



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CIVIL SUIT NO. 5 OF 2019**

**SHIV CONSTRUCTION COMPANY LIMITED.....PLAINTIFF/APPLICANT**

**VERSUS**

**CHIEDO DEVELOPERS LIMITED.....DEFENDANT/RESPONDENT**

**RULING**

The Plaintiff, **SHIV CONSTRUCTION COMPANY LIMITED** filed suit against the Defendant, **CHIEDO DEVELOPERS LIMITED**, on 28<sup>th</sup> March 2019.

1. The claim against the Defendant was for the sum of

Kshs 44,716,402/39, being the balance payable to the Plaintiff, arising from work which the Plaintiff carried out for the Defendant.

2. On 19<sup>th</sup> November 2019 the case came up for Formal Proof.

3. **PW1, DILIPKUMAR DHANJ SUTHAR**, testified that he is one of the Directors of the Plaintiff.

4. He said that the Plaintiff had entered into a contract with the Defendant, pursuant to which the Plaintiff was to construct apartments in Kisumu. The said apartments were to be named **Lake Breeze Apartments**.

5. It was the Plaintiff's case that they constructed the apartments in accordance with the contract.

6. Notwithstanding the fact that the project was completed and was handed over to the Defendant, together with a Certificate of Practical Completion, the Defendant had failed to remit payment of the balance of the contractual amount.

7. The Final Accounts were delivered to the Defendant, with the letter dated 27<sup>th</sup> November 2015, which was received by the Defendant on 4<sup>th</sup> December 2015.

8. Pursuant to **clause 34.22** the Final Certificate is deemed to be conclusive evidence that the Works were properly carried out and completed in accordance with the terms of the contract, unless the issue is referred to arbitration within 30 days from the date the said Certificate is issued.

9. Although the Plaintiff completed construction of the apartments, and handed them over to the Defendant, I find that the Defendant has failed or refused to pay the outstanding balance, amounting to Kshs 44,716,402/39.

10. Accordingly, I do now enter judgment in favour of the Plaintiff for the said sum of Kshs 44,716,402/39.

11. The said principal sum will attract interest at Court rates from 5<sup>th</sup> January 2015, until it is settled in full. The date from when interest is to accrue has been pegged on the provisions of **clause 34.22** of the **Agreement And Conditions of Contract for Building Works**, which the parties executed on 24<sup>th</sup> December 2012.

12. The Plaintiff is also awarded the costs of the suit.

**FRED A. OCHIENG**

**JUDGE**

**DATED, SIGNED at DELIVERED at KISUMU**

This **29<sup>th</sup>** day of **January** 2020

**T. W. CHERERE**

**JUDGE**