



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYERI

E.L.C. NO.25 OF 2013

GEORGE WAWERU GATHIGA.....PLAINTIFF

VERSUS

JOSEPH MAINA KAMAU.....DEFENDANT

J U D G M E N T

The plaintiffs claim is based on agreement of sale of one acre of land out of land parcel **No.LOC.15/MUGEKA/840** at a consideration of Kshs.235,000 entered on 15/11/2010 with the defendant. The defendant avers that he paid the defendant a sum of Kshs.163,000/= towards the purchase price and they agreed that the party in default would pay liquidated damages agreed at 50% of the monies received to the party not in default making the money due for the defendant a sum of Kshs.244,500/=. The plaintiff avers that the defendant reneged on his undertaking to transfer the land and/or refund the monies received by him plus the penalty. The plaintiff's claim against the defendant therefore is for payment of Kshs.244,500/= for a consideration that failed or for no consideration at all.

Despite demand and notice of intention to sue having been duly served the defendant has failed to pay the sum of Kshs.244,500/= or any part thereof hence this suit. There has been no pending and/or previous suit between the parties herein or the same subject matter anywhere in the Republic. The cause of action arose within the jurisdiction of this Honourable court.

The plaintiff prays for judgment against the defendant for;

- (a) Kshs.244,500/=**
- (b) Cost of the suit**
- (c) Interest (a) and (b) above**
- (d) Further relief as may be just.**

The defendant admits in his defence that there is an agreement of sale between him and the plaintiff but denies that he is in breach of the same and states that indeed it is the plaintiff who has breached the agreement and therefore should be penalized. He prays that the suit be dismissed with costs.

When the matter came up for hearing on the 4/12/2013, the plaintiff and his counsel turned up but the defendant with his counsel did not despite the date having been taken by the consent of parties.

The plaintiff testified that he hails from Murang'a, Mathioya. He is a driver by profession based at Nairobi. The defendant sold him an acre of **L.R. No.15/MUGEKA/840** at a consideration of

Kshs.235,000/= out of which he paid Kshs.163,000/=. There was a default clause in the agreement which made him entitled to ksh 163,000/= and 50% of the same and therefore he is claiming a total of Kshs.244,500/=. He produced the agreement as the exhibit. He prayed for judgment against the defendant for the total of ksh244,500, costs and interest.

It is important to note that the defendant never turned up for the hearing of this matter despite being aware of the hearing date hearing.

This court finds that on the 15th November 2010 ,the plaintiff entered into an agreement with the defendant for sale of 1 acre out of **LOC.15.MUGEKA/840** measuring 2 acres. The plaintiff was the purchaser whilst the defendant was the vendor. The land was registered in the name of Kama Rukenya (deceased).

The terms of agreement were **that the vendor was to sell and the purchaser was to buy 1 acre out of land parcel No.LOC.15/MUGEKA/840.The total purchase price of the said 1 acre was Kenya shillings two hundred and thirty five thousand (Kshs.235,000/=) out of which sum of Kenya shillings one hundred and fifty five thousand (155,000/=) had been paid to the vendor by the purchaser receipt of which sum the vendor acknowledged. The balance of Kenya shillings eighty thousand (Kshs.80,000/=) was to be paid on the date of transfer .The purchaser was to meet the succession fees which succession was to be done immediately on execution of the agreement. Ultimately, it was agreed that the purchaser was to take the possession of the said 1 acre immediately on execution of the agreement and start any development awaiting official transfer into his name which was to be done after determination of succession cause and in case of default by either party then the party in default was to pay the party not in default a liquidated sum of 50% of the total paid plus any other sum legally payable to the party not in default.**

The plaintiff has paid a total of Kshs.163,000 but the defendant has defaulted in giving him possession of the parcel of land. This court finds that the defendant has breached the term of the aforesaid agreement. I do hereby invoke clause 6 of the agreement and do award the plaintiff a total of Kshs.244,500 being a refund of the money paid by the plaintiff plus 50% of the said amount. The defendant will pay the plaintiff costs of the suit. Orders accordingly.

Dated, signed and delivered at Nyeri this 14th day of March 2014.

A. OMBWAYO

JUDGE