



REPUBLIC OF KENYA

High Court at Eldoret

Civil Case 112 of 2011

PHILEMON KIPLAGAT KIPRONO.....PLAINTIFF

VERSUS

WHEELER K. KENEI T/A GREEN ACRES PROPERTY SOLUTIONS.....DEFENDANT

RULING

This Chamber Summons has been brought under Order 2 Rule 15 of the Civil Procedure Rules and seeks that the defendant's defence be struck out and that judgment be entered for the plaintiff as prayed in the plaint. The application, which is supported by an affidavit sworn on 1st August, 2011 by the plaintiff, is based on the grounds that the defence discloses no reasonable defence; comprises of admissions and is a sham whose purposes is to delay the fair trial of the action.

No replying affidavit or grounds of opposition have been filed by the defendant and the evidence contained in the plaintiff's affidavit stands uncontroverted. The affidavit reveals that the plaintiffs claim against the defendant arises from an agreement between him and the defendant in respect of the suit property. The defendant was paid Kshs. 1000,000/- which was the agreed purchase price. The plaintiff also paid Kshs. 32000/- as stamp duty and other related charges.

The defendant in his defence admits the agreement but denies failing to perform his part of the bargain contending that he is in the process of transferring the suit land to the plaintiff and that the delay was occasioned by unforeseen circumstances.

The plaintiff, through his counsel, abandoned the prayer for specific performance and urged refund of the purchase price plus the said Kshs. 32000/- paid for transfer.

Given the evidence detailed above, the defendant's defence to the alternative prayer for refund of Kshs. 1,032,000/- is a sham which does not raise any triable issues and in the premises the plaintiff is entitled to the orders sought in his application under consideration.

Accordingly, the application is allowed and judgment entered in favour of the plaintiff against the defendant for Kshs. 1,032,000/- together with costs and interest. The agreement between the parties was silent on the punitive damages payable in the event of default. In the premises, I order that the said sum attracts interest at court-rates from the date of institution of this suit until payment in full.

Orders accordingly.

DATED AND DELIVERED AT ELDORET

THIS 5TH DAY OF SEPTEMBER, 2012

F. AZANGALALA
JUDGE

Read in the presence of:-
Mr. Mutai for the Appellant.

F. AZANGALALA
JUDGE

5TH SEPTEMBER, 2012