

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Case 243 of 1999

PETER GITHINJI NAHASONPLAINTIFF

VERSUS

ZABLON MOMANYI NYANKADEFENDANT

J U D G M E N T

This suit was filed in 1999. After service of the plaint, no action was taken by the defendant and consequently the Plaintiff obtained ex-parte judgment. The defendant fought to set aside exparte judgement which he succeeded.

On 11/2/2002 the court gave the defendant time to file defence. This was done. The statement admits non-payment of Shs.300,000/- and that he was unable to pay the money due to financial constraints. Also that later it was agreed to pay shs.100,000/- in addition on the ground of delay occasioned. He denies that there was agreement to forfeit deposit paid in the sum of 900,000/-. Reply to defence was filed and issues filed by plaintiff.

In my view the issues to be resolved are number 1, 4, 15 and 16.

When the suit came up for hearing, the plaintiff and his advocate appeared but neither defendant nor his advocate appeared. The plaintiff proceeded to hearing as a formal proof.

The plaintiff gave evidence and produced exhibits. The defendant took possession of the house and up to now (date of hearing) the defendant was in possession the plaintiff's house.

This is a matter of agreement for purchase of house. It was reduced into writing. The defendant admits that he has not paid the balance of purchase price Shs.300,000/-.

He is in breach of agreement. He has enjoyed the possession of the plaintiffs property, since 1998 and this indicates his willingness to delay in completing this matter. Agreements are to be complied with precisely especially when they are reduced into writing. I have examined the plaintiffs evidence and I am satisfied that he is entitled to orders he has sought.

On the issue of Shs.900,000/- it is clear the Defendant has received value having occupied the property to date and the same should be forfeited to the plaintiff.

After considering the statement of defence, I find the defendant has not any defence to the plaintiff's suit and I dismiss the defence as having no merit.

I enter judgement for Plaintiff and grant prayers as prayed with all costs and interest.

Delivered and dated at Mombasa this 20th Day of December 2005.

J. KHAMINWA

JUDGE