



**Kipkeu v Suraya Property Group Limited & 2 others (Environment & Land  
Case 492 of 2018) [2025] KEELC 4776 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4776 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 492 OF 2018**

**AA OMOLLO, J  
JUNE 19, 2025**

**BETWEEN**

**DR. CHEMTAI KIPKEU ..... PLAINTIFF**

**AND**

**SURAYA PROPERTY GROUP LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**SURAY SALES LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**LYNX @MUCHAI DRIVE LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff commenced this suit against the Defendant vide her plaint dated 15<sup>th</sup> November, 2018. She pleaded that by letters of offer, both dates 3<sup>rd</sup> August, 2016, the Defendants formally and/or jointly made an offer to the Plaintiff to Purchase known as Apartment Nos. SPG/25/L10B/7F/05 and SPG/25/L11B/9F/021 on L.R No. 209/7733 along Muchai Drive for the selling price of Kshs.8,500,000/= and Kshs.9,800,000/= respectively; a total of Kshs.18,300,000/=.
2. It is pleaded that at all material times, the 1<sup>st</sup> Defendant was to develop and manage the construction and completion of the apartments using the 3<sup>rd</sup> Defendant, a Special Purpose Vehicle and the sales were through the 2<sup>nd</sup> Defendant who is the duly appointed agent of the vendor, the 1<sup>st</sup> Defendant herein. The Plaintiff duly paid the said deposits of Kshs.9,300,000/= to the 2<sup>nd</sup> Defendant, and was ready and willing to carry out the said agreement on her part.
3. The Plaintiff impleads that the sale agreements were never forwarded and she has been denied use of the said movies. Therefore, she prays to be granted the following reliefs jointly and severally against the defendants;
  - a. Refund of deposit of Kshs.9,300,000/= as at 30<sup>th</sup> April, 2018.
  - b. General damages for Breach of Contract.



- c. General Damages for Fraudulent misrepresentation
  - d. Costs of this claim
  - e. Interest on (a) (b) and (c) at commercial rates and on (d) at court rates until payment in full.
  - f. Any other or further reliefs that this Honourable deems fit to grant.
4. All the three defendants filed a joint statement of defence dated 27<sup>th</sup> March, 2019 contesting the claim. The Defendants admitted paragraphs 5 and 8 of the plaint as relates to the offer to sell and receipt of Kshs.9.3 million from the Plaintiff.
  5. The Defendants contends that the Plaintiff was under strict obligation to pay the remaining balances of the purchase price on specific dates as stipulated in the Letters of Offer which she defaulted, refused and/or failed to pay. The Defendants aver that the Plaintiff failed to pay the following installment payments of the balance of the purchase price.
  6. The defendants admit the construction has not been completed but denies they are in default. They contend that pursuant to the terms stipulated in the Letters of Offer, the completion date for the project has not yet reached because the same shall be determined once the project's Architect shall issue the Certificate of Practical completion which date shall fall after 30<sup>th</sup> April, 2018 as contemplated under the terms of the Letter of Offer.
  7. The Defendants content that the Plaintiff's claim for refund of the deposit paid for the purchase price is premature and misplaced because it was an express term of the sale that "in the event that the Purchaser wishes to withdraw from the commitment, then they will be refunded the said deposit less 2% of the Sale Price on re-sale of the said unit." The subject units have not been re-sold and the plaintiff is put to strict proof of any contrary allegation. The Defendant therefore contends the Plaintiff's suit is made in bad faith and has no merit.
  8. When the matter was set down for hearing, only the Plaintiff gave oral evidence. She adopted her witness statement dated 15<sup>th</sup> November, 2018 which highlights the nature of the transaction between her and the defendants. She accuses the defendant of breach because they have failed to even commence the construction of the said apartments. That this failure means the paid deposits became returnable.
  9. The Plaintiff produced copies of the letters of offer both dated 3<sup>rd</sup> August, 2016, and receipts issued to her by the defendants confirming payment of the claimed sum of Kshs.9.3 million.

**Written submissions:**

10. The Parties filed closing submissions pursuant to the directions of this court. The Plaintiff's submissions are dated 3<sup>rd</sup> March, 2025 while for the Defendants are dated 5<sup>th</sup> March, 2025. In summary, the Plaintiff states that the Defendants failed to comply with order 7 rule 5 of the Civil Procedure Rules.
11. She avers that not contracts don't have to be in writing and cited the Court of Appeal in NBI Civil Appeal No. 1 of 2008; Abdulkadir Shariff Abdirahim & Another vs Awo Shariff Mohamed which held thus;

“There is no general rule of law that all agreements must be in writing. The numerous advantages of written agreement notwithstanding, all that the law requires is that certain specific agreements must be in writing witnessed by some written note or memorandum. Section 3(1) of the law of Contract is one such provision”



12. On failure by the defendants to call evidence, the plaintiff relied on the case of NBI HCC No. 79 of 2011 Linus Nganga Kiongo & 3 Others Vs Town Council of Kikuyu where Odunga J. (as he then was) held as follows:

“...where a party fails to call evidence in support of its case, that party’s pleadings remain mere statements of facts since in doing so the party fails to substantiate its pleadings.”

13. In their submissions the Defendants reiterated the averments in their statement of defence asserting that the plaintiff breached the terms stipulated in the draft letters of offer in the following aspects;

- i. There’s nowhere in the said draft letters of offer where it is provided that balances of the Purchase price were payable progressively as per the construction stages till completion of the project as pleaded and purported by the Plaintiff.
- ii. There was a strict obligation by the Plaintiff to pay the remaining balances of the purchase price on specific dates as stipulated in the Letters of Offers which she defaulted, refused and/or failed to pay.

14. The Defendants submit that the Plaintiff failed to pay the following installment payments of the balance of the purchase price as stipulated in the said draft letters of offer;

2 Bedroomed Apartment No. SPG/25/L10B/7F/05

- i. 20% instalment of the sale price of Kshs.1,700,000 on 15<sup>th</sup> April, 2017.
- ii. 10% instalment of the sale price of Kshs.850,000 on 15<sup>th</sup> July, 2017.

3 Bedroomed Apartment No. SPG/25/L11B/9F/021

- i. 20% instalment of the sale price of Kshs.1,960,000 on 15/04/2017
- ii. 10% instalment of the sale price of Kshs.980,000 on 15/07/2017

15. It is their submissions that the claim for refund is premature & misplaced because the refund was subject to re-sale of the said units and the same have not been re-sold. The Defendants also argue that damages are not payable in this case because there was no contract in existence. Lastly, that the plaintiff did not present any letter of intention to withdraw from the transaction before filing this suit. They urged the court to dismiss the suit.

#### **Determination:**

16. This is more of a liquidated claim other than the addition of a prayer for general damages. The plaintiff seeks for an order of refund because the Defendants failed to complete the project as per the letters of offer signed by her. It was her evidence that the Defendants only excavated the grounds but no construction has ever commenced.

17. The evidence of no construction taking place has not been controverted both by the statement of defence filed or any other evidence. It is true the letters of offer produced by the plaintiff are not signed by the either of the defendants but it appears on its face that they were prepared by them. The plaintiff produced a copy of advertisement by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants advertising the project and inviting people to buy.

18. The Defendants do not deny receiving the Kshs.9.3 million as evidenced by receipts issued by the 2<sup>nd</sup> defendant on various dates (2/8/2016 for Kshs.3 million; 18/8/2016 for Kshs.3.4 million, 19/8/2016



for Kshs.2.9million). They also do not deny the payment was towards purchasing a 2-bedroom and 3-bedroom unit apartments from a project they were to launch (paragraph 4 of the defence admits paragraph 5 of the plaint).

19. It follows that the project not having commenced, the Defendant's submissions that the claim for refund is premature or misplaced because the refund was subject to re-sale is made in bad faith. How do you re-sell what has not been built? The Defendants further argued the suit is premature. From the receipts, the payments were made in August 2016 while the suit filed in January, 2018.
20. The plaintiff stated that by this time (1.4years) there was no evidence of any construction going on. During cross-examination on 23<sup>rd</sup> January, 2025, the witness said she had been to that site one month ago (8years later) and there was still no building. Hence the question of refund being subject to a re-sale does not lie.
21. I adopt the reasoning for Odunga J. in the case of Linus Ng'ang'a Kiongo & 3 Others Supra to hold that this claim has been proved. What orders should be granted?
22. The justice of the case deductible from the facts presented demands that the order for refund is automatic. The plaintiff sought general damages for breach of contract and for fraudulent misrepresentation. There was no written contract between the parties but the Defendants represented to the plaintiff that they would building apartment blocks from which she could purchase two units. The misrepresentation is evidenced by the unsigned letters of 3<sup>rd</sup> August 2016 which set out the terms of the offer.
23. Although the letters of offer were not signed, the Defendants have not denied they prepared the same. Secondly, the Plaintiff produced some posters generated by the defendants advertising the launch of the new concept of home ownership targeting buyers working in or near the city. It is pursuant to these two documents that led the plaintiff to make the payments. If this was not misrepresentation, then the Defendants ought to have explained what it is. I award a sum of Kshs.500,000 as damages.
24. On the prayer of interest at commercial rates, the plaintiff submitted that the deposit was from her savings as part of her investment. From the date of filing of this suit, the defendants have not made effort to refund the plaintiff opportunity to invest elsewhere. Therefore, I am persuaded to award interest at commercial rate of 20% from the date of filing of this suit.
25. In conclusion, I enter judgment for the plaintiff against the defendants jointly and severally as follows;
  1. Refund of Kshs.9.3 million forthwith
  2. Kshs.500,000 as general damages for misrepresentation
  3. Interest on (a) at 20% from date of filing of suit until payment of the entire sum.
  4. Interest on (b) at court rates from the date of this judgment until payment in full.
  5. Costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF JUNE, 2025**

**A. OMOLLO**

**JUDGE**

