



Gachu & another v Ndocha & another (Environment & Land Case 41 of 2008) [2025] KEELC 3985 (KLR) (22 May 2025) (Judgment)

Neutral citation: [2025] KEELC 3985 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 41 OF 2008**

OA ANGOTE, J

MAY 22, 2025

BETWEEN

ALEX NJOROGE GACHU 1ST PLAINTIFF

MARGARET WANJIKU 2ND PLAINTIFF

AND

GEOFFREY NYAKUNDI NDOCHA 1ST DEFENDANT

SAVANNAH DEVELOPMENT COMPANY LIMITED 2ND DEFENDANT

JUDGMENT

1. Through an Amended Complaint dated 12th February 2019, the Plaintiffs have sought Judgment against the Defendants and prayed for the following orders:
 - a. A permanent injunction to issue restraining the defendants from dealing and/or purporting to deal, interfere, trespass and/or in any manner whatsoever dispose of L.R. No. Block 82/782 Savannah Estate Phase 1 House No. 31 other than to effect transfer thereof to the Plaintiff severally/ or as the Plaintiff's nominees.
 - b. An order of specific performance to issue commanding and compelling the Defendants to transfer the L.R No. Nairobi Block 82/782 Savannah Estate Phase 1 House No. 31 to the Plaintiffs and or such of their nominees forthwith.
 - c. Further and in the alternative (but without prejudice) to prayer (b) above, this Honourable Court do effect a transfer L.R. No. Block 82/782 Savannah Estate Phase 1 House No. 31 to the Plaintiffs through the Deputy Registrar or otherwise.
 - d. Further and in the alternative to (b) and (c) above, but without prejudice thereto general damages for breach of contract.



- e. Interest on (d) above at court rates from the date of filing suit until payment in full.
 - f. Further and in the alternative to (b) and (c) above, but without prejudice thereto punitive damages in view of the conduct of the 1st Defendant.
 - g. Interest on (f) above at court rates from the date of filing suit until payment in full.
 - h. Further & in alternative to (b) and (c) refund all monies paid as a result of the sale agreement.
 - i. Interest on (h) above at commercial rates from the date of filing suit until payment in full.
 - j. Costs of this suit be provided in favour of the Plaintiffs.
 - k. Interests on (j) above at court rates from the date of filing suit until payment in full.
 - l. Any other relief that this court deems fit to grant.
2. The Plaintiffs' case is that the 2nd Defendant is the registered proprietor of all the property comprised in Title No. Block 82/782, Savannah Estate Phase 1, House No. 31 (the suit property). They assert that the 1st Defendant purchased House No. 31, situated within Savannah Estate measuring 0.125 acres and paid the full purchase price, but the transfer has not been effected.
 3. It was averred in the Plaint that the 2nd Defendant holds the property in trust for the 2nd Plaintiff and her late husband, the substituted 1st Plaintiff, who purchased the property from the 1st Defendant.
 4. According to the Plaintiffs, through an informal agreement dated 14th February 2003, the 1st Defendant agreed to sell the suit property to the substituted Plaintiff for Kshs. 2,350,000 and that the parties further agreed that Kshs. 350,000 was for the purposes of facilitating processing of documents and related issues.
 5. According to the Plaintiffs, the parties further agreed that in the event that there arises any impediments to the transfer of the property, the Kshs. 350,000 would serve as rent for the two-year period remaining in the tenancy between the substituted Plaintiff as tenant and the 1st Defendant as landlord.
 6. The Plaintiffs averred that on 26th June 2004, the 1st Defendant sold to the 2nd Plaintiff and the substituted 1st Plaintiff the suit property; that the purchasers paid the 1st Defendant the sum of Kshs. 2,200,000 which was acknowledged in two agreements made on 26th June 2004 and 1st September 2004, and that the terms of the agreement were that the Plaintiffs would pay Kshs. 2 million at the time of execution and the balance of Kshs. 350,000 would be paid upon the vendor availing the completion documents.
 7. The Plaintiff asserted that as at 1st September 2004, they had paid Kshs. 2,200,000 and had a pending balance of Kshs. 150,000/-.
 8. The Plaintiffs averred in the Plaint that through a letter dated 31st January 2005, the vendor claimed that they had evicted his tenant and demanded for unpaid rent, electricity bill, balance of the purchase price as well as collection fee of Kshs. 50,000. They contended that they made a further payment of Kshs. 20,000 towards the outstanding balance of the purchase price on 4th December 2007 which was acknowledged by the Defendant.
 9. It was averred by the Plaintiffs that they made further made payments as follows:
 - a. Accrued water bill - Kshs. 3,096.40/-
 - b. Electricity - Kshs. 61,287.50/-



- c. Land rent - Kshs. 11,910/-
 - d. Rates Clearance - Kshs. 2,975/- and
Kshs. 5000/-
 - e. Direct payments to the 1st Defendant -Kshs. 10,000/-
10. The Plaintiffs asserts that the 1st Defendant failed to provide the completion documents on the agreed date of 30th June 2004; that these documents included a transfer duly executed by the vendor in their favour; valid rates clearance certificate; a land rent clearance certificate; and all the consents necessary to effect the transfer including but not limited to consent from the 2nd Defendant to transfer to them or their nominee the suit property.
 11. They argued that the 1st Defendant all the same continues to harass them and has unreasonably sought more money on the transaction price, and that the Defendants have threatened to sell the suit property to third parties, which would prejudice their interest in the property.
 12. The Plaintiffs asserted that the 1st Defendant is in breach of the sale agreement by failing to complete the agreement, failing to honor his part of the bargain, failing to deliver the completion documents stipulated in the agreement and failing to perform the agreement on its terms.
 13. The Plaintiffs assert that the agreements dated 1st June 2004 and 1st September 2004 are alive and in force; that prior to 31st December 2004, they have never collected nor demanded for payment of any rent and that if there was any rent accruing, it was paid off with the Kshs. 350,000 as per the informal agreement dated 14th February 2003.
 14. It is the Plaintiffs' case that upon entry into the sale agreements, the parties terminated their relationship as landlord and tenant, save for the two years contingency stipulated in the agreements, and assumed a new relationship of vendor and purchasers.
 15. The Plaintiffs have sought that the 1st Defendant be compelled to complete the sale agreements and to transfer the suit property to them; In the alternative, and without prejudice, they have averred that they are entitled to refunds from the 1st Defendant of the monies paid towards the purchase price, which includes the purchase price less the balance held, as well as the outgoings (land rent, land rates, electricity bills and water bills), and monies advanced on request by the 1st Defendant, as follows:

Purchase price Kshs. 2,235,000.00

Less Balance held Kshs 148,000.00

Outgoings:

Land Rent Kshs. 23,820.00

Land Rates Kshs. 7,975.00

Electricity Bills Kshs. 61,287.00

Water Bills Kshs. 3,096.40

Monies advances on Kshs. 20,000.00

Request of the 1st

Defendant

Total Kshs. 2,203,178.90



16. The Plaintiffs have also sought for general damages for breach of contract and punitive damages on account of the unreasonableness in the sale transaction by the 1st Defendant as an alternative to the prayer for specific performance.
17. The 1st Defendant opposed the suit through a Statement of Defence and Counterclaim dated 4th June 2019. The 1st Defendant averred that he rented out part of the suit premises to the late Stephen Mungai Gachu on 1st May 2000 at an agreed rent of Kshs. 10,0000 revisable after two years from the date of the lease; that the lease was mutually revised to Kshs. 15,000 after two years and that the residential house in the suit premises at the time was leased out to a different tenant for Kshs. 10,000.
18. The 1st Defendant admitted that he entered into a formal written agreement with the deceased on the date pleaded and the Kshs. 350,000 was to be utilized for rent for 2 years or refunded to the deceased in the event of any difficulties arising in transferring the suit property.
19. The 1st Defendant further admitted that while the commercial lease was subsisting, he entered into a written sale agreement with the deceased, to which the 2nd Plaintiff was not a party to, for the sale of the suit premises for Kshs. 2,350,000. He stated that the sale was subject to the existing lease and the deceased was to continue paying rent pending completion of the sale.
20. According to the 1st Defendant, the deceased and the 2nd Plaintiff later invaded the suit premises and evicted his other tenant without giving notice to him; that the deceased then continued to be a tenant in the two houses in the premises until his demise in August 2017 and that the continued occupation of the suit premises by the Plaintiffs after the demise of the deceased is an act of trespass because he has not consented to their occupation of the suit property.
21. It was averred in the Defence by the 1st Defendant that at the time of the lease, the Plaintiffs had rented out the shop in the suit premises for commercial premises; that after the sale agreement, the deceased approached him and requested to be given the main house for the revised rent of Kshs. 25,000/-, which included rent of the main house and that it was thereafter that the deceased and the 2nd Plaintiff invaded the suit property and evicted the tenant of the main house at that time.
22. However, it was averred, from December 2003, the Plaintiffs never paid the revised rent of Kshs. 25,000 and the property is now worth leasing for Kshs. 90,000 per month.
23. The 1st Defendant asserted that since the deceased made the deposit of Kshs. 350,000 on 14th February 2003, he has never paid rent; that he obtained all documents necessary for the transfer of the title before the completion date and informed the deceased that he would transfer the title to him upon payment of the outstanding rents and the balance of the purchase price and that on 15th July 2004, he terminated the contract of sale with the deceased and the same was communicated to the deceased.
24. The Defendant stated that on 1st September 2004, he was led by the deceased to sign another agreement upon the deceased's promise to pay the balance of the purchase price and rent arrears and that the Plaintiffs are trespassers on the suit property as from the date of the demise of the deceased and that the deceased and his estate have accumulated rent arrears and/or mesne profits to the tune of Kshs. 2,525,000/-, which amount continues to accrue.
25. In his Counterclaim, the 1st Defendant averred that the deceased and his relatives are in unlawful in occupation of the suit property; that the tenancy relationship between himself and the deceased was not transferable to the Plaintiffs and that the continued occupation by the Plaintiffs of the suit property is an act of continuing trespass.



26. In the 1st Defendant's Counterclaim, he has sought that the Plaintiff's suit be dismissed with costs and that the counterclaim be allowed as follows:
 - a. A declaration that the Plaintiffs' continued possession and occupation of the suit property is illegal and unlawful.
 - b. An order of eviction from the suit premises to issue against the Plaintiffs.
 - c. Costs of the suit.
27. In their Reply to the Defence and Counterclaim, the Plaintiffs stated that the tenancy agreement was extinguished upon the execution of the agreement of sale and put the 1st Defendant to strict proof on the allegation that it was a term of the sale agreement that the Kshs. 350,000 was to be utilized as rent for two years when the completion date of the transaction was to be within 4 days, on 30th June 2004.
28. The Plaintiffs asserted that it was an express term of the agreement of sale that vacant possession would be handed over on the completion date and that they have always been ready and willing to pay the balance but the 1st Defendant has blatantly refused to comply with his obligations under the agreement.
29. The Plaintiffs averred that they are the widow and son of the late Stephen Mungai Gachu and they were issued with letters of administration ad litem with respect to the deceased's estate on 26th September 2018 and that while the 1st Defendant terminated the agreement dated 26th June 2004, he executed the further agreement dated 1st September 2004 of his own free will.
30. It is the Plaintiffs stated that the sale agreement failed to be completed out of the 1st Defendant's negligence and failure to fulfill his obligations under the contract and that 94% of the purchase price had already been paid and they are ready to pay the remaining 6%.

Hearing and Evidence

31. The Plaintiffs presented the evidence of two witnesses. PW1, Margaret Wanjiku Njoroge, the 2nd Plaintiff relied on her statement dated 4th March 2021 as her evidence in chief. She also produced a bundle of documents marked as PEXB1-10 dated 4th March 2021.
32. In her statement, PW1 averred that she is resident in the suit property; that together with her late husband, they knew the 1st Defendant and that the 1st Defendant got into a tenancy agreement with her late husband on 1st May 2000, which was executed by her late husband. She averred that on 14th February 2003, her late husband and the 1st Defendant got into an informal agreement for the sale of the suit property for Kshs. 2,350,000/-.
33. It was the evidence of PW1 that on 26th June 2004, her and her late husband entered into a further agreement with the 1st Defendant for the sale of the suit property, on the same terms, for Kshs. 2,350,000; that Kshs. 2 million was paid upon execution of the sale agreement, which was acknowledged in the sale agreement, and that the Kshs. 350,000 was to be paid to the 1st Defendant upon him availing the completion documents.
34. PW1 stated that they had agreed that the completion documents were to be supplied by 30th June 2004. However, by that date, the 1st Defendant had not provided the completion documents; that the 1st Defendant instead approached them and asked for more time and more money to enable him obtain the completion documents and that they agreed to accommodate him.
35. It was her evidence that the sale agreement provided that the property was being sold with vacant possession; that because they had paid 85% of the purchase price, they gave a notice to vacate to



the tenant who was in occupation of the other house and that the 1st Defendant did not raise any complaints about that.

36. PW1 stated that on 16th August 2004, they were surprised to receive a letter from the 1st Defendant stating that the transfer had taken too long to be effected and demanded Kshs. 240,000/- rent for 16 months and the balance of Kshs. 200,000 for the purchase.
37. PW1 asserted that the 1st Defendant made a further unfounded claim for rent of Kshs. 925,000 and alleged that the Kshs. 2,200,000 paid as the purchase price was deposit on rent; that these allegations were made through a letter dated 1st November 2006, in which the 1st Defendant stated that he would avail the completion documents on condition that the Plaintiffs first pay the balance of the purchase price and that the 1st Defendant threatened to sell the suit property to a third party in the event his demands were not met.
38. PW2, Alan Njoroge Gachu, relied on his statement dated 4th March 2021 as his evidence in chief. In his statement, he stated that he is the son of the late Stephen Mungai Gachu and that the 2nd Plaintiff is his mother. He adopted PW1's witness statement and the list of documents and reiterated the contents of the statement in his statement. The Defendants did not testify.
39. Neither the Plaintiffs nor the Defendants filed submissions.

Analysis and Determination

40. Having given due consideration to the pleadings, evidence and submissions by the parties, the following are the issues before this court for determination:
 - a. Whether this court should issue orders for specific performance.
 - b. Whether the Plaintiffs are entitled to damages for breach of contract.
41. The property at the center of this dispute is House No. 31, Phase 1 on parcel number Nairobi Block 82/782 Savannah Estate, which was purchased by the 1st Defendant, Geoffrey Nyakundi Ndocha from the 2nd Defendant, Savannah Development Co. Ltd.
42. It is not disputed that there pervaded a tenancy relationship between the 1st Defendant and the late Stephen Mungai Gachu, who has since been substituted by the two Plaintiffs.
43. The evidence before this court shows that the 1st Defendant leased a house on the suit property through a five years' tenancy agreement dated 1st May 2000 at an agreed rent of Kshs. 10,000 per month revisable after two years from the date of the lease. This is admitted by the 2nd Plaintiff as well as by the 1st Defendant in his Statement of Defence.
44. The parties to this suit agree that the late Stephen Mungai Gachu and the 1st Defendant thereafter executed three sale agreements with respect to the suit property dated 14th February 2003, 26th June 2004 and 1st September 2004. The terms of these agreements were congruent: that the 1st Defendant had agreed to sell the suit property to Stephen Mungai, for a consideration of Kshs. 2,350,000.
45. The Plaintiffs have sought orders of specific performance. They assert that they have paid about 96% of the purchase price and have at all times been willing and ready to complete the transaction. In the alternative, they have sought that the 1st Defendant refund to them the sum of Kshs. 2,203,178.90, which is the sum they claim they have paid towards the purchase of the suit property.
46. They have further and alternatively claimed for damages for breach of contract as well as punitive damages due to the conduct of the 1st Defendant.



47. This court however noted that there were errors in the calculations by the Plaintiff. The sum claimed by the Plaintiff should in fact be as follows:

Purchase price/paid Kshs. 2,220,000.00

Outgoings:

Land Rent Kshs. 23,820.00

Land Rates Kshs. 7,975.00

Electricity Bills Kshs. 61,287.50

Water Bills Kshs. 3,096.40

TOTAL Kshs. 2,316,178.90

48. While the 1st Defendant filed a Defence and Counterclaim, they did not call any witnesses. It is trite that where a party fails to call evidence to support his case, his pleadings remain mere statements, having failed to substantiate them. That is the position that was taken in *Shaneebal Limited v County Government of Machakos* [2018] KEHC 5921 (KLR) quoting the case of *Janet Kaphiphe Ouma & Another v. Marie Stopes International (Kenya) Kisumu HCCC No. 68 of 2007* where the court stated:

“In this matter, apart from filing its statement of defence, the defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1st plaintiff and that of the witness remain uncontroverted and the statement in the defence therefore remains mere allegations...Sections 107 and 108 of the *Evidence Act* are clear that he who asserts or pleads must support the same by way of evidence.”

49. Although the Plaintiffs’ suit was uncontroverted, they still had the legal mandate to discharge the burden of proof placed upon them by the law to the requisite standard, which in civil cases is on a balance of probabilities. This is in accordance with Section 107 of the *Evidence Act* which provides as follows:

“(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

50. The Plaintiffs, acting on behalf of the Estate of the late Stephen Mungai Ndoche, pursuant to a Letters of Administration ad Litem issued on 26th September 2018, have sought that this court issue orders for specific performance.

51. Specific performance is an equitable remedy, issued by the court at the exercise of its discretion, and upon the satisfaction of well settled principles, chiefly being the existence of a valid enforceable contract.

52. In the case of *Reliable Electrical Engineers (K) Ltd v Mantrac Kenya Limited* [2006] KEHC 2855 (KLR), the court stated as follows:

“Specific performance, like any other equitable remedy, is discretionary and the court will only grant it on the well settled principles.



The jurisdiction of specific performance is based on the existence of a valid, enforceable contract. It will not be ordered if the contract suffers from some defect, such as failure to comply with the formal requirements or mistake or illegality, which makes the contract invalid or unenforceable. Even where a contract is valid and enforceable specific performance will, however, not be ordered where there is an adequate alternative remedy. In this respect damages are considered to be an adequate alternative remedy where the claimant can readily get the equivalent of what he contracted for from another source. Even where damages are not an adequate remedy specific performance may still be refused on the ground of undue influence or where it will cause severe hardship to the defendant.”

53. This is similarly stated in the Halsbury’s Laws of England (4th Edition) at paragraph 487 vol. 44:
- “A Plaintiff seeking specific performance must show that he has performed all the terms of the contract which he has undertaken to perform whether expressly or by implications and which ought to have been performed...The court does not bar a claim on the ground that the plaintiff has failed in literal performance or is in default in some non-essential or unimportant term although in such cases it may grant compensation.”
54. As noted above, there are three agreements that were executed by the late Stephen Mungai Gachu and the 1st Defendant. The first agreement, which the Plaintiffs refer to as an informal agreement is dated 14th February 2003. The terms of this agreement were that the Plaintiff would pay a deposit of Kshs. 350,000 to facilitate processing of the completion documents. The balance of Kshs. 2 million was then to be paid when the documents were ready, at which time the 1st Defendant would transfer the property to Stephen Mungai.
55. In this agreement, it was noted that there were two years pending before the expiry of the lease. Further, that in case of any complication with regard to the transfer, then the Kshs. 350,000 would either be refunded or counted as rent for the period of the two years.
56. In the 2nd Agreement dated 26th June 2004, the 1st Defendant acknowledged that it had received Kshs. 2 million of the purchase price. The parties agreed that the remaining Kshs. 350,000/- would be paid upon the 1st Defendant/Vendor availing the completion documents. This agreement specified the completion date as 30th June 2004. It was also noted that vacant possession would be handed over to the purchaser upon completion.
57. The 1st Defendant did not, however, give the deceased the completion documents or vacant possession of the suit property on the agreed date of 30th June 2004. Rather, through the letter dated 16th August 2004, the 1st Defendant claimed for the balance of the purchase price of Kshs. 200,000 as well as for rental arrears for 16 months at Kshs. 15,000, amounting to Kshs. 240,000, as a condition to allow the Plaintiff to take possession of the property.
58. In his Defence and Counterclaim, the 1st Defendant averred that it rescinded the sale agreement dated 26th June 2004 through a letter dated 15th June 2004. That the 1st Defendant terminated this agreement is admitted by the Plaintiffs in their Reply to the Statement of Defence and Defence to the Counterclaim.
59. Despite the frustration in completing the sale agreement, the parties all the same went ahead and executed a further agreement dated 1st September 2004, which was for the purchase of the same property at a consideration of Kshs. 2,350,000.



60. In this agreement, the 1st Defendant acknowledged that it had received Kshs. 2,200,000 at the time of executing the agreement, and that the balance of Kshs. 150,000 would be paid upon the vendor availing the completion documents. Curiously, the completion date was noted as 30th June 2004, a date which had already passed at the point of execution. The parties all the same contracted that the vendor would give vacant possession to the purchaser upon completion.
61. From this narrative of facts, it is apparent that the sale agreement dated 26th June 2004 was rescinded. This leaves the agreements dated 14th February 2003 and 1st September 2004. It is also evident that these sale agreements have never been completed, as the 1st Defendant has refused to hand over the completion documents to the Plaintiffs on the grounds that they owe him rental arrears.
62. The Plaintiffs, on their part, have not been able to pay the remaining balance of the purchase price, which stands at Kshs. 150,000/-. The refusal or failure by the 1st Defendant to avail the completion documents and to execute the transfer documents was a breach of the sale agreement.
63. The 1st Defendant's actions must however be considered as against the conduct of the Plaintiffs in this transaction, which has been wanting, especially with respect to the Plaintiff's failure to pay the rent for the premises, during the pendency of the tenancy of the lease agreement.
64. I say so because it is clear from the agreement dated 14th February 2003, that the Plaintiff was still expected to pay rent for the remaining two years of the lease agreement.
65. The Plaintiffs have admitted that they did not pay any rent at all following the execution of the agreements of sale. They contend that the tenancy agreement was terminated upon the signing of the sales agreement. This runs counter to the very framing of the contract dated 14th February 2003, which provides that in case the contract is frustrated, the Kshs. 350,000 would serve as rent for the two-year period or would be refunded.
66. There is no clause in any of the sale agreements that suspended the tenancy agreement. The Plaintiffs' conduct therefore exacerbated the performance of the sale agreements.
67. The Plaintiffs admitted in their pleadings that they issued a notice to the other tenant on the suit property to vacate and that they entered into full possession of the land. They contend that at the time, they had paid 85% of the purchase price. However, the terms of the agreement that they had willingly signed was that vacant possession would be given to the purchaser upon completion, which this court has already found has never been met. The manner in which the Plaintiffs took possession of the suit property was therefore in breach of the agreement of sale.
68. Having found that the Plaintiffs acted in breach of the contractual agreement, this court does not find it appropriate to award the remedy of specific performance to the Plaintiffs. As has been noted, specific performance is an equitable remedy, and it is a well-founded maxim of equity that he who comes to equity must come to equity with clean hands.
69. The Plaintiffs have sought for general damages for breach of contract. It is however a general rule that there can be no general damages for breach of contract. This is because the purpose of damages in cases where contracts exist would be to put a claimant in the position they would have been in, had the breach not been committed. The nature of damages in breach of contract is therefore specific in nature and must be proved.



70. The Court of Appeal in *Total (Kenya) Limited Formally Caltex Oil (Kenya) Limited v Janevams Limited* [2015] KECA 822 (KLR), quoted with approval the decision of the Court of Appeal for Eastern Africa in the Case of *Dharamshi v Karan* [1974] EA 4 where it held as follows:

“This case has been accepted by this court as an authority for the proposition that general damages cannot be awarded for breach of contract and that proposition makes sense because damages arising from a breach of a contract are usually quantifiable and are not at large. Where damages can be quantified they cease to be general...”

71. This principle was similarly stated by the High Court in *Consolata Anyango Ouma v South Nyanza Sugar Company Limited MGR HCCA No. 53 of 2015* [2015] eKLR as follows:

“The next question is whether the appellant was entitled to damages as a result of the breach. As a general principle, the purpose of damages for breach of contract is, subject to mitigation of loss, the claimant is to be put as far as possible in the same position he would have been if the breach complained of had not occurred. This principle is encapsulated in the Latin phrase *restitution in integrum* (see *Kenya Industrial Estates Ltd v Lee Enterprises Ltd NRB CA Civil Appeal No. 54 of 2004* [2009]eKLR, *Kenya Breweries Ltd v Natex Distributors Ltd Milimani HCCC No. 704 of 2000* [2004]eKLR). The measure of damages is in accordance with the rule established in the case of *Hadley v Baxendale* [1854] 9. Exch. 341 that the measure of damages is such as may be fairly and reasonably be considered arising naturally from the breach itself or such as may be reasonably contemplated by the parties at the time the contract was made and a probable result of such breach (see *Standard Chartered Bank Limited v Intercom Services Ltd & Others NRB CA Civil Appeal No. 37 of 2003* [2004]eKLR). Such damages are not damages at large or general damages but are in the nature of special damages and they must be pleaded and proved (see *Coast Bus Service Ltd v Sisco Murunga Ndanyi & 2 others, NRB CA Civil Appeal No. 192 of 92 (UR)* and *Charles C. Sande v Kenya Co-operative Creameries Ltd, NRB CA Civil Appeal No. 154 of 1992 (UR)*.)”

72. Save for the amounts paid, the Plaintiffs in this case have not specified the damages they have suffered by the 1st Defendant's breach of contract, and have not proved any such loss through evidence. This court accordingly declines to grant this relief.
73. This court has found that the both the Plaintiffs and the 1st Defendant breached the sale agreements. Consequently, this court declares the agreements to be rescinded and directs the 1st Defendant to refund the sums paid to it by the Plaintiffs.
74. The Defendants, in signing the sale agreement dated 1st September 2004 and through the letter dated 1st November 2006, acknowledged that the Plaintiffs had paid to them the sum of Kshs. 2,200,000. In their bundle of documents, the Plaintiffs have additionally adduced a handwritten note by the 1st Defendant acknowledging receipt of Kshs. 20,000 from Stephen Mungai on 4th December 2007.
75. The Plaintiffs have also adduced a receipt for payment of Kshs, 5,000 to Kenya Power and Lighting Company and a receipt dated 8th October 2007 for Kshs. 2500 to the City Council of Nairobi being payment for the Clearance Certificate for Block 82/782.
76. The Plaintiff has therefore proved through evidence that they paid Kshs. 2,220,000 to the 1st Defendant and incurred a further Kshs 7,500/- on costs related to the suit property. The Plaintiff's are entitled to a



refund of this money. The 1st Defendant having failed to testify, and adduce evidence, his counterclaim is dismissed with costs.

77. For those reasons, the Plaintiffs' suit is allowed on the following terms:

- a. The 1st Defendant be and is hereby ordered to refund to the Plaintiffs all the monies paid as a result of the sale agreements, being Kshs. Kshs. 2,227,500.
- b. The 1st Defendant to pay to the Plaintiffs interest on the above amount at court rates from the date of filing this suit until payment in full.
- c. The 1st Defendant to pay the Plaintiffs the costs of the suit and counterclaim.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 22ND DAY OF MAY, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Macheru for Plaintiffs

Mr. Malenga for 1st Defendant

No appearance for 2nd Defendant

Court Assistant: Tracy

