



Njoka v Joakim Kiarie Kamere t/a Kiarie Kamere and Company Advocates; Ebrahim (Third party) (Civil Case 177 of 2017) [2024] KEHC 9761 (KLR) (Civ) (31 July 2024) (Judgment)

Neutral citation: [2024] KEHC 9761 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 177 OF 2017

CW MEOLI, J

JULY 31, 2024

BETWEEN

DAVIS NYAMU NJOKA PLAINTIFF

AND

**JOAKIM KIARIE KAMERE T/A KIARIE KAMERE AND COMPANY
ADVOCATES DEFENDANT**

AND

ESMAIL HAJI EBRAHIM THIRD PARTY

JUDGMENT

1. Davis Nyamu Njoka (hereafter the Plaintiff) brought the Originating Summons dated 21.08.2017 (the Summons) seeking the following orders against Joakim Kiarie Kamere T/A Kiarie Kamere & Co. Advocates (hereafter the Defendant):
 1. That the Defendant do deliver an account for all sums received while acting for the Transferor (Esmail Haji Ebrahim) in the transaction relating to the transfer to the Plaintiff of parcels of land known as Land Reference No.s 1286/1 and 14282-Thika.
 2. That the Defendant do release to the Plaintiff all sums held as purchase price received by the firm of Kiarie Kamere & Co. Advocates from the transaction for sale of portions of land of the parcel of land known as Land Reference No.s 1286/1 and 14282-Thika.
 3. That in default of compliance of 2) above the Plaintiff do proceed with execution against the Defendant for the purchase price held on his behalf.
 4. That the Defendant pay the costs of this application. sic



2. The Summons which is expressed to be brought under Section 51(1) of the *Advocates Act*; Sections 3A and 63 of the *Civil Procedure Act* (CPA); and Order 52, Rule 4 of the Civil Procedure Rules (CPR) and is supported by the grounds on its face and as amplified in the supporting affidavit sworn by the Plaintiff.
3. In his affidavit, the Plaintiff averred that sometime on or about 11.06.2012 he entered into an agreement for the purchase of the two (2) parcels of land situated in Thika and known as L.R. No.s 14282 and 12861/1 (the subject properties) from Esmail Haji Ebrahim (hereafter the 3rd Party), the 3rd Party being the vendor and the Plaintiff the purchaser. The Plaintiff further averred that the Defendant herein, as the advocate representing the 3rd Party, drafted a sale agreement to that effect, whereas the Plaintiff was at the time represented by the firm of Gakuru & Co. Advocates (the Plaintiff's advocates) for purposes of the sale transaction.
4. That pursuant to the sale agreement, the Plaintiff paid an initial amount in the sum of Kshs. 2,950,000/- to the account of the Defendant vide the cheque dated 11.06.2012 followed by other payments particularized as follows in paragraph 7 of the Summons:
 - a. Payment via cheque dated 4.07.2012 for Kshs. 2,500,000/- (Annexed to the supporting affidavit and marked as "DNN-5" is the RTGS).
 - b. Payment via cheque dated 17.07.2012 for Kshs. 2,000,000/-(Annexed to the supporting affidavit and marked as "DNN-5" and "DNN-6" is the cheque and RTGS respectively).
 - c. Payment via cheque dated 7.08.2012 for Kshs. 500,000/-(Annexed to the supporting affidavit and marked as "DNN-7" and "DNN-8" is the cheque and RTGS respectively).
5. That on 3.07.2012 the Plaintiff's advocates forwarded completion documents, including a duly executed transfer and copies of his National Identity Card (I.D. Card) and KRA PIN certificate. And on 13.07.2012 the Plaintiff paid the respective sums of Kshs. 160,000/- and Kshs. 440,000/- being stamp duty fees, to the Commissioner for Domestic Taxes.
6. It is the Plaintiff's averment that he subsequently encountered difficulties in completing the transaction, prompting the 3rd Party to rescind the sale agreement through a communication made by the Defendant, vide the email dated 13.12.2012; and which email further conveyed the 3rd Party's willingness to refund the sums already paid towards the transaction. That the Plaintiff's advocates responded by way of the email dated 11.01.2013 seeking extension of time on the completion date, to 30.03.2013, indicating that should the Plaintiff be unable to complete the transaction, then L.R. No. 14282 being one of the subject properties, be transferred to the Plaintiff in the alternative.
7. The Plaintiff averred that subsequent attempts to communicate with the Defendant proved unsuccessful and the Plaintiff's advocates thus demanded refund of the sum of Kshs. 8,750,000/- received by the Defendant, on behalf of the 3rd Party. That despite receiving correspondence dated 7.08.2014 from the Defendant, indicating that the 3rd Party would refund the sums paid (in full) upon subdividing and selling the subject properties, the Plaintiff is yet to receive any refund thereof, hence the Summons. That in the circumstances, the Plaintiff is entitled to the reliefs sought in the Summons.
8. Upon entering appearance, the Defendant swore a replying affidavit on 19.06.2018 to oppose the Summons. Therein, he stated that no justifiable claim exists against him, since the Plaintiff ought to have instead sued the 3rd Party for either an order for specific performance, or for a refund on the sums allegedly paid. The Defendant further stated that he merely acted as a stakeholder for the 3rd Party



- and hence any sums received from the Plaintiff were released to the said 3rd Party, pursuant to the sale agreement. That at no point in time did he provide a professional undertaking to the effect that he would hold the relevant sums on behalf of the Plaintiff. The Defendant therefore termed the Summons as frivolous and vexatious, further averring that the Plaintiff has not complied with the arbitration clause contained in the sale agreement.
9. In the alternative, the Defendant deposed that it is the Plaintiff who was in breach of the sale agreement, by virtue of his inability to complete the transaction, resulting in its rescission. He deposed that whatever the case may be, no proper claim lies against him, given that he was simply acting in his capacity as an agent of the 3rd Party.
 10. Thereafter, the Defendant took out third party proceedings against the 3rd Party herein by way of the third-party notice dated 10.06.2022, the latter whom did not enter appearance or file any documentation in respect of the Summons, despite evidence of service. Consequently, the Defendant applied for entry of interlocutory judgment against the 3rd Party vide the request for judgment dated 6.10.2023. Interlocutory judgment was entered against the 3rd Party on 24.10.2023.
 11. The Summons proceeded by way of viva voce evidence on 30.04.2024 for hearing as scheduled. However, Mr. Mandala counsel for the Defendant raised an objection to the jurisdiction of the court to entertain the Summons, pursuant to clause 22 in the sale agreement, which provides for arbitration in the event of a dispute. In presenting his oral arguments, counsel argued that the arbitration option had not been attempted and hence the Summons was a non-starter.
 12. In opposition, Mr. Mogeni advocate for the Plaintiff, dismissed the objection as frivolous, arguing that an application to have the matter referred for arbitration ought to have been filed prior to the filing of the defence to the Summons. That upon the Defendant filing a defence herein, he forfeited his right to assert eight (8) years later that the court lacked jurisdiction to entertain the Summons. Counsel further argued that in any event, attempts were made to negotiate settlement of the matter, but which ultimately failed.
 13. Upon hearing the parties on the objection, the court found no merit for reasons to be set out later in this judgment.
 14. The Summons proceeded for hearing, with the Plaintiff being the sole witness, as PW1. Upon adopting his signed witness statement dated 26.2.2020 as his evidence-in-chief and producing his list and bundle of documents of like date as P. Exhibits 1-19, the Plaintiff proceeded to testify that he never received the contractually stipulated 21-days' completion notice and that the subject properties were never transferred to him. He testified that the contract was rescinded and hence he was entitled to a refund, according to the sale agreement. The Plaintiff asserting the propriety of his claim against the Defendant on grounds that the Plaintiff never instructed the Defendant to release any of the sums paid, to the 3rd Party. He prayed for judgment as sought in the Summons.
 15. During cross-examination, the Plaintiff admitted that the reliefs in the Summons do not specify the sums sought. He further stated that out of the agreed purchase price of Kshs. 29,000,000/- in respect of the subject properties, he paid an initial sum of Kshs. 9,350,000/- which payment has never been disputed. That at no point in time did the Defendant serve him with a notice of intention to rescind the contract, but continued to hold the monies paid, as stakeholder.
 16. It was his testimony that he did not default on the sale agreement and that it is the 3rd Party who failed to forward the completion documents upon request. It was similarly his testimony that the 3rd Party made a proposal to sell the subject properties and then refund the sums paid by the Plaintiff, but he did not accede to the said proposal.



17. In re-examination, the Plaintiff restated that he was seeking a refund of all monies paid in respect of the sale transaction as well as accounts, while reiterating his earlier testimony. This marked the close of the Plaintiff's case.
18. The Defendant on his part opted to close his case without adducing any evidence.
19. Thereafter parties filed final written submissions. Counsel for the Plaintiff anchored his submissions on Clause 11(3) of the Law Society Conditions of Sale 1989, to argue that where a contract for sale is rescinded, the purchaser is entitled to a refund of the deposit sum as well as any payments made on the purchase price, without any interest. Counsel then argued that in the present instance, the Plaintiff was intent on completing the transaction but sought an extension of time pursuant to Clause 10.1.2 of the sale agreement, to no avail.
20. That instead, the 3rd Party by his conduct chose to rescind the contract, and in the premises, the Plaintiff is entitled to a refund, from the Defendant in his capacity as stakeholder between the parties to the sale of the sums previously paid. To buttress this point, counsel relied on the decisions in *Lucy Muthoni Muthumbi v Shamira Chepkemei Chelang'a & 2 others* [2020] eKLR and *George Muriani Muboro t/a A.M Advocate v Ndungu Kamiti, Civil Appeal No 233 of 2003*; [2011] eKLR where the respective courts determined that in the event that a sale is not completed, the stakeholder is obligated to refund the sums initially paid, to the purchaser.
21. Therefore, counsel submitted, the Plaintiff is entitled to a refund of the total sum of Kshs. 9,350,000/- being the monies paid to the Defendant towards the purchase of the subject properties. Counsel similarly submitted that the Plaintiff is also entitled to a delivery of accounts from the Defendant, for all the monies received in his capacity as an advocate for the 3rd Party, in respect of the sale transaction. As such, counsel urged the court to grant the reliefs sought in the Summons, as prayed, with costs.
22. Counsel for the Defendant by way his brief submissions, contended that the second prayer sought in the Summons is nonspecific and u not particularized. That it is trite law that special damages must not only be specifically pleaded, but also strictly proved, as restated in the decision of *Hahn v Singh, Civil Appeal No 42 of 1983* [185] KLR 716. Counsel further reiterating the objection earlier raised at the trial stage, namely that the suit is a non-starter because the parties did not first ventilate the dispute by way of arbitration. On those grounds, the Defendant sought the dismissal of the Summons in its entirety, with costs.
23. The court has considered the pleadings, evidence as well as the rival submissions on record. The undisputed facts, as seen from the averments made by the relevant parties herein, are that the Plaintiff entered into an agreement for sale with the 3rd Party, in respect of the subject properties. Thereby, the former agreed to purchase the subject properties from the latter. Furthermore, it is not disputed that the Defendant herein acted as the advocate for the 3rd Party at all material times, in the aforesaid transaction, and that certain payments thereon were to be made to him for subsequent onward transmission to the 3rd Party . It is equally undisputed that ultimately, the agreement was rescinded, by which time the Plaintiff had made certain payments towards the purchase, now sought by way of refund.
24. The key issues arising for determination in this matter are:
 - a. Whether this court has jurisdiction to determine the present claim;
 - b. Whether the Plaintiff is entitled to the reliefs sought in the Summons, and if so, who between the Defendant and 3rd Party is liable to cater for the said reliefs.



25. Concerning the foremost issue, as earlier mentioned, the question of jurisdiction was raised by the Defendant at the trial stage of the claim. The Defendant questioning the jurisdiction of this court to entertain the claim, for the reason that an arbitration clause incorporated in the sale agreement had not been invoked by the Plaintiff. That, consequently, the Summons was a non-starter, and it ought to be struck out/dismissed on those grounds. For his part, the Plaintiff through his counsel maintained that the claim is properly before this court, arguing that no application was made by the Defendant at the appropriate stage for the matter to be referred for arbitration. That the Defendant in any event filed a defence to the Summons, thereby forfeiting his right to challenge the court's jurisdiction to adjudicate over the claim. The Plaintiff also took the position that the objection has been brought after inordinate delay and is therefore unsustainable.
26. Upon hearing the respective parties' arguments on the above objection, the court found it untenable and will now set out reasons for the said finding. First, while it appears from the material on record that the agreement for sale contained an arbitration clause under Clause 22, the same reads that should any dispute arise between any of the parties to the agreement, with regards to any matter pertaining to the agreement, then the parties shall in the first instance attempt to resolve such dispute by way of amicable negotiation. The averments by the Plaintiff in his Summons included an assertion that any attempts on his part to amicably negotiate the issues/challenges arising from the agreement and/or performance thereof, bore no fruit. This position was not controverted by the Defendant. Suffice to say that, from a reading of the said Clause, there was nothing barring the Plaintiff from filing a claim before any court of competent jurisdiction.
27. Secondly, the record shows that upon service of the Summons, the Defendant unconditionally entered appearance and filed a reply thereto, which would constitute a defence within the context of the claim. There is no indication that the reply was filed conditionally. In the court's view therefore, the conduct by the Defendant could be taken to constitute an acquiescence to the jurisdiction of this court. In such instances, the legal position is that a party cannot be heard to subsequently challenge the jurisdiction of a court.
28. This position was expressed by the Court of Appeal in the case of *Raytheon Aircraft & Another v air al-Faraj Ltd* C.A. NO. 29 OF 1999 [Unreported] and previously in the case of *Kanti & Co. Ltd v South Briton Insurance Co. Ltd* [1985] KLR page 1 at page 2. In the latter decision, the Court of Appeal held inter alia that:
- “a defendant by entering an unconditional appearance to a summons to enter appearance, submits to the jurisdiction of the court and as long as the unconditional appearance stands, the court is seized of jurisdiction to try the suit, and the defendant cannot after filing such a memorandum of appearance abrogate or annul it unilaterally by entering an amended appearance under protest, without an order of the court releasing him from his admission and acceptance of the jurisdiction.”
29. Thirdly, it is noteworthy from the record that despite having filed a reply to the Summons back in the year 2018, the Defendant chose to wait until the matter was certified ready for hearing on 30.04.2024 to raise the issue of jurisdiction. In the court's view, such objection was raised too late in the day. The Defendant had eschewed filing an application at the earliest opportunity possible, to have the matter referred for arbitration.
30. In view of the foregoing and the timing especially, the objection to the court's jurisdiction appears to be a red herring and cannot stand. The court is satisfied that it has the requisite jurisdiction to adjudicate over the claim.



31. Having determined so, the court will now proceed to decide on the second issue already set out hereinabove being the crux of the present claim.
32. To begin with, the background facts as drawn from the record are as follows. The Plaintiff entered into an agreement for sale with the 3rd Party vide the agreement for sale dated 11.06.2012 (P. Exhibit 2) for sale of the subject properties at an aggregate consideration/purchase price of Kshs. 29,500,000/- constituted as follows:
- SUBPARA (a)
- L.R. No. 14282 (Kshs. 6,992,592/) and
- SUBPARA (b)
- L.R. No. 12861/1 (Kshs. 22,507,408/-). The 3rd Party was the vendor therein, while the Plaintiff was the purchaser. Under Clause 2 thereof, the Plaintiff was to pay a deposit sum of Kshs. 2,950,000/- to the Vendor's advocates (the Defendant) whereas the balance price of Kshs. 26,550,000/- was to be paid in accordance with Clause 9 (which provides for completion). The completion date agreed upon was 90 days from the date of executing the sale agreement (under Clause 4).
33. It was a further term of the contract that the 3rd Party would be represented by the Defendant, while the Plaintiff herein would be represented by the firm of Gakuru & Co. Advocates, for purposes of the agreement (Clauses 5 and 6). Clause 9 on completion, further stipulated that in exchange for the completion documents, the Plaintiff's advocates would pay the balance of the purchase price by way of RTGS or bank transfer, to the account belonging to the Defendant (Vendor's advocates) to hold the same as stakeholders pending registration of the transfers in favour of the Plaintiff or his nominees.
34. Under Clause 10, where the transaction was not completed owing to the Purchaser's (Plaintiff's) default, then the vendor (3rd Party) would be entitled to rescind the contract and the Plaintiff would forfeit 10% of the purchase price. The 3rd Party would however be entitled to allow the Plaintiff to complete the transaction after lapse of the completion date, save that the latter would pay interest on the balance of the purchase price at the rate provided under Clause 16. In the event that the transaction fell through due to default on the part of the 3rd Party, then the Plaintiff would be entitled to a refund of the sums paid, though the Plaintiff would be at liberty to exercise his discretion in extending the completion date. In the event that the agreement fell through due to circumstances beyond the parties herein, then the 3rd Party would be required to refund the Plaintiff the deposit sum plus all monies paid under the agreement.
35. The Plaintiff also tendered copies of various documentation to support his testimony that several payments were made in relation to the agreement, in form of a cheque dated 11.06.2012 for the sum of Kshs. 2,950,000/- (P. Exhibit 3) accompanied by an RTGS form of like date (P. Exhibit 4); an RTGS form dated 3.07.2012 for the sum of Kshs. 2,500,000/- (P. Exhibit 5); a cheque dated 17.07.2012 for the sum of Kshs. 2,000,000/- accompanied by an RTGS form of like date (P. Exhibits 6 and 7); and a cheque dated 7.08.2012 for the sum of Kshs. 500,000/- accompanied by an RTGS form of like date (P. Exhibits 8 and 9). The total payments made by the Plaintiff to the Defendant's account towards the purchase price, being a sum of Kshs. 7,950,000/-.
36. Further, the Plaintiff tendered as exhibits a letter dated 3.07.2012 (P. Exhibit 10) addressed to the Defendant by his then advocates, forwarding the duly executed transfer in respect of the subject properties (P. Exhibit 11) and copies of the Plaintiff's ID Card and PIN Certificate. To support the averment that he incurred additional costs towards stamp duty fees, the Plaintiff produced two (2)



- cheques dated 13.07.2012 for the respective sums of Kshs. 160,000/- and Kshs. 440,000/- (P. Exhibits 12).
37. Going by the evidence tendered, it is apparent that following the above payments, the Plaintiff was unable to complete the sale, hence the email correspondence dated 13.12.2012 (P. Exhibit 13) emanating from the Defendant to the Plaintiff's then advocates, indicating willingness on the part of the 3rd Party to rescind the contract and refund the sums already paid. In response however, the Plaintiff's then advocates wrote to the Defendant vide the email dated 11.01.2013 (P. Exhibit 14), requesting an extension on the completion date to enable him complete the transaction, pursuant to Clause 4 of the agreement, failing which a proposal was made for the 3rd Party to transfer one of the subject properties, namely L.R. No. 14282 to the Plaintiff, at the agreed consideration of Kshs. 6,992,592/- pursuant to Clause 2 of the agreement.
38. It is apparent from the exhibited documents that the Plaintiff's then advocates subsequently wrote to the 3rd Party directly vide the letter dated 1.08.2014 (P. Exhibit 15), demanding the immediate refund of the sum of Kshs. 8,750,000/- previously remitted to the Defendant, purporting that the said 3rd Party had proceeded to sell the subject properties to third parties. This position was confirmed through the correspondence dated 7.08.2014 (P. Exhibit 16) addressed by the Defendant to the Plaintiff's then advocates. However, the Defendant also stated that upon sale of the subject properties, the Plaintiff would receive a full refund of monies paid towards the transaction. As seen in the correspondences dated 13.02.2015, 3.03.2017 and 21.06.2017 (P. Exhibits 17, 18 and 19 respectively), the Plaintiff unsuccessfully sought a refund on the sums paid. In the aforesaid correspondences, the Plaintiff sought a sum of Kshs. 8,750,000/- plus stamp duty fees in the sum of Kshs. 600,000/- which amounts making a total sum of Kshs. 9,350,000/-.
39. Evidently, the Plaintiff made several payments to the Defendant, towards the purchase of the material transaction. The production of the various payment documentation tendered was not challenged or contents thereof rebutted by way of any contrary evidence.
40. It is also clear from the above circumstances that the Defendant, though acting as the advocate for the 3rd Party at all material times, was nonetheless obligated to hold any monies received from the Plaintiff, in his capacity as a stakeholder, pending registration of the transfer, pursuant to Clause 9 of the agreement for sale (P. Exhibit 2).
41. The term 'stakeholder' was defined by the Court of Appeal in the case of *George Muriani Muboro t/a A.M Muboro Advocate v Ndungu Kamiti, Civil Appeal No. 233 of 2003* in the following manner:
- “A stakeholder is a person with whom money is deposited pending the decision of a bet or a wager or one who holds money or property which is claimed by rival claimants but in which he himself claims no interest...
- ... a stakeholder has a duty to deliver the money or property to the owner or owners once the right to legal possession or ownership has been established....”
42. It is thus clear that by virtue of his capacity as stakeholder, the Defendant was obligated to hold the monies received from the Plaintiff at all material times until the transfer was completed. It was his argument that the said sums were released to the 3rd Party and hence no claim stands against him. However, no evidence was tendered to support or otherwise verify this position.
43. Be that as it may, the Plaintiff's oral and documentary evidence shows that the Plaintiff himself was eventually unable to complete the transaction prior to rescission of the agreement by the 3rd Party through his conduct. Whereas the Plaintiff later purported to argue that rescission of the contract was



ultimately the result of default on the part of the 3rd Party, no credible evidence was tendered to support that position.

44. Clause 10.1.1 of P. Exhibit 2 entitled the 3rd Party to rescind the contract upon default of the Plaintiff, with the alternative of extending the time for compliance on completion. Going by his conduct as averred by the respective parties, it is apparent that the 3rd Party opted to rescind the contract pursuant to that Clause.
45. Flowing from the foregoing, the court is of the view that in the absence of any indication that subsequent amendments were made to the sale agreement, the provisions of Clause 10.1.1 would become applicable as regards the consequence of default, notwithstanding correspondences by the Defendant indicating that the sums paid would be refunded in full. This is so, since the role of the courts in adjudicating a dispute arising between contracting parties is well settled. In the renowned decision of National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another [2001] eKLR, the Court held thus:

“A court of law cannot re-write a contract between the parties whereas its role is limited to interpretation of the same. This is because contracting parties are free to specify the terms and conditions of their agreement, and that when parties do contract, the court does not have the right or ability to substitute its judgment for that of the parties.”
46. From a reading of the above-cited decision and Clause 10.1.1, the Plaintiff would be required to forfeit 10% of the purchase price and would therefore not be entitled to receive a refund on the full sums paid.
47. On the question whether the Plaintiff was entitled to sums not set out in the reliefs, the law on special damages is tried and true; that a claim on special damages must be specifically pleaded and strictly proved. In the present instance, while the court acknowledges that the specific sums sought were not indicated under prayer 2) of the Summons, the same were pleaded by way of the particulars under paragraph 7 thereof and further proved by way of evidence, at the trial. In applying substantive justice, the court finds that the Plaintiff is entitled to the sums particularized under paragraph 7 (totaling Kshs. 7,950,000/-), less the 10% forfeited amount, pursuant to Clause 10.1.1 (supra) the net sum being Kshs. 7,155,000/-. The court will also award the sum of Kshs. 600,000/- incurred as stamp duty fees, bringing the total sums to be refunded to Kshs. 7,755,000/-.
48. The Defendant alleged that he had remitted the sums paid by the Plaintiff to the 3rd Party, but no proof was tendered to support such allegations. Despite the Defendant enjoining the third party, he did not tender any evidence concerning the manner and extent of the 3rd Party's involvement and liability in the dispute. In the absence of such evidence, the court has no basis upon which to make a finding of liability against the 3rd Party.
49. As pertains to the second prayer seeking an order to the effect that the Defendant delivers an account for all sums received while acting for the 3rd Party, it is apparent that the Plaintiff has a record of all sums said to have been paid to the Defendant in respect of the agreement, as seen in the various exhibits considered hereinabove. That being the case, the court is not satisfied that the Plaintiff has justified the said relief. The court therefore declines to grant the same.
50. Consequently, upon considering the totality of the material on record, it is the court's reasoned finding that the Originating Summons dated 21.08.2017 partially succeeds, and is allowed in the following terms:
 - a. The Defendant be and is hereby ordered to release to the Plaintiff the sum of Kshs. 7,755,000/- out of the purchase price received by the firm of Kiarie Kamere & Co. Advocates from the



transaction for sale of portions of land of the parcel of land known as Land Reference No.s 1286/1 and 14282-Thika.

- b. In default of compliance of a) above the Plaintiff is at liberty to proceed with execution against the Defendant for the sum of Kshs. 7,755,000/- held as a stakeholder.
- c. The Defendant is at liberty to pursue the 3rd Party as he deems necessary as no liability has been assigned to the said party.
- d. The Plaintiff shall have the costs of the Originating Summons and interest on the sums awarded in (a) above from the date of filing of the claim until full payment, and on costs from the date of judgment until full payment.

DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 31ST DAY OF JULY 2024.

C.MEOLI

JUDGE

In the presence of:

For the Plaintiff: Ms. Gitonga h/b for Mr. Mogeni

For Defendants: Mr. Mandala

C/A: Erick

