



**Njoro Teachers Welfare Association Suing Through David Waweru, Bonareri Kerioba & Jacob Songor and 40 others & 4 others v Komen & 7 others (Environment & Land Case 340 of 2017 & 481 of 2016 (Consolidated)) [2024] KEELC 604 (KLR) (8 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 604 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**  
**ENVIRONMENT & LAND CASE 340 OF 2017 & 481 OF 2016 (CONSOLIDATED)**  
**A OMBWAYO, J**  
**FEBRUARY 8, 2024**

**BETWEEN**

**NJORO TEACHERS WELFARE ASSOCIATION SUING THROUGH DAVID WAWERU, BONARERI KERIOBA & JACOB SONGOR AND 40 OTHERS ..... PLAINTIFF**

**AND**

**ABDUL- GHANI KIPKEMBOI KOMEN ..... 1<sup>ST</sup> DEFENDANT**  
**ABDUL-KHALID KIPKEMEI KOMEN ..... 2<sup>ND</sup> DEFENDANT**  
**OCRA REALTORS LTD ..... 3<sup>RD</sup> DEFENDANT**  
**SMARTLINE CLASSIC SACCO THROUGH DANIEL ONGERA ONDERI, KODECK OKWORO & JONES WILFRED ASUGA ..... 4<sup>TH</sup> DEFENDANT**  
**DANIEL ONGERA ONDERI ..... 5<sup>TH</sup> DEFENDANT**  
**KODECK OKWORO ..... 6<sup>TH</sup> DEFENDANT**  
**JONES WILFRED ASUGA ..... 7<sup>TH</sup> DEFENDANT**

**AS CONSOLIDATED WITH**  
**ENVIRONMENT & LAND CASE 481 OF 2016**

**BETWEEN**

**NJORO TEACHERS WELFARE ASSOCIATION SUING THROUGH DAVID WAWERU, BONARERI KIRIOBA ORIANGO & JACOB SONGOR ..... 1<sup>ST</sup> PLAINTIFF**  
**DAVID WAWERU ..... 2<sup>ND</sup> PLAINTIFF**



**BONARERI KIRIOBA ORIANGO ..... 3<sup>RD</sup> PLAINTIFF**

**JACOB SONGOR ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**OCRA REALTORS LTD ..... 1<sup>ST</sup> DEFENDANT**

**ABDUL KADIR MOHAMED ..... 2<sup>ND</sup> DEFENDANT**

### **JUDGMENT**

1. The matter came before court on 28<sup>th</sup> February, 2022 and the court directed that it is evident that the dispute both in this file and ELC No 481 of 2016 arose out of an aborted purchase of land belonging to some of the Defendants. The transaction related to purchase of portions of the same parcel of land. The Defendants are either the principle owners and/or alleged selling agents.
2. The court was persuaded that the issues and the subject matter in the two suits are basically the same. The court directed that the two suits be consolidated and tried together. It was also directed that ELC No 340 of 2017 be deemed to be the lead file in which proceedings henceforth shall be taken and pleadings filed.
3. The Plaintiffs filed their further amended Plaint dated 25<sup>th</sup> March, 2022 on 29<sup>th</sup> March, 2022 and they aver that at all material times, the 1<sup>st</sup> and 2<sup>nd</sup> Defendant were the beneficial owner (as tenants in common) of a portion of parcel of land situated North of Njoro Town Nakuru District measuring approximately sixty-six (66) acres or thereabout of L.R No 10013/4. They aver that vide an agreement dated 21<sup>st</sup> April, 2011, the 2<sup>nd</sup> Defendant appointed the 1<sup>st</sup> Defendant as its sole sale agent, with the responsibility to undertake the process of subdivision of its share of the suit property into sub plots and to sell off the same.
4. They aver that by an agreement of sale dated 26<sup>th</sup> August, 2011, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants agreed to sell to the 4<sup>th</sup> Defendant a portion of L.R No 10013/4 (hereinafter only referred to as the suit property) measuring approximately 29 acres at a price of Ksh 13,775,000/=.
5. They aver that sometimes in the month of July, 2011, the 4<sup>th</sup> Defendant through the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants with a proposal to enter into a partnership with the Plaintiffs for the purpose of purchase a portion of the suit property. The 2<sup>nd</sup>-41<sup>st</sup> Plaintiffs aver that they are members of Njoro Teachers Welfare under the leadership of David Muriithi Waweru, Bonareri Kerioba Oriango and Jacob C. Songol and they operated an investment account in the name of Njoro Teachers Investment account No 5-02-00010778-00 Cosmopolitan Savings Credit Co-operative Society Ltd, Nakuru.
6. The Plaintiffs aver that the 2<sup>nd</sup>- 41<sup>st</sup> Plaintiffs on 17<sup>th</sup> August, 2016 registered the 1<sup>st</sup> Plaintiff under the *Societies Act* with a full mandate to deal with their affairs. They aver that it was mutually agreed between the Plaintiffs and the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants that the Plaintiffs would purchase 10 acres whereas the 4<sup>th</sup> Defendant would purchase 19 acres at a cost of Ksh 4,750,000/= only and Ksh 9,025,000/= only respectively.
7. The Plaintiffs aver that the Plaintiffs in fulfillment of their obligation under the agreement duly remitted the entire sum of Ksh 4,750,000/= from Njoro Teachers Investment Account No 5-02-00010778-00 Cosmopolitan Savings Credit Co-operative Society Ltd, Nakuru to the 1<sup>st</sup>-3<sup>rd</sup> Defendants through the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants receipt whereof was duly acknowledged.



8. The Plaintiffs aver that they jointly and severally deposited Ksh 4,237,000/= into account No 0050797018 Diamond Trust account operated by the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants therein. The Plaintiffs aver that upon completion of the purchase they took possession of their portion of the 10 acres and proceeded to subdivide the same amongst themselves into 41 plots.
9. The Plaintiffs aver that it was further a term of the agreement with the Defendants that the Vendor would be responsible for ensuring that the subdivision of the parcel is successful including issuance of the Land Control Board Consent to subdivide the same amongst themselves into 41 plots.
10. The Plaintiff's aver that it was further a term of the contract that the Vendor would deliver a certified copy of the deed plan to the purchasers. They aver that it was also a term of the agreement that the 1<sup>st</sup>-3<sup>rd</sup> Defendants would deliver the following documents to the Plaintiffs and the 4<sup>th</sup> Defendant. i) Original title document ii) Original Deed Plain iii) Duly executed transfer in triplicate iv) Valid Rates Clearance Certificate v) Duly completed and signed stamp duty valuation form in the prescribed form v) Valid Land Rate clearance certificate vi) Commissioner of Lands Consent to Transfer viii) Land Control Board to transfer ix) All other consents and approvals x) Any other documents necessary in order to complete transfer
11. The Plaintiffs aver that in or about the month of February, 2016, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants unlawfully and without any notice, color of right and in breach of the terms of agreements between themselves entered the Plaintiff's land, fenced off and cultivated the same. They aver that further in utter breach of the terms and conditions of the agreement between themselves the Defendants have failed to perform their obligations.
12. They list the particulars of breach of agreement as: a) Failing to deliver the documents stipulated under clause 5.3 of the agreement, b) Failing to comply with conditions stipulated under clause 3.1 and 3.2 of the agreement, c) Denying the Plaintiff vacant possession.

The Plaintiff's seek the following reliefs:

- a. A declaration that the Defendants are in breach of the terms and conditions of the agreement between themselves.
  - b. An order of specific performance compelling the Defendants to comply with the terms and conditions of the agreement and more specifically to complete the process of subdivision and transfer of 10 acres to the Plaintiffs.
  - c. Orders of permanent injunction restraining the Defendants either by themselves, servant and/or agents from entering, dispossessing, cultivating, selling, alienating or in any way dealing with the Plaintiffs land being 10 acres on L.R No 10013/4.
  - d. In the alternative, an order for refund of the purchase price of Ksh 4,750,000/= together with interest at court rate with effect from 26<sup>th</sup> August, 2011 to the date of payment.
  - e. Costs of the Suit.
13. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed their Statement of Defence on 28<sup>th</sup> July, 2022. They deny each and every allegation of fact in the Further Amended Plaint. They state that any agreement executed by them for sale of land and or appointment of agent for purposes of subdivision and sale as alleged (which is denied) for any portion of L.R No 10013/4 was vitiated for want of performance by the 3<sup>rd</sup> Defendant and the 4<sup>th</sup> Defendant and as consequence the Agency Agreement and the Agreement for Sale were all frustrated and/or could not be performed.



14. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants deny having entered into any contractual agreement with the Plaintiffs herein and are strangers to any agreements alleged to be entered into by the Plaintiff for any purchase of land puts the Plaintiff to strict proof thereof.
15. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants also state that they have not received any payment consideration from the Plaintiff and/or any of the Defendants with respect to the subject matter in these proceedings and puts the Plaintiffs to strict proof thereof. They state that the Plaintiffs have no cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and have not entered into any agreement for sale with the Plaintiff. They state that the agreement for sale dated 26<sup>th</sup> August, 2011 was violated for want of performance. They state that at no time had the Plaintiff granted any party possession of the suit land and puts the Plaintiff to strict proof.
16. They also deny that they unlawfully took possession of the suit land and further deny that the Plaintiff was in possession of the suit land nor entitled to enter and take possession of the said land. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants pray that the Plaintiff's suit against them be dismissed with costs and interest.
17. The 4<sup>th</sup> Defendant filed a statement of Defence to the suit on 16<sup>th</sup> February, 2018 and state that the suit filed against it is vague, unmerited, ambiguous and does not disclose sufficient particulars or any known cause of action against it and should be struck out with costs. The 4<sup>th</sup> Defendant admitted that this Court has jurisdiction to hear and determine this suit but denies that any cause of action has arisen against them.

#### **Evidence on Record**

18. On 30<sup>th</sup> October, 2023 when the matter came before the court, counsel for the Plaintiffs informed the court that the matter is consolidated with ELC Case No 481 of 2016 and the Petitioners are the same. He stated that he hoped the matter would proceed together. He stated that they shall not be pursuing the land and they are pursuing a refund of the money. Counsel further stated that in the matter, the plaintiff sought judgment for land purchase for LR No 10013/14. He stated that the Plaintiff in ELC No 111 of 2016 was in respect of an agreement for sale in the suit before court.
19. Counsel for the Plaintiffs stated that the court held that the Plaintiff in ELC No 111 of 2016 had no power to sell land. He stated that they are claiming a refund of Ksh 6 million in ELC case No 481 of 2016 and the payment is captured in paragraph 2 of the ruling by Justice Munyao.
20. He stated that in ELC Case No 340 of 2017, it is 20 acres and the smart line Sacco 4,750,000 in ELC Case No 481 of 2016 where they had put in an application of summary judgment.
21. Josephat Ndirangu testified as PW1 and he stated that he is a farmer and he has been a teacher but he retired in 2017. He stated that he is an official of Njoro Teachers Welfare Association and he has a statement in civil suit No 340 of 2017 and the statement is dated 14<sup>th</sup> September, 2017 which was adopted as part of his evidence. He stated that he filed a Notice of Motion dated 19<sup>th</sup> September, 2017 and this was as application for injunction and the supporting affidavit is in his name. He stated that the court should look at the motion and the annexure in Case Number 340 of 2017 and he prayed that they have their money refunded. He stated that they are praying for Ksh 4,750,000 and are praying for costs and interest.
22. He stated that they tried to get the money with no success and in Case Number 481 of 2016, they had filed a statement dated 11<sup>th</sup> October, 2023 and filed on the same day. He also adopted the statement as part of his evidence in chief.



23. He stated that in this suit they are asking for Ksh 6,000,000/= and costs and interest. He stated that he has a Notice of Motion dated 6<sup>th</sup> September, 2021 and he prayed for a refund of Ksh 6,000,000/= and the motion is supported by an affidavit of Bonareri Kirioba Oriango. He prayed that the court relies on affidavit and annexures. He testified that he is aware of Case No 111 of 2016 and the court should look at the judgment. He testified that they partnered with smart line Sacco and they had planned to buy 20 acres and found that they could not. He testified that they partnered with them for 10 acres out of 29 acres. He testified that they paid Ksh 4,000,000 in full and later they bought 10 acres of 600,000 per acre totaling to 6 million.
24. In his witness statement dated 14<sup>th</sup> September, 2017, he states that sometimes in 2011, the principal of Kilimo High School, Mr. Nathan Nyabayo, a member of their welfare informed them that there was a piece of land at the Komen's family that was being sold. He states that smart line sacco had entered into an agreement with the owners for the purchase of 29 acres on the 26<sup>th</sup> August, 2011 and Mr. Nyabayo informed them that the Sacco could only pay for 19 acres and requested if they could take 10 acres.
25. He states that a meeting was convened at Njoro boys High School between their members and the representatives of the Sacco Mr. Nyabayo and Mr. Orina and Jessee of Odra Realtors, and Michoma a physical planner. He states that the Smart line Sacco introduced Jesse as the agent of the sellers and they talked and agreed that they were to take 10 acres and they take 19 acres. He states that they showed them the search of the title 10013/4 to confirm ownership of the property.
26. He states that they informed them that the purchase price for the 10 acres would be Ksh 4.75 million since there was already an agreement between the sellers and Smart line where they orally agreed to partner and to pay the purchase price through them. He stated that they started collecting money from their members and they deposited the same in the account of officials of Jones and Kodek who were officials of Smart line.
27. He states that the smart line officials confirmed to them that they remitted all the money they paid to Odra as agents of the seller. He states that Smart line gave them payment receipts that were issued to them by Odra in their name. He states that after completing the payment, they instructed Michoma to excise 10 acres from a portion 29 acre that had been sold to Smart line. He states that Mr. Michoma then excised 10 acres from the 29 acres. He states that they paid Michoma Ksh 3,000/= and he issued a receipt.
28. He states that Mr. Michoma then brought in a surveyor who subdivided the 10 acres into 41 portions and all their members took possession of their respective plots. He stated that they have the subdivision plan by Michoma. He states that they were in occupation from 2011 October until February, 2016 when a stranger entered into the land, ploughed it and fenced off.
29. He states that they were later informed that it was Abdullah and his brother called Junior who did this and they met Abdullah and tried sorting it out but it never bore fruit. He states that sometimes in 2012, they were told that another piece of land within the same property was being sold which belonged to Abdul Khadir a brother to the 1<sup>st</sup> seller. He further states that Mr. Jacob Songor met Mr. Abdul Khadir who informed him to contact his agents Odra Realtors Ltd who took them to show and showed them the land and the beacons to the 10 acres.
30. He states that they entered into an agreement on the 2<sup>nd</sup> February, 2012 and paid the entire sum of Ksh 6,000,000/= to the seller through the agent Odra Realtors Ltd. He states that they again contacted Mr. Michoma who subdivided the parcel into 49 plots and they have the sub-division plan. He states that their members took possession thereafter.



31. He states that sometimes in February, 2016 Abdul Khadir came into the property, fenced it off, cultivated and uprooted all the trees. He states that the mutations of the deed plan were to be registered by the Physical Planner and they paid Michoma Ksh 415,000/= for the registration of the same. He states that it appears as if there is a disagreement between Ocra and Abdul Khadir over the remission of the purchase price. He states that Jesse of Ocra Realtors has confirmed on oath in ELC 111 of 2016 that he indeed paid the purchase price to Abdul. He referred the court to paragraph 8 of his affidavit sworn on 7<sup>th</sup> April, 2016.

### **Plaintiff's Submissions**

32. The Plaintiffs submit that at the hearing the court was told that the cases were limited to refund of the purchase price in view of the judgment of the court in Nakuru ELC No 111 of 2016 Ocra Realtors Ltd vs Abdulghani Kipkemboi Komen & 2 others and the judgment was delivered on 30<sup>th</sup> September 2019. Reliance was placed on paragraphs 33,34,35 and 38 of the judgment.
33. The Plaintiff submits that there is no dispute the parcels of land subject of this suit were sold by Ocra Realtors Ltd who is the 3<sup>rd</sup> Defendant. They submit that following the finding by the court that Ocra Realtors Ltd was not a registered estate agent, it follows that the Plaintiffs recourse lies on seeking refund of the purchase price paid by them to the Defendants herein.
34. The Plaintiffs submit that they collected Ksh 4,750,000/= and the same was paid to the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants who were officials of the 4<sup>th</sup> Defendant herein. They submit that the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants confirmed that they paid Ksh 4,750,000/= to the 3<sup>rd</sup> Defendant herein. They submit that on 24<sup>th</sup> June, 2012, the Plaintiff paid Ksh 276,000/= to the 3<sup>rd</sup> Defendant and official receipt was issued. They submit that on 31<sup>st</sup> October, 2011 the Plaintiff paid Ksh 1,474,000/= to the 4<sup>th</sup> Defendant and on 7<sup>th</sup> November, 2011 the Plaintiff paid Ksh 3,000,000/= to the 4<sup>th</sup> Defendant.
35. They submit that the total amount paid to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants through 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants is Ksh 4,750,000/=. They submit that the said amounts were deposited in the account held by the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants hence the need to join the said Defendants who were the officials of the 4<sup>th</sup> Defendant herein. They submit that the 3<sup>rd</sup> Defendant was the agent of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein.
36. They submit that they have proved their cases on a balance of probability as required by law. They pay that the court be pleased to enter judgment against the Defendants jointly and severally for Ksh 4,750,000/= with interest at court rate from 26<sup>th</sup> August, 2011 to the date of payment in full and cost of the suit.
37. They also submit that PW1 also testified for the Plaintiffs in Nakuru ELC No 481 of 2016 and he adopted his statement dated 11<sup>th</sup> October, 2023 as evidence in Chief. They submit that he further relied on the notice of motion dated 6<sup>th</sup> September, 2021 and the Supporting Affidavit therefore. They submit that the notice of motion sought summary judgment for Ksh 6,000,000/= with costs and interest against the Defendants jointly and severally.
38. The Plaintiffs gave a breakdown of payment of Ksh 6,000,000/= and submit that the 3<sup>rd</sup> Defendant was the Plaintiff in Nakuru ELC No 111 of 2016 (as per the judgment of the court dated 30<sup>th</sup> September, 2019). They submit that the 3<sup>rd</sup> Defendant admitted the Plaintiffs' claim of Ksh 6,000,000/= in Nakuru ELC No 111 of 2016 and the company claimed that it paid the money to the other Defendants who instructed it to sell the land on their behalf. They urged the court to enter judgment for the Plaintiff in ELC No 481 of 2016 for Ksh 6,000,000/= with interest from 2012 to the date of full



payment together with costs of the suit. In ELC No 340 of 2017, they prayed for Ksh 4,750,000/= with interest from 26<sup>th</sup> August, 2011 together with costs of the suit.

### **Analysis and Determination**

39. On 30<sup>th</sup> October, 2023, counsel for the Plaintiff informed the court that the matter is consolidated with ELC case No 481 of 2016 and the Petitioner is the same. He further stated that they shall not be pursuing the land and they are pursuing a refund of the money. This court thus identifies the following issues for determination:
- a. Whether the Plaintiffs are entitled to an order of refund of the purchase price of Ksh 4,750,000/= together with interest at court rate with effect from 26<sup>th</sup> August, 2011 to the date of payment?
  - a. Whether the Plaintiffs are entitled to an order of refund of Ksh 6,000,000/= together with interest at court rate with effect from 2012?
  - b. Who should bear the costs of the two suits?
40. The court notes that in the Plaint filed on 29<sup>th</sup> March, 2022, the Plaintiffs aver that by an agreement of sale dated 26<sup>th</sup> August, 2011, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants agreed to sell to the 4<sup>th</sup> Defendant a portion of L.R No 10013/4 (hereinafter only referred to as the suit property) measuring approximately 29<sup>th</sup> acres at a price of Ksh 13,775,000/=.
41. It is the Plaintiffs case that sometimes in the month of July, 2011, the 4<sup>th</sup> Defendant through the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants with a proposal to enter into a partnership with the Plaintiffs for the purpose of purchase a portion of the suit property and they operated an investment account in the name of Njoro Teachers Investment Account No 5-02-00010778-00 Cosmopolitan Savings Credit Co-operative Society Ltd, Nakuru.
42. The 2<sup>nd</sup>- 41<sup>st</sup> Plaintiffs aver that on 17<sup>th</sup> August, 2016 they registered the 1<sup>st</sup> Plaintiff under the *Societies Act* with a full mandate to deal with their affairs. They aver that it was mutually agreed between the Plaintiffs and the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants that the Plaintiffs would purchase 10 acres whereas the 4<sup>th</sup> Defendant would purchase 19 acres at a cost of Ksh 4,750,000/= only and Ksh 9,025,000/= only respectively.
43. The Plaintiffs aver that the Plaintiffs in fulfillment of their obligation under the agreement duly remitted the entire sum of Ksh 4,750,000/= from Njoro Teachers Investment Account No 5-02-00010778-00 Cosmopolitan Savings Credit Co-operative Society Ltd, Nakuru to the 1<sup>st</sup>-3<sup>rd</sup> Defendants through the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants receipt whereof was duly acknowledged.
44. The Plaintiffs aver that they jointly and severally deposited Ksh 4,237,000/= into account No 0050797018 Diamond Trust account operated by the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants therein. The Plaintiff's aver that upon completion of the purchase took possession of their portion of the 10 acres and proceed to subdivide the same amongst themselves into 41 plots.
45. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants on the other hand in their statement of Defence filed on 28<sup>th</sup> July, 2022 state that any agreement executed by them was vitiated for want of performance by the 3<sup>rd</sup> Defendant and 4<sup>th</sup> Defendant and as consequence the Agency Agreement and the Agreement for sale were all frustrated and/or could not be performed. They also deny having entered into any contractual agreement with the Plaintiffs herein and are strangers to any agreements alleged to be entered into by the Plaintiff for any purchase of land.



46. The 4<sup>th</sup> Defendant on the other hand states that the suit filed against it is vague, unmerited, ambiguous and does not disclose sufficient particulars or any known cause of action against it and should be struck out with costs

Section 3 (3) of the Contract Act provides that;

“3(3) No suit shall be brought upon a contract for the disposition of an interest in land unless

—

- (a) the contract upon which the suit is founded—
  - (i) is in writing;
  - (ii) is signed by all the parties thereto; and
- (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:

Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the *Auctioneers Act* (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.

47. In the case of *Nelson Kivuvani...Vs...Yuda Komora & Another*, Nairobi HCCC No.956 of 1991, the Court held that:-

“the agreement for sale of land which contains the names of the parties, the number of the property, the purchase price and the conditions attached thereto, the obligations, express or implied, of each of the parties and signed and witnessed by two witnesses who signed against their names amount to a valid contract”.

48. This court has looked at the pleadings in ELC No 481 of 2016 and found that there is a sale agreement dated 2<sup>nd</sup> February, 2012 and filed in court on 10<sup>th</sup> September, 2021 between the Plaintiffs’ and one Abdul Kadir Komen who is listed as the 2<sup>nd</sup> Defendant in ELC No 481 of 2016. The Plaintiffs have gone ahead to illustrate how the payments were made by adducing both cash deposit receipts. In the Court of Appeal case of *Attorney General & another v Andrew Maina Gitbinji & Another* [2016] eKLR Waki JA. held that,

“A cause of action is an act on the part of the defendant, which gives the plaintiff his cause of complaint.”

49. This court finds that the Plaintiffs have a valid cause of action and they are entitled to a refund of the purchase price. In view of the foregoing I issue the following orders:

- a. The Plaintiffs in ELC Case No 340 of 2017 are to be refunded the purchase price of Ksh 4,750,000/= by the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants in ELC Case No 340 of 2017 together with interest at court rate with effect from 26<sup>th</sup> August, 2011 to the date of payment.
- b. The Plaintiffs in ELC Case No 481 of 2016 are to be refunded of Ksh 6,000,000/= by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in ELC Case No 481 of 2016 together with interest at court rate with effect from 10<sup>th</sup> May, 2012 to the date of payment.



- c. The costs of ELC Case No 340 of 2017 and ELC Case No 481 of 2016 are awarded to the Plaintiffs in the respective cases.

**DATED AND DELIVERED VIRTUALLY AT NAKURU THIS 8TH DAY OF FEBRUARY, 2024**

**A.O. OMBWAYO**

**JUDGE**

