Submissions on Termination Resale and an Alternative Purchase Refund

Educational sample 065 | 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 issues are whether the project agreement permitted cost adjustment, whether the asserted default and termination complied with it, and what remedy remains after the allocated unit was resold.

2. The agreement must be read as a whole. The contribution of KES 8,700,000 is established, but the price-adjustment clause cannot be omitted when addressing a later demand. Conversely, the existence of a clause does not dispense with proof of the actual calculation and notice.

3. The excavation, materials and project-account evidence is relevant to the claimed additional cost. The Court should distinguish expenditure proved by records from a technical opinion requiring an appropriate witness.

4. The notice dated 17 April 2015 gave a seven-day period and identified the asserted consequence. The parties should address its wording, communication and the subsequent acts, rather than infer compliance from the later resale alone.

5. Specific performance is discretionary and must take account of the contractual position and third-party rights. The source Court refused it where termination was accepted and the unit had been resold. That outcome does not mean that a developer may retain the original payment without accounting.

6. The alternative refund is a distinct pleaded remedy. The source Court ordered KES 8,700,000 to be refunded and awarded interest from seven days after the notice rather than the earlier payment date requested. An adapted case must state and justify its own interest basis.

7. A proposed alternative apartment or refund is not the same as payment. The evidence of offers may affect costs, subject to privilege and admissibility, but a party should not describe an offer as extinguishing an unpaid principal sum.

8. The Court is invited to decide the primary and alternative remedies separately, identify any lawful deductions and record the interest start date expressly. Claimed rental loss and penalty interest require their own pleaded and proved basis. Costs remain discretionary; the source awarded only half the costs.

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 present the source’s termination ruling as a universal approval of developer price increases. Identify the precise adjustment clause and its application. Keep requests affecting the later purchaser within properly constituted proceedings.

Source and procedural limits

An investor paid KES 8,700,000 under a project development agreement. The developer required a further contribution, invoking a clause dealing with estimated project costs. The investor disputed the top-up and penalties. A notice dated 17 April 2015 preceded termination and resale of the unit. Project accounts, additional excavation and materials costs were discussed in evidence.

The Court accepted the contractual basis for cost adjustment and termination and refused specific performance of the unit already resold. It ordered refund of KES 8,700,000 with interest from seven days after the termination notice and awarded half the costs. The reasons refer to different top-up figures; a specimen must identify the actual demand rather than harmonise them by invention.

Read the project’s price-adjustment and termination provisions as a whole. Distinguish lawful adjustment from proved deductions and distinguish a refund remedy from an order affecting a later purchaser. A requested interest date or contractual penalty is not necessarily the date or rate ultimately awarded.

[2024] KEELC 3450 (KLR) — 24 April 2024. Source: https://new.kenyalaw.org/akn/ke/judgment/keelc/2024/3450/eng@2024-04-24

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.