



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

HIGH COURT CIVIL CASE NO. 2 OF 2023

ANTHONY MAINA HENIA.....1ST PLAINTIFF
CIGMA BUSINESS CENTRE LTD.....2ND PLAINTIFF
HORIZON DRILLING CO. LTD.....3RD PLAINTIFF
JAMES KABUGI KIMANI.....4TH PLAINTIFF
JACINTA WANJIRU MACHARIA..... 5TH PLAINTIFF

VERSUS

SOUTHSHORES LOGISTICS LTD.....1ST DEFENDANT
COSTIN & WEBSTER LAW.....2ND DEFENDANT

JUDGMENT

1. Anthony Maina Henia, Cigma Business Centre Ltd, Horizon Drilling Co. Ltd, James Kabugi Kimani, and Jacinta Wanjiru Macharia are the plaintiffs in this case. In their plaint dated 8th November 2022, they sued both defendants for breach of the land sale contracts, alleging that the defendants failed to transfer title to the parcels of land in question. They are represented by Githui & Company Advocates and seek the following reliefs:
 - a) The refund of the consideration sums totalling Kshs. 82,811,015/=. The amount is particularized as follows:
 - i) Kshs. 1,000,000/= payable to the 1st plaintiff.
 - ii) Kshs. 48,000,000/= payable to the 2nd plaintiff.
 - iii) Kshs. 13,163,015/= being the costs of development of the land by the 2nd plaintiff.
 - iv) A sum of Kshs. 648,000/= being stamp duty paid by the 2nd plaintiff.
 - v) Kshs. 8,000,000/= payable to the 3rd plaintiff (evidence of stamp duty).
 - vi) Kshs. 4,000,000/= payable to the 4th plaintiff.
 - vii) Kshs. 8,000,000/= payable to the 5th plaintiff.
 - b) Interest on the amounts paid at the rate of 12% p.a. from the time when the same was paid to the defendants to the time of refund to the plaintiffs.

- c) Costs of the suit with interest at 14% per annum.
2. The Plaintiffs argued that after paying for the parcels of land to the first defendant, he did not transfer the titles to them. They also alleged that the second defendant was required to hold the funds until the transfers were completed and ownership was transferred to the buyers. Instead, he released the money in violation of the agreement.
3. Southshores Logistics Limited, in its statement of defence, claimed that the 1st and 2nd plaintiffs seized the parcels of land in violation of the sale agreements and thus are not eligible for compensation. Additionally, it was argued that the plaintiffs failed to comply with the contract's requirement to lodge the transfers within 7 days.
4. Costin & Webster Law, the second defendant, argued that the purchase price was paid to the 1st defendant in accordance with the agreement's terms.
5. The issues for determination are as follows:
 - a) Whether the first defendant is in breach of the contract.
 - b) Whether the second defendant released the monies for the land purchase prematurely, and if so,
 - c) Whether it is liable to the plaintiffs.
6. Anthony Maina Henia (PW1) testified that he bought four parcels of land. Among them, Nyandarua/Mbuyu 9317, which was purchased for his company, Cigma Business Centre Ltd. Nyandarua/Mbuyu/9323,9324 & 9325 were in his name. His evidence was that he completed payment for land parcel number Nyandarua/Mbuyu 9317 on the 11th day of August 2022 and took possession. He, however, did not complete the payments for the other three parcels.
7. Joseph Macharia Runo (PW2), testifying as the director of the third plaintiff, stated that he was involved in a land sale with the first defendant, representing his wife, the fifth plaintiff. The third plaintiff acquired parcels Nyandarua/Mbuyu 9318 and 9320, while the fifth plaintiff purchased parcels Nyandarua/Mbuyu 9321 and 9322. They took possession of the land upon completion of payment.
8. James Kabugi Kimani (PW3) testified that he paid the entire purchase price for the land parcel number Nyandarua/Mbuyu 9319. He took possession thereof.
9. The plaintiffs argue they could not acquire titles to the land parcels because the estate administrator of James Kanyotu had filed an inhibition. This inhibition resulted from the estate suing the first defendant in a related matter.
10. Daniel Macua Ndonga (DW2), the first defendant's director, confirms that he entered into sale agreements with the plaintiffs and agrees on the purchase prices claimed. About a year later, he learned of the inhibition order and subsequently filed Case No. E018 of 2022 in the Environment and Land Court against the estate administrators of James

Kanyotu. He sought orders to lift the inhibitions concerning land parcels Nyandarua/Mbuyu, 9317-9325.

11. During cross-examination, he conceded that possession would be meaningless if he did not have a clear title, as the purchasers would be trespassers. He also conceded that he had no right to retain possession of the monies paid if he did not pass title to the purchasers.
12. During the hearing of the case, it was revealed that the title for parcel number 9317 is dated 14th July 2022, which further complicated the question of the first defendant's ability to transfer ownership.
13. Since the first defendant has acknowledged receiving the plaintiffs' payments and admitted he cannot transfer ownership due to the inhibition filed by James Kanyotu's estate administrators, I conclude that the plaintiffs have proven their case on a balance of probabilities against him.
14. Although the second defendant argued that the purchase price was paid to the 1st defendant as per the agreement, Mr. Costin Simiyu Mulongo, the managing partner of the firm, admitted during cross-examination that he acted against the agreement.
15. The second defendant confirmed they were stakeholders under conveyancing law and had a duty to assist in completing the transaction. They admitted the transactions in this case were not finalized at their office as expected. He also agreed that all the purchase funds, except for those of the first plaintiff, were deposited at their office, and that a written instruction from the purchasers' advocates was required before releasing funds to the first defendant. Despite this, he released the money without having received such instructions.
16. The second defendant also concurred that, should the transaction not go through, the funds held by the stakeholder will be returned to the buyers.
17. The second defendant did not act professionally and is liable to the plaintiffs.
18. After reviewing the available evidence, I determine that the defendants are jointly and severally liable to the plaintiffs in terms of prayers a, b, and c of the plaint. Right of appeal, 30 days.

Delivered and signed at Nyandarua, this 12th day of February 2026

KIARIE WAWERU KIARIE

JUDGE.