Closing Submissions for a Developer Refund After Loss of an Apartment

Educational sample 060 | Environment and Land Court at Nairobi

Educational reconstruction based on a reported Kenyan decision. This is newly drafted text, not an original court filing, not a matter handled by our team, and not proof that a sample argument succeeded. Parties, parcels and identifying case details in the specimen are replaced with bracketed fields. Do not sign, swear or file it without checking your facts, jurisdiction, applicable rules and court directions.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

CASE OR APPLICATION NO [insert appropriate reference]

[APPLICANT OR CLAIMANT] v [RESPONDENT OR DEFENDANT]

WRITTEN SUBMISSIONS

1. The issue is the developers' liability to restore the purchaser's payments and meet proved consequential losses after the promised apartment interest became unavailable. The Plaintiff seeks the relief pleaded in the amended plaint, not an unpleaded reversal of the bank auction.

2. The offer, executed agreement, payment proof and handover establish the transaction. The agreement promised an interest free from encumbrances. The charge, auction and possession records establish why payment and handover did not produce the promised title.

3. Although the developer defendants did not defend the source claim, the Plaintiff must present the contractual and monetary foundation for each remedy. Non-appearance should not replace proof of payment, causation or quantum in an adapted case.

4. The purchase-price refund and title-processing payment are separate heads. A reconciled ledger must demonstrate full payment and exclude duplication. The reported judgment records KES 9,500,000 and KES 508,500, but its narrative instalment gap cannot be filled by counsel's submissions.

5. Rental loss requires the tenancy, receipts and evidence of redirected collection. The earlier KES 990,000 period and later component must not overlap. Any difference in rental rate requires an explanation in the evidence rather than a presumed market increase.

6. The source Court discussed double compensation and awarded a later rental component of KES 960,000. Its reasons contain a period-versus-month-count ambiguity. The Plaintiff in a fresh case relies on the actual proved schedule, not on reproduction of that ambiguity.

7. The bank-costs item is conditional. If the purchaser has already paid the KES 502,750 liability, reimbursement is requested on proof of payment. If it remains due, any direction to discharge it must be framed consistently with the relevant order and affected parties.

8. Interest is requested separately on each pleaded basis and date. The Court should be invited to identify the components in its decree so that enforcement does not multiply the same loss under different labels.

9. The Plaintiff asks for the proved refund, expenses and non-overlapping consequential loss against the defendants whose obligations are established, together with the appropriate interest and costs. The existence and outcomes of the related lender proceedings are expressly disclosed.

DATED at [place] on [date]. [Signature of party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected party and address].

Use and evidence notes

Do not use submissions to add a new fraud claim, different defendant or unpleaded damages head. Check that every sum sought appears in the pleadings and evidence. The source order does not establish that the bank’s security was unlawful.

Source and procedural limits

The purchaser’s agreed apartment price was KES 9,500,000. He also paid KES 508,500 towards title processing, took possession and rented the unit out. The development land secured a bank facility. After the developer’s default, an auction and diversion of rent deprived the purchaser of the unit. The claim against the two developer defendants proceeded undefended.

The court awarded the price and processing payments, KES 990,000 for an earlier rental-loss period, KES 960,000 for the later period, and conditional reimbursement or payment of KES 502,750 bank costs. Interest dates differed between the items. It did not cancel the bank auction. The judgment’s listed instalments and later rental-period calculation contain apparent reconciliation gaps; a fresh pleading needs its own proved ledger.

A purchaser’s refund claim against developers must be separated from relief affecting a lender’s charge. Plead and prove each monetary component and avoid overlapping compensation. Civil Procedure Rules governing pleadings, witness evidence, documentary disclosure and amendment apply according to the actual stage of the case.

[2025] KEELC 1310 (KLR) — 13 March 2025. Source: https://new.kenyalaw.org/akn/ke/judgment/keelc/2025/1310/eng@2025-03-13

The linked original judgment may identify parties. This public specimen omits their names. Historical allegations are not presented as established facts. A different result in your own proceedings is possible.