

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. E091 of 2022**

**K.P.C RETIREMENT BENEFIT SCHEME 2006 (D.C)**

**REGISTERED TRUSTEES.....**

**PLAINTIFF**

**VERSUS**

**ERIC NG'ANG'A MBURU.....**

**DEFENDANT**

**JUDGEMENT**

1. By the **Plaint** dated **4<sup>th</sup> July 2022**, the Plaintiff claims that it is the registered owner of parcel Kajiado/Kitengela/76873 where it has constructed residential houses and sold them to members through tenant purchase agreements.
2. It is it's case that on 21<sup>st</sup> September 2020 they entered into an agreement with the defendant for the purchase of House Number 88 for a consideration of Kshs. 10,125,000 to be paid in equal instalments of Kshs. 111,485 within

two hundred and forty months at a rate of 12% p.a on a reducing balance. The agreement provided that the monthly instalments would be paid by the fifth day of every calendar month. As of 14<sup>th</sup> April 2022, the defendant's unpaid amount had accrued to Kshs. 1,877,514 together with Kshs. 60,000 as service charge.

3. The defendant failed to meet his obligations and was issued with demand notices to pay, a termination notice dated 25<sup>th</sup> May 2021 and a termination letter dated 10<sup>th</sup> August 2021 rescinding the agreement and requiring him to vacate the premises. Another notice to vacate was issued on 6<sup>th</sup> October 2021, served upon the Sub County Police Commander- Isinya on 21<sup>st</sup> March 2022 and to the Deputy County Commissioner- Isinya on 30<sup>th</sup> March 2022. Despite these notices, the defendant continued occupying the premises and the plaintiff therefore seeks the following reliefs;

**a. A mandatory order of eviction compelling the Defendant, his servants, agents, employees, personal representatives, assigns or anyone claiming to be on the suit premises by the**

**Defendant's authority to vacate the suit property known as House No. 88 on Kajiado/Kitengela/76873.**

**b. A mandatory order compelling the Defendant to remove any personal belongings or items of property which he has brought onto House No. 88 on Kajiado/Kitengela/76873 with immediate effect failure to which the Plaintiff should remove the same at the Defendant's cost.**

**c. A mandatory order compelling the Defendant to forthwith and without delay settle the outstanding arrears of Kshs. 1,937,514 together with interest at commercial rate from the date of filing this suit to the date of fully complying with the orders of this Honourable Court.**

**d. A permanent injunction restraining the Defendant, his servants, agents, employees, personal representatives, assigns or anyone claiming to be on the suit property by the**

**Defendant's authority from occupying, being in occupation, trespassing on the suit property and/ or interfering, in any way, with the Plaintiff's quiet enjoyment, possession and use of the suit property and/or from offering for sale, selling, transferring alienating or in any way disposing of the suit property being House Number 88 on Kajiado/Kitengela/76873.**

**e. An order directed at the officer commanding station, Kitengela Police Station to ensure compliance with the court orders herein, to oversee the eviction of the Defendant from the suit property and ensure that peace prevails.**

**f. Costs of the suit.**

**g. Any other or further reliefs that this Honourable Court may deem fit and just to grant.**

4. The Defendant filed a statement of defence but it was struck out for being defective. The matter then proceeded for formal proof.

### **Evidence of the Plaintiff**

5. **PW1, Geoffrey Bett**, the Assistant Accountant of the Plaintiff

adopted his witness statement as his evidence in chief and produced his bundle of documents as exhibits in this case.

6. The Defendant neglected to attend court for the hearing.

7. At the close of the oral testimony, the Plaintiff tendered final written submissions.

### **Submissions of the Plaintiff**

8. Counsel submitted that the Plaintiff had adduced evidence to show that the Defendant failed to perform its contractual obligations as required by the Tenant Purchase Agreement dated 21<sup>st</sup> September 2020. As such, it was entitled to the reliefs sought together with costs.

Reference was made to **Dormakaba Limited vs Architectural Supplies Kenya Limited KEHC**

**210(KLR) and Consolata Anyango Ouma vs South Nyanza Sugar Co. Ltd (2015) eKLR.**

**Analysis and Determination**

9. I have considered the suit before this court, evidence, submissions, statutes and legal authorities and find that the issues for determination are:

***i. Whether the plaintiff is entitled to the prayers sought;***

***ii. Who should bear costs of the suit?***

10. It is the Plaintiff's case that the Plaintiff and the Defendant entered into a Tenant Purchase Agreement dated 21<sup>st</sup> March 2020 for the purchase of Maisonette Number 88.

11. That as per the agreement the Defendant was to pay the balance of the purchase price of Kshs.10,225,000 at 12% interest in two hundred and forty (240) equal instalments.

12. It is their case that the Defendant failed to perform his obligations under the agreement hence this suit.

13. I have considered the evidence tendered by the Plaintiff and I am satisfied that the Defendant is in breach of the agreement.

14. The Plaintiff's case has not been controverted.

15. In conclusion I find that the plaintiff has proved his case as against the Defendant on a balance of probabilities.

16. Accordingly judgement is entered in favour of the plaintiff as follows;

**a) That an order is hereby issued against the Defendant, his servants, agents, employees, personal representatives, assigns or anyone claiming to be on the suit premises by the Defendant's authority to vacate the suit property known as House No. 88 on Kajiado/Kitengela/76873.**

**b) That an order is hereby issued compelling the Defendant to remove any personal belongings or items of property which he has brought onto House No. 88 on Kajiado/Kitengela/76873**

forthwith Failure to which the Plaintiff should remove the same at the Defendant's cost.

c) That an order is hereby issued compelling the Defendant to forthwith and without delay settle the outstanding arrears of Kshs. 1,937,514 together with interest at commercial rate from the date of filing this suit until payment in full.

d) That a permanent injunction is hereby issued restraining the Defendant, his servants, agents, employees, personal representatives, assigns or anyone claiming to be on the suit property by the Defendant's authority from occupying, being in occupation, trespassing on the suit property and/or interfering, in any way, with the Plaintiff's quiet enjoyment, possession and use of the suit property and/or from offering for sale, selling, transferring alienating or in any way disposing of the suit property being House Number 88 on Kajiado/Kitengela/76873.

e) That an order is hereby issued directed at the officer commanding station, Kitengela Police

**Station to ensure compliance with the court orders herein, to oversee the eviction of the Defendant from the suit property and ensure that peace prevails.**

**f) That costs of the suit be borne by the Defendant.**

**Dated, Signed and Delivered virtually at Kajiado this 30<sup>th</sup> day of October 2025.**

**L.KOMINGOI**

**JUDGE.**

**IN THE PRESENCE OF:**

Mr. Kimathi for the Plaintiff.

N/A for the Defendant.

Court Assistant - Peter.