



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 744 OF 2016

REBECCA CHEPKOECH KAMOING.....PLAINTIFF

=VERSUS=

MICHAEL WAWERU MWANGI.....DEFENDANT

RULING.

1. The Defendant/Applicant filed a Notice of Motion dated 17th March 2017, in which he sought the following orders;-

1. That the Honourable Court be pleased to strike out the Plaintiff's reply to defence, and defence to counter-claim dated 2nd April 2016 and 10th November 2016 respectively and to enter Judgement as prayed for by the Defendant in the Counter-Claim.

2. That in the alternative to prayer (1) above, this Honourable Court be pleased to order that parties take account.

3. That the cost of this application be provided for.

2. The applicant entered into a sale agreement with the Respondent on 3rd March 2014, in which the Respondent agreed to sell to the applicant land known as **LR No. 23279/2** at Karen for **Kshs.21,000,000/=-**. It was a term of the agreement that if the Respondent did not clear the purchase price at the completion date, any outstanding balance was to attract interest at the rate of 20%.

3. The applicant did not complete payment of the purchase price as at the completion date. He cleared payment of the purchase price on 15th August 2014. The respondent invoked the clause on interest and demanded that he applicant pays interest as per the agreement. The applicant did not respond to the demand forcing the Respondent to file this suit in which she claimed interest of **Kshs.776,500/=-**.

4. The applicant now contends that the respondent has failed to disclose that **Kshs.400,000/=-** was deposited into the account of her Advocate which amount was an estimate of the accrued interest being demanded; that according to the applicant, the interest due was **Kshs.276,547** and that since the respondent was paid **Kshs.400,000/=-** the Respondent owes the applicant **Kshs.123,453** being the amount over what was due to the respondent and this is the amount which the applicant claims in his counterclaim.

5. The applicant therefore contends that the Respondent's plaint and reply to defence and defence to counter-claim is an abuse of the Court process and the same should be struck out and judgement entered for the applicant in the counter claim.

6. The Respondent has opposed the applicant's application based on a replying affidavit sworn on 19th October 2017 in which she contends that the applicant's lawyer did not inform her lawyer that **Kshs.400,000/=-** had been paid into his account and that the applicant's lawyer has not provided the original transfer receipt despite being asked to do so.

7. The Respondent's lawyer had asked the applicants lawyer to take accounts but the applicant's lawyer never responded.

8. I have considered the applicant's application as well as the opposition to the same by the Respondent. This is not a suit which can be struck out. There are issues which are raised which have to be determined. The applicant has come up with his own computation of interest. The Respondent has too come up with her own computation. There is an issue as to whether **kshs.400,000/=-** was paid or not. I therefore reject prayer (1) of the Notice of Motion. This is a matter which should be resolved by taking accounts. I accordingly allow prayer (2) of the Motion. The accounts should be taken within one (1) month from the date of this ruling. The applicant shall have costs of this application.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **5th** day of **March 2018**.

E.O.OBAGA

JUDGE

In the absence of parties who were aware of the date and time for ruling.

Court Assistant: Hilda

E.O.OBAGA

JUDGE