



**IAF (East Africa) Limited v Thika Greens Limited (Civil Suit 523 of 2016)
[2025] KEHC 11556 (KLR) (Commercial & Admiralty) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11556 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
CIVIL SUIT 523 OF 2016**

PM MULWA, J

JULY 31, 2025

BETWEEN

IAF (EAST AFRICA) LIMITED PLAINTIFF

AND

THIKA GREENS LIMITED DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit by way of a plaint dated 14th November 2016 seeking various reliefs against the Defendant arising from an Engagement Letter dated 18th January 2016 and a subsequent Agreement for Sale dated 23rd June 2016. The Plaintiff sought, inter alia:
 - i. An order of specific performance directed to the Defendant to make payment of the consideration for services delivered by the Plaintiff as per clause 4.1 of the Engagement Letter dated 18th January 2016, or in the alternative;
 - ii. To pay the Plaintiff a sum of Kshs 20,000,000.00 being the value of the consideration plus interest at court's rate until payment in full from 23rd June 2016 when the parties executed an agreement for sale;
 - iii. Refund of Kshs 194,000.00 paid by the Plaintiff as costs, duties and fees to the Defendant's Advocates in relation to the transfer of the land;
 - iv. A sum of Usd 20,000 being total monthly fees for two months plus interest at courts rates;
 - v. Costs of the suit.
2. The Plaintiff pleaded that it was retained by the Defendant pursuant to an Engagement Letter dated 18th January 2016 to provide financial and commercial advisory services concerning the Defendant's



development of its leisure project which included 18-holes golf course, residential development among others. It was agreed that the consideration would be paid in two parts, an initial retainer fee to be paid in kind by way of transfer of a prime plot facing the golf course in the Defendant's development, and a second instalment after the first six months.

3. The Plaintiff avers that it rendered services under the agreement and that on 23rd June 2016 the parties executed an Agreement for Sale in relation to Plot No. 818 situated on Land Reference No. 10744/2, Thika. The Plaintiff claims that the transfer was supposed to be at no cost, but that the Defendant unlawfully introduced transfer and legal costs, which the Plaintiff paid. Subsequently, the Defendant informed the Plaintiff via a letter dated 15th August 2016 that the subject plot was no longer available. The Plaintiff thus contends that the Defendant acted fraudulently.
4. The Defendant filed a Statement of Defence dated 25th January 2017 denying the claim. It pleaded that the agreement provided for payment of the first instalment on the seventh month from the date of engagement and that the Plaintiff's services were lawfully terminated on 26th July 2016 before that obligation had crystallized. The Defendant further asserted that the Plaintiff had failed to meet its obligations and was not entitled to any payment or transfer of land.
5. Importantly, the Defendant raised the issue of regulatory and statutory compliance, asserting that the Plaintiff could not lawfully offer financial advisory services in Kenya as it did not hold a valid license from the Capital Markets Authority (CMA), and that Mr. David L. Massie, the individual who executed the agreement on the Plaintiff's behalf, did not possess a valid work permit under Kenyan immigration laws.
6. At the hearing, each party called one witness. The Plaintiff called one Linda Mwendu Mwendwa (PW1), who testified that she is a director of the Plaintiff company, having assumed that role in 2019 following the demise of the company's then chairman, Mr. David Moesie. PW1 adopted her witness statement dated 24th July 2019, together with the Plaintiff's list of documents dated 14th November 2016 and supplementary list dated 22nd July 2019, which were produced without objection.
7. PW1 testified that the Defendant had engaged the Plaintiff's services by way of an Engagement Letter dated 18th January 2016. It was her evidence that pursuant to that engagement, the Plaintiff was to provide financial and commercial advisory services to the Defendant, culminating in the transfer of a parcel of land as consideration for the services rendered. She stated that although the Defendant purported to terminate the agreement by letter dated 26th July 2016, such termination occurred approximately seven months after the commencement of the engagement and after the lapse of the initial six-month period contemplated in the agreement. It was therefore the Plaintiff's contention that the second phase of the agreement had commenced, and that the Plaintiff had duly earned the agreed consideration, being the transfer of a prime parcel of land or in the alternative, a sum of Usd 20,000.
8. PW1 further testified that by a sale agreement dated 23rd June 2016, the Defendant had offered a discount of Usd 5,000, effectively reducing the consideration payable to Usd 15,000. She further stated that while the agreement stipulated that the transfer of the property was to be effected at no cost to the Plaintiff, the Plaintiff was nevertheless compelled to incur the sum of Kshs. 194,000.00 in legal fees and transfer charges.
9. On its part, the Defendant called Charles Kibiru (DW1), who testified that he is the Chief Executive Officer of Thika Greens Limited. He adopted his witness statement and list of documents both dated 2nd December 2021. DW1 testified that the Plaintiff had been engaged by the Defendant during a period when the Defendant was undertaking a construction project and sought capital to revive certain non-performing loans. He stated that the Plaintiff was to render financial and commercial advisory



services, with consideration to be made partly through a retainer and partly in kind, namely through the transfer of a parcel of land. However, it was his evidence that the Plaintiff failed to render the services as agreed in the Engagement Letter.

10. During cross-examination, DW1 confirmed that the Engagement Letter dated 11th February 2016 was executed by both parties. He referred the Court to clause 2 thereof, which outlined the Plaintiff's obligation to provide financial and commercial advisory services, and clause 4.1, which provided that the Defendant was to transfer a prime plot fronting the golf course and pay a retainer fee of Kshs. 15,000,000.00. He further acknowledged that the said transfer was to be at no cost to the Plaintiff.
11. However, DW1 testified that there was a verbal understanding that the Plaintiff would be responsible for stamp duty and other incidental transfer costs. He stated that the Defendant issued a termination notice on 15th August 2016 on grounds that the Plaintiff had failed to render the agreed services. He contended that the Defendant was nevertheless willing to transfer Plot No. 818 to the Plaintiff, but explained that it was not practically possible to carve out the parcel of land fronting the golf course, as originally contemplated.
12. DW1 reaffirmed paragraph 11 of his witness statement, wherein he stated that under the agreement, the Plaintiff would only be entitled to the retainer if the Defendant terminated the engagement within the initial four-month period.
13. The court directed the parties to make closing submissions in writing. The Plaintiff filed submissions on 2nd December 2024 with the defendant filing submissions on 17th January 2024.
14. After carefully considering the evidence presented by both parties and the submissions, the following issues arise for determination:
 - i. Whether there existed a valid and enforceable agreement between the parties;
 - ii. Whether the Defendant's claim of lack of regulatory compliance vitiates the agreement;
 - iii. Who was in breach of the agreement, and
 - iv. Whether the plaintiff is entitled to the reliefs sought.
15. The central issue that goes to the root of this suit is whether the Engagement Letter dated 18th January 2016 was tainted with illegality, and therefore unenforceable.
16. The Defendant has raised the issue of illegality, contending that the Engagement Agreement dated 18th January 2016 was void *ab initio* as it was executed by Mr. David L. Massie, who at the material time acted as a director of the Plaintiff but did not possess a valid work permit allowing him to lawfully work or carry on business in Kenya. In addition, it is the Defendant's position that the Plaintiff did not possess a valid license from the Capital Markets Authority authorizing it to provide investment or financial advisory services within the Republic of Kenya.
17. The Plaintiff did not dispute these assertions and offered no evidence to demonstrate compliance with either statutory requirement. The CR12 on record, marked "CK-1," shows that at the material time, the Plaintiff's directors were two foreign companies: Curzon Nominees Limited and Nisk Capital Limited. No local director or officer with legal authority to conduct regulated business was disclosed, and no evidence was tendered to show that Mr. Massie had been lawfully permitted to work or transact business in Kenya.



18. In *Heptulla v Noormohamed* [1984] KLR 58, the Court of Appeal held:

“No court ought to enforce an illegal contract where the illegality is brought to its notice and if the person invoking the aid of the court is himself implicated in the illegality...An illegal contract is totally void, but neither party (unless innocent of the illegality) can recover back any money paid or property transferred under it.”

19. That position has been affirmed in several decisions including *Kenya Anti-Corruption Commission v Lands Limited & Others* [2008] eKLR, where the court held that public policy forbids the enforcement of contracts that are illegal either by statutory prohibition or by reason of their object or formation.

20. It is trite law that where a statute prohibits the performance of certain acts without a license or permit, a contract made in contravention of such statutory provisions is unenforceable. In this case, the Plaintiff, through an unauthorized person, purported to offer services regulated by law without compliance with the mandatory licensing regime under the *Capital Markets Act*. Furthermore, engaging in work or business without a valid work permit is an offence under Section 53 of the *Kenya Citizenship and Immigration Act*.

21. The Plaintiff, having participated in a transaction that was expressly prohibited by law, cannot now turn to the Court for relief. The contract, being tainted with illegality, is void *ab initio* and cannot be enforced by a court of law. As the Court of Appeal aptly put it in *Heptulla* (*supra*) no person can claim any right or remedy whatsoever under an illegal transaction in which they have participated.

22. Having found that the Engagement Letter upon which the Plaintiff's suit is based was tainted with illegality and is therefore void and unenforceable, the Court declines to consider the remaining issues as doing so would amount to giving effect to a void agreement.

23. In the result, I find that the Plaintiff has failed to establish its case on a balance of probabilities. The suit is accordingly dismissed.

24. On the issue of costs, I consider the nature of the dispute and the conduct of the parties. This is a case in which both parties bore responsibility for entering into an agreement without adherence to regulatory requirements. I therefore direct that each party shall bear its own costs.

It is so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Musa for Plaintiff

Ms. Wanjiku h/b for Mr. Macharia for Defendant

Court Assistant: Carlos

