

REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT MILIMANI

ELC CIVIL SUIT NO. 552 OF 2017

NATIONAL HOUSING CORPORATION.....PLAINTIFF

VERSUS

DAVID KISALA.....DEFENDANT

JUDGMENT

1. The Plaintiff is the registered owner LR No. 25980 on which is erected flat No.MF20E (Suit Property). The Plaintiff sued the Defendant for vacant possession of the suit property and for an order of eviction. The Defendant who was duly served with the Originating Summons neither entered appearance nor filed any Replying Affidavit to the Originating Summons.

2. The Plaintiff contends that it advertised for sale the suit property identified as Flat No. MF 20E at Madaraka Estate in Nairobi. The Defendant offered to purchase the suit property by making a down payment. The Defendant however did not complete payment of the purchase price. The Plaintiff advertised rescission of the offer to sell the suit property through advertisement in the Standard Newspaper of 4th September, 2009.

3. Prior to the advertisement of the rescission of the offer, the Plaintiff had severally reminded the Defendant to meet his part of the agreement in vain. The Plaintiff subsequently served the Defendant with Notice of termination of tenancy and rescission of the offer on various dates. The Defendant was given notice to give vacant possession and avail receipts for purposes of refund of whatever he had paid. The Defendant never heeded this prompting the Plaintiff to file this suit.

4. I have gone through the documents annexed to the Originating Summons. The Plaintiff issued a Notice of rescission of the offer to the Defendant through notice appearing on the Standard Newspaper of 4th September, 2009. There are also correspondence written on 7th September, 2011, 13th June, 2012 and 21st March, 2017 all communicating the Plaintiff's rescission of the offer and demanding for vacant possession. This evidence remains uncontroverted.

5. During the hearing, the Plaintiff's Counsel submitted that the Defendant was in rent arrears of Kshs.1,253,229/= as at 14th February, 2019. The Defendant had also not cleared the balance of the purchase price amounting to Kshs.600,000/=. As at 14th February, 2019, the Plaintiff was demanding from the Defendant a total of Kshs.2,239,118.20/=. It is therefore clear that the Defendant is not willing to clear the balance of the purchase price or pay rent if he cannot purchase the house. I therefore find that the Plaintiff has proved its case against the Defendant on a balance of probabilities. I enter judgment for the Plaintiff in the following terms:-

(i) The Plaintiff is entitled to vacant possession of Flat No MF 20E at Madaraka Estate, Nairobi.

(ii) The Defendant by himself, his servants, agents or any other occupant of Flat No MF 20E Madaraka Estate, Nairobi do deliver vacant possession of the said flat within 14 days failing which the Defendant to be forcefully evicted from the said premises.

(iii) The costs of this suit shall be paid by the Defendant.

Dated, Signed and delivered at Nairobi on this 9th day of May, 2019.

E.O.OBAGA

JUDGE

In the presence of Mr. Mbogo for Plaintiff.

Court Assistant Hilda