

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CIVIL CASE NO. 101 OF 2011

REV. WACHIRA KARANI.....PLAINTIFF

VERSUS

MR. BILDAD WACHIRA.....DEFENDANT

JUDGEMENT

The Plaintiffs claim as enumerated in the Plaint dated 18.7.2011 is for recovery of **Ksh. 450,000/=** plus costs and interests being the amount of money allegedly due and owing from the Defendant to the Plaintiff in respect of monies paid by the Plaintiff to the Defendant pursuant to a sale agreement dated 14.2.2008 entered into between the Plaintiff and the Defendant. The Plaintiff avers that the Defendant breached the agreed terms and or conditions of the said agreement hence the claim for the refund. Details of the said agreement are *inter alia* that the Defendant offered to sell and the Plaintiff agreed to purchase four plots described in the said agreement at an agreed price of **Ksh. 450,000/=** per plot and upon signing the said agreement the Plaintiff paid to the Defendant a deposit of **Ksh. 450,000/=** receipt whereof the Defendant confirmed by signing the said agreement, and the balance thereof was payable on or before 30th December 2008 but subject to the conditions stated in the said agreement.

The Plaintiffs case is that the Defendant breached the said agreement and has enumerated particulars of breach in the plaint, and that as a result of the said breach the Plaintiff issued a termination notice of the said agreement and demanded a refund of the said sum, which amount the Defendant has failed and or refused to refund hence this suit.

The Defendant filed a defence admitting receipt of the said sum of **Ksh. 450,000/=** but claims that he commenced the process of processing the transfer but the Plaintiff became impatient and demanded his money back. He alleges that he refunded **Ksh. 100,000/=** to the defendant being part repayment thereof.

At the hearing of this suit, there was no appearance for the Defendant even though his advocates had been served with a hearing notice dated 15th July 2015 clearly indicating that the hearing was scheduled on 6th October 2015. The matter was called at **9.15am** and hearing allocated for **10.30am**. The case was mentioned at **11.15am** and still there was no appearance for the Defendant. Hearing proceeded at **12.20pm** in the absence of the Defendant or his advocate after the court was satisfied that there was proper service.

At the hearing, the Plaintiff adopted his written statement dated 18.7.2011 and the documents filed in court which the Plaintiff identified, particularly the sale agreement and letter of allotment which were produced as exhibits. Save for the admission in the defence, none of the allegations in the defence were admitted.

I have carefully evaluated the Plaintiffs' testimony; and the documents relied upon in this case and I also examined the demeanour of the Plaintiff as he gave evidence in court, and I am satisfied that in absence of evidence to the contrary the plaintiff has proved his case on a balance of probabilities as required in civil cases.

The upshot is that the plaintiffs claim is allowed, hence I hereby find for the plaintiff and enter judgement in favour of the plaintiff against the defendant as follows:-

i. **That** Judgement be and is hereby entered in favour of the plaintiff against the defendant for **Ksh. 450,000/= plus costs and interests thereon at court rates from the date of filing this suit until payment in full.**

ii. Costs and interests thereon at court rates from date of judgement.

Right of appeal 28 days

Dated at Nyeri this 19th day of October 2015

John M. Mativo

Judge