



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC CASE NO. 125 OF 2020

PETER MBUTHIA KAROKI..... PLAINTIFF

=VERSUS=

JOHN NGANGA KIBE.....DEFENDANT

JUDGEMENT

1. The Plaintiff filed this suit against the Defendant in which he sought the following reliefs:

a) An order for Specific performance of agreement dated 18th March 2019.

b) An order for Payment of the remaining balance.

c) interest on balance at commercial rate for the year 2019 when the money fall due until payment in full:

d) General damages

2. The Defendant was duly served with summons to enter appearance and file defence but he neither entered appearance nor filed defence . The hearing therefore proceeded by way of formal proof.

3. The Plaintiff testified that he entered into a sale agreement with the Defendant in respect of sale of LR No. Nairobi Block 126/498 (suit property). The agreed purchase price was Kshs.10,000,000/= . The defendant paid Kshs.1,500,000/= on execution of the agreement and later made a further payment of Kshs.5,800,000/= leaving a balance of kshs.2,700,000/=.

4. The Defendant took possession of the suit property and started constructing residential houses on it. The Plaintiff has been demanding payment of the balance of the purchase price but the Defendant has refused to pay.

5. I have considered the evidence adduced by the Plaintiff as well as his submissions. The Plaintiff produced a copy of certificate of lease in respect of LR No. Nairobi Block 126/498. He also produced a sale agreement dated 18th march 2019 between him and the Defendant. It is clear from the agreement that the Defendant was to pay Kshs.10,000,000/= within 90 days .

6. The Plaintiff has acknowledged receipt of kshs.7, 300,000/=. There is therefore a balance of Kshs.2, 700,000/=. The Defendant has already taken possession of the suit property and has constructed houses from which he is earning income. It is therefore clear that there can be no order for specific performance of the contract.

7. The only relief available to the Plaintiff is payment of the balance of purchase price. I therefore enter Judgement for the Plaintiff against the Defendant in the sum of Kshs.2,700,000/= together with interest at court rates with effect from 1st July 2019 until payment in full. The Plaintiff shall also have costs of this suit.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 11TH DAY OF NOVEMBER 2021

E.O.OBAGA

JUDGE

In the Virtual absence of parties who were aware of date of delivery of judgement.

Court Assistant: Mercy

E.O. OBAGA

JUDGE