



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL CASE NO. 251 OF 2014

BENGERIA ARAP KORIRPLAINTIFF

-VERSUS-

ST. ELIZABETH ACADEMY KAREN LIMITED DEFENDANT

J U D G M E N T

1. The Plaintiff **Bengeria Arap Korir** filed this suit against **St. Elizabeth Academy Karen Limited**, the Defendant seeking judgment for Kshs. 79,961,286 with interest at 19% per annum from date of filing suit until payment in full. Although the Defendant filed a defence to this action when this case came up for hearing on 6th February 2019 the Defendant did attend Court. The case proceeded *ex parte*.
2. The debt claimed by the Plaintiff is in respect to the arrangement dated 10th February 2009 when the Defendant agreed to purchase two schools of the Plaintiff situated in Miritini and Bombolulu. That agreement provided the Defendant would pay the Plaintiff Kshs. 58,500,000 (of which Kshs. 3,315,000 was paid on execution of the agreement).
3. It was further agreed that the Defendant would pay the Creditors, which amount would be deducted from the purchase price. The Plaintiff in evidence stated that the Creditor's debt was Kshs. 24,167,662.00.
4. The completion date of the agreement was 180 days from the date of execution. Interest was applicable to amounts not paid after the completion date at 19% per annum.
5. That the Defendant failed to make payment as agreed. This led to the Plaintiff being sued by one of the Creditors CMC Company. That case against the Plaintiff, filed by CMC Company, was dismissed but judgment was entered against the Defendant.
6. The Plaintiff in evidence testified that in the year 2018 he met with the proprietor of the Defendant, namely Anne Wanjiku Wado. They reconciled the payments made where upon they reached an agreement on the settlement of the remaining balance the Defendant owed the Plaintiff which was Kshs. 40,761,504.30. the following is what they agreed:

“FURTHER AGREEMENT FOR SALE

We Anne Wanjiku Wado on behalf of St. Elizabeth Academy-Karen P.O. Box 313 Post Code 00502

And

Bengeria Arap Korir of Marben School P.O. Box 1164 Post code 30300 Kapsabet have agreed as follows:-

- a. To withdraw the case in Court in connection to the sale/purchase of Marben School in Mombasa.***
- b. The remaining amount to be paid to Mr. Korir on behalf of Marben School is Kshs. 40,761,504/30.***
- c. That St. Elizabeth Academy-Karen to pay Shs. 1,500,000 to Marben School every term until the whole debt is pad.***
- d. That St. Elizabeth Academy-Karen can pay more should it find it necessary.***
- e. That this mode of payment is effective from May 2018.***

f. Upon completion of the payments all the plot/titles shall be transferred into the Name of St. Elizabeth Academy Karen.

g. This agreement supersedes the ones signed on 10/02/2009.

Name: Bengeria Arap Korir

I/D Number 482XXXX

Signature (signed) Date: 13/3/18

Name: Anne Wanjiku Wado

I/D Number 482XXXX

Signature (signed) Date: 13/3/18

Witness:

1. Andrew Chunguli Mudave

I/D Number 042XXXX

Signature: (Signed) Date: 13/3/18

2. Rose Ndirangu

I/D Number 116XXXX

Signature: (Signed) Date: 13/3/18

7. The Plaintiff therefore stated that his claim against the Defendant is Kshs. 40,361,504.30 with interest with effect from 13th March 2018 at 19% per annum.

8. The Plaintiff met the civil standard of proof. He produced the initial agreement dated 10th February 2009 and also produced the agreement reproduced above.

9. Having proved his claim, the Plaintiff is entitled to costs.

10. In the end, the Court enters judgment for the Plaintiff for:

a) Kshs. 40,761,504.30 with interest with effect from 13th March 2018 at 19% per annum until payment in full.

b) Costs of the suit.

DATED, SIGNED and DELIVERED at NAIROBI this 16TH day of MAY, 2019.

MARY KASANGO

JUDGE

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

Sophie..... COURT ASSISTANT

..... FOR THE PLAINTIFF

..... FOR THE DEFENDANT