



**Stima Investment Co-operative Society v Njenga & 3 others (Sued as the Administrators and/or the Personal Representatives of the Estate of Wambui Njenga (Deceased)) (Environment & Land Case E020 of 2022) [2025] KEELC 1199 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1199 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E020 OF 2022  
LC KOMINGOI, J  
MARCH 13, 2025**

**BETWEEN**

**STIMA INVESTMENT CO-OPERATIVE SOCIETY ..... PLAINTIFF**

**AND**

**THUKU NJENGA ..... 1<sup>ST</sup> DEFENDANT**

**WAWERU NJENGA ..... 2<sup>ND</sup> DEFENDANT**

**GEORGE NJENGA ..... 3<sup>RD</sup> DEFENDANT**

**KURIA NJENGA ..... 4<sup>TH</sup> DEFENDANT**

**SUED AS THE ADMINISTRATORS AND/OR THE PERSONAL  
REPRESENTATIVES OF THE ESTATE OF WAMBUI NJENGA (DECEASED)**

**JUDGMENT**

1. The Plaintiff, an investment company registered under the *Co-operative Societies Act*. By the Plaintiff dated 3<sup>rd</sup> March 2022 and Amended on 30<sup>th</sup> January 2024, the Plaintiff stated that Land parcel known as Kajiado/Kaputiei North/29456 measuring approximately 40.47 hectares belonged to the late Wambui Njenga. It is its case that on 25<sup>th</sup> April 2016, the Plaintiff entered into an agreement with the Defendant to buy the said property for Kshs. 75,000,000. On diverse dates between 11<sup>th</sup> April 2016 and 12<sup>th</sup> July 2017, the Plaintiff paid Kshs. 56,250,000 towards the purchase as follows: Kshs. 15,000,000 paid on 11<sup>th</sup> April 2016; Kshs. 15,000,000 paid on 22<sup>nd</sup> June 2016; Kshs. 7,500,000 paid on 28<sup>th</sup> October 2016 and Kshs. 18,750,000 paid on 12<sup>th</sup> July 2017. The balance of Kshs. 18,750,000 was to be paid in exchange of issuance of completion documents.
2. It is further its case that on 21<sup>st</sup> June 2019, the agreement was varied and it was agreed that the balance of Kshs. 18,750,000 was to be paid into two separate accounts as follows: Kshs. 10,000,000 was to be



paid to the vendor's advocates' account D. Njogu & Company Advocates; while Kshs. 8,750,000 was to be paid to her personal account. This variation agreement was executed by James George Thuku Njenga, the son of the deceased, through a Power of Attorney registered on 16<sup>th</sup> March 2018 giving him authority to act on her behalf.

3. The Plaintiff made an additional payment of Kshs. 6,750,000: Kshs. 2,187,000 paid on 5<sup>th</sup> July 2019; Kshs. 2,187,000 paid on 25<sup>th</sup> November 2020; and Kshs. 2,187,000 paid on 9<sup>th</sup> March 2021. However, they discovered that the mutation form and the original title deed had an error which would require Kshs. 1,250,000 to correct. It was agreed that the parties would share this amount by half, but the Plaintiff paid the whole amount and thus the Defendant owes it Kshs. 625,000.
4. By this time, the Plaintiff had paid Kshs. 63,436,000 towards the purchase of the property including Kshs. 625,000 which was paid to correct the mutation form and original title deed. The balance was Kshs. 11,564,000, which the Plaintiff states that it has been ready and willing to pay. This was delayed due to a dispute between vendor and her advocates on who was to be paid the final instalment. As a result, the late Wambui was unwilling to complete the transaction. This was not only a breach of contract but had also inconvenienced the Plaintiff's members who had invested in the purchase of the said property.
5. This necessitated the Plaintiff to issue a completion notice on the 23<sup>rd</sup> November 2021 which elicited no response. A search on the suit property revealed that there was a restriction. The plaintiff therefore seeks the following orders;
  - a. A declaration that there exists a valid contract between the Plaintiff and the deceased.
  - b. A declaration that the Defendants are in breach of the terms of the sale agreement and the variation agreement.
  - c. An order of specific performance directing the Defendants to provide to the Plaintiff unencumbered completion documents and execute the requisite transfer documents.
  - d. General damages for inconvenience and breach of the sale agreement terms.
  - e. Costs of the suit.
  - f. Any other order that the Hon. Court deems fit.
6. The Defendants who were duly served with copies of Plaintiff and Summons to Enter Appearance neglected to enter appearance and or file defence within the stipulated period.
7. The matter therefore proceeded for formal proof.

### **Evidence of the Plaintiff**

8. PW1, Jonathan Kinyeze, Chief Executive Officer of the Plaintiff adopted his witness statement dated 3<sup>rd</sup> March 2022 and produced his bundle of documents as evidence. He testified that the Defendants were the Administrators of the Estate of the late Wambui Njenga whom they entered the agreement for the sale of property Kajiado/Kaputiei North/29456 with. He stated that the Plaintiff paid the purchase price, but the transfer was yet to be effected. Due to this, the Plaintiff's members had filed a suit against it for issuance of titles to their land and this was tarnishing the Plaintiff's reputation. He urged the court to grant the reliefs sought.
9. At the close of the oral testimony the Plaintiff tendered final written submissions.



## The Plaintiff's submissions

10. Counsel submitted on the following three issues:
11. On whether there was a valid contract between the Plaintiff and the deceased, counsel submitted that there was a valid contract for disposition of land as per Section 3(3) of the Law of Contract Act. And since Courts cannot rewrite contracts as held in Kiprop v Kiptui [2024] KEHC 14702 (KLR) and Chogi & 2 others (Personal representatives of the Estate of Simon Chogi Gatuma- Deceased) v Kiragu [2024] KEELC 3999 (KLR), that parties had to perform their obligations. The agreement had a completion period of 120 days from the date of execution which had not been adhered to years later. The Defendant had thus breached both the agreement and the variation agreement.
12. On whether the Plaintiff was entitled to the orders sought, counsel submitted that the Plaintiff was entitled to the reliefs because the Defendant had breached terms of the agreement citing General Properties Ltd v Saika Two Estate Developers Ltd [2021] eKLR. Counsel pointed that a completion notice was issued to the defendant on 23<sup>rd</sup> November 2021 which went unheeded. Therefore, the Plaintiff having performed its obligations and made payment for the property, were entitled to the order of specific performance.

## Analysis and Determination

13. I have considered the pleadings, the evidence on record, the written submissions, and the authorities cited. I find that the issues for determination are:
  - i. Whether there exists a valid contract between the Plaintiff and the late Wambui Njenga;
  - ii. If yes, whether the Defendants were in breach of the terms of the sale agreement and the variation agreement;
  - iii. Whether an order for specific performance directing the Defendants to provide to the Plaintiff unencumbered completion documents and execute the requisite transfer documents should issue;
  - iv. Whether the Plaintiff is entitled to General damages for inconvenience and breach of the sale agreement terms;
  - v. Who should bear costs of the suit?
14. The Plaintiff stated that on 25<sup>th</sup> April 2016, an agreement for the sale/purchase of land known as Kajiado/Kaputiei North/29456 for Kshs. 75,000,000 was entered between itself and the late Wambui Njenga.
15. The first issue for determination is whether there was a valid contract between the parties:
16. Section 3(3) of the Law of Contract Act provides that:
  - (3) No suit shall be brought upon a contract for the disposition of an interest in land unless-
    - (a) the contract upon which the suit is founded –
      - (i) is in writing;
      - (ii) is signed by all the parties thereto; and
    - (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party...



17. This Court has perused the sale agreement produced as evidence and notes that it meets the set criteria for sale of land since: it is in writing; it is signed by all parties; and the agreement is duly attested by a witness. The Variation agreement dated 21<sup>st</sup> June 2019 was also valid having been duly executed and attested.
18. There being a valid agreement means that parties to it ought to have upheld their obligations unless the contract was terminated or rescinded. And since courts cannot re-write a contract, reference shall be made to the duly executed agreement as it is.
19. Are the Defendants thus in breach of the terms of the sale agreement and the variation agreement?
20. A breach of contract occurs when a party fails to fulfil their contractual obligations. Justice G. Ngenye in *Jackline Njeri Kariuki v Moses Njung'e Njau* [2021] eKLR held:

“... a breach of contract is committed when a party, without lawful excuse, fails or refuses to perform what is due from him under the contract, or performs defectively, or incapacitates himself from performing...”

It is on record that the Plaintiff has honoured its obligations by paying Kshs. 63,436,000 of the purchase price. From the correspondences produced, it on record that from July 2021 the Plaintiff had been following up on receiving duly executed completion documents from the Defendants in exchange of the balance of the purchase price. In a letter dated 23<sup>rd</sup> November 2021 from the Plaintiff's advocate to the Defendant's advocate, it indicated that despite the purchase price having been paid in full, the completion documents were yet to be released. The Defendants' refusal to complete the transaction and the restriction placed on the property indicate a fundamental breach of contract.

#### **Should an order for specific performance therefore issue?**

21. In addressing the question of specific performance, the Court of Appeal in *Kivungi v Mangenge* [2024] KECA 1755 (KLR) stated:

“... Specific performance is a discretionary remedy. A trial court has a choice in the matter. However, it is not a choice to be exercised arbitrarily or capriciously. The conduct of the parties in a claim for specific performance is a relevant consideration. See Anson's Law of Contract, 28<sup>th</sup> Edition, by J. Beatson at page 634. As held by the Court in *Openda v. Abn* [1984] KLR 208, a condition precedent for specific performance of an agreement is that the purchaser must pay or tender the purchase price to the seller or such person as he directs at the time and place of completing the sale.”
22. It is on record that the Plaintiff has made substantial payments for the suit property as per the sale agreement, and is willing to complete the transaction. The property remains the subject matter of the contract, and damages may not adequately compensate the Plaintiff. Consequently, this Court finds that an order for specific performance directing the Defendants to provide unencumbered completion documents and execute transfer documents is justified.
23. Is the Plaintiff is entitled to General damages for breach of the sale agreement?



24. While it is not in contention that there was breach of contract by the Defendants, the Court of Appeal in *Regnoil Kenya Limited v Karanja* [2023] KECA 112 (KLR) held:

“In the case of *Total (Kenya) Limited formerly Caltex Oil (Kenya) Limited v. Janevams Limited* [2015] eKLR stated as follows:

“As a general rule, there can be no damages for breach of contract. This was the holding of this Court in *Provincial Insurance Co East Africa Ltd v Nandwa* LLR No 867 (CAK). In *Habib Zurich Finance (K) limited v Muthoga & Another*. [2002] 1 EA 81 at page 88 cited with approval the decision of the Court of Appeal for Eastern Africa in the Case of *Dharamshi v Karan (supra)* where that court held as follows:

“This case has been accepted by this court as an authority for the proposition that general damages cannot be awarded for breach of contract and that proposition makes sense because damages arising from a breach of a contract are usually quantifiable and are not at large. Where damages can be quantified they cease to be general...”

25. In the case of *Joyce Wanjiku Madsen & Another v. Daniel Kairu Kiaraho & 3 others* (2014)KEHC 724 KLR the court in allowing for the refund of the money paid, quotes with approval *Amina Abdul Kadir Hawa v. Rabinder Nath Anand & Another* (2012) eKLR which case sets down principles taken into account in assessing general damages in a case where specific performance is not granted that:

“On general damages for breach, which this court has found payable as opposed to an order for specific performance, the principles guiding its award which this court has to bear in mind when making the assessment are:-

- i. These are discretionary, meaning the court has to ensure that it exercises its discretion judiciously and with a reason.
- ii. They are not meant to enrich a party but to compensate him/her for the injury suffered.
- iii. These should not be inordinately too low or too high.

On the issue of the refund of the sum Kshs.8,719,850/= there can be no contest since all the parties admit the plaintiff paid this sum.”

I am guided by the above authority in declining to grant General damages to breach of contract as I have already stated that the plaintiff is entitled to an order of Specific Performance.

26. On who should bear costs of the suit, Section 27 of the *Civil Procedure Act* provides that costs follow the event unless the court directs otherwise. The Plaintiff having demonstrated that it has a valid claim against the Defendants, it follows that the Defendants should bear the costs of the suit.

27. Accordingly, Judgement is entered for the Plaintiff as against the Defendants as follows;

- a. That a declaration is hereby issued that there is a valid contract between the Plaintiff and the Defendants.
- b. That a declaration is hereby issued that the Defendants are in breach of the terms of the sale agreement and the variation agreement.



- c. That an order of specific performance is hereby issued directing the Defendants to provide to the Plaintiff unencumbered completion documents and to execute the requisite transfer documents within 30 days of this Judgement.
- d. In default, the Deputy Registrar of this Court be and is hereby directed to execute the requisite transfer documents of property Kajiado/Kaputiei North/29456 in favour of the Plaintiff.
- e. That costs of the suit to be borne by the Defendants.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 13<sup>TH</sup> DAY OF MARCH 2025.**

**L. KOMINGOI**

**JUDGE.**

IN THE PRESENCE OF:

Ms. Chitechi for the Plaintiff.

N/A for the Defendants.

Court Assistant – Mutisya.

