



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 200 OF 2016

MICHAEL TENDWA SANGA MUTESHI...1ST PLAINTIFF

LAURA TAMARA SAISI.....2ND PLAINTIFF

VERSUS

RONALD MORARA NGISA T/a MORARA

MGISA & CO. ADV.DEFENDANT

JUDGMENT

1. The Plaintiffs vide the Originating Summons dated 1st July, filed suit against the Defendant seeking the following orders:

- 1) An order do issue compelling the Defendant to pay the Plaintiffs the sum of Ksh.764,000/= with interest at Court rates from 1st July, 2015 until full payment.**
- 2) A declaration that the Defendant do pay the Plaintiffs interest on the sum of Ksh.1,000,000/= at court rates for the period between 2015 and 15 January, 2016.**
- 3) The cost of this suit be awarded to the Plaintiffs.**

2. The Plaintiffs' case as stated in the affidavit in support is that they engaged the Defendant advocate to represent them in the sale of their property flat No. 56 Block on LR No. 127515/290 at 360 Court Estate to one Emmy Jerono Rotich who was buying the property for the sum of Ksh.4,000,000/= financed by Kenya Commercial Bank (hereinafter KCB). That the purchase price was to be applied to clear a mortgage facility that the Plaintiffs had with KCB for the sum of Ksh.2,095,000/= That the balance was released through KCB to the Defendant. That the Defendant was to pay the Plaintiffs the sum of Ksh.1,864,000/= after deducting his legal fees and attendant costs. That KCB paid out the proceeds of the sale in June, 2015 to the Defendant.

3. That the Defendant failed to disclose the said payment or release the same to the Plaintiffs. The Plaintiffs came to learn of the sale from the purchaser in August 2015 and went to inquire about the same from the Defendant. That the Defendant instead of releasing the money to them issued them with a commitment letter and a promissory note undertaking to pay the amount in question to them. That the promissory note was not honoured and the Defendant issued them with cheques which were dishonoured by the bank. That the Defendant once again issued them with promissory notes which he did not honour.

4. The Plaintiffs reported the matter to the Banking Fraud Unit for investigations. That the Defendant then paid them the sum of Ksh.1,100,000/= and promised to pay the balance of Ksh.764,000/= in two weeks. That the said sum of Ksh.764,000/= was not paid hence the suit herein.

5. The claim is denied. It is stated in the replying affidavit that there is no basis for the prayer for interest on the sum of Ksh.1,000,000/=. That there was no agreement on interest. That the 1st Plaintiff has not attached any authority allowing him to swear the affidavit in support on behalf of the 2nd Plaintiff. That there is duplicity in filing these proceedings in court when the Plaintiff filed similar proceedings before the Law society of Kenya Disciplinary Committee and therefore the suit herein should be dismissed.

6. The parties relied on their affidavit evidence. Written submissions were then filed. I have considered the said submissions.

7. The replying affidavit is silent on the issue of the none payment of the Ksh.764,000/=. Thus the Plaintiffs' evidence remains uncontroverted in that respect.

8. There is no evidence in support of the claim for interest on the sum of Ksh. 1,000,000/=. The Plaintiff's affidavit evidence in paragraph No. 12 talks of payment of a sum of Ksh.1,100,000/=.

9. The 1st Plaintiff's affidavit in paragraph No. 1 reflects that he was authorized by the 2nd Plaintiff to swear the affidavit. The 1st Plaintiff is also a joint owner of the property in question.

10. The pendency of disciplinary proceedings before the Law Society of Kenya Disciplinary Committee is not a bar to the suit herein. The Defendant will therefore not suffer any double jeopardy.

11. With the foregoing, I find the Plaintiffs claim of Ksh.764,000/= proved on a balance of probability. I allow the same with interest at court rates as prayed in prayer No.1. Costs of the suit to the Plaintiff.

Date, signed and delivered at Nairobi this 28th day of June, 2018

B. THURANIRA JADEN

JUDGE