



REPUBLIC OF KENYA



**KENYA LAW**  
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**G Cleph Limited v Jericho Development Company Limited (Environment & Land Case 185 of 2018) [2022] KEELC 15639 (KLR) (20 December 2022) (Judgment)**

Neutral citation: [2022] KEELC 15639 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 185 OF 2018  
LN MBUGUA, J  
DECEMBER 20, 2022**

**BETWEEN**

**G CLEPH LIMITED ..... PLAINTIFF**

**AND**

**JERICHO DEVELOPMENT COMPANY LIMITED ..... DEFENDANT**

**JUDGMENT**

1. Vide a plaint dated April 16, 2018, the plaintiff contends that by a sale agreement dated March 7, 2016, they entered into an agreement with the defendant for the purchase of the latter's premises which are commercial developments known as "The Greenhouse Office Park" to wit, the grid numbers 20, 21, 22, 24, 25 situated at the fourth floor, penthouse numbers 20, 22 and 24 as well as 4 parking slots. It contends that the defendant has failed to complete the said agreement by failing to transfer the suit properties despite the plaintiff having paid the entire purchase price.
2. The plaintiff therefore prays for judgement against the defendant for;
  - a. An order of specific performance to issue to the defendant to undertake completion of the registration of the subject properties within 14 days.
  - b. Interest at the late payment rate as per clause 3.2 of the agreement accruing to ksh.13, 593,000/ = as at April 7, 2018 with the same to continue accruing until the date of settlement.
  - c. The costs of this suit.
3. The defendant did not enter appearance or file a defence, but they had legal representation before this court. They were however absent on the date of hearing.



4. On July 18, 2019, Counsel for the plaintiff informed the court that plaintiff had been issued with the title, thus the only outstanding issue for determination was on interest.
5. On the date set for hearing of the case, PW1; Cleophas Amurono Olwambula, a director of the Plaintiff adopted his witness statement dated April 16, 2018 as his evidence. He produced documents in his bundle of documents dated March 10, 2021 as P. Exhibits 1-8.
6. In his statement, pw1 reiterated the averments set out in their pleadings adding that despite the agreement for sale stipulating that the defendant would ensure completion of the registration of the subject properties in the Plaintiff's name, the defendant did not comply. The plaintiff had duly paid ksh. 39,400,000/= towards the purchase of the suit properties.
7. The suit premises were apparently transferred to the plaintiff during the pendency of the suit, hence the only issue falling for determination relates to interests and costs.
8. It is trite law that a court cannot rewrite a contract between the parties as held in *Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd* (2017) eKLR. What a court can do is enforce what the parties execute in a contract.
9. In *William Kazungu Karisa v Cosmas Angore Chanzera* [2006] e KLR the court held that,  
“The basic rule of the law of contract is that the parties must perform their respective obligation in accordance with the terms of the contract executed by them”.
10. The question that comes to my mind is; What constituted an act of commission or omission on the part of the vendor to warrant the granting of interests and costs in favour of the plaintiff.
11. In paragraph 5 of his witness statement, the plaintiff admits that the draft assignment of lease was duly lodged at the lands registry. The plaintiff then paid the stamp duty as per payment receipts from Kenya Revenue Authority. To this end, I can only conclude that the transaction had reached the stage of registration process. It is common ground that the said stage falls in the province of government officers, primarily the lands registry. The plaintiff has not pointed out the specific role that the defendants were obligated to play at this stage of the transaction. In that regard, I decline to grant the plaintiff any interest or costs.
12. The suit is therefore marked as spent with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF DECEMBER, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

M/s Kathurima for the Plaintiff

Court assistant: Eddel

