



**Sumbi & another v Keronya (Environment & Land Case 306 of 2017)  
[2023] KEELC 20849 (KLR) (18 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20849 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 306 OF 2017  
A NYUKURI, J  
OCTOBER 18, 2023**

**BETWEEN**

**DANIEL SUMBI ..... 1<sup>ST</sup> PLAINTIFF**

**WINROSE MWIKYA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**NYANDUSI KERONYA ..... DEFENDANT**

**JUDGMENT**

**Introduction**

1. By a plaint dated 13<sup>th</sup> July 2017, the Plaintiffs in this matter, jointly and severally sought judgment against the Defendant, in terms of the following orders;
  - a. Defendant be compelled to refund the Plaintiffs entire purchase price of Kshs. 800,000/=.
  - b. General Damages.
  - c. Costs of this suit.
  - d. Interest on (a) (b) and (c) above.
2. The Plaintiffs pleaded that on 2<sup>nd</sup> May 2017, the Defendant entered into a land sale agreement with them for purchase of L. R. No. 7340/144 (suit property) at Kshs. 800,000/=. They stated that the Defendant agreed to execute transfer and deliver vacant possession of the suit property to the Plaintiffs. They further averred that the Defendant had breached the sale agreement by failure to execute transfer documents; avail completion documents; and deliver vacant possession.
3. The suit was not defended as the Defendant did not enter appearance or file defence, despite service. The suit proceeded by way of oral evidence.



## Plaintiffs' evidence

4. PW1 was Daniel Sumbi, the 1<sup>st</sup> Plaintiff in this case. He testified on 6<sup>th</sup> November 2019 and adopted his witness statement dated 21<sup>st</sup> July 2017 as his evidence in chief. His testimony was that on 2<sup>nd</sup> May 2017, together with the 2<sup>nd</sup> Plaintiff, they purchased the suit property from the Defendant at a consideration of Kshs. 800,000/=, which they paid in full. He stated that the Defendant had failed to supply them with completion documents including original title deed, two passports photographs, and copies of the pin certificate and national identity card. He sought prayers itemized in the plaint. He produced the sale agreement dated 2<sup>nd</sup> May 2017, demand letter dated 4<sup>th</sup> July 2017 and a letter dated 27<sup>th</sup> September 2017 addressed to the Principal Secretary Ministry of Defence.
5. PW2 was Winrose Mwikya, the 2<sup>nd</sup> Plaintiff in this matter and wife of PW1. She adopted as her testimony in chief, her witness statement dated 21<sup>st</sup> July, 2017, which was a word for word replica of PW1's witness statement, save for the name and signature. She testified that together with the 1<sup>st</sup> Plaintiff, they paid the Defendant Kshs. 800,000/= in cash as consideration for the purchase of the suit property. She stated that however, the Defendant neither transferred nor gave them vacant possession of the suit property. She sought orders sought in the Plaint. That marked the close of the Plaintiff's case.
6. On 22<sup>nd</sup> November 2021, the Plaintiffs filed submissions in support of their case.

## Plaintiffs' Submissions

7. Counsel for the Plaintiffs submitted that the sale agreement between the Defendant and the Plaintiffs met the mandatory requirements for a valid contract as required under Section 3 (3) of the [Law of Contract Act](#) Cap 23. To buttress their argument, reliance was placed on the case of [Sammy Some Kosgei v Grace Jelev Boit](#) Eldoret ELC Case No. 411B of 2012.
8. On whether the Plaintiffs paid the Defendant the entire purchase price of Kshs. 800,000/=, counsel submitted that F.M. Mulwa advocate who had been counsel for both parties, corroborated the evidence of payment of the entire consideration, vide his letter dated 4<sup>th</sup> July, 2017. Counsel argued that indeed there existed a valid enforceable contract between the parties. It was further contended for the Plaintiff that the defendant's execution of the sale agreement was a confirmation that indeed the sum of Kshs. 800,000/= was paid to him. Counsel cited the case of [Sammy Kuria Ndugu v Samuel Mbugua Ikumbu](#) Nakuru HCCC No. 193 of 2011.
9. They argued that among the Defendant's obligations under the contract was to deliver to the Plaintiffs all the completion documents which was not done.

## Analysis and Determination

10. I have considered the pleadings, evidence and submissions by the Plaintiffs. In my considered view, the issues that arise for determination are;
  - a. Whether there existed a valid contract between the Parties
  - b. Whether the contract was breached by the Defendant
  - c. Whether the Plaintiffs are entitled to refund of the purchase price and general damages
  - d. Who should bear the costs of the suit?
11. Section 2 of the [Law of Contract Act](#) Cap 23 Laws of Kenya provides that the English Law of Contract and the Common Law as modified by the doctrines of equity shall apply in Kenya. Under Common



- Law, the basic elements of a valid contract are an offer and acceptance which result in an agreement; parties' intention for a contractual intention; and consideration. (See *Edwards v Skywards Ltd* [1964] 1WLR 349).
12. While Section 3 of the *Law of Contract Act* provides that no suit shall be brought upon a contract for disposition of interest in land unless it is in written, signed by the parties and attested by two witnesses, the plaintiffs herein do not seek to enforce the agreement for disposition in land, but seek a refund of the consideration on the basis that the Defendant breached the contract in dispute.
  13. The Plaintiffs pleaded and testified that they entered into a sale of land agreement with the Defendant on 2<sup>nd</sup> May 2017, and paid a consideration of Kshs. 800,000/=; which amount they seek to be refunded on account of the Defendant's violation of the contractual terms. I have considered the sale of land agreement dated 2<sup>nd</sup> May 2017, which was produced by the Plaintiffs. The same shows that the Defendant offered for sale L.R. No. 7340/144 to the Plaintiffs at a consideration of Kshs. 800,000/=. That offer was accepted by the Plaintiffs who paid the entire consideration of Kshs. 800,000/=, receipt of which was acknowledged by the Defendant. I am therefore satisfied that the Plaintiffs have demonstrated that they entered into a valid contract with the Defendant, for sale of land parcel L.R. No. 7340/144 at a consideration of Kshs 800,000/=, which amount they paid in full. I therefore find and hold that there exists a valid contract between the parties in this case.
  14. Breach of contract may be defined as a violation of the agreement terms spelt out in a contract by any or all of the parties to the contract.
  15. *Black's Law Dictionary* 11<sup>th</sup> Edition defines breach of contract as:

Violation of a contractual obligation by failing to perform one's own promise, by repudiating it, or by interfering with another party's performance.
  16. On the question of breach of contract, the Plaintiffs argued that the Defendant's failure to avail the completion documents including the original title, copies of the national identity card, pin certificates, and passport photographs; failure to transfer the suit property and grant vacant possession thereof to the Plaintiffs, amounted to a breach of contract on the part of the Defendant.
  17. Having examined the contract in this matter, it is clear that the parties' intention was for the suit property to be transferred to the Plaintiffs upon payment of the consideration as shown in clauses 2 and 3 of the sale agreement. The transfer can only be done if completion documents are availed to the Plaintiff. There is evidence that this was not done. The Plaintiffs also maintained that they were not granted vacant possession by the Defendant. That evidence was not controverted as no evidence was given by the Defendant to challenge the Plaintiffs' evidence. In the premises, I find and hold that the Plaintiffs have proved that the Defendant breached the contract dated 2<sup>nd</sup> May 2017 by his failure to avail completion documents; transfer the suit property to the Plaintiffs and grant them vacant possession.
  18. The Plaintiffs sought refund of the sum of Kshs. 800,000/= paid as consideration together with general damages.
  19. The law is settled that a claim for special damages must not only be specifically pleaded, but must also be strictly proved with as much particularity as circumstances permit. (See *Capital Fish Limited v Kenya Power and Lighting Company Limited* [2016] eKLR).



20. In *Provincial Insurance Co. EA Ltd v Mordekai Mwangi Nandwa*, (KSM Civil Appeal No 179 of 1995 (ur), the court stated as follows;

It is now well settled that special damages need to be specifically pleaded before they can be awarded. Accordingly, none can be awarded for failure to plead. It is equally clear that no general damages may be awarded for breach of contract.

21. In the instant suit, the Plaintiffs produced a sale of land agreement dated 2<sup>nd</sup> May 2017 which shows that the Defendant sold the suit property at a consideration of Kshs. 800,000/=, which amount the Defendant acknowledged receipt. The evidence on record has demonstrated that the Defendant violated the land sale agreement between him and the Plaintiffs by failing to ensure the suit property is transferred to the Plaintiffs and that they get vacant possession thereof. It therefore follows that it is only fair, just and equitable that the amount received by the Defendant in respect of an agreement he failed to complete, be refunded to the Plaintiffs. I therefore find and hold that the Plaintiff has specifically pleaded and proved the claimed sum of Kshs. 800,000/=, which must be refunded by the Defendant.

22. On whether there should be an award for general damages for breach of contract, I am of the view that once the Plaintiffs have been refunded the consideration paid, which is equivalent to the loss suffered due to breach of contract by the Defendant, they cannot be entitled to general damages as that will amount to double compensation which is against the tenets of equity and which would amount to unjust enrichment.

23. I am fortified in my reasoning by the holding in the case of *Securicor Courier (K) Ltd v Benson David Onyango & Another* [2008] eKLR, where the Court of Appeal reiterated that general damages are not awardable for breach of contract.

24. Similarly, in the case of *Dharamshi v Karsan* [1974] EA 41, it was held that general damages are not awardable for breach of contract in addition to the quantified damages as it would amount to duplication.

25. The upshot is that the court finds that the Plaintiffs have proved their case on a balance of probabilities. I therefore enter judgment for the Plaintiffs against the Defendant for refund of Kshs. 800,000/=, together with interest thereon at court rates from the date of filing this suit till payment in full. The costs of the suit are awarded to the Plaintiffs.

26. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 18<sup>TH</sup> DAY OF OCTOBER, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.**

**A. NYUKURI**

**JUDGE**

