



Kariuki v Tofina Rom Builders Ltd & 2 others (Environment & Land Case 334 of 2015) [2024] KEELC 3450 (KLR) (24 April 2024) (Judgment)

Neutral citation: [2024] KEELC 3450 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 334 OF 2015**

**AA OMOLLO, J
APRIL 24, 2024**

BETWEEN

JAMES NGUNJE KARIUKI PLAINTIFF

AND

TOFINA ROM BUILDERS LTD 1ST DEFENDANT

SOCIAN VILLAS LIMITED 2ND DEFENDANT

DAVID KIVUTI NYAGA 3RD DEFENDANT

JUDGMENT

1. The Plaintiff filed a suit against the 1st -3rd Defendants vide Plaintiff dated 27th April 2015, amended on 22nd December 2015 and further amended on 20th July 2022 seeking for the following orders;
 - a. A declaratory order that the Plaintiff having performed all the fundamental terms of a contract between himself and the 1st and 2nd Defendants is lawfully entitled to own and hold apartment C5, Socian Villas on LR. No. 209/3091.
 - b. A permanent injunction be issued forthwith to bar, prohibit and restrain the Defendants from unlawfully increasing the cost of the project, levying illegal interest thereon without consulting and/or the consensus of the Plaintiff.
 - c. A permanent injunction be issued forthwith restraining the 2nd Defendant through its employees, servants and or agents from dealing by way of transfer, processing title documents and/or altering the records of ownership in any manner whatsoever and howsoever that is adverse to the Plaintiff's exclusive ownership and proprietary interest in Apartment C5, Socian Villas on L.R Number 209/3091.
 - d. A permanent injunction barring and restraining the 3rd Defendant from taking possession and/or entering into Apartment C5, Socian Villas on L.R Number 209/3091.



- e. The 2nd Defendants be compelled to transfer ownership and exclusive possession of Apartment C5, Socian Villas on L.R Number 209/3091 to the Plaintiff.
 - f. An order of specific performance of the said Agreement between the Plaintiff and the 1st Defendant.
 - g. That in the alternative and without prejudice to prayers(a)to (e) herein above, an Order compelling the 1st Defendant to give and/allocate the Plaintiff an alternative 3 bedroomed apartment with Domestic Quarters measuring approximately 170 Square meters plinth area in an equally affluent neighborhood as Kileleshwa.
 - h. That in the alternative and without prejudice to prayers(a) to (e) herein above, the 1st Defendant be ordered to refund the full purchase price of Kshs.8,700,000/= together with interest with effect from 15th March 2013 until payment in full.
 - i. An order directing the 1st Defendant to pay to the Plaintiff lost revenue in rent of Kshs.180,000/= per month from the date of filing suit until payment in full together with interest at Court rates.
 - j. That an Order that the 1st Defendant compensates the Plaintiff by way of damages for breach of contract.
 - k. The Defendant be ordered jointly or severally to pay interest on h, I and j above at Court rate of 14%.
 - l. Costs of this suit
 - m. Any other relief that this Honourable Court may deem just and fit to grant.
2. The Plaintiff stated that in the year 2010 he agreed to be part of a project proposed by the Defendant for the development of 3 bedroomed apartments on L.R No.209/3091 which land is registered under the 2nd Defendant. He added that this was formalized by agreement dated 13th October 2010 where he was required to contribute Kshs.8.7 Million towards the project to cater for purchase of the land, construction costs and concept fees.
 3. He averred that the 1st Defendant was developing the apartments on behalf of the 2nd Defendant for the benefit of the Plaintiff and other contributors of the project. That it was the 1st Defendant who was issuing payment receipts on behalf of the 2nd Defendant. The Plaintiff stated that he paid in full the agreed amount of Kshs.8.7 Million in installments with the last installment paid on the 15th March, 2013. This entitled him to one unit of a 3 bedroomed apartment with domestic quarters measuring approximately 170 square meters plinth area and that he was allocated Apartment Number C5 herein after referred to as “the unit”.
 4. He explained that in the agreement, the Defendant undertook to complete the project within 24 months but the same is underway. That it was also agreed that upon completion of the project, the ownership of the unit would be transferred to the Plaintiff once the Defendant obtains the requisite title documents. The Plaintiff contended that in June 2014, one of the 1st Defendant’s Directors sent an email asking him to pay an additional amount Kshs.2.6 Million without any explanation offered. Further, they imposed a penalty interest for the additional amount at the rate of 3% per month which was not based on any law or the agreement executed.
 5. He further contended that it was an implied term of the agreement that the Defendant shall at all times consult, involve and seek his consensus and approval on the design of the project, alteration thereof and



on any increase on the overall cost. The Plaintiff averred that the 1st Defendant issued him with a final notice vide letter dated 17th April 2015 emailed on 20th April 2015 demanding that he pays the disputed outstanding amount which stood at Kshs.3,494,184/- inclusive of the interest imposed within 7 days from the date of the said notice else the unit would be sold to a third party and the Plaintiff refunded his contribution less the disputed penalties.

6. The Plaintiff averred that in a rush to defeat his interest in the unit, the 2nd Defendant entered into another agreement dated 27th April 2015 with the 3rd Defendant for the sale of the unit for a consideration of Kshs. 15 Million, a price lower than the estimated market value. He posits that the 1st and 2nd Defendants breached the executed contract by unilaterally and unlawfully increasing the cost of the project, levying exorbitant and punitive interest on the increased amount, purporting to have sold the unit at price which is lower than the estimated market value of the property and increasing the number of agreed units from 30 to 40 units.
7. He impleads the Defendant has no right to terminate the contract in the manner it purported to do so after he had paid the full agreed contribution. That, if they are allowed to transfer and dispose the unit the Plaintiff will suffer irreparable losses and damages.
8. The Defendants filed a statement of defence dated 22nd July 2015 and amended on 29th February 2016. They admitted the existence of an agreement between them and the Plaintiff but added that the Plaintiff was bound to pay any additional costs that arose in the course of the construction. They affirmed that the Plaintiff was a contributor and he was to fully comply with the respective development agreement signed between themselves. That the unit was to be transferred to the Plaintiff on condition of fulfilling all his financial obligations which included paying the additional costs that arose as provided for in the agreement.
9. The Defendants denied that the Plaintiff paid the agreed Kshs.8.7 Million and that he is entitled to the unit or that the Defendants undertook to complete the project within 24 months. They also denied that they had imposed penalty interest on the amount to be paid which was not provided in law or the agreement; denied that there was an implied term of the agreement that the Plaintiff was to be involved in the approval of the design of the project, alteration or on any increase of the overall cost.
10. The Defendants assert that they fully explained the basis for the additional charges to the Plaintiff and that the issuance of the notice requiring him to pay the outstanding amount is legal and within the terms of the contract. They pleaded that they entered in the sale agreement with the 3rd Defendant only after the Plaintiff failed to abide to the terms of the contract and deny that they sold the unit at a value below market value.

Evidence

11. PW1, the Plaintiff herein testified in support of his case and adopted his recorded statement dated 27th April 2015 as evidence in chief and adduced bundle of documents dated 27/4/2015 as Pexh1. They included; Copy of the development Agreement, copy of proposal dated 13/10/ 2010, copy of receipts dated 14/10/2010,27/10/2010,12/11/2010,8/5/2012,30/7/2012,31/7/2012,5/9/2012,8/9/2012, two dated 15/3/2013,copies of email correspondences in a bundle, copies of letter 17th April 2015 to the Plaintiff and another one of the date from the 1st Defendant and a breakdown of amount paid and owing from the 1st Defendant.
12. He testified that the he was interested in one of the units of an apartment block the 1st Defendant was developing which they agreed on the price being Ksh.8.7 Million and also agreed on the time the project was to start and end and on the schedule of payment of the agreed price. That he was to pay a deposit



- of Ksh.3.9 Million and the balance to be cleared in 18 equal installments in a period of one and half years and the full Ksh. 8.7 Million was paid within the stipulated period, a fact which is not disputed.
13. He further testified that the dispute is with regard to the delay in commencing and completing the development, the number of the units and increased costs. He stated that there was a delay of over 2 years and there was a change in pricing by upto 30% noting that the number of units agreed on also increased from 30 to 39 which when done to economy of scale the price ought to have gone down.
 14. PW1 confirmed that the agreement provided that the pricing could vary slightly but that the increase of Kshs.2,600,000 was not substantiated. It is his testimony that initially he was dealing with a marketing director of the 1st Defendant, Lucy Ringera but received a notice from the financing director increasing the payment at 10% per month until payment in full. That about April 2015 the sum of Kshs.2.6 Million had increased to Kshs.3,494,182 and he received a demand letter from the finance director of the 1st Defendant to clear the same in 7 days else his unit would be sold.
 15. The witness testified that notice was carried out and his unit was sold to the 3rd Defendant. He asserted that although there was a clause in the agreement allowing the increase in price, he expected the variation to be minimal. He stated that he was away in Arusha and when he came back he did not have his unit noting that he did not receive a notice terminating the agreement they had served for the one demanding payment in 7 days which caught him by surprise.
 16. That attempts have been made to resolve the dispute amicably but no progress has been made and his recourse lies in being granted the reliefs sought in the amended plaint. He also stated that he has not received a refund of the payments made to the 1st Defendant and that the deposits paid was used to buy the land.
 17. On cross examination, the witness confirmed the agreement entered was between himself and the 1st Defendant and he made his payment over a period of time. He also confirmed that the project involved blocks with many units and after completion other purchasers got their units except him noting that each purchaser had their own agreement. He stated that the money paid was used for development thus a delay in payment would occasion a delay in completion. He conceded that prices of materials and cost of development could change but not materially.
 18. He admitted that clause 3(b) of the Project Development Agreement provided for an increase in development cost, he would be informed and he would increase his contribution. That further, Clause 8(b) of the agreement provided for termination of the agreement with 8(c) stating that the developer was allowed to terminate the agreement for delay of payment. The Plaintiff stated that there was a delay in commencement of the suit property and by the time he came back in Nairobi from Arusha in December 2015, the project was in its final stages of completion. That he had complied with the terms of the development Agreement but did not increase his contribution for the reasons he has shared with the court.
 19. PW1 confirmed having received an email dated 10/4/2015 from Lucy Ringera addressed to Ojiambo Wafula, Hassan Kassim and copied to several people among them the Plaintiff, with a proposal to sell the unit. He also saw the email from Ojiambo Wafula which talks of defaulters of payments to their homes. Further that vide email dated 14/3/2015 from Mboya which he was copied, shows a worksheet that explained the cost of the unit but stated that he did not attend the meeting referred therein. That he can see the email dated 14/3/2015 from Samuel Ngugi to Simon who is the financial director of the 1st Defendant and that he does not know if the house to Samuel Ngugi was sold stating his unit was sold to a third party, whose sale he knew about a month prior.



20. The witness stated that his main complaint is the increase in cost by the project developer who did not produce an audit report of the project while referring to paragraph 8 which deals with termination with a notice of 3 months which was not given. He testified that he individually entered into the subject agreement with the developer and not as a group. That he visited the project once when it was 35% complete. He also stated that being used to dealing with the Marketing director, Lucy Ringera, he visited her once or twice to find out justification for the increased list but did not get any. That the demand for the additional sum of Kshs.2.6 Million was made to all the purchasers/investors.
21. In support of their case, the Defendants called 2 witnesses DW1 and DW2. DW1, Lucy Ringera who is a co- director of the 1st and 2nd Defendants stated that the 1st Defendant is a developer with a concept of looking for land and after settling on a price would invite people to invest. That it is as per this arrangement that the Plaintiff invested in the 2nd Defendant.
22. She testified that after agreeing with the owner of the land, they invited the investors in the project informing them that the estimate costs with a warning that the cost was not exact and that may not finish the construction within the time lines given. She continued that the challenge that arose when the investors were not able to pay on time which can make them sell the houses to others and the prices of the materials also went up.
23. Dw1 confirmed that the Plaintiff paid Kshs.8.7 Million but was not able to pay the additional costs despite being reminded severally and this failure forced them to sell the unit. She stated that out of the 40 investors, it was only the Plaintiff who refused to pay the additional cost and that she offered him a two-bedroom house whose price was Kshs.8.7 Million or refund the money paid but he refused.
24. On cross examination DW1, stated that she had worked with the 1st Defendant since its incorporation in the year 2009 and that they had done six projects at the time they were undertaking the impugned project in. She added that the cost of the project includes cost of the land, stamp duty, legal costs, cost of construction and their costs and that in the project they judged the land by the red top soil they saw which turned out to have been added by the vendor.
25. The witness confirmed that the Plaintiff had made his final payment around 2013 and that she sold the unit in 2017 noting that the price had increased because the cost kept escalating so they could not complete the project. She also confirmed that the proposed units were 30 but at the time of completion, they did 40 units after getting approvals for more which required they start with a stronger base/foundation hence the higher cost.
26. The witness testified that when they start a project, they do not have money to even buy land and that they work with estimates with the additional costs being reasonable. She stated that they started the project in 2010 and finished in 2015 stating that they issued termination after 2 years. She affirmed that they had not produced a survey from the market to prove the increase in prices of materials. The witness stated that she is unable to give the Plaintiff a 3-bedroomed house in the suit premises but can give him a 2 bedroom in Lavington. She admitted that the offer to refund the money was not done through the advocates.
27. DW1 stated that the payment was to be done within 24 months and the last payment was done in 15th March 2013 and that the notice dated 2015 to the Plaintiff was subsequent to the several emails sent to him to add the money. That the 30 % increment was not done in bad faith and was reasonable noting as they did a Quantity Survey report to explain the costs increment. The witness testified that the increment was for every investor evidenced by the email dated 14.3.2015 at 10.39 pm. She agreed that the sum of Ksh.2.9 Million was significant to a specific unit and that the increment was justified because of the time that was taken to complete and creating ground parking.



28. Simon Ogega Oonge gave his testimony as DW2 and adopted his witness statement dated 1/11/2022 as evidence in chief and also produced two documents attached to the statement as exhibits. He stated that he has worked with the 1st Defendant for 20 years and that they identify land, negotiate the price then estimate the cost of construction which they use to invite people to subscribe but it is not based on Quantity Surveyor's report as they do not have drawings yet.
29. In the statement, the witness stated that they have an obligation to explain to the investors the cost of increase and the reasons. He added that he was in charge of the finances for the entire project and produced the exhibits referred above which contained monies that was received in the project and the expenditure which was shared with all the investors.
30. DW2 testified that what caused the changes in cost included difference in soil texture, i.e. 3 M deep cotton soil which had to be excavated. He confirmed that they do not have QS report because they do not use them. He stated that they had set out with 30 units but ended up with 40 units which does not reduce the cost of production as the foundation remained the same and each unit had specific costs. He further stated that it is possible the project cost increased by Kshs.100 M.
31. DW2 continued to state that all the money received was justified and was used in the construction. That the investors had issues with the increment but paid and that each had a private contract. He also confirmed that the emails sent did not explain the issue of excavation as the reason for increment of price. He averred that in the course of construction, they had meetings with investors and gave them figures and an option to audit.

Submissions

32. There are no submissions on record filed on behalf of the Plaintiff. The Defendant filed submissions dated 16th February 2024 in support of their case where they laid out the Plaintiff's case and their case before outlining their issues for determination. They submitted on whether the parties entered into the project development agreement and what were the parties' respective obligations in the agreement, whether the Plaintiff or the defendants were in breach of its obligations, whether the 1st Defendant was thus in the circumstances entitled to sell the apartment, whether the Plaintiff and the rest of the investors were informed of the project costs and expenses and progress, is the Plaintiff entitled to specific performance, whether in the circumstances the Plaintiff has proved his case and is entitled to the prayers sought and who pays the costs of the case.
33. They submitted that the agreement entered by the Parties envisaged an increase in the cost of construction and made a provision for the increase. It provided where there is any increase in the development cost for the project beyond what is shown in schedule A, the Developer shall inform the Client and the Client shall increase his/her contribution towards the development cost. That Clause XIII and XIV of the agreement also provided for the Developers obligations inter alia; account for costs and expenses of construction and apportion amongst the participants of the project and if there was a need, the developer was to secure additional funding as required to complete the construction of the project.
34. The Defendant submitted that in keeping with their obligations to account for the money received from the investors, the 1st Defendant kept and maintained a cash book and project income and expenditure. It also maintained a schedule containing all the contributions by all the investors in the project which the Plaintiff had access to. It is their further submission that from the agreement, the Plaintiff was to contribute a total of Kshs.8,700,000 per unit and which Schedule A contained notes stating at note 1 that the costs were estimates based on past experience and that the final costs could vary.



35. Further, that under Clause 8C, the parties agreed that the agreement could be terminated by the Defendants forthwith in the event that the Plaintiff does not pay his/her contributions as stipulated in schedule A or delays to remit his or her contributions. That the Plaintiff paid Kshs.8,700,000 but the project was incomplete and more money was required to complete the project which other investors topped up but the Plaintiff refused thus constituting breach of the contract.
36. The Defendants argued that they served the Plaintiff with a notice in line with the agreement dated 17th April 2015 notifying him to make payments failure to which the unit would be sold and the contributions refunded to him. When the Plaintiff did not make the payments, the Defendant had no option but to sell the unit to enable the project to proceed. They averred that from the evidence on record, the Plaintiff was informed of the progress of the project including the financials and like all the participants had access to the project cash book which presented the money collected and every cent spent on the project which figures and expenses have not been challenged.
37. The Defendants submitted that the Plaintiff was in breach of his obligations under the contract thus the remedies therein were invoked, and the unit was sold to a third party thus he not entitled to the remedy of specific performance noting that the unit is no longer available. That the remedy of specific performance is an equitable remedy which can only be granted to the party who demonstrates he is deserving and has come to equity with clean hands. In support cited the case of Industrial & Com Devt Ltd v Mawa Family Company Ltd & another [2015] eKLR.

Analysis

38. I have read the pleadings filed by the parties, considered the evidence tendered and the submissions filed the Defendant. The following facts are not disputed by both parties; that the Plaintiff and the 1st Defendant entered into undated Project Development Agreement for the Plaintiff to contribute Kshs.8.7 Million per unit for ownership out of the 30 units projected by the 1st Defendant who was the developer. It was also agreed that in the event of any increase in the cost of the Project beyond what was agreed on and tabulated in Schedule A of the agreement, the 1st Defendant shall inform the client and the client was expected to increase his/her contribution towards the development cost. Also, it is not disputed that the Plaintiff paid in full the agreed sum of Ksh.8.7 Million.
39. The issue in dispute is whether or not the Defendants are in breach of the contract and if so, whether the Plaintiff is entitled to the reliefs sought. The Plaintiff's claim is that the 1st Defendant unilaterally increased the number of units of the project agreed to be constructed which action increased the cost of his unit. Consequently, the added costs demanded from him were not substantiated and it was unlawful for the Defendants to sell his unit to a third party. In their defence, the 1st Defendant accuses the Plaintiff of failing to add the additional cost as was stipulated in the agreement.
40. Courts have established that the law prohibits them from rewriting contracts executed between parties. It is also trite law that parties are bound by the terms and conditions they agree on. In National Bank of Kenya Ltd vs. Pipe Plastic Samkolit (K) Ltd (2002) 2 E.A. 503, (2011) eKLR the Court of Appeal at page 507 stated as follows: -

“ A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved.”
41. Further, in the case the Supreme Court of Kenya [the Apex Court] in the case of *Moi University versus Zaippeline & another (Petition 43 of 2018)* [2022] KESC 29 (KLR) (Civ) (17 June 2022) (Judgment), where the court held as hereunder;



37. It is trite that for any contract to be valid at law, it must meet certain elements commencing with offer and acceptance. The essential components of a contract as was observed by Harris JA in *Garvey v Richards* [2011] JMCA Civ 16 ought to ordinarily reflect the following principles: “[10] It is a well-settled rule that an agreement is not binding as a contract unless it shows an intention by the parties to create a legal relationship. Generally, three basic rules underpin the formation of a contract, namely, an agreement, an intention to enter into contractual relationships and consideration. For a contract to be valid and enforceable all essential terms governing the relationship of the parties must be incorporated therein. The subject matter must be certain. There must be positive evidence that a contractual obligation, born out of an oral or written agreement is in existence.”
42. The Project development agreement in subject under the financial provisions clause stated the amount to be contributed at Kshs 8.7million and under paragraph 3(b), it stated thus;
- “In the event that there is any increase in the development cost of the Project, beyond what is shown in schedule A the Developer shall inform the Client and the Client shall increase his/her contribution towards the development cost.”
43. In schedule A of the agreement, the costing for the project was for 30 units and the costs per unit was given at Kshs 3,013, 333. The Plaintiff avers that the increased costs was because the Defendants developed 40 units instead of the 30 contained in their agreement and hence no basis was laid by the Defendants increasing the costs. DW1 confirmed that 40 units were built which necessitated building a stronger foundation but denied that it translated to increment of construction cost. Instead, he stated that some of the reasons for the increase was due to increases in prices of building materials and the type of soil which required them to excavate deeper.
44. This court is now called upon to interrogate the terms of contracts and determine if the alleged breach and in particular, if the alteration of the number of units to be constructed in the agreed project amounted to breach of the agreement by the 1st Defendant. To begin with, notes on schedule A stated that the costs given were estimates based on past experience with a rider that the final cost was likely to vary. The Plaintiff pleaded that the Defendants unilaterally increased the cost of the project. A plain reading of clause 3(b) reproduced herein above did not impose an obligation on the Defendants to consult with the Plaintiff not what is pleaded in paragraph 14 of the amended plaint on consulting for increase on the overall cost. All they were required to do was to notify the client and which the Plaintiff admitted was done vided email sent on June 2014 (paragraph 12 of the A/Plaint).
45. I hold the position that the Plaintiff was under obligation to present evidence that the costs increased because of the added units. A perusal of the exhibits produced by the Plaintiff included only the agreement, evidence of payment and the emails exchanged regarding the dispute over the impugned increment. The Defendants stated that they kept records of total incomes received and the monies expended which record was open for any of their investors to view and ask questions. The Plaintiff did not inform this court whether he asked for those records and were denied access. The said records were filed in court by the Defendants vide their further list dated 23rd September 2023 and counsel for the Plaintiff did not ask DW1 any questions to invalidate the contents of that document.
46. I am guided by the holding of the above Supreme Court decision (*Moi University vs Zaipline supra*) thus;
- “The evidentiary value of the contract was underpinned by section 97(1) of the *Evidence Act* which provided that when the terms of a contract or a grant or any other disposition of property had been reduced to the form of a document, and in all other cases which any



matter was required by law to be reduced to the form of a document, no evidence was to be given in proof of the terms of such contract, grant or other disposition of property or such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence was admissible under the provisions of the Act sufficed”

47. Consequently, I am unable to find for the Plaintiff that the increment of costs of his unit was contrary to their agreement as the same was clearly stated. There was no evidence of coercion or misrepresentation by the Defendants at the time of execution of the agreement. The Plaintiff confirms that he was notified in writing of the amount to top up and he confirms that he did not pay the additional costs of Kshs 2.6M. Instead I find that the contract between the parties was terminated.
48. Proceeding on the basis of my holding that the contract was lawfully terminated, the order for specific performance does not lie. Further, there is evidence presented that the apartment unit in dispute was sold to a third party as pleaded in paragraph 19(iii) of the amended Plaintiff and confirmed by oral evidence adduced. In the case of *Gurdev Singh Birdi & Narinder Singh Ghatora as Trustees of Ramgharia Institute of Mombasa V Abubakar Madhubuti* [1997] eKLR, Court of Appeal observed as hereunder;

“It cannot be gainsaid that the underlying principle in granting the equitable relief of specific performance has always been that under all the obtaining circumstances in the particular case, it is just and equitable so to do with a view to doing more perfect and complete justice. Indeed, as is set out in paragraph 487 of Volume 44 of Halsbury’s Laws of England, Fourth Edition, a plaintiff seeking the equitable remedy of specific performance of a contract:

“must show that he has performed all the terms of the contract which he has undertaken to perform, whether expressly or by implication, and which he ought to have performed at the date of the writ in the action, However, this rule only applies to terms which are essential and considerable. The court does not bar a claim on the ground that the plaintiff has failed in literal performance, or is in default in some non-essential or unimportant term, although in such cases it may grant compensation.

Where a condition or essential term ought to have been performed by the plaintiff at the date of the writ, the court does not accept his undertaking to perform in lieu of performance, but dismisses the claim.”

49. In light of my holding that the order of specific performance is not available to the Plaintiff, it follows that prayers a-g of the further amended plaintiff dated 20th July 2022 does not lie and is dismissed. For the reason that the sum of Kshs 8.7M was received by the 1st and 2nd Defendants, I will grant the alternative prayer for refund of stated amount with interests calculable from the date of the notice to terminate (Seven days from 17th April, 2015 exhibit 1 in Defendants’ list dated 27th June, 2017) at court rates until payment is made in full. Prayers (I) and (j) also collapses because the Plaintiff executed the elastic (impugned) contract voluntarily. I award the Plaintiff half-costs because the 1st and 2nd Defendants offered him alternative house and or refund which offers he rejected. The matter did not require to go to full trial had he taken up the offer to resolve the matter.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF APRIL, 2024.

A. OMOLLO

JUDGE

