

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

Civil Suit 24 of 2005

P & T HOUSING CO-OPERATIVE SOCIETY LTD
PLAINTIFF

VERSUS

DIVISIONAL INTERGRATED DEVELOPMEN

PROGRAMMES COMPANY LTD
DEFENDANT

RULING

This is an application under Order 12 Rule 6 of the Civil Procedure Rules for Judgment on admission.

The Applicant says that the Respondent has “admitted” receiving the sum of Kshs.7,057,070/= from it, and that the defence is a sham and mere denial. The parties entered into an agreement for the purchase of a piece of land which they knew was registered in a 3rd party’s name. Now, the Applicant wants refund of the aforesaid sum because the Respondent is not the owner of the said land and unable to convey the same to the Applicant. The Respondent, on the other hand, has cited clauses 7 and 8 of the Sale Agreement (Annexure JMS 1) which stipulate as follows:

“7. The land in question is currently registered in the name of Josphat Musyoka Nganga who has sold it to Divisional Integrated Development Programmes Company Limited.

8. Transfers from the registered owner to Divisional Integrated Development Programmes Company Limited and from Divisional Integrated Development Programmes Company Limited to the buyers of the sub-divisions will be done simultaneously when all buyers have paid their plots in full”.

Clearly, based on this agreement, and the fact that the Respondent’s defence states that it is the Applicant who is in breach of the contract, there are triable issues that make it necessary for this case to proceed to full hearing.

Judgment on admission can be granted only in clear and unequivocal circumstances, and not where one has to resort to interpretation of documents to reach a decision {See ***Cassam vs Sachania (1982) KLR 191***}. Here, I cannot say that there is a clear and unequivocal admission of fact, and accordingly I dismiss this application with costs to the Respondent.

Dated and delivered at Nairobi this 3rd day of November, 2005.

ALNASHIR VISRAM

JUDGE