



Ndungu v National Social Security Fund Board of Trustees (Environment and Land Case Civil Suit 558 of 2016) [2023] KEELC 17303 (KLR) (11 May 2023) (Judgment)

Neutral citation: [2023] KEELC 17303 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 558 OF 2016**

SO OKONG'O, J

MAY 11, 2023

BETWEEN

STEPHEN NJOROGE NDUNGU PLAINTIFF

AND

NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEES . DEFENDANT

JUDGMENT

The Pleadings

1. The plaintiff brought this suit against the defendant on 26th May 2016 seeking the following reliefs:
 1. An order directing the defendant to render true and accurate accounts in favour of the plaintiff in respect of the apartments known as Hazina – B30/F1 to F9 and L.R No. Kitisuru 101/C233.
 2. An order directing the defendant to refund monies paid in excess in each account.
 3. An order for specific performance compelling the defendant to transfer apartments known as Hazina – B30/F1 – F9 and L.R No. Kitisuru 101/C233 to the plaintiff.
2. In his plaint, the plaintiff averred that on various dates between 1st June 2002 and 1st August 2002, he purchased apartments known as Hazina – B30/F1- F9 (hereinafter referred to as “the apartments”) from the defendant at various considerations through a tenant – purchase scheme. The plaintiff averred that he was supposed to pay for the apartments within a period of 180 months in various monthly installments. The plaintiff averred that on or about 1st June 2002, he entered into another tenant-purchase agreement with the defendant in respect of L.R No. Kitisuru101/C233 (hereinafter referred to as “the Kitisuru Plot”). The plaintiff averred that the purchase price for the Kitisuru Plot was Kshs. 9,000,000/- which was payable in 180 monthly installments of Kshs. 113,366.56 each with effect from 1st June 2002 after the initial payment of a deposit of Kshs. 900,000/-. The plaintiff averred



that between 1st June 2002 and 6th December 2013, he made various payments to the defendant in settlement of the monthly installments due on account of the apartments and the Kitisuru Plot. The plaintiff averred that he paid a total sum of Kshs. 56,076,339.05 to the defendant for the apartments and Kshs. 25,255,819/- for the Kitisuru Plot. The plaintiff averred that the said payments were on account of the monthly installments, interests and penalties.

3. The plaintiff averred that on or about 20th April 2016, the defendant served him with notices of rescission of the agreements in respect of some of the apartments namely, Hazina – B30/F4, F5, F6, F7 and F8. The plaintiff averred that in the said notices, the defendant demanded payment of a total of Kshs. 1,143,070/= within 37 days that it claimed to be due on the said apartments. The plaintiff averred that he had fully paid all the installments that were due to the defendant as at 6th December 2013 in respect of the said apartments and there was no outstanding payment due to the defendant. The plaintiff averred that in response to that demand, he wrote to the defendant demanding among others, statements of account in respect of the nine (9) apartments that he purchased from the defendant. The plaintiff averred that the defendant instead of providing the information requested wrote back reiterating its rescission notices. The plaintiff averred that he had paid all the monies due to the defendant for the apartments and the Kitisuru plot and had in fact overpaid the defendant.
4. The defendant filed a statement of defence on 1st November 2018. The defendant admitted that between 1st June 2002 and 1st August 2002, the plaintiff purchased from it the apartments and the Kitisuru Plot through a tenant-purchase scheme. The defendant averred that the plaintiff paid the purchase price for the apartments and the Kitisuru Plot but defaulted in the payment of the control management and administrative costs amounting to a total of Kshs. 1,143,070/- in respect of apartments, Hazina – B30/F4, F5, F6, F7 and F8. The defendant averred that as a result of this default, it served the plaintiff with recession notices on 20th April 2016 in respect of the said apartments pursuant to Clause 9(b) of the agreements that the defendant had entered into with the plaintiff. The defendant averred that in the said notices, it demanded the payment of a total sum of Kshs. 1,143,070/-. The defendant averred that as a result of the plaintiff's failure to pay the said amount, the defendant could not transfer the said apartments and the Kitisuru Plot to the plaintiff.
5. The defendant denied that the plaintiff had paid in full all the monthly installments, interests and penalties due on the said apartments and the Kitisuru Plot. The defendant denied further that the plaintiff had overpaid the defendant for the said properties. The defendant averred that the overpayments referred to by the plaintiff resulted from the reconciliation which showed that the plaintiff had overpaid the Kitisuru Plot by Kshs. 2,314,850.28 which amount was distributed to the apartments that were underpaid. The defendant averred that what the plaintiff referred to as overpayments were penalties and interests that accrued due to late payment of installments. The defendant denied that it breached the tenant-purchase agreements that it entered into with the plaintiff. The defendant averred that it did not refuse or neglect to issue the plaintiff with the statements of account. The defendant averred that it had supplied the plaintiff with statements of account and he was satisfied with the same. The defendant averred that it was always willing and ready to provide the plaintiff with any information relating to the accounts on request. The defendant averred that the plaintiff's suit was an abuse of the process of the court and urged the court to dismiss the same.

The Evidence:

6. At the trial, the plaintiff adopted his witness statement dated 26th May 2016 as his evidence in chief and produced his bundle of documents filed in court on 26th May 2016 as an exhibit. The plaintiff told the court that he finished making payment for the apartments and the Kitisuru Plot on 6th December 2013. The plaintiff urged the court to grant the reliefs sought in the plaint and general damages. The



- plaintiff stated that the defendant was supposed to transfer to him the suit properties as soon as he finished paying for them. The plaintiff averred that if the properties would have been transferred to him timeously, he would have used the titles for the same as securities for a loan for his business.
7. On cross-examination, the plaintiff stated that the defendant had supplied him with three conflicting statements of account. The plaintiff stated that after analysing the statements that were supplied by the defendant against the payments that he had made and receipts issued to him for the same, he found an overpayment of Kshs. 16, 616,289/-.
 8. In his defence, the defendant called one witness, Richard Kasiva(DW1). DW1 told the court that he was working with the defendant as an accountant. DW1 adopted his witness statement dated 26th October 2018 filed together with the defence as his Evidence in chief. DW1 produced the defendant's bundle of documents dated 31st October 2018 as an exhibit. DW1 stated that it was the plaintiff who owed the defendant money. DW1 stated that the plaintiff owed the defendant a sum of Kshs. 744,315/- as at the time DW1 was giving Evidence. He stated that the plaintiff had a running account with them in which the defendant continued to debit him for the service charge and land rates. He stated that the Plaintiff had stopped making payments to the defendant. He stated that the plaintiff had not made any payment to the defendant since he filed the suit. DW1 stated that the defendant had not transferred the suit properties to the plaintiff due to the said outstanding payment. He stated that the defendant was always ready to supply the plaintiff with the statements of account on request.
 9. On cross-examination, DW1 stated that the sum of Kshs. 744, 315/- due from the plaintiff was on the running account. He stated that in his witness statement, he had indicated that the amount that was due from the plaintiff was Kshs. 1,143,070/-. He stated that the plaintiff had not made any payment since he filed the suit. He stated that a reconciliation was done in 2016 through which the amount due from the plaintiff was found to be Kshs. 1,143,070/-. He stated that the Kitisuru Plot was overpaid to the tune of Kshs. 2,314,850.28. He stated that in his witness statement, he had also mentioned other accounts that were overpaid and the extent of the overpayment. He stated that the overpaid amounts were distributed to the plaintiff's other accounts that were underpaid as a result of which all the accounts stood settled. He stated that what remained was the service charge, land rent and land rates. He stated that the defendant did not involve the plaintiff in the reconciliation of the accounts and that the plaintiff was not informed of the distribution of the overpaid amounts to the plaintiff's other accounts. DW1 stated that the defendant had not written to the plaintiff demanding the amount that was claimed to be outstanding. He stated that the defendant was willing to transfer the suit properties to the plaintiff as soon as he cleared the outstanding amount. DW1 admitted that the defendant received the plaintiff's letters of defendant dated 20th April 2016 and 5th May 2016. He stated that he was not sure whether the defendant responded to the same.
 10. On examination by the court, DW1 stated that at the time of his evidence, the amount that was due and payable by the plaintiff was Kshs. 744,315/-. He stated that after the reconciliation of the plaintiff's accounts, the defendant found that some accounts had been overpaid. He stated that the overpayments were spread over the underpaid accounts that ended up clearing all the plaintiff's accounts. DW1 stated that after all the accounts were paid up, he communicated this fact to the defendant's legal department. He stated that it was that department that was supposed to process the transfers in favour of the plaintiff. He stated that he did not know why the suit properties were not transferred to the plaintiff at that stage. He admitted that the sum of Kshs. 744,315/- claimed by the defendant accrued after the plaintiff had settled his accounts in full. He stated that since the defendant was still managing the suit properties, the plaintiff's service charge account was still running.
 11. After the close of evidence, the court asked the parties on 22nd March 2021 to try to settle the matter out of court and gave them time for that purpose. After a period of over 1 year, the parties informed



the court on 12th July 2022 that they had failed to resolve the matter and wanted a determination by the court. The court directed the parties to make closing submissions in writing.

The Submissions:

12. The plaintiff filed his submissions dated 12th August 2022. The plaintiff submitted that the amount claimed by the defendant to be due from the plaintiff accrued after the plaintiff had settled all his accounts with the defendant. The plaintiff submitted that this suit would not have been filed if the defendant had responded to its letters dated 20th April 2016 and 5th May 2016 for statements of accounts, certificates of completion of payments and transfers. The plaintiff submitted that although the defendant had claimed that what was due from the plaintiff were penalties and accrued interest, in its rescission notices, the defendant had demanded what it referred to as equated installments and other payments. The plaintiff submitted that there was no mention of penalties and accrued interest in the said notices. The plaintiff submitted that the defendant had admitted that some of the plaintiff's accounts were overpaid. The plaintiff submitted that this admission called for the submission of true and accurate accounts by the defendant to the plaintiff. The plaintiff submitted that the defendant did not justify why it was still demanding payments from the plaintiff while accounts were reconciled in 2016 and the plaintiff's accounts settled. The plaintiff submitted that the defendant should render a true and accurate account and any money found to have been paid to the defendant over and above what was due to the defendant should be refunded to the plaintiff. The plaintiff submitted that he was entitled to specific performance since he completed making payment of the purchase price for the suit properties to the defendant in December 2013. The plaintiff submitted that the defendant did not explain why the suit properties were not transferred to the plaintiff after the plaintiff completed the payment of the purchase price for the same in full. The plaintiff submitted that the defendant could not have both the purchase price and the suit properties.
13. On the issue of damages, the plaintiff submitted that the general rule that general damages are not payable for breach of contract has exceptions. The plaintiff submitted that the general rule does not apply where a party in breach of the contract acts oppressively, in a high-handed or outrageous manner or where he is insolent or vindictive. The plaintiff submitted that the defendant's threat to rescind some of the agreements that it entered into with the plaintiff through notices issued on 20th April 2016 while there was no default on the part of the plaintiff was oppressive and amounted to harassment. The plaintiff submitted that the defendant also refused to respond to the letters of demand from the plaintiff and his advocates. The plaintiff submitted that the conduct and attitude of the defendant which is a public body were improper. The plaintiff submitted that the conduct of the defendant brought it within the exceptions to the general rule on general damages for breach of contract. The plaintiff urged the court to award it general damages against the defendant for breach of the tenant-purchase agreements. The plaintiff submitted that even where a party has not proved that he has suffered any loss by reason of the breach of contract, he is still entitled to damages although nominal. The plaintiff submitted that an award in the sum of Kshs. 6,000,000/- would be a fair compensation for the defendant's breach of the tenant-purchase contracts with the plaintiff. The plaintiff submitted that the defendant had no defence to its claim. The plaintiff submitted that the sum of Kshs. 1,143,070/- claimed in the defence as control management and administrative costs had nothing to do with the installments, interest and penalties which the defendant claimed in its evidence to be due from the plaintiff. The plaintiff submitted further that the defendant did not file a counter-claim for the said amount because it was aware that the claim had nothing to do with the contracts between the plaintiff and the defendant. The plaintiff submitted that it had proved its claim against the defendant and urged the court to enter judgment in its favour as prayed in the plaint. The plaintiff cited several authorities in support of his Submissions.



- 14 The defendant filed submissions dated 8th September 2022. The defendant submitted that the burden was upon the plaintiff to prove that he had performed his part of the contracts that he entered into with the defendant. The defendant submitted that the plaintiff did not place in evidence, records showing the payments that he had made to the defendant. The defendant submitted that it was not its duty to render accounts to prove what the plaintiff had paid to the defendant. The defendant submitted that its witness proved that the plaintiff had not been making payment from the time of filing suit and that a sum of Kshs. 1,143,070/- was due from him on account of management and administrative costs. The defendant submitted that in the circumstances, it was the plaintiff who was in breach of the tenant-purchase agreements that he entered into with the defendant. The defendant submitted that since it was the plaintiff who was in breach of the said contracts, the plaintiff was not entitled to the reliefs sought in the plaint against the defendant. The defendant submitted that the plaintiff being a party in breach of a contract was not entitled to an order for specific performance. The defendant submitted that the fact that the plaintiff sought an order for accounts shows that the plaintiff was not aware of the payments that he had made to the defendant and for that reason, he was not entitled to an order for specific performance as he had failed to prove that he had fulfilled his part of the contracts he entered into with the defendant.
15. The defendant submitted that the plaintiff failed to tender evidence showing that he had paid any monies to the defendant in excess of what was payable, and as such he was not entitled to a refund of the alleged overpaid amount. With regard to the prayer for general damages, the defendant submitted that the same was not available in a claim for breach of contract. The defendant submitted that what the plaintiff was entitled to in the event that he had proved breach of contract was special damages which had to be specifically pleaded and proved. The defendant submitted that the plaintiff had not pleaded or proved that he had suffered any loss as a result of the alleged breach of contract and as such the claim for general damages had no basis. The defendant urged the court to dismiss the suit with costs. The defendant cited several authorities in support of its submissions.

Analysis and determination:

16. I have considered the pleadings and the evidence tendered by the parties in support of their respective cases. The following in my view are the issues arising for determination in this suit;
1. Whether the plaintiff is entitled to an order for accounts.
 2. Whether the plaintiff is entitled to a refund of any amount found to be due to him after the accounts are rendered.
 3. Whether the plaintiff is entitled to an order for specific performance.
 4. Whether the plaintiff is entitled to general damages?
 5. Who should bear the costs of the suit?

Whether the plaintiff is Entitled to an Order for Accounts.

17. In the Indian case of *Triloki Nath Dhar v. Dharmarth Counsel, Srinagar and others*, AIR 1975 J and K76, the court stated as follows on suits for accounts:

“The defendant did not stand in any fiduciary capacity so as to impose upon him a legal obligation to render accounts to the plaintiff, the relation being only that of a contractor and contractee/promisor and promisee... The scope of suit for accounts is limited to a certain number of cases for instance between one partner against another, between the beneficiary



against the executor or administrator, between mortgagor against a mortgagee, between a cestui que trust against a trustee and between principal against an agent. But no suit for accounts can be maintained by a promisee against a promisor or as between two contracting parties.”

18. I am of the view that the relationship between the plaintiff and the defendant created by the various tenant-purchase agreements between them was of a fiduciary nature and as such entitled the plaintiff to accounts. From the evidence on record, the dispute between the plaintiff and the defendant is over accounts. This suit was filed by the plaintiff after the defendant threatened to rescind the tenant-purchase agreements between it and the plaintiff in respect of five apartments. In its notices of rescission, the defendant demanded payment of a sum of Kshs. 1,143,070/- which it referred to as “equated installments and other payments”. In its statement of defence, the defendant stated that the said sum of Kshs. 1,143,070/- was due on account of control management and administrative costs. In his evidence, the defendant’s witness, DW1 stated that the payment that was due from the plaintiff to the defendant was a sum of Kshs. 744,315/- which was outstanding on the plaintiff’s running account with the defendant. In paragraph 12 of its statement of defence, the defendant stated that the plaintiff had overpaid for the Kitisuru Plot to the tune of Kshs. 2,314,850.28. In paragraph 4 of his witness statement that was adopted as part of his evidence in chief DW1 stated that in addition to the Kitisuru Plot, the plaintiff had also overpaid apartments F1, F2 and F3 to the tune of a total of Kshs. 1,178,447.67. The defendant claimed that these overpayments of over Kshs. 3,493,297.95 were spread over the plaintiff’s other apartments’ accounts namely; F4, F5, F6, F7, F8 and F9 the balances on which were also cleared in full. DW1 told the court that it did not involve the plaintiff in the use of the said overpayments to settle the said accounts that were allegedly underpaid. DW1 was also hard-pressed to explain why the plaintiff was not issued with payment completion certificates and the instruments of transfer of the suit properties having paid the purchase price for the suit properties in full. I am in agreement with the plaintiff that he is entitled to a statement of account for each apartment and the Kitisuru Plot. The plaintiff is entitled to know how the sum of Kshs. 3,493,297.95 which the defendant admitted to have been overpaid by him was used. The plaintiff is also entitled to know how the sum of Kshs. 1,143,070/- that was claimed by the defendant in its rescission notices and the sum of Kshs. 744,315/- which DW1 claimed to be due to the defendant in his evidence were arrived at the defendant having admitted that the plaintiff’s accounts were settled in full. The foregoing information can only be obtained from the defendant through the furnishing of accounts. In the circumstances, the plaintiff is entitled to an order for accounts.

Whether the Plaintiff is Entitled to a Refund of any Amount found to be due to him after the Accounts are Rendered.

19. The answer to this question is in the affirmative. The defendant is not entitled to keep any amount paid by the plaintiff over and above what was payable to the defendant. When true accounts are rendered by the defendant, any amount found to have been paid by the plaintiff to the defendant over and above what was payable under the various agreements entered into by the parties is refundable to the plaintiff.

Whether the Plaintiff is Entitled to an Order for Specific Performance.

20. In the Supreme Court of Uganda case of *Manzoor v Baram* [2003] 2 E.A 580 that was cited in the case of *Thrift Homes Limited v Kays Investment Limited* [2015]eKLR, the court stated as follows on specific performance:

“Specific performance is an equitable remedy grounded in the equitable maxim that “equity regards as done, that which ought to be done”. As an equitable remedy, it is decreed at



the discretion of the court. The basic rule is that specific performance will not be decreed where a common law remedy such as damages, would be adequate to put the plaintiff in the position he would have been but for the breach. In that regard, the courts have long considered damages an inadequate remedy for breach of a contract for the sale of land, and they more readily decree specific performance to enforce such contract as a matter of course. In the instant case, I find no circumstances that would make it inequitable to order the respondent to complete the contract. On the contrary, it seems to me that to deny the appellant that relief would be to give unfair advantage to a respondent, who sought to avoid his contractual obligations through false claims, as found by the trial court, and through inapplicable technicalities. After taking into consideration the equities of this case, I am satisfied that the discretion ought to be exercised in favour of the appellant. I would hold that the appellant is entitled to specific performance.”

21. In *Gurdev Singh Birdi and Marinder Singh Ghatora v. Abubakar Madhubuti* CA No.165 of 1996 it was stated that:

“...It cannot be gainsaid that the underlying principle in granting the equitable relief of specific performance has always been that under all the obtaining circumstances in the particular case, it is just and equitable so to do with a view to doing more perfect and complete justice. Indeed...a plaintiff must show that he has performed all the terms of the contract which he has undertaken to perform, whether expressly or by implication, and which he ought to have performed at the date of the writ in the action.”

22. I am satisfied from the evidence on record that the plaintiff had settled the purchase price for the suit properties in full. DW1 told the court that the sum of Kshs. 744,315/- said to be outstanding from the plaintiff accrued after the plaintiff's accounts with the defendant had been settled. I am unable to see how the payment that accrued after the plaintiff had paid the purchase price in full could justify the defendant's refusal to transfer the suit properties to the plaintiff. The plaintiff having fulfilled his part of the agreement with the defendant, he is entitled to an order for specific performance. The defendant has not given any valid reason for his failure to transfer the suit properties to the plaintiff. The defendant's claim that a sum of Kshs. 744,315/- is due from the plaintiff is negated by its admission that the plaintiff had overpaid four tenant purchase accounts and that the excess payments were used to settle in full the remaining six accounts. One does not talk of overpayment or full payment of an account when there is any payment of whatsoever nature outstanding on such account. It is my finding that the plaintiff has made out a case for specific performance.

Whether the Plaintiff is Entitled to General Damages?

23. In *Joseph Urigadi Kedeva v. Ebby Kangishal Kawai*, Kisumu Civil Appeal No. 239 of 1997 (UR) the court stated as follows:

".....As to the award of Kshs. 250,000/= as general damages,..We respectfully agree. There can be no general damages for breach of contract..."

24. In *Consolata Anyango Ouma v. South Nyanza Sugar Co. Ltd* (2015)eKLR the court stated as follows:

“The next question is whether the appellant was entitled to damages as a result of the breach. As a general principle, the purpose of damages for breach of contract is, subject to mitigation of loss, the claimant is to be put as far as possible in the same position he would have been if the breach complained of had not occurred. This principle is encapsulated in the Latin phrase restitution in integrum (see *Kenya Industrial Estates Ltd v Lee Enterprises*



Ltd NRB CA Civil Appeal No. 54 of 2004 [2009] eKLR, *Kenya Breweries Ltd v Natex Distributors Ltd* Milimani HCCC No. 704 of 2000 [2004] eKLR). The measure of damages is in accordance with the rule established in the case of *Hadley v Baxendale* (1854) 9. Exch. 341 that the measure of damages is such as may be fairly and reasonably be considered arising naturally from the breach itself or such as may be reasonably contemplated by the parties at the time the contract was made and a probable result of such breach (see *Standard Chartered Bank Limited v Intercom Services Ltd & Others* NRB CA Civil Appeal No. 37 of 2003 [2004] eKLR). Such damages are not damages at large or general damages but are in the nature of special damages and they must be pleaded and proved (see *Coast Bus Service Ltd v Sisco Murunga Ndanyi & 2 others*, NRB CA Civil Appeal No. 192 of 92 (UR) and *Charles C. Sande v Kenya Co-operative Creameries Ltd*, NRB CA Civil Appeal No. 154 of 1992 (UR))”.

25. In *Capital Fish Kenya Limited v. The Kenya Power & Lighting Company Limited* [2016] eKLR, the court stated as follows:

“On the second issue, the appellant conceded that whereas the general legal principle is that courts do not normally award damages for breach of contract, there are exceptions such as when the conduct of the respondent is shown to be oppressive, high handed, outrageous, insolent or vindictive. In support of this proposition, the appellant relied on the Nigerian case of *Marine Management Association & Another v National Maritime Authority* (2012) 18 NWLR 504.

26. ...The appellant having conceded to the general proposition regarding the award of damages for breach of contract, it was incumbent upon it to lead evidence so as to bring the respondent’s conduct into the exceptions it alluded to above. In this case the mere fact that the appellant wrote several letters to the respondent without remedial measure being undertaken immediately cannot amount to oppressiveness, insolent or vindictive behaviour. The correspondence was responded to explaining what was being undertaken. The fact that the respondent took no corrective action only making incessant promises that the issue was under investigations is not of itself evidence of high handedness, outrageous, or insolent conduct. Further there was no agreement at the time as to the real cause of power outages. There was a blame game between them which went on for a long time. In those circumstances we do not see how the respondent can be accused of being oppressive, high handed, outrageous, insolent or even vindictive.”
27. I have stated earlier that the plaintiff performed his part of the agreements with the defendant and that the defendant failed to honor his part. In the circumstances, the defendant breached the various tenant purchase agreements that it entered into with the plaintiff. I am in agreement with the foregoing statement of the law on general damages for breach of contract. As a general rule, general damages are not payable for breach of contract. There are however exceptions. What I need to determine here is whether the plaintiff has demonstrated that the breach herein falls under the said exception. As stated by the Court of Appeal in *Capital Fish Kenya Limited v. The Kenya Power & Lighting Company Limited*(*supra*), I am not persuaded that the conduct of the defendant herein complained of by the plaintiff can be said to have been oppressive, high-handed, outrageous, insolent or vindictive. The plaintiff has therefore not proved that it is entitled to general damages from the defendant for breach of contract.



Who Should Bear the Costs of the Suit?

28. As a general rule, costs follow the event unless the court for good reason orders otherwise. In the present suit, the plaintiff has succeeded in his claim against the defendant. The defendant has not given any reason why the plaintiff should be denied the costs of the suit. I will therefore award the costs of the suit to the plaintiff.

Conclusion:

29. In conclusion, I hereby enter judgment for the plaintiff against the defendant as follows;
1. The defendant shall within 30 days from the date hereof furnish the plaintiff with true and accurate statements of accounts in respect of each of the apartments known as Hazina – B30/F1 to F9 and L.R No. Kitisuru 101/C233 from the inception to 26th May 2016.
 2. The defendant shall refund to the plaintiff any monies found to have been paid by the plaintiff to the defendant in excess of what was due to the defendant in respect of apartments known as Hazina – B30/F1 to F9 and L.R No. Kitisuru 101/C233 upon the furnishing of the said accounts.
 3. The defendant shall within 30 days from the date hereof execute instruments of transfer in respect of apartments known as Hazina – B30/F1 to F9 and L.R No. Kitisuru 101/C233 in favour of the plaintiff.
 4. Either party shall be at liberty to apply to court in respect of orders 1 and 2 above.
 5. The plaintiff shall have the costs of the suit.

DELIVERED AND DATED AT KISUMU ON THIS 11TH DAY OF MAY 2023

S. OKONG'O

JUDGE

Judgment delivered through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Manyara for the Plaintiff

Mr. Odongo for the Defendant

Ms. J. Omondi-Court Assistant

