



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 733 OF 1998.

ARTHUR D.C. MUKUHA.....PLAINTIFF

VERSUS

MARY WANJIKU MBUGUA.....DEFENDANT

J U D G M E N T

The Plaintiff claims a sum of Shs.650,000/- from the Defendant for services rendered in the form of architectural services with interest thereon at 30% as claimed in the plaint.

The Defendant denied that the Plaintiff rendered any services to her and if he did then the same were unprofessionally done and the Defendant had to employ the services of other architects for which she again paid.

The Plaintiff also claimed in respect of a cheque for Shs.123,000/- given to him by the Defendant in part payment which was dishonored on presentation. In reply to this allegation the Defendant avers that without prejudice paid to the Plaintiff a sum in full settlement as being a reasonable sum and that the stoppage of cheque was justified in the circumstances and upon her discussing that she was about to be defrauded.

The Plaintiff who is a duly registered architect gave evidence that he was approached in the middle of 1993 by the Defendant who had three projects at Voi namely;-

- 1) A House
- 2) A commercial Development and

His instruction were verbal and a result correspondence took place between the parties.

On the 2.3.94 the Plaintiff wrote the Defendant informing her that he had issued her with a finalised drawings for the development on Flat 13 (the house) and plot B Kasarani (the restaurant). He also stated that the Plaintiff had approved the proposals for flat No. 1956/375 (the commercial development). He also acknowledge receipt of Shs.60,000 on account.

He asked for instructions and not fee note for services rendered to date amounting to Shs.196,660 after crediting the said sum of Shs.60,000/-.

As a result the cheque for Shs.123,000 of the 22.8.96 was given to the Plaintiff which cheque was dishonoured on presentation. Thereafter the Plaintiff said he had done the work but as he did not get paid he withdrew. By his letter to the Defendant of the 13.12.96 the Plaintiff referred to the dishonoured cheque and threatened legal action unless the outstanding claim of Shs.196,600.00 was paid within 14

days.

On the 10th December 1997 the Plaintiff wrote again to the Defendant stating he understood from Mr. Gathanga that the Defendant had no intention of making good the returned cheque and as a result he sent his final claim for shs.655,940. The Plaintiff produced a plan Exhibit 1 of the commercial development which disappeared from the court file. However a copy was handed to me during the final submissions. The Plaintiff also referred to the plans he drew when being cross-examined but again the places are not on the court file. He also produced a number of photographs of the home which he said he had designed.

In Cross-examination a great deal of information was illicited from the Plaintiff by the Defendant's counsel which showed that there had been discussions between the parties with regard to roof structures and other matters which to my mind only needs to substantiate the Plaintiff's claim. Amongst matters that were raised was the title to commercial development. The Defendant makes much of the fact that the title to this is a temporary occupation licence under the Government Lands Act. However this does not mean that the Defendant does not have an interest in the land and was not contemplating a development upon it.

Having heard the Plaintiff's evidence I am satisfied that he was telling the truth.

The Defendant called three witnesses the first being Joel Macharia who was employed by the Defendant in the building of the house at Voi. He claims that he was supervised by an architect called Mr. Fred Muia. He also claimed that although he had seen the Plaintiff on the site he didn't work with him for the Plaintiff. He produced photographs for the building Exhibit A. I did not form a particularly favourable comparison of the witness who appeared to be saying what he thought the Defendant wanted him to say. The Defendant called two other witnesses a mason and an architect who did not add much to the facts of the case.

The Defendant admitted in her evidence and that she had employed the Plaintiff to draw some plans for her house which she accepted. she claimed there was only one project at Voi namely the house. She denied receiving any plans for the commercial development because it only had a temporary occupation licence.

She stated she did not built the house designed by the Plaintiff but in 1996 built one designed by Mr. Fred Mwai who was the district engineer. Mr. Mwai was not called as a witness although he would have been the most useful witness the Defendant could have got. I do not believe the Defendant when she says Mr. Mwai produced the design for the house. She did not produce in evidence his plan nor ask Mr. Mwai to swear that he was the architect.

If Mr. Mwai had been the architect I can see no reason why the Plaintiff should have rescued the site as Mr. Joel Macharia stated.

The Defendant stated that she gave the cheque for Shs.130,000/- to the Plaintiff which he wrote himself. She had no money in her account and so she asked him not to date but he did so without her knowledge. She gave him the cheque to get rid of him because he disturbed her.

In my view the Defendant know she had employed the plaintiff and owed him money and it was for this reason she gave him the cheque. I think the truth of the matter is that the Plaintiff did the drawings for the Defendant as he alleged. Had he not done so the Defendant would have replied to the letter of the 2.3.94 and denied its contents. I believe she used the plaintiff's plan for the house but decided not to proceed with the other two projects and as such felt she should not pay the Plaintiff for them. The defendant appeared to me to be very capable and formidable woman and not someone who would be frightened of the Plaintiff. She is clearly a clever business woman. However it seems to me that the Defendant's services were dispensed with and this is why he send the bill for Shs.196,660,00. Had that been paid that would have been the end of the matter. As it was no payment was forthcoming so the Plaintiff increased his charges as appears from the final claim. Enclosed with the letter of the 10.12.97 sent to the Defendant. No further work had however been done by the Plaintiff between the sending of the two accounts and I therefore award the Plaintiff a sum of Shs.196,660 together with costs therein.

Interest will be payable on that sum from the date of the filing of the suit at 18% per annum until payment in full.

Dated and delivered at Nairobi this 5th day of April, 2001.

PHILIP J. RANSLEY

COMMISSIONER OF ASSIZE.