



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**CIVIL CASE NO. 1327 OF 2007**

**PRECAST PORTAL STRUCTURES LIMITED.....PLAINTIFF**

**VERSUS**

**RICCARDO LIZZIER.....1<sup>ST</sup> DEFENDANT**

**PEETRO LANGUI.....2<sup>ND</sup> DEFENDANT**

**IVREA GROUP.....3<sup>RD</sup> DEFENDANT**

**CATHOLIC DIOCESE OF NAIROBI.....4<sup>TH</sup> DEFENDANT**

**RULING**

Through amended plaint dated 30<sup>th</sup> March, 2005, the Plaintiff sought the following reliefs against the defendants:

- a. An injunction to restrain the defendants, their servants and or agents from constructing, developing, trespassing, selling, transferring, giving in exchange, charging or in any other way encumbering or utilizing land reference number 15314/10 Kamiti road Nairobi.
- b. A declaration that the Plaintiff is the sole legal and beneficial owner of LR. Number 15314/10 Kamiti road Nairobi.
- c. A declaration that the transfer of Land reference Number 15314/10 Kamiti to the 3<sup>rd</sup> defendant is fraudulent and/or irregular.
- d. An order for cancellation of certificate of title I.R 93733 being the title document for L.R Number 15314/10.
- e. An order compelling the defendants to transfer land reference number 15314/10 to the Plaintiff forthwith.
- f. An injunction to restrain the 1<sup>st</sup> and 2<sup>nd</sup> defendants from evicting, harassing, threatening to evict, trespassing onto or in any other way interfering with the Plaintiff's occupation and quiet enjoyment of land reference number 15314/10 Kamiti road Nairobi.

g. An order that the Plaintiff do deposit the monthly rent of Kshs.5,000/= into an interest earning account in the name of the advocates on record for the parties herein.

h. In the alternative to (a) (b) (c) (d) (e) above

#### **ALTERNATIVE 1**

(a) An order compelling the 1<sup>st</sup> and 2<sup>nd</sup> defendants to transfer land reference number 15314/5 to the plaintiffs forthwith.

(b) In default of (a) above, the Registrar of this Honourable Court to execute the transfer documents in place of 2<sup>nd</sup> Defendant.

(c) That the plot number 15314/10 and 15314/5 be valued and the 1<sup>st</sup> and 2<sup>nd</sup> defendants be ordered to pay the plaintiff the differences in the value of the two plots.

#### **ALTERNATIVE 2**

(d) The Defendants be ordered to pay the plaintiff the prevailing market value of land reference number 15314/10.

i. General Damages for breach of contract.

j. General damages for loss of business

k. Special damages as stated in paragraph 23 above.

l. Interest on the special and general damages above.

m. Costs of this suit.

The suit was heard by Nyamweya J. who entered judgment on 22<sup>nd</sup> April 2015 for the plaintiff against the 1<sup>st</sup> and 2<sup>nd</sup> defendants jointly and severally for Kshs.30,000,000/= as general damages and Kshs.811,014/75 as special damages together with interest and costs of the suit. The parties are yet to extract a decree from the said judgment. On 16<sup>th</sup> October 2015, the plaintiff's advocates on record filed in court what is referred to as "Deed of Settlement" dated 13<sup>th</sup> October 2015. To that Deed of Settlement was attached, a copy of a certificate of title in respect of land reference number 15314/4 (I.R 93729) and another Deed of Settlement dated 9<sup>th</sup> September 2015 to which is also attached a number of documents. The Deed of settlement dated 13<sup>th</sup> October 2015 is signed by the advocates for the Plaintiff, the advocates for the estate of the 1<sup>st</sup> defendant who is said to be deceased and the advocates for the 2<sup>nd</sup> defendant. The second Deed of Settlement dated 9<sup>th</sup> September, 2015 is signed by the 2<sup>nd</sup> defendant herein and one, Wanda Marlena Lolli on behalf of the estate of one, Sergio Lolli (deceased). Paragraph 7 of the Deed of Settlement dated 13<sup>th</sup> October 2015 incorporates the terms of the Deed of Settlement dated 9<sup>th</sup> September 2015 into the Deed of Settlement dated 13<sup>th</sup> October, 2015.

After filing the Deed of Settlement dated 13<sup>th</sup> October, 2015 in court as aforesaid, the advocates for the parties listed the matter for mention before me on 22<sup>nd</sup> October, 2015. On that day, Mrs. Mbugua appeared for the plaintiff while Ms. Auka appeared for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants. Mrs. Mbugua told the court that the purpose for the mention was to request the court to adopt the Deed of settlement dated 13<sup>th</sup> October 2015 aforesaid as an order of the court. Ms. Auka confirmed the position. On that day, I informed the advocates who appeared before me that I had noted from the Deed of Settlement dated 13<sup>th</sup> October 2015 that the 1<sup>st</sup> defendant is deceased and as such they should consider bringing on board the administrators of his estate before the court could consider adopting the said Deed of Settlement as an

