



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 444 of 2011

FRED AMAYO..... PLAINTIFF

VERSUS

STEPHEN KINYANJUI KIBUNJA T/A KIBUNJA & ASSOCIATES..... DEFENDANTS

JUDGEMENT

By an amended originating summons dated 12th July 2011 filed the same day, the Plaintiff herein seeks the following orders:

- 1. That this Honourable Court be pleased to order Stephen Kinyanjui Kibunja Advocate T/A Kibunja & Associates Advocates to deliver within fourteen (14) days of the order of the Court cash account of monies received by him from the Sheila Diane Toya & Geoge Mazuri on or about 28th January 2010, 11th March 2010 and 24th March 2010 pursuant to a sale agreement entered into on the 11th day of December 2009 with respect to sale of property known as Land Portion Number 2097(original Number 1857/17) Malindi.**
- 2. That the Defendant do pay to the plaintiff such sums as are found to be lawfully due on taking account.**
- 3. That the Defendant do pay interest at 24% per annum on such sums as are found due in (2) above from the date of receipt thereof until payment in full.**
- 4. That this Honourable Court be pleased to make any other or further orders as may be necessary to secure delivery of an account and payment of monies due to the Plaintiff.**
- 5. That in any event the Defendant do pay the costs of this application.**

The said Originating Summons is based on the following grounds:

- 1. The Defendant acted for both as a party and advocate for both himself and the Plaintiff in the sale of property known as Land portion number 2097 (Original number 1857/17) Malindi that the Defendant jointly owned with the Plaintiff.**
- 2. The Plaintiff and the Defendant were to share equally the proceeds of such sale after payment of agent commission in the sum of Kshs. 250,000.00 and rates of Kshs. 220,662.00.**
- 3. The plaintiff was entitled to receive Kshs. 2, 264,669.00 from the said transaction but the defendant has only paid to the plaintiff the sum of Kshs. 1,750,000.00 leaving an outstanding in the**

sum of Kshs. 514,669.00 that is due to the plaintiff.

4. The defendant has refused, failed and/or neglected to deliver an account to the Plaintiff of monies due to the plaintiff in spite of demand made.

In support of the summons the plaintiff swore an affidavit on 12th July 2012 in which he deposes that the Defendant, a registered (sic) advocate was his business partner in respect of the acquisition of LR No. 2097 Malindi which was registered in their joint names. This property, the said partners decided to sell in the sum of Kshs. 5,000,000.00 and share the proceeds equally after deducting Kshs. 250,000.00 being Commission to the agent and Kshs. 220,662.00 being land rates. The said property was duly sold in a transaction in which the defendant acted both as a vendor and the advocate and the sum of Kshs. 5,000,000.00 was duly paid in instalments. Consequently the sum due to each partner, it is deposed was Kshs. 2,264,669.00. According to him save for Kshs. 250,000.00 paid to him directly by the purchasers and a further Kshs. 1,500,000.00 received from the defendant no other sum has been remitted to him by the defendant hence his claim for the sum of Kshs. 514,669.00. Since there was no agreement on the advocate's fees, it is the plaintiff's case that the defendant ought to have paid him the said sum or accounted for the same. Despite demanding for the said sum the defendant has not responded and therefore there is no justifiable reason for non-payment of the said sum.

The defendant entered appearance through the firm of Kibunja & Associates on 8th November 2011 which appearance was filed on 8th November 2011. On 9th November 2011, Hon. Lady Justice Nambuye granted an order granted the Originating Summons "as prayed" and directed that accounts be filed within 21 days. The learned Judge, however, proceeded to stand over the "rest of the prayers" to 1st December 2011. It is the plaintiff's case that despite service of the order for accounts the defendant has not complied.

As the defendant has not filed any defence to show that there is any preliminary question to be tried and as the defendant has not rendered any account to show the sum, if any, that he is entitled to, I accordingly find that the plaintiff is entitled to the orders sought.

In the premises I enter judgement for the plaintiff in the sum of Kshs. 514,669.00 as sought in the Originating summons dated 12th July 2012 together with interests at court rates from the date of filing suit till payment in full. The plaintiff will also have the costs of this suit.

Dated at Nairobi this 12th day of October 2012

G V ODUNGA
JUDGE

Delivered in the absence of the parties