



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 57 OF 2017**

**RUSI CHEPNGETICH BIGEN.....PLAINTIFF**

**Versus**

**KEMEI KIBET PHILIPH.....DEFENDANT**

**JUDGMENT**

**Introduction**

1. By a Complaint dated 15<sup>th</sup> May 2017 the Plaintiff filed suit against the Defendant for the sum of Kshs. 429,000 as well as general damages as a result of a breach of contract relating to the sale of land parcel number KERICHO/KAPSUSER/5014.
2. Despite being served with Summons to enter appearance the Defendant neither entered appearance nor filed a defence. The suit therefore proceeded ex-parte.
3. The plaintiff testified that she entered into an agreement dated 4<sup>th</sup> August 2012 for the sale of L.R No. KERICHO/KAPSUSER/5014 measuring 25 by 100 feet for a consideration of 330,000.
4. It was a term of the said agreement that immediately after the payment of the purchase price, the defendant would give the plaintiff vacant possession of the suit land. It was also a term of the agreement that in the event of breach of the agreement, the defendant would refund the purchase price together with a penalty of 30% of the purchase price.
5. In breach of the said agreement the plaintiff paid the purchase price but the defendant refused to give him vacant possession of the suit land. The plaintiff produced the sale agreement together with an undertaking by the defendant to refund the sum paid by the plaintiff as exhibits.
6. The Plaintiff called two witnesses who were present when the plaintiff purchased the suit land and who corroborated his testimony.
7. Since the plaintiff's evidence was unchallenged I have no reason to disbelieve her. Furthermore, her exhibits and witnesses testify as to the truth of what she stated.
8. I therefore find that the Plaintiff has proved her case on a balance of probabilities and she is entitled to the remedies sought. In addition to the sum claimed, the plaintiff is also entitled to general damages for breach of contract. Counsel for the Plaintiff has suggested as figure of Kshs. 100,000 as general damages which I find reasonable in the circumstances.
9. Accordingly, I enter judgment of the Plaintiff as follows:
  - a. Kshs. 429,000 being the contract sum
  - b. Kshs. 100,000 General damages
  - c. Costs of this suit
  - d. Interest on a) and b) at court rates until payment in full

**Dated, signed and delivered at Kericho this 25<sup>th</sup> day of May 2018**

**J. M. ONYANGO**

**JUDGE**

**In the presence of:**

1. Mr. Koske for the Plaintiff
2. N/A for the Defendant
3. Court Assistant - Rotich