



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 732 OF 2012

RUTH NJERI KURIA, suing through

SAMUEL KUNGU KURIA by virtue

of the Power of Attorney registered as

IP/A 57190/1.....APPLICANT

-VERSUS-

NJERI CUCU.....DEFENDANT

JUDGMENT.

INTRODUCTION

1. The Plaintiff filed this suit against the defendant seeking the following reliefs:-

1. An order for specific performance of the contract of sale.

2. Alternatively a refund of Kshs.570,000/= plus interest at 30% per annum from 28th November 2008 until payment in full.

3. Costs and interest on (2) above.

2. The Plaintiff had entered into a sale agreement with the defendant in which the defendant offered to sell to the Plaintiff her Plot No.LR Nairobi/Block 119/1353 at a consideration of Kshs.800,000/=. At the execution of the agreement on 19th September 2008, the Plaintiff had already made payment of Kshs.570,000. The balance of the purchase price was to be paid in accordance with the terms of the agreement. The transaction did not however go through as the Defendant declined to finalize the same.

3. The Defendant refunded the amount of Kshs.570,000/= on 14th December 2016 but did not pay interest of 30% as per the agreement. Part of the Plaintiff's claim was settled by this refund. The parties failed to agree on the rest of the claim and the matter was set down for hearing. The Defendant's counsel who was duly served never appeared for hearing. The Plaintiff's counsel proposed to have the matter disposed of by way of written submission a proposal which was accepted by the Court. The Plaintiff filed her submissions on 4th September 2017. The Defendant's advocates who were not present during the date set down for hearing did not file any submissions.

PLAINTIFF'S CASE

4. The Plaintiff's case is that she is entitled to interest on the deposit paid at 30% as per the sale agreement. The Defendant refunded the deposit on 14th December 2016 but failed to pay the interest.

ANALYSIS

5. I have gone through the Plaintiffs submissions and the documents filed in support of the case. A sale agreement was entered on 19th September 2008. As per clause 3 of the agreement, it was acknowledged that Kshs.570,000/= had already been paid. Clause 9 of the agreement provided that if the sale or transfer was not successful, the amount already paid was to be refunded within 30 days of such failure failing which the principal amount was to attract interest of 30% per annum until the final settlement.

6. There is evidence that the balance of the purchase price was available for collection by the defendant as at November 2008 but the defendant failed to collect it. A demand was made for the defendant to meet her part of the agreement but she did not. When this suit was filed, she refunded the principal sum but declined to pay interest of 30% per annum as per the agreement.

7. From the documents filed in this case by the plaintiff, the breach of agreement happened in November 2008 when the defendant refused to take the balance of the purchase price. The defendant was therefore expected to refund the Kshs.570,000/= within 30 days from the date of breach. According to the Plaintiff, the plaintiff is asking for interest of 30% with effect from 28th November 2008. I take this to be the date of breach. The defendant therefore had 30 days from that date to pay up before the 30% interest would start. I therefore find that interest started accruing as from 28th December 2008.

8. The agreement was signed before a lawyer. There is no evidence that any party was coerced into signing the agreement either through misrepresentation or fraud. Parties are bound by agreements into which they voluntarily enter. Once there is breach, then parties should be prepared to suffer the consequences of that breach. In this case the agreement was clear that breach of the agreement was to attract interest on principal sum at 30% per annum.

CONCLUSION

9. Having found that interest of 30% ought to have started from 28th December 2008, I enter judgement in favour of the Plaintiff for interest of 30% to be calculated from 28th December 2008 until 14th December 2016 when the refund of Kshs.570,000/= was made. The Plaintiff shall also have costs and interests at Court rates.

Dated, Signed and delivered at **Nairobi** on this **1st** day of **November 2017**.

E.O.OBAGA

JUDGE

In the presence of:-

Mr Njoroge for Mr Etole for Plaintiff

Court Assistant: Hilda

E.O.OBAGA

JUDGE