

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL CASE NO. E022 OF 2023

MUSA KOSGEI CHEBET
PLAINTIFF

VERSUS

FAULU MICRO-FINANCE BANK 1ST
DEFENDANT

JOHN KAMBURI WANDERI 2ND
DEFENDANT

Coram: Before Hon. Justice R. Nyakundi
M/s Joseph C.K. Cheptarus & Co. Adv.

RULING

1. This Court was moved by the Plaintiff by a way of a plaint dated 30th October 2023 seeking the following orders against the defendants;
 - a. A declaration be and is hereby granted forthwith that the defendants jointly and severally who did the advertisement in the Standard, Monday 22, November, 2021 and entered the memorandum of sale and the agreement for sale both dated 3-12-2021 with the Plaintiff are in breach of contract.
 - b. A declaration be and is hereby granted forthwith that the Defendants jointly and severally declined to give possession, transfer, registration and title of the suit property NZOIA/MOI'SBRIDGE BLOCK 1/4435 in favor of the Plaintiff.

- c. The refund of the sum of Kshs 1,425,000 by the 1st Defendant to the Plaintiff be and is hereby granted forthwith.
 - d. Damages be and are hereby granted to the Plaintiff.
 - e. Interest on (c) and (d) above namely the principal sum and damages at the commercial rates from 3-12-2021 until payment in full be and is hereby granted to the Plaintiff.
 - f. Costs plus interests to the Plaintiff.
 - g. Any other or further relief deemed fit in favor of the Plaintiff.
2. From that day henceforth the timelines outlined under the Civil Procedure Act and Rules were on a countdown. In Order 5 the Rule provides as follows;
- a) When a suit has been filed, a summons shall issue to the Defendant ordering him to appear within the time specified therein.*
 - b) Every summons shall be signed by the Judge or an Officer appointed by the Judge and shall be sealed with the seal of the Court without delay, and in any event not more than thirty days from the date of filing suit.*
 - c) Every summons shall be accompanied by a copy of the plaint.*
 - d) The time for appearance shall be fixed with reference to the place of residence of the Defendant so as to allow him sufficient time to appear: Provided that the time for appearance shall not be less than ten days.*
 - e) Every summons shall be prepared by the Plaintiff or his advocate and filed with the plaint to be signed in accordance with sub rule (2) of this rule.*

f) Every summons, except where the Court is to effect service, shall be collected for service within thirty days of issue, failing which the suit shall abate.

3. Apparently from the record the summons was duly served and there has been no appearance entered by the Defendant. That indolence or inactivity also hit the Plaintiff for no action has never been taken to move the court for a formal proof or no such step to prosecute the claim. The Court on its own motion issued a notice to the parties for a status conference and none of them showed up on the 25th September 2025. The Court exercising jurisdiction so clothed by law dismisses the suit for want of prosecution.
4. File be marked as closed.

**DATED, SIGNED AND DELIVERED VIA EMAIL AND CTS AT
ELDORET THIS 29TH SEPTEMBER 2025**

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**R. NYAKUNDI
JUDGE**