



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**Civil Case 9 of 2004**

**HEINZ A. THEISSING .....PLAINTIFF**

**Versus**

**DIANI HOMES LTD. ....DEFENDANTS**

**J U D G M E N T**

This is a formal proof the defendant having been served with summons on 19/11/04 through the Secretary /Manager. No appearance or defence was filed within the prescribed time. Affidavit of service is filed.

Interlocutory judgment was entered on 28/1/2005.

On the hearing day the plaintiff gave evidence and produced documents showing he is the registered owner of the property in dispute.

The plaintiff pleads the agreement of sale contained conditions that the house would be of required standard be safe and habitable place to live in without any defects whatsoever. The plaintiff pleads that after taking possession the house was found to be of substandard and uninhabitable and despite requesting the Defendant to rectify the defendant has failed to do so.

The plaintiff called a witness PW 2 to testify and give a technical report on the building. The report is exhibited and recommended repairs are valued at shs. 3,644,200/-. The plaintiff claims the payment of sufficient compensation to enable rectification of the constructions as he no longer has confidence with the defendant to carry the repairs. He prays for Shs.3,644,200/- as certified by the PW 2 the Consultant Architect.

Upon reading the pleadings the exhibits and the evidence offered by the plaintiff I am satisfied that the Defendants have breached the sale agreement and the result is selling to the Plaintiff substandard and uninhabitable premises. The defendant has been requested to comply with the contract but has failed to do so. In the circumstances I enter judgment for plaintiff against the defendant in the sum of Shs.3,644,200/- to enable him to rectify the breaches.

Costs and interest also awarded.

**Delivered and dated at Mombasa this 16<sup>th</sup> day of December 2005.**

J. KHAMINWA

J U D G E