



REPUBLIC OF KENYA



**KENYA LAW**  
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**Getecha v Njagi (Civil Case 269 of 2018)  
[2026] KEHC 508 (KLR) (Civ) (26 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 508 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE 269 OF 2018**

**LP KASSAN, J**

**JANUARY 26, 2026**

**BETWEEN**

**FRANCES WANJIRU GETECHA ..... PLAINTIFF**

**AND**

**EDWIN KIRUNJA NJAGI ..... DEFENDANT**

**RULING**

1. Frances Wanjiru Getecha (hereafter the Plaintiff) filed suit by way of plaint dated 27.11.2018 seeking inter alia damages in the sum of Kshs. 9,330,000/-; general damages; interest on the above; costs of the suit; and any other relief that this Court may deem appropriate, in the circumstance. The Plaintiff's claim was premised on fraud and negligence on the part of Edwin Kirunja Njagi (hereafter the Defendant)
2. It was averred that at all material times relevant to the suit, the Defendant was the Plaintiff's advocate wherein it was contractually understood that the latter would exercise reasonable care, knowledge and skill expected of an Advocate in the course of his engagement. That the Defendant acted for the Plaintiff, as buyer, in the purchase of 1 ½ acres of land being LR No. 4927/Kasarani (hereafter suit property), while contemporaneously acting for the seller. It was further averred that the Plaintiff relied on the Defendant's representation regarding the seller's interest and entitlement to the suit property at the time of concluding the agreement for sale, in paying the agreed purchase price of Kshs. 8,625,000/- and in paying the Defendant's legal fees in the sum of Kshs. 480,000/- to facilitate the registration of her interest in the suit property.
3. That in breach of the contract, the Defendant fraudulently and negligently made representation meanwhile grossly failed to perform his duty as an Advocate, which, occasioned the Plaintiff loss and damage. It was further averred that the Plaintiff initiated disciplinary proceedings as against the Defendant before the Law Society of Kenya and a complaint before the Directorate of Criminal



Investigations meanwhile the Defendant continues to make verbal assurances to act in the Plaintiff's interest, in respect of the purchase of the suit property, but has failed to do so.

4. The Defendant filed a statement of defence dated 17.01.2019 admitting to having been the Plaintiff's advocate however went on to deny key averments in the plaint. The Defendant went on to aver on without prejudice to the averments in his statement of defence, that by virtue of the Plaintiff's engagement with the vendor of the suit property, the Defendant has no knowledge of any loss suffered, since his obligation was limited to drafting the sale agreement, which was promptly done and paid for.
5. The foregoing thus formed the state of pleading prior to hearing of the suit.
6. During the trial, Motho Kimotho Munyua testified as PW1. He began by identifying himself as the Plaintiff's son and thereafter proceeded to adopt his witness statement dated 27.11.2018, as his evidence in chief. The gist of his testimony was that sometime in May of 2009, he accompanied the Plaintiff to the Defendant's office concerning the purchase of the suit property. During the initial meeting the Plaintiff had prepared a banker's cheque and later in November 2010 made an RTGS being the final deposit towards purchase of the suit property. It was his evidence that, consequently, the Plaintiff made several attempts to reach the Defendant, to no avail, and it is only after she involved the police that the Defendant showed up for a meeting to explain the status of the transaction.
7. That it was his belief that the Defendant took advantage of the Plaintiff's desperation to purchase the suit property, all the while knowing he could not fulfill the transaction. He went on to state that upon the Plaintiff lodging a criminal complaint as against the Defendant, the latter was charged before a criminal Court wherein he testified as witness. He maintained that the Defendant acted for both the Plaintiff and vendor of the suit property and was duly paid his legal fees with a receipt being issued thereafter. He concluded by stating that at the time of filing suit, the complaint as against the Defendant was ongoing.
8. The Plaintiff, Frances Wanjiru Getecha testified as PW2. She too began her evidence by adopting her witness statement dated 27.11.2018 as her evidence in chief. She stated that the purpose of purchasing the suit property was to relocate her school. That the Defendant requested to act as her advocate meanwhile intimated that he was equally the advocate acting for the vendor of the suit property. It was her evidence that she settled the Defendant's legal fees in the sum of Kshs. 480,000/- meanwhile paid a total of Kshs. 8,625,000/- towards purchase of the suit property. Despite a request to effect the transfer, the Defendant began forestalling the process. She went on to state that upon placement of beacons on the suit premises she proceeded to the Environment and Lands office at Kasarani to confirm that the beacons were not on riparian land however it was confirmed by the latter office that the suit property was partially on riparian land. She later reported the matter to the police at Kasarani and was later referred to DCI Kiambu.
9. Alongside the report to the police, she lodged a complaint with the Law Society of Kenya. She went on to state that her claim as against the Defendant was for professional negligence and fraud particularly for receiving money and selling property that did not exist. She stated that Munywa Properties, which was involved in the transaction, was a fabrication and a fraudulent company. She went on to state that she had since obtained judgment in another matter for the sum of Kshs. 9,330,000/- and therefore would abandon her claim as against the Defendant for the said amount nevertheless her claim as against the Defendant was specific to general and special damages. She iterated that her claim as against the Defendant pertains compensation for the ten (10) years she suffered psychological torture and not for the eight (8) million she had paid as purchase price.
10. The Defendant, Edwin Njagi testified as DW1. He began his evidence by identifying himself as an Advocate of the High Court of Kenya with over twentyfive (25) years' experience. He thereafter



proceeded to adopt his witness statement dated 04.03.2019 as his evidence in chief meanwhile adduced into evidence the documents appearing in his list of documents of even date as DExh.1-15, documents appearing in his supplementary list of documents dated 22.11.2024 as DExh.16-19 and further supplementary list of documents dated 10.02.2025 as DExh.20. He went on to urge the Court to dismiss the Plaintiff's claim for Kshs. 9,330,000/- on the premise of her testimony. He confirmed that the Plaintiff visited his office in respect of the purchase of the suit property wherein he proceeded to prepare an agreement between the latter and Munyuwa Properties and Developers Ltd for the purchase of 1 ½ Acres.

11. He disputed having prompted the Plaintiff to act for her in the transaction and that when the Plaintiff approached him at the time, he was acting for Munyuwa Properties, to wit, she asked him to act for her as well in the said transaction. That his duty was limited to drafting the sale agreement on the suit property. He went on to state that the seller of the land had an interest in the same on the premise of an arbitration award, contrary to the Plaintiff's assertion. That the Plaintiff directly paid Kshs. 8,625,000/- to the seller – Munyuwa Properties. It was his evidence further that he was acquitted of the charges leveled against him both before the Criminal Court and the Disciplinary Committee. The latter judgment found that the owner of the suit property was not disposing of the same therefore he had no control over the decision of disposal of the suit property whereas he was equally relieved of his role as Advocate and another counsel appointed in his stead.
12. He went on to state that in Nyambura's affidavit before the Disciplinary Committee, she equally deposed an affidavit acknowledging receipt of the purchase price in respect suit property and that she had no complaint as against the Defendant. He maintained that the purchase price was to be refunded by Nyambura. The instant suit was filed in 2018 whereas the judgment before the Disciplinary Committee and Criminal Court were rendered in 2020 and 2024 respectively. He further iterated that he did not have control over the sale of the suit property whereas his services were terminated. In conclusion he stated that both decisions before the Disciplinary Committee and Criminal Court have not been challenged on appeal.
13. Respective counsel for the parties had an opportunity to cross-examine and reexamine the witnesses.
14. At the close of the trial parties filed submissions, of which, the Court has duly considered alongside the authorities relied in support thereof.
15. Having considered the above, the overarching question for determination is whether the Plaintiff has on a balance of probabilities proved her case as against the Defendant. And if so, whether the relief(s) as sought in the plaint ought to be granted. Pertinent to the determination of issues before this Court are the pleadings, which formed the basis of the parties' respective cases before the trial Court. Concerning the latter, the Court of Appeal in Wareham t/a A.F. Wareham & 2 Others v Kenya Post Office Savings Bank [2004] 2 KLR 91 observed that-

“We have carefully considered the judgment of the superior court, the grounds of appeal raised against it and the submissions before us on those matters. Having done so we are impelled to state unequivocally that in our adversarial system of litigation, cases are tried and determined on the basis of the pleadings made and the issues of fact or law framed by the parties or Court on the basis of those pleadings pursuant to the provisions of Order XIV of the Civil Procedure Rules. And the burden of proof is on the Plaintiff and the degree thereof is on a balance of probabilities. In discharging that burden, the only evidence to be adduced is evidence of existence or non-existence of the facts in issue or facts relevant to the issue. It



follows from those principles that only evidence of facts pleaded is to be admitted and if the evidence does not support the facts pleaded, the party with the burden of proof should fail.”

16. With above in reserve, it is undisputed that the parties had an existing advocate-client relationship, in respect of the purchase of the suit property, wherein the Defendant was acting for both the Plaintiff and the vendor of the suit property. It is equally undisputed that the Plaintiff paid the full purchase price for the suit property to Munywa Properties in the sum of Kshs. 8,625,000/-. Further, it is not in dispute that the Defendant was not the vendor of the suit property and that his services were eventually terminated by the Plaintiff, upon the advocate-client relationship having broken down. The Plaintiff's case, from her pleadings, is that she suffered loss and damage on account of the Defendant's fraud and negligence in relation to the sale of the suit property.
17. The Defendant vehemently denies any loss occasioned to the Plaintiff and asserts that firstly, the Plaintiff from her evidence had since abandoned her claim on damages in the sum of Kshs. 9,330,000/-; secondly, his role as an Advocate was limited to preparing of the sale agreement of which he did; thirdly the vendor of the suit property had an identifiable interest in the suit property, by dint of the arbitral award and could therefore dispose of it; fourthly, he had no control over the decision on disposal of the suit property; and fifthly by dint of the Plaintiff's own evidence, she had not suffered any identifiable loss and damage as claimed in her plaint.
18. On the back drop of the forestated, this Court has been called upon to determine whether there was fraud or negligence on the part of the Defendant and whether the Plaintiff is entitled to the reliefs sought in her pleadings. To the foregoing end, the applicable law as to the burden of proof is spelt out in Section 107, 108 and 109 of the *Evidence Act*. In *Karugi & Another v Kabiya & 3 Others* (1987) KLR 347 the Court of Appeal stated that:

“The burden on a plaintiff to prove his case remains the same throughout the case even though that burden may become easier to discharge where the matter is not validly defended and that the burden of proof is in no way lessened because the case is heard by way of formal proof...The plaintiff must adduce evidence which, in the absence of rebuttal evidence by the defendant convinces the court that on a balance of probabilities it proves the claim.”
19. As to the question of fraud, *Tunoi JA* (as he then was), in *Vijay Morjaria vs Nan Singh Madhu Singh Darbar & Another* [2000] eKLR succinctly stated that; -

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”
20. Meanwhile, as pertains the standard of proof the Court of Appeal in *Kinyanjui Kamau vs George Kamau* [2015] eKLR expressed itself as follows; -

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo vs Ndolo* (2008) 1 KLR (G & F) 742 wherein the Court stated that:

“...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases,



namely proof upon a balance of probabilities; In cases where fraud is alleged, it is not enough to simply infer fraud from the facts."

21. Earlier, the same Court In *Virani t/a Kisumu Beach Resort v Phoenix of East Africa Assurance Company Ltd* [2004] eKLR, held that:-

"Fraud is a serious quasi-criminal imputation, and it requires more than proof on a balance of probability though not beyond reasonable doubt".

22. With the above in reserve, It can be garnered from the Plaintiff's evidence that she paid the Defendant's legal fees in the sum of Kshs. 480,000/- meanwhile paid a total of Kshs. 8,625,000/- towards purchase of the suit property. To the foregoing end, the Plaintiff has itemized the particulars of fraud and negligence at paragraph 7 of her plaint, to wit, she asserts that the Defendant grossly failed to perform his duty as counsel.

23. At the outset, it necessitates mentioning, by her own evidence, the Plaintiff abandoned her quantified claim of Kshs. 9,330,000/- as against the Defendant meanwhile asserted that her claim as against the Defendant was for professional negligence and fraud in particular for receiving money and selling property that did not exist. That her claim was localized to compensation for the ten (10) years she suffered psychological torture.

24. Notably, the Plaintiff did not amend her plaint to capture her mutated claim. It is trite that parties are bound by their pleadings and that the issues arising for determination can only be localized from pleadings. The latter was echoed by the Court of Appeal in *North Kisii Central Farmers Limited v Jeremiah Mayaka Ombui & 4 others* [2014] eKLR wherein it was observed that; -

"The complaint running through the submissions by the learned counsel for the appellant in this appeal was that the learned judge wrote and delivered a judgement on issues that were not pleaded in the plaint and which were therefore not be before the learned judge for determination.

.....One of the issues for determination on appeal in the case of *Abdul Shakoor Sheikh v Abdul Najeid Sheikh Civil Appeal No. 161 of 1991 (ur)* was the complaint that the trial judge dealt with an issue which was not properly before him as it had not been pleaded in the plaint. It was also contended in that appeal that in making this part of the order dependent on a non-existent appeal the judge grossly erred in that he granted a relief which had not been sought. This court differently constituted agreed and held that a plaintiff is not entitled to reliefs which he has not specified in his statement of claim as pleadings play a very pivotal role in litigation. The court cited a quote from the authors *Bullen and Leake* (12<sup>th</sup> edition) page 3 under the rubric *Nature of Pleadings*:- "The system of pleadings operates to define and delimit with clarity and precision the real matters in controversy between the parties upon which the parties can prepare and present their respective cases and upon which the court will be called upon to adjudicate between them. It thus serves the two fold purposes of informing each party what is the case of the opposite party which he will have to meet before and at the same time informing the court what are the issues between the parties which will govern the interlocutory proceedings before the trial and which the court will have to determine at the trial."

25. It is palpable from the Plaintiff's pleadings that the claim for professional negligence and compensation for the ten (10) years physiological torture were not pleaded. That said, as to whether there was fraud and negligence on the part of the Defendant, firstly, it is not in dispute that the Defendant prepared a



sale agreement in respect of the suit property for the Plaintiff and was thereafter compensated in the sum of Kshs. 480,000/- being advocate fees for work rendered.

26. Further, it can be gathered from the Plaintiff's adopted witness statement that she was introduced to the Defendant by one Eunice Wanjohi, wherein the Defendant confirmed that he was acting for Nyambura Mwangi, who was a beneficiary of her late husband's shares in Miaraho Limited, encompassing the suit property. It is notable from the arbitral award in respect of Miaraho Limited and affidavit in the Disciplinary Proceedings before the LSK disciplinary tribunal, that the Defendant had a transferable interest in the suit property and was thus capable of disposing of the same.
27. Secondly, it is evident from the sale agreement, (at paragraph 5), between the Plaintiff and Munywa Properties and Developers Ltd, that the Defendant was to act as counsel for the parties in the transaction. Therefore, at all material times relevant to the transaction in question, the Defendant had duly disclosed and it was within the knowledge of the Plaintiff that the former was acting for both purchaser and vendor in the transaction.
28. Thirdly, from the Plaintiff's evidence, she failed to demonstrate by way of conduct or otherwise that the Defendant imposed himself as counsel in the transaction and the sale agreement was restrictive to the effect that the Defendant was the only advocate who could act as counsel in the matter. Therefore, for all intents and purposes the Plaintiff was at liberty to engage another counsel in the transaction if she so wished. Whereas, from the respective parties' evidence before this Court, at a certain point, the Plaintiff had terminated the Defendant's services as counsel in the matter.
29. Fourthly, given the advocate-client relationship that had existed between the parties hereto, the Defendant role was limited to counsel, whereas there was no evidence to the effect that the latter was the proprietor of the suit property. Thus, as rightly argued by the Defendant, upon preparing the sale agreement, he had no authority or vested interest to implore upon the vendor Nyambura Mwangi/ Munywa Properties to dispose of the suit property, in any event.
30. Fifthly, by the Plaintiff's own testimony, she told this Court that she had since obtained judgment against the vendor and or its advocate with respect to a refund to the purchase price. Sixthly, the Defendant was acquitted of the preferred offences against him before the Criminal Court and Disciplinary Tribunal meanwhile the latter decision was categorical to the effect that-;

“Upon assessment of the facts of this case, we hold that the accused advocate rendered professional services to the complainant but the sale transaction was not completed due to breach by the vendor....We hold that on a balance of probabilities, the charge of failing to render adequate professional services has not been proved....Therefore, the charges or professional misconduct for failure to render any or any adequate services as set out in the complaint's affidavit is not merited”

31. All said and done the totality of the Plaintiff's evidence does prove above a balance of probabilities and not beyond reasonable doubt, fraud and negligence on the part of the Defendant. In totality, the particularized grounds of fraud and negligence in the Plaintiff's plaint have not been proved.
32. Having considerably addressed myself to the question, as held in the case of Wareham t/a A.F. Wareham & Others (supra), if the evidence tendered by a plaintiff does not support the pleaded facts, the plaintiff being the party bearing the burden of proof should fail. See also Karugi & Another v Kabiya & 3 Others (supra). In the result, the Court finds that the Plaintiff has failed to prove her claim as against the Defendant. The Plaintiff's suit must fail and is hereby dismissed with costs to the Defendant.
33. Orders Accordingly!



**DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 26<sup>TH</sup> DAY OF JANUARY 2026.**

**HON L P KASSAN**

**JUDGE**

In the presence of;

Waliako for Appellant

Kirunja holding brief Kamwethe for Respondent

Carol – Court Assistant

