



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 145 OF 2016

MUCHIRA PAUL MBOGO.....PLAINTIFF

VERSUS

LINCOLN MUCHOKI MWANGI.....1ST DEFENDANT

RULING

[1] The plaintiff and the defendant entered into a sale agreement on 3rd May 2013 to purchase Plot No. D 357 Kagio at Ksh. 600,000/=. In the event of default of the defendant, he will refund the purchase price to the plaintiff together with interest of 30%. The defendant gave vacant possession and the plaintiff commenced developing the subject matter. However, the structure erected were demolished by Daniel Mbugua Gacina who claimed to be the owner of the said land.

[2] The defendant reported the dispute to the County Government of Kirinyaga and it was resolved that the suit land belong to the said Daniel Mbugua Gacina. In view of this, the plaintiff is now seeking refund of the purchase price together with interest of 30%.

[3] The defendant in his response filed defence admitting that he lawfully transferred the suit land to the plaintiff after he received the full consideration and with the consent of County Government of Kirinyaga. He also filed counter-claim against Joseph Njuguna Kimani whom he purchased the suit land from in September 2010 and County Government of Kirinyaga.

[4] Consent was entered for the plaintiff for the full purchase price of Ksh. 600,000/- on 19th July 2018. The issue for the Court's determination was the issue of interest of 30%. The plaintiff stated that in the sale agreement, the defendant agreed to refund with 30% interest if he defaulted. That he has had the purchase price since 2013 therefore he has benefited from it. The defendant on the other hand states that he should not be condemned to pay the interest since he did not willingly breach the agreement, the plot was handed to the plaintiff and the only part not met is the transfer.

Issue for determination is whether the defendant should be condemned to pay interest of 30%.

[5] It was the terms of the sale agreement that in the event of the defendant breaching it, he shall refund the amount paid plus 30% and should the plaintiff breach, he shall get the amount paid less 30%.

According to the *Black's Law Dictionary 2nd Edition*, breach of contract is defined as:

“A legal cause of action in which a binding agreement or bargained-for exchange is not honoured by one or more of the parties to the contract by non-performance or interference with the other party's performance”.

[6] The defendant had indicated that he is the sole proprietor of the suit land and he shall sell it to the plaintiff free from any encumbrances. The plaintiff was to pay the Ksh. 490,000/= at the execution of the agreement and the balance of Ksh. 110,000/= on or before 3rd June 2013.

The plaintiff fulfilled his part of the contract and thus the reason why the defendant has consented to refund him the purchase price. As for the defendant, it was later declared that the suit land belonged to Daniel Mbugua Gachia therefore the defendant has duly breached the agreement. In the *National Bank of Kenya Ltd Vs Pipeplastic Samkolit (K) Ltd & Another (2001) e K.L.R.*, the Court of Appeal stated:

“A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge”.

[7] As was stated by *Shah J.A.* in the case of *Fine Bank Limited Vs Spares & Industries Limited (Civil Appeal No. 51 of 2000)* (unreported):

“It is clear beyond peradventure that save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity’s function to allow a party to escape from a bad bargain”.

In *Margaret Njeri Muiruri Vs Bank of Baroda (Kenya) Limited (2014) e K.L.R*, the Court of Appeal held on the issue of unconscionable contract:

“Nevertheless, Courts have never been shy to interfere with or refuse to enforce contracts which are unconscionable, unfair or oppressive due to the procedure abuse during formation of the contract, or due to contract terms that are unreasonably favourable to one party and would preclude meaningful choice for the other party. An unconscionable contract is one that is extremely unfair. Substantive unconscionable is that which results from actual contract terms that are unduly harsh, commercially unreasonable, and grossly unfair given the existing circumstances of the case.

[8] Therefore a Court of law will not interfere with a contract entered into between two consenting parties and the interest agreed upon unless the same is illegal, unconscionable or fraudulent.

The *Civil Procedure Act* is clear on its proviso to *Section 27* that costs of any action, cause or other matter or issue shall follow the event unless the Court or Judge shall for good reason otherwise order. There is no good reason shown why the plaintiff should not have his costs in this matter.

[9] The entire principal claim having been conceded by the defendants herein. The plaintiff’s claim is therefore allowed as prayed in the plaint.

S.N. MUKUNYA

JUDGE

26TH JULY, 2018