

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 351 OF 2009

JAMES ONYANGO ONYANGORE.....PLAINTIFF

VERSUS

AGGRET TAIKOSH AZELWA..... DEFENDANT

JUDGMENT

The plaintiff and the Defendant entered into a written agreement dated 14th July, 2008 for the sale of L.R No. Eldoret Municipality Block 21 (King'ong'o)/1696 (hereinafter "the suit property"). Under the said agreement, the Plaintiff agreed to sell and the Defendant agreed to purchase the suit property at a consideration of Kshs.2.9 million. Pursuant to the said agreement, the Defendant issued the Plaintiff with a cheque dated 5th September 2008 for Kshs.2.9 million in full and final settlement of the purchase price for the suit property in consideration of which the Plaintiff handed over to the Defendant the title deed for the suit property together with the instrument of transfer duly executed by him. It was agreed between the Plaintiff and the Defendant that the Defendant would use the suit property as a security to secure a bank loan which the Plaintiff would utilize to pay the purchase price for the suit property.

The Plaintiff brought this suit against the Defendant on 16th July 2009 seeking specific performance of the said agreement for sale dated 14th July 2008. The Plaintiff averred that pursuant to the said agreement, the Defendant issued him with a cheque for Kshs.2.9 million for the entire purchase price which was post dated to 5th September 2008. The Plaintiff averred that prior to 5th September 2008 when the said cheque was to be deposited, the Defendant asked him not to bank the cheque as he wanted to settle the purchase for the suit property in cash. The Plaintiff averred that out of the purchase price of Kshs.2.9 million the Defendant paid only a sum of Kshs.900,000/= leaving a balance of Kshs.2.1 million unpaid. The Plaintiff averred that the Plaintiff had in the meantime transferred the suit property to his name and charged the same to Standard Chartered Bank Ltd. to secure a loan of Kshs.2.8 million. The Plaintiff averred that his claim against the Defendant was for the payment of the balance of the purchase price in the sum of Kshs.2,000,000/=.

The Defendant entered appearance and filed a statement of defence on 5th August 2009. The Defendant admitted that he entered into an agreement for sale of the suit property with the Plaintiff on 14th July 2008. The Defendant further admitted the terms of the said agreement as pleaded in paragraphs 3, 4 and 5 of the plaint. The Defendant admitted further that he paid to the Plaintiff a sum of kshs.900,000/= of the agreed purchase price of Kshs.2.9 million. The Defendant contended however that the agreement for sale which they entered into with the Plaintiff was rescinded and that it was agreed that the Plaintiff would refund him the sum of Kshs.900,000/= which he had paid on account of the purchase price to enable the Defendant repay the loan, have the charge over the suit property discharged and the suit property re-conveyed back to the Plaintiff. The Defendant denied owing the Plaintiff the claimed sum of Kshsh.2,000,000/= or any other amount.

The suit came up for hearing on 24th October 2016 when only the Plaintiff and his advocate appeared in court. The Defendant and his advocate did not appear. Having satisfied myself that the Defendant's advocates were duly served with a hearing notice, I allowed the Plaintiff to prosecute the suit the absence of the Defendant notwithstanding. In his evidence, the Plaintiff told the court that he sold the suit property to the Defendant at Kshs.2.9 million. He stated that the Defendant gave him a post dated cheque for Kshs.2.9 million in exchange of the original title deed and instrument of transfer which the Defendant

