



**Verecke v Mwang'ombe & another (Environment & Land Case
17 of 2021) [2023] KEELC 22416 (KLR) (11 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22416 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT & LAND CASE 17 OF 2021**

AE DENA, J

DECEMBER 11, 2023

BETWEEN

MARC MARCEL VEREECKE PLAINTIFF

AND

MNYANZI MWANG'OMBE 1ST DEFENDANT

WINNIE MWANG'OMBE 2ND DEFENDANT

JUDGMENT

- 1 The Plaintiff and the 1st Defendant met in Belgium sometime in 2018 and according to the Plaintiff, in October of the same year the 1st Defendant informed him that her father was unwell and needed medical attention. She requested for financial aid. A total of 11,689.00 Euros was sent. At paragraph 6 of the plaint the Plaintiff lists the diverse dates and amounts sent. That sometime in February 2019 the 2nd Defendant who is a sister to the 1st Defendant called and informed the Plaintiff that they needed money to offset accrued medical bills and to release their brother from police custody.
- 2 The Plaintiff avers that he was requested to buy land from the Defendants family to offset the above issues. The 2nd Defendant sent him a soft copy of the agreement which indicate the said land as Kwale/ Diani S.S/ 3692. At paragraph 11 of the plaint, it is averred that the agreed purchase price was Kshs 250,000/- but the amount was later revised to Kshs 1,200,000/- following alleged valuation conducted by the County Government of Kwale.
- 3 The Plaintiff states that sometime in March 2019 the 2nd Defendant informed him that their father was deceased and requested for money to offset the funeral expenses. The Plaintiff then sent a total of 7,759.00 Euros as particularised under paragraph 12 of the plaint. Further, the Plaintiff sent 1,150 Euros for stamp duty. That on 3/5/2019 the 1st Defendant sent the Plaintiff a copy of an entirely different plot being Kwale/Diani/465 when he demanded the correct parcel, the same was sent but in the names of one Elijah John Mwangombe.



- 4 It is the Plaintiffs avers that upon getting the title he proceeded to construct his holiday home thereon and relied on the 1st Defendant to oversee everything. That 23,700Euros was sent to facilitate the development as particularised under paragraph 17 of the plaint. In addition to that, the 1st Defendant convinced the Plaintiff to send him money for purchase of a motor vehicle the same being M/V Reg No KCK 841M. A logbook bearing the Plaintiffs name was sent on 7/8/2019. It was however found to be a forgery.
- 5 The Plaintiff states that he sent a total of 112,046.00 Euros to the 1st Defendant and further paid 8,086.44 Euros to the 1st defendant's landlord in Belgium the same being rent arrears. The Plaintiff states that he realised something was amiss sometime in the year 2019 upon reviewing the updates by the 1st Defendant on the progress made in purchase and construction of the mentioned properties and sought to establish the true position of the same. That he realised the documents purportedly sent by the 1st Defendant were all forgeries and the construction was taking place on the 1st Defendant's parcel of land being Kwale/Diani Complex/629. The Defendant's fraudulent acts are particularised under paragraph 27 of the plaint.
- 6 The Plaintiff seeks for the following reliefs before court;
1. A refund of the 163,280.44 Euro with interest at court rates from the date of filing this suit until payment in full.
 2. Costs of the suit
 3. Any other relief that the honourable court will deem fit to grant.

Defence Case

- 7 The 1st and 2nd Defendants filed their Statement of Defence on 29/1/2020. The 1st Defendant contends that she met the Plaintiff sometime in January 2016 and lived as man and wife where the Plaintiff agreed to maintain the 1st defendant monthly. That the 1st Defendant conceived and came back to Kenya but was asked by the Plaintiff to procure an abortion. That the Plaintiff further asked the 1st Defendant to resign as a nurse helper and relocate. In return he offered to compensate her and indeed sent the said funds as agreed.
- 8 The allegation that the two parties entered into an agreement for purchase of land is denied and the 1st and 2nd Defendants pray that the Plaintiffs suit is dismissed with costs.
- 9 The case was heard on 20/7/22, 25/10/22, 3/7/23 and 4/7/23.

Plaintiff's Evidence

- 10 PW1 Marc Marcel Vereecke Passport No. ENO 53679 is the Plaintiff a resident of from Belgium. Adopting his witness statements dated 15/10/2019 and 11/12/2020 he admitted that the 1st Defendant Maria was his girlfriend. That he sent her the money in 2019 by bank transfer for building a holiday home on his behalf and helping her family out, the latter being refundable. PW1 reiterated the averments in the plaint and added that the holiday home was built but on an entirely different parcel and which belonged to the 1st Defendant. That after finding out that the 1st Defendant was sending him fake documents and pictures of the home, he asked his lawyer to write to the police who responded confirming that documents submitted by Maria were fake. He denied asking the 1st Defendant to terminate a pregnancy. The Plaintiff stated he wanted his money back and sought for the cost of the suit.



- 11 The Plaintiff produced the documents in the Plaintiffs three list of documents dated 15/10/2019, 11/12/2020 and 20/6/2022 as PEX “1-27. PEX “28-39” and PEX “40-42” respectively. Documents on page 22 -214 of the Plaintiff’s bundle were expunged from the record following an objection raised by Ms. Achieng that the same lacked certificate of translation.
- 12 On cross-examination he stated that he bought the land from Maria and which belonged to her father. Upon being referred to page 216 -220 of his bundle of documents which was an agreement between John Elija Mwang’ombe and himself. He admitted it was not dated neither did it bear the Defendants name but noted it was signed by him and the Defendants father. He stated there was no other land he had agreed to buy except parcel number 3692. The witness stated he had not sued the administrators of the estate of the deceased whose name was on the land sale agreement as he had sent the money directly to the Defendants accounts.
- 13 He clarified on re-examination that he had not gone to the DCI in person as he lives in Belgium. About the funds sent for the funeral, the witness testified that the 1st defendant had promised to refund the same on her own. Though the agreement was between him and the 1st defendant father he never dealt or communicated with him.
- 14 PW2 No. 57819 Corporal Zebedayo Safari Mbikaya stated that in September 2021 he was based at DCI Msambweni. That vide a letter dated 4/9/2020 a complaint was reported and was entered as OB 42 of 5/9/2020. The witness referred to the letter by NEMA 25/08/2020 PEX 43. Letter 1/9/2020 PEX 44. Letter 25/8/2020 PEX 45 green card for KWALE/DIANI /SS465 PEX 46. Letter 25/8/2020 NTSA PEX 47. NTSA records 25/18/2020 PEX 49. KRA letter 1/9/2020 PEX 50 invoices Ayuyo 024 and 025 –PWX 41 PEX 51 as bundle. Invoice book form Ayuyo PEX 52. Court Order CM court 25/9/2020 Misc Criminal Application 33/2020 PEX 53. Bank Account opening application 1st Defendant form ID and PIN Certificate PEX 54. Chief’s letter undated PEX 55. Chief’s statement 23/10/2020 PEX 56. Statement by Ruwa Kalume Bahati 26/6/2022 PEX 57 and that of Mr. Ayuyo. This he confirmed were all contained in the police file he had carried to court.
- 15 Referring to approval letter from NEMA dated 26/6/2019 which the complainant had suspected to be fake documents he testified that he wrote to NEMA Kwale to confirm whether the same originated from their office who disowned the same vide a letter dated 1/9/2020. That on the title deeds for parcels Kwale/Ukunda/SS/3692 and Kwale/Diani/4665 purportedly issued from Msambweni Lands Office, PW2 stated he wrote to Lands Registrar Kwale County for the status of the parcels which were in the Plaintiffs name. They responded by sending him the green card of the parcels showing the parcels did not belong to the Plaintiff. He added that he established there is no land registry at Msambweni.
- 16 Referring to the copy of the log book for motor vehicle registration No. KCK 841 M in the name of the Plaintiff the witness wrote to NTSA to confirm the ownership which they stated belonged to Bahati Kalume who upon being interrogated confirmed the vehicle belonged to him. The witness further stated that he also investigated a KRA payment receipt and confirmed that the payment Bill didn’t originate from KRA offices.
- 17 On invoices from Ayuyo designers and constructions dated 17/7/2019 issued to the Plaintiff he called the co-director whose number was available thereon. PW2 stated upon calling the said Director he informed him that invoice No 25 and 24 were not issued from his company as both the original and duplicate of the same were still in the companies invoice book. The witness further referred to a copy of letter purported to be from the Area Chief for Diani/Daraad confirming that he knew Mr. Elija Mwang’ombe the vendor and assuring the transaction could proceed. That upon calling that area chief



he denied having ever issued such a letter. He also denied knowing the persons mentioned in the said letter.

- 18 In his assessment the witness stated that the aim of the documents was to obtain money from the complainant. That he proceeded to investigate the account of the 1st defendant by order of the court and confirmed funds remittance by the plaintiff. However, before he completed his investigations he was transferred and hence handed the file to inspector Langat. To his knowledge the file was taken to ODPP but was returned to cover some points.
- 19 PW3 Lawrence Amolo Awuor a carpenter and joiner trading as Ayuyo Designer and Contractors relied on his statement recorded on 15/11/2021 as his evidence in chief. He recognised the invoice book at (PEX 52) and confirmed it was from his workshop but that the invoices 024 and 025 PEX 51 didn't originate from his workshop as they did not bear his PIN No. A0058211176. He denied having met the Plaintiff on 17/7/2015. He stated his hardware does not stock the items listed as having been supplied. The witness affirmed the invoices (024/025) did not originate from his workshop. He however stated that he had constructed wooden frames for the 1st Defendant through her contractor.
- 20 On cross examination, the witness stated that he had been sub contracted to make the door frames for the 1st defendant for about Kshs 30,000. On re-examination reiterated he has never issued an invoice for such amounts as (2,014,700 and 657,400/- respectively.
- 21 PW4 Paul Wambua Mathura an architect by profession adopted his statement dated 4/2/2021 as his evidence in chief. On cross examination he testified that it was the 1st defendant who had approached him for a design for use. That he did drawings but there was no copy of the approval.
- 22 With the above the plaintiff's case was closed.

Defence Evidence

- 23 DWI Elly Mwavita Mwang'ombe made reference to the power of attorney dated 27/5/2022 as donated by the 1st Defendant Maria Mnyazi Mwang'ombe his sister. He acknowledged the statement filed on 29/3/2021 and told the court he had never met the Plaintiff though he knew the plaintiff had a love relationship with the 1st defendant. That the two intended to stay together as husband and wife. The witness testified that the 1st defendant does not owe the plaintiff any money. About the suit property Kwale Diani Complex/629, he stated that the same had been purchased by the 1st defendant long before she met the plaintiff. About the vehicle KCK 841M, he testified it did not belong to the plaintiff. He admitted using the vehicle though he did not know its owner. That the money was given to the 1st defendant willingly by the plaintiff. That the parties both lived in Belgium but had separated.
- 24 On cross examination DW1 indicated he did not know the date the abortion happened. About plot 629 herein he stated it was acquired by 1st Defendant before she met the Plaintiff. That in 2019 there was construction on the property and to his knowledge the source of the funds was the 1st Defendant. He admitted having used the motor vehicle sometime in the year 2019 but he did not know the source of funds for its purchase. He admitted he did not produce the monthly maintenance agreement or any document confirming that the 1st defendant and plaintiff were husband and wife or that the 1st defendant was a nurse helper. The witness denied having any knowledge of the 1st defendants bank account.
- 25 The witness stated further that his father died in 2014 he wouldn't need treatment in 2018.
- 26 With the above the defence case was marked as closed.



27 Parties filed and exchanged submissions.

Determination

28 I considered the parties pleadings, evidence and submissions. The issues for determination are; -

1. Whether the Plaintiff transmitted any money to the 1st Defendant and if so what was the purpose of the said money?
2. Whether the Plaintiff is entitled to the reliefs sought
3. Who bears the costs of the suit?

29 Before I get into the main issues as set out above, I am alive to the fact that the Defendants in their submissions contended that this court is devoid of jurisdiction to determine the instant dispute. It is however noted that the issue was raised late into the matter and that is at the submissions stage. As has been held in a number of authorities, the issue of jurisdiction can be raised at any stage of litigation though it is more preferable that the same is raised at the earliest opportunity- See Owners of Motor Vessel Lilian VS Versus Caltex Oil[K] Limited 1989 eKLR.

30 I will in summary address the said issue of jurisdiction. This suit in my view arose from a land purchase deal gone sour. This is the gravamen. From the plaint, the basis of the Plaintiff sending the money in dispute was for purchase of amongst other things land. A bulk of the money was towards the purchase and development of the said land. At paragraph 7 [b] of the plaint, it is captured as here below;

For the reason that the Defendants family could not pay the hospital bill and pay off the loan to secure the 1st Defendant and Ely's release from police custody due to financial constraints, the family could sale to the Plaintiff a parcel of land owned by the Defendants father so that they could meet their urgent financial obligations; the hospital bill and loan".

31 I am confident of the fact that this suit is properly before this court. In making a determination that the issues before court are land related I fully associate and I am guided by the holding in the case of Suzanne Achieng Butler & 4 others v Redhill Heights Investments Limited & another [2016] eKLR, where the court stated that;

In all honesty, it would not be possible for such direction to come from *the Constitution* or statute; it would have to be supplied by the Courts in a case by case basis. Such is our task here".

23. When faced with a controversy whether a particular case is a dispute about land (which should be litigated at the ELC) or not, the Courts utilize the Pre-Dominant Purpose Test: In a transaction involving both a sale of land and other services or goods, jurisdiction lies at the ELC if the transaction is predominantly for land, but the High Court has jurisdiction if the transaction is predominantly for the provision of goods, construction, or works.

24. The Court must first determine whether the pre-dominant purpose of the transaction is the sale of land or construction. Whether the High Court or the ELC has jurisdiction hinges on the predominant purpose of the transaction, that is, whether the contract primarily concerns the sale of land or, in this case, the construction of a townhouse.



25. Ordinarily, the pleadings give the Court sufficient glimpse to examine the transaction to determine whether sale of land or other services was the predominant purpose of the contract. This test accords with what other Courts have done and therefore lends predictability to the issue.

Whether the Plaintiff transmitted any money to the 1st Defendant and if so what was the purpose of the said money?

- 32 The Plaintiff in his testimony gave a chronology of events as to how he met the 1st Defendant and the circumstances under which he began to remit funds to her. It is not in dispute the two were in a love relationship. The same forms the basis of how they were able to send and receive money between themselves. PExh 2 and 3 are copies of the transaction advices to the 1st defendant's bank account from the plaintiff. This is further corroborated by PW2 who informed the court he investigated the 1st defendant account by order of the court at DTB Malindi Branch Account No. 5415701002 Maria Mnyazi Mwang'ombe Euro Malindi. He confirmed that there was money transferred therein by the Plaintiff. That the said Bank supplied him with a certified copy of Bank statement and bank opening document ID and PIN certificate. These were tendered to the court. In any event the 1st Defendant does not dispute receiving the money. From her testimony recounted by DW1 to whom she had donated power of attorney to represent her in the suit, the money was sent and received. The amount sent is also not disputed by the 1st Defendant. It is this court's finding that the plaintiff indeed sent money to the 1st defendant.
- 33 It is clear that there were arrangements to buy land by the Plaintiff. The Plaintiff in his testimony states that he did send money for purchase of the land. That at first, he was informed the land would cost Kshs 205,000/- or thereabout but was later informed that a valuation report from the county government of Kwale had confirmed that the value of the land was Kshs 1.2 million. The money was then sent to the 1st Defendant's account. The Plaintiff states that he was also interested in having a holiday home in Kenya and asked the 1st defendant to take charge of its construction on his behalf. He also sent money for the same. Thus according to the Plaintiff, the purpose of the money was for purchase of a motor vehicle and land for construction of a holiday home. The Plaintiff's evidence pointed towards several documents sent to him by the 1st Defendant for purposes of confirming that the sale transaction was successful and the land was registered in his names. The same include agreement for sale, a copy of title for the parcel Kwale/Diani/465 in the Plaintiff's name, stamp duty allegedly paid, an invoice for the agreement, a letter from NEMA authorising the construction and also from the County Government of Kwale.
- 34 The Plaintiff's sentiments were vehemently disputed by the 1st defendant. She states that she was married to the Plaintiff. DW1 the brother conceded in cross examination that they had not produced before court any document in evidence that his sister and the Plaintiff were husband and wife. He stated they were just lovers. He conceded he had not produced any evidence to show that the 1st Defendant was working as a nurse helper in Belgium before being asked by the Plaintiff to quit her job. In her witness statement the 1st Defendant alleges that she was asked to quit after falling pregnant, the plaintiff then asked her to relocate back to Kenya. No medical evidence was produced to confirm the pregnancy, further allegations were made that the Plaintiff sent the money to her for purposes of procuring an abortion, still the court has not been led to evidence in support of this assertions. DW1 stated in cross examination that he did not know when the abortion was procured and admitted he did not have any documents in proof of an abortion. Even if such evidence was led this court would not be drawn into supporting an illegality. My attention has been drawn to an official search for parcel Kwale/Diani Complex/629, the same is registered in the name of the 1st Defendant. The search indicates that title to



the said property was issued on 30/4/2018, coincidentally, this was around the time money was being remitted to the 1st Defendant by the Plaintiff.

- 35 The court has interrogated the evidence of both parties with regard to why the money was being remitted to the 1st Defendants account, the only reasonable explanation in my view is that of the Plaintiff. The evidence presented to court vide the exhibits shows the trail of money from him to the 1st defendant and further the communication that followed before and after the said amounts being sent. A quick perusal of the documents in the 1st defendants list of documents dated 29/3/2021 did not reveal any financial statements by the 1st or 2nd defendant but are simply letters indicating the 1st defendants place of residence. It is noteworthy that DW1 having forgotten to mute his gadget was overheard by this court speaking to someone whom he admitted was the 1st defendant and he wanted to clarify on the construction. Despite this nothing came out in proof that Maria was sending money from abroad for the construction. To that end, I hold and find that the money sent to the 1st Defendant was for purposes of purchase of land, a motor vehicle and development of the land with a holiday home.
- 36 Is the plaintiff therefore entitled to the reliefs sought? PW2 a DCI officer testified that a report of the alleged fraud by the Defendants in purporting to sale land to the plaintiff had been made. That in carrying out his investigations, he was able to establish that the documents sent to the plaintiff by the 1st defendant were all forgeries. From the testimony, the suit parcel Kwale/Diani SS/3692 was never registered in the Defendants fathers name. The testimony of DW1 baffled the court, he stated that their late father died sometime in the year 2014 and not 2018 as alleged. Any reasonable person would draw the conclusion that the alleged land sale agreement was therefore forged as one of the parties being the vendor was deceased as at the time the same was being prepared. The letters alleged to be from NEMA and the county government of Kwale were found to be a forgery too. Indeed, the makers of the same formally denied having knowledge of them and denied that the same emanated from their offices.
- 37 The motor vehicle allegedly bought and registered in the name of the Plaintiff and whose logbook was produced before court was found to be a forgery. PW2 in his evidence confirmed that after investigations at the NTSA it was unveiled that the vehicle was registered in the name of Ruwa Kalume Bahati and who recorded a statement PExh57 confirming the same. The evidence of PW3 was that the invoices sent to the Plaintiff did not originate from his office.
- 38 To succeed in a claim for fraud, the Plaintiff not only need to plead but also particularize the same. It is therefore trite law that any allegations of fraud must be pleaded and strictly proved. I am guided by the Court of Appeal in case of Kuria Kiarie & 2 Others –vs- Sammy Magera [2018] eKLR where it was held:

The next and only other issue is fraud. The law is clear and we take it from the case of Vijay Morjaria –vs- Nansingh Madhusingh Darbar & Another [2000] eKLR__, where Tunoi, JA
“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

- 39 Further in the case of Kinyanjui Kamau vs George Kamau [2015] eKLR the court of appeal stated that:

It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs Ndolo (2008)1KLR (G & F) 742 wherein the court stated that “. We start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove the



allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely; proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases.”

- 40 In the instant suit, it is evident that the Plaintiff transferred a substantial amount of money to the 1st Defendant as supported by his exhibits. In October 2018 a total of 11,689.00Euros were sent on diverse dates 29/10/2018- 2,000 Euros; 31/10/2018-650 Euros; 6/12/2018-2,900 Euros; 4/2/2019-1,000 Euros; 6/2/2019-750 Euros; 21/2/2019-515 Euros; 6/3/2019-800 Euros; 8/3/2019-900 Euros; 15/3/2019-650 Euros and 19/3/2019-1,524 Euro. From 27/3/2019 to 5/4/2019 a total of 7,759.00 Euros were sent to the 1st Defendant from the Plaintiff on 27/3/2019-2350 Euros; 29/3/2019-400 Euros; 3/4/2019-3,859 Euros and 5/4/2019-1,150 Euros.
- 41 Within that period of time, the 1st Defendant informed the Plaintiff that she had already purchased the land and was intending to put up a perimeter wall. A total of 23,700 Euros were then sent for the said purpose on 6/5/2019-16,400 Euros; 20/5/2019-3,100 Euros; 31/5/2019-4,200 Euros. In order to complete the construction of the holiday home that was allegedly being put up on the purchased parcel of land and to further purchase a motor vehicle, the Plaintiff sent a total of 112,046 Euros, on 16/4/2019-2,950 Euros; 24/4/2019-308 Euros; 26/4/2019-600 Euros; 17/5/2019-208 Euros; 12/6/2019-5,900 Euros; 1/7/2019-26,000 Euros; 4/7/2019-20,080 Euros; 11/7/2019-25,000 Euros; 22/7/2019-20,000 Euros and 25/7/2019-11,000 Euros
- 42 The 1st Defendant in an attempt to explain why the funds were being remitted in her account leaves several gaps in her case. For example, the allegation that she was pregnant and was asked to procure an abortion is not backed by any medical evidence. If anything, the 1st Defendant does not explain the origin of the fictitious title for land parcel no Kwale/Diani/465 in the Plaintiff's name and which was allegedly sent to the Plaintiff by her. The alleged stamp duty paid while transacting on the said land was also established as having been a forgery and did not emanate from KRA. The letters from various government agencies like County government of Kwale and NEMA were forgeries as well and upon seeking authentication, PW2 was informed that the said letters did not originate from the said offices. Consent from the Land Control Board was a forgery as well as the logbook for Motor Vehicle Reg No KCK 841M Mark X in the name of the plaintiff.
- 43 From the above, it can be said that the issue of fraud has sufficiently been proved by the plaintiff. There is sufficient evidence that the 1st Defendant manipulated the plaintiff into remitting funds to her account based on falsehoods that she was procuring land on his behalf. The 1st Defendant does not rebut the evidence that she sent the said documents to the Plaintiff while trying to extort him. Again, she does not explain the source of income or funds that purchased parcel Kwale/Diani Complex/629 which is in her names. The allegation that she works as a nursing helper in Belgium is not supported by any documentary evidence save for the letters forming part of her list of documents. The said letters only indicate her place of residence but not her profession and means of livelihood.
- 44 Justice P. Waki faced with similar facts in *Walter Blasius – Vs Emily Wanyoike* (1997) eKLR had no hesitation in holding thus; -

I accept the evidence on record that she was a woman around Malindi town with no known or legal source of income and was staying in one room in Majengo before she met Walter. She never even told her mother what she did for a living although the mother assisted her in looking after the children. I find no sufficient or any evidence from Emily to displace the findings which I now make that Walter was the sole financier of the purchase of the



undeveloped plot number 2032, 2033, 2034 and 2035 in Malindi. She never contributed financially and was not in a position to contribute the money for such purchase.”

45 Though this court noted the admission by the Plaintiff sending money to help the family and funeral expenses all the reasons raised by the defendants for requiring the same were based on fraud and the money must be refunded. Indeed, DW1 agreed in cross examination that if his father John Elijah Mwangome died in the year 2014 he did not need treatment in 2018.

46 Based on all the forgoing, I find that the Plaintiff has proved the claim against the 1st defendant to the required standard. I note that the Plaintiff on cross examination conceded that he did not send any money to the 2nd defendant.

47 The upshot is judgement is hereby entered for the Plaintiff against the 1st defendant in the following terms;

- i. A refund of the 163,280.44 Euro with interest at court rates from the date of filing this suit until payment in full at the current exchange rate.
- ii. Noting that the monies were received over a period of time, the above amounts shall be paid within 6 months of the date of this judgment failure to which parties shall be at liberty to execute.
- iii. It is trite that costs follow the event and the Plaintiff shall have the costs of this suit payable by the 1st defendant.

Orders accordingly.

JUDGEMENT SIGNED, DATED AND DELIVERED THIS 11TH DAY OF DECEMBER, 2023.

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A.E DENA

JUDGE

Mr. Lewa together with Ms. Mulago for the Plaintiff

Ms. Otieno for the Defendants.

Mwakina – Court Assistant

