

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 221 OF 2016

BETH WAMUYU MUKINYUKIA.....PLAINTIFF

VERSUS

EPHANTUS KARIUKI NGURU.....DEFENDANT

JUDGMENT

[1] The plaintiff in this case filed this suit against the defendant and stated that on or around 24th May 2016, she entered into an agreement for sale with the defendant for the sale of ¼ acre out of land parcel number Mutira/Kangai/2610 at a consideration of Ksh. 400,000/= . She alleges that she paid a deposit of Ksh. 225,000/= and that the balance would be paid after the parties attended the Land Control Board for consent of sub-division and sale.

[2] It was the plaintiff's case that after the receipt of the said deposit, the defendant became uncooperative and has failed to apply for the said consent for Land Control Board. That this is despite a demand letter from the plaintiff dated 24th October 2016.

[3] The defendant filed a statement of defence and admitted the ownership of the suit land; he further admitted entering into an agreement with the plaintiff but averred that the agreement was frustrated by the plaintiff. He went on to state that after the frustration, the defendant started to refund the purchase price and that he has refunded a substantive amount. He otherwise denied the claim.

[4] This suit was fixed for hearing on 6th March 2018 Ex-parte. An affidavit of service dated 30th April 2018 was filed in Court showing that a hearing notice dated 9th April 2018 for the hearing of the case on 2nd May 2018 was duly served on the defendant at Kagio Town in Kirinyaga County.

[5] The defendant or his lawyer never attended the Court during the hearing.

[6] The plaintiff relied on her statement filed in Court on 8th December 2016. She also relied on her list of document filed in Court on the same date. She demanded him Ksh. 225,000/= plus costs and interests. She also demanded the 30% monthly interest as per the agreement for sale.

[7] The defendant alleges that he refunded a substantial amount. That substantive amount is not indicated as to how much. The defendant did not come to Court to say how much was refunded in the alleged refund. That claim remains an allegation. It was not proved.

[8] The plaintiff's claim of 30% interest per month pursuant to the agreement for sale remains unenforceable since none of the parties is a registered money holder authorized to charge that kind of interest by the Central Bank of Kenya. I hold that such amount of interest is not recoverable.

[9] The plaintiff however has proved her claim of Ksh. 225,000/= plus costs and interests at Court rates.

It is so ordered.

S.N. MUKUNYA

JUDGE

29TH JUNE, 2018