



REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI  
CIVIL CASE NO. 3933 OF 1989

MILLICENT WANDUGA & ANOTHER.....PLAINTIFFS

-VERSUS

JOHN CHEGE.....DEFENDANT

Coram: Osiemo J.

Mr. Le Pelley for Plaintiff

Mrs. Sichale for defendant

Mr. Onduma: Court Clerk

JUDGMENT

By Sale Agreement dated 2.11.1988 between the plaintiffs and the defendant, the plaintiffs agreed to purchase and the defendant agreed to sell the suit premises L.R. No. 209/8292/37 at Nairobi at Sh.740,000/-.

According to the evidence of the plaintiff pursuant to this agreement she paid sh.100,000/- as down payment through her advocate then on record signing of the agreement. She made a further payment of Sh.120,000/-. On 15.11.1988 (payment receipt Exh.I)

After the two initial payments, she arranged with VICTORIA FINANCE CO. LTD. to finance the balance of the purchase price. But this was on condition that she produced the Title Deed of the said property for security. The defendant refused to hand over to her lawyers the said title deed which they could in turn charge with the said Finance Co. Ltd. to enable it to release the loan. The defendant refused to hand over his title deed before he was paid the whole of the purchase price. As a result this arrangement to have the said Victoria Finance Co. Ltd. finance the balance of the purchase price failed.

Subsequently on the 31-5-1991 the defendant sold the suit land to one GAD GITHENGU MUNGAI for Sh.1,400,000/-

The plaintiff brought this suit against the defendant for damages, for breach of contract and demanded to be paid the difference between sh.740,000/- the agreed purchase price between herself and the defendant and Sh.1,400,000/- the amount the defendant sold the suit premises to the said 3rd party Gad Githengu Mungai which comes to sh. 660,000/-. Counsel for defendant submitted that it was the plaintiff who breached the contract. The contractual completion date was 15-12-1988 and the property was sold in 1991 about 2 1/2 years outside the completion date. That the defendant refused to surrender the title deed to the plaintiff before he was paid the whole of the purchase price was outside the sale agreement. The defendant was not bound to surrender his title deed before he was paid the whole of the purchase price.

All in all the plaintiff has failed to prove that she is entitled to the orders sought. She had failed to pay the whole of the purchase price within the required time and therefore she is not entitled to any damages since she was the one who breached the sale agreement.

For the above reasons the plaintiff suit fails and the same is dismissed with costs.

The plaintiff is entitled to a refund of the purchase price. The amount she has proved is Sh.220,000/-

Delivered and dated at Nairobi this 11th day of November, 1998.

J.L.A. OSIEMO

JUDGE