



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL CASE NO. 456 OF 2004

THE REGISTERED TRUSTEES OF THE DIOCESE OF

MT. KENYA SOUTH ANGLICAN CHURCH OF KENYA.....
.....PLAINTIFF

VERSUS

CHARLES WACHIRA NGUNDO.....DEFENDANT

J U D G M E N T

1. By a Plaint dated 12th August, 2004 the Plaintiff sued the Defendant for: -

- a. *A sum of KShs. 7,625,000/= together with interest at 29% per annum from 17th October, 1997 till payment in full.*
- b. *Costs of this suit and interest on the same.*
- c. *Any other or such further relief that this court may deem fit to grant in favour of the Plaintiff against the Defendant.*

2. The Plaintiff's claim is that it appointed the Defendant as an agent to facilitate and recommend a suitable property for purchase and development. The Defendant was also to procure loans for that purpose. The Defendant recommended for purchase a property known as L.R. No. 11781/9 ("the **subject property**"). Pursuant thereto, the Plaintiff executed a sale agreement in 1997 with Stirling Civil Engineering (K) Limited at a consideration of KShs.32 Million for the purchase of the subject property. That on diverse dates, between April 1997 and January, 1998, the Plaintiff remitted a sum totalling KShs.11,958,000/- to the Defendant as part of the purchase price. Due to failure by the Defendant in obtaining the required loans, the Plaintiff could not proceed with the purchase of the subject property. The contract was therefore rescinded.
3. The Plaintiff claimed from the Defendant, a refund of KShs. 7,625,000/- due on account of monies he had received from the Plaintiff after taking into account the Defendant's agency fees, disbursements and incidentals as agreed between the parties. The Plaintiff further claimed that it borrowed funds at an interest rate of 29% per annum from Barclays Bank of Kenya on 17th October, 1997 which facility the Defendant was aware of and the Plaintiff therefore claimed interest of 29% per annum on the refund claimed. The Plaintiff pleaded that the Defendant had, in his letter dated 23rd February, 2002, admitted liability and had undertaken to refund the amount within ninety (90) days of the date of the letter but had failed to do so.

4. Reverend Paul Ngugi Karanja (PW1) testified on behalf of the Plaintiff. He told the court that the Defendant approached the Plaintiff in the year 1997 with a proposal that the Diocese do establish an income generating project on the subject property which the Defendant had identified and which costed KShs. 32 Million. The Defendant's role in the transaction was to act as an agent of Sterling Civil Engineering (K) Limited which was the owner of the subject property. After signing an agreement, the Plaintiff paid the Vendor's advocates KShs.3.2 Million as the 10% deposit of the purchase price. Between the years 1997 and 1998, the Plaintiff paid to the Defendant a total of KShs.11,958,000/- inclusive of the KShs. 3.2 Million paid to the Vendor's advocates; that the Defendant agreed to arrange for a loan which was to be used to pay the balance of the purchase price for the subject property; that by the year 1999, the Defendant had not secured a loan facility with East African Development Bank which he had mentioned and the contact was thereupon rescinded. The Plaintiff forfeited 10% of the KShs. 3.2 Million which had been paid to the Vendor's advocates.
5. PW I further testified that the Defendant subsequently agreed to refund KShs.7,625,000/= vide a letter dated 23rd February, 2002 (P. Exhibit 3) within three months from the date of the letter but failed to make the payment. He stated that during the entire transaction, the Defendant never disclosed to the Plaintiff that there was any principal involved. In cross-examination, PW1 confirmed that funds were borrowed from Barclays Bank at 25% and not 29% as stated in the Plaintiff. He changed his testimony and stated that the Defendant was the Plaintiff's agent and that of a third party. He admitted that he had no documentary evidence to prove that the Defendant was acting for the Plaintiff or that the Defendant had participated in obtaining the loan from Barclays Bank of Kenya Ltd.
6. In his statement of defence, the Defendant denied the Plaintiffs claim in total. He denied the existence of any sale agreement and/or remittance of money for the facilitation of the purported agreement or that money was paid to him as an agent of the Plaintiff for purposes of processing financial loans. He admitted he receipt of KShs.11,958,000/- but stated that part of that money was paid to different third parties and the remainder was utilized as agency fees, disbursements, and incidentals. The Defendant denied knowledge of any money borrowed from Barclays Bank on 17th October, 1997 or at any other time and pleaded that the interest of 29% per annum therefore, claimed had no basis. The Defendant stated that the admission of liability was on behalf of third parties.
7. At the trial, the Defendant (DW1) testified that he had been appointed by Stirling Engineers to, among others, dispose off the subject property. In March, 1997, he was approached by the Plaintiff through Bishop Njenga who wanted to purchase the subject property for the construction of a school or college for the neighbouring community. That the Plaintiff did not have the 10% deposit required to secure the property, but was later able to pay Kshs.11,958,000/- out of which KShs.3.2 Million was paid to the Vendor's advocates whilst the balance was paid to him. That he used the monies received from the Plaintiff to pay casual workers, engineers, drivers, for maintenance of the premises, carpentry work, welders and watchmen. He confirmed that he never forwarded any of the said monies to Stirling Engineers since he had instructions to use the money to clear the site. He was to be paid by the Vendors a commission of Kshs.1.5 million.
8. The Defendant denied being an agent of the Plaintiff or being privy to any loan facility by Barclays Bank in favour of the Plaintiff. He stated that the sale of the subject property never went through because the Plaintiff could not raise the purchase price as a result of which he lost the intended commission. He denied owing the Plaintiff because in his view, it is Stirling Engineers who received the monies. On cross examination he admitted receiving KShs. 11,958,000/= and agreeing to refund KShs. 7,625,000/=. He contended that, his principals said that since the money had been used to pay the workers, it was not part of the purchase price and they were, therefore, of the opinion that the said sum was not to be refunded. He admitted that his advocates vide a letter dated 9th April, 2003 undertook to pay the outstanding sum to the Plaintiff. He admitted taking out 3rd party proceedings against Sterling Engineers on 16th February, 2006 but did not know what happened of that application. He maintained that the Plaintiff knew that Sterling Engineers was his principal. That then was the cause of the respective parties.
9. The following were the issues that were identified by the court at pre-trial stage for determination:-

- i. ***Whether there was an agreement between the Plaintiff and the Defendant for the latter to act as an agent to facilitate the purchase of the subject property?***
- ii. ***If (i) is answered in the affirmative, was it a condition of the agreement that the Defendant would procure loans for the said purchase in pursuance thereof.***
- iii. ***Did the Plaintiff execute a sale agreement to purchase L.R. No. 11781/9 of 1997 for KShs. 32 Million.***
- iv. ***For what purposes was the sum of KShs. 11,958,000/= paid to the Defendant by the Plaintiff.***
- v. ***Is the Defendant indebted to the Plaintiff in the sum of KShs. 7,625,000/= out of the sum of KShs. 11,950,000/= paid to him.***
- vi. ***Was the amount paid to the Defendant borrowed at an interest of 29% p.a. from Barclays Bank? If so, was the Defendant aware of that fact?***
- vii. ***If there is any monies due from the Defendant to the Plaintiff, at what rate of interest?***
- viii. ***What orders as to costs are to be awarded.***

10. According to PW 1, the Defendant approached the Plaintiff in or about March, 1997 with an investment proposal whereby the Plaintiff was to purchase some property and develop the same in order to generate income for itself. That the Defendant persuaded the Plaintiff to purchase the subject property for Kshs.32 million. The Defendants evidence however, was that around 17th March, 1997, he was instructed by Stirling Civil Engineering Kenya Limited to look for a buyer for the subject property at an agreed commission. That he thereupon approached the Plaintiff amongst other interested buyers to the subject property. That he settled for the Plaintiff whom he introduced to the said Stirling Civil Engineering Kenya Ltd since they were his principals whereupon, a Sale Agreement was executed between the Plaintiff and his principals.

11. Although in his evidence in Chief, PW I had testified that the Defendant's role was that of an agent for the owner of the subject property, he clarified and maintained both in cross-examination and re-examination that the Defendant was primarily the Plaintiff's agent both in the purchase of the subject property as well as in the attempts to secure financing therefor. On his part however, the Defendant maintained throughout that he was never an agent of the Plaintiff. With such conflicting evidence, the court is left with only one alternative to be able to discern the relationship between these parties. That is, to interpret and construe the various correspondence and documents that were produced by the parties.

12. The legal relationship of the parties to this suit can be inferred from the correspondence which they exchanged as well as correspondence by or with third parties. The references to all those letters are in respect of the subject property. The earliest letter on record is to be found at page 26 D Exhibit 2. It is a letter dated 20th February, 1997. It is by Sterling Civil Engineering (Kenya) Ltd (hereinafter "the Vendor") to the Defendant. In its relevant part it reads: -

"We refer to the letter of 18th February, 1997 addressed to Mr. A Patel, Director of Trident Insurance Co. Ltd with a copy to us.

On our part, we confirm that we are agreeable to the sale of the above property for Ksh.32 million.....

Our advocates are M/s Kaplan & Stratton who will be the stakeholders and to whom the initial deposit should be paid. Please let us know who are the advocates for the purchaser.

We would like to have a firm commitment in writing from the purchaser agreeing to the terms laid in your letter.

Kindly let us have the aforesaid letter of agreement quickly so that we can table it at the Board meeting..... “ (Emphasis supplied)

The letter is shown to have been signed for Stirling Civil Engineering (K) Ltd.

13. That letter was closely followed by a letter dated 27th February, 1997 at pg 1 of D Exhibit 1 by the Plaintiff addressed to the Defendant. The letter read as follows: -

“I write to confirm the acceptance of offer on the sale of the above property.

As you know mine is community that will have to raise the said amount. I have now committed them and I believe nothing is going to change.

Our lawyers for this project are Mohamed & Muigai Advocates P O Box 61323, NAIROBI” (Underlining mine)

The letter was signed by the Diocesan Bishop of the Plaintiff and was copied to Trident Insurance Co. Ltd.

14. From the foregoing, it is clear that the correspondence for the sale of the subject property emanated from the Defendant dated 18th February, 1997 to Trident Insurance Co. Ltd and copied to the Vendor. It is on receipt of that letter, which seems to have been by way of an inquiry whether the Vendor was willing to sell the subject property, that the Vendor wrote to the Defendant on 20th February, 1997 confirming its willingness to sell the subject property for Kshs.32 million and demanded a letter of commitment from the proposed purchaser and the name of their Advocates. It is pursuant to this letter that the Defendant must have communicated to the Plaintiff whereby, the Plaintiff wrote the letter of 27th February, 1997 giving its commitment to purchase the subject property and gave the names of its advocates.

15. At this stage, the question that arises is, if it is true that the Vendor had appointed the Defendant to carryout various duties including the sale of the subject property as was alleged by the Defendant in his testimony, would the Vendor write such a letter to the Defendant? If he had been instructed by the Vendor as he alleged, would he make inquiries as to the willingness of the Vendor to sell the subject property? It will be recalled that PW 1 told the court that the Defendant had approached the Plaintiff in 1997 with a proposal on how to start an income generating project. That he advised the Plaintiff to purchase a property and develop the same. This the Plaintiff accepted. Could it be then that, that is when the Defendant approached the Vendor with an inquiry whether it was willing to sell the subject property with his letter of 18th February, 1997? This will get clearer if further correspondence is considered.

16. It is after the Plaintiff’s letter of commitment of 27th February, 1997 that the Vendor wrote a letter dated 17th March, 1997 to the Defendant at page 2 of D Exhibit 1 as follows: -

“In the event that the sale of the above property at the price of Kshs.32,000,000/- proceeds to completion and we receive payment of the purchase in full (less any legally deductible expenses) we undertake to pay you a commission of Kshs.1,500,000/- in consideration of your having arranged the said sale of the property.”

17. This letter was followed by three (3) letters which the court thinks are crucial. These are dated 20th March, 1997, 24th March, 1997 and 16th May, 1997 produced at pages 17, 1 and 31 of D exhibit 1, respectively. The letter dated 20th March, 1997 was by the Plaintiff to Ms. S. M. Kivuva & Co. Advocates and copied to the Defendant. The same stated, inter alia, that: -

“On the recommendation of Mr. Charles Wachira of Pillars Ltd, we wish to appoint you to act on our behalf during the purchase of the above property, which we intend to buy at a price of Kshs.32 millions (sic). I am sure Mr. Wachira has all the details.”

18. The letter of 24th March, 1997 was by the said S M Kivuva & Co. Advocates to the Defendant and it read, inter alia, that: -

“We refer to the above and confirm that we have already received the letter of appointment from the purchasers.

Kindly get the correct purchaser’s name from them to enable the Vendors Advocates prepare the sale agreement.”

19. On the other hand, the letter of 16th May, 1997 was by R R Oswald & Company Limited to the Defendant and was copied to the Plaintiff. It read, inter alia, as follows: -

“RE: VALUATION OF C.P.K PROPERTY L.R. NO. 11781/9 NORTH OF KIKUYU STATION, MUGUGA, KIAMBU.

Reference is made to the letter from the Church of Province of Kenya, the Diocese of Mt. Kenya South dated 13th May, 1997 which authorized you to instruct us to value the Rironi Project.

We wish to advise you that we are willing to give a 50% discount on the gazetted fee scale.

We are willing to accept a fee somewhere between Kshs.65,000/- to Kshs.70,000/-

We hope the foregoing will meet your most favourable response.”

20. Further to the foregoing, the evidence on record shows that out of the total sum paid by the Plaintiff of Kshs.11,958,000/-, the sum of Kshs.10,958,000/- was paid to the Defendant (page 8 P Exhibit 2). That document gave the details of how the said monies were paid directly to the Defendant. In his testimony, the Defendant admitted that all the payments were paid to him whereafter he paid the monies to third parties as he had been authorized to do so by the Vendor.

21. Finally, there is the Sale Agreement dated 16th December, 1997, appearing to pages 1 – 6 of P Exhibit 2 between the Plaintiff and the Vendor. The same was in respect of the subject property. The purchase price was agreed at Ksh.32 million. The deposit of 10% in the sum of Kshs.3,200,000/- was payable to Ms Kaplan and Stratton, Advocates for the Vendor. The balance was payable on the completion date. The completion date was given as 31st January, 1998. Under Clause 11 thereof, the agreement was subject to the Law Society Conditions of Sale (1989 Edition) in so far as they were not varied by the conditions in that agreement.

22. Having considered and construed the totality of the aforesaid correspondence and Sale Agreement dated 16th December, 1997, this court’s conclusion is as follows; that the Defendant having convinced the Plaintiff to start an income generating project, the Plaintiff appointed the Defendant it’s as agent in assisting the Plaintiff realise that goal. The Defendant thereupon identified the subject property and inquired from the Vendor whether it was willing to sell the same and at what price as the Defendant had a ready buyer. The Vendor expressed to him its willingness to sell the subject property at Kshs.32 million and demanded a letter of commitment from the proposed purchasers. The Defendant thereupon asked the Plaintiff to write the commitment letter (page 1 D Exhibit 1) along the lines demanded by the Vendor in its letter at page 26 D Exhibit 2.

23. It is after the Plaintiff had given its commitment letter that the Defendant extracted an undertaking by the Vendor to pay a commission of Ksh.1.5 million if the sale went through (page 2 P Exhibit 1). Although the Plaintiff had indicated that its Advocates were Mohamed and Muigai, in its letter of commitment, the Defendant as the Agent and adviser of the Plaintiff in the transaction, advised the Plaintiff to appoint Ms S.M. Kivuva Advocates instead, which the Plaintiff did vide its letter of 20th March, 1997 at page 19 D Exhibit 2.

24. As a further confirmation that the Defendant was an agent and adviser of the Plaintiff in the

transaction, instead of Ms S.M. Kivuva Advocates writing directly to the Plaintiff on an important issue such as the Plaintiff's details they were writing directly to the Defendant vide a letter dated 24th March, 1997 at page 1 of D Exhibit 2 to request for such details. Even the valuation of the property was undertaken by the Valuers at the instance of the Defendant acting on behalf of the Plaintiff (see page 31 D Exhibit 2).

25. From the foregoing analysis of the correspondence between the parties, coupled with the conduct of the parties whereby all the payments were made to the Defendant (Pg 8 P Exhibit 2) in bits and pieces, I am satisfied that in the subject transaction, the Defendant was acting as an agent of the Plaintiff and not that of the Vendor. Indeed the Sale Agreement (pages 1 -6 of P Exhibit 2) did not recognise the Defendant as through whom the purchase money was payable. The agreement imported the Law Society Conditions (1989 Edition) as part of its conditions. Under those conditions, the balance of the purchase price was payable to the Vendors Advocates on the completion date.
26. Condition 4(2) thereof provided.

“2. Completion shall take place in the manner set out hereunder, namely: -

- a. ***Upon completion, the Purchaser shall pay the purchase money to the Vendor's Advocates who shall hold the same as stakeholders until the registration of the conveyance.....***
- b. ***Where the Vendor has agreed that the whole or any part of the purchase money shall not be paid upon completion but shall be secured by an undertaking from the Purchaser's Advocates or the Purchaser's Mortgagee or his Advocate, the relevant undertaking, in form and substance satisfactory to Vendor, shall be delivered to the Vendor's Advocates upon completion together with the payment of any unsecured balance of the purchase money.”***

27. That was the mode of payment of the balance of the Purchase price that the Plaintiff agreed with the Vendor and not otherwise. It cannot therefore lie in the Defendant's mouth that he had been instructed to receive the purchase money on behalf of the Vendor and utilize the same in clearing the site as he alleged. That evidence cannot supersede the express conditions set out in the Sale Agreement dated 16th December, 1997 between the Plaintiff and the Vendor.

28. On the basis of the foregoing, I answer issue Nos. (i), (ii) and (iv) as follows; that there was an agreement whereby the Defendant acted as the agent of the Plaintiff in the purchase of the subject property; that the Plaintiff did execute an agreement dated 16th December, 1997 with the Vendor for the purchase of the subject property and that the sum of Ksh.11,958,000/- paid by the Plaintiff to the Defendant was towards the purchase of the subject property by the Plaintiff.

29. As regards issue No's (ii) and (vi) above, the Plaintiff's witness PW I told the court that the Defendant was to assist the Plaintiff to procure a loan. He did not tell the court the bank from which the said loan was to be procured and the amount of the loan to be so procured. In the correspondence, there was mention of East African Development Bank, but this had no connection with the Defendant. It was in the communication between the Plaintiff and its funders, Christian Development Trust of South Africa.

30. The other document that pointed towards obtainment of a loan facility was produced at page 3 of P Exhibit 1. That was a Loan Agreement between Barclays Bank of Kenya Limited and the Plaintiff. It was for Kshs.4 million only. The purpose for the loan is shown to be for the purchase of the subject property. The rate of interest was shown to be 5% above base rate which was then at 24%. The interest rate therefore was 29% per annum. Although the agreement was signed by three persons on behalf of the Plaintiff, it was neither alleged nor shown that either the Defendant was one of the signatories or that it was executed at his instance. In any event, there was no evidence to show that the said monies were advanced to the Plaintiff and thereafter paid over to the Defendant.

31. In this regard, I will answer the said issue Nos. (ii) and (vi) in the negative, that there was no evidence to show that the Defendant was to assist the Plaintiff to procure loans for the purchase of the subject property. Further, there was no evidence to show that the amount paid to the Defendant was borrowed by the Plaintiff at interest of 29% per annum or was with the knowledge of the Defendant.

32. The next issue is whether the Defendant is indebted to the Plaintiff in the sum of Ksh.7,625,000/-

and if so, at what rate of interest. At page 1 of P Exhibit 1, the Plaintiff produced a letter dated 23rd February, 2002 by the Defendant addressed to the Plaintiff. The said letter stated in its penultimate paragraph as follows: -

“However, as agreed between the Bishop and myself, and also between my principals and myself, we agreed to pay your Kshs.7,625,000/- within a period of three months from today’s letter.”

33. At page 8 of P Exhibit 2 is a schedule showing that a total sum of Ksh.10,958,000/- was paid to the Defendant. At page 3 of P Exhibit 3, is a document dated 6th September, 2001 which is said to have been prepared by the Defendant. In that document, the Defendant showed that out of the total sum of Kshs.11,825,000/- paid by the Plaintiff, a sum of Kshs.3,200,000/- was to be forfeited as the 10% purchase price. A further sum of Ksh.1,000,000/- as disbursements was also to be deducted. A sum of Kshs.7,625,000/- was shown to be the balance due to the Plaintiff.

34. The Defendant did not deny all the foregoing. His position was that the balance was only payable if it was received from the Vendor. That he had paid over the monies to 3rd parties and he was not liable to refund the same to the Plaintiff.

35. In paragraph 4 of the defence, the Defendant had pleaded that: -

“4. The Plaintiff (sic) is a stranger to the contents of paragraph 5 and avers that whatever amount of money paid to him were fully utilized as stated in paragraph (3) above (Underlining mine)

36. In the foregoing paragraphs, the term Plaintiff should have meant Defendant. In paragraph 3 of that Defence, the Defendant had pleaded that: -

“3.”

And further confirms the receipt of Kshs.11,958,000/= part of which the Plaintiff (sic) contends was paid to different third parties and the remainder thereof was utilized as agency fees, disbursements, and incidentals, facts well within the Plaintiff’s knowledge.”

36. I have already found that the Defendant was an agent of the Plaintiff. In paragraph 3 above, the Defendant himself confirmed that he applied part of the monies he received from the Plaintiff for agency fees (thereby admitting that he was actually an agent of the Plaintiff). An agent is bound to account to his principal for monies had and received. In the account he prepared on 6th September, 2001 (pg 3, D exhibit 3), the Defendant showed that the sum of KShs.7,625,000/= was the balance due to the Plaintiff. That money was admittedly received by the Defendant from the Plaintiff. The Defendant never tendered any evidence to show to whom he allegedly released or paid the same.

37. The Defendant testified as follows: -

“All payments were paid to me on behalf of Stirling Engineers. As I had instructions from them, I would sign documents releasing these items to the purchasers including the vehicles.

.....

The balance was paid to me.

On receipt of these sum, any monies received at the time was paid to the workers (casual) who were clearing the site, Engineers, drivers, maintenance of the premises, carpentry, welders and watchmen. I did not forward to Stirling Engineers. I had instructions to use these monies to finalise the clearing of the site.”

38. Apart from the said bare assertions, there was no evidence that the monies were applied as alleged. I have already shown above that when the Vendor wanted to commit itself in the said transaction, it did so in writing (see the letters of 20/02/97 (pg 26 – Dexh 2) and 17/3/97 (pg 2 Dexh 1) respectively. It is doubtful that the Vendor would have given instructions as to the use of monies received on its behalf without doing so in writing. There being no evidence of such instructions, I reject that allegation.
39. In any event, the sale agreement of 16/12/97 did not direct that the balance of the purchase price was payable to the Defendant. On my part, I am satisfied that on the strength of the correspondence on record and the testimonies of the witnesses who appeared before me, the Defendant was the Plaintiff's agent. He started to receive the monies from the Plaintiff way back on 25th April, 1997 notwithstanding that the Sale Agreement was executed by the Plaintiff eight (8) months later, on 16/12/97 by which time the Defendant had already received from the Plaintiff a total sum of Kshs.9,758,000/=. That sum of course exceeded the 10% deposit of Kshs.3.2 Million.
40. The court has seen the letters dated 19/09/1997 and 15/12/97 (pgs 24 & 29 D Exhibit 2) by Ms. Kaplan & Stratton Advocates for the Vendor addressed to the Plaintiff's Advocates in that transaction. In both letters, the said Advocates were threateningly demanding the 10% deposit of KShs.3,200,000/=. If the Defendant was the Vendor's agent for purposes of receiving and expending the monies received from the Plaintiff as he alleges, would the Vendors Advocates write such threatening letters? As at 17/12/97 when the Advocates indicated that the 10% was required by the Vendor before the end of that week, the Defendant had already received KShs.9,758,000/=. Why would the Vendor's Advocates be demanding the deposit from the purchasers Advocates if the Vendor's agent was already holding the purchasers monies exceeding the 10% deposit?
41. From the foregoing, I am satisfied that the Defendant received the sum of KShs.11,958,000/= as agent of the Plaintiff. There was no principal on whose behalf he received the same. The sum of KShs.4,200,000/= was properly deducted from the total sum paid since 10% deposit was forfeited whilst Kshs.1 Million was paid to one David Macdonald. The admission by the Defendant of KShs.7,625,000/= at pg 1 Dexh1 dated 23rd February, 2002 was unequivocal. The letter is clear that the agreement was as between him and the Plaintiff's Bishop. The mention of a principal was a red herring. Any agreements the Defendant had with 3rd parties or so called principals did not concern and could not bind the Plaintiff. The Defendant failed to join the Vendor as 3rd party in these proceedings even after being granted permission to do so.
42. Accordingly, the Defendant owes the Plaintiff the said sum of KShs.7,625,000/=. I enter judgment accordingly. Since I have found that there was no evidence that the said sum had been obtained as a loan for which the Defendant would be responsible, the same shall attract interest at court rate.
43. The upshot is that, Judgment is hereby entered for the Plaintiff against the Defendant for KShs.7,625,000/= together with interest thereon at the rate of 12% per annum from the date of filing suit until payment in full. I also award the costs of the suit to the Plaintiff.

Dated, Signed and Delivered at Nairobi this 20th day of March, 2015.

.....

A MABEYA

JUDGE