



REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT AT MERU
CIVIL CASE NO. 9 OF 2012

ZACCHEAUS GITONGA TURUCHIU.....APPLICANT

VERSUS

KENNETH KIRIMI KABURU.....DEFENDANT

J U D G M E N T

The plaint herein is dated 9th May, 2013 and prays for judgment against the Defendant for:

- (a) A declaration that the Sale Agreement dated 6th April, 2009 has been rescinded by virtue of the Defendant's breach of the terms of the said Agreement and that the deposit of Kshs.350,000/ be deemed as forfeited.**
- (b) General damages for breach of the contract.**
- (c) Costs of the suit and interest.**

An Interlocutory Judgment was entered against the defendant and formal proof hearing took place on 13th May, 2013.

During formal proof hearing the Plaintiff gave evidence that on 6.4.2009, he had entered into an agreement with the defendant for sale of land parcel No. **TIMAU SETTLEMENT SCHEME/1066** measuring 2.2. acres. The purchase price was Kshs.700,000/=. The defendant took possession of the suit land upon the signing of the agreement. He however only paid Kshs.350,000/= and refused to pay the balance of Kshs.350,000. There was a penal clause to the effect that if there was default, the innocent party would be paid a sum of Kshs.1,400,000/= being double the purchase price.

The Plaintiff gave evidence that he was forced, due to the breach of the contract by the Defendant, to borrow a loan to educate his children. His business was also affected. His intention when he entered into an agreement with the Defendant was to educate his children and to improve his business.

He, therefore, prayed for judgment against the Defendant as per the prayers in the plaint.

I am satisfied that the Plaintiff has formally proved his case. I, therefore, grant orders as follows:

- 1. I declare that the sale agreement dated 6th April, 2009 has been rescinded by virtue of the Defendant's breach of the terms of the said Agreement and that the deposit of Kshs.350,000 is declared forfeited.**
- 2. The Plaintiff is awarded general damages for breach of contract in the sum of Kshs. five**

hundred thousand (Kshs.500,000/=) only.

3. Costs of the suit and interest are awarded to the Plaintiff.

It is so ordered.

Delivered in Open Court at Meru this 10th day of October, 2013 in the presence of:

Cc. Mwonjaru

Zaccheaus Gitonga Turuchiu - Plaintiff

P. M. NJOROGE

JUDGE