

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL CASE NO. 056 OF 2023

PREMJI VALJI PINDORIA.....1ST
PLAINTIFF

JITENDRA VALJI MULJI.....2ND
PLAINTIFF

VERSUS

PRAMILABEN CHANDRAKANT PATEL.....
DEFENDANT

JUDGMENT

1. The Plaintiffs commenced this suit by a Plaint dated 20th July 2023. In the plaint, the Plaintiffs plead that by a Share Sale Agreement dated 17th July 2020, they purchased 65,000 shares in Foam Plastics Limited from the Defendant at a consideration of Kshs. 147,550,000. They aver that the Defendant represented that the company owned L.R. No. 209/4227 (I.R. No. 10434/1), that the company's assets were worth the purchase price, that the company would have no liabilities upon completion, and that the property was free from encumbrances save for disclosed leases.
2. The Plaintiffs contend that those representations were false and that the Defendant failed to disclose the existence of a prior claim over the shares and an alleged

earlier transfer of the suit property to third parties. Upon discovering the alleged misrepresentations, they state that they rescinded the agreement.

3. The Plaintiffs therefore seek for:

- a) An injunction restraining Prime Bank Limited, its agents or servants, from transferring or otherwise dealing with funds held in the Defendant's account pending determination of the suit;*
- b) Rescission of the Share Sale Agreement or, in the alternative, damages in lieu thereof;*
- c) Repayment of Kshs. 147,550,000;*
- d) Damages for misrepresentation;*
- e) Interest; and*
- f) Costs of the suit.*

4. In her Defence dated 7th August 2023, the Defendant admits ownership of the 65,000 shares and execution of the agreement, but denies any misrepresentation or non-disclosure. She avers that the Plaintiffs conducted thorough due diligence with the assistance of counsel and that the transaction was not induced by any false representation. She maintains that the company was the registered proprietor of L.R. No. 209/4227 at the time of sale and that any alleged irregular transfer had been reversed. She further contends that the Plaintiffs assumed full control of the company upon completion and that the suit is misconceived and without merit.

5. At the hearing, the plaintiff called one witness, Premji Valji Pinduria, who testified as Pw1. He stated he is a director and shareholder of Home Park Limited and adopted his written witness statement dated 20th July 2023 as his evidence in chief. He produced the documents in his bundle as exhibits.
6. He stated that in or about September 2020, he and the 2nd Plaintiff purchased the subject company and its shares from the Defendant at a consideration of approximately Kshs. 105,500,000. The transaction was conducted through their common advocates, Taibjee & Bhalla Advocates. Pw1 testified that prior to completion, due diligence was undertaken through the said advocates, which confirmed that the Defendant was the sole registered owner of the shares and that the Company held title to L.R. No. 209/4227, on which there stood a warehouse. Being satisfied with the results of the due diligence, they proceeded to complete the transaction.
7. Pw1 further testified that upon completion, the Plaintiffs assumed management and control of the Company as directors and shareholders. He referred to a CR12 reflecting them as the shareholders of the Company.
8. He stated that on 10th June 2021, information came to their attention alleging fraud and irregularities concerning the Company and the sale transaction. He testified that correspondence ensued through their advocates, including letters to the Registrar of Companies and other authorities.

He also referred to attempts to alter company records at the Companies Registry and alleged interference with PIN and account details at KRA.

9. Pw1 maintained that at the time of purchase, there was no indication of fraud and that all reasonable due diligence had been conducted. Upon discovery of the alleged irregularities, the Plaintiffs sought a refund of the purchase price, rescission of the contract, and damages for misrepresentation. Demand letters were issued, and the present proceedings were subsequently instituted.
10. In cross-examination, Pw1 confirmed that due diligence had been carried out prior to the purchase and that the Defendant was reflected as the sole owner at the time. He nonetheless maintained that subsequent events revealed material misrepresentation and fraudulent interference with the Company's records.
11. Dw1, Pramilaben Chandrakant Patel, testified that she is the Defendant in this matter and adopted her witness statement dated 26th January 2024 as her evidence in chief. She produced the documents in her bundle, including a letter dated 6th January 2020 and a CR12 dated 4th September 2023, as exhibits.
12. She stated that she purchased the shares in Suleiman Company Limited for her late husband and at one time served as a director of the Company. She testified that issues concerning alleged fraud in the ownership of the shares arose in or about February 2019. Upon becoming

aware of the matter, she informed the Plaintiffs and availed the relevant documentation to them prior to completion of the transaction.

13. Dw1 maintained that the Plaintiffs were aware of the dispute relating to the shares before the sale and that the sale was subsequently revoked. She denied any non-disclosure or misrepresentation, contending that she did not conceal any material facts. She further stated that due diligence was undertaken through advocates before the transaction was concluded.
14. In cross-examination, Dw1 reiterated that she disclosed the existence of the dispute and that the Plaintiffs were fully aware of the claim affecting the shares at the time they proceeded with the purchase.
15. At the cross of trial, only the Plaintiffs filed written submissions dated 9th April 2025. The Plaintiffs submit that pursuant to a Share Sale Agreement dated 17th July 2020, they purchased 65,000 shares in Foam Plastics Limited for Kshs. 147,550,000 in reliance on the Defendant's express warranties that she was the sole legal and beneficial owner of the shares, that the company owned L.R. No. 209/4227 (I.R. No. 10434/1), that the assets were worth the purchase price, and that no liabilities or encumbrances were affecting the sale
16. They contend that these representations were false, as the Defendant allegedly failed to disclose a prior claim by Suleiman Consultants Limited over the same shares and

an attempted transfer of the suit property in October 2019. Relying on the common law principles governing fraudulent misrepresentation as set out in **Derry v Peek and Sing'oei v Busienei**, the Plaintiffs argue that the Defendant knowingly or recklessly made false representations which induced them to enter into the agreement, thereby entitling them to rescission of the contract, repayment of the purchase price, damages, interest, and costs.

Analysis and determination

17. I have carefully considered the pleadings, the evidence tendered by both parties, and the written submissions filed by the Plaintiffs. In my view, the issues that fall for determination are:

- i. Whether the Defendant made false representations or failed to disclose material facts prior to execution of the Share Sale Agreement;*
- ii. Whether the Plaintiffs have proved fraudulent misrepresentation;*
- iii. Whether the Plaintiffs are entitled to rescission, refund of the purchase price, damages and other reliefs sought.*

18. The Plaintiffs' cause of action is founded on fraudulent misrepresentation, otherwise known as the tort of deceit.

19. The **Black's Law Dictionary (8th Edition)** defines 'fraudulent misrepresentation' as:

A false statement that is known to be false or is made recklessly without knowing or caring whether it is true or false, and is intended to induce a party to detrimentally rely on it.

20. It is trite law that fraud must not only be specifically pleaded but must also be strictly proved. In **Vijay Morjaria v Nansingh Madhusingh Darbar & Another [2000] eKLR**, the Court of Appeal stated:

“It is well established that fraud must be specifically pleaded and that particulars of fraud alleged must be stated on the face of the pleading. The standard of proof required is higher than that of a balance of probabilities, though not beyond reasonable doubt.”

21. The elements of fraudulent misrepresentation were settled in **Derry v Peek (1889) 14 App Cas 337**, where Lord Herschell held that:

“...fraud is proven when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, carelessly whether it be true or false.”

22. In **Central Kenya Ltd v. Trust Bank Limited & 4 Others [1996] eKLR**, the Court of Appeal held:

“Fraud and conspiracy to defraud are very serious allegations. The onus of prima facie proof was much heavier on the appellant in this case than in an ordinary civil case.”

23. There is no dispute that the parties entered into a Share Sale Agreement dated 17th July 2020 for the sale of 65,000 shares at a consideration of Kshs. 147,550,000. It is also not disputed that before the completion, the Plaintiffs conducted due diligence through advocates.
24. Pw1 testified that due diligence confirmed that the Defendant was the sole registered owner of the shares and that the Company held title to L.R. No. 209/4227. He conceded in cross-examination that, at the time of purchase, the Defendant was shown as the sole owner and that completion proceeded after the due diligence was satisfied.
25. The gravamen of the Plaintiffs' complaint is that the Defendant failed to disclose an alleged prior claim by Suleiman Consultants Limited and an earlier purported transfer of the suit property in October 2019.
26. Dw1, on the other hand, testified that any alleged irregular transfer had been reversed and that the Company was the registered proprietor at the time of sale. She further stated that the Plaintiffs were made aware of the dispute before completion and that documentation was made available to them.
27. **Sections 107(1), (2) and 109 of the Evidence Act** are on the burden of proof. They state as follows:
107(1). Whoever desires any Court to give judgment as to any legal right or liability

dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

109. Proof of particular fact.

The burden of proof as to any particular fact lies on the person who wishes the Court to believe in a particular fact.

28. The burden of proof lay upon the Plaintiffs to prove, not merely that a representation was false, but that it was knowingly or recklessly false at the time it was made.
29. From the evidence on record, it is clear that, at the time of execution and completion, the Defendant was the registered shareholder; the Company was reflected as proprietor of L.R. No. 209/4227, and the Plaintiffs conducted due diligence through counsel before completion.
30. The alleged prior transfer of October 2019 was, by the Plaintiffs' own evidence, subsequently cancelled by the Registrar. No evidence was placed before the Court demonstrating that, at the time of sale in July 2020, the Company was not the registered proprietor of the suit property.
31. Further, the Plaintiffs have not demonstrated that the Defendant knowingly made a false statement. Even assuming that there had been a prior dispute, the

evidence shows that the Plaintiffs undertook due diligence and were professionally advised before completion.

32. This Court is not persuaded that the elements set out in **Derry v Peek** have been satisfied. There is no sufficient evidence that the Defendant made a representation she knew to be false or made recklessly without belief in its truth.
33. On the contrary, the evidence shows that the Plaintiffs completed the transaction after professional advice and verification of the register. The law does not relieve a party from a contract merely because the transaction later becomes commercially undesirable. Rescission is an equitable remedy and will not issue where fraud is not strictly proved.
34. In the circumstances, the court finds that the Plaintiffs have failed to prove fraudulent misrepresentation to the required standard and have also not established breach of warranty entitling them to rescission, and the claim for damages is unproven.
35. Consequently, the Plaintiffs' suit is hereby dismissed. Costs follow the event and are thus awarded to the Defendant.

JUDGMENT delivered virtually, dated and signed at

NAIROBI

This **26th** day of **February** 2026.

P.M. MULWA
JUDGE

In the presence of:

Ms. Murugi h/b for Mr. Okulo for for Plaintiffs

Mr. Karuga Maina for Defendant

Court Assistant: Carlos