



**Joel Koskei Kipkurui T/A Koskei Monda & Co. Advocates & Another v Nkoyo & Another
(Civil Appeal E755 of 2021) [2024] KEHC 16342 (KLR) (Civ) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16342 (KLR)

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

CIVIL

CIVIL APPEAL E755 OF 2021

JM NANG'EA, J

DECEMBER 19, 2024

BETWEEN

**JOEL KOSKEI KIPKURUI T/A KOSKEI MONDA & CO. ADVOCATES &
ANOTHER APPELLANT**

AND

LETOIYA ALEX OLE NKOYO & ANOTHER RESPONDENT

JUDGMENT

Grounds of Appeal

1. The appeal arises from the above trial court's judgment by which the respondents were granted a sum of Kshs. 7,818,000/= together with the costs of the suit and interest thereon.
2. The appellants were aggrieved and rely on grounds stated in the Memorandum of Appeal dated 23rd January 2021 and Amended on 25th May, 2023. The Grounds of Appeal may be condensed as hereunder;
 - a. That the learned trial magistrate erred in law and fact in entering judgment for the respondents in the sum of Kshs. 7,818,000/- despite expressly finding that they were not entitled to a sum of Kshs. 3,000,000/= which was part of the judgment sum.
 - b. That the learned trial magistrate erred in law and fact in failing to appreciate that a letter dated 13/9/2017 purportedly admitting the appellants' indebtedness to the respondents was obtained through false information and intimidation and thus could not be a basis for judgment in favour of the respondents.

And



- c. That the learned trial magistrate otherwise entered judgment for the respondents against the weight of evidence adduced at trial.
3. The court is therefore urged to allow the appeal, by setting aside the lower court's judgment and substitute it with an order dismissing the suit with costs. The appellants also pray for the costs of the Appeal.

Background to the Appeal

4. The respondents sued the appellants in the lower court for judgment in the sum of Kshs. 15,018,000/= plus costs of the suit and interest thereon at court rates. The respondents averred in the suit that they had instructed the appellants to act as their advocates in a transaction by which the respondents intended to buy property described as Maisonette No. 11 on L.R. No. 1871/V/24 situated in Westlands Nairobi City County.
5. Between 22/11/2016 and the respondents made a deposit of Kshs. 21,400,000/= via RTGS into the respondents' law firms bank accounts towards purchase of the property. The sum included legal fees of Kshs. 200,000/= and stamp duty charges of 1,200,000/= and the property purchase price of Kshs. 30,000,000/=. The appellants were however, alleged to have remitted only Kshs. 24,000,000/= to the vendors' advocates and unlawfully withheld Kshs. 6,000,000/=.
6. The appellants conduct allegedly led to rescission of the contract and imposition of a 10% penalty against the respondents for breach of contract thereby exposing them to loss and damage. The respondents also claimed for loss of earnings on account of a fixed deposit of Kshs. 3,400,000/= they had accessed to purchase the property.
7. The respondents further averred that by letter dated 13/9/2017 the appellant acknowledged indebtedness and made a proposal to settle the debt in 3 months through postdated cheques amounting to Kshs. 15,018,000/=. The cheques were not however, paid due to insufficiency of funds in the appellants' bank account, hence this suit.
8. The appellants filed a joint defence to the suit. While admitting that they acted for the respondents in the purchase of the property in question, they traverse the claim of indebtedness. In the alternative and without prejudice, the appellants contend that they refunded the entire purchase price to the respondents before the suit was instituted. The appellants further contend that if the respondents used their fixed deposit it was merely in furtherance of their desire to purchase property.
9. The appellant also admitted drawing the payment cheques and authoring the letter dated 13/9/2017 as alleged. They, however, lament that they were induced by fraudulent misrepresentation and coercion.
10. For the stated reasons inter alia the appellants urged the trial court to dismiss the suit with costs.
11. The 1st respondent Letoya Alex Ole Nkoyo reiterated their averments in this suit in his oral evidence. In support of the evidence, he tendered their bundle of documents filed on 15/11/2018. The documents include copies of various RTGs documents indicating cash transfers in favour of the appellants, the appellant's letter dated 13/9/2017 and various payment cheques and return cheque advises referred to in the Complaint and the respondents' evidence.
12. Both appellant also testified underscoring their averments in the statement of defence. They acknowledged receipts of the funds in question from the respondents and their failure to remit Kshs. 6,000,000/= to their vendor's advocates. The appellants admitted owing the claimed sum of Kshs. 15,019,000/= but told the court that they repaid a sum of Kshs. 7,200,000/= before the suit was filed.



13. In her judgment, the learned trial magistrate noted the undisputed fact that the appellants owed the claim and agreement of Kshs. 15,018,000/= out of which Kshs. 7,200,000/= was repaid. The trial court further noted that the respondent confirmed receiving another refund of Kshs. 3,000,000/=. The learned trial magistrate then proceeded to enter judgment for the respondents in the sum of Kshs. 7,818,000/= together with costs and interest.

Analysis and Determination

14. The Learned Counsel for the parties filed Written Submissions which I have perused against the record of the trial court and the appeal. The appellants' advocate submit that the trial court did not give credit to them in respect of the sum of Kshs. 3,000,000/= that was supposedly forfeited to the vendor for breach of the contract but which the 1st respondent admitted in court that he did not in fact pay the sum to the vendor. Furthermore, there was no proof of Kshs. 3,400,000/= claimed as interest and another Kshs. 1,418,000/= which was not particularized. These contested sums amount to Kshs. 7,818,000/= which the court awarded to the respondents. The appellant argue that this amounts to unlawful enrichment of the respondents as held in the Court of Appeal Cases of Joel Mwangangi Kithure vs Prisca Mkoriburi (2014) eKLR and Macharia Mwangi Maina & 87 others vs Davidson Mwangi Kagiri (2014) cited in the appellant's submissions.
15. The respondents reply that the appellants are bound by their commitment to settle the debt vide the letter dated 13/9/2017 executed by the parties after the respondents complained to the police about the appellants' conduct. Counsel for the respondents place reliance on the judicial determination in National Bank of Kenya Ltd vs Pipelastik Samkolit (k) Ltd & Another, Civil Appeal No. 95 of 1999 (2001) KLR 112 (2002) EA 503 which held in part;

“A court of law cannot re-write a contract between parties. The parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proven.”

The court is therefore told that on the evidence and in the entire circumstances of the case the appellants admitted the debt of Kshs. 15,018,000/= and even paid part thereof.

16. Having carefully perused the submissions, and record of the trial court, it is noted that the basis of the claim of Kshs. 15,018,000/= before the lower court is the purported letter dated 13/9/2017 by which the appellants allegedly admitted the debt. In the letter signed by the appellants and the respondents the former committed to refund interest of Kshs. 1,218,000/= on unclear principal amount, the said Kshs. 3,000,000/= the respondents forfeited to the property vendor for breach of contract and further interest of Kshs. 3,400,000/= the 1st respondent is said to have lost before 30th June 2017. These are the amounts in dispute in this appeal and which was granted to the respondents by the trial court.
17. The appellant's defence of duress is not credible as they also acknowledged indebtedness in their evidence in court. I, however, agree with them that the sum of Kshs. 3,000,000 should have been discounted since the respondents conceded that they did not pay out the sum to the subject property's vendor. The balance constituting the debt owed to the respondents is thus Kshs. 4,818,000/=.
18. In the result, the trial court's judgment for the respondents in the sum of Kshs. 7,818,000/= is set aside and substituted with an award of Kshs. 4,818,000/= instead. The parties will bear their own costs of this appeal as well as in the suit in the lower court.

J. M. NANG'EA - JUDGE

RULING DELIVERED VIRTUALLY THIS 19TH DAY OF DECEMBER, 2024 IN THE PRESENCE OF:



Mr. Maundo advocate for the Appellant

Respondents' Advocate, absent

J.M. NANG'EA - JUDGE.

