



Yumen & 4 others v Tudor Heights Limited (Civil Suit E103 of 2022) [2024] KEELC 5726 (KLR) (29 July 2024) (Judgment)

Neutral citation: [2024] KEELC 5726 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
CIVIL SUIT E103 OF 2022**

**LL NAIKUNI, J
JULY 29, 2024**

BETWEEN

**NOORA FEISAL MOHAMED BIN YUMEN 1ST PLAINTIFF
SAUD FEISAL MOHAMED BIN YUMEN 2ND PLAINTIFF
SUMAIYA FEISAL MOHAMED BIN YUMEN 3RD PLAINTIFF
SAMER FEISAL MOHAMED BIN YUMEN 4TH PLAINTIFF
SIHAM FEISAL MOHAMED YUMEN 5TH PLAINTIFF**

AND

TUDOR HEIGHTS LIMITED DEFENDANT

JUDGMENT

I. Preliminary

1. The Judgment of this Honourable Court pertains the Plaint dated 28th February, 2022. It was filed on the same day by Noora Feisal Mohamed Bin Yumen, Saud Feisal Mohamed Bin Yumen, Sumaiya Feisal Mohamed Bin Yumen, Samer Feisal Mohamed Bin Yumen and Siham Feisal Mohamed Yumen, the Plaintiffs herein against Tudor Heights Limited, the Defendant herein.
2. Upon service of the pleading and summons to enter appearance, the Defendant did not enter appearance and the court on 27th February, 2024 the Court directed that the matter proceed as a formal prof matter.

II. Description of the Parties in the suit

3. The Plaintiffs were adults siblings residing in Mombasa within the Republic of Kenya. The Defendant was described as a limited liability company incorporated within the Republic of Kenya under the



provisions of the repealed [Companies Act](#) Cap 486 Laws of Kenya and with its registered offices within the Republic of Kenya.

III. Court directions before the hearing

4. Nonetheless, on 17th July, 2023, the Honourable Court fixed the hearing dated on 27th February, 2024 with all parties having fully complied on the Provisions of Order 11 of the Civil Procedure Rules 2010 with the Court proceeding for the same that afternoon at 12.30 pm and the Plaintiffs called their witness on 27th February, 2024. The Plaintiffs called their cases to a close on the same day.
5. This matter proceeded on for hearing by way of adducing “viva voce” evidence with the Plaintiffs’ witness (PW - 1) testifying in Court on 27th February, 2024. After which the Plaintiffs closed their case. The Defendant did not call any witness.

IV. The Plaintiff’s case

6. From the filed pleadings, the Plaintiffs had vide Deed of Assignment dated 1st July, 2026 agreed to transfer the property known as MOMBASA/BLOCK XI/498 with all improvements thereon to the defendant in consideration of a sum of Kenya Shillings Sixty Million (Kshs. 60,000,000/-) which amount was payable as follows:-
 - i. A sum of Kenya Shillings Five Million (Kshs.5,000,000/-) payable on signing the Deed of Assignment.
 - ii. A sum of Kenya Shillings Fifty Five Million (Kshs. 55,000,000/-) only after completion and selling of apartments and in any event within three (3) years from the date the Defendant gets vacant possession which fell due on 30th June, 2019
7. The Defendant was given possession within three months of the Deed of Assignment, in timely manner and the property was transferred to the Defendant, however it has so far only paid a sum of Kenya Shillings Five Million (Kshs. 5,000,000/-) leaving a balance of a sum of Kenya Shillings Fifty Five Million (Kshs. 55,000,000/-) unpaid to date. Despite reminders to the Defendant it failed, refused and/or ignored to make payment of the balance purchase price to date in the tune of a sum of Kenya Shillings Fifty Five Million (Kshs. 55,000,000/-) due and owing to the Plaintiffs which the Plaintiff now claims.
8. In spite of demand made and notice of intention to sue in default of payment having been given, the Defendant has neglected, ignored and/or refused to pay the plaintiff the sum claimed or any part thereof thus rendering this action necessary. There was no other suit pending and there have been no previous proceedings in any court between the plaintiff and the Defendant over the same subject matter. The cause of action arose within the jurisdiction of this Honourable Court.
9. The Plaintiffs herein prayed that Judgement be entered against the Defendant in terms of:-
 - a. An Declaration that the Defendant is in fundamental breach of the Deed of Assignment dated 1st July, 2016.
 - b. An order of cancellation of the deed of assignment dated 1st July, 2016
 - c. An order that the Deposit of kshs.5,000,000/- has been forfeited to the Plaintiffs.
 - d. An order that the suit property be transferred by the Defendant to the Plaintiffs at the Defendant’s Cost in default of which the court to issue vesting orders of the property to the Plaintiffs.



- e. Costs of the suit and incidentals hereto;
 - f. Interest on (a) and (b) at court rates from the date of filing this suit until payment in full;
 - g. Any other or further relief this Honourable court may deem fit and just to grant in the circumstances.
10. The Plaintiffs called their witness PW - 1 on 27th February, 2024 at 12.30 pm where he averred that:-

A. Examination in Chief of PW - 1 by M/s Hassan Advocate.

11. PW - 1 testified under oath and in English. He identified himself as Saud Feisal Mohamed. He lived in Tudor Estate in the County of Mombasa and a business man by profession. He was representing his family – the Plaintiffs herein. He had a special power of attorney dated 10th January, 2024 and registered on 15th June, 2022. He recorded a witness statement dated and filed on 15th June, 2022. He recorded a statement dated and filed on 28th September, 2022. He filed documents i.e. 10 documents – marked as Plaintiffs Exhibits 1 to 10 in the order of filing. He relied on the said documents and his statement as his evidence in chief.
12. According to the witness he was aware of the suit property MSA/BLOCK/498 belonging to Feisal Mohamed Bin Yumen. He was the Plaintiffs’ late father. By 2018 he passed on. Before his death he had acquired the property and had a title. After the demise of his father, he was appointed as the legal administrator at the Kadhi’s Court at Saudi Arabia and Kenya. He was issued the grant letters of administration in 2009. In July 2016, they entered into an agreement with the Defendant for the construction of the apartments -JVC. They were to get to some of the apartments while he retained some. He refused to obliged; they wrote a demand letter. When they decided to file a restriction on the land dated 19th June, 2020. He had done nothing.
13. PW - 1 confirmed that he was seeking to be granted the prayers as sought out from the Plaint. The Joint Venture Vehicle (JVC) was in form of the Deed of Assignment dated 1st July, 2016. He was to pay a sum of Kenya Shillings Sixty Million (Kshs. 60,000,000/-) instead he only paid a sum of Kenya Shillings Five Million (Kshs 5,000,000/-). The balance was for a sum of Kenya Shillings Fifty Five Million (Kshs 55,000,000/-) after completion (See Clause 3). The land was transferred to the Defendant on 7th September, 2016. The application for the restriction was requested on 28th October, 2020. The demand letter issued on 5th June, 2020 to him. He had not done the valuation of the property nor the official search.
14. The Plaintiffs marked their case closed through their Learned Counsel M/s. Hassan.

V. Submissions

15. On 27th February, 2024 after the Plaintiffs and Defendant marked the close of this case. Subsequently, the Honourable court directed that parties to file their submissions within stringent timeframe thereof on. Pursuant to that on 15th May, 2024 the Parties complied accordingly and the Honourable court reserved a date to deliver its Judgement on 29th July, 2024.

A. The Written Submissions by the Plaintiffs

16. The Learned Counsel for the Plaintiffs being the Law firm of Sachdeva, Nabhan & Swaleh Advocates filed their written submissions dated 7th March, 2024. M/s. Hassan Advocate commenced her submission by providing the Honourable Court with a brief background of the matter. She stated that, the Plaintiff filed this suit vide Plaint dated 28th September 2022 seeking the above stated orders.



According to the Learned Counsel the brief facts of the case were that the Plaintiffs entered into a Deed of Assignment dated 1st July, 2016 with the Defendant for the development of MOMBASA/BLOCK XI/498 which was registered in the name of their deceased father the late Feisal Mohamed bin Yumen. The Plaintiffs were to transfer the property to the Defendant who was to develop the property into a block of apartments to be shared with the Plaintiffs and a sum as consideration of Kenya Shillings Sixty Million (Kshs. 60, 000, 000.00/=) to be paid to the Plaintiffs as per the agreed terms in the agreement. The Defendant had ignored, failed and/or neglected to perform it's obligations as per the Deed of Assignment and thus necessitated the legal action against him. The Plaintiffs thereafter instituted the suit dated 28th September 2022 seeking the prayers above which are the ones stated in the Plaint filed.

17. The Defendant was served with summons to appear together with the pleadings on the 3rd October 2022. The Defendant had failed to enter appearance to date and thus the court moved the motion of formal proof hearing on the Plaintiffs. One of the Plaintiff Mr. Saud Feisal appeared for the formal proof hearing on 27th February, 2024. In his testimony, he averred that he appears on behalf of the other Plaintiffs as well through their authorization on the Power of Attorney dated 10th January, 2022.
18. He further mentioned that the suit property belonged to his late father Feisal Mohamed Bin Yumen. He stated that they were able to enter into the agreement with the Defendant as he had obtained Grant Letters of administration on the estate of his deceased father and Certificate of Grant of the Plaintiffs herein as the deceased's legal heirs in The Kingdom of Saudi Arabia which were letter translated at the Kenyan Embassy in Saudi Arabia and produced in the Plaintiff's further list of documents marked and produced as Plaintiff Exhibit Number 12 and 13 respectively.
19. He Further outlined that the property was successfully transferred to the Defendant herein vide a transfer dated 31st August 2016, whereafter the Defendant proceeded to pay the deposit of the consideration of Kenya Shillings Five Million (Kshs, 5, 000, 000.00/)receipt of which was acknowledged by the Plaintiffs.
20. The Learned Counsel opined that four years down the line, it became apparent that the Defendant had no intention to develop the said property after being issued with a demand notice produced as Plaintiff Exhibit Number 5 dated 5th June, 2020. Further, the Plaintiffs proceeded to register a restriction produced as Plaintiff Exhibit Number 6 on the property dated 19th June, 2020 in order to protect their interests on the property.

The Plaintiffs further prayed that their prayers in the Plaint be granted as they stand to suffer irreparable harm, damage and great prejudice should this Honorable Court fail to grant their prayers as sought.

21. By and large, the Learned Counsel submitted on the following two (2) issues for the determination by the Court. Firstly, whether the Plaintiffs had proved their case on a balance of probability. The Learned Counsel averred that the Plaintiffs had the burden of proof to prove their case on a balance of probability by presenting evidence before this honorable court in support of their claim against the Defendant herein. The Plaintiffs produced their documents as per their list of documents dated 28th September 2022 as the Plaintiffs Exhibit Numbers 1 to 10 respectively. The documents as in the order produced had shown before this court that he had lawfully instituted this suit as an administrator and on behalf of the other Plaintiffs in respect of the suit property. The Plaintiff further presented a Deed of Assignment produced as Plaintiffs Exhibit Number 7 which created the legal relationship between the Plaintiffs and the Defendant herein.
22. Furthermore, the Plaintiffs presented the transfer document produced as Plaintiff Exhibit Number 8 on the suit property showing his performance of obligations as the Deed of Assignment and lastly to protect his interest he filed a restriction on the property produced as Plaintiff Exhibit Number 6



when the Defendant failed to perform his part of the bargain. The Defendant on the other hand had failed, ignored and or neglected to enter appearance and rebut the evidence as provided by the Plaintiffs despite being issued with summons to appear. The Counsel argued that the Plaintiffs had managed to tilt the balance of probability in their favor and urged Court to grant them the reliefs sought.

23. Secondly, whether the Plaintiffs had suffered damages. The Learned Counsel asserted that the Plaintiffs had in fact been greatly affected and prejudiced by the breach caused by the Defendant. The Plaintiffs had already effected transfer of the suit property which was duly registered on 7th September, 2016 and title issued in favour of the defendant dated 7th September, 2016. The Plaintiffs produced both the Transfer and Title deed as Plaintiffs Exhibit Number 8 and 9 respectively as evidence as per their list of documents before the Court. The Plaintiffs would continue to suffer damages if the court failed to grant the prayers as sought as the Defendant was currently the registered owner of the Property.
24. In conclusion, the Learned Counsel humbly submit that the Defendant had committed a fundamental breach of the Deed of Assignment. That although he was given the chance to be heard which he failed to do so. On their part, the Plaintiffs had presented supporting evidence outlining the breach and damage caused by the Defendant herein. The Counsel urged Court to find that the Plaintiffs suit was merited and thus be allowed as prayed.

VI. Analysis and Determination

25. I have keenly assessed the filed pleadings by all the Plaintiffs herein, the written submissions and the cited authorities, the relevant provisions of *the Constitution* of Kenya, 2010 and the statutes.
26. In order to reach an informed, reasonable and just decision in the subject matter, the Honourable Court has crafted the following three (3) issues for its determination. These are: -
 - a. Whether the Plaintiffs suit has merit to wit – whether the Defendant breached the Deed of Assignment of land registration number MOMBASA/BLOCK XI/498 dated 1st July, 2016?
 - b. Whether the Plaintiffs are entitled to the orders sought in the Plaintiff
 - c. Who bears the costs of the suit?

Issue No. a). Whether the Plaintiffs suit has merit to wit – Whether the Defendant breached the Deed of Assignment of land registration number MOMBASA/BLOCK XI/498 dated 1st July, 2016

27. Under this sub – title, the Honourable Court deciphers that the main substratum in this matter is whether the breached the Deed of Assignment of land registration number MOMBASA/BLOCK XI/498 dated 1st July, 2016. Disposition of Land is based on contract. At this juncture, its instructive to note that whenever a Court of Law is faced with a dispute regarding disposition of land, it must satisfy itself at the first instance that indeed the said transaction was in compliance with the provisions of Section 3 (3) of the Law of contract and Section 38 (1) and (2) of the *Land Act*, No. 6 of 2012. Both of these provisions of the Law which are materially and in nature identical are based on the validity of contract. The provision of Section 3(3) of the Law of Contract reads as follows:-

“No suit shall be brought upon a contract for the disposition of an interest in land unless-

- (a) The contract upon which the suit is founded:
 - (i) is in writing;
 - (ii) is signed by all the parties thereto; and



- (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party; provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the *Auctioneers Act* (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust”

28. While the provision of Section 38 (1) and (2) which are more specific on the validity of contract in sale of land reads as follows:-

1. Other than as provided by this Act or any other write law no suit shall be brought upon a contract for the disposition of an interest in land:-

(a) The contract upon which the suit is founded:

- (i) is in writing;
- (ii) is signed by all the parties thereto; and

(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party.

29. It is not in dispute that the Plaintiffs’ case is uncontroverted as despite of service no defence was filed by the Defendant. Thus, the herculean task here by this Honourable Court is to determine whether the Defendant breached the agreement for sale or not. To begin with, the Black’s Law Dictionary, 9th Edition, Page 213, defines a breach of Contract as:

“a violation of a contractual obligation by failing to perform one’s own promise, by repudiating it, or by interfering with another party’s performance. A breach may be one by non-performance or by repudiation or by both. Every breach gives rise to a claim for damages and may give rise to other remedies. Even if the injured party sustains no pecuniary loss, or is unable to show such loss, with sufficient certainty, he has at least a claim for nominal damages.”

30. The provision of Section 39 of the *Land Act* No. 6 of 2012 further extrapolates on the validity of contract on sale of land and the breach of contract by stating as follows:

“If, under a contract for the sale of land, the purchaser has entered into possession of the land, the vendor may exercise his contractual right to rescind the contract by reason of a breach of the contract by the purchaser by:-

- a. Resuming possession of the land peacefully; or
- b. Obtaining an order for possession of the land from the Court in accordance with the provision of Section 41.

31. It is trite law that courts cannot re-write contracts for parties, neither can they imply terms that were not part of the contract. In the case of “Rufale – Versus - Umon Manufacturing Co. (Ramsboltom) (1918) L.R 1KB 592”, Scrutton L.J. held as follows:

“The first thing is to see what the parties have expressed in the contract and then an implied term is not to be added because the court thinks it would have been reasonable to have inserted it in the contract.”



3227. Equally in the case of “Attorney General of Belize et al – Versus - Belize Telecom Limited & Another (2009), 1 WLR 1980 at page 1993”, citing Lord Person in the case of: “Trollope Colls Limited – Versus - Northwest Metropolitan Regional Hospital Board (1973) I WLR 601 at 609”, held as follows:

“The Court does not make a contract for the parties. The Court will not even improve the contract which the parties have made for themselves. If the express terms are perfectly clear and from ambiguity, there is no choice to be made between different meanings. The clear terms must be applied even if the court thinks some other terms could have been more suitable.”

33. Based on the above decisions, the starting point for me will be to critically assess the Sale agreement which is in form of a Deed of Assignment dated 1st July, 2026 that the parties duly executed and the terms and conditions stipulated therein. The Plaintiffs agreed to transfer all that parcel of land known as land reference numbers MOMBASA/BLOCK XI/498 with all improvements thereon to the Defendant in consideration of Kenya Shillings Sixty Million (Kshs. 60,000,000/-) as the total purchase price which amount was to be payable as follows:

- i. A sum of Kenya Shillings Five Million (Kshs.5,000,000/-) payable upon signing of the Deed of Assignment.
- ii. A sum of Kenya Shillings Fifty Five Million (Kshs. 55,000,000/-) only after completion and selling of apartments and in any event within three (3) years from the date the Defendant gets vacant possession which fell due on 30th June, 2019

34. Upon making the first payment as agreed, the Defendant was given possession within three months of the Deed of Assignment, in timely manner. Indeed, the property was transferred to them. However it has so far only paid the first deposit of Kenya Shillings Five Million (Kshs. 5,000,000/-) leaving an outstanding balance of a sum of Kenya Shillings Fifty five Million (Kshs. 55,000,000/-) which is unpaid to date. Despite numerous reminders to the Defendant to settle the debt has been unsuccessful as they deliberately and willfully failed, refused and/or ignored to comply accordingly. Resultantly, it was from this acts of commission and omission in terms of the breach of contract that necessitated the Plaintiffs to institute this suit accordingly.

35. According to PW - 1, he was aware of the suit property MSA/BLOCK/498 belonging to Feisal Mohamed Bin Yumen. He was the Plaintiffs’ late father. As fate would have it, by the year 2018 he passed on. Before his death he had acquired the property and had a title. After the demise of his father, he was appointed as the legal administrator at the Kadhi’s Court at Saudi Arabia and Kenya. He was issued the Grant Letters of Administration in the 2009. In July 2016, they entered into an agreement with the Defendant for the construction of the apartments through the JVC. They were to get to some of the apartments while he retained some. Unfortunately, in the fullness of time, he refused to obliged. The Plaintiffs issued them with a demand letter. At the same time, they decided to register a restriction on the land dated 19th June, 2020. But still with all these development in place, he had done nothing.

36. PW - 1 confirmed that he was seeking the grant of the prayers as sought from the Plaintiff. The JVC was in form of the Deed of Assignment dated 1st July, 2016. He was to be paid a sum of Kenya Shillings Sixty Million (Kshs 60,000,000/-) instead he only paid a deposit of a sum of Kenya Shillings Five Million (Kshs. 5,000,000/-). It follows that the outstanding balance was a sum of Kenya Shillings Fifty-Five Million (Kshs. 55,000,000/-) after completion (See Clause 3). The land was transferred to the Defendant on 7th September, 2016. The application for the restriction was requested on 28th October,



2020. The demand letter was issued on 5th June, 2020 to him. He had not done the valuation of the property nor the official search.

37. Based on the foregoing surrounding facts and inference, I discern that this suit is therefore necessary in order to protect the Plaintiffs' interests. Thus, in conclusion, the Honourable Court strongly finds that the Defendant to have breached the Deed of Assignment – terms and conditions stipulated thereof by failing to pay Kenya Shillings Seven Million, Five Hundred (Kshs 5,500,000/-) by the 30th June, 2019 as required. The suit by the Plaintiff must succeed.

Issue No. b). Whether the Plaintiffs are entitled to the orders sought in the Plaintiff

38. Under this Sub - heading, the Plaintiffs have sought for various Reliefs as contained at the foot of the Plaintiff, herein. Having held that the Defendant is guilty of breach of Deed of Assignment, the next thing I need to determine is the question of prayers in the Plaintiff. In the given circumstances, I seek refuge from the provision of Section 40 of the Land Act, No. 6 of 2012 on damages for breach of contract. It provides as follows:

- 1). Nothing in Section 39 prevents a Vendor from claiming damages and Mesne profits from the Purchaser for the breach of a contract for a sale, or for breach of any other duty to the Vendor which the Purchaser may be under independently of the contract, or affects the amount of damages that the Vendor may claim.

SUBPARA 2).

Any term express or implied in a contract or other instrument that conflicts with this section shall be inoperative.

From this legal preposition, it follows that a party in whose contract has been breached is entitled to damages and Mesnes profits. In the case of “Hadley – Versus - Baxendale (154) 9. Exch 214” where Anderson P. at page 354 stated as follows:

“Where two parties have made a contract which one of them has broken the damages which the other ought to receive should be such as may fairly and reasonably be considered either as arising naturally i.e according to the usual course of things, from such breach itself, or such as may reasonably be supposed to have been in contemplation of both parties at the time they made a contract as the probable result of a breach of it.”

39. The Plaintiffs having ably proved that the Defendant breached the deed of assignment dated 1st July, 2016 by not satisfying the agreement after three years I find that it is only right to issue the them with the prayers sought from the filed pleadings. These are clearly orders relating to the use, occupation and title to land and within the jurisdiction of this Court. Having found that the Plaintiffs have proven their claim on a balance of probability and established that the Defendant has no legal right over the suit land based on the evidence placed before this court.
40. With regard to Prayers a, b, c, and d being that the Plaintiffs are the bona fide legal and absolute proprietor of the suit property with all the indefeasible rights, title and interest vested on them by law, then the same are granted with accordance to the provision of Sections 24, 25 and 26 of the Land Registration Act, No. 3 of 2012. The upshot of it all is that the case by the Plaintiffs has been well established and hence they are entitled to the reliefs sought.



Issue No. c). Who bears the costs of the suit

41. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.
42. In the case of:- “Machakos ELC Pet No. 6 of 2013 Party of Independent Candidate of Kenya & another – Versus - Mutula Kilonzo & 2 others [2013] eKLR” quoted the case of “Levben Products – Versus - Alexander Films (SA) (PTY)Ltd 1957 (4) SA 225 (SR) at 227” the Court held;
- “It is clear from authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is matter in which the trial Judge is given discretion (Fripp vs Gibbon & Co., 1913 AD D 354). But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at....In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.”
43. In the present case, I reiterate that the Plaintiffs have been able to establish their case as pleaded from the filed pleadings against the Defendant therefore, I proceed to award her the costs of this suit.

VII. Conclusion and Disposition

27. Ultimately, having caused such an in-depth analysis to the framed issues herein, the Honourable Court on the Preponderance of Probabilities and the balance of convenience finds that the Plaintiffs have established their case against the Defendant herein. Thus, the Court proceeds to make the following specific orders:
- a. THAT Judgment be and is hereby entered in favour of the Plaintiff as pleaded in Plaint dated 28th September, 2022.
 - b. THAT a declaration be and is hereby issued that the Defendant is in fundamental breach of the Deed of Assignment dated 1st July, 2016.
 - c. THAT an order be and is hereby issued of cancellation of the deed of assignment dated 1st July, 2016.
 - d. THAT an order be and is hereby issued that the Deposit of a sum of Kenya Shillings Five Million (Kshs.5,000,000/-) has been forfeited to the Plaintiffs.
 - e. THAT an order be and is hereby issued that the suit property be transferred by the Defendant to the Plaintiffs immediately at the Defendant’s Cost in default of which the court to issue vesting orders of the property to the Plaintiffs.



- f. THAT the costs of this suit vide the Plaint dated 28th September, 2022 be borne by the Defendant and awarded to the Plaintiffs.

It is so ordered accordingly

JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 29TH DAY OF JULY 2024.

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HON. MR. JUSTICE L.L. NAIKUNI
ENVIRONMENT AND LAND COURT AT
MOMBASA

Judgement delivered in the presence of:-

- a. M/s. Firdaus Mbula – the Court Assistant.
- b. M/s. Awino Advocate holding brief for M/s. Feisal Hassan Advocate for the Plaintiffs.
- c. No appearance Advocate for the Defendant.

