



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 684 OF 2016

CHRIS WAHOME NDEGWA.....PLAINTIFF

=VERSUS=

PINE CRIB APARTMENTS COMPANY LIMITED.....DEFENDANT

JUDGEMENT

1. The plaintiff has filed this suit against the defendant seeking:-

2. It seeks orders:-

(i) An order for an injunction restraining the defendant by itself and/or its agents from selling, advertising for sale, letting, charging or in any way interfering with the suit property being apartment No.B3 erected on LR NO. 4871/126-Pine Crib Apartments;

(ii) As an alternative to prayers 1 and 2, an order compelling the defendant to refund the sum of Kshs.1,520,000/- plus interest at commercial rates from 19th August 2011 until payment in full;

(iii) Costs of this suit;

(iv) Interest on (iii) above;

(v) Such further or other relief as this honourable court may deem fit and just to grant.

3. The defendant who was duly served with copies of plaint and summons to enter appearance neglected and/or refused to enter appearance and/or file defence, within the prescribed period. Judgment was then entered and the matter proceeded to formal proof.

4. It is the plaintiff's case that the defendant offered to sell to the plaintiff, apartment Number B3 situated in LR NO.4871/126 (original Number 4871/23/2; in Kikuyu Kiambu. On 18th March 2011, the defendant executed a letter of offer, which was sent to the plaintiff.

5. The plaintiff further told the court that her lawyer executed a sale agreement which was sent to the defendant's lawyers. At this point the plaintiff had paid a total of Kshs.1,520,000. The parties later disagreed on the issue of legal fees.

6. It is the plaintiff's submissions that it is the defendant who frustrated the contract. In paragraph 11 of the plaint the particulars of breach of contract by the defendant are given as follows:-

(i) Failing to execute the agreement for sale and complete the transaction, despite accepting the sum of Kshs.1,520,000 from the purchaser.

(ii) Failing to communicate the approval or decline of the proposed amendment by the plaintiff.

(iii) Failing to refund the amount paid towards the purchase of the suit property.

7. The plaintiff's case has not been controverted. The sale agreement referred to in paragraph 5 of the plaint has not been produced before this court. It is difficult to tell what the terms were. It is also the plaintiff's admission that the defendant did not execute the said agreement. The plaintiff can only get a refund of the monies paid toward the intended purchase.

8. I find that the plaintiff has proved his case as against the defendant on a balance of probabilities. I enter judgment on his favour as follows:-

(a) The defendant do refund to the plaintiff the sum of Kshs.1,520,000 plus interest at court rates from 19th August 2011 until payment in full.

(b) Costs of the suit.

It is so ordered.

Dated, signed and delivered in Nairobi on this 25TH day of APRIL 2019.

.....

L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendant

.....Court Assistant