Defence to a Developer Counterclaim for Gym Conversion Losses and Mesne Profits

Educational sample 073 | 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]

DEFENCE TO COUNTERCLAIM

1. The Plaintiff, as defendant to the counterclaim, denies liability for the monetary relief claimed from it. It repeats only the relevant contractual averments and answers the counterclaim by its actual paragraph numbers.

2. The developer claims interest on unpaid sale consideration for the two units proposed from the gym and health-club space. The Plaintiff denies that its enforcement of the original estate obligations makes it liable for the developer’s separate sale contracts with third parties.

3. The Plaintiff disputes the asserted right to convert the promised facilities. The sale and lease descriptions, plans and competent company resolutions are identified. Any alleged consent must be proved with its conditions and cannot be expanded into a waiver of all contractual rights.

4. The developer also claims mesne profits. The Plaintiff denies that the residents’ occupation and use of the contracted estate facilities amounted to wrongful possession of the developer’s property.

5. The pleaded aggregate is specifically disputed. The developer must identify the property, alleged period of wrongful possession, legal entitlement and the calculation supported by admissible evidence. A claimed total does not establish the profits actually received or reasonably obtainable.

6. The Plaintiff does not admit that a third-party apartment sale, a demand for deposit interest or a computer-generated schedule proves its own liability. Each document is addressed according to authenticity, admissibility and the obligation allegedly owed.

7. The Plaintiff relies on the promised transfer of the reversion and the relevant management records. It denies that those arrangements authorise additional residential units contrary to the instruments and required approvals.

8. The Plaintiff requests dismissal of the counterclaim with an appropriate costs order. If the developer owes refunds to its separate buyers, that issue must be addressed between the competent parties rather than shifted to the management company without a legal basis.

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

The source counterclaim failed. Adapt this response to the actual pleaded heads and parties. Mesne profits require wrongful possession and proof of quantum; they are not interchangeable with contractual rent or damages for breach.

Source and procedural limits

A residents' management company sued the developer over a thirty-apartment estate, promised common facilities, the reversionary title and original management documents. The developer converted the gym and health-club space into two proposed apartments and asserted resident consent. Its counterclaim included interest on outstanding sale consideration and mesne profits.

The Court found the management company entitled to the reversionary interest, restrained dealings and further demolition, ordered transfer within sixty days and handover of the identified originals, and dismissed the developer's counterclaim. The consent and waiver defence was not proved. A mesne-profits demand was not established merely by listing a sum.

The source considered the lease and sale terms, Sectional Properties Act 2020 sections 6 and 13, planning approval, and the definition and proof of mesne profits. A new file must check its title regime and any applicable sectional conversion requirements rather than assume every estate has the same structure.

[2021] KEELC 1268 (KLR) — 2021. Source: https://new.kenyalaw.org/akn/ke/judgment/keelc/2021/1268/

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.