



Midumbi v Owiti & another (Sued as Administratrixes of the Estate of the Late Leonadus Omolo Owiti Omolo) (Environment and Land Appeal E048 of 2024) [2025] KEELC 5364 (KLR) (8 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5364 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL E048 OF 2024**

**FO NYAGAKA, J
JULY 8, 2025**

BETWEEN

CHORA SHADRACK MIDUMBI APPELLANT

AND

SPRINA OBIERO OWITI 1ST RESPONDENT

REAL ATIENO ADEDE 2ND RESPONDENT

SUED AS ADMINISTRATRIXES OF THE ESTATE OF THE LATE LEONADUS OMOLO OWITI OMOLO)

JUDGMENT

1. One Chora Shadrack Midumbi, the Appellant, filed this suit before the Magistrate’s court at Ndhiwa seeking the following reliefs:
 - i. A declaration that he is legitimate owner of all that piece of land known as Kanyama/K/K/Kadwet/439 having purchased it for value;
 - ii. An order granting him exclusive vacant possession and title of Kanyama/K/K/Kadwet/439;
 - iii. A permanent injunction restraining the Defendants by themselves, their representatives or anyone acting on their behalf from alienating, interfering, trespassing, encroaching, transferring and/or in any way dealing with his quiet possession and enjoyment of Kanyama/K/K/Kadwet/439;
 - iv. The Defendants as administratrixes of the Estate of the Late Leonadus Owiti Alias Owiti Omolo (Deceased) be ordered to execute all transfer documents in his favour to allow for ease of transfer;



- v. In the alternative the Registrar of lands be directed to register him as the owner of the land and issue him with a title document.
 - vi. Costs of the suit; and
 - vii. Any other relief the court may deem fit to grant.
2. It was his contention that he had bought the piece of land from Leonadus Omolo Owiti on 6th September 1991 at a consideration of Kshs. 21,000/=. Furthermore, that he subsequently took immediate vacant possession which has been ongoing to the time of filing suit. It was the Appellant's case that after purchasing the land he took time to effect transfer in his favour and at some point, lost contact with the deceased which resulted in the suit land not being transferred to him timeously.
 3. It was the Appellant's further case that when the deceased died, the Respondents despite knowledge of the fact that he had bought the suit property refused to recognize his status as a bona fide purchaser for value and were on the verge of distributing the estate to his exclusion.
 4. In response, the Respondents filed a Defence dated 22nd March 2024, vehemently denying the Appellant's claim of purchase of the suit land. They maintained that he had only leased the land for two years, during which he farmed and harvested crops, with his last use of the land being in 1993. They urged the court to dismiss the suit with costs.
 5. In support of the Appellant's case three witnesses testified.
 6. PW1, the Appellant himself, maintained that the deceased held the title in trust for him as a Bonafide purchaser. He narrated that sometime in 2022 he found out that the deceased had passed on and the Respondents had initiated succession proceedings. He testified that the Respondents refused to include him as a beneficiary of the estate despite the 2nd Respondent witnessing his sale agreement. It was his further testimony that the transaction was done in the presence of members of the local administration including the Clan Elder, Assistant Chief and the Chief. PW1 maintained that the Respondent's failure to recognize his stake in the estate exposed him to the risk of losing his land.
 7. During cross-examination, PW1 admitted he was unaware of the deceased's death in 1993. He also explained that he could not obtain Land Control Board (LCB) consent as the land was still under adjudication at the time. He acknowledged that a land claim ought to be brought within 12 years.
 8. PW2, Michael Omungu Abuor, testified that he accompanied the Appellant to the suit land, whereat they were introduced to the deceased by Joseph Obonyo Magolo. He confirmed witnessing the sale agreement between the two parties. He stated that he, the Appellant, and the deceased were acquaintances residing in Kericho at the time.
 9. In cross-examination, PW2 stated that the Appellant had brought a blank agreement which they completed at the time of the transaction. He insisted that it was not a lease agreement.
 10. PW3, Jacob Odero Obiero, stated that he was invited to work on the suit land in November 1994 by one Samuel Ochieng Orinda. Samuel informed him that the land belonged to the Appellant. PW3 testified that he worked under the Appellant's instructions, even helping to construct a house, until he left in November 1996.
 11. Upon cross-examination, PW3 admitted that while the Appellant never showed him title documents, he would visit the farm once or twice a month.
 12. This marked the close of the Appellant's case.



13. On the Respondent's part DW1 the 2nd Respondent testified that her late husband had informed her and the 1st Respondent that he had leased 3 acres of the suit property to the Appellant for 2 years. She narrated that the Appellant only utilized the suit land for 2 years between 1992 and 1993. DW1 maintained that since 1994 when his lease ended the Appellant had never been to the suit property, neither had he come to her home claiming to have purchased the land.
14. During cross-examination, she acknowledged that her identity card was attached to the sale agreement but stated that she had not signed it due to being illiterate. She denied knowledge of the agreement and affirmed that she and the 1st Respondent had continued cultivating the land.
15. DW2, Elijah Ouma Owiti, a son of the deceased, testified that he had lived on the suit property since childhood and that the Appellant never asserted ownership against his father. He recalled that in 2002, the Appellant filed a claim with the Chief of South Kanyamwa Location, but it was dismissed for lack of a valid sale agreement.
16. On cross-examination, DW2 admitted that he was only 10 years old in 1991 and was therefore not privy to the transaction. He also confirmed that the 2nd Respondent and one Michael Ogwella had witnessed the agreement.
17. The Respondents then closed their case.
18. In the judgment dated 10th September 2024 the learned trial Magistrate found that in as much as the sale agreement was valid the Appellant had not proven that a constructive trust had been created in his favour. The court also found the suit time-barred, having been filed 32 years after the cause of action arose.
19. The Appellant was aggrieved and he lodged a memorandum of appeal contending that:
 - i. The Magistrate erred in law and fact by making a finding that it was incumbent upon the Appellant to prove that the deceased owned the suit property known as Kanyamwa/K/K/Kadwet/439 while from the records and evidence given during trial, there was no contention as to the ownership of the subject parcel and further, the Respondents, during hearing confirmed to the court that indeed the property belonged to the deceased at the time of sale.
 - ii. The Magistrate made a fundamental error in law and in equity by holding that the principle of constructive trust in favour of the Appellant did not arise, despite the court making a finding that the agreement was valid while the evidence produced in court by the Respondent shown that the estate of the deceased, through the administrators, categorically denied the Appellant his right to ownership of the suit land with the intention to unfairly enrich the estate of the deceased and gain due advantage.
 - iii. The Magistrate erred in law and in fact by finding that the Appellant's suit was time barred under section 7 of the *Limitation of Actions Act* while failing to consider the fact that the Appellant was in possession of the suit parcel and that the Estate of the deceased only held the title in trust for the Appellant with the intention to fulfill the obligation of the deceased to transfer the suit parcel to the Appellant.
 - iv. The Magistrate erred in law and in fact in finding that the Agreement dated 6th September 1991 was void by virtue of section 6 as read with section 8(1) of the *land Control Act*, contrary to the fair administration of justice and equity and by failing to consider the doctrine of constructive trust, the estate of the deceased unjustly enriched themselves by receiving/obtaining both the Appellant's purchase price and getting the suit parcel.



- v. The trial court erred in law and fact and thereby misdirected itself in finding that the said agreement entered into between the Appellant and deceased over the suit land was unenforceable, null and void for lack of Land Control Board consent, despite making a finding that the Appellant and the deceased had a valid agreement for the sale and purchase of the suit parcel.
 - vi. The Magistrate erred in law and fact in failing to find that there was no party, being the administrator of the estate of the deceased, to sue since the deceased passed on in 1993 to when the estate/the Respondents took over succession proceedings in the year 2022 in Ndhiwa MCSUCCE074/2022, leaving out the name of the Appellant from the list of liability to the estate of the deceased in the said succession cause and bringing into question the motive and intention of the Respondents with reference to dispossessing the Appellant the suit property purchased for value.
 - vii. The Magistrate erred in law and fact in failing to consider and find that the Appellant's evidence against the Respondent was uncontroverted thus: -
 - 1. Failing to consider and determine all the issues raised in evidence;
 - 2. Failing to take into consideration matters that ought to have been taken into consideration matters which ought (not) to be taken have been into consideration in the impugned decision.
 - viii. The Magistrate erred in law and in principle in failing to appreciate the Appellants' evidence, submissions, and the recent comparable cases cited therein and thus making a prejudicial decision against the Appellant who was a purchaser for value and had a continued possession of the suit parcel.
20. On the basis of these grounds, the Appellant sought to have the appeal allowed, the trial court's judgment set aside, and substituted with an order granting the reliefs sought in the original suit. He also prayed for costs of the appeal and such further orders as the court may deem just.
21. On 3rd April 2025, the court directed that the appeal be disposed of by way of written submissions.

Appellant's Submissions

- 22. It was the Appellant's contention that he was a bona fide purchaser for value of the suit land, namely Kanyamwa/K/K/kadwet/439, having entered into a sale agreement with the deceased on 6th September 1991. This agreement, he submitted, complied with the legal requirements under Section 38 of the *Land Act* and Section 3(3) of the *Law of Contract Act*. The Appellant relied on his own testimony and that of PW2 and PW3, as well as the trial court's acknowledgement of the validity of the agreement, in its judgment.
- 23. The Appellant submitted further that he paid the full purchase price of Kshs. 21,000, and although the deceased held the title, it was in trust for him pending fulfillment of the agreement. He asserted that even the Respondent's own evidence confirmed that the land was registered in the name of the deceased prior to his death.
- 24. The Appellant argued that the failure to obtain Land Control Board (LCB) consent and to execute transfer documents was attributable solely to the deceased, who failed to take the necessary steps despite having received full payment. It was submitted that the deceased's actions amounted to an intention to hold the property in trust for the Appellant. Consequently, the doctrine of constructive trust arose.



25. The Appellant referred the Court to the legal framework under Section 93 of the [Law of Succession Act](#), which he submitted validated transfers made to purchasers by personal representatives. He distinguished his case from others where purchasers failed to prove their status or where transfers were attempted prior to confirmation of grant.
26. Relying on precedent, including *Macharia Mwangi Maina & 87 Others v Davidson Mwangi Kagiri* [2014] eKLR and *Aliaza v Saul* [2022] KECA 583 (KLR), the Appellant submitted that equity and good conscience dictated that a constructive trust existed in his favour. He maintained that the deceased had granted him possession, received full consideration, and failed to complete the transfer, which conduct, he asserted, amounted to an intention to create and acknowledge a trust.
27. It was further submitted that the Respondents, having become administrators of the estate in 2022 more than three decades after the sale had fraudulently failed to disclose the Appellant's interest in the estate during succession proceedings. This, the Appellant argued, was an abuse of process aimed at defeating his equitable rights.
28. The Appellant urged the court to find that a constructive trust arose from the conduct of the deceased and his estate, relying also on *Steadman v Steadman* (1976) AC 536, *Lloyds Bank Plc v Rosset* (1991) 1 AC 107, and *Soulos v Korkontzilios* (1997) 2 SCR 217. He submitted that all conditions necessary for a constructive trust had been met, including the existence of an equitable obligation, breach thereof, and the need for a proprietary remedy.
29. He further submitted that the doctrine of proprietary estoppel also applied and that the Respondents' failure to include him in the grant of letters of administration amounted to concealment and misrepresentation.
30. The Appellant therefore prayed that the Court finds that he acquired an equitable interest in six acres of the suit parcel and that this land should not form part of the distributable estate. He further prayed that the Respondents be compelled to execute the necessary transfer forms to vest legal title in his name.
31. On the issue of costs, the Appellant urged the Court to be guided by Sections 26 and 27 of the [Civil Procedure Act](#), as well as the decision in *Party of Independent Candidate of Kenya & Another v Mutula Kilonzo & Others* (HC EP No. 6 of 2013), submitting that costs should follow the event and be awarded in his favour.

Respondent's Submissions

32. The Respondents submitted that the core issues for determination were whether the learned trial magistrate erred in finding that no constructive trust arose from the sale agreement between the Appellant and the deceased, and whether the appeal should be dismissed.
33. They maintained that although the trial court acknowledged the existence of the sale agreement dated 6th September 1991, it correctly held that the agreement was unenforceable as it was statute-barred under Section 7 of the [Limitation of Actions Act](#). The Respondents contended that the Appellant's right to enforce the contract accrued six months after the date of the agreement when the parties were expected to obtain the requisite Land Control Board (LCB) consent to facilitate transfer of the suit land. As such, the limitation period of 12 years began to run in early 1992, and the Appellant's suit filed in 2024 came over three decades later.
34. The Respondents argued that the Appellant had a legal duty to pursue the transfer of the property within the prescribed time. If the deceased became unavailable, it was incumbent upon the Appellant to initiate appropriate legal steps, including citing the deceased's family to commence succession



proceedings to facilitate transfer. Instead, the Appellant waited until 2022 after the Respondents had obtained a grant of letters of administration to stake his claim. His contention that his cause of action only arose in 2022 when he was excluded from the succession process was, in their view, legally untenable.

35. The Respondents cited the principle that equity aids the vigilant and not the indolent, and referred to decisions such as *Gathoni v Kenya Cooperative Creameries Ltd* [1982] KLR and *Mukuru Munge v Florence Shingi Mwawana & 2 Others* [2016] eKLR to reinforce the position that the purpose of limitation laws is to protect against stale claims and unreasonable delay in litigation.
36. Addressing the Appellant’s invocation of constructive trust, the Respondents submitted that the doctrine was inapplicable in this case. They emphasized that the Appellant had not pleaded fraud in his pleadings, nor proved any wrongful conduct on the part of the Respondents that could warrant imposition of a trust. On the contrary, they submitted that they had always occupied the suit land—which they regarded as their home—and had undertaken succession legally and transparently.
37. They relied on authorities including *Monata Matiko Chonchorio v John Marwa Chabaro* [2021] eKLR and *Baron Mathenge Munyoki v Dedan Mbangula Kithusi* [2022] eKLR to argue that constructive trust does not arise where a party merely seeks to enforce a time-barred contract. They further cited *Twalib Hatayan & Another v Said Saggar Ahmed Al-Heidy & 5 Others* [2015] eKLR, to reiterate that constructive trusts arise only where property has been acquired through wrongdoing or unconscionable conduct—neither of which had been demonstrated against them.
38. It was their case that the Appellant failed to prove continuous possession of the suit land. They disputed the Appellant’s claim of uninterrupted occupation since 1991 and testified at trial that he only farmed on the land for about two years. They questioned how the Appellant, if indeed he had remained on the land, did not know of the deceased’s death until 2022 a fact that, in their view, further undermined his credibility and vigilance in enforcing his alleged rights.
39. The Respondents also submitted that no evidence was adduced to show that the Appellant had made formal claims to the property or taken legal action earlier that could have been ignored or dismissed by the Respondents. Accordingly, they maintained that no fraudulent registration occurred, nor could any trust be implied in the circumstances.
40. On the second issue, the Respondents submitted that the appeal was devoid of merit and ought to be dismissed in its entirety. They urged the Court to uphold the decision of the trial court, which they asserted correctly found that the Appellant’s suit was statute-barred and that equitable doctrines could not be used to circumvent clear provisions of the law. They reiterated that equity cannot assist a party who has slept on their rights.

Analysis And Determination

41. Having carefully considered the record of appeal, and the parties’ respective submissions, the issues the determination of which will dispose of this appeal are:
 - i. Whether the learned trial magistrate erred in finding that a constructive trust did not arise in favour of the Appellant despite there being a valid sale agreement;
 - ii. Whether the suit before the lower court was statute-barred under Section 7 of the *Limitation of Actions Act*;
 - iii. Whether the Appellant proved possession and equitable entitlement to the suit property sufficient to warrant relief; and



- iv. Whether the appeal has merit and should be allowed.

Whether a constructive trust arose from the sale agreement

42. The Appellant's case was anchored on the doctrine of constructive trust. He asserted that having purchased the land on 6th September 1991 for Kshs. 21,000/= and taken possession, yet the land was not transferred to him, the deceased held the title in trust for him. The trial court acknowledged the sale agreement's validity but declined to find that a constructive trust arose.
43. A constructive trust is envisaged and provided for, in land matters, under Section 20 of the *Land Registration Act*, 2012. A constructive trust arises where a person, by reason of his conduct or relationship, is deemed to hold property for the benefit of another. Simply put, a constructive trust is created when a person by his conduct, words or express instruction causes another to believe that the promise or act he has given the recipient is true and or will take effect and causes that recipient to change his status or situation to his detriment in the belief that the promisor will fulfill his part of the bargain but then the promisor fails to carry out his part of the bargain.
44. Thus, in *Shah & 7 others v Mombasa Bricks & Tiles Limited & 5 others* (Petition 18 (E020) of 2022) [2023] KESC 106 (KLR) (28 December 2023) (Judgment), the Supreme of Kenya held,
- “We have also established that constructive trusts can arise in various circumstances, including in land sale agreements. Trust is an equitable remedy which is an intervention against unconscionable conduct. Where the circumstances of the case are such that it would demand that equity treats the legal owner as a trustee, the law will impose a trust. It is imposed by law whenever justice and good conscience require it. On this issue and for the reasons given above, we therefore find that a constructive trust can be imported into a land sale agreement to defeat a registered title.”
45. In the *Shah* case (*supra*) the Supreme Court held further,
- “Constructive trusts could arise in various circumstances, including in land sale agreements. A trust was an equitable remedy which was an intervention against unconscionable conduct. Where the circumstances of the case were such that it would demand that equity treated the legal owner as a trustee, the law would impose a trust. It was imposed by law whenever justice and good conscience required it. A constructive trust could be imported into a land sale agreement to defeat a registered title.”
46. In *Twalib Hatayan & Another v Said Saggah Ahmed Al-Heidy & 5 Others* [2015] eKLR, the Court of Appeal affirmed that constructive trusts are imposed by equity to prevent unjust enrichment. The Appellant relied on several authorities including *Macharia Mwangi Maina & 87 Others v Davidson Mwangi Kagiri* [2014] eKLR and *Steadman v Steadman* (1976) AC 536, to support the view that the deceased's acceptance of full consideration and failure to transfer the land created such a trust.
47. In *William Kipsoi Sigei v Kipkoech Arusei & another* [2019] eKLR, the Court of Appeal held as follows:
- “Taking into account the *Macharia Mwangi Maina* decision and the *Willy Kimutai Kitilit* decision alongside the circumstances of this case, we are of the view that the fact that the appellant herein, received the full purchase price for the property, allowed the 1st respondent to take possession, and for a period of at least fourteen years, let him remain on the property undisturbed, a constructive trust had been created. We agree with the English decision



Yaxley v Gotts & Another, (2000) Ch 162, where it was held that an oral agreement for sale of property, created an interest in the property even though void and unenforceable as a contract; but the oral agreement was still enforceable on the basis of a constructive trust or proprietary estoppel. This was also the approach taken in Macharia Mwangi Maina decision where the court observed that the appellant had put the respondent into possession of the suit property with the intention that he was to transfer the properties purchased to them and as such, a constructive trust had been created and the appellant could not renege. We come to the conclusion that in the circumstances of this case the equitable doctrines of constructive trust and proprietary estoppel were applicable and enforceable in regard to land subject to the *Land Control Act*. We therefore agree with the learned judge of the Environment and Land Court that despite the lack of consent of the Land Control Board, the doctrine of constructive trust applied to the agreement between the appellant and the 1st respondent. In the circumstances, we find that the first appellate court, made the correct decision, and we have no justification to interfere with that decision.”

48. Also, in the learned judge held, Samwel Kiprotich Chemase & 3 others v Ludia Jemalit Sameoi & 4 others [2019] eKLR,

“The Court of Appeal in Nyeri Civil Appeal No. 6 of 2011 consolidated with Civil Appeal No. 26 and 27 of 2011 – Macharia Mwangi Maina & 87 Others Vs Davidson Mwangi Kagiri (2014) eKLR, held that where a party pays for a parcel of land and is put in possession even without obtaining the consent of the Land Control Board to equitable doctrines of constructive trusts can be invoked. The court relied on the decision of Yaxley Vs Gotts & Another (2000) 162, where it was held that an oral agreement for sale of property created an interest in the property even though void and unenforceable as a contract; but the oral agreement was still enforceable on the basis of a constructive trust or proprietary estoppel. In the instant case, it was the respondent who put the appellants in possession of the suit property not as licensees but with the intention that he was to transfer individual plots purchased by them. The respondent went ahead and received the purchase price. They are of the considered view that the doctrines of proprietary estoppel and constructive trust are applicable and the respondent cannot renege.

49. The appellant contended that there was a valid agreement which was concluded but the deceased seller never effected the transfer to him. I have carefully analyzed the document which the deceased seller used to permit the appellant at first to occupy the land. What was it? A lease or a sale agreement? It was the latter. It was executed and witnessed properly. It was thus valid.
50. Further, that the appellant used the land but the adjudication process made him not to perfect the transfer in his favour hence there was a trust. The Respondents disputed this, arguing that the sale agreement was never perfected due to lack of Land Control Board consent and that the Appellant had abandoned the land in 1993. The plaintiff's evidence was that he was on the land. Contrary to the averments of the Defendants about departure in 1993 the Plaintiff introduced PW3 onto the land and he worked on it, built a house on it before he left in 1996. Therefore, contrary to the assertion that the appellant parted with possession, it is this Court's view that he did not, as detailed below. The Respondents were not candid on the aspect of possession. Actually, PW1, PW2 and PW3 offered consistent testimonies confirming payment, possession, and long-standing intention to enforce the agreement.
51. Additionally, when the Appellant took possession, did he part with it? The Respondents testified that the appellant entered the land and remained thereon until 1993 and had never gone thereon since then.



- But the Appellant stated that he used to use the land. The constructive trust continued to the time of sui.
52. Notably, the Appellant was unable to obtain LCB consent due to the land's adjudication status. In such situations, Kenyan courts have acknowledged that failure to obtain LCB consent should not defeat equitable claims. In *Willy Kimutai Kitilit v Michael Kibet* [2018] eKLR, the Court held that equity, through constructive trust or proprietary estoppel, may override the statutory requirement for LCB consent where possession and consideration are proven.
 53. On balance, the Court finds that the deceased's acceptance of the purchase price, grant of possession, and subsequent silence combined with the Respondents' exclusion of the Appellant in the succession proceedings constitutes conduct sufficient to warrant a constructive trust. The conduct of the seller was such that if he received the purchase price as he did as per the agreement of sale, and put the appellant into possession and let him there for a while but never transferred the land to him, a constructive trust was created in favour of the appellant. This Court finds that in absence of evidence of a lease yet there is the presence of evidence of the sale of the sui land to the Appellant by the deceased, it is clear that a sale occurred to the Appellant as a bona fide purchaser.
 54. The trial court erred in failing to give due weight to this equitable doctrine.

Whether the suit was time-barred under Section 7 of the *Limitation of Actions Act*

55. The suit could only be barred if it was brought contrary to the provisions of the *Limitation of Actions Act*. This would depend on whether the applicant remained in possession of the land. If he was in possession all through, then the constructive trust remained operational up to the time of suit. Thus, the twelve years period given for one to recover land would not bar him from recovering the land. If he parted with possession then he would have lost the claim to the land, after the twelve years.
56. In the decision of the learned trial magistrate also dismissed the suit as time-barred, by holding that the cause of action arose in 1991 and expired 12 years later. However, the Appellant argued that his cause of action accrued upon the Respondents' exclusion of his interest during succession proceedings in 2022. There was evidence, as stated above, which shows that contrary to the Respondents' assertions that the Plaintiff was not in continuous occupation of the land he was. PW3 clearly stated how he build even a house on the suit land for and on behalf of the appellant. This was crucial evidence in support of the appellant's case.
57. It is settled that where a party is in possession of land pursuant to a sale agreement, time does not begin to run until dispossession or assertion of adverse title. In *Mbira v Gachuhi* [2002] 1 E.A. 137, the Court held that possession confers equitable rights enforceable even without registration.
58. Further, in *Macharia Mwangi Maina* (supra), the Court affirmed that possession under an unregistered or unperfected sale agreement gives rise to an overriding interest not extinguished by lapse of time. If the Appellant was indeed in possession since 1991, the limitation period would not have run until he was dispossessed or his interest denied both events occurring upon the institution of succession in 2022.
59. The Respondents contended that the Appellant vacated the land in 1993. However, this was disputed. PW3 testified that he worked on the land as late as 1996. Additionally, the Appellant testified that he visited the land periodically and lodged a complaint on his house being burnt in the year 2002. On a balance of probability, the Appellant has been able to prove occupation. The conflicting testimony and lack of clear evidence of dispossession militate against a firm finding that time began to run in 1993.
60. Consequently, the Appellant's claim, being based on a constructive trust and alleged continuous possession, was not time-barred under Section 7. The trial magistrate erred in that respect.



Whether the Appellant proved an equitable entitlement to the suit land

61. The Appellant testified, supported by witnesses, that he purchased the land, paid in full, and took possession. He asserted that the Respondents deliberately excluded him from succession proceedings despite the 2nd Respondent witnessing the agreement.
62. The Respondents did not dispute the agreement's existence, nor did they tender any evidence of refund or challenge the consideration paid. Their primary challenge lay in lapse of time and lack of LCB consent.
63. In *Willy Kimutai Kitilit (supra)* and *Aliaza v Saul* [2022] KECA 583 (KLR), the Court of Appeal upheld claims where purchasers had paid for land and taken possession but were denied transfer due to lack of consent or succession delays. A similar approach is warranted here.
64. Thus, on the strength of evidence adduced, the Appellant demonstrated an equitable interest in the suit parcel and is entitled to proprietary relief. The estate continues to be registered and hold the land in trust for the appellant.

Whether the appeal has merit

65. From the foregoing, it is evident that the trial court failed to properly consider the principles of constructive trust and possession, and erroneously dismissed the claim on limitation grounds.
66. This Court finds merit in the appeal and determines that the Appellant is entitled to enforcement of his equitable rights.
67. Accordingly, the Court makes the following orders:
 - i. The appeal is allowed.
 - ii. The judgment of the trial court delivered on 10th September 2024 is set aside in its entirety.
 - iii. A declaration is hereby issued that the Appellant, Chora Shadrack Midumbi, holds an equitable interest in land parcel Kanyamwa/K/K/Kadwet/439 by virtue of a constructive trust.
 - iv. The Respondents, as administrators of the estate of Leonadus Omolo Owiti, shall execute all necessary transfer documents to vest the legal title in the Appellant's name within 30 days. In default, the Deputy Registrar of the Court shall execute the documents.
 - v. The Appellant shall be registered as the proprietor of six acres, being part, of the said parcel.
 - vi. A permanent injunction is hereby issued restraining the Respondents from interfering with the Appellant's quiet possession of the land.
 - vii. The Respondents shall bear the costs of the appeal and the suit in the lower court.

JUDGMENT DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 8TH DAY OF JULY, 2025

HON. DR. IUR NYAGAKA,

JUDGE

At 3:38 PM in the presence of,

Mr. Abiero Advocate for the Appellant



Ms. Ombaka Advocate for the Respondent.

