



REPUBLIC OF KENYA



**KENYA LAW**  
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**Okapesi v Ekweny (Environment and Land Case Civil Suit  
186 of 2017) [2022] KEELC 3176 (KLR) (8 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3176 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT AND LAND CASE CIVIL SUIT 186 OF 2017**

**AA OMOLLO, J**

**JUNE 8, 2022**

**(FORMERLY BUSIA PMCC CASE NO. 253 OF 2010)**

**BETWEEN**

**LUDOVICO EMAI OKAPESI ..... PLAINTIFF**

**AND**

**JOSEPHAT BARASA ETYANG EKWENY ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff instituted this suit vide a plaint dated on the 27<sup>th</sup> April 2010 which later amended on the 19<sup>th</sup> of March, 2015. He impleaded the Defendant in this suit and prayed for judgement against him for:
  - a. A declaration that the Plaintiff is the owner of the suit parcel;
  - b. K.Shs. 675,000/-;
  - c. Permanent injunction as prayed in the plaint;
  - d. Costs of the suit;
  - e. Any other or further relief this Honourable Court deems fit and just to grant.
2. The Plaintiff avers that vide an agreement dated 16<sup>th</sup> July, 2005 the Defendant sold to him a commercial plot measuring approximately 50x100 of land parcel number S.Teso/Apokor/2308 for KShs.175,000/- and thereafter the Plaintiff took possession immediately. That at the time of sale of the property, the Defendant had constructed thereon an incomplete business property (shop only) and upon taking possession of the suit property, the Plaintiff completed the building, built a toilet, cleared the bushes and carried out landscaping which costed KShs.500,000 which increased the value of the property to KShs.675,000/-. That the Plaintiff carries out commercial business on the property. On



the 10<sup>th</sup> of January, 2010, the Defendant served the Plaintiff with a notice to quit the suit property purporting to hold him as a tenant.

3. The Defendant filed his defence on the 3<sup>rd</sup> of June, 2011 and later amended it to include a counterclaim on the 24<sup>th</sup> of October, 2019. The Defendant denied all the averments in the Plaint and stated that in the event there was an agreement for sale, the same was for the portion of an undeveloped plot measuring 25x100ft adjacent to his shop comprised on L.R No. South Teso/Apokor/2308 at an agreed consideration of K.Shs.160,000/-. That the Plaintiff only paid KShs.15,000/- which amount was for accrued rent arrears owed to the Defendant by the Plaintiff. That the Plaintiff has been a tenant in his shop since July, 2005 without paying any rent in a tenancy relationship that has been acrimonious.
4. In his counterclaim, the Defendant contends that the Plaintiff breached the agreement for purchase of the suit property by failing to pay the full purchase price within the agreed period. That the transaction was rendered void for lack of LCB consent and is therefore not enforceable as it has been caught by the Limitation of Actions Act and this Court lacks jurisdiction to entertain it. The Defendant (Plaintiff in the counterclaim) prayed for judgement against the Plaintiff (Defendant in the counterclaim) for:
  - a. The amended plaint and/or suit herein be dismissed and/or struck out with costs for being spurious, frivolous and or vexatious and a clear abuse of the court process;
  - b. That an order of eviction do issue against the Defendant herein, his servants and /or agents from L.R No. South Teso/apokor/2308;
  - c. A declaration that this suit is incompetent;
  - d. Costs of the suit and counter claim.
5. In his reply to the defence and Counterclaim filed on the 29<sup>th</sup> May, 2019, the Plaintiff denied that the purchase agreement between the parties was for the purchase of an undeveloped portion of land and that the KShs.15,000 he paid was for accrued rent due to the Defendant. He denied the counterclaim and specifically that he breached the agreement for sale and that the sale agreement is unenforceable due to the lack of the Land Control Board consent. He urged the Court to strike out the defence and dismiss the Counterclaim.
6. The hearing commenced on the 28<sup>th</sup> of April, 2021 with the Plaintiff testifying as PW1. He adopted his witness statement dated 12<sup>th</sup> July, 2012 as his evidence in chief and produced the documents on his list of documents of even dates as PEx1-8. In his statement, PW1 stated that the Defendant owned a parcel of land within Amukura market being L.R No. South Teso/Apokor/2308 measuring approximately 0.025Ha (50x100ft) in which there was an incomplete building. That the Defendant agreed to sell the said plot to him at a consideration of KShs.170,000/-. On the 16<sup>th</sup> of July, 2005 they went to the area Liguru, Fred Arubano and after paying the Defendant KShs.10,000/- the Liguru drew up the agreement. That on the same day, together with Leonard Odima Emuduki they went to the Assistant chief's home and the agreement was drafted and signed by the parties, their witnesses Leonard, James, the Liguru as well as the Assistant chief.
7. PW1 stated further that they visited the site in the presence of the Assistant Chief. That on 18<sup>th</sup> August, 2005 the Defendant requested for an additional KShs.5,000/- which he paid him upon execution of another sale agreement. That between September and December 2005 he engaged the services of contractors who completed the construction of the shop. The building material for the shop were worth KShs.83,735/-. That he has been in occupation of the business since then but not as the Defendant's tenant. He concluded by urging this Court to grant him the prayers sought in the Plaint.



8. PW1 was recalled on the 26<sup>th</sup> of October, 2020 and he adopted his further witness statement dated 1<sup>st</sup> October, 2021 where he stated that apart from KShs.175,000 consideration and KShs.83,735, the total amount for completing the building was KShs.500,000/-.
9. On cross-examination, PW1 stated that he had two agreements with the Defendant: the first was dated 18/8/2005 for KShs.5,000/- and the second was for KShs.160,000/-. He reiterated that before paying the K.Shs. 160,000/- he had paid the Defendant KShs.10,000/-. PW1 confirmed that the Defendant neither signed the transfer forms nor sought the consent of the Land Control Board. He admitted that he did not seek the extension of time to get the consent. He stated that he stopped using the building because the roof was leaking. That the receipts he produced were for the money used to buy materials to complete the house. He reiterated that he completed the building in 2005. PW1 denied that he was claiming both the land and compensation as he only wanted his money back. During further cross-examination, PW1 stated that although he used building materials worth KShs.500,000/-, he had not brought any receipts for the purchases of the building materials.
10. Samuel Ekopia testified as PW2 and stated that he was the Assistant Chief for Amukura sublocation and the parties were his residents. He adopted his witness statements made in 2012 and 2021 as his evidence in chief. He stated that on the 16/7/2005 the parties came to him accompanied by the area Liguru Mr Fredrick Arubano and Mr Leonard Odima. He was informed that the parties had discussed and agreed on the terms of the sale with the price agreed at KShs.170,000. PW2 added that he was aware the Defendant had started building a shop on the plot which building had stalled. He confirmed that he witnessed the Plaintiff give the Defendant KShs.160,000 together with the KShs.10,000/- earlier given making it a total of KShs.170,000/-. PW2 stated further that Fredrick Omunyin was one of the witnesses present during the sale.
11. During cross-examination, PW2, stated that the agreement was dated 16/7/2005 and he confirmed that K.Shs. 10,000 was paid in his absence but he joined them at the Defendant's home at 11am where the buyer and seller were both present together with their witnesses. That although he did not participate during the payment of the KShs.5,000/- he had heard that the Defendant approached the Plaintiff and he was given an additional of KShs.5,000/- for school fees. That Arubano was the village elder and he trusted him. That he did not witness the Defendant take the Plaintiff to the land control board. He concluded by stating that he retired as an Assistant Chief in 2007.
12. Leonard Odima Emuduka testified as PW3. He confirmed that he knew the Defendant who was his paternal uncle. He adopted his witness statements dated 5/6/2012 and 1/10/2021 as his evidence in chief. He stated that on the 16/7/2005, the Plaintiff informed him that the Defendant had agreed to sell to him a plot at Amukura market and requested PW3 to accompany him to go make payments in the Liguru's presence. That he saw the Plaintiff give the Defendant KShs.170,000. That they met at PW2's home and the Assistant Chief gave the Liguru a sale agreement form to fill in the details. That he saw the Defendant signing the documents after he had confirmed the details. That the Liguru signed as a witness so did he and the Assistant Chief (PW2). That the Plaintiff then took possession of the suit property on which there was constructed an incomplete building. The Plaintiff later completed and occupied the same and even constructed a pit latrine.
13. PW3 stated further that in the agreement of 18<sup>th</sup> of August, the Plaintiff gave the Defendant a further KShs.5,000/- at the Liguru's home. That the Defendant signed the sale agreement and was countersigned by his son James Ekuleu while he (PW3) countersigned as the Plaintiff's witness. That the Liguru also signed as the person who drew up the agreement. That by the 18<sup>th</sup> of August, 2005, the Plaintiff had paid a total of KShs.175,000/- to the Defendant.



14. During cross-examination, PW3 stated that the initial KShs.10,000 was paid in the presence of the Liguru who filled in the details in the sale agreement form. He clarified that the money was paid at the Defendant's home and not the home of the Assistant chief. PW3 reiterated that he was present when the further KShs.5,000 was paid and there was no outstanding balance. On re-examination, PW3 stated that the first amount was KShs.10,000/- and the KShs.160,000 was paid in the presence of the assistant chief. This marked the close of the Plaintiff's case.
15. The defence hearing commenced with the evidence of the Defendant, Joseph Barasa Etyang testifying as DW1. He confirmed that he had a transaction with the Plaintiff on the 16/7/2005 as he was selling him land measuring 0.025Ha at a consideration of KShs.160,000/-. That the Plaintiff gave him KShs.10,000 in the presence of two witnesses in his home. He denied that the balance of KShs.160,000 was paid to him. He however confirmed receipt of KShs.5,000 and stated that he could not transfer the land after only KShs.15,000 had been paid to him. That on the plot he had two houses and he allowed the Plaintiff to stay in one of the houses so as to recover the KShs.15,000.
16. DW1 further stated that the house on the property was complete when he met the Plaintiff thus it is not true that he used his own money to complete the building. He urged this court to order the Plaintiff to leave his land and dismiss his claim. DW1 produced the documents on his list of documents as Dex 1-6.
17. During cross-examination, DW1 stated that he was selling to the Plaintiff 25x100ft and that the house the Plaintiff occupied was on this land. He confirmed that Dex 4, the agreement for sale did not have the assistant chief's stamp on it and neither did it indicate that there was any balance left. He confirmed that the Plaintiff's agreement has the senior assistant chief's (PW2) stamp and that Leonard and Fredrick were witnesses in both agreements. He stated that the 2<sup>nd</sup> agreement confirmed that the Plaintiff has accepted to add KShs.5,000/=. That he has not produced the lease agreement between him and the Plaintiff and the Plaintiff has not paid rent since 2010. He denied receiving the KShs.160,000/- when the Assistant Chief was signing adding that it is not true that the Plaintiff finished building the shop.
18. That between 2005 and 2010 the Plaintiff paid rent but he did not give him any receipts nor did he keep the rent book. He stated that the land sold is where the shop is. He conceded that he did not have any agreement that showed that they agreed to have the KShs.15,000 recovered as rent for the premises. On re-examination, DW1 stated that the agreement did not specify that the land sold was inclusive of a shop. That although there are two agreements, produced by him and the Plaintiff the correct one as the is the one without the assistant chief's stamp or signature.
19. Fredrick Omunyan Arubano testifying as DW2 stated that he is a clan elder and on the 16/7/2005 he witnessed the payment of KShs.10,000 together with Leonard, the Plaintiff and the Defendant. He affirmed that he prepared the agreement between the parties and signed it as a witness. That on the 18/8/2005 he also witnessed the payment of KShs. 5,000. DW2 denied that the assistant chief witnessed the payment of KShs.160,000/-. That the agreement he gave the parties had no name or signature of the area assistant chief.
20. Upon cross-examination, DW2 stated that the signature on the statement dated 5/6/2012 looks like his although he does not remember if he made a witness statement in favour of the Plaintiff. That he never witnessed the Assistant Chief sign the agreement as indicated in his statement dated 5/6/2012. He contended that he only witnessed the payment of KShs.15,000 and preparing the second agreement dated 18/8/2005. He denied writing NIL a balance for the said agreement. He confirmed that in both agreements, the handwritten words are in his handwriting. That the land sold was S. Teso/ Apokor/2308 and the size was 0.025Ha. That there is a permanent house on the land which was there at the time of the sale. That he did not know who was using the house. On re-examination, DW2 stated



- that he was not the one who included the Assistant Chief's name in the agreement produced by the Plaintiff.
21. DW3, James Epuleu Barasa who is the defendant's son adopted his statement dated 14/10/2005 as his evidence in chief. In his statement he stated that his father agreed to sell to the Plaintiff a portion of land measuring 25x100ft comprised on L.R No. South Teso/Apokor/2308 for an agreed sum of KShs.160,000/-. That the Defendant informed him that he had received KShs.10,000 leaving a balance of KShs.150,000. That the Plaintiff later only paid KShs.5,000/= and has never cleared the balance. That prior to the agreement, his father had already developed the property by putting a permanent house on it.
  22. Upon cross-examination, DW3 stated that in 2005 he was a student and witnessed the agreement dated 18/8/2005. That in the said agreement they did not indicate any balance that was due. He stated that it was not true that the house on the land was incomplete at the time of the purchase. He concluded his evidence by stating that it is the Plaintiff who is currently using the house. This marked the close of the defendant's case.
  23. Parties agreed to exchange their written submissions within 21 days. The Plaintiff filed his submissions on the 15<sup>th</sup> of December, 2021 and submitted on the following issues: whether the Plaintiff was a purchaser or a tenant; whether the Plaintiff is entitled to a declaration that he is the owner of the land; in the alternative, whether the Plaintiff is entitled to a refund of KShs.675,000; and whether the Defendant is entitled to the orders sought in the counterclaim. On the first issue, the Plaintiff submitted that the tenancy allegations were an afterthought on the Defendant's part. That all the evidence led during the trial has confirmed that the transaction was a purchase and not a tenancy.
  24. On the second issue, the Plaintiff submitted that he should be registered as the owner of the disputed parcel of land, having paid full consideration and that from the conduct of parties, there is no doubt that their intention was for him to own the property. That it was for this reason that the Defendant allowed him to complete the construction of the incomplete building, carry out landscaping and erect a permanent pit latrine. That he has been using that building to the exclusion of the Defendant since 16/05/2005. That it has been more than 12 years since then and the Defendant is estopped from laying claim to the said land by section 7 of the [Limitation of Actions Act](#).
  25. While submitting on the third issue, the Plaintiff submitted that from the evidence tendered the Plaintiff paid KShs.175,000/- being the purchase price and that he has produced receipts amounting to KShs.83,660 confirming that he completed the building. The Plaintiff relied on the case of Swake C. Kariuki and Another vs. Violet Owiso Ouko to support his aversions that it is not mandatory in certain circumstances to prove special damages by way of receipts. That he could not have completed the building without money and the witnesses he called confirmed the same. On whether the Defendant had proved his counterclaim, the Plaintiff submitted that the same should be dismissed with costs as it is barred by operation of section 7 of the [Limitation of Actions Act](#).
  26. The Defendant filed his submissions on the 1<sup>st</sup> of December, 2021 and opened by reiterating the facts adduced during trial. He submitted that there would be no further agreement if the Plaintiff had paid the entire purchase price. He submitted that those contradictions in the statements of the witnesses point to the fact that the Plaintiff is not being truthful. The Defendant raised the following issues: whether the suit property that was sold was 25x100ft or 50x100ft; whether the purchase price was KShs.175,000/-, KShs.170,000/= or KShs.160,000/-; was the agreement drawn and executed at the Defendant's home or at the former Assistant Chief's home; who filled the agreement form, the Assistant Chief or the Liguru; which agreement is genuine, the Plaintiff's or the Defendant's, why



was the agreement produced by the Plaintiff signed and stamped by the Assistant Chief while the one attached to his bundle is neither signed nor stamped.

27. The Defendant submitted further that the glaring anomalies and suspicious pieces of evidence in the Plaintiff's case and he cannot be said to have proved his case on a balance of probabilities. That the forgeries render the Plaintiff's claim untenable and tainted. The Defendant relied on the section 107 and to 109 of the *Evidence Act*. While referring to the case of Swaleh C. Kariuki supra, the Defendant submitted that the Plaintiff has failed to provide evidence to prove his claim of KShs.500,000 as special loss and the receipts provided only add up to KShs.70,000. That this Court cannot therefore award him special loss that is not proved. The Defendant urged this Court to dismiss the Plaintiff's case and allow the payers in the counterclaim.

### Determination

28. In consideration of the parties' pleadings, evidence, submissions and the applicable law; the questions which in my opinion arise for determination are as follows:

- a. Whether there was a valid sale agreement between the Plaintiff and the Defendant;
- b. Whether the Plaintiff should be registered as the owner of the suit land, alternatively that he be refunded the sum claimed; or
- c. The Plaintiff should be evicted from the suit land; and
- d. Who bears the costs of this suit?

29. On whether there exists a valid sale agreement for the purchase of the suit land, the Plaintiff produced two agreements for sale that was attached to his bundle with DW1 also producing a similar agreement for sale as Dex 1. From the agreements, it is recorded that the Plaintiff and the Defendant entered into an agreement for the sale of the land for KShs.170,000/-. In the agreement dated 16<sup>th</sup> July, 2005 the Defendant agreed to sale a portion of 0.025Ha for KShs.170,000/-. The only difference between Pex1 and Dex 1 is the word NIL put in front of the statement the balance shall remain in the plaintiff's document. In Dex1 there is no mention of any balance of the purchase price. Both agreements were duly executed by the parties herein and their signatures witnessed. Both indicated that the seller had earlier received KShs.10,000. The second agreement dated 18<sup>th</sup> August, 2005 and it clearly stated that the plaintiff had agreed to add the Defendant KShs.5,000/-. DW1 confirmed that he signed the agreement and that the two witnesses signed the agreement.

30. The Defendant did not tell the court that he executed any of the agreements under duress or coercion. The intention of the parties was clearly for sale of a portion of the measuring 0.025ha. which is the exact size of the suit title as contained in the title deed. Both agreements complied with the provisions outlined for a sale of contract in land as provided under section 3 of the Law of Contracts Act which provides thus:

“No suit shall be brought upon a contract for the disposition of an interest in land unless-

- (a) the contract on which the suit is founded –
  - (i) is in writing.
  - (ii) is signed by all parties thereto; and



- (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party.”

31. My answer to the first question is that there was a valid sale agreement entered into between the parties. The next question is whether the purchase price was paid in full. All the Plaintiff’s witnesses confirmed that the Plaintiff paid the entire purchase price on the day of preparation and signing of the first agreement (16<sup>th</sup> July 2005). The Defendant admitted receiving only KShs.15,000. Dw2 who prepared the sale agreement between the parties also denied seeing a payment of KShs.160,000 being made to the Defendant. So who is truthful between the two sides? Paragraph 2 of the agreement provided that the seller and the buyer had agreed to pay and receive the balance as indicated above and failure to do that, the land would be returned to the seller.
32. Although DW1 stated that he did not receive the entire purchase price, he did not sue for specific performance as per the terms of this contract. Instead, he stated that he allowed the plaintiff to stay in the premises and recover the amount of KShs.15,000 now being treated as rent. This was a new term being introduced with Defendant conceding that there was no understanding reached to that effect. DW1 does not indicate how much the monthly rent was taking into consideration that the plaintiff took possession immediately in 2005 and stayed on for five years until January 2010 when the defendant served the notice to terminate the tenancy. If indeed the sum of KShs.160,000 was not paid as alleged by the Defendant, why did DW2 not indicate it as a balance? Secondly, why did the Defendant allow for possession for these many years without demanding for vacant possession or accrued rent? Although the Defendant pleaded that he had only leased the premises to the Plaintiff the argument was not supported by the evidence adduced during trial. Why was the agreement of 18<sup>th</sup> August 2005 refer to the subsequent payment as additional and not part payment of the balance? The inference drawn from the conduct of the Defendant is that he was indeed paid the agreed purchase price.
33. DW1 stated that he did not sign any transfer documents and neither did he obtain the land control board consents and thus made the contract voidable. Obtaining the LCB consent is a key ingredient to transfer of agricultural land as provided under section 6 of the [Land Control Act](#), CAP 302 thereof provides as follows :-

Transactions affecting agricultural land

- (1) Each of the following transactions that is to say—
- a. the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area;
  - b. the division of any such agricultural land into two or more parcels to be held under separate titles, other than the division of an area of less than twenty acres into plots in an area to which the Development and Use of Land (Planning) Regulations, 1961 (L.N. 516/1961) for the time being apply;
- ...is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act.
34. Despite both parties agreeing that they did not obtain the land board consent within the required period as per the [Land Control Act](#), it is an automatic matter to disenfranchise the plaintiff of rights over the property. From the evidence of the parties, it appeared this was a commercial plot, with a shop constructed to completion whether the completion was done by the Defendant or not. Does it then qualify as agricultural land? Further, the Courts have been reluctant to declare void transactions where



the consent of the respective land control boards was not obtained. The Court of Appeal in the case of *Willy Kimutai Kitilit v Michael Kibet* [2018] eKLR, held that:

“As we have held in essence that, the lack of the consent of Land Control Board does not preclude the court from giving effect to equitable principles, in particular the doctrine of constructive trust, we find that the trial court reached the correct decision and therefore the appeal has no merit.”

35. In another case of, *Macharia Mwangi Maina & 87 Others v. Davidson Mwangi Kagiri* [2014] eKLR the Court of Appeal sitting at Nyeri, held that;

“The appellant’s action of receiving the full purchase price and putting the respondent in possession created a constructive trust in favour of the respondent, dismissed the appellant’s claim and granted an order of specific performance in favour of the respondent.”

36. All the witnesses confirmed that the Plaintiff took possession of the suit parcel immediately after execution of the agreement of 16<sup>th</sup> July 2005. DW3 even confirmed that the Plaintiff is the one who has been using the building on the suit premises since 2005. The agreements between the parties on their own are sufficient proof that the Defendant was not owed any purchase price. The balance of the purchase price in the agreement is indicated as NIL and in the second agreement, it states that the Plaintiff had agreed to add more money. The agreement did not specify what the extra money was for and whether there was still a balance of the purchase price owing. This Court cannot rewrite the contract for parties. In the case of *Pius Kimaiyo Langat versus Co-operative Bank of Kenya Ltd* [2017] eKLR, the Court stated that:

“We are alive to the hallowed legal maxim that it is not the business of Courts to rewrite contracts between parties. They are bound by the terms of their contracts, unless coercion, fraud or undue influence are pleaded and proved.”

37. That being said, unless the Defendant can prove that he signed the contract under coercion or fraud and that there was indeed a balance which was not indicated thereon then he is bound by the agreement he produced which save for the assistant chief’s signature is the replica of the one produced by the Plaintiff. The Assistant Chief was not a witness to the agreement and thus his signature or lack thereof did not dilute the provisions of the contract. DW2 confirmed that he prepared both agreements and that he is the one who filled the part for balance as NIL. The proof payment of the purchase price in full and the fact that the Plaintiff took possession of the suit land creates a constructive trust in favour of the Plaintiff. Although the issue of trust was not pleaded, from the aversions during trial it is evident that constructive trust was created. Trust is an equitable remedy as held in the case of *Willy Kimutai Kitilit* (supra).

38. The Court of Appeal in the case of *Twalib Hatayan Twalib Hatayan & Anor vs. Said Saggat Ahmed Al-Heidy & Others* [2015] eKLR, while dealing with the issue of trust stated as follows on the issue of constructive trusts:

“A constructive trust is an equitable remedy imposed by the court against one who has acquired property by wrong doing. (see Black’s Law Dictionary) (Supra). It arises where the intention of the parties cannot be ascertained. If the circumstances of the case are such as would demand that equity treats the legal owner as a trustee, the law will impose a trust. A constructive trust will thus automatically arise where a person who is already a trustee takes advantage of his position for his own benefit (see. Halsbury’s Laws of England



supra at para1453). As earlier stated, with constructive trusts, proof of parties' intention is immaterial; for the trust will nonetheless be imposed by the law for the benefit of the settlor. Imposition of a constructive trust is thus meant to guard against unjust enrichment..."

39. The Plaintiff produced several receipts as proof of the repair of the building on the suit land and the Plaintiff's witnesses agreed that the building on the land was incomplete. The intention of the parties was to sell and buy the suit land respectively. This affirms that a trust was formed on behalf of the Plaintiff. The Defendant raised the defence of limitation of time. The contract was executed in July and August 2005. In my view, the six (6) year period would end on June or July 2011. The suit was filed in January 2010 which was within the time allowed by law. The claim that the suit is time-barred is misplaced in the circumstances.
40. In view of the above analysis and observations, I am satisfied that the Plaintiff has proved his case on the balance of probabilities. The claim raised in the counterclaim is without merit and is hereby dismissed.
41. Consequently, I enter judgement for the plaintiff and make the following orders:
  - a. A declaration that the Plaintiff has by way of constructive trust acquired 0.025ha of the land parcel known as SOuth Teso/apokor/2308 together with the fixtures thereon;
  - b. The Defendant is directed to execute in favour of the Plaintiff the transfer documents and consents in respect of land parcel known as South Teso/apokor/2308 measuring 0.025ha within 90 days from the date of judgement failure to which the Deputy Registrar execute the same on behalf of the Defendant;
  - c. An order of permanent injunction be and is hereby issued against the Defendant restraining him, his family members, servants and or agents from interfering with the Plaintiff's possession of land parcel known as South Teso/apokor/2308;
  - d. The Plaintiff is awarded the costs of the suit.

**DATED, SIGNED AND DELIVERED AT BUSIA THIS 8<sup>TH</sup> DAY OF JUNE, 2022.**

**A. OMOLLO**

**JUDGE**

