



**Kihumo Property Developers (K) Ltd v Sausi t/a Ochoki & Ochoki Associates Advocates
(Environment & Land Case 709 of 2016) [2023] KEELC 18875 (KLR) (6 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 18875 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 709 OF 2016**

EK WABWOTO, J

JULY 6, 2023

BETWEEN

KIHUMO PROPERTY DEVELOPERS (K) LTD PLAINTIFF

AND

**JIMMY SAUSI T/A OCHOKI & OCHOKI ASSOCIATES
ADVOCATES DEFENDANT**

JUDGMENT

1. The Plaintiff instituted the present suit against the Defendant vide plaint dated 24th June 2016 seeking reliefs against the Defendant as follows: -
 - a. A declaration that the Defendant acted fraudulently with the sole intention of defrauding the Plaintiff.
 - b. An order that the Defendant do refund the Plaintiff the sum of Kshs 30,605,404/-
 - c. Interest on (b)
 - d. Costs of the suit and interest thereon.
2. The suit was contested vide a defence dated 6th December 2019 that was filed by the Defendant.

The Plaintiff's case.

3. In the plaint, the Plaintiff stated that it had an Advocate- Client relationship with the Defendant and that in the month of October 2014, the Defendant fraudulently misrepresented to the Plaintiff that there was all that piece of property known as L.R. 209/2268 measuring 0.0235 hectares which was being sold by Hunyo Njuguna and Peter Mbugua Wainaina for Kshs 20,900,000/-. The defendant caused a grant for the property to be issue to the Plaintiff's affiliate Company Gee Six (K) Limited and subsequently transferred the said to the Plaintiff. The Plaintiff received a notice on 21st April 2015,



from the Nairobi City County in respect of the suit property regarding its sanitation condition and was subsequently charged with non-compliance with the notice on 8th July 2015.

4. It was also averred that on or about 21st January 2016, the Plaintiff was sued by Martin Thiong'o Hunyu, Peter Mbugua Hunyu and Veronica Muchera Hunyo the administrators of the estate of Hunyo Njuguna (deceased) in ELC No. 34 of 2016 for fraudulently acquiring land belonging to their late father's estate.
5. The Plaintiff pleaded the particulars of fraud which were particularized at paragraph 13 of its plaint as follows: -
 - a. Misrepresenting to the Plaintiff that Hunyu Njuguna (deceased) was selling land.
 - b. Preparing and having the Plaintiff execute a purported agreement for sale of Land Reference 209/2268 measuring 0.0235 hectares from Hunyu Njuguna well knowing that he was deceased.
 - c. Obtaining Kshs 20,900,000/- while purporting that he will rent the same to Hunyu Njuguna well knowing that he is deceased.
 - d. Obtaining over Kshs 1,244,499 towards purported payment of stamp duty, rates and legal fees among others.
 - e. Causing a Grant to be fraudulently issued to Gee Six (K) Limited and subsequently transferring the same to the Plaintiff.
6. During trial, James Njogu Njenga testified as PW1 and the sole Plaintiff's witness. He adopted his witness statement and bundle of documents dated 24th June 2016 as his evidence in chief and urged the court to grant the prayers sought.
7. On cross-examination, he stated that the company has 6 directors but he had not attached any resolution of the Company confirming the company's decision to sue. He also stated that he signed the sale agreement in the presence of the Defendant who acted as their Advocate in the matter. He further stated that the transaction was not completed and that the said property had been sold to a third party.
8. When asked if any due diligence was done prior to the transaction, he stated that the same was done through their Advocate Mr. Ochoki. He also stated that a deposit of Kshs 5,000,000/- was paid in cash to the Defendant. He also stated that a loan of Kshs 14,961,000/- was borrowed from the bank and sent to the Defendant.
9. When cross-examined about the transfer, the stated that he could see a difference in the Advocate's signatures appearing at the transfer and the agreement of sale. He also told the Court that the title of the property was with their Advocate the Defendant herein.

The Defendant's case.

10. The Defendant filed a statement of defence dated 6th December 2019 seeking inter alia that the suit be dismissed. The Defendant also filed a Preliminary Objection dated 18th November 2021 to the effect that the suit was commenced without a lawful resolution and or authority of the Plaintiff company and also that the suit as drawn and filed is therefore devoid of competence for want of compliance with substantive legal provisions vis- a-vis institutions of suits inter alia by a legal person and pleadings on behalf of such legal person.



11. The Defendant denied participating in the assignment of lease dated 24th August 1999 wherein Hunyo Njuguna and Peter Mbugua Wainaina had sold L.R. No. 209/2268 to Gee Six (K) Limited at an agreed price of Kshs 15,000,000/-. The Defendant averred that he only participated in the transfer of L.R. No. 209/2268 from Gee Six (K) Limited to Kihumo properties Developers (K) Limited which was a sister company and with the same directors and shareholders.
12. The Defendant also averred that the Plaintiff had come to court with unclean hands having participated in the sharing agreement done on 24th April 2015 to which Kshs 15,000,000/- was to be distributed as follows:
 1. Lawyers fee (Mr. Moi) Kshs 1,350,000/-
 2. Anyora Kshs 1,625,000/-
 3. Devs Kshs 875,000/-
 4. Cyrus Kshs 875,000/-
 5. Broker fees Kshs 2,000,000/-Balance was to be issued to the two other directors James Njogu Njenga and Francis Maina Mwangi.
13. The Defendant further denied any particulars of fraud as was pleaded by the Plaintiff and averred that there was no sale in respect to the said transaction but a transfer from one company to the other with the same directors and shareholders. The Defendant further denied appending his signature in respect to the transfer dated 8th April 2015.
14. During trial, Jimmy Sausi Ochoki testified as DW1 and the sole Defendant's witness. He relied on his witness statement dated 9th March 2021 and bundle of documents dated 6th December 2019 as his evidence in chief. He also added that he did not participate in the assignment of lease which was between Gee Six Limited and Hunyo Njuguna together with Peter Mbugua Wainaina.
15. The court was also informed that the defendant never prepared the transfer. It was also his testimony that the Plaintiff took possession and requested approval from Nairobi City County to renovate the building and the amount that was paid was used for renovations after the eviction of the previous tenants. He also stated that the Plaintiff's company had 6 directors but only one had testified. He further stated that there was no sale of the property since it was just a transfer from Gee Six to the Plaintiff.
16. It was further stated that the stamp duty in respect to the said transaction was paid and there was a handwritten breakdown of all the expenses and how they had been accounted for including payment of Kshs 720,000/- received by PW1. He also stated that one of the defence witness Cyrus Nyakundi Mosiara was brutally murdered. He further stated that the Ministry of Lands had written a letter objecting to the value of the property being Kshs 15,000,000/- and valued the same at Kshs 60,000,000/-
17. He further stated that the sale agreement was a forgery since it did not bear his full names. He stated that the payment of 5,000,000/- that was received to this law firm was paid to PW1 after it was withdrawn and paid out to PW1 in cash. It was also stated that the payment of Kshs 14,900,000/- was to be used in carryout the renovations and a breakdown of the same had been done.
18. On cross-examination, he stated that he was admitted to the bar on 18th August 2008 and he maintained that the sale agreement was fake as he did not prepare it. He stated that the documents had been forwarded to DCI headquarters for investigations but the said investigations were yet to be concluded.



19. On further cross-examination, he acknowledged receiving Kshs 14,961,000/- and a further Kshs 5,000,000/- which were paid to his law firm. He stated that upon receiving the money, he disbursed the same. He denied ever acting for Mr. Hunyo Njuguna.
20. When re-examined, he reiterated that he did not prepare the sale agreement dated 29th October 2014 and that the same was a forgery. He further stated that he had no reason to misappropriate the over Ksh 20 million which is peanuts. He also stated that the Plaintiff is still in possession of the property.
21. At the end of the viva voce evidence parties filed their respective written submissions.

The Plaintiff's written submissions.

22. The Plaintiff filed its written submissions dated 20th February 2023 and raised two issues for determination: -
 - a. Whether there was fraud and misrepresentation by the Defendant.
 - b. Whether the Plaintiff is entitled to the prayers sought.
23. The Plaintiff submitted that the following particulars of fraud had been proved owing to the evidence tendered to this court.
 - a. Misrepresenting to the Plaintiff that Hunyo Njuguna (deceased) was selling land.
 - b. Preparing and having the Plaintiff execute a purported agreement for sale of land reference 209/2268 measuring 0.0235 hectares from Hunyo Njuguna well knowingly that he was deceased.
 - c. Obtaining Kshs 20,900,000/- while purporting that he sent the same to Hunyo Njuguna well knowing that he is deceased.
 - d. Obtained over Kshs 1,244,499 towards purported payment of stamp duty, rates and legal fees among others.
 - e. Causing a grant to be fraudulently issued to Gee Six (K) limited and subsequently transferring the same to the Plaintiff.
24. The Plaintiff further submitted that the sale agreement was duly drawn by the defendant, duly witnessed and stamped. They added that they had also produced before this court bank statements and correspondence providing how the Defendant Advocate who was purportedly acting for deceased vendor recovered the proceeds of sale and that the documents that were produced clearly corroborate the active participation from the start to the conclusion of the purported sale.
25. It was their further submissions that the Defendants went to file an application dated 27th January 2020 seeking orders that they be granted leave to conduct forensic tests confirming the signatures attesting to the vendor's and purchasers' signatures. However, the defendants failed to tender before this court the report of the outcome conducted by the Directorate of Criminal Investigation (DCI).
26. On whether the Plaintiff is entitled to the prayers sought, it was submitted that the Plaintiff was a bonafide purchaser in the executed sale of LR No 209/2268 and the refund sought was particularized as follows: -
 - i. Kshs 5,000,000/- via RTGS.
 - ii. Kshs 14,961,000/- borrowed through Co-operative Bank and remitted vide RTGS.



- iii. Kshs 1,000,000/-.
- iv. Kshs 900,000/- vide cheque number 110745.
- v. Kshs 100,000/- in cash.
- vi. Kshs 170,000/- in cash.
- vii. Kshs 12,500/- in cash.
- viii. Kshs 7,460,905/- interest expected to be paid until the loan is fully paid.
- ix. Kshs 1,000,000/- being legal fees for defending ELC Case No 34 of 2016.

Total being Kshs 30,605,404/=

27. The Plaintiff relied on the following case in support of its case which cases, the court has duly considered; Lawrence Mukiri –vs- Attorney General & 4 others (2013) eKLR, Vijay Morjanian –vs- Nansigh Madhusing Darbar & Another (2000) eKLR and Kinyanjui Kamau –vs George Kamau (2015) eKLR.

The Defendant’s written submissions.

28. The Defendant filed written submissions dated 8th March 2023. The Defendant submitted that there was no authority obtained by PW1 to sue on behalf of the Plaintiff and hence therefore pursuant to Order 4 Rule 1 (4) of the Civil Procedure Code the suit was a nullity. Reliance was placed on the cases of High Court Petition No. 600 of 2013, East African Portland Cement Limited –vs- The Capital Markets Authority & 5 others, High Court Civil Case No. 45 of 2012 Kenya Commercial Bank Limited –vs- Stage Coach Management Limited among others which also this court has duly considered.
29. It was also submitted that the then Defendant or his firm did not draw/prepare the sale agreement dated 29th October 2004. Since during the cross-examination of the Defendant, he confirmed that he was admitted to the bar on 18th August 2008 and he was incapable of preparing the same. It was also submitted that the firm of Ochoki and Ochoki was merely receiving money as directed by James Njoroge Njenga and Francis Maina Murega and the same was utilized to carry out major renovations of the old premises on the suit land, and was also paid to auctioneers to evict tenants who had declined to move out of the premises to allow the Plaintiff carry out its renovations. The other sum of money was utilized to process the transfer between Gee Six (6) (K) Limited and the Plaintiff by paying stamp duty, registration fees, other sums were used to compromise a suit that had been filed at Nairobi City Court as well as pay the accumulated rates and penalties at the Nairobi County Government and that all payments, receipts and authorization notices are contained in the defendants list of documents.
30. It was also submitted that the Plaintiff could not have purchased a property in the year 2004 and then apply for a loan from Cooperative Bank in the year 2015. The property was owned by the Plaintiff’s sister company Gee Six (K) Limited way back in 1999. Gee Six (K) Limited was registered owner of L.R. No. 209/2268 vide the Assignment of lease dated 24th August 1999. It was submitted that the Defendant and his firm were involved only in the transferring from Gee Six (K) Limited to Kihumo Properties Developers (K) Limited vide transfer dated 8th April 2015.
31. The Defendant also questioned the involvement of PW1 in the said suit and wondered why he had not involved other directors of the company. It was also submitted that Peter Ndiba Kihara, the cousin to PW1 who introduced PW1 to the Defendant’s Offices also sought to have been called to testify as a witness in the suit. The Defendant submitted that it defeats logic as to why the Plaintiff had applied



and obtained several renovation authorities from Nairobi County Government to renovate a property that they do not own.

32. The Defendant further submitted that the defendant transferred LR No 209/2298 from Gee Six (K) Limited to the Plaintiff's names by a transfer instrument dated 8th April 2015 paid its stamp duty and proceeded to present the document to the Lands office on the 10th April 2015 at 10.45 hours which was attended by J.W. Kameiyu on official number 213 as his identification number. The said transfer was effected shortly after the defendant received the money from Muriu Mungai & Co. Advocates.
33. It was also submitted that in the absence of a board resolution, minutes, authority to the firm of Mongeri, Kinyanjui & Co. Advocates of expressly authorizing the said law firm to institute a suit on behalf of the Plaintiff, the fact that out of six directors/shareholders only one wrote a statement and indeed testified and the fact that Mr. Francis Maina Mwangi whose passport photo, ID number and PIN number appears on the transfer dated 8th April 2015 did not testify in support of Plaintiff's case is a clear indication that PW1, solely organized, arranged and indeed managed to defraud the Plaintiff in which he serves as a director.
34. The Defendant concluded his submissions by stating that the Plaintiff had not made any reference to his preliminary objection and hence this court should proceed to dismiss the suit with costs.

Analysis and determination.

35. The court has perused the pleadings, analyzed the evidence adduced during trial, considered the written submissions filed by the parties and is of the view that the following are the issues for determination:
 - i. Whether the Plaintiff's suit filed herein is fatally defective for having commenced without a lawful resolution and authority of the Plaintiff's company.
 - ii. Whether the Plaintiff has proved the particulars of fraud.
 - iii. Whether the Plaintiff is entitled to the remedies sought.

Issue No. 1

Whether the Plaintiff's suit is fatally defective for having been instituted without a lawful resolution and authority from the Plaintiff's company.

36. The Defendant raised an objection to the suit for the reasons that the suit had been commenced without a lawful resolution and or authority of the Plaintiff company and that no such authority has been conferred to James Njogu Njenga to sue in the name of the Plaintiff company.
37. In the Defendant's submissions dated 8th March 2023, the Defendants submitted extensively on the said issue and referred to several authorities for consideration which the court has considered. The Plaintiff never addressed the said issue in its written submissions.
38. Order 4 Rule 1 (4) of the Civil Procedure Rules 2010, deals with particulars to be contained in a plaint and states that:

“ where the Plaintiff is a corporation, the verifying affidavit shall be sworn by an Officer of the Company duly authorized under seal of the company to do so.”

39. The Plaintiff describes itself as a limited company and therefore the deponent of the verifying affidavit ought to demonstrate that he or she has authority to do so. In the instant suit, I have seen the Plaintiff dated 24th June 2016, I have also seen that the same was accompanied by a Verifying Affidavit sworn



by James Njogu Njenga on 24th June 2016 who swore the Verifying Affidavit as the Director of the Plaintiff.

40. In the case of *Leo Investments Ltd v Trident Insurance Company Ltd* (2014) eKLR Odunga J. found that the mere failure to file the resolution of the Corporation together with the Plaintiff did not invalidate the suit and the associated himself with the decision of Kimaru J. in the case of *Republic vs. Registrar General and 13 Others Misc. Application No. 67 of 2005* [2005] eKLR where the court held as follows:-

” ...such a resolution by the Board of Directors of a company may be filed at any time before the suit is fixed for hearing as there is no requirement that the same be filed at the same time as the suit. Its absence is, therefore, not fatal to the suit.”

41. In the case of *Spire Bank Limited v Land Registrar & 2 others* [2019] eKLR the Court of Appeal stated as follows: -

“ ...It is essential to appreciate that the intention behind order 4 rule 1 (4) was to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on its behalf. This was to address the mischief of unauthorized persons instituting proceedings on behalf of corporations, and obtaining fraudulent or unwarranted orders from the court. The company’s seal that is affixed under the hand of the directors ensured that they were aware of, and had authorized such proceedings together with the persons enlisted to conduct them. And where evidence was produced to demonstrate that a person was unauthorized, the burden shifted to such officer to demonstrate that they were authorized under the company seal. With this in mind, we dare say that the provision was not intended to be utilized as a procedural technicality to strike out suits, particularly where no evidence was produced to demonstrate that the officer was unauthorized.”

42. In view of the above, it is clear that it was sufficient for the authorized person to depose that he or she was duly authorized, but in the event of a complaint that such, person was unauthorized then it was upto the disputing party to demonstrate with evidence that there was no such authority or that the person was not a director of the Company. In the instant case, there was no dispute that James Njogu Njenga who testified as PW1 was not a director of the Plaintiff Company and as such the objection filed by the Defendant in respect to his Preliminary Objection dated 18th November 2021 and as raised at paragraph 23 of the Defendant’s statement of defence fails.

Issue No. 2

Whether the Plaintiff has proved the particulars of fraud.

43. The Plaintiff pleaded and particularized fraud against the Defendant. Paragraph 13 of the plaint dated 24th June 2016 particularized fraud against the Defendant as follows:

- a. Misrepresenting to the Plaintiff that Hunyu Njuguna (deceased) was selling land.
- b. Preparing and having the Plaintiff execute a purported agreement for sale of land reference 209/2268 measuring 0.0235 hectares from Hunyu Njuguna well knowing that he was deceased.
- c. Obtaining Kshs 20,900,000/- while purporting that he will remit the same to Hunyu Njuguna well knowing that he is deceased.
- d. Obtaining over Kshs 1,244,499 towards purported payment of stamp duty, rates and legal fees among others.



- e. Causing a grant to be fraudulently issued to Gee Six (K) Limited and subsequently transferring the same to the Plaintiff.
44. A party alleging fraud must specifically plead the particulars of fraud and lead evidence to prove the allegations of fraud. Whether there was fraud or not needs production of evidence. Fraud is defined under the Black's Law Dictionary 10th Edition as "A knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment". To decipher that there was fraud it is important that knowledge of the existence of fraud be established on the part of the Defendants. How then can fraud be proved? The Court of Appeal in Mombasa Civil Appeal No. 312 of 2012 Emfil Limited v Registrar of Titles Mombasa & 2 others [2014] eKLR held;
- "Allegations of fraud are allegations of a serious nature normally required to be strictly pleaded and proved on a higher standard than the ordinary standard of balance of probabilities".
- Similarly, the Court of Appeal decision in the case of John Kamunya & another v John Nginyi Muchiri & 3 others [2015] eKLR held that:
- "we find that the law is clear as put by Mr. Karanja that matters of "fraud" must be strictly and specifically pleaded before these can be interrogated by a court of law. Alternatively, even though not pleaded, these may be raised in the cause of the trial, evidence tendered on them, submission made on them and then left for the court to determine."
45. In the case of Gladys Wanjiru Ngacha vs Treresa Chepsat & 4 Others, [2013] eKLR, the Court held that:
- ".... Allegations of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required. It is not enough for the appellant to have pleaded fraud; she ought to have tendered evidence that proved the particulars of fraud to the satisfaction of the trial court. In Mutsonga vs. Nyati (1984) KLR 425, at pg 439, this Court held: "Whether there is any evidence to support an allegation of fraud is a question of fact".
46. A party alleging fraud must specifically plead the particulars of fraud and specifically lead evidence to prove the allegations of fraud. There are steps that must be taken to prove fraud. In the case of Vijay Morjaria Vs Nansign Madhusihn Darbar & Another (2000) eKLR, the court of Appeal stated as follows"-
- "It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts".
47. The same procedure goes for allegations of misrepresentation and illegally as outlined under Order 2 rule 4 of the Civil Procedure Rules. As regards the standard of proof, the court of Appeal in the case of Kinyanjui Kamau Vs George Kamau (2015) eKLR expressed itself as follows:-
- "It is trite law that any allegations of fraud must be pleaded and strictly proved. (See Ndolo Vs Ndolo (2008) 2 KLR (G & F) 742 wherein the court stated that:-



“...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”

“In cases where fraud is alleged, it is not enough to simply infer fraud from the facts”.

48. In the instant case, the Plaintiff in its submissions dated 20th February 2023 submitted that the Plaintiff had tendered evidence before this court proving beyond reasonable doubt that the Defendant had fraudulently misrepresented to them that he was representing the owner of the land when in actual sense he knew that the vendor was deceased and he caused the Plaintiff to execute an agreement with a dead person and he received the proceeds of the purported sale and appropriated the same to himself.
49. James Njogu Njenga’s evidence indicated that pursuant to an agreement dated 29th October 2014, the Defendant caused the Plaintiff to execute the same upon which a sum of over Kshs 22,144,499 was remitted towards the purported purchase of L.R.No. 209/2238 measuring 0.0235 hectares which was being sold by Hunyo Njuguna and Peter Mbugua for Kshs 20,900,000/-
50. The Plaintiff also produced evidence vide a bank statement showing how the sum of Kshs 5,000,000/- was paid to the Defendant. The Plaintiff also produced a letter dated 17th March 2015 from MMC Africa Law Advocates forwarding a copy of RTG’s confirming payment of Kshs 14,961,000/- which the Plaintiff had borrowed as a bank loan from Cooperative Bank to finance the purchase.
51. During cross-examination, the Plaintiff maintained that payment was made to the Defendant with a deposit of Kshs 5,000,000/- being paid at the first instance and later about over Kshs 14,961,000/- which was borrowed as a loan from the bank and paid to the Defendant.
52. From the evidence that was adduced during trial, the Defendant acknowledged receipt of Kshs 5,000,000/- and further sum of Kshs 14,961,000/- which was paid to his law firm. He however maintained that the sale agreement was forgery but did not adduce any evidence to support his allegations.
53. In the instant case, the Plaintiff was also able to produce evidence in court showing how the Defendant received the proceeds of sale and in the circumstances the Plaintiff has been able to prove the particulars of fraud as pleaded in its plaint as against the Defendant.

Issue No. III

Whether the Plaintiff is entitled to the reliefs sought.

54. Having made a finding that the Plaintiff has been able to prove the particulars of fraud as against the Defendant, the Plaintiff’s claim against the Defendant is proved and as such the Plaintiff is entitled to the reliefs sought. The Plaintiff pleaded for a declaration that the Defendant acted fraudulently with the sole intention of defrauding the Plaintiff. The Plaintiff also sought a refund of Kshs 30,605,404/- together with interest and costs of the suit. The law on special damages is that the same must be specifically pleaded and strictly proved. This position was also reiterated by the court in the decisions of National Social Security Fund Board of Trustees vs Sifa International Limited (2016) eKLR, Macharia & Waiguru vs Muranga Municipal Council & Another (2014) eKLR and Provincial Insurance Co.



EA Ltd vs Mordekai Mwangi Nandwa, KSM CACA 179 of 1995 (ur). In the latter case the Court was emphatic that:

“... It is now well settled that special damages need to be specifically pleaded before they can be awarded. Accordingly, none can be awarded for failure to plead. “

55. From the evidence that was presented before this court, the Plaintiff was only able to prove payment of Kshs 5,000,000/-, 14,961,000/- Kshs 900,999/- which were made to the Defendant and a further sum of Kshs 7,460,905/- which was expected as interest to be made in respect to the repayment of loan until payment in full. This amounts to a total of Kshs 28,322,904/- I will condemn the defendant to pay the said proved amount.
56. On the issue of costs, costs is at the discretion of the court and as a general rule, costs follow the event unless the court for good reason orders otherwise. In the present case, the Plaintiff has succeeded in its claim against the Defendant and is entitled to the costs of the suit.
57. On interest, I have considered the fact that the payment of Kshs 28,322,904/- had already factored a sum of Kshs 7,460,905 being interest that was to be paid in the repayment of the loan and as such I will not make any award on interest.

Final orders.

58. In conclusion, the court finds that the Plaintiff has been able to prove its case against the Defendant to the required standard of balance of probabilities. Consequently, the court hereby enters Judgement for the Plaintiff against the Defendant as follows: -
 - a. A declaration that the Defendant acted fraudulently with the sole intention of defrauding the Plaintiff.
 - b. Refund of Kshs 28,322,904/-
 - c. Costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF JULY 2023.

E.K. WABWOTO

JUDGE

In the presence of:

Mr. Mongeri for the Plaintiff.

Mr. Sausi h/b for Musa Juma for the Defendant.

Court Assistant – Caroline Nafuna.

