



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI

CIVIL CASE NO. 373 OF 2016

RUAKA SABUNI DEVELOPMENT CO. LIMITED.....PLAINTIFF

VERSUS

MARTIN KIAI NUTHU.....DEFENDANT

J U D G M E N T

1. The Plaintiff, ***Ruaka Sabuni Development Company Limited*** is a Limited Liability incorporated under the companies Act. The Defendant, ***Martin Kiai Nuthu*** is an Advocate of the High Court of Kenya.
2. The Defendant acted, as an Advocate, for the Plaintiff in sale of and transaction in ***August 2012***. The Plaintiff was the vendor of Land Reference No. 1338/9 (original number 1338/4/5 (the Subject property)). The purchaser was Welding Alloys Limited.
3. The purchaser paid 10% of the purchase price, Kshs. 10,500,000 to the Defendant. The Plaintiff has filed this case, an originating summons, seeking two prayers. The first prayer sought that the Defendant do deliver cash account in respect to the deposit of the purchase price paid to him. That prayer was entertained by ***Justice Ochieng*** and the Learned Judge delivered a ruling on ***31st May 2017***.
4. By that ruling, the Learned Judge ordered the Defendant to provide the Plaintiff, and the Court, with a detailed cash account within 30 days.
5. During subsequent attendance in Court, the Learned Advocate for the Plaintiff informed the Learned Judge that the Defendant had failed to provide an account. I can also confirm, from the Court record, that no such account was provided to the Court.
6. The second prayer in the originating summons seeks an order that the Defendant do pay to the Plaintiff Kshs. 10,500,000 with interest.
7. The Plaintiff proved by documents, and it is not denied by the Defendant that the amount of Kshs. 10,500,000 was paid to the Defendant by the purchaser's Learned Advocate.
8. The Defendant filed a Replying Affidavit.
9. By that Affidavit, the Defendant stated he was requested , by two of the Directors of the Plaintiff, to look for a buyer of the subject property. In the process of looking for a buyer, and on conducting a search over the subject property, he found that the deed plain at the land register were missing. That he embarked on a process of having those replaced. He secured a buyer, in the year 2011, who paid a deposit on the purchase price but that sale aborted because the land was invaded by land grabbers. The deposit was refunded to that buyer. That since the Directors of the Plaintiff had no funds, the Defendant financed the process of evicting those who had invaded the land. The Defendant filed a suit being HCCC No. 13 of 2011 on the promise that he would pay himself of his fees from the eventual sale proceeds. The Defendant also filed the Plaintiff's returns with the Registrar of Companies. He looked for a buyer but because two of the Plaintiff's Directors, the chairman and secretary, were facing opposition from the other Directors, he filed a suit and obtained a stay to stop a meeting, which meeting would have deposed those Directors. That the suit was financed by him, again on the promise he would recover his costs from the sale proceed.
10. The Defendant stated that thereafter, the Plaintiff's Directors requested for release of some funds which, he did, leaving a balance of Kshs. 8,700,000 in his hand.
11. The Defendant denied the Plaintiff's claim that he was obliged to release Kshs. 10,050,000. He stated that the present proceedings were actuated by malice based on mischief to blackmail him.

12. The Plaintiff filed a further Affidavit, through its chairman.

13. It was denied that the Defendant found the purchaser, rather that the Plaintiff had contracted a sole agent who was able to secure a buyer.

14. That the Defendant was engaged by the Plaintiff mainly to act in the sale transaction and other ancillary work.

ANALYSIS AND DETERMINATION

15. The parties are agreed that the Defendant was paid 10% deposit of the sale proceeds.

16. The Defendant’s refusal to release those funds is because, as he alleges, the Plaintiffs engaged him in other matters with a promise that he would recoup his fees from the sale proceeds.

17. That is denied by the Plaintiff.

18. It is clear that parties are not in agreement that the Defendant was to recoup his fees from the money he held. Indeed the Plaintiff alleges that the Defendant was paid Kshs. 3.6 million as his fees at the very initial time before the sale agreement was prepared.

19. It is clear that since fees of the Defendant were not agreed as provided in Section 45 of the Advocates Act Cap 16, the Advocate was obligated to tax his costs. To date, there is no evidence he has done so.

20. Further, the Defendant has failed to account for the money he received despite the order of the Court that he does so, by the Ruling of 31st May, 2017.

21. There is no legal basis for the Defendant to continue holding money he received since 2012, in the absence of taxing his costs. Accordingly, I find there is merit in Plaintiff’s claim.

22. The Plaintiff, since it has succeeded in its claim, is entitled to the costs of the suit.

23. In the end, there shall be judgment for the Plaintiff against the Defendant as follows:-

a. Judgment for Kshs. 10,050,000 with interest at Court rate from the date of filing suit until payment in full.

b. The Defendant shall pay the Plaintiff’s costs of this suit.

DATED, SIGNED and DELIVERED at NAIROBI this 5th day of MARCH, 2019.

MARY KASANGO

JUDGE

Judgment Read and Delivered in Open Court in the presence of:

.....**COURT ASSISTANT**

.....**COUNSEL FOR THE PLAINTIFF**

.....**COUNSEL FOR THE DEFENDANT**