



**Sumar & another v VK Construction Limited (Civil Suit E351 of 2019)
[2025] KEHC 1749 (KLR) (Commercial and Tax) (25 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1749 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E351 OF 2019
A MABEYA, J
FEBRUARY 25, 2025**

BETWEEN

NIZARALI PRADHAN SUMAR 1ST PLAINTIFF

SHEHNAZ NIZARALI SUMAR 2ND PLAINTIFF

AND

VK CONSTRUCTION LIMITED DEFENDANT

JUDGMENT

1. The plaintiffs instituted this suit against the defendant vide a plaint dated 20/9/2019. They sought judgment against the defendant for a declaration that the plaintiff was entitled to repudiate the agreement of sale dated 23/4/2015. The plaintiffs further sought for a declaration that they are entitled to the full purchase price of Kshs. 28,860,000/- with interest, Kshs. 549,490/- plus interest and for loss of income at the rate of Kshs. 150,000/- per month. The plaintiff further prayed for costs of the suit together with interest at court rates.
2. The plaintiffs case was that the defendant had developed the suit property by erecting 32 four bedroom apartments. The plaintiffs entered into a sale agreement dated 23/4/2015 for the purchase of apartment 804. It was a term of the agreement that the defendant would expedite the construction of the estate and the completion date would be 15 days after receipt of the architect's certificate of completion.
3. The plaintiffs stated that the parties had agreed that the purchase price was Kshs. 18,800,000/- payable in installments. That upon signing of the agreement, the parties agreed to a variation of the apartment from a four-bedroom apartment to a three-bedroom apartment. That the plaintiffs made payments amounting to Kshs. 18,860,000/- made plans to inspect the apartment.



4. On inspection, they realized that there were several defects and incomplete works which were not attended to. The plaintiffs incurred a cost of Kshs. 489,490/- for finishing the suit properties. It was stated that the defendant authorized agents had refused to give the plaintiffs access or possession of the apartment and when they finally did, it was not in a habitable condition.
5. The defendant did not enter appearance or file any defence. The matter proceeded to formal proof on 26/5/2021.
6. PW1 Nizarali Pradhan Sumar relied on his witness statement and produced the bundle of documents as exhibit. He testified that he paid the whole purchase price of Kshs. 18,860,000/- but had not been able to take possession of the property. That there was water leakage for every bedroom and the finishing was not well done as the defendant did a shoddy job which was covered up with cement. That a completion notice was issued to the defendant but it failed to respond to it.
7. The plaintiff filed submissions dated 2/11/2021. The plaintiff submitted that the defendant breached the terms of the agreement by failing to deliver possession of the apartment and grant the plaintiffs access contrary to clause 2 of the agreement.
8. Counsel submitted that pursuant to clause 11 of the agreement, the plaintiffs were entitled to rescind the agreement and the defendant was duly served with the completion notice. It was the plaintiffs' submission that they were entitled to a refund of the purchase price and the cost incurred for valuation as well as the price for fixtures.
9. Having considered the pleadings and submissions on record, the main issue for determination is whether judgment should be entered against the defendant as sought in the plaint. The plaintiffs have approached the court seeking a refund of the purchase price for apartment number 804, which was paid in accordance with the agreement between the parties dated 23/4/2015.
10. The plaintiffs assert that the defendant breached the agreement by failing to grant them possession of the apartment and by not completing the construction within the agreed timelines.
11. Upon reviewing the agreement, it is evident that clause one imposed an obligation on the defendant to ensure the construction of the 32 flats was carried out expeditiously. The agreement also outlined the mode of payment, which the plaintiffs duly adhered to. Regarding completion, the agreement stipulated that the project would be considered complete either 15 days after the vendor's architect issued a certificate confirming the completion of the development or by 30/4/2015, whichever was later.
12. Since the plaintiffs fulfilled their contractual obligations, the defendant was equally bound to honor its commitments. By failing to do so, the defendant was in clear breach of the agreement. No justifiable reason has been provided to explain the defendant's refusal to allow the plaintiffs to take possession of the apartment.
13. Furthermore, as per clause 11 of the agreement, upon failure to complete the development and hand over possession, the defendant was obligated to compensate the plaintiffs by refunding all monies paid toward the purchase price.
14. Based on the foregoing, I find that the plaintiffs have sufficiently proven their case against the defendant and are entitled to the reliefs sought. Accordingly, I enter judgment in favor of the plaintiffs as prayed for in the plaint.

It is so decreed.

SIGNED AT KISUMU THIS 17TH DAY OF FEBRUARY, 2025.



A. MABEYA, FCI ARB

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF FEBRUARY, 2025.

F. GIKONYO

JUDGE

