



Tata Africa Holdings (Kenya) Ltd v Premier Care Diagnostics Narok Ltd (Land Case E004 of 2023) [2025] KEELC 3621 (KLR) (8 May 2025) (Judgment)

Neutral citation: [2025] KEELC 3621 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
LAND CASE E004 OF 2023
LN GACHERU, J
MAY 8, 2025**

BETWEEN

TATA AFRICA HOLDINGS (KENYA) LTD PLAINTIFF

AND

PREMIER CARE DIAGNOSTICS NAROK LTD DEFENDANT

JUDGMENT

1. The Plaintiff herein vide a Complaint dated 25th August 2023, filed this claim against the Defendant herein Premier Care Diagnostics Narok Ltd, and sought for Judgment in the following terms: -
 - a. Payment of USD 102,990
 - b. Interest on the above sum from 31st December, 2021, till payment in full.
 - c. Damages for breach of contract.
 - d. Cost of interest at court rates
2. In its Claim, the Plaintiff averred that it was the absolute proprietor of land parcels Nos. Cis-Mara/Oleleshwa/5312, Cis-Mara/Oleleshwa/5314, Cis-Mara/Oleleshwa/5315 and Cis-Mara/Oleleshwa/5316, situated in Narok Municipality. Further, that on 9th December, 2020, the Plaintiff sold to the Defendant the said suit properties, together with all the development therein at a consideration of Kshs.38,000,000/=, as purchase price, and upon such terms and conditions contained in the said agreement.
3. The Plaintiff further averred that the Defendant paid to it Kshs.26,980,000/= and the parties agreed that the balance of the purchase price was payable in USDs being 102,990(USD), and the Defendant was well aware of that. However, the Defendant has failed to pay the said amount despite demand and Notice of Intention to sue having been served upon it by the Plaintiff. Consequently, the Plaintiff urged the court to enter Judgment against the Defendant as prayed in its Complaint.



4. The Defendant had initially failed to Enter Appearance and file its Defence, wherein the matter proceeded as a formal proof and Judgement was entered in favour of the Plaintiff vide a Judgement delivered on 20th December, 2023.
5. However, vide an application dated 21st February, 2024, the Defendant applied for setting aside of the said Judgment and for leave to file Defence out of time. The said application was allowed vide a Ruling dated 6th June, 2024.
6. Consequently, the Defendant filed its Defence dated 17th February, 2025, and admitted the contents of paragraphs 1, 2, 3, 4 and 5 of the Plaint, but denied paragraph 6 of the said Plaint, and denied being that indebted to the Plaintiff in the tune of USD 102,990, and neither does the said debt attract interest on default penalty if any.
7. Further, the Defendant averred that it made payment of the balance of the purchase price to the Plaintiff, who acknowledged receipt of the said funds. The Defendant also acknowledged having received Demand and Notice to sue, but insisted that it had paid the funds due, and urged the court to dismiss the Plaintiff's suit with costs.
8. The matter proceeded for hearing via viva voce evidence wherein the Plaintiff called one witness to support its case, whereas the Defendant also called one witness and closed its case.

Plaintiff's Case

9. PW1 Andrew Masyula, the Financial Controller of Tata African Holding Limited adopted his witness statement as his evidence in chief. He also produced the list of documents dated 25th August, 2023 as P.ExhibitS 1 -4, and Further list of documents dated 7th November, 2023 as P.Exhibits 5-6.
10. In his evidence in chief, Pw1 confirmed that the Plaintiff sold the suit properties to the Defendant for a sum of Ksh 38,000,000/=. Further, the Defendant paid Kshs.26,980,000/= in two instalments as part payment of the purchase price. He also testified that the balance of Ksh.11,020, 000/=:, was payable in USDs, which translated to 102, 990 USDs, which amount the Defendant was to pay as per the terms of the agreement.
11. However, the Defendant failed to pay the said amount, which failure has impacted on the Plaintiff as it was unable to offset its bank loan. The witness relied entirely on the exhibits produced in court and his witness statement.
12. On cross-examination, PW1 alleged that the Plaintiff's claim was for 102,990 USDs, and that the Plaintiff has also received Ksh.200,000/= , from the Defendant which amount of money was not part of the purchase price. He denied that the Plaintiff did receive a further Ksh.500,000/= from the Defendant.
13. In re-examination, Pw1 testified stated that even if the Defendant deposited any money, which claim was denied by the Plaintiff, then the Defendant did not inform the Plaintiff about the said deposits, and that was not part of the agreement.

Defendants Case

14. DW1 Dr. Stephen Ojwang, the founder and CEO of Premier Care Hospital in Narok Municipality, where he works as a Radiologist adopted his witness statement dated 11th September 2024, as part of his evidence. He also produced his list of documents D.Exhibit 1. It was his further evidence that out of the balance of ksh 11, 020,000/=:, the Defendant has so far paid Ksh.700,000/=:, which was paid in two instalments of Ksh.200,000/=: and Ksh.500,000/=:.



15. He admitted that the Defendant has not paid the full amount of the purchase price as claimed by the Plaintiff. He further alleged that the Defendant had been facing challenges, and that the Defendant has also been struggling to keep the business a float, and that it only started paying the balance after two years. It was his further claim that the Health sector is facing problems, but he expected the Defendant to pay the full amount in due course.
16. On cross-examination, Dw1 confirmed that the sale agreement between the Plaintiff and Defendant had timelines for completion, and that the said agreement also had a default clause. Further, he admitted that he did not ask for extension of time after expiry of the time lines, and the terms of the contract was not amended.
17. It was his further evidence that he did not know if the Plaintiff acknowledged receipt of Ksh 200,000/=, as part payment of the purchase price Dw1 insisted that the Defendant paid Ksh.200, 000/=, and that though the Defendant wanted to vary the terms of the agreement but it did not do so.
18. Further, Dw1 acknowledged being indebted to the Plaintiff, and he also acknowledged that the Plaintiff transferred the purchased properties to the Defendant. Further, he admitted that the balance of the purchase price was supposed to be paid in US Dollars being 102,990 USDs. It was his evidence that that the Defendant would pay the balance in Dollars as agreed.
19. After the viva voce evidence, parties filed and exchanged written submissions. The Plaintiff filed its written submissions dated 24th March, 2025, through Muma Nyagaka & Co Advocates, and urged the court to allow its claim as per the Plaint, and further awards it Kshs.3,000,000/= as General damages.
20. The Plaintiff relied on various decided cases, among them the case of; Charles Mwalia vs The Kenya Bureau of Standards (2001) 1EA 551, Consolata Anyango Ouma vs South Nyanza Sugar Co. Ltd[2015]eklr, Kimakia Cooperative Society vs Green Hotel [1988]KLR 242, and Prem Lata vs Peter Musa Mbiyu [1965]E.A 592, where the court held; -

“in both cases, the successful party was deprived of use of goods or money by reason of the wrongful act on the part of the Defendant, and in such a case it is clearly right that the party who has been deprived of the use of goods or money to which he is entitled should be compensated for such deprivation by the award of interest.”
21. The Defendant filed its submissions dated 14th March, 2025, through Patrick Rono & Co Advocates, wherein it argued that since it has so far paid Kshs.700,000/=, of the balance of the purchase price, which translates to 6,312/243 USDs, then the said amount should be subtracted from the initial debt of USDs 102,990, and the Defendant should be allowed to pay USD 96, 677/757.
22. For the above submissions, the Defendant relied on the case of Regal Equipment Ltd vs Lyna G. Ventures Ltd(Civil Case No.259 of 2018)(2024)KEHC 8505 [KLR] 15th July, 2024) (Ruling) where the court held; -

“The court therefore finds that the agreed exchange rate at the sales time of agreement time of being 140 shillings to the USD shall therefore be the exchange rate to be applied in the implantation of the Deputy Registrar’s ruling dated 24th July, 2023 and up to full payment at the decretal sum. Each party to bear own costs.”
23. Further, the Defendant also filed Further written submissions in response to the Plaintiff’s submissions and submitted that the Plaintiff is not entitled to General damages of Ksh.3000,000/=, since the said claim of General damages was not proven. It relied on the following cases; Barclays Bank of Kenya



Ltd vs Mema [2021] KEHC 333[KLR] Dharamshi vs Kersai [1974]EA 41 and Postal Corporation of Kenya vs Gerald Kamondo Njuki T/a Geka General Supplies NRB CA Civil Appeal No. 625 of 2019 [2021]eKLR.

The Defendant urged the court to enter a fair, just and equitable Judgement to both parties.

24. The above are the Pleadings, of the parties which the court has carefully considered, together with the available evidence and the exhibits produced in court. From the available evidence, there is no doubt that the parties herein entered into a sale agreement dated 9th December 2020. The purchase price of the suit properties was Ksh.38,000,000/= and the Defendant paid the first instalment of Ksh.380,000/= as deposit, and later Ksh.26,600,000/= as the 2nd instalment, which payments the Plaintiff confirmed receipt of the same and has no dispute over that.
25. Further, it is evident that the Defendant was to pay the balance of Ksh.11,020, 000/= or 102,990 USDs within a period of 12 months from the 1st completion date or on 1st December 2021, whichever was later. In its testimony in court through DW1, the Defendant admitted that the properties were transferred to it, and also admitted that it did not pay the balance of the purchase price as per the sale agreement.
26. Further, the Defendant alleged that it has so far paid ksh 700,000/=, out of the balance of the purchase price, and the said amount was paid as follows; Ksh.200,000/= and later Ksh.500,000/=. The Plaintiff has admitted that though the Defendant did not inform it of the deposit of Ksh.200,000/= it noted such payment, but the said amount was not part of the purchase price.
27. It is trite that Parties are bound by the terms of their contract or agreement, and the court cannot rewrite the terms of said agreement or contract that binds the parties. Therefore, it is clear that parties are generally bound by the terms of their agreements if those agreements are valid and legally enforceable contracts. A contract is formed when there is an offer, acceptance, and consideration, and the parties intend to create a legally binding relationship.
28. It is not in doubt that the Plaintiff herein offered to sell the named properties to the Defendant, and the Defendant accepted the said offer, and the consideration was Ksh 38,000,000/=. Therefore, the sale agreement between the Plaintiff and the Defendant herein is legally binding and enforceable.
29. From the available evidence, there is no doubt that the Defendant is in default of the said sale agreement, since it has not paid the balance of the purchase price in the tune of Ksh 11,020, 000/= or USDs 102,990. It is clear that the Plaintiff has come to court due to the failure of the Defendant to honour the terms of the sale agreement. The Defendant is in breach of the said sale agreement.
30. However, the Defendant admitted being in default of the sale agreement, and attributed the default and delay to pay to the challenges being faced by the health sector. Further, the Defendant alleged that it had paid an amount of Ksh.700,000/= to the Plaintiff in two instalments, which payment of the said amount was denied by the Plaintiff. The Defendant did not produced evidence to support payment of Ksh 500, 000/= though Plaintiff claimed to have seen a deposit of Ksh 200, 000/, and it claimed the said amount was not part payment of the purchase price.
31. The Plaintiff has claimed payment of the balance of the purchase price to the tune of USD 102,990. However, the Defendant is alleging that if it has to pay the balance in its USDs, then it should be allowed to pay at the rate that was prevailing when the sale agreement was executed.
32. However, the sale agreement is very clear that the balance of the purchase being Ksh.11,020,000/=, should be paid either in Kenya shillings on USDs at the prevailing rate at the time of payment. The



terms of the contract is binding to the parties and this court cannot rewrite such terms. In the case of Pius Kimaiyo Langat vs. Co-operative Bank of Kenya Ltd (2017) eKLR the Court of Appeal held that:

“ A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved.”

33. The Defendant has not claimed any of the above conditions. In fact its claim is that it should be allowed to pay in USDs, at the rate that existed when the sale agreement was executed. However, the sale agreement is clear that if the payment is in USDs, then it should be at the prevailing rate at the time of payment. This court cannot re write or alter the said terms. See the case of National Bank of Kenya Limited v Pipe Plastic Samkolit (K) Ltd [2002] 2 EA 503 [2011] eKLR at 507, where the Court stated:

“ A court of law cannot rewrite a contract between parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded or proved.” See also Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited [2017] eKLR.”

34. From the terms of the said sale agreement, it is clear the payment of the third instalment is either by Kenya Shillings which amount is ksh 11,020,000/= or in USDs which was quoted as 102,990. The said sale agreement does not indicate that it is mandatory that the balance should be paid in USDs.

35. In its Defence, the Defendant denied owing any money to the Plaintiff, but changed tune during the hearing, and admitted being indebted to the Plaintiff for failure to pay the balance of the purchase price. The Defendant alleged that it has paid Ksh 700,000/= in two instalments of Ksh.200,000/= and 500,000/=.

36. Though the Plaintiff acknowledged having seen a deposit of Kshs.200, 000/=, the witness stated that the Defendant did not bother to inform the Plaintiff about the deposit of such amount, and therefore the Plaintiff could not acknowledge that it was part payment of the purchase price. The sale agreement is clear that the last instalment was to be paid at once, and not in instalments. The said agreement was not amended or altered to allow payments of the balance of the purchase in instalments.

37. Without having altered the terms of the agreement to allow payment in instalments, and with denial of receipt of ksh 500, 000/= by the Plaintiff, this court cannot hold and finds that the Defendant has paid further Ksh. 200,000/= and Ksh 500, 000/= as part payment of the balance of the purchase price.

38. The Plaintiff in its submissions urged the court to award it General damages of Ksh.3,000,000/= , which submission has vehemently been opposed by the Defendant. However, it is clear that the Plaintiff has indeed incurred losses due to the failure by the Defendant to pay the full purchase price as per the sale agreement. The Plaintiff is entitled to some compensation for such loss, and this can be compensated through an award of damages.

39. Therefore, this court finds and holds that having considered the available evidence, and the fact that the parties herein are bound by the terms of their contract/ agreement, then the Defendant is bound to pay Ksh.11,020,000/= or 102,990 USDs, as provided in the said sale agreement. Further, if the payment is made in USDs, then it should be at prevailing rate at the time of payment as per clause (b) of the said Sale agreement.

40. Further, the court finds that the Plaintiff has also proved on a balance of probabilities that it is entitled to general damages for breach of contract. Though the Plaintiff had sought for Ksh 3000, 000/=, the court uses its discretion and award the Plaintiff ksh 500,000/=, as General damages for breach of contract.



41. Further, the court finds and holds that the Plaintiff is entitled costs of the suit and interest at court's rate, given that the Defendant had to wait until the suit was filed to admit the claim. The Plaintiff has been in court since 2023.
42. For the above reasons, the court finds and holds that the Plaintiff has proved its case on the required standard of balance of probabilities. Consequently, judgment is entered for the Plaintiff against the Defendant for;
 - a. Payment of Ksh.11,020,000/= or 102,990 USDs, as stated in the terms of the agreement.
 - b. Interest on the above sum from 31st December 2021, until payment in full.
 - c. General damages of Ksh. 500,000/= for breach of contract
 - d. Costs of the suit and interest thereon at courts rate.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 8TH DAY OF MAY 2025.

L. GACHERU

JUDGE

8/5/2025

Delivered online in the presence of

Meyoki – Court Assistant

Mr Muma for the Plaintiff

M/S Kingara for the Defendant

L. GACHERU

JUDGE

8/5/2025

