caused a demand letter dated 3.08.2004, to be written to the Defendant demanding the immediate transfer and vacant possession of the suit premises. However, the Defendant did not respond thereby forcing the Plaintiff to file this present suit. Eventually the Defendant effected the transfer on 31st May, 2005, and the Title over the plot being lease over Nyahururu Municipality Block 6/506 was delivered to her. The Plaintiff was not given vacant possession and hence the prayer for vacant possession and general damages.

The Defendant who was served with the Summons entered appearance but did not file any defence. Judgment was entered in favour of the Plaintiff in default and the matter came up for formal proof.

The Plaintiff duly adduced evidence and produced the documents i.e., the sale agreement, the demand letter and the copy of the original lease title over the property.

It is clear the Defendant effected the transfer on 31st May, 2005 but he has not handed over the premises to the Plaintiff. The sale agreement was entered into on 24th November, 2003, although I find there was inordinate delay on the part of the Defendant in effecting the transfer, the sale agreement is silent on the period of completion. The Defendant having effected and handed over the title on 31st May, 2005, he was under duty to hand over the premises in vacant possession at the same time.

In assessing the general damages I would award the Plaintiff the interest that would be payable on Kshs.3,500,000/- at the rate of 12% being the cost of the money if she had borrowed deposited it from the bank with respect from 1st June, 2005 when the Defendant ought to have handed in the property in vacant

possession.

I would also grant the orders prayed in the Amended Plaint as follows:-

- (1) The Defendant be and is hereby ordered to deliver vacant possession of Nyahururu/Municipality Block 6/506 to the Plaintiff absolutely.**
- (2) The Plaintiff is entitled to general damages being the interest at the rate of 12% p.a. of Kshs.3,500,000/- calculated from 1st June, 2005 until payment.**
- (3) Costs of this suit and interest.**

It is so ordered.

Judgment read and signed on 24.01.06.

MARTHA KOOME

JUDGE

24TH JANUARY, 2006