



**REPUBLIC OF KENYA**

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

**E.L.C CASE NO. 64 OF 2017**

**KORIR GILBERT.....PLAINTIFF**

**VERSUS**

**REUBEN CHERUIYOT MUTAI.....DEFENDANT**

**JUDGMENT**

**Introduction**

1. By a Plaint dated 18<sup>th</sup> May, 2016 the Plaintiff filed suit against the defendant seeking the following reliefs:

- a) *The sum of Kshs. 311,400 being refund of the purchase price and survey fees in respect of land parcel number KERICHO/KABARTEGAN/339.*
- b) *Liquidated damages ta 25% of the purchase price of Kshs. 275,000.*
- c) *Interest at court rates from the date of the agreement to date.*
- d) *Costs of this suit.*

2. Despite being served with Summons to enter Appearance, the Defendant neither entered appearance nor filed a Defence. The case therefore proceeded ex-parte.

3. When the case came up for hearing the Plaintiff testified that he purchased 0.5 of an acre from the Defendant's land parcel number KERICHO/ KABARTEGAN/339. The said property was registered in the name of the Defendant's late father- Peter Arap Soi. He produced copies of the 2 separate agreements dated 31<sup>st</sup> December, 2012 and 30<sup>th</sup> September, 2013 . He testified that he paid the full purchase of 275,000 in two installments of Kshs. 175,000 and Kshs. 100,000 respectively.

4. He testified that in 2015 he paid the Defendant Kshs. 30,000 for an access road. He then had the land surveyed, took possession of the suit property, fenced it and he was in peaceful occupation thereof until 2017 when the Defendant became hostile and started threatening him. He was forced to move out of the suit property due to these threats.

5. The Plaintiff claims a refund of the purchase price being kshs. 275,000, Kshs, 30,000 for the road of access and survey fees amounting to Kshs. Kshs,6400. He produced receipts for all these expenses as exhibits. He further prays for 25% of the purchase being liquidated damages for breach of contract in accordance with the sale agreement.

6. The Plaintiff testified that he had not yet obtained a title deed for the suit property.

7. The Plaintiff's evidence which is uncontroverted shows that he purchased the suit property and incurred a total cost of Kshs. 311,400 being the purchase price together with the survey fees. He further claims 25% of the purchase price as liquidated damages for breach of contract in accordance with the sale agreement. This works out to Kshs. 68,750. The total amount claimed is therefore Kshs.380, 150.

8. I find and hold that the plaintiff has proved his case on a balance of probabilities and I accordingly enter judgment for the plaintiff as follows:

- a) Kshs. 311, 400 being a refund of the purchase price and survey fees.
- b) Kshs. 68,750 being 25% liquidated damages for breach of contract, together interest at court rates from the date of the agreement

until payment in full.

c) The defendant shall bear the costs of this suit.

Dated, signed and delivered at Kericho this 2<sup>nd</sup> day of March, 2018.

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**J.M ONYANGO**

**JUDGE**

**In the presence of:**

1. Mr. Koech for the Plaintiff.
2. No appearance for the Defendant.
3. Court Assistant - Rotich