



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 37 OF 2009

PETER K. KIPLAGAT.....1ST PLAINTIFF

PAMELA NJOKI KAGAU.....2ND PLAINTIFF

VERSUS

TELPOSTA PENSION SCHEME

TRUSTEES REGISTERED.....DEFENDANT

JUDGMENT

The plaintiffs commenced this suit by way of a plaint filed in court on 30th January, 2009. In their plaint dated 29th January, 2009, the plaintiffs averred that by an agreement dated 29th November, 2005 between the 1st plaintiff and the defendant, the defendant sold to the 1st plaintiff all that parcel of land known as Parcel No. Nairobi/Block 5/96 Unit 31 (hereinafter referred to as the “suit property”) at an agreed price of Kshs. 1,850,000/-. The plaintiffs averred that by virtue of the aforesaid agreement of sale, the 1st plaintiff paid to the defendant Kshs. 185,000/- as a deposit being 10% of the purchase price receipt of which was acknowledged by the defendant.

The plaintiffs averred that as at the time of execution of the said agreement of sale on 29th November, 2005, the 1st plaintiff was in possession of the suit property. The plaintiffs averred that with full knowledge of the defendant, the 1st plaintiff sold his proprietary interest in the suit property to the 2nd plaintiff and gave the 2nd plaintiff vacant possession. The plaintiffs averred that with the intention of defeating the plaintiffs’ interest in the suit property, the defendant had wilfully neglected to supply the plaintiffs’ advocates with the completion documents necessary to effect the transfer of the suit property to the 1st plaintiff. The plaintiffs averred that the 1st plaintiff had always been willing and able to complete the agreement of sale between him and the defendant and in that regard, the 1st plaintiff had deposited the balance of the purchase price with his advocates on record. The plaintiffs averred that despite demand, the defendant had neglected and/or refused to transfer the suit property to the 1st plaintiff as a result of which the 1st plaintiff was unable to perform his contractual obligations to the 2nd plaintiff. The plaintiffs sought judgement against the defendant for;

- a) Specific performance of the agreement of sale dated 29th November, 2005.
- b) A permanent injunction restraining the defendant from selling Land Parcel Number Nairobi/Block 5/96 Unit 31(the suit property) pending the hearing and determination of the suit.
- c) Cost of the suit.

The defendant filed a statement of defence on 23rd February, 2009. The defendant admitted entering into an agreement of sale with the 1st plaintiff on 29th November, 2005. The defendant averred that it was a term of the said agreement that the completion period shall be 90 days from 29th November, 2009 and that the agreement was subject to the Law Society Conditions of Sale (1989) Edition. The defendant averred that it was also a term of the said agreement that 1st plaintiff was to pay the balance of the purchase price in the sum of Kshs. 1,665,000/- on or before the completion date. The defendant averred that the 1st plaintiff was occupying the suit property as a tenant of the defendant and was given an offer to purchase the suit property in that capacity. The defendant averred that the 1st plaintiff’s tenancy on the suit property did not confer upon the 1st plaintiff any proprietary rights over the property. The defendant averred that the 1st plaintiff could only acquire such rights after paying the full purchase price to the defendant and having the suit property transferred and registered in his name. The defendant averred that the 2nd plaintiff was not a party to the sale agreement between the 1st plaintiff and the defendant and as such had no *locus standi* to commence legal proceedings against the defendant in respect of the sale.

The defendant averred that the 1st plaintiff failed to pay the balance of the purchase price to the defendant on or before the completion date despite being given notice to complete. The defendant averred further that the 1st plaintiff and/or his advocates failed to comply with the Law

Society Conditions of Sale as incorporated in the agreement. The defendant averred further that the 1st plaintiff failed to tender the balance of the purchase price against release of the completion documents by the defendant's advocates. The defendant averred that the agreement of sale between the 1st plaintiff and the defendant had since lapsed and was incapable of enforcement. The defendant averred that the suit property was re-sold in April, 2008 to one, Alice Chebet Lagat at a price of Ksh 3,500,000/- and consequently, the plaintiffs' claim for specific performance had been overtaken by events and could not be sustained. The defendant urged court to dismiss the plaintiffs' suit against the defendants.

At the trial, the 2nd plaintiff, Pamela Njoki Kagau (PW1) gave evidence for the plaintiffs. PW1 adopted her witness statement dated 3rd December, 2012 as her evidence in chief and gave a brief oral testimony. She testified as follows: The 1st plaintiff and she were friends. The 1st plaintiff approached her around September 2005 and requested her to purchase the suit property. The 1st plaintiff was in occupation of the suit property but the same was owned by the defendant. The 1st plaintiff showed her among other documents, a letter dated 29th April, 2005 through which the 1st plaintiff had been allocated the suit property by the defendant. After investigating the 1st plaintiff's title to the suit property, she asked the 1st plaintiff to give her a formal letter offering to sell the property to her. The 1st plaintiff complied by issuing a letter of offer dated 12th September, 2005. Following that offer letter, they entered into a sale agreement with the 1st plaintiff on 18th November, 2005. The purchase price was agreed at Kshs. 2,400,000/- of which a sum of Kshs. 1,850,000/- was to be paid to the defendant by the 1st plaintiff. She paid the purchase price in full after which the 1st plaintiff gave her vacant possession of the suit property. After taking possession, she renovated the premises and rented the same out to two tenants. Her tenants occupied the suit property from 12th May, 2006 to May 2010 when they were evicted from the premises by the defendant. The defendant was aware of the agreement that she had entered into with the 1st plaintiff in respect of the suit property and of the fact that she had taken possession of the property.

The defendant evicted her tenants from the suit property claiming that the property belonged to it. The defendant did not have a court order authorising the eviction. She did not manage to get back the premises from the defendant after the eviction. In the agreement of sale dated 29th November, 2005 between the 1st plaintiff and the defendant, the 1st plaintiff was represented by the firm of Mbichi Mboroki & Co. Advocates who also acted for her and the 1st plaintiff in the agreement of sale between them dated 18th November, 2005. PW1 stated that the agreement of sale dated 29th November, 2005 was not completed because the defendant failed to furnish the firm of Mbichi Mboroki & Co. Advocates with the completion documents.

PW1 stated that she performed her part of the agreement with the 1st plaintiff who had retired to his rural home. PW1 stated that she had no dispute with the 1st plaintiff because she had paid him all that they had agreed on. PW1 stated that she was willing to pay to the defendant the balance of the purchase price. She urged the court to issue an order for specific performance.

Peter Kipyegon Rotich (DW1) who was the administrator/secretary to the board of the defendant gave evidence on behalf of the defendant. DW1 adopted his witness statement dated 24th April, 2012 as his evidence in chief. DW1 also gave oral testimony and produced the defendant's bundles of documents filed in court on 8th December, 2011 and 24th April, 2012 as exhibits. DW1 testified as follows: The 1st plaintiff was a former member of Telposta Pension Scheme. The 1st plaintiff used to reside on the suit property as a tenant. The 1st plaintiff failed to fulfil the conditions under which the suit property was offered to him for sale. The 1st plaintiff was supposed to pay 10% of the purchase price as a deposit and the balance within 90 days. The 1st plaintiff did not fulfil this condition as a result of which the defendant cancelled the transaction by a letter dated 12th April, 2006 through which the defendant gave the 1st plaintiff 21 days' notice to complete the agreement. The 21 days' completion notice was given to the 1st plaintiff pursuant to the provisions of the Law Society Conditions of Sale. Time was of the essence in respect of the parties' obligations under the agreement of sale dated 25th November, 2005. The advocates for the 1st plaintiff were informed that the completion documents would be forwarded to them upon payment of the balance of the purchase price. The defendant had in its possession all the completion documents. The defendant did not complete the agreement of sale because the 1st plaintiff neither paid the balance of the purchase price nor gave a professional undertaking in respect thereof. The balance of the purchase price was Kshs. 1,665,000/-. After the rescission of the agreement of sale by the defendant, the 1st plaintiff remained in occupation of the suit property as a tenant of the defendant. The 1st plaintiff was however not paying rent to the defendant. On 16th September, 2009, the court directed the plaintiffs to pay the balance of the purchase price in an interest earning joint account in the names of the advocates for the parties. The plaintiffs did not comply with said court order.

DW1 stated that since the suit property had not been transferred to the 1st plaintiff by the defendant, the 1st plaintiff had no authority to transfer the same to a third party. He stated that the defendant did not enter into any contract with the 2nd plaintiff in relation to the suit property and was not aware of the agreement of sale between the plaintiffs in respect thereof. He told the court that the defendant's agreement of sale with the 1st plaintiff was made on 29th November, 2005 while the agreement between the 1st plaintiff and the 2nd plaintiff was made on 18th November, 2005. He stated that as at the date of the agreement between the plaintiffs, the defendant had not entered into an agreement of sale with the 1st plaintiff. He stated that the suit property was in the possession of the defendant's tenant one, Dale Amolo. DW1 stated that the defendant had not sold the suit property due to a caution that was registered on the title of the property by the 1st plaintiff.

After the close of evidence, the parties were directed to make closing submissions in writing. The plaintiffs filed their submissions on 13th September, 2019 while the defendant filed its submissions on 17th July, 2019. I have considered the evidence tendered by the parties and the submissions of counsels together with the authorities cited in support thereof. The parties had framed a total of ten (10) issues for determination by the court in their statement of agreed issues filed in court on 4th September, 2012. Most of the issues contained in the parties' statement of agreed issues were not contested in the pleadings. I will summarise the issues arising for determination in this suit as follows;

1. Whether the agreement of sale dated 29th November, 2005 between the 1st plaintiff and the defendant was breached and if so by which party?

2. Whether the defendant was a party to the agreement of sale dated 18th November, 2005 between the 1st plaintiff and the 2nd plaintiff in respect of the suit property.
3. Whether the 2nd plaintiff has any cause of action against the defendant arising either from the agreement of sale dated 29th November, 2005 between the 1st plaintiff and the defendant or the agreement of sale dated 18th November, 2005 between the 2nd plaintiff and the 1st plaintiff.
4. Whether the plaintiffs are entitled to the reliefs sought in the plaint.
5. Who is liable for the costs of the suit?

Whether the agreement of sale dated 29th November, 2005 between the 1st plaintiff and the defendant was breached and if so by which party?

It is not disputed that the 1st plaintiff and the defendant entered into an agreement of sale dated 29th November, 2005 under which the defendant agreed to sell the suit property to the 1st plaintiff at a consideration of Kshs. 1,850,000/- on terms and conditions that were set out in the said agreement. It is also not disputed that it was a term of the said agreement that the 1st plaintiff was to pay to the defendant a sum of Kshs. 185,000/- being 10% of the purchase price as a deposit on the execution of the agreement and was to pay the balance of the purchase price in the sum of Kshs. 1,665,000/- on completion. The agreement provided further that the completion date was 90 days from the date of the agreement; that was 27th February, 2006. The agreement between the parties provided that the same was subject to the Law Society Conditions of Sale (1989 Edition) in so far as the same was not inconsistent with the conditions of the agreement. It is not disputed that the 1st plaintiff paid to the defendant 10% of the purchase price as a deposit in accordance with the terms of the agreement. It is also not disputed that the balance of the purchase price in the sum of Kshs. 1,665,000/- was not paid on the completion date. The plaintiffs have contended that the 1st plaintiff was ready and willing to pay the said amount to the defendant on the completion date and that the same was not paid due to the defendant's failure to furnish the plaintiffs' advocates with the completion documents pursuant to the provisions of clause 10 of the agreement. The defendant on the other hand has contended that it had all the completion documents in its possession and that the same were not released to the plaintiffs' advocates due to the 1st plaintiff's failure to pay the balance of the purchase price.

The agreement between the parties did not provide how the completion was to take place. As I have mentioned earlier, the agreement between the 1st plaintiff and the defendant was subject to the Law Society Conditions of Sale (1989 Edition). The Law Society Conditions provides as follows in Condition 4;

“4. Completion

(1) Completion shall, unless otherwise agreed in writing between the parties or their advocates and the advocates for any mortgagee, take place at the office of the vendor's advocate or, if required by the vendor at least five (5) working days prior to the completion date, at the office of the vendor's mortgagee or his advocate.

(2) Completion shall take place in manner set out hereunder namely:

(a) Upon completion, the purchaser shall pay the purchase money to the vendor's advocate who shall hold the same as stakeholder until registration of the conveyance. If registration of the conveyance shall not be effected within thirty (30) days of completion, the vendor may, without prejudice and in addition to any other right or remedy, give notice to the purchaser requiring him to effect the registration of the conveyance within such period (not being less than thirty (30) days from the date of the notice) as may be specified in the notice. If the conveyance shall not have been registered on or before the expiry of the notice, the purchaser shall, within seven (7) days after such expiry:

(i) pay, and release to the vendor unconditionally the whole of the purchase price and all other sums payable under the contract; or

(ii) treat the contract as rescinded whereupon the purchaser shall return all documents delivered to him by the vendor against repayment of any sums paid by way of deposit or otherwise and the purchaser shall, at his own expense, procure the cancellation of any entry relating to the contract in any register

(b) Where the vendor has agreed that the whole or any part of the purchase money shall not be paid upon completion but shall be secured by an undertaking from the purchaser's advocate or the purchaser's mortgagee or his advocate, the relevant undertaking, in form and substance satisfactory to the vendor, shall be delivered to the vendor's advocate upon completion together with the payment of any unsecured balance of the purchase money;

(c) Where the provisions of paragraph (b) of this sub-condition apply, registration of the conveyance and, if so required by the purchaser, of any mortgage in favour of a purchaser's mortgagee shall be undertaken by the vendor's advocate subject to the following conditions:

i. upon completion, the documents referred to in paragraph (d) of this sub-condition shall be produced for inspection by the purchaser's advocate and, if applicable, the advocate for any purchaser's mortgagee;

ii. upon completion, the purchaser shall pay to the vendor's advocate a sum sufficient to pay the stamp duty on the

conveyance and any mortgage in favour of a purchaser's mortgagee and the registration fees for those documents and shall deliver to the vendor's advocate an undertaking addressed to the Collector of Stamp Duties in form and substance sufficient to enable immediate registration of the conveyance pending any valuation required by the Collector;

iii. for the purposes of this paragraph, the expression "registration" shall, where the purchaser is a company incorporated under the Companies Act (Cap. 486) or a co-operative society registered as a registered society under the Co-operative Societies Act (Cap.490), in the case of any mortgage include registration of such mortgage in accordance with the provisions of the Companies Act or (as the case may be) of the Co-operative Societies Act;

(d) Against payment or delivery (as the case may be) in accordance with paragraph (a) or (b) above, the vendor shall deliver or, where paragraph (c) applies, produce for inspection to the purchaser's advocate and, if so required by the purchaser, the advocate for the purchaser's mortgagee the duly executed conveyance and all necessary discharges of encumbrances, consents and clearance certificates together with, if required by the purchaser, a duly completed Stamp Duty Valuation Form.

(e) Upon registration of the conveyance, the party responsible for registration shall give written notice within seven (7) days to the other party whereupon:

(i) where paragraph (a) applies, the purchase money shall be released to the vendor;

(ii) where paragraph (b) applies, the title deeds to the property and the conveyance shall be delivered to the purchaser or his mortgagee against compliance with the undertaking referred to in that paragraph.

(3) The vendor shall not be obliged to accept payment of any money due on completion or in fulfillment of an undertaking other than by one or more of the following methods:

a) legal tender

b) a banker's draft drawn by and upon a bank registered under the Banking Act (Cap,488);

c) an unconditional authority to release any deposit held by a stakeholder;

d) otherwise as the vendor shall have agreed before completion.

(4) If the parties agree that completion shall be effected through the post, completion shall take place when:

(a) the money due on completion is paid to the vendor; and

(b) the vendor's advocate holds to the order of the purchaser all the documents to which the purchaser is entitled on completion.

(5) For the purposes of this condition, money is paid when the vendor or, as the case may be, the vendor's advocate receives payment by a method specified in sub-condition (3). Where the parties have agreed upon a direct credit to a bank account at a specified branch, payment is made when that branch receives the credit

(6) (a) This sub-condition applies if the money due on completion is not paid by such time on the day of completion as is specified in the Special Conditions or, if none is so specified, by 2.30 p.m. on that day.

(b) For the purposes of condition 8 only, completion shall be deemed to be postponed by reason of the purchaser's delay from the day of completion until the next working day.

(c) The purchaser shall not, as a result of the deemed postponement of completion, be liable to make any payment of interest to the vendor unless the vendor gives him notice claiming such payment within Five (5) working days after completion (as to which period time shall be of the essence of the contract). Payment of interest so demanded shall be due Five (5) working days after receipt of such notice.

(7) This sub-condition applies unless a Special Condition provides that time is of the essence in respect of the completion date:

(a) In this condition "completion notice" means a notice served in accordance with this sub-condition;

(b) If the sale shall not be completed on the completion date, either party (being then himself ready, able and willing to complete) may after that date serve on the other party notice to complete the transaction in accordance with this sub-condition. A party shall be deemed to be ready, able and willing to complete:

(i) If he could be so but for some default or omission of the other party;

(ii) notwithstanding that any mortgage on the property is unredeemed when the completion notice is served, if the aggregate of all sums necessary to redeem all such mortgages (to the extent that they relate to the property) does not exceed the sum payable on completion.

(c) Upon service of a completion notice it shall become a term of the contract that the transaction shall be completed within Twenty-One (21) days of service and, in respect of such period, time shall be of the essence of the contract.

(d) If the purchaser does not comply with a completion notice:

(i) the purchaser shall forthwith return all documents delivered to him by the vendor and at his own expense procure the cancellation of any entry relating to the contract in any register;

(ii) without prejudice to any other rights or remedies available to him, the vendor may forfeit and retain any deposit paid and/or resell the property by auction, tender or private treaty.

(e) If on any such re-sale contracted within Six (6) months after the completion date the vendor incurs a loss, the purchaser shall pay to the vendor liquidated damages. The amount payable shall be the aggregate of such loss, all costs and expenses reasonably incurred in any such re-sale and any attempted re-sale and interest at the contract rate on such part of the purchase money as is from time to time outstanding (giving credit for the amount of the forfeited deposit (if any) and for all sums received under any re-sale contract on account of the re-sale price) after the completion date;

(f) If the vendor does not comply with a completion notice, the purchaser, without prejudice to any other rights or remedies available to him, may give notice to the vendor forthwith to pay to the purchaser any sums paid by way of deposit or otherwise under the contract and interest on such sums at the contract rate from Four (4) working days after service of the notice until payment. On compliance with such notice, the purchaser shall not be entitled to specific performance of the contract but shall forthwith return all documents delivered to him by the vendor and, at the expense of the vendor, procure the cancellation, of any entry relating to the contract in any register;

(g) Where, after service of a completion notice, the time for completion shall have been extended by agreement or implication, either party may again invoke the provisions of this condition which shall then take effect with the substitution of “ten (10) days” for “twenty-one (21) days” in paragraph (c) of this sub-condition.”

Sub-condition 2(a) of Condition 4 above provides that on completion, the purchaser shall pay to the vendor's advocates the purchase price or the balance thereof to hold as stakeholder pending registration of the transfer in favour of the purchaser. Sub-condition 2(d) of Condition 4 provides that it is upon the payment of the purchase price that the vendor is supposed to furnish the purchaser or his advocates with the completion documents. It follows from the foregoing that the 1st plaintiff had an obligation to pay to the defendant the balance of the purchase price on the completion date on receipt of which the defendant was to forward to his advocates the completion documents. The defendant had no obligation to furnish the 1st plaintiff's advocates with the completion documents before receiving the balance of the purchase price in the sum of Kshs. 1,665,000/-. Since it is admitted that the 1st plaintiff did not pay the said balance of the purchase price, he was in breach of the agreement of sale and the defendant was entitled subject to Condition 4(7) of the Law Society Conditions of Sale to rescind the agreement of sale and to forfeit the deposit paid. It is not disputed that after the 1st plaintiff failed to pay the balance of the purchase price on 27th February, 2006 which was the completion date, the defendant served his advocates with a completion notice dated 12th April, 2006 on 18th April, 2006 pursuant to Condition 4(7)(b) and (c) of the Law Society Conditions of Sale. That notice called upon the 1st plaintiff to pay the balance of the purchase price within 21 days failure to which the defendant would forfeit the 10% deposit. It is not disputed that the 1st plaintiff did not comply with the demand contained in that notice. The evidence on record shows that even after the expiry of that notice, the 1st plaintiff was given more time to pay the balance of the purchase price but he still failed to do so maintaining wrongfully that he could only make the payment upon his advocates being furnished with the completion documents.

I have also noted that on 16th September, 2009, this court made an order that the 1st plaintiff deposits the said balance of the purchase price in an interest earning bank account in the joint names of the advocates for the parties on record. Even that order was not complied with which casts doubt whether the 1st plaintiff had the balance of the purchase price on the completion date. It is my finding from the foregoing that it was the 1st plaintiff who breached the agreement of sale dated 29th November, 2005 between him and the defendant by his failure to pay the balance of the purchase price on the completion date and after the time was extended for him to do so.

Whether the defendant was a party to the agreement of sale dated 18th November, 2005 between the 1st plaintiff and the 2nd plaintiff in respect of the suit property.

There is no evidence on record that the defendant was a party to the agreement of sale dated 18th November, 2005 between the 1st plaintiff and the 2nd plaintiff. There is also no evidence that the defendant approved or consented to the 1st plaintiff entering into the said agreement with the 2nd plaintiff. The agreement dated 18th November, 2005 speaks for itself. There is no indication or suggestion in the agreement that the consent of the defendant was sought before the plaintiffs entered into the agreement. As at the time the plaintiffs entered into the said agreement, the 1st plaintiff had not even entered into a sale agreement with the defendant. As at 18th November, 2005 when he entered into the said agreement of sale with the 2nd plaintiff, the 1st plaintiff had no proprietary interest in the suit property that he could transfer to the 2nd plaintiff. The plaintiffs relied on the defendant's advocates' letter dated 27th January, 2007 as evidence of the fact that the defendant was aware of the existence of the agreement of sale between the plaintiffs dated 18th November, 2005. This letter was written after the completion date and the rescission of the agreement of sale between the defendant and the 1st plaintiff. There is nothing in the letter suggesting that the defendant had consented to the agreement between the plaintiffs. Even if the defendant was aware of such agreement, it

was not a party to it and could not be bound by the same. It is my finding therefore that the defendant was not a party to the agreement of sale dated 18th November, 2005 between the 1st plaintiff and the 2nd plaintiff.

Whether the 2nd plaintiff has any cause of action against the defendant arising either from the agreement of sale dated 29th November, 2005 between the 1st plaintiff and the defendant or the agreement of sale dated 18th November, 2005 between the 2nd plaintiff and the 1st plaintiff.

It is not in doubt that the 2nd plaintiff was not a party to the agreement of sale dated 29th November, 2005 between the defendant and the 1st plaintiff. I have also found above that the defendant was not a party to the agreement of sale dated 18th November, 2005 between the 1st plaintiff and the 2nd plaintiff. It follows therefore that the 2nd plaintiff cannot enforce any of the two agreements against the defendant. The 2nd plaintiff's agreement with the 1st plaintiff dated 18th November, 2005 was subject to the successful completion of the agreement dated 29th November, 2005 between the defendant and the 1st plaintiff. As I have found above, the agreement was not completed as a result of the 1st plaintiff's failure to pay the balance of the purchase price to the defendant. The failure by the parties to complete that agreement of sale was not as a result of any fault on the part of the defendant. Due to the foregoing, it is my finding that the 2nd plaintiff has no cause of action against the defendant.

Whether the plaintiffs are entitled to the reliefs sought in the plaint.

As mentioned earlier in this judgment, the plaintiffs sought specific performance and a permanent injunction restraining the defendant from selling the suit property pending the hearing of the suit. The second relief cannot be granted as it sought injunction pending the hearing of the suit and this is a final judgment in the matter. That leaves only the prayer for specific performance. In Gurdev Singh Birdi and Marinder Singh Ghatora v Abubakar Madhubuti CA No.165 of 1996 it was held that:

“...It cannot be gainsaid that the underlying principle in granting the equitable relief of specific performance has always been that under all the obtaining circumstances in the particular case, it is just and equitable so to do with a view to doing more perfect and complete justice. Indeed...a plaintiff must show that he has performed all the terms of the contract which he has undertaken to perform, whether expressly or by implication, and which he ought to have performed at the date of the writ in the action.”

As I have held above, the 1st plaintiff has not performed his part of the agreement of sale dated 29th November, 2005 between him and the defendant while no agreement existed between the 2nd plaintiff and the defendant that can be enforced by an order of specific performance. In the circumstances, I am not satisfied that the plaintiffs have met the conditions for granting an order for specific performance. The plaintiffs have therefore failed to prove their claim against the defendant and as such are not entitled to the reliefs sought in the plaint.

Who is liable for the costs of the suit?

Costs is at the discretion of the court which must be exercised judicially. As a general rule, costs follow the event. In this case, the court has held that the plaintiffs have failed to prove their case against the defendant. No reason has been put forward that would justify a departure from the general rule on costs. The defendant shall have the costs of the suit.

Conclusion

In conclusion, the plaintiffs' suit fails and the same is dismissed with costs to the defendants.

Dated and Delivered this 24th Day of September 2020

S. OKONG'O

JUDGE

Judgment read through Microsoft Teams Video Conferencing platform in the presence of;

Mr. Kithinji for the Plaintiffs

Ms. Nyabenge for the Defendant

Ms. C. Nyokabi-Court Assistant