



REPUBLIC OF KENYA



KENYA LAW
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**Rono & another v Chirchir (Environment and Land Appeal 4 of 2018)
[2022] KEELC 14977 (KLR) (24 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14977 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND APPEAL 4 OF 2018**

MC OUNDO, J

NOVEMBER 24, 2022

BETWEEN

SAMWEL RONO 1ST APPELLANT

BOARD OF MANAGEMENT OF MAGENJI PRIMARY

SCHOOL 2ND APPELLANT

AND

WESLEY KIPNGETICH CHIRCHIR RESPONDENT

(Being an appeal against the Judgment of Hon P. Achieng Principal Magistrate in her Judgment dated the 31st May 2018 in Bomet Principal Magistrate's Court Civil Case No 16 of 2015)

JUDGMENT

1. What is before me for determination on Appeal is a matter which was heard by Hon P Achieng, Principal Magistrate in the Principal Magistrate Court at Bomet in Civil Suit No 16 of 2015, where the learned trial Magistrate, upon considering the evidence of both parties, entered judgment in favour of the Plaintiff/Respondent against the Defendants/Appellants, on the May 21, 2018 in the sum of Ksh 900,000/= plus cost of the suit.
2. The Appellants, being dissatisfied with the judgment of the trial Magistrate filed the present Appeal based on the following grounds in their Memorandum of Appeal:
 - i. That the trial Magistrate erred in failing to make a finding that there was no valid and un(sic) enforceable sale agreement between the Appellants and the Respondent.
 - ii. That the trial Magistrate erred in failing to make a finding that the purported sale agreement produced by the Respondent as exhibit 2 was not binding on the Appellants.



- iii. That the trial Magistrate erred in failing to make a finding that the 1st Appellant and the Board of Management of the 2nd Appellant did not execute the purported sale agreement produced by the Respondent as exhibit 2.
 - iv. That the trial Magistrate erred in failing to make a finding that the identity of the person who purported to sign the sale agreement on behalf of the 2nd Appellant's school was not proved to the required standard.
 - v. That the trial Magistrate erred to appreciate and find that the 1st Appellant had no authority to sign any document on behalf of the 2nd Appellant and in particular the purported sale agreement.
 - vi. That the trial Magistrate erred in failing to take judicial notice of the fact that the purported sale agreement was null and void for want of the consent of the appropriate Land Control Board.
 - vii. That the trial Magistrate did not critically analyzed the evidence thereby reaching an erroneous decision.
 - viii. That the trial Magistrate's award of damages was excessive, unjustified and contrary to the principles of awarding damages.
 - ix. That the trial Magistrate erred in arriving at an award of damages equivalent to the value of the land and trees thereon when specific performance and payment of the purchase price of the land and value of the trees thereon was not pleaded, the prayed for and proved; and in particular when the 2nd Appellant never took possession of the suit land.
 - x. That the trial Magistrate's decision was bad in law and against the weight of evidence.
 - xi. That the trial Magistrate erred on the burden of proof.
3. The Appellants thus sought that the appeal be allowed and the decision of the trial court and the award of damages be set aside. They also sought that the Respondent pays the costs of the appeal and proceedings in the lower court.
 4. The Appeal, which was to be disposed of by way of written submissions was admitted on June 29, 2022.

Appellants' submission

5. The Appellant's submission in support of their appeal was to the effect that the 1st Appellant is the head teacher of the 2nd Appellant which is a public primary school. That at the time of the execution of the impugned sale agreement of February 28, 2014, the 1st Appellant was a deputy head teacher of the said school. The impugned sale agreement was not executed or signed by the Board of Management of the 2nd Appellant. The 1st Appellant therefore had no authority to sign any document as per the provisions of Sections 55, 56, 57 and 58 of the Education Act.
6. That the Respondent herein had relied on the same agreement which he had interpreted in his evidence as a promissory agreement and to which agreement the trial Magistrate had relied on to award of damages for breach of the same. That the sale agreement suffered from defects in that it had been executed by the 2nd Appellant, it did not contain clause of Constituency Development Fund (CDF) which the Respondent claims to fund the purchase price, which was against the regulation of the Constituency Development Fund Act. That the general damages of Ksh 900,000/= was illegal, excessive and not pleaded by the Respondent.



7. The Appellants' argued grounds 1, 2, 3 and 4 jointly to the effect that the impugned sale agreement that was produced in court as exhibit 2 did not bear the signature of the 2nd Appellant but had just been rubber stamped by the school's stamp and signed by an undisclosed person who only bore an identity card. That the 2nd Appellant, being a public school was governed by the provisions of Section 9 of the Education Act which provided that only the school committee, which comprised of the chairperson, treasurer, secretary and committee members, were legally mandated to enter into contracts on behalf of the school. The sale agreement having not been entered by these persons was not binding.
8. That although PW1 in his evidence testified that the sale agreement was signed by one David Koech who was by then the head teacher, the names of the said head teacher did not feature in the agreement and neither was he called as a witness to testify.
9. The evidence of PW1 and PW2 was contradictory as to what position the said David Koech occupied in the school in that whereas PW1 claimed that he was the head teacher and thus chairperson of the Board of Management, PW2 claimed that he was the chairman of the school Management Committee. That PW4 and PW5 testified as witnesses to the sale agreement but were not representatives of the school. The 1st and 2nd Appellants denied to either having been signatories to the sale agreement nor being the owners of the identity card that was used therein.
10. That the sale agreement was not binding for reasons that it was not a contract as defined under Section 3 of the Law of Contract, it was not a promissory agreement since by nature of its tenure, the agreement was on transaction of land involving purchase price wherein the 2nd Appellant had made a proposal to the Bomet East constituency for funds to purchase, the sale agreement was not a precondition that the said funds would be channeled for the purchase of the Respondent's land. That there had been no evidence on how the Constituency Development Funds was to be approved and dispersed to the Management Committee and there was no clause in the agreement that the said funds were to be appropriated for the purchase of the land. The Appellants' submission further was that the said agreement contravened the provisions of Section 3 of the Law of Contract Act in that the same was not signed by all parties.
11. On their submission in relation to paragraph 5 of the Memorandum, the Appellants submitted that the trial Magistrate failed to appreciate and find that the 1st the Appellant had no authority to sign any document on behalf of the 2nd Appellant. Reliance was placed on the decided case in Beatrice Tiliti & Another vs William Kibet Chiboi [2017] eKLR to buttress their submissions. That it was only the school committee that could sue and be sued but not the headmaster of the said school.
12. In relation to ground 6 of their Memorandum, their argument was that the trial Magistrate had failed to take judicial notice of the fact that the purported sale agreement was null and void for want of consent of the appropriate Land Control Board. That by the production of the title deeds to land parcel No Kericho/ Merigi/1003, it had been clear that this was an agricultural land and therefore under the ambit of the Land Control Act. That pursuant to the provisions of Sections 6 of the said act, it was incumbent of the parties to obtain consent from the Board and therefore lack of the said consent, rendered the sale agreement void, as was held in the case of James Njuguna Mwaura vs Paul Wandati Mbochi [2018] eKLR.
13. Grounds 8 and 9 of the Memorandum of Appeal were argued together to the effect that the damages awarded by the trial Magistrate of Ksh 900,000/= was the excessive, unjustified and contrary to the principles of awarding damages of a breach of contract. That the said amount was equivalent to the purchase price of the suit land and which amount had not been pleaded and/or proved.



14. The Respondent had relied on the impugned sale agreement on the account that it was a promissory document between him and the 2nd Appellant to the effect that should the Constituency Development fund (CDF) be availed, then the school would purchase the land from him. This kind of arrangement was not reflected in the said agreement which was premised on the sale of land at a sum of Ksh 800,000/= . There submission further was that there was nothing known as the promissory sale agreement in the Law of contract in relation to land. The Magistrate’s decision was therefore bad in law and against the weight of evidence.

Respondent’s submissions

15. The Respondent, in opposing the appeal and after giving a brief history of the matter in question pegged his issues for determination on the following;
- i. Whether the court has jurisdiction to hear and determine this appeal?
 - ii. Whether the sale agreement dated February 20, 2016 was executed by the parties herein?
 - iii. Whether the sale agreement dated February 20, 2014 was enforceable in law and if so who breached the sale agreement aforesaid?
 - iv. Whether the Respondent was injured as a result of the breach and whether he is entitled to any reliefs from the 1st and 2nd Appellants jointly and severally?
 - v. Who shall pay the costs of the suit?
16. On the first issue for determination, the Respondent submitted that jurisdiction was everything and without it, a court had no power to make one more step. That indeed the Respondent had sought redress from the Magistrate’s court for an award of general damages and breach of contract by the 1st and 2nd Appellants. The jurisdiction of the court was founded on the provisions of Article 162(2) (b) of the *Constitution*. That Section 2 of the *Environment and Land Court Act* defined the court and other courts that had jurisdiction on matters relating to land. That the Magistrate court had the power to award damages as prayed by the Respondent unlike this court that had no jurisdiction to hear the appeal before it which had been filed without merit and without compliance with the provisions of the *Constitution*.
17. That the appeal was an abuse of the court process in that on one hand the Appellant had moved the court seeking contention of an agreement that had been entered into by the parties and on the other hand, they were now pleading enforceability and performance costs by breach into the suit land notwithstanding that they had consented to the use of the Respondent’s land to construct classrooms for the use by the 2nd Appellant to the detriment of the Respondent.
18. That for breach of the contract, the Respondent had been compensated for damage to his land, use and tress therein. That that the Appellants not only chose the wrong forum to agitate their claim, but had also sought claim that was subject of appeal in a court of competent jurisdiction to determine the issue of damages on contractual obligation and not the matters before this honorable court.
19. On the 2nd issue for determination, the Respondent submitted that the written sale agreement of 20th February 2016 which had been produced as exhibit 2, was a complete and valid agreement which had been signed by both the Respondent and the Appellants. Its execution was therefore conclusive of the intention by the parties to bind themselves into the commitment. The subordinate court had found that indeed there had been a contract created by the parties in the year 2014 in relation to the suit property and breach of the said agreement was an award of general damages and costs thereto.



20. On the third issue for determination as to whether the contract of February 28, 2014 was enforceable and if so, who breached it, the Respondent submitted that from the evidence adduced by the Respondent herein, it had been the 1st Appellant, who was the secretary to the 2nd Appellant who had gone to his home looking for land to use as a school field. That after deliberation and negotiations, the Respondent had agreed to sell and the 1st Appellant had agreed to buy the suit parcel of land at an agreed consideration. The agreement was reduced into writing. Later, the Respondent had approached the court for breach of the contract. The Appellants therefore were not entitled to the prayers sought in the Appeal.
21. On the fourth issue for determination, the Respondent submitted that the sale agreement was valid as the same had been executed by the officials of the said 2nd Appellant, the 1st Appellant in this case being its secretary. That the contract was executed pursuant to the provisions of Section 3 of the contract Act, which contract was subsequently breached by the Appellants herein.
22. On the last issue for determination, the Respondent submitted that the issue of costs was at the discretion of the court. That the basic rule that costs follow the event should not be used to penalize the losing party but rather to compensate the successful party for the trouble taken in prosecuting or defending the case. The Respondent sought for the appeal to be dismissed with costs to him.

Analyses and determination.

23. Section 13 of the Environment and Land Court defines the Jurisdiction of the Court as follows;
 - (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
 - (2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—
 - (a) Relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) Relating to compulsory acquisition of land;
 - (c) Relating to land administration and management;
 - (d) Relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) Any other dispute relating to environment and land.
24. This said and done, I find that this court has jurisdiction to hear and determine this Appeal. I have therefore considered the record, the judgment by the trial Magistrate, the written submissions by learned Counsel as well as the applicable law. Conscious of my duty as the first Appellate Court in this matter, I have to reconsider the evidence, assess it and make my own conclusions on the evidence, subject to the cardinal fact that I did not have the advantage singularly enjoyed by the trial Magistrate, of seeing and hearing the witnesses as they testified. (See *Seascapes Ltd v Development Finance Company of Kenya Ltd [2009] KLR, 384*). I also remind myself that this Court will not normally interfere with a finding of fact by the trial Court unless it is based on no evidence or on a misapprehension of the evidence or the Magistrate is shown demonstrably to have acted on wrong principle in reaching the



findings he did. (See [Ephantus Mwangi & Another v Duncan Mwangi Wambugu \[1982-88\] 1 KAR 278](#)).

25. According to the proceedings herein, the Plaintiff/Respondent herein instituted suit against the Appellants vide a plaint dated March 27, 2015 where he had sought for;
 - i. A declaration that the Defendant breached the sale of land agreement dated February 20, 2014.
 - ii. An order for general damages for breach of contract.
 - iii. Cost of the suit.
 - iv. Interest on (a) and (b) above.
 - v. Any other relief that this honorable court may deem fit to grant.
26. The Appellants filed their statement of defence on the May 12, 2015 wherein they generally denied all the allegations set forward by the Respondent stating that the agreement entered therein was not binding to them and therefore they were not bound by the Respondent's miseries. They sought for the dismissal of the Respondent's suit with costs.
27. After the confirmation of the preliminaries, the matter proceeded for hearing before P Achieng the Senior Principal Magistrate on the October 5, 2015 wherein the Plaintiff/Respondent's evidence in summary was to the effect that he was the proprietor to land parcel No Kericho/Merigi/1003 land which he had put up for sale and the 2nd Appellant had agreed to buy (so as to expand the school) at a purchase price of Ksh 800,000/= for the land and Ksh 100,000/= for the trees, all totaling to Ksh 900,000/=. That the funds were to be sourced from the Constituency Development Fund (CDF) which the school was expecting. On February 19, 2014, after the Chairman of the school, Mr Alfred Maina and the head teacher, Mr David Koech had visited the land and seen the developments therein, parties had reduced their agreement into writing.
28. Meanwhile the Plaintiff/Respondent had looked for another parcel of land in Nakuru which he was to purchase with the proceeds from the sale of the suit land parcel No Kericho/Merigi/1003. This did not fall through because despite the 2nd Defendant/Appellant having received Ksh 400,000/= in the month of August from the CDF, the incumbent headmaster of the school had become non-committal and had embarked on looking for another piece of land to purchase for the school. That at the time, the 1st Defendant/Appellant was the deputy head teacher of the school.
29. The Plaintiff/Respondent had confirmed in cross examination that the agreement they had entered into was a commitment and promising in nature where the Constituency Development Fund (CDF) had not been involved. He also conceded that although the agreement had stipulated that he had received Ksh 800,000/= yet this was not the position as the said phrase had been inserted there so that the Constituency Development Fund could be released. That he therefore sued the 1st Defendant/Appellant because he had received the money but had not honored the agreement. His the evidence was that the school had used his land to solicit for the funds wherein it had received the total amount of money, in two installments but had not paid him. He also confirmed that the former head teacher did not execute the agreement.
30. Alfred Kiplangat Maina, the 2nd Plaintiff's witness had testified that he was the Chairman of the school Management Committee of Magenji Primary school and that the school had entered into a sale agreement for the purchase of a piece of land with the Plaintiff/Respondent. That they had sought for the Constituency Development Fund to fund the said purchase which was Ksh 800,000/= per acre and Ksh 100,000/= for the trees thereon.



31. That it had taken long for the Constituency Development Fund to be released, and by the time they said money arrived, which was in small batches, the committee members had held a meeting wherein there had been a division amongst them as to whether or not to buy the land from the Plaintiff/ Respondent or to look for another land for reason that whereas there was another land for sale, adjacent to the school, the Plaintiff/Respondent's land was about 1km away from the school. The division was caused by the fact that some members had resorted to buy the land that was adjacent to the school. That at the time, the Plaintiff/Respondent had already subdivided his land for the school. That he had been a witness to the agreement which had been violated by the school. He also conceded that the names of the officers of the school were not shown as purchasers in the agreement and that at the time, they did not approach the Ministry of Education before entering into the agreement. His contention was that the agreement, though promissory in nature and which did not include the CDF, was binding to the parties. P W 3, PW4, PW5 and PW6 all gave evidence that was similar to PW1's evidence
32. PW 7, the area chief testified that he had endorsed on an already prepared promissory agreement, by appending his signature and rubber stamping the same, in the presence of the head teacher Mr David Koech and some school committee members. That at the time parties entered into the agreement the school had no money to purchase land and therefore awaited for monies to be dispensed by the CDF. That Ksh 400,000/= had been dispensed but the Plaintiff/Defendant's land had not been bought. The Plaintiff closed their case.
33. The defense case was prosecuted by Samuel Kipkurui Rono, the head teacher of the school whose evidence was to the effect that on August 8, 2014, he had received a cheque of Ksh 400,000/= from Constituency Development Fund (CDF) to purchase land for the school. That pursuant to a meeting of the Board of Management and the parents of the school it had been agreed that the money be used to purchase land measuring 1.5 acres at Ksh 975,000/=, from one Johana Soi whose land was 10 meters away from the school. That with the permission of the Constituency Development Fund Committee, he had been allowed to purchase the said land which then resulted to the current suit. He testified that for funds to be released by the CDF, there ought to have been a proposal and that such a proposal had been written by the former head teacher. He confirmed the school was a public school and that the Plaintiff/Respondent's land was 1Km away from the school. That he had no prior knowledge of the impugned agreement.
34. DW2 an employee of the Constituency Development Funds Board at the constituency level testified to the effect that the said board governed the Constituency Development Fund and approved projects for payments once they were satisfied with the proposal from the county, wherein after they would disburse funds. That Megenji Primary School had made a proposal on September 17, 2013 wherein Ksh 400,000/= had been disbursed to the 2nd Appellant/Defendant during the 2013/2014 financial year. He confirmed that they had no control over agreements made privately. That the Constituency Development Committee did not implement projects but played an oversight role and ensured that funds were disbursed upon requests made to the Board.
35. He confirmed that Ksh 400,000/= had been disbursed in 2013 and Ksh 500,000/ in the year 2014 and that although he was not around at the said time, the procedures were followed as required. The Defence closed its case.
36. I have anxiously considered the evidence adduced in the trial court. The Plaintiff's/Respondent's case was that he and the school (which is public school) had entered into a promissory agreement that should the Constituency Development Funds (CDF) be released to the school, then the school, which wanted land for expansion, would buy one acre of land, including the trees thereon, from him at Ksh



900,000/=. However when the said money was disbursed by the CDF, the school opted to buy land that was nearer to it in place of the Plaintiff/Respondent's land, which was 1 km away.

37. That in the meanwhile, the Plaintiff had entered into another agreement to purchase land elsewhere with the money received from the school. The Plaintiff then sued the Appellants for breach of contract stating that it had been a promissory agreement.
38. I have tried to understand what a 'promissory contract means' as the same is not defined in our statute, the Law of contract Act. Such an agreement, also called a promissory note, is a written agreement between an individual or company and bank or other financial institution to pay back a loan. Promissory agreements are common in the real estate industry as part of the mortgage process because they serve as an agreement that the borrower will repay their mortgage loan by the maturity date. A promissory agreement is a legal document that includes all the relevant information of the loan including the total amount of the loan, the interest rate, monthly payment amount, number of payments, and any collateral involved. (<https://www.contractsounsel.com/t/us/promissory-agreement>.) The impugned agreement, can surely not be classified as a promissory contract.
39. The agreement dated the February 24, 2014, which was produced as Pf exh 2 and which formed the basis of the suit, gave rise to the following issues for determination;
- i. Whether the sale agreement of February 20, 2014 between the Respondent and the Appellants was valid.
 - ii. Whether the Appellants herein breached the sale of land agreement of February 20, 2014.
40. Section 3(3) of the Law of Contract provides as follows;

' (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:

Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the *Auctioneers Act* (Cap 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust'.

41. The sale agreement having been entered into in the year 2014, allegedly with the Appellants, the law applicable thereto was the *Basic Education Act* 2013.
42. Section 55 (b) of the *Basic Education Act* provides that there shall be a Board of Management for every public primary school whereas Section 56 of the same act provides for the Composition of Board of Management to include; -
- ' (a) Six persons elected to represent parents of the pupils in the school or local community in the case of county 2nd ary schools;



- (b) One person nominated by the County Education Board;
- (c) One representative of the teaching staff in the school elected by the teachers;
- (d) Three representatives of the sponsors of the school;
- (e) One person to represent special interest groups in the community; and
- (f) One person to represent persons with special needs;
- (g) A representative of the students' council who shall be an ex officio member'

43. Section 55 (4) of the act provides that;

' The members of the Board of Management shall elect their chairperson from amongst themselves provided that the member to be so elected shall not be a person who was appointed under subsection (1)(c).'

44. Whereas Section 55(6)of the Act provides that;

' For a public school, the chairperson of the Board of Management shall be elected by the members in their 1st meeting.'

45. Rule 1 schedule 4 of the *Basic Education Act* further provides as follows:

' The Board of Management shall be a body corporate with perpetual succession and a common seal, and shall in their corporate names, be capable of-

- (a) Suing and being sued;
- (b) Taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) Borrowing, lending and granting money;
- (d) Entering into contracts; and
- (e) Doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.'

46. Rule 9 of the same schedule then goes ahead to provide that;

' Unless a unanimous decision is reached, a decision on any matter before a Board of Management shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the chairman or the person presiding shall have a casting vote.'

47. And lastly Rule 11 of the fourth schedule is in relation to the Common seal wherein it provides that;

' (1) Subject to this Act, the common seal of a registered institution of basic education for which a Board of Management is responsible shall be kept in a safe in the registered office of the institution and shall not be used except in the manner authorized by the Board of Management.



- (2) All deeds, instruments, contracts and other documents shall be deemed to be duly executed by or on behalf of the institution-
- (a) Where they are required to be under seal, if sealed with the common seal of the institution and authenticated by the chairperson and the secretary of the Board of Management;
 - (b) Where they are not required to be under seal, if executed in that behalf by a member authorized by the Board of Management for that purpose.
 - (3) A deed, instrument, contract or other documents executed in accordance with sub-paragraph (2) shall be effective in law to bind the institution and it 'No governor shall be subject to any personal liability in respect of any matter or thing done or omitted or any contract entered into by or on behalf of the board which he is a governor or by or on behalf of any school or group of school administered by that board.'

48. From the above provisions of the law, it is quite clear that the body which can sue or be sued on matters affecting a public school such as the one in question was the Board of Management. In this case, the 1st Appellant was sued in his capacity as the head teacher of the School which was irregular as he lacked capacity to be sued in his name or personal capacity on behalf of Magenji primary school.

49. Having laid down the necessary provisions of the law that would govern a public school more so when it came to entering into a contract such as the one in the present case, and which contract had the effect of binding the school, I find that the impugned contract of February 24, 2014, fell well below the threshold of a binding contract.

50. Considering the contents of the impugned sale agreement dated the February 20, 2014, it is not in dispute that the same was between Wesley Kipngetich Chirchir as the vendor and Magenji primary school of Id No xxxx as the purchaser of one (1) acre of land at Ksh 800,000/= at a cost of 80,000/= per point. Of interest to note however which was rather odd if not strange was that the said school, which was the purchaser had an Id Number xxxx, the bearer who was neither disclosed nor called to testify. This aspect would surely have raise red flags in my opinion.

51. The contract also had a floating/vague sentence to wit; 'trees in the farm value 100,000/= ' Although the Respondent sued for non-performance of the contract, yet a look at the impugned contract confirmed that the vendor had been paid a sum of Ksh 800,000/= in advance as there had been NIL balance. Reference is made in the provision of the installment to which was indicated as follows:

' 1st instalment Ksh 800,000/=, not signed but dated February 20, 2014.

The 2nd instalment are Nil and not signed.

3rd instalment is Nil, not signed but dated February 20, 2014'

52. The Plaintiff/Respondent sued the Defendants/Appellants for breach of contract in that they had not paid him the contracted purchase price. The Court of Appeal in *National Bank Kenya Limited -vs- Pipeplastic Samsolit (K) Limited & Another [2002] 2 EA 503* held that a Court of law cannot rewrite a contract between the parties and that the parties are bound by the terms of their contract unless they



can prove that coercion, fraud or undue influence was used to procure the contract. Payment of Ksh 800,000/=, according to this 'contract' had been made.

53. I further note that the contract had been signed by one Wesley Kipngetch Chirchir of Id No xxxx as the land owner and witnessed by his witnesses wherein there was the name of Magenji primary school of Id No xxxx appearing as the purchaser and a signature thereto had been appended, and a school rubber stamp affixed. The witnesses for the school included;
- i. Alfred Maina of Id no xxxx.
 - ii. Agnes Sigira of Id No xxxx.
 - iii. David Ngeno of Id No xxxx and
 - iv. Samwel Rono of Id No xxxx.
54. Rule 11(2) of the fourth schedule of the *Basic Education Act* as herein above clearly stipulated that all deeds, instruments, contracts and other documents shall be deemed to be duly executed by or on behalf of the institution, where they are required to be under seal, if sealed with the common seal of the institution and authenticated by the chairperson and the secretary of the Board of Management. Again, no evidence had been adduced that the witnesses who had attested to the agreement had been members of the board nor was the rubber stamp authenticated to belong to the school, was this in place of the school seal?
55. I further find that no evidence was adduced in court, in form of minutes, confirming that before the parties entered into the contract, that there had been a unanimous decision reached, by a majority of the votes of the members conceding to the purchase of the Respondent's land using funds from the CDF, for the expansion of the school, more so since the said land was, according to evidence, about 1 Km far away from the school.
56. In totality therefore on my own evaluation of the evidence, I have no difficulty holding that there was no valid and/or enforceable sale agreement between the Appellants and the Respondent. The learned trial Magistrate erred in evaluation of the evidence presented and made an erroneous finding and conclusion. I find in favour of the Appellants to the effect that the Appeal herein succeeds. The judgment of the Trial Magistrate's Court dated the May 21, 2018 is herein set aside. The Appellants shall have the costs of the Appeal and proceedings in the subordinate court.

It is ordered.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 24TH DAY OF NOVEMBER 2022

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

