Plaint Pleading an Alternative Refund in a Development Top Up Dispute

Educational sample 061 | 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]

PLAINT

1. The Plaintiff invested under the project development agreement dated [date] for allocation of [redacted unit]. The contracting developer and registered project owner are [identify defendants and roles]. The Plaintiff paid KES 8,700,000 towards the agreed project contribution.

2. The agreement described the project contribution and completion obligations. Clause [number] concerning cost estimates and notification is set out accurately in the evidence bundle. The Plaintiff pleads the term as written and does not assume that the initial contribution was a fixed price if the agreement says otherwise.

3. The developer subsequently demanded a further contribution. The demand relied upon is [date and amount]. The Plaintiff disputed the basis of the additional cost and the monthly penalty imposed. Particulars are [identify the contractual notice, calculation or consultation breach actually alleged].

4. A notice dated 17 April 2015 demanded payment within seven days and warned of resale and refund. The Plaintiff identifies how and when the notice was received and the steps taken in response. The unit was subsequently sold to a third party.

5. The Plaintiff seeks specific performance only if the current title and the rights of every affected purchaser permit that relief on the pleaded case. The later purchaser’s interest is disclosed, and any relief affecting that person must follow joinder and a hearing.

6. In the alternative, if the agreement has been validly terminated or specific performance is unavailable, the Plaintiff seeks repayment of the KES 8,700,000 received by the contracting party, less only a deduction lawfully established under the contract and evidence.

7. Interest is sought from [pleaded date] on [legal or contractual basis]. The prayer distinguishes that claim from disputed penalty interest demanded by the developer. Any rent or other consequential loss is separately pleaded and supported, or omitted where no evidential basis exists.

8. The Plaintiff requests the appropriate declaration, primary relief if legally available, alternatively the proved refund, interest and costs. Prior settlement offers, related proceedings and the status of the unit are disclosed to the extent required by law.

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 plaintiff lost on termination and specific performance but obtained a refund. Do not present its unsuccessful theory as a guaranteed route. Use a verifying affidavit and other accompanying materials where required. Do not insert the source’s claimed 14 percent as an automatically applicable court rate.

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.