



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC CASE NO. 1556 OF 2016**

**CAROLINE NJERI KARIUKI.....PLAINTIFF**

**=VERSUS=**

**SAMUEL MAINA NGANGA.....1<sup>ST</sup> DEFENDANT**

**SAENT GROUP LIMITED.....2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

1. The Plaintiff filed this suit against the defendants claiming a refund of Kshs.3,000,000/= with interest from 2<sup>nd</sup> February 2014 until payment in full. The first defendant is a principal shareholder of the second defendant company. The defendants who were duly served neither entered appearance nor filed defence. The plaintiff applied for entry of judgement but it appears the court officials did not endorse the entry of judgement for this liquidated claim. The plaintiff therefore proceeded to formal proof.

2. The plaintiff had entered into a sale agreement in which she was to purchase six plots measuring 50x100 at Athi River. The purchase price was Kshs.3,000,000/= which she fully paid. The first defendant did not complete the transaction within the time stipulated. The plaintiff issued a notice making completion time of essence. The first defendant did not comply. The plaintiff proceeded to rescind the agreement and demanded a refund.

3. The first defendant agreed to refund the plaintiff the purchase price paid. The first defendant issued six cheques drawn by the second defendant for Kshs.500,000/- each. All the six cheques were returned unpaid. The first defendant became evasive after this prompting the plaintiff to file this suit.

4. I have gone through the documents produced by the plaintiff. There is a sale agreement dated 3<sup>rd</sup> November 2013 between the first defendant and the plaintiff. The plaintiff was purchasing six plots out of un-surveyed plot No.255 Athi River. The plots were identified in the agreement as plot Nos.11,12,13,14,15 and 16. The entire purchase price was paid on execution of the agreement.

5. The agreement provided for issuance of a 21 days' notice in case the vendor defaulted. This notice was given by the plaintiff's lawyer on 15<sup>th</sup> September 2015. The agreement was thereafter rescinded vide a rescission notice issued on 6<sup>th</sup> November 2015. A demand for the refund was made on 17<sup>th</sup> August 2016 after which suit was filed. The plaintiff produced copies of six cheques given by the second defendant in her favour all of which were returned unpaid.

6. The plaintiff's evidence has not been controverted. I find that the plaintiff has proved her case against the defendants on a balance of probabilities. I allow her claim in terms of prayer (a), and (b) of the Plaintiff.

**Dated, Signed and delivered at Nairobi on this 4<sup>th</sup> day of October 2018.**

**E.O.OBAGA**

**JUDGE**

In the presence of:

M/s Chichi for Mr Kariuki for Plaintiff

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**