



Nyagowa v Seth & Wathigo Advocates (Environment and Land Case Civil Suit 25 of 2017) [2023] KEELC 18530 (KLR) (6 July 2023) (Judgment)

Neutral citation: [2023] KEELC 18530 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE CIVIL SUIT 25 OF 2017**

SO OKONG'O, J

JULY 6, 2023

BETWEEN

GEORGE ADADA NYAGOWA PLAINTIFF

AND

SETH & WATHIGO ADVOCATES DEFENDANT

JUDGMENT

1. The plaintiff instituted this suit against the defendant on 22nd September 2017 through Originating Summons dated 19th September 2017 seeking the determination of the following questions;
 - a. Whether the plaintiff sold to Ms. Crater Automobiles all that parcel of land known as L.R No. 29996, Grant No. 153894 (hereinafter referred to as “the suit property”) in a transaction in which the said purchaser was represented by the defendant.
 - b. Whether the plaintiff was entitled to an order that the defendant pursuant to its professional undertaking returns to the plaintiff the original title deeds and other completion documents for the suit property in the same state in which they were when received by the defendant.
 - c. Whether the defendant should be compelled to comply with the terms of its professional undertaking dated 19th January 2015.
 - d. Whether in the alternative, the defendant should be ordered to pay the remaining balance of Kshs. 14,653,826/- as undertaken within 7 days from the date of the order together with interest as per clause 3 of the agreement dated 12th January 2015 and other auxiliary disbursements.
 - e. Whether the defendant should be compelled to pay the costs of these proceedings.



The plaintiff's case

2. The plaintiff was all material times the registered owner of the suit property. Through an agreement for sale dated 12th January 2015, the plaintiff sold the suit property to Crater Automobiles(NBI) Limited (hereinafter referred to only as “the purchaser”) at a consideration of Kshs. 18,000,000/-. The plaintiff was represented in the transaction by the firm of Ouma Njoga & Company Advocates (hereinafter referred to only as “the vendor’s advocates”) while the defendant firm acted for the purchaser. Through a letter dated 19th January 2015, addressed to the vendor’s advocates, the defendant gave a professional undertaking on the following terms:

“1. That we will hold the completion documents referred to at Clause 7.1 of the sale agreement to your order, returnable on demand pending our payment to you on behalf of the vendor the sum of Kenya Shillings Eighteen Million(Kshs.18,000,000/-) being the purchase price of the property herein less any advance payment that shall have been released to the vendor as per clause 2(1) of the sale agreement, which sum shall accrue interest as per clause 3 of the sale agreement, net of all bank charges and deductions or withholdings whatsoever be forwarded to your client A/C via RTGS as follows:-

Ouma Njoga & Company

Advocates

A/C No. 0091325845

Barclays Bank of Kenya-kisumu Branch

Barckenx

Within 14 Days of registration of the transfer in favour of our client Crater Automobiles(nbi) Limited.

2. That if the sum advised in Clause (1) hereof together with any interest for late payment thereof is not forwarded to you on behalf of your client within 14 days from the date of successful transfer, of the title into the purchaser’s name then we shall forthwith and immediately upon demand return to you the completion documents in the same condition in which they were on leaving your offices without prejudice to your client’s other remedies available in law.

3. That by accepting, retaining, or utilizing the completion documents that will be sent by you to us, we shall be deemed not only to have accepted and confirmed the foregoing undertaking terms and conditions as set forth hereinabove but also to have acknowledged and confirmed that we are solely liable and responsible for the full compliance with the said undertakings terms and conditions.”

3. Following the issuing of the said undertaking by the defendant, the vendor’s advocates forwarded to the defendant the completion documents which the defendant used to transfer the suit property to the purchaser.

3. On 16th June 2015, the plaintiff and the purchaser executed a deed of variation of the agreement for sale dated 12th January 2015 whereby the parties agreed among others that:

1. The purchaser had paid the plaintiff a total sum of Kshs. 1,346,177/-



2. A sum of Kshs. 2,000,000/- was to be paid to the plaintiff upon the execution of the deed of variation and the plaintiff giving the purchaser full possession of the suit property.
3. A sum of Kshs. 5,000,000/- was to be paid to the plaintiff upon successful transfer of the suit property by the plaintiff to the purchaser and the plaintiff obtaining a change of user of the property from residential to commercial use.
4. The remaining balance in the sum of Kshs. 9,653,823/- was to be paid by the purchaser to the plaintiff within 90 days from the date of obtaining of the change of user.
4. After the execution of the said deed of variation, the purchaser paid the plaintiff an additional sum of Kshs. 2,000,000/- leaving a balance of Kshs. 14,653,823/- due and payable by the purchaser to the plaintiff. The defendant refused to pay the said sum of Kshs. 14,653,823/- despite demand having been made upon it to do so and the fact that the purchaser had taken possession of the suit property and obtained a change of user.
5. The plaintiff annexed to his affidavit in support of the Originating Summons among others copies of; Grant No. I.R 153894 for L.R No. 29996, agreement for sale dated 12th January 2015, a letter from the defendant to the vendor's advocates dated 19th January 2015, a letter of undertaking from the defendant to the vendor's advocates dated 19th January 2015, transfer dated 21st February 2015, deed of variation dated 16th June 2015, demand letter dated 5th January 2016 and notification of approval of change of user of the suit property from residential to commercial dated 18th August 2015 by the County Government of Kisumu.
6. At the trial, the plaintiff adopted his affidavit in support of the Originating Summons as his evidence in chief and produced the annexures thereto as exhibits. The plaintiff told the court that he had no dispute with the purchaser who had been in possession of the suit property since 2015. In cross-examination, the plaintiff stated that his suit was for the enforcement of the professional undertaking that was given by the defendant. The plaintiff stated that the defendant had confirmed that the transfer of the suit property to the purchaser had been effected but the defendant had not paid the amount claimed.

The defendant's case

7. The defendant opposed the Originating Summons through a replying affidavit and further affidavit sworn by Daniel Ndeke Gatumu on 13th November 2017 and 8th December 2017 respectively. Daniel Ndeke Gatumu was a partner in the defendant law firm. The defendant admitted that it acted for the purchaser in the purchase of the suit property from the plaintiff. The defendant admitted further that it issued a professional undertaking to pay the balance of the purchase price to the vendor's advocates upon successful registration of the transfer of the suit property in favour of the purchaser. The defendant admitted further that upon issuing the said undertaking, the vendor's advocates released to it the completion documents which included Rent Clearance Certificate. The defendant averred that upon presentation of the transfer for registration, the said Rent Clearance Certificate was found not to be genuine. The defendant averred that the purchaser paid Kshs. 505,470/- to obtain a genuine Land Rent Clearance Certificate.
8. The defendant averred that after the Land Office verified the documents and confirmed that the same were genuine, the transfer was registered and the property was transferred to the purchaser. The defendant averred that after the suit property was transferred to the purchaser, the purchaser was unable to take possession. The defendant averred that attempts by the purchaser to take possession were thwarted by a group of youths from the neighborhood who claimed that the suit property belonged to somebody else. The defendant averred that due to this development, it conducted a search



at the request of the purchaser which revealed that a caveat had been registered against the title of the suit property by the Land Registrar. The defendant averred that upon bringing the issue of this caveat to the attention of the vendor's advocates, they did not respond. The defendant averred that it was the plaintiff who responded and indicated that he was aware of the caveat and requested that all correspondence regarding the same be addressed to him rather than the vendor's advocates. The defendant averred that the plaintiff took no action to have the caveat that it learnt was placed by the Land Registrar at the instance of one, Seylina Z. Musandu removed.

9. The defendant averred that although the registration of the transfer in favour of the purchaser was indicated as entry number 2 in the register, the caveat was also indicated as entry number 2 raising doubt on the registration of the transfer. The defendant averred that the issue was raised with the Chief Land Registrar but the same was never addressed. The defendant averred that Seylina Z. Musandu subsequently filed a suit before this court against the plaintiff and others namely, Kisumu ELC No. 50 of 2016 alleging fraud in the acquisition of the suit property which she claimed to belong to her. The defendant averred that the plaintiff's suit should be stayed pending the hearing and determination of Kisumu ELC No. 50 of 2016. The defendant averred that in view of the conflict over the ownership of the suit property between the plaintiff and the said Seylina Z. Musandu, the defendant was duty bound to safeguard the interest of the purchaser by withholding the payment of the balance of the purchase price to the plaintiff notwithstanding its undertaking to the vendor's advocates.
10. The defendant averred that the contract between the plaintiff and the purchaser was frustrated and as such the plaintiff was estopped from claiming the payment of the balance of the purchase price through enforcement of the said undertaking. The defendant averred that due to the variation in the terms of the original agreement for sale on the strength of which the professional undertaking was given, the defendant was discharged from the undertaking. The defendant averred that due to the competing claims over the ownership of the suit property, the purchaser was entitled to rescind the agreement with the plaintiff and to demand the refund of the payment already made to the plaintiff.
11. In its further affidavit, the defendant averred that it conducted another search on the title of the suit property on 17th November 2017 while the suit was pending which search disclosed the registration of a caveat as entry number two but did not disclose the registration of the transfer in favour of the purchaser as it was in the previous search. The defendant averred that in view of the latest search, there was doubt if the suit property was transferred to the purchaser. The defendant averred that its undertaking was to pay the balance of the purchase price upon successful registration of the transfer. The defendant averred that since the latest search showed that the suit property had not been transferred to the purchaser, its undertaking could not be enforced. The defendant annexed several documents to its two affidavits filed in opposition to the Originating Summons.
12. At the trial, the defendant called two witnesses. The defendant's first witness, Daniel Ndeke Gatumu adopted his affidavit and further affidavit filed in response to the Originating Summons as his evidence in chief. He told the court that the defendant's undertaking was given on condition that there would be a successful transfer of the suit property to the purchaser. He stated that the property was not transferred to the purchaser and the purchaser was not given possession of the same. On cross-examination, he admitted that the transfer of the suit property in favour of the purchaser was registered on 13th April 2015 and that the caveat was placed on the title after the registration of the said transfer. He also conceded that the title for the suit property was issued in the name of the purchaser. He stated however that a subsequent search showed that the suit property was not in the name of the purchaser. On re-examination, Daniel Ndeke Gatumu stated that the plaintiff sold to the purchaser a parcel of land that was fraudulently acquired by him.



13. The defendant's second witness was, Gildine Gatwiri Karani (DW2). DW2 told the court that he was a Principal Land Registration Officer based at the Chief Land Registrar's office. DW2 told the court that a caveat was registered against the title of the suit property on 19th May 2015 following a complaint that was lodged with the National Land Commission by a third party. On cross-examination, DW2 stated that the complainant at whose instance the caveat was registered against the title of the suit property was Selyna Z. Musandu and that she had lodged her complaint on 5th May 2014. DW2 stated that in the title in her possession, there was no entry regarding the transfer of the property in favour of the purchaser. She stated that in the said title, the last entry was a caveat. He stated that the suit property was still registered in the name of the plaintiff.
14. On examination by the court, DW2 confirmed that the title for the suit property in their records had the name of the plaintiff as the registered owner of the property.

The submissions

15. After the close of evidence, the court directed the parties to make closing submissions in writing. The plaintiff did not file submissions while the defendant filed its submissions on 10th May 2023. The defendant framed two issues for determination by the court. The first was whether the plaintiff was entitled to enforce the professional undertaking that was given by the defendant on 19th January 2015 and secondly, what remedies should the court grant. On the first issue, the defendant submitted that a professional undertaking between advocates could only be enforced by either of the advocates and not by their clients. The reason for this the defendant submitted was because the clients were not parties to such undertaking and have no privity of contract in respect thereof. The defendant cited several authorities that I have considered in support of this submission. The defendant submitted that the plaintiff had no locus standi to enforce the defendant's professional undertaking dated 19th January 2015. The defendant submitted that in any event, the professional undertaking was contingent upon a successful transfer of the suit property to the purchaser that did not occur. The undertaking was therefore unenforceable according to the defendant. The defendant urged the court to dismiss the plaintiff's suit with costs to the defendant.

Analysis and determination

16. I have considered the Originating Summons and the replying affidavits filed by the defendant in response thereto. I have also considered the evidence tendered by the parties and the submissions by the advocates for the defendant. From my perusal of the Originating Summons and the response thereto, the following in my view are the issues that arise for determination in this suit;
 1. Whether the defendant should be compelled to fulfill its undertaking dated 19th January 2015.
 2. Whether the plaintiff is entitled to the reliefs sought in the Originating Summons.
 3. Who should bear the costs of the suit?

Whether the defendant should be compelled to fulfill its undertaking dated 19th January 2015.

17. The purchase price for the suit property was Kshs. 18,000,000/-. Clause 2 of the agreement for sale dated 12th January 2015 provided that the purchaser would pay the plaintiff a sum of Kshs. 700,000/- as a deposit and "the balance of the purchase price shall be secured by irrevocable professional undertaking by the purchaser's advocates in the form and substance satisfactory to the vendor's advocates to release the balance of the purchase price to the vendor's advocates upon successful registration of the transfer of the lease to the purchaser". It is admitted by the defendant that it acted



for the purchaser of the suit property and that it gave an undertaking to the vendor's advocates, Ouma Njoga & Company Advocates on 19th January 2015 on the following terms;

- “1. That we will hold the completion documents referred to at Clause 7.1 of the sale agreement to your order, returnable on demand pending our payment to you on behalf of the vendor the sum of Kenya Shillings Eighteen Million(Kshs.18,000,000/-) being the purchase price of the property herein less any advance payment that shall have been released to the vendor as per clause 2(1) of the sale agreement, which sum shall accrue interest as per clause 3 of the sale agreement, net of all bank charges and deductions or withholdings whatsoever be forwarded to your client A/C via RTGS as follows:-

Ouma Njoga & Company

Advocates

A/C No. 0091325845

Barclays Bank of Kenya-kisumu Branch

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Within 14 Days of registration of the transfer in favour of our client Crater Automobiles(NBI) Limited.

2. That if the sum advised in Clause (1) hereof together with any interest for late payment thereof is not forwarded to you on behalf of your client within 14 days from the date of successful transfer, of the title into the purchaser's name then we shall forthwith and immediately upon demand return to you the completion documents in the same condition in which they were on leaving your offices without prejudice to your client's other remedies available in law.
3. That by accepting, retaining, or utilizing the completion documents that will be sent by you to us, we shall be deemed not only to have accepted and confirmed the foregoing undertaking terms and conditions as set forth hereinabove but also to have acknowledged and confirmed that we are solely liable and responsible for the full compliance with the said undertakings terms and conditions.”

18. It is also admitted that on the strength of that undertaking, the vendor's advocates released to the defendant the completion documents set out in clause 7.1 of the agreement dated 12th January 2015. In the defendant's undertaking reproduced above, the defendant undertook to pay to the vendor's advocates, the balance of the purchase price together with interest for late payment less any advance payment within 14 days of registration of the transfer of the suit property in favour of the purchaser. The defendant also undertook that in the event that the said payment was not made within the prescribed period, the defendant was to immediately upon demand return to the vendor's advocates the completion documents in the same condition in which they were on leaving the vendor's advocates' offices.
19. It is common ground that the defendant used the completion documents that were given to it by the vendors' advocates pursuant to the said professional undertaking save for the Rent Clearance Certificate to transfer the suit property to the purchaser on 13th April 2015. The plaintiff who was the vendor was not paid the balance of the purchase price in terms of the said undertaking.



20. On 16th June 2015, the plaintiff and the purchaser entered into a deed of variation through which they varied clause 2 of the agreement dated 12th January 2015 with regard to the payment of the balance of the purchase price. In the deed of variation, the plaintiff acknowledged receipt of the payment of a total sum of Kshs. 1,346,177/- leaving a balance of Kshs. 16,653,823/-. The parties also agreed that the purchaser would pay the said balance of the purchase price to the plaintiff as follows; a sum of Kshs. 2000,000/- upon the execution of the variation agreement, a sum of Kshs. 5,000,000/- upon successful transfer of the suit property to the purchaser and the purchaser obtaining a change of user and the remaining Kshs. 9,653,823/- within 90 days from the date of the purchaser obtaining a change of user.
21. As I have mentioned, the deed of variation amended clause 2 of the agreement dated 12th January 2015 on the payment of the balance of the purchase price. The agreement of 12th January 2015 provided that the purchaser was to pay a deposit of Kshs. 700,000/- to the plaintiff and would secure the balance by an irrevocable professional undertaking of its advocates. In the deed of variation, the parties came up with a new formula for the payment of the balance of the purchase price. They left out the sub-clause on the professional undertaking. No new professional undertaking was given by the defendant neither was the defendant called upon to confirm its earlier undertaking. As I have mentioned, this deed of variation was entered into by the parties on 16th June 2015, two months after the registration of the transfer in favour of the purchaser. This means that the parties varied the terms of payment of the balance of the purchase price that was secured by the defendant's professional undertaking after it had had become due and payable, and had not been paid.
22. In The Encyclopaedia of Forms and Precedents 5th Edition, Volume 39, professional undertaking is defined as follows:
- “An undertaking is an unequivocal declaration of intention addressed to someone who reasonably places reliance on it.....an undertaking is therefore a promise made by a solicitor, or on his behalf by a member of his staff to do or to refrain from doing something.”
23. In Fidelity Commercial Bank Limited v. Onesmus Githinji & Co. Advocates [2013]eKLR, the court stated as follows with regard to the liability of the advocates on their professional undertakings:
- “This court was able to glean further assistance on the liability as regards undertakings from pages 379 of The Encyclopaedia of Forms and Precedents paragraph 30 in relation to the English Law Society's Guide Principle as follows:
- “An undertaking given by a solicitor is personally binding on him and must be honoured. Failure to honour an undertaking is prima facie evidence of professional misconduct and the Counsel of the Law Society will require the undertaking to be honoured as a matter of conduct. Although consideration for the promise will often be present, an undertaking is enforceable even if it does not constitute a legal contract..... Any ambiguity in the terms of an undertaking is generally construed against the party who gave the promise. In general, no terms will be implied into a professional undertaking and extraneous evidence will not be considered.”
24. In Kenya Reinsurance Corporation v. V.E. Muguku Muriu T/A M/S V.E. Muguku Muriu & Company [1996] eKLR the court stated that:
- “Although the memorandum of appeal contains nine grounds of appeal, this appeal raises primarily four main points which are



- i. Can a professional undertaking given by an advocate be subject to watering down on account of a dispute between the advocate's client and the party to whom the undertaking is given"
- ii. Does it fall to the advocate to take up, on behalf of his client, defences which could be open to the client in a claim for enforcement of an undertaking"

....The respondent advocate was at pains to argue that his letter of undertaking (dated 1st July, 1986 must be read with his client's letter of 26th May, 1986 addressed to the Managing Director of the appellant corporation. By that letter the client of the respondent advocate had stated that according to him he ought to pay a sum of Shs.399,443/= including interest due up to 30th June, 1986. What the respondent advocate did was to bring in the issue of alleged disputes between his client and the appellant corporation to qualify his undertaking. But we do think that is right. Having given a solemn professional undertaking to pay a certain sum of money an advocate is bound by the same and he cannot resile therefrom. We hold that the undertaking given by the respondent advocate was unambiguous, unequivocal and binding on him. An advocate cannot, after giving such an undertaking, qualify the same on account of accounting disputes between the parties.

.... Simply and plainly the respondent advocate was bringing in the dispute between his client and the appellant corporation to qualify his clear undertaking. This was quite wrong and if allowed to stand would encourage advocates to resile from their undertakings Interest was payable on the amount covered by the undertaking and there was no question of changing that date.”

25. In *Arthur K. Igeria t/a Igeria & Co. Advocates v. Michael Ndaiga* [2017] eKLR the court stated that:

“20. An undertaking by an advocate is enforceable. In enforcing undertakings by advocates, the court is guided not by considerations of contract, or of securing the legal rights of parties, but mainly to ensure the honesty of advocates. In *Muiruri v. Credit Bank & Another* [C.A. No.263 of 1998] this court stated that –

“an undertaking is a solemn thing. In enforcing undertakings, the court is not guided by considerations of contract, but the court aims at securing the honesty of its officers.”

26. Apart from constituting a contract in law, an undertaking is also viewed, as it should, as a word of honour by an officer of the court which must be his/her bond. It cannot be gainsaid that professional undertakings are the oxygen without which conveyancing practice would be stifled. The importance of undertakings cannot be over-emphasized. Templeman LJ highlighted the importance of undertakings in conveyancing practice in the case of *Domb v. Isoz* [1980] 1 KB 76 at pg 81 when he stated –

Conveyancing is a complicated business. A chain of transactions is frequently involved where no vendor will sell until he can purchase and no purchaser will buy until he can sell. Each client as vendor and purchaser needs time to make up his mind and change his mind after studying surveys and legal reports and other related matters and each client expects everyone else to be ready when he is ready. Skillful conveyancers are required to forge the chain, to see that no bargain is lost and that no one is left without a home. Binding



and enforceable undertakings between professional men play an essential part at different stages.”

27. In *Harit Sheth Advocate v. K. H. Osmond, Advocate* [2011] eKLR the Court had this to say on the obligation of the advocates to honour professional undertakings:

..... a professional undertaking is given to an advocate on the authority of his client. It is based on the relationship which exists between the advocate and his client. An advocate who gives such a professional undertaking takes a risk. The risk is his own and he should not be heard to complain that it is too burdensome and that someone else should shoulder the responsibility of recovering the debt from his own client. A professional undertaking is a bond by an advocate to conduct himself as expected of him by the court to which he is an officer. No matter how painful it might be to honour it, the advocate is obliged to honour it if only to protect his own reputation as an officer of the court. The law gives the right to sue his client to recover whatever sums of money he has incurred in honouring a professional undertaking. He cannot however sue to recover that amount unless he has first honoured his professional undertaking.”

28. The defendant has put forward several reasons why it should not be compelled to fulfill the terms of its undertaking dated 19th January 2015 to the vendor’s advocates. From the authorities that I have cited, most of those reasons do not hold water. They may be valid defences for the purchaser against a claim that the plaintiff may institute for specific performance of the agreement dated 12th January 2015. They may also form a good basis for a claim by the purchaser for rescission of the said agreement. They are however of little assistance to the defendant against a claim for the enforcement of a professional undertaking. The defendant undertook to pay the balance of the purchase price within 14 days from the date of registration of the transfer in favour of the purchaser in default of which the defendant was to return the completion documents back to the vendor’s advocates. The transfer of the suit property in favour of the purchaser was registered by the defendant. The defendant carried out a search thereafter which confirmed that the suit property had been transferred to the purchaser. The defendant neither paid the balance of the purchase price nor returned the completion documents. The allegation that another search surfaced after the filing of the suit herein in which the transfer in favour of the purchaser was not reflected is neither here nor there. The allegation that the plaintiff had acquired the suit property fraudulently also has no basis. No evidence in the form of a judicial pronouncement was placed before the court in support of the same. The defendant had also argued that the plaintiff was not competent to sue for the enforcement of the professional undertaking dated 19th January 2015. I am unable to see any reason why the plaintiff could not enforce the undertaking. In my view, the undertaking was given by the defendant to the plaintiff through the plaintiff’s advocate. The plaintiff or the plaintiff’s advocate could enforce the undertaking. In *Kenya Reinsurance Corporation v. V.E. Muguku Muriu T/A M/S V.E. Muguku Muriu & Company*(supra) the undertaking was given to the appellant’s advocate and the appellant successfully enforced the undertaking. In my view, if the agreement dated 12th January 2015 was not varied, the court would not have hesitated to compel the defendant to honour the undertaking.

29. I am in agreement with the defendant that the variation of the agreement dated 12th January 2015 on 16th June 2015 after the balance of the purchase price that was secured by its undertaking had become due and payable, and not paid, discharged the defendant from its undertaking. Following the variation of the terms of payment of the balance of the purchase price that were set out in the agreement dated 12th January 2015, the plaintiff could only be paid the balance of the purchase price in accordance with



the terms of the deed of variation dated 16th June 2015. The deed of variation did not provide for a professional undertaking to secure the payments set out therein and the defendant did not provide any.

30. Due to the foregoing, I answer the first issue in the negative.

Whether the plaintiff is entitled to the reliefs sought in the Originating Summons

31. The plaintiff has failed to prove that the defendant had given a professional undertaking to pay the balance of the purchase price set out in the agreement dated 12th January 2015 as varied on 16th June 2015. I have already held that the variation of the terms of payment of the balance of the purchase price after the same had become payable in accordance with the defendant's undertaking without the defendant being called upon to give another undertaking or to confirm its earlier undertaking discharged it of its undertaking given on 19th January 2015. The plaintiff is therefore not entitled to the reliefs sought in the Originating Summons.

Who is liable for the costs of the suit?

32. Costs normally follow the event unless the court for good reason orders otherwise. No reason has been put forward by the plaintiff why the defendant should be denied the costs of the suit. The defendant shall have the costs of the Originating Summons.

Conclusion:

33. In conclusion, it is my finding that the plaintiff's suit has no merit. The same is dismissed with costs to the defendant.

Delivered and Dated at Kisumu this 6th day of July 2023

S. OKONG'O

JUDGE

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Ms. Odhong h/b for Mr. C. Onyango for the Plaintiff

Mr. Maganga for the Defendant

Ms. J. Omondi-Court Assistant

