

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ENVIRONMENTAL AND LAND DIVISION

ELC CIVIL SUIT NO. 186 B OF 2016

HIRAM BERE KINUTHIA.....PLAINTIFF

VERSUS

MULTI-TRACK VENTURE LIMITED.....DEFENDANT

JUDGMENT

Plaintiff's case is that on 29/6/15, he entered into a Sale Agreement with defendant whereby the former was to sell, and the latter was to buy land parcel No. L.R. 18484/5 situated at Garden Estate. The price agreed upon was Shs.18, 000,000. Defendant paid a deposit of Shs. 1,800,000. On 7/1/16 defendant's financier paid Shs. 12,600,000 leaving a balance of Shs. 3,600,000. The financier, Equity Bank had to register a charge against the property and so plaintiff's advocate had to release the documents to facilitate the process. The transfer was then effected in favour of the defendant and his financier, however, defendant never paid the balance of Shs.3, 600,000. Plaintiff filed this suit to recover this balance.

The Process Server vide his Return of Service filed in court on 16/9/16 has given a detailed and plausible account of his efforts to effect personal service of summons to enter appearance upon the directors of defendant to no avail. Defendant frustrated the process server's efforts to effect service, which was eventually effected through registered post. The matter therefore proceeded ex-parte.

Plaintiff adapted his statement of 29/2/16 as his evidence. He has given an account of how he set out to sell his land to defendant at a price of Shs. 18,000,000. All the monies were paid save a sum of Shs. 3,600,000.

The sale agreement indicates that in the event of breach by purchaser "*the purchaser shall pay to the vendor interest on balance of the purchase price at the rate of 24% per annum from date of completion until the date of payment*".

Plaintiff's claim is uncontroverted and has been proved on a balance of probability.

Conclusion;

I enter judgment for plaintiff against the defendant in the following terms;

- a) **Defendant is hereby ordered to pay to plaintiff the sum of KShs.3, 600,000.**
- b) **Defendant is to pay interest in respect of the above mentioned amount at the rate of 24% from 29/9/15 until payment of the amount due.**
- c) **Defendant is condemned to pay costs of the suit**

DATED AND SIGNED and DELIVERED AT NAIROBI THIS 3RD DAY OF NOVEMBER, 2017

HON. L.N. MBUGUA

ELC JUDGE

IN THE PRESENCE OF:-

Mr. Muhanga H/B for Namanda for Plaintiff