



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MILIMANI

ELC NO. 1186 OF 2016

PETER NYABUTI.....PLAINTIFF/APPLICANT

VERSUS

RINGA PROPERTY LIMITED.....1ST DEFENDANT

PAUL OGADA.....2ND DEFENDANT

JUDGMENT

1. By an amended Plaint filed on 9th June 2017, the Plaintiff claimed the following reliefs against the Defendants:-

- (a) **The sum of Kshs.2,000,000/= from the 1st Defendant being the part payment of the total sale price of the suit premise.**
- (b) **The sum of Kshs.1,200,000/= from the 2nd Defendant being part payment of the total sale price of the suit premise.**
- (c) **The sum of US Dollars 5,000 from the 2nd Defendant being the part payment of the total sale price of the suit premise.**
- (d) **General damages for breach of contract.**
- (e) **Interest on (a), (b) and (c) above at the prevailing rates of interest until payment is made in full.**
- (f) **Costs of this suit together with the interest thereon at Court rates.**
- (g) **Any such other or further relief as this Honourable Court may deem appropriate.**

2. The first Defendant is Limited Liability Company whereas the second Defendant is a Director of the first Defendant. On 19th August 2013, the first Defendant offered to sell apartment number 2D (suit premises) comprised in LR No 1870/IV/100 Westlands Nairobi (suit property) which was subject to contract which was still under construction. The suit premises was offered for sale at Kshs. 18,000,000/=. The Plaintiff was expected to pay a sum of Kshs.5,000,000/= to the first Defendant upon execution of the letter of offer which amount was to be held by the first Defendant as stakeholder pending completion of the sale.

3. The Plaintiff was further expected to pay Kshs.1,068,610/= to the first Defendant's Advocates M/s Wamae & Allen Advocates as transactional costs. On diverse dates the Plaintiff paid a total of Kshs.19,500,000/= to the first and second Defendants as well as their lawyers and consolidated Bank Limited. The apartments which were being put up by the first Defendant were never completed as per the agreement. Consolidated Bank Limited who had offered a facility to the first Defendant sold the suit property after it reached an agreement with the Plaintiff for the refund of what the Plaintiff had paid to the bank. The Plaintiff who had sued Consolidated Bank Limited as a second Defendant in the original claim amended the Plaint and removed the bank following a consent entered between the Plaintiff and the bank.

4. The Defendants who were served by way of advertisement in the press neither entered appearance nor filed a defence. The Plaintiff's suit therefore proceeded by way of formal proof. The Plaintiff adopted his witness statement which he had filed 28th September, 2016 and relied on documents which he filed on the same date.

5. I have gone through the evidence adduced by the Plaintiff. On 26th August 2013, the Plaintiff transferred Kshs.1,000,000/= to the account of the second Defendant at Kenya Commercial Bank. On 24th December 2013, the Plaintiff paid the second Defendant Kshs.200,000/=. On 6th January 2014, the Plaintiff transferred Kshs.2,000,000/= to the first Defendant's Advocates. Again on 8th July 2014, the Plaintiff sent a

sum of USD 5000 to the agent of the first Defendant. This amount was equivalent to Kshs.440,000/=.

6. The amount which the Plaintiff sent is supported by documents. This evidence has not been controverted. Though the Plaintiff is also asking for general damages for breach of contract, the law is clear that one cannot be awarded general damages in addition to quantified damages. The Plaintiff has proved that he paid out Kshs.3,640,000/= to the Defendants. I therefore enter judgment in favour of the Plaintiff in the sum of Kshs.3,640,000/= against the Defendants jointly and severally . The interest on the decretal sum shall be calculated at court rates from the respective date when payment was made until payment in full. The Plaintiff shall also have costs of the suit.

Dated, Signed and delivered at Nairobi on this 27th day of August, 2019.

E.O.OBAGA

JUDGE

In the presence of Mr Onganda for Plaintiff

Court Clerk : Hilda

E.O.OBAGA

JUDGE