



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Gitau v Muruthi (Environment & Land Case 812 of 2013)  
[2022] KEELC 3251 (KLR) (21 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 3251 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 812 OF 2013**

**LC KOMINGOI, J**

**JULY 21, 2022**

**BETWEEN**

**EVANSON MBUTHIA GITAU ..... PLAINTIFF**

**AND**

**PRICILLA WANJIKU MURUTHI ..... DEFENDANT**

**JUDGMENT**

1. By a plaint dated 8<sup>th</sup> May 2013, the Plaintiff prays for judgment against the Defendant for;
  - a. A permanent injunction restraining the Defendant by herself, through her agents, servants and /or employees or otherwise howsoever from selling, transferring and /or registering any change in ownership of the flat No.G situate on 2<sup>nd</sup> floor of Block MF-8 on LR No.25980 Madaraka estate to any person or persons or in any manner whatsoever pending the hearing and determination of the suit herein.
  - b. An order /declaration that a constructive trust exists between the Plaintiff and the Defendant by virtue of the agreement entered into by the parties and payments made by the Plaintiff towards purchase of the property.
  - c. An order/declaration that the registration of the Defendant as owner of Flat G situate on 2<sup>nd</sup> floor of Block MF-8 on LR No.25980 Madaraka Estate is as a trustee of the Plaintiff.
  - d. An order of specific performance compelling the Defendant to execute the transfer of lease of flat No.G situate on 2<sup>nd</sup> floor of Block MF-8 on LR No.25980 Madaraka Estate in favour of the Plaintiff within 7 days, failing which the transfer of lease in favour of the Plaintiff be executed by the Deputy Registrar of the High Court of Kenya with an order directing the land Registrar to register the same.
  - e. Costs of this suit.



2. The Plaintiff averred that the Defendant relocated to the United Kingdom in 1991 where she lives and works and allowed the Plaintiff to occupy Flat No.G situate on 2<sup>nd</sup> floor of Block MF -8 on LR No.25980 Madaraka estate which he has occupied since 1991 and was paying rent to Nairobi city council. He added that the Defendant's records as tenant remained with the landlord. He further averred that by a letter dated 11<sup>th</sup> August 2006, the Defendant was offered to buy the suit property by National Housing Corporation for a consideration of Kshs.2.1 million as a tenant and she paid a 10% deposit of the purchase price being Kshs.210, 000/= on 11<sup>th</sup> August 2006. He stated that the balance of the purchase price being Kshs.1,890,000/= was due for payment 75 days from the date of the offer letter, which was 11<sup>th</sup> August 2006.
3. He contended that the he entered into an agreement with the Defendant whereby she undertook to transfer the suit property to him in consideration of the Plaintiff paying the balance of the purchase price being Kshs.1,890,000/= which she had been unable to raise and refund to her the sum of Kshs.210,000/= being the deposit she had paid. He added that he duly paid the balance of the purchase price on 26<sup>th</sup> October 2006 and refunded the Defendant the sum of Kshs.210,000/= via cheque and the payment was acknowledged by the Defendant.
4. The Plaintiff also averred that together with the Defendant, they instructed Njoroge Nyaga & Company Advocates to act for the Defendant in the sale from National Housing Corporation to the Defendant and thereafter prepare the transfer from the Defendant in his favour. He added that he paid stamp duty of Kshs.84, 000/=, rates and rent for the years 2009 to 2012 of Kshs.222,406.52/= and legal fees of Kshs.60,000/= to facilitate the successful issuance of the lease in the Defendant's favour from City Council of Nairobi which was duly issued.
5. It is his case that the Defendant is a trustee on his behalf with regard to registration of the suit flat in her name by virtue of the Plaintiff having paid the balance of the purchase price to National Housing Corporation and refunding the deposit paid by the defendant as well as having paid stamp duty, rates, rent, registration fees and legal fees to ensure that the transfer of lease was registered.
6. The Plaintiff averred that the Defendant asked for a further Kshs.500,000/= as goodwill which the Plaintiff ceded and offered her Kshs.400,000/= but she has declined to accept a cheque thereof since July 2012. She therefore frustrated the Plaintiff by refusing to sign the transfer of lease in the Plaintiff's favour and also refused to collect and handover to the Plaintiff the share certificate of the Management company for the block of flats.

### **The Defendant's case**

7. The Defendant filed the amended statement of defence and counterclaim dated 7<sup>th</sup> February 2019. She denied all the allegations against her contained in the plaint. She averred that she is the bona fide legal owner of the property known as Makadara Flat No.GMF-8 situated on LR 25980 having qualified as a bona-fide tenant to get the first priority to purchase the same from National Housing Corporation.
8. She averred that in 2006, National Housing Corporation advertised the sale of Madaraka Estate houses to the public with the first priority being given to bona fide tenants and being a tenant, she was offered the suit property and she paid a deposit of Kshs.210,000/=. She averred that the balance of the purchase price was payable within 75 days and that she intended to liquidate her shares held at Nairobi Stock Exchange through the firm of Ngenye Kariuki stock brokers whom the Plaintiff had introduced to her so as to obtain finances but the Plaintiff offered to pay in order that she is not caught up by the deadline. She added that the sums paid by the Plaintiff would be treated as a loan payable to him by her either in cash or by way of a set off from the monthly rent due from the Plaintiff to them upon



registration of the suit property in her name. She admitted that on 21<sup>st</sup> November 2007, the Plaintiff refunded her the sum of Kshs.210, 000/=.

9. In her counterclaim, she seeks;
  - a. An order of eviction to be issued against the Plaintiff requiring him to render vacant possession of the suit property Madaraka Estate Flat No.GMF-8 situated on LR No.25980 and to surrender the original title documents.
  - b. Rent arrears in the sum of Kshs.45, 000/= per month from the month of November 2008 to the date of eviction.
  - c. Costs on the counterclaim.
  - d. Any other relief that this Honourable court may deem fit to grant.

### **Evidence of the Plaintiff**

10. PW1 Evans Mbuthia Gitahi, the Plaintiff testified on 13<sup>th</sup> October 2021. His witness statement dated 15<sup>th</sup> May 2019 was adopted as part of his evidence in chief. He told the court that he has sued the Defendant who is his sister in law since she has refused to honour the agreement they entered into over MF-8G, Madaraka flats. It was his testimony that the Defendant was a tenant in that house up to 1991 and the landlord was Nairobi City Council. He further stated that in 1991, the Defendant was leaving for the United Kingdom and she called him through her sister requesting him to occupy the house and take care of it. She left everything intact.
11. He stated that he moved into the apartment in 1991 with his furniture and he locked all the Defendant's items in one room. He told the court that he was the one paying rent from 1991 to 2006 as a tenant. He stated that in 2006, the house was taken over by National Housing corporation thus they stated paying rent to the said corporation. He stated that later that year, the corporation decided to sell the flats to tenants at Kshs.2.2 million and since its records showed the tenant for the suit property was the Defendant, it offered her the house to buy.
12. He further stated that he informed the Defendant about the sale and she said that she was interested and she paid Kshs.210,000/= being 10% of the purchase price as deposit in August 2006 and was given 75 days to pay the balance of Kshs.1,890,000/= but she did not pay.
13. He stated that the Defendant approached him and told him that she was not able to pay the balance at the time and they entered into an agreement with her that she would transfer the transaction for him to complete and thereafter refund her Kshs.210,000/= and clear the balance. He further stated that he decided to buy the house and paid the balance of Kshs.1,890,000/= in December 2007 and refunded her Kshs.210,000/=.
14. He stated that he paid legal fees of Kshs.60,000/= to M/s Nderitu & Partners on 18<sup>th</sup> January 2007 and Kshs.s.84,110/= being stamp duty. He added that he paid Kshs.48,000/= to NHC being rent for that month and Kshs.22,407 being rates to the City Council all paid in the Defendant's name as she was the one registered as a tenant.
15. It was his testimony that the letter dated 6<sup>th</sup> November 2006 addressed by the Defendant to M/S Nyambura Nyaga Njoroge Advocates shows her intention to transfer the house to him but she has not transferred it. He told the court that the Defendant later asked him to pay her Kshs.500,000/= as good will. He also stated that later, she sent one Njeru and they agreed that he pays her Kshs.400,000/= so that she could sign the transfer. He further stated that he deposited a cheque of Kshs.200,000/= but she refused to collect it. He stated that there was no agreement to buy the house jointly and



later sell for profit, she came up with this story after he filed this suit. He prayed that the Defendant be compelled to sign the transfer in his favour as well as costs of the suit and interest as the Defendant has no claim to the house.

16. When he was cross-examined, he stated that he occupied House No.MF8G in 1991 but he does not know anything about the rent book. He further stated that the landlord was National Housing Corporation while the Defendant was the tenant. When referred to the agreement dated 6<sup>th</sup> November 2006, he stated that his signature does not appear, Ms Nyambura Nyaga has not signed and the seller is National Housing Corporation. When referred to the letter dated 8<sup>th</sup> July 2012 addressed to the Defendant by Njoroge Nyaga Advocates asking her to collect the cheque and execute the transfer, he stated that the said Advocates were their joint Advocates. He also stated that he acted as an agent for the Defendant as she would send him money so that he could buy her shares. When referred to the lease agreement dated 12<sup>th</sup> September 2008, he stated that he has not paid rent from 2008 as he bought the house and does not know the current monthly rent.
17. When he was re-examined, he stated that the Defendant has not demanded any rent from him. He further stated that they agreed verbally over payment of good will which she demanded later and they agreed that he would pay her Kshs.400,000/= as goodwill in order for her to execute the transfer in his favour. When referred to the lease agreement dated 12<sup>th</sup> September 2008 between the Defendant and Nairobi City Council, he stated that he paid Kshs.2.1 million and that between 2008 and 2012, the Defendant was in the United Kingdom.

### **Evidence of the Defendant**

18. DW1, Pricillah Wanjiku Muruthi, the Defendant testified on 13<sup>th</sup> October 2021. Her witness statements dated 23<sup>rd</sup> August 2013 and 30<sup>th</sup> January 2019 were adopted as part of her evidence in chief. She told the court that MF-8G was being sold to tenants (bonafide), thus the Plaintiff was not qualified to purchase the house as he was not a tenant. She stated that he had no intention to sell the house to the Plaintiff and that he never entered into any agreement with the Plaintiff. It was her testimony that the house was transferred to her in 2008 and that the Plaintiff has not paid her any rent since 2008.
19. She stated that rent payable is now at Kshs.45,000/= per month. She also stated that the Plaintiff tricked him that he was trading for her at Nairobi Stock Exchange and he would send money to him to trade in shares. She stated that the Plaintiff was her agent but he did not tell her that the balance of the purchase price was due until it was late. She told him to liquidate her shares in order to pay the balance. He added that the Plaintiff then proposed that he would pay the balance and the Defendant would later refund her.
20. When she was cross-examined and referred to the letter dated 6<sup>th</sup> November 2006, she stated that she wrote it to their joint lawyer under duress from the Plaintiff and the lawyer while she was in the United Kingdom. She further stated that she travelled to Kenya and paid the deposit in June 2006. She also stated that she knew the purchase price was Kshs.2.1million and the balance was to be paid within 75 days but she expected the Defendant to remind her of the deadline as it had slipped her mind.
21. She stated that the Plaintiff was not her business partner and that she has the capacity to pay the balance of the purchase price. She also stated that she does not know the Plaintiff is a stock broker but she is knowledgeable in shares and they agreed verbally that he would be her agent as regards to shares.
22. She stated that she wrote the letter dated 6<sup>th</sup> November 2006 under duress and though she realized it the same day, she did not take any action to stop the transaction. She further stated that she realized that the Plaintiff had paid the balance. When referred to acknowledgement of Kshs.210, 000/= dated



- 26<sup>th</sup> November 2007, she stated that the cheque of Kshs.210, 000/= was deposited to her account but it was money from her shares as she sent the Plaintiff several monies to buy shares on her behalf. She also stated that the good will idea came from family members as the Plaintiff had benefitted by living in her house and she needed to have a benefit as well. She added that the Plaintiff paid the balance from monies she had sent him and that they agreed verbally. She stated that the landlord was Nairobi City Council and that she has a claim to the suit property.
23. When she was re-examined, she stated that she became a tenant in 1977 as per the rent card and she was qualified to purchase the house. When referred to the letter dated 6<sup>th</sup> November 2006, she stated that the Plaintiff has not paid her anything. She also stated that she pays rates and she had no intention of selling the house to the Plaintiff.
24. DW2, David Chege Kariuki, a registered and licenced land valuer testified on 13<sup>th</sup> October 2021. He told the court that he was instructed by the Defendant to inspect and determine the open market rent for a house MF-8G in Makadara estate and that he did the assessment but he could not get access since the Defendant does not have possession of the house. He further stated that he did comparables in the neighborhood as at 20<sup>th</sup> January 2020 and came up with the monthly rent. He stated that he was also requested to determine the rent from 1<sup>st</sup> July 2007 to date and prepared a report. He produced the report dated 20<sup>th</sup> January 2020.
25. When he was cross-examined, he stated that the Defendant became the owner or Lessee in 2008 thus the valuation as regards 2001-2008 are not relevant. He stated that he did not gain access to the suit house but it is a three bedroomed. He also stated that he did not have copies of leases of the comparables.
26. When he was re-examined, he stated that his core business is to determine the rent due.
27. At the close of the oral testimonies parties tendered their written submissions.

### **The Plaintiff's submissions**

28. They are dated 8<sup>th</sup> March 2022. Counsel for the Plaintiff relied on Section 25 of the [Land Registration Act](#) to submit that the registration of a person as the owner of a property is subject to their obligations as a trustee and the fact that the Defendant is indicated as the registered owner of the property under the lease cannot defeat the Plaintiff's claim to ownership of the property arising from trust. He relied on the case of [LN v SMMM](#)[2013]e KLR and the case of [Rose Naswa Masinde v Lilian Nekesa Simiyu Mukopi](#)[2014]e KLR.
29. It was also counsel's submission that trusts are protected under Section 28 of the [Land Registration Act](#) and are deemed as overriding interests and do not require to be registered thus the Defendant's lease is subject to the trust in favour of the Plaintiff.
30. Counsel relied on Section 120 of the [Evidence Act](#) to submit that the Defendant is estopped from denying that she was the Plaintiff's trustee in the purchase of the suit property having expressly written in the letter dated 6<sup>th</sup> November 2006 that she had agreed to transfer the suit premises to the Plaintiff upon his settling the balance of the purchase price and refunding her the deposit which letter the Plaintiff relied on to make 2 payments. He also submitted that the Defendant is bound by her conduct and said letter and cannot now refuse to execute the transfer of lease in favour of the Plaintiff.
31. Counsel for the Plaintiff also submitted that he who alleges must prove and the Defendant has failed to prove the allegation that she was capable of paying the balance of the purchase price of Kshs.1,890,000/= and that she requested the Plaintiff to pay the purchase price as a loan. He also submitted that that the Defendant is not entitled to rent from 29<sup>th</sup> October 2008 when the lease was registered in her



name for the reason that she was merely a trustee of the real owner. He also submitted that the mesne profits claimed were inaccurate and exaggerated as they were calculated at the period before the lease was registered in the name of the Defendant.

### The Defendant's submissions

32. They are dated 9<sup>th</sup> June 2022. Counsel for the Defendant submitted that issues for determination are as follows;
  - a. Was there a sale agreement between the Plaintiff and the Defendant in respect of the suit property?
  - b. Did a trust exist in favour of the Plaintiff?
  - c. Who is entitled to cost?
33. It was counsel's submission that neither the letter dated 6<sup>th</sup> November nor the relationship between the Plaintiff and the Defendant meets the requirement of a contract for sale of land as set out in Section 3 of the *Law of Contract Act* cap 23 Laws of Kenya. He relied on the case of *David Ledama Morintat v Mary Christine Kiarie & 2 others* [2017] e KLR.
34. Counsel also submitted that the issue of a resulting trust does not arise in this case. He added that the case of *Rose Naswa Musinde v Lilian Wekesa Simiyu Mukopi* [2014] eKLR can be distinguished from the circumstances of this case. He pointed out that a beneficiary of a trust must be the purchaser yet in the present case, the Plaintiff was not the purchaser as the contracts was expressly between National Housing Corporation and the Defendant. He added that the offer was specifically made to the Defendant who paid the initial deposit and the houses were being sold specifically to the tenants of National Housing Corporation and since the Plaintiff was not a tenant, he was not qualified to be a purchaser or enter into any contract with the vendors. He relied on the case of *Peter Ndungu Njenga v Sophia Watiri Ndungu* [2000]e KLR.
35. I have considered the pleadings and the evidence on record. I have also considered the written submissions and the authorities cited. The issues for determination are:-
  - i. Whether the Defendant is holding the house in trust for the Plaintiff.
  - ii. Is the Plaintiff entitled to the reliefs sought?
  - iii. Is the Defendant entitled to the reliefs sought in the counterclaim?
  - iv. Who should bear costs of this suit?
36. It is not disputed that the Defendant was the initial tenant of Nairobi City council in house MF-8G Makadara estate. It is also not disputed that she left the country for the United Kingdom in 1991 and handed over the house to the Plaintiff, who is her brother in law to pay rent and live therein. It emerged in evidence that their arrangement was local since the Defendant did not change her details with the landlord. She remained the tenant in the records of City council of Nairobi which later ceded the house to National Housing Corporation.
37. By a letter of offer dated 11<sup>th</sup> August 2006, the Defendant was offered the suit property for sale by National Housing Corporation at a purchase price of Kshs..2.1million since she was on record as the tenant. She paid a deposit of Kshs. 210,000/= towards the purchase price and the balance of Kshs.1,890,000/= was payable within 75 days from the date of the offer. The said balance of the purchase price was paid by the Plaintiff vide cheque No.515309 and a lease was then executed.



38. The Plaintiff contended that he entered into an agreement with the Defendant that he would pay the balance of the purchase price to National Housing Corporation and refund the deposit of Kshs.210,000/=paid by the Defendant to her then the Defendant would transfer ownership of the suit property to him. This argument was rejected by the Defendant who contended that she had no intention of transferring the house to the Plaintiff and that any sums the Plaintiff paid to salvage the property were refundable.
39. I find that the Defendant had the intention of transferring the house to the Plaintiff. In an email sent to M/s Nyambura Nyaga of Njoroge Nyaga & Co. Advocates, the Defendant expressly intimated to the said Advocate that she had agreed to transfer the house to the Plaintiff. The email reads:-

“Pricilla Muruthi

2 Sequioia House

50 Lithos Road

London NW36EY

United Kingdom

020-7433 1205 (house)

027388 2717 (office)

Mobile: 07940074610

Email: Pricilla M@netel.com

6<sup>th</sup> November 2006

Nyambura Nyaga

Njoroge Nyaga & Co. Advocates

Travel House

Box 59925-00200

Nairobi – Kenya

Dear Ms Nyaga

I have agreed to transfer my house –Madaraka MF8G to Evanson Mbuthia Gitahi on condition he makes the following payments

1. He pays National Housing Corporation the balance of Kshs.s.1,890,000.
2. He refunds me the deposit I paid towards purchase of the house of Kshs.s.210,000.

Please collect the cheque from Mbuthia and pay to NHC.

I would like Mbuthia also to pay a cheque of Kshs.s.210,000 to me and either give it to you to hold or pay it into my account.

Then please send me transfer documents to sign in his favour.

I look forward to hearing from you.

Yours Sincerely



Pricilla Wanjiku Muruthi

ID No 4854940

Passport No 540073886”

40. By an the acknowledgement dated 26<sup>th</sup> November 2007, the Defendant acknowledged receipt of cheque number 987057 of Kshs..210, 000/= from the Plaintiff. During cross examination, she stated that it was not a refund of the deposit but the Defendant was sending money he owed the for the shares he had sold.
41. Is there a proper basis for implying a trust in favour of the plaintiff in the above circumstances? My view is that there is a proper basis for implying a trust. First, the Plaintiff was a fiduciary of the Defendant. The Plaintiff got into the suit property due to his relationship with the Defendant that was based on trust. It is not contested that it is the Plaintiff who paid the balance of the purchase price being Kshs.1, 890,000/= .The Plaintiff also refunded her the deposit of Kshs.210, 000/= that she had paid as deposit of the purchase price to the suit property.
42. I agree with the Plaintiff that the Defendant held the suit property in trust for him. In the case of *Twalib Hatayan Twalib Hatayan & Another v Said Saggat Ahmed Al-Heidy & Others* [2015] e KLR the Court of Appeal examined and stated the law of trust as follows:-

“According to the Black’s Law Dictionary, 9<sup>th</sup> Edition; a trust is defined as

“1. The right, enforceable solely in equity, to the beneficial enjoyment of property to which another holds legal title; a property interest held by one person (trustee) at the request of another (settlor) for the benefit of a third party (beneficiary).”

Under the Trustee Act, “...the expressions “trust” and “trustee” extend to implied and constructive trust, and cases where the trustee has a beneficial interest in the trust property...”

In the absence of an express trust, we have trusts created by operation of the law. These fall within two categories; constructive and resulting trusts. Given that the two are closely interlinked, it is perhaps pertinent to look at each of them in relation to the matter at hand. A constructive trust is an equitable remedy imposed by the court against one who has acquired property by wrong doing. ....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. In the present case, a constructive trust cannot be imposed or inferred since the suit premises were yet to be transferred to the third party. Therefore, there is no unjust enrichment .....

A resulting trust is a remedy imposed by equity where property is transferred under circumstances which suggest that the transferor did not intend to confer a beneficial interest upon the transferee .....

This trust may arise either upon the unexpressed but presumed intention of the settlor or upon his informally expressed intention. (See Snell’s Equity 29<sup>th</sup> Edn, Sweet & Maxwell p.175)..”



43. Similarly in *Julelabi African Adventure Ltd & Another v Christopher Michael Lockley* [2017] e KLR, the Court of Appeal cited its examination of the law of trusts in *Twalib Hatayan Twalib Hatayan & Anor v Said Saggat Ahmed Al-Heidy & Others* [2015] eKLR and held,-

“....As stated in the authority above, a resulting trust will automatically arise in favour of the person who advances the purchase money. Whether or not the property is registered in his name or that of another, is immaterial. It is common ground that all the purchase money for both the vehicle and the parcel was advanced by the Respondent. The parcel and vehicle were therefore held in trust for the Respondent by the 1<sup>st</sup> Appellant.”

44. In my view, the doctrine of estoppel is also applicable. The Plaintiff acted on the Defendant’s letter dated 6<sup>th</sup> November 2006 in which she committed to transfer the suit property to him on condition that the Plaintiff pays the balance of the purchase price and refunds the deposit. While the Defendant testified that she wrote the said letter under duress, she accepted the refund of the purchase price in part performance of their agreement and she has never refunded the Plaintiff the sums he incurred over the sale and transfer of the suit land. Further, in her email dated 8<sup>th</sup> July 2012, addressed to Nyambura Nyaga of Njoroge Nyaga & Company Advocates who was their joint Advocate, the Defendant reiterated that she was ready to transfer the property to the Plaintiff provided that he paid her a good will of Kshs.500,000/=Was she still under duress the second time? She made a commitment six (6) years before this suit was filed and partly performed. She did not say anything until the Plaintiff filed this suit. She had a fiduciary duty to transfer the suit property to the Plaintiff. The Defendant was estopped from going back on her representation which the Plaintiff had acted upon. I also note that receipts for payment of land rent produced by the Defendant were all issued after this suit was filed.

45. I find that the Defendant is holding the suit property in trust for the Plaintiff. In the case of *Rose Naswa Masinde v Lilian Nekesa Simiyu Mukopi* [2014] e KLR, it was held that:-

“Trusts can be created expressly but can also be created informally or be implied (See Snells, Equity, 13th Edition, Sweet & Maxwell, Chapter 9). One of the recognized categories of this form of trust is where one person purchases a property, but the same is conveyed in the name of someone other than the purchaser. In the case of *Dyer v Dyer* (1788) 2 Cox Eq, 92 at 93, (quoted in Snells, Equity, supra, page 206) it was stated as follows :-

“The clear result of all the cases, without a single exception, is, that the trust of a legal estate, whether freehold, copyhold, or leasehold; whether taken in the names of the purchasers and others jointly, or in the names of others without that of the purchaser; whether in one name or several; whether jointly or successive, results to the man who advances the purchase-money. This is a general proposition supported by all the cases, and there is nothing to contradict it;

46. From the foregoing, having found that a trust has been established, the plaintiff is entitled to the reliefs sought.
47. The Defendant counterclaim fails. She did not advance any monies towards the purchase of the said house. The counterclaim is hereby dismissed.
48. In conclusion, I find that the Plaintiff has proved his case on a balance of probabilities as against the Defendant.
49. Accordingly, judgment is entered in favour of the Plaintiff as against the Defendant as follows:-



- a. A permanent injunction is hereby entered restraining the Defendant by herself, through her agents, servants and /or employees or otherwise howsoever from selling, transferring and /or registering any change in ownership of the flat No.G situate on 2<sup>nd</sup> floor of Block MF-8 on LR No.25980 Madaraka estate to any person or persons.
- b. An order /declaration is hereby issued that a constructive trust exists between the Plaintiff and the Defendant by virtue of the agreement entered into by the parties and payments made by the Plaintiff towards purchase of the property.
- c. An order/declaration is hereby issued that the registration of the Defendant as owner of Flat G situate on 2<sup>nd</sup> floor of Block MF-8 on LR No.25980 Madaraka Estate is as a trustee of the Plaintiff.
- d. An order of specific performance is hereby issued compelling the Defendant to execute the transfer of lease of flat No.G situate on 2<sup>nd</sup> floor of Block MF-8 on LR No.25980 Madaraka Estate in favour of the Plaintiff within sixty (60) days, failing which the transfer of lease in favour of the Plaintiff be executed by the Deputy Registrar of the High Court of Kenya with an order directing the Chief Land Registrar to register the same.
- e. Costs of the suit plus interest.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF JULY 2022.**

.....

**L. KOMINGOI**

**JUDGE**

In the presence of:-

Mr. Thuo advocate for the Plaintiff

Mr. Kimathi holding brief for Mr. Mureithi advocate for the Defendant

Steve - Court Assistant

