Statement of Defence to an Apartment Development Cost Top Up Claim

Educational sample 062 | 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]

STATEMENT OF DEFENCE

1. The First Defendant admits the project agreement and receipt of KES 8,700,000, subject to verification against the ledger. It denies that every estimate in that agreement was an immutable final construction price.

2. The First Defendant relies on clause [number], which provided for adjustment of estimated project costs and notification to contributors. The complete wording is produced, together with the other clauses governing contribution, completion and default.

3. Additional costs arose from [the excavation and material-cost items supported by the project records]. The First Defendant identifies the notification sent, its date, the demanded contribution and the calculation. It does not rely on an unexplained aggregate or the mere fact that other investors paid.

4. The Plaintiff declined to pay the additional contribution. The First Defendant issued the notice dated 17 April 2015 identifying the asserted default and the seven-day period. The Defendant relies on [proof of communication] and the contractual consequence pleaded.

5. The Defendant contends that termination followed the agreement. It denies that the Court can order transfer of a unit subsequently sold to a purchaser whose rights have not been set aside on a properly pleaded case.

6. The Defendant identifies the refund or alternative accommodation offered and the Plaintiff’s response. It does not plead a privileged settlement communication as an ordinary admission without counsel first considering its evidential status.

7. Any claimed penalty or deduction is pleaded by its contractual basis, period and calculation. If no lawful deduction is established, the Defendant’s resistance to specific performance does not by itself justify indefinite retention of the original contribution.

8. The Defendant denies unproved rental loss and damages and requests dismissal of unsupported primary relief. It invites the Court to determine any alternative repayment, interest and costs according to the contractual record and proved sums. The role and liability of each defendant are answered separately.

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

This is a reconstruction of the developer’s successful position on adjustment and termination, not an original defence. The source still required repayment. Verify service, contractual notice and the actual demanded amount; the source contains differing top-up references.

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.