

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 967 OF 2016

ELIZABETH WANJIRU KARIUKI.....PLAINTIFF

VERSUS

STEPHEN NGAKU MACHUA.....1ST DEFENDANT

NANCY NGENDO MACHUA.....2ND DEFENDANT

RULING

1. On 10/8/2016, the plaintiff brought this suit seeking a refund of Ksh 1,200,000 together with interest at court rate from 14/12/2012. She contends that through an agreement for sale dated 14/12/2012, the defendants agreed to sell to her Plot Nos F515 and 416 (Parcel Nos 105/6233 and 105/6234) located at Embakasi Ranching Company Limited at a price of Ksh 2,400,000. She made a partial payment of Ksh 1,200,000 leaving a balance of Kshs 1,200,000. She further contends that, subsequent to that, the defendants filed **Nairobi (Milimani) High Court Succession Cause No. 1614/2010; In the Matter of the Estate of John Machua Kahochia alias Machua Kahochia**, in which, on 18/2/2013, the High Court nullified the said sale on the ground that the suit property formed part of the estate of the deceased. Arising from the nullification of the sale, the plaintiff seeks a refund of the sum of Ksh 1,200,000 which she had paid to the defendants.

2. On 18/11/2016, the defendants filed a statement of defence dated 18/11/2016 in which, at paragraphs 2, 3, and 4, they admitted the gist of the plaintiff's claim. They however contended that the plaintiff was included in the succession cause as one of the beneficiaries in respect of one plot, Number F415, and the matter is still pending confirmation of grant. In the ultimate paragraph of the defence, they urged the court to allow the plaintiff's plea and they be given ample time to refund the money.

3. Subsequently, on 1/2/2017, the plaintiff brought a Notice of Motion dated 14/12/2016 seeking judgment on admission against the defendants. The application is supported by an affidavit sworn by the plaintiff on 14/12/2016. The defendants did not file any affidavit to challenge the averments made in the plaintiff's supporting affidavit. That application is the subject of this ruling.

4. The jurisprudential criteria upon which the jurisdiction to enter judgment on admission is exercised was spelt out in **Choitram v Nazari (1984) KLR 327** by **Madan JA** as he then was as of follows:

“Admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they may result in judgment being entered. They must be obvious on the face without requiring a magnifying glass to ascertain their meaning. Much depends on the language used. The admissions must leave no room for doubt”

5. In the present suit, there is common ground that there was a sale agreement and a sum of Ksh 1,200,000 was paid by the plaintiff and received by the defendants pursuant to the said sale agreement. There is also common ground that, at the behest of the defendants, the High Court annulled the said sale. The defendants do not contest the plaintiff's plea for a refund of the sum of Ksh 1,200,000. What they contest is the plea for interest. Besides, the defendants elected not to challenge any of the averments made by the plaintiff in the supporting affidavit dated 14/12/2016. Similarly, the defendants did not file grounds of opposition. The net effect is that the present application is uncontested in so far as evidential facts are concerned

6. Against the above background, and in the absence of any affidavit or grounds of opposition in response to the application, the court is satisfied that the plaintiff/applicant has met the criteria for grant of judgment on admission. Consequently, prayers (a) and (b) of the Notice of Motion dated 14/12/2016 are granted. Interest on the judgment sum will be reckoned from the date of filing suit because no basis has been laid for reckoning interest on a date prior to the filing of the suit. Interest will be at court rate. The plaintiff shall have costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18TH DAY OF MAY 2018.

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B M EBOSO

JUDGE

In the presence of:-

No appearance for the Plaintiff

No appearance for the Defendant

Kajuju - Court clerk