

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO. 294 OF 2011

EUNICE WAIRIMU MUTURI.....1ST PLAINTIFF

WASHINGTON MUCHIRI MUTURI.....2ND PLAINTIFF

VERSUS

RUTH NYAMBURA CHUCHU.....1ST DEFENDANT

ZIPPORAH WANGUI CHUCHU.....2ND DEFENDANT

FLORENCE NJERI CHUCHU.....3RD DEFENDANT

RULING

The Plaintiffs brought the application dated 26/8/2020 seeking to have the court enter judgement on admission for Kshs. 500,000/= against the 1st and 2nd Defendants and for the Defendants to pay interest on the sum of Kshs. 2,300,000/= from 22/3/2010 until 23/4/2019. They also sought interest on the balance of Kshs. 500,000/= at the rate of 14% from 23/4/2019 until payment in full.

The application was made on the grounds that the late Gerald Muturi Maina entered into an agreement with the Defendants on 19/3/2010 for the sale of land reference number 36/III/22 at the agreed consideration of Kshs. 23,000,000/=. Gerald Muturi Maina died on 10/1/2011 and the administrators of his estate filed this suit on 16/6/2011 seeking to compel the Defendants to complete the sale agreement. The Defendants through their advocates proposed to refund the deposit to the Plaintiffs on 2/10/2018. They refunded the sum of Kshs. 1,800,000/= through the Plaintiff's advocate on 23/4/2019 leaving a balance of Kshs. 500,000/=.

The application was supported by the 2nd Plaintiff's affidavit sworn on 26/8/2020. Mr. Muturi attached a copy of the sale agreement dated 19/3/2010 together with copies of the letters dated 2/3/2010, 2/10/2010, 8/10/2018 and copies of the cheques dated 23/4/2019 for the total sum of Kshs. 1,800,000/=.

The letter dated 2/10/2018 from Muchangi Nduati and Company Advocates informed the Plaintiffs' advocates that the Defendants were ready and willing to refund the deposit paid by the Plaintiffs. The letter sought confirmation by the Plaintiffs to enable the request for the funds to be made.

The Plaintiffs filed submissions and relied on Order 13 Rule 2 of the Civil Procedure Rules in urging that theirs was a plain and obvious admission by the Defendants. The Plaintiffs relied on **New Tyres Enterprises Limited v Kenya Alliance Insurance Company Limited [1988] eKLR** where Kwach JA found that where a party had been deprived of land or movable property and receives a monetary award in compensation for the loss, the usual practice is to award interest from the date of such deprivation.

The issue for determination is whether the court should enter judgement for the Plaintiffs as sought. There is an admission and offer to refund the deposit contained in the Defendants' advocates' letter of 2/10/2018 which was followed by the payment made on 23/4/2019 of Kshs. 1,800,000/=.

The court enters judgement in favour of the Plaintiffs against the Defendants for Kshs. 500,000/= together with interest on the sum of Kshs. 2,300,000/= from the date of filing suit until payment in full. The Plaintiffs are awarded the costs of the suit.

DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF JUNE 2021.

K. BOR

JUDGE

In the presence of: -

Mr. Michael Manyara for the Plaintiffs

Mr. V. Owuor- Court Assistant

No appearance for the Defendants