

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO.1414 OF 2016

CHARLES KAMAU NGUNYI.....PLAINTIFF

=VERSUS=

NAIROBI CITY COUNTY.....DEFENDANT

JUDGEMENT

1. The Plaintiff filed this suit against the defendant seeking refund of Kshs.27,700/= which he paid to the defendant's predecessor the Nairobi City Council . The Plaintiff testified that on 17th July 2003, he was allocated plot No.B-48/1 by the City Council. He paid all that was required but on going to the ground, he found that the plot was occupied by someone else who claimed that it was plot No.B 51. He went to the offices of Nairobi City Council seeking allocation of an alternative plot but he was not given any.

2. During the hearing of this suit, the defendant's counsel indicated that they were not going to call any evidence. The defendant's counsel indicated that he was going to file submissions which he did. The defendants submitted that the plaintiff's claim was statute barred and that in any case, the plaintiff's evidence did not tally with his pleadings.

3. I have considered the evidence adduced by the plaintiff as well as the submissions by the parties herein. The issues for determination are firstly whether the plaintiff's suit is statute barred and secondly whether he is entitled to a refund as claimed. The plaintiff produced a copy of a letter of allocation dated 17th July 2005 which shows that he was allocated plot No.B- 48/1 Kayole Shopping Centre (extension). According to this letter, the plaintiff was expected to pay the amounts indicated in the letter within 30 days of the date of the letter or else the allocation would be deemed to have lapsed.

4. The plaintiff made the first payment of Kshs.500/= on 20.8.2008 . This was a period of five years after the allocation. The plaintiff in his statement stated that he realized that the plot he had been allocated was non-existent in 2006. As at the time he realised that the plot was non-existent, he had not paid a single cent as required in the letter of allocation. The offer may have lapsed and the plot given to someone else.

5. The plaintiff did not file a suit for recovery of what he had paid until 16.11.2016. Recovery of money based on contract is supposed to be made before expiry of six (6) years from the time of the contract. The plaintiff was given an offer in 2003. He did not accept the offer until after five years later when he started paying. The last payment was made in 2010. The plaintiff's claim is clearly statute barred. Even if the plaintiff's claim would not have been statute barred, it would not have succeeded as he did not meet the conditions of the offer. Besides this, the Plaintiff's evidence was contradictory. Whereas he claimed that the plot was allocated to him, during cross-examination he stated that he purchased the plot from someone-else at Kshs.100,000/=. I proceed to dismiss the plaintiff's suit with costs to the defendant.

Dated, Signed and delivered at Nairobi on this 25th day of October 2018.

E.O.OBAGA

JUDGE

In the presence of:-

M/s Nyaga for Mr Wanyoike for Plaintiff

Mr Mokua for Mr Mboya for Defendant

Court Assistant: Hilda

E.O.OBAGA

JUDGE