



**Crane & another v Kamau & another (Environment & Land Case
598 of 2014) [2024] KEELC 6392 (KLR) (3 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6392 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 598 OF 2014
JO OLOLA, J
OCTOBER 3, 2024**

BETWEEN

TERI CRANE 1ST PLAINTIFF

PROJECT KENYA INTERNATIONAL LTD 2ND PLAINTIFF

AND

PETER WANJOHI KAMAU 1ST DEFENDANT

FRANCIS KINYANJUI GITHINJI 2ND DEFENDANT

JUDGMENT

Background

1. By a Plaint dated 12th October 2012 as amended on 8th October 2014, Ms. Teri Crane and Project Kenya International Limited (herein after “the Plaintiffs”) pray for Judgment against the two Defendants for:-
 - a). A declaration that the 1st Defendant holds the properties known as Nyeri Municipality/ Block 1/1285, Nyeri Municipality Block 1/1286, Nyeri Municipality Block 1/1287 and Nyeri Municipality Block 1/1446 in trust for the Plaintiffs;
 - b). An order that the 1st Defendant do transfer the properties known as Nyeri Municipality Block 1/1285, Nyeri Municipality Block 1/1286 and Nyeri Municipality Block 1/1446 to the 2nd Plaintiff;
 - c). An order that the 2nd Defendant do execute the transfer and other necessary documents/ instruments of transfer in regard to the property known as LR. No. Nyeri Municipality Block 1/1287 to the 2nd Plaintiff;



- d). An order that the 1st Defendant do deliver vacant possession of the suit properties known as Nyeri Municipality Block 1/1285, Nyeri Municipality Block 1/1286, Nyeri Municipality Block 1/1287 and Nyeri Municipality Block 1/1446;
 - e). An award of mesne profits payable by the 1st Defendant to the 2nd Plaintiff, assessable at shillings Thirty Thousand (Kshs. 30,000/=) per month from the month of September 2010, until the date of delivery of vacant possession of the suit properties;
 - f). Costs of this suit plus interest thereon at court rates; and
 - g). Any other further relief as this court may deem fit and just to grant.
3. Those prayers arise from the Plaintiff's contention that on diverse dates between the year 2001 and 2007, the Plaintiffs who represent a non-profitable organization incorporated in the United States of America and known as Project Kenya Inc. (USA), did resolve to purchase premises in Nyeri town from where the said organization could operate and offer accommodation for its members who would from time to time visit Kenya on what they termed as their mission to empower locals to achieve freedom from poverty and disease.
 4. It is the Plaintiff's case that their American based organization did resolve and agree that prior to its acquiring legal status locally to enable them own immovable property, any such property as would be identified would in the first instance be registered in the name of the 1st Defendant, a Pastor of the Nyeri Town Baptist Church who had become acquainted with the 1st Plaintiff in the course of her missionary activities.
 5. The Plaintiffs aver that pursuant to that resolution and arrangement with the 1st Defendant, they identified the suit properties which were then registered in the name of the 2nd Defendant and put on course arrangements to remit funds to both the 1st and 2nd Defendants for the purchase of the suit properties.
 6. It is the Plaintiffs' case that as a result and on diverse dates between the year 2006 and 2010, the 1st Plaintiff outsourced monies from the said Project Kenya Inc. (USA) and other donors aggregating to Kshs. 7,329,000/= which sum they channeled to the 1st Defendant as their agent in Kenya for the purchase of the suit properties.
 7. The Plaintiffs state that in accordance with the arrangement and upon completion of the respective agreed purchase prices, the properties known as LR. No. Nyeri Municipality Block 1/1285, 1286 and 1446 were duly registered in the name of the 1st Defendant who was put in occupation on the understanding that he would hold the same as trustee for the said Project Kenya Inc. (USA) while the fourth property- LR No. Nyeri Municipality/Block 1/1287 remained in the name of the 2nd Defendant pending payment of the final installment of the purchase price.
 8. The Plaintiffs aver that upon the incorporation of the 2nd Plaintiff in May 2010, the 1st Defendant was requested to transfer the suit properties to the 2nd Plaintiff in accordance with the established trust but the 1st Defendant declined to do so claiming to be the sole proprietor of the said properties. It is further the Plaintiffs' case that the 2nd Defendant has equally refused to transfer the fourth property to the 2nd Plaintiff's name thereby necessitating this suit.
 9. Peter Wanjohi Kamau (the 1st Defendant) is opposed to the Plaintiff's claim. In his Statement of Defence and Counterclaim as amended on 18th November 2014, the 1st Defendant asserts that the 1st Plaintiff has no locus standi to sue in Kenya and further that a duly incorporated Limited Liability Company such as the 2nd Plaintiff cannot in law be an affiliate of a non-profit making organization.



10. The 1st Defendant denies having received monies from Project Kenya Inc. (USA) aggregating to the sum of Kshs. 7,329,000/= and invites the Plaintiffs to strict proof. It is the 1st Defendant's case that between 1st April 2007 and 11th October 2007, he received donations and contributions from well-wishers and gospel partners both from Kenya and United States of America amounting to Kshs. 6,238,862/= as consolation following the death of his wife during child birth on 30th March 2007. It is further his case that he topped up the donations to purchase the suit properties in the sum of Kshs. 8,500,000/- in the year 2007.
11. The 1st Defendant denies being a party to any meeting with the Plaintiffs and/or their affiliates in the United States and denies that he was to hold the suit properties as a trustee for anyone.
12. The 1st Defendant further avers that the Plaintiffs' claim is an afterthought conceived by the 1st Plaintiff after her attempt to seduce the 1st Defendant to marry her failed.
13. By way of counterclaim, the 1st Defendant avers that vide a letter dated 7th September 2010, the Plaintiffs circulated defamatory information against him to all the leaders of the Nyeri Baptist Church whereby they accused the 1st Defendant of stealing a sum of over 100,000/= US Dollars from the Plaintiffs.
14. The 1st Defendant avers that the aforesaid letter painted him as a corrupt and untrustworthy person who is not fit to hold the position of the Pastor in charge of the Nyeri Baptist Church and was therefore calculated to damage the 1st Defendant's standing in the church and society as a whole.
15. Accordingly, the 1st Defendant prays for Judgment against the plaintiffs as follows:-
 - a). General damages for defamation and character assassination;
 - b). Removal of the caution lodged against LR. No. Nyeri Municipality Block 1/1285, 1286 and 1446; and
 - c). Costs of the counterclaim.
16. Francis Kinyanjui Githinji (the 2nd Defendant) is equally opposed to the Plaintiffs' claim. In his brief Statement of Defence dated 18th October 2017, he denies that he has ever agreed to sell to the Plaintiffs any property. The 2nd Defendant asserts that he cannot be forced by law to transfer LR. No. Nyeri Municipality Block 1/1287. It is his case that the sale of the said property was rescinded after the 1st Defendant failed to honour the payment periods they had agreed on.

The Plaintiffs' Case.

17. At the trial herein, the Plaintiffs called a total of four (4) witnesses in support of their case.
19. PW1- Nancy Lynn Meredith is a member of the Board of Project Kenya Inc. (USA). She told the court that together with the 1st Plaintiff, they attend Blount Christian Church in Marysville, USA and that they came up with a plan to do some missionary work in Kenya. They sent the 1st Plaintiff to Kenya sometime before the year 2004 and the 1st Plaintiff visited several churches and reported back that there were children who were in need and could be offered help through sponsorship.
19. PW1 testified that thereafter Project Kenya Inc. (USA) decided to start sending teams for various project works with the first team visiting Kenya in November 2003. After a visit to the Nyeri Baptist Church at the invitation of the 1st Defendant, the Board decided that they needed to have their own physical office in Kenya for their operations.



20. PW1 told the court they started searching for property and that sometimes in the year 2006, the 1st Defendant informed them that he had identified some property. They then wired the first payment of 6,000/- US Dollars to the 1st Defendant in September 2006. The Board was however informed that the property had been sold and so they continued searching for another one. In the meantime, the money wired to the 1st Defendant was left in his account as the Board did not have any local account.
21. PW1 told the court that in March 2007, the Board was informed that some property had been found along Ring Road in Nyeri. They decided to purchase the same. PW1 testified that they were informed that as foreigners, they could not register as owners of land in Kenya and it was agreed that initially the property would be registered in the 1st Defendant's name before being transferred to the NGO that they planned to have.
22. PW1 testified that the 1st Plaintiff, herself and two other Board members thereafter held a meeting with the 1st Defendant at the Ring Road Property and they became unhappy that the 1st Defendant was using the premises for the purposes of an NGO under the name SOKA and not for the purpose it was intended. They took that information back to the USA where the Board decided to invite the 1st Defendant and one Benard Kabaruru to the USA for a joint discussion.
23. PW1 further testified that the two honoured the invite and visited the US in July 2008. At that meeting it was decided that they needed to transfer the property from the 1st Defendant's name so that the Board could start using it for Project Kenya Inc. activities. At the time the 1st Defendant assured them that the property was in safe hands and they continued sending teams and they would stay in the house situated on the property whenever they were in Kenya.
24. PW1 told the court that they did manage to register the 2nd Plaintiff in Kenya in May 2010. However, when they asked the 1st Defendant to have the property transferred to the 2nd Plaintiff's name, the 1st Defendant refused claiming that he was the sole owner of the property.
25. PW2- Pastor Martin Murigu is a father-in-law of the 1st Defendant. He told the court he was the father of Ruth Muthoni who before her death on 30th March 2007, was the wife to the 1st Defendant.
26. PW2 testified that he knew about Project Kenya through the 1st Defendant's family as an organization that supported children besides other missionary work. He further told the court he had two grand children who were being supported by Project Kenya.
27. PW2 testified that during his conversation with his daughter and the 1st Defendant, he got to learn that Project Kenya was buying property. The property which was to be bought was to be used as a centre for providing for needy children and as Project Kenya Offices. PW2 stated that he knew the land was bought in May 2007 and the 1st Defendant's family stayed there. When the 1st Plaintiff was around, she would also stay at the house situated on the property. PW2 told the court he knew as a fact that the property was bought by Project Kenya for its Ministry activities.
28. PW3- Terri Crane is the 1st Plaintiff and a resident of Tennessee in the United States of America. She told the court she is a full time missionary and a Director of both Project Kenya Inc. (USA) as well as the 2nd Plaintiff. In that capacity, she first came to Kenya on 17th November 2001 at the invitation of one Doctor Weckesser. That is when PW3 met the 1st Defendant and his wife Ruth Wanjohi in Kayole, Nairobi.
29. PW3 testified that on her fourth visit to Kenya in September 2002, they again met the 1st Defendant who told them he had left the Joshua Ministries in Kayole and was now moving to Nyeri. The 1st Defendant invited both PW3 and Dr. Weckesser to visit him in Nyeri.



30. PW3 further testified that in September 2003, he visited Nyeri for the first time and the 1st Defendant introduced him to the Board of the Nyeri Baptist Church where he was now serving. PW3 told the court the 1st Defendant and the Board presented her with a proposal requesting assistance for various projects for their church.
31. PW3 told the court that upon her return to the US, she presented the concept paper to the Missions Department, Blount Christian Church. The Department agreed to support the goals stated in the concept paper by sending teams which PW3 would lead with financial support for various projects.
32. PW3 testified that Project Kenya grew to a point where it became incorporated and registered in the United States in the year 2006 with PW3 as its Director and a nine member board. For purposes of accountability of projects and funding, they formed an NGO in the name Springs of Kartatismos Africa (SOKA). The 1st Defendant who was instrumental in the formation of the NGO brought in one Bernard Kabaru to assist during the registration process.
33. PW3 told the court that S.O.K.A was established in order to have a working NGO on the ground in Kenya to manage the Project Kenya Funded Programs as well as future grants. In order to facilitate the transmission of funds, a bank account was opened by Project Kenya in Suntrust Bank solely for funds which could be withdrawn by the 1st Defendant and the said Bernard from Kenya. For this reason, they obtained Debit (ATM) cards in the names of the 1st Defendant and the said Bernard Kabaru.
34. PW3 told the court that in the year 2008, herself together with 3 other board members discovered that the said Bernard Kabaru was using S.O.K.A to partner with other donors. The board was unhappy with what had happened and in order to clarify matters they had decided that it was important to invite the 1st Defendant and Bernard to the USA to attend a full board meeting of Project Kenya Inc (USA) to have a clear understanding on reporting for financial purposes and to clarify the position of the Ring Road property which had been purchased earlier and was placed under the care of the 1st Defendant.
35. PW3 told the court, the two visited the US between 3rd July 2008 and 17th July 2008 during which time they attended a meeting with the board. PW3 told the court that although the original intention was to transfer the suit property to the name of S.O.K.A, it was agreed that the property would remain as it was until Project Kenya would establish an organization in Kenya for the property to be transferred.
36. PW3 told the court they had first started looking for property in Kenya in November 2005. When they found the first property, they had wired \$ 6000/= on the 9th September 2006 to the 1st Defendant's account as a down payment. They were however unable to complete the transaction as the owner sold the land before the Project could make full payment. The money was then left in the 1st Defendant's account.
37. PW3 testified that in May 2007, a new property located in Ring Road Nyeri was found. They met with the owner after which PW3 emailed the details to the members of the board. The board agreed to purchase the properties. PW3 told the court that the 1st Defendant informed them that they would have to place the property in his name since they were foreigners until such a time that their registration was completed in Kenya. As a result they executed an agreement on 8th May 2007 spelling out the terms under which the property would be held by the 1st Defendant.
38. PW3 told the court she thereafter left the country on 9th May 2008 leaving the 1st Defendant to finalize the arrangement for sale of the properties as they had agreed. Thereafter the Project continued to wire money through the 1st Defendant's account. After the agreed amount was paid, the 1st Defendant and his family moved into the house. He later refused to transfer the property to the Project claiming it to be his own.



39. PW4- Anthony Mwangi Ng'ang'a is an Advocate by profession currently practicing under the name and style of Ng'ang'a Munene & Company Advocates. He told the court that in the course of his practice, PW3 visited his firm with another member of Project Kenya in the year 2010. They instructed his Law Firm to register for them a company under the name Project Kenya International Limited. He did as instructed and the company was registered on 4th May 2010.
41. PW4 told the court that the 1st Plaintiff and another Board member later on visited his office and requested him to accompany them to a meeting at Gathiga Mwangi & Company Advocates Offices in Nyeri to witness the signing of an agreement between Project Kenya International Ltd and the 1st Defendant who was to transfer titles of the suit properties to the 2nd Plaintiff. The 1st Defendant however declined to execute the agreement.

The Defence Case

42. The Defendants equally called four (4) witnesses in support of their case during the trial.
43. DW1- Peter Wanjohi Kamau is the 1st Defendant and a Pastor with the Nyeri Baptist Church. Relying on his Statement dated 27th February 2012, DW1 told the court that he only dealt with the 1st Plaintiff and came to hear of the 2nd Plaintiff after this case was filed.
44. DW1 testified that he first met the 1st Plaintiff in the year 2001 and that she visited Nyeri Baptist Church in February 2003 and met the leadership of the church. DW1 told the court that the church had shared their vision of a feeding and sponsorship program for children with the 1st Plaintiff.
45. DW1 told the court that the 1st Plaintiff promised to walk with them and sent them some money in July 2003. In the beginning, the 1st Plaintiff would send the money to the church's account. Sometimes she would send money directly to DW1 or the church's leadership.
46. DW1 testified that the suit properties came to be acquired after he and his wife hosted the 1st Plaintiff in a two-bedroom house and that that is what prompted the need for a bigger house. After the demise of DW1's wife in March 2007, the 1st Plaintiff came to Kenya and together they identified a plot in Ring Road which the 1st Plaintiff promised to help him purchase and put up a house for guests.
47. DW1 further testified that he used his savings and that with the help of the 1st Plaintiff he bought the property. DW1 told the court it was the 1st Plaintiff who was involved in the negotiations for the 4 plots and that he did not hear anything to do with the land being held in trust for anyone. He told the court he declined to transfer the property to the 2nd Plaintiff because he had struggled to raise the money and that that is where his family lived.
48. DW2- John Mwangi Kinyari is a land agent and a member of the Nyeri Baptist Church. He told the court that after the death of DW1's wife, they formed a committee to look for an alternative residence for DW1. He told the court the 1st Plaintiff was a member of the said committee.
49. DW2 testified that when he heard about the Ring Road Plots, they went to see them with the 1st Plaintiff after which they did an agreement. He told the court that the property was purchased by the 1st Defendant and that he was not holding it in trust.
50. DW3- Harun Muchagia is a resident of Nyeri and a Pastor with the Baptist Church. He told the court he was a member of the committee that scouted for a new residence for the 1st Defendant following the death of his wife. Having found plots and after agreeing on the price of Kshs. 8.5 million, they executed a sale agreement on 14th May 2007 with DW3 as a witness. He told the court the 1st Plaintiff



was present when the final terms of the agreement were negotiated but she did not sign the agreement since she left the country before signing.

51. DW4- Francis Kinyanjui Githinji is the 2nd Defendant and the initial owner of the suit properties. He told the court he was approached by DW2 and DW3 on behalf of the 1st Defendant to sell the suit properties. Having settled on the price of Kshs. 8.5 million, he proceeded to transfer 3 of the plots to the 1st Defendant who was the purchaser. He retained one plot because the 1st Defendant was unable to clear the purchase price. The outstanding balance was wired to him by the 1st Plaintiff who then requested him to transfer the properties to the Plaintiffs. He declined because he did not have any agreement with the Plaintiffs.

Analysis and Determination.

52. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly gone through the submissions and authorities placed before the court by the Learned Advocates representing the parties herein.
53. By their suit as instituted herein, the two Plaintiffs urge the court to declare that the 1st Defendant holds the properties known as Nyeri Municipality/ Block 1/1285, 1286, 1287 and 1446 in trust for the Plaintiffs. They have asked the court to direct the 1st Defendant to transfer the said properties to the name of the 2nd Plaintiff and to deliver vacant possession thereof.
54. The Plaintiffs also pray that the 2nd Defendant herein be directed and ordered to execute the transfer and/or any other necessary instruments of transfer in regard to the property known as Nyeri Municipality Block 1/1287 and to have the same transferred to the name of the 2nd Plaintiff. In addition, the Plaintiffs have urged the court to award them mesne profits as well as the costs of this suit.
55. The 1st Plaintiff is a director of a non-profitable organization incorporated in the United States of America and known as Project Kenya Inc. (USA). She is also a director of the 2nd Plaintiff which is the local affiliate of the said Project Kenya Inc. (USA).
56. It is the Plaintiffs' case that on diverse dates between the year 2001 and 2007, the 1st Plaintiff on behalf of their organization set out on a missionary assignment within the Rift Valley and Central Provinces of Kenya and that during that period, the 1st Plaintiff met the 1st Defendant herein with whom they started collaborating in their missionary work.
57. The Plaintiffs told the court that as their organization in the US intensified its work in Central Kenya, they resolved to purchase premises in Nyeri town from where the said organization could operate and offer accommodation for its members who would from time to time visit Kenya on their mission which they stated was to empower locals to achieve freedom from poverty and disease.
58. The Plaintiffs aver that they were made to understand that as a foreign entity, it was not possible for them to legally acquire immovable property in Kenya. Subsequently and on the basis of that understanding, their organization did resolve and agree that prior to their acquisition of such legal status, any such property that would be identified and acquired by themselves would in the first instance be registered in the name of the 1st Defendant, a Pastor of the Nyeri Baptist Church who had since become acquainted with a number of their members.
59. It was the Plaintiffs' case that pursuant to that resolution and in agreement with the 1st Defendant they identified four (4) plots of land which were then registered in the name of the 2nd Defendant and put on course arrangements to remit funds to the Defendants for the purchase thereof.



60. The Plaintiffs told the court that subsequently on diverse dates between the years 2006 and 2010, they outsourced monies from the said Project Kenya Inc. (USA) together with other donors aggregating to the sum of Kshs. 7,329,000/= which sum they then channeled to the 1st Defendant as their agent in Kenya for the purchase of the suit properties.
61. The Plaintiffs testified that in accordance with the said arrangement and upon completion of the respective purchase prices for the 4 plots, the properties known as LR. No. Nyeri Municipality/Block 1/1285, 1286 and 1446 were duly registered in the name of the 1st Defendant, while Plot No. 1287 remained in the name of the 2nd Defendant pending payment of the last installment of the purchase price.
62. The Plaintiffs told the court that they were subsequently able to incorporate the 2nd Plaintiff in May 2010. To their shock and dismay, when they thereafter requested the 1st Defendant to have the three properties in his name transferred to the 2nd Plaintiff, the 1st Defendant refused to do so claiming that he was the sole proprietor thereof.
63. The Plaintiffs are equally aggrieved that despite payment of the agreed purchase price, the 2nd Defendant has equally declined to transfer plot No. 1287 to the 2nd Plaintiff's name on account that he did not execute any sale agreement with the Plaintiffs.
64. The 1st Defendant does not deny that he resides on the suit property. It is his case that he occupies the suit properties as of right being the registered owner thereof and having purchased the same from the 2nd Defendant. The 1st Defendant denies that he received the sum of Kshs. 7,329,000/= from the Plaintiffs and /or their affiliates in the United States of America to purchase the suit properties on their behalf.
65. On the contrary, the 1st Defendant avers that he purchased the suit properties through donations given to him by his friends and well-wishers. It was the 1st Defendant's case that between 1st April 2007 and 11th October 2007, he received donations and contributions from various well-wishers and gospel partners both from Kenya and the United States of America amounting to Kshs. 6,238,862/- as consolation following the death of his wife during child birth on 30th March 2007. He asserts that he topped up the donations using his own resources and thereafter purchased the suit properties at a consideration of Kshs. 8,500,000/-.
66. While he admits knowing the 1st Plaintiff since the year 2001, the 1st Defendant asserts that the 1st Plaintiff has no locus standi to sue in Kenya. It is further his case that as a duly incorporated Limited Liability Company such as the 2nd Plaintiff cannot in law be an affiliate of a non-profit making organization.
67. By way of a counterclaim the 1st Defendant accuses the Plaintiffs of circulating defamatory information against him through a letter dated 7th September 2010 that was sent to the leadership of the Nyeri Baptist Church and which he pleads accused him of stealing more than 100,000/= US Dollars from the Plaintiffs.
68. It was the 1st Defendant's case that the said letter painted him as a corrupt and untrustworthy person who is not fit to hold the position of the Pastor in-charge of the Nyeri Baptist Church. Accordingly, the 1st Defendant prays for general damages for what he terms as defamation and character assassination.
69. On his part, the 2nd Defendant asserts that he has never sold any property to the Plaintiffs and that he has therefore been wrongly sued herein and cannot be compelled to transfer Plot No. 1287 to the Plaintiffs.



It was further his case that the sale of the said parcel of land was rescinded after the 1st Defendant to whom he was selling the same, failed to honour the payment periods that they had agreed on.

70. On the issue of locus standi, the 1st Defendant pleads briefly at Paragraph 2 of the Amended Statement of Defence and Counterclaim dated 18th November 2014 as follows:-

“2. The 1st Defendant admits the contents of Paragraph 1 of the Plaintiff but denies that the 1st Plaintiff has locus standi to sue in Kenya.”

71. While that provision did not say much as to why the 1st Plaintiff lacked standing to sue in Kenya, it was apparent to me from a reading of the said Paragraph 1 of the Amended Plaintiff dated 8th October 2014 that it was the 1st Defendant’s position that the 1st Plaintiff being a foreign national, lacked standing to bring this suit. At the said Paragraph 1 of the Amended Plaintiff, the Plaintiffs plead as follows:

“1. The 1st Plaintiff is an adult female of sound mind residing in Sevierville Tennessee within the United States of America and whose address of service for purposes of this suit shall be care of Muthoga Gaturu & Company Advocates; Barclays Bank Building, Off Kenyatta Road, P.O Box 1294-10100, Nyeri.”

72. I did not however think that the mere fact that the 1st Plaintiff was a foreign national and that the 2nd Plaintiff’s affiliate was incorporated in a foreign country could be relied upon to deny them standing to bring this suit. As Majanja J stated while discussing the protection accorded to foreign nationals by *the Constitution* of Kenya 2010 in Overseas Private investment Corporation & 2 Others –vs- Attorney General [2013] EKLK:

“....Article 20 (1) provides that, “The Bill of Rights applies to all and binds all state organs and all persons, “Article 27 protects the rights of all persons before the law and to equal protection and benefit of the law including the full and equal enjoyment of all rights and fundamental freedoms. . The provision also bars discrimination of any person on any ground including race, ethnic or social origin, colour, language or birth. Article 260 defines a person to include, ‘a company’ association or other body of persons whether incorporated or unincorporated leaving no doubt that *the Constitution* applies to all persons and benefits all persons unless the context of a specific provision limits the right to a citizen or a special category of persons. For these reasons, I dismiss the argument by JOPA to the effect that the OPIC being an overseas company lacks standing to challenge Kenya laws under *the Constitution*.”

73. In the matter herein, the 1st Defendant did not point out any specific provision in law that would limit the rights of the Plaintiffs to institute this suit. In their submissions before the court, the 1st Defendant further pointed out that the 2nd Plaintiff was incorporated long after the suit properties were acquired and that there being no minutes appointing the 1st Plaintiff to do pleadings on its behalf, the 2nd Plaintiff equally lacked standing to sue the 1st Defendant.

74. That was a matter clearly outside the 1st Defendant’s pleadings as it had not pleaded anywhere that the 2nd Plaintiff lacked basis to sue. That notwithstanding the assertion that there were no minutes appointing the 1st Plaintiff to plead was also not factual. At the trial herein, the Plaintiffs have produced



minutes of a Board meeting of the 2nd Plaintiff held on 7th September 2010. Those minutes read in the relevant portion as follows:

“Appointment. A motion was made to appoint Teri L. Crane, Executive Director, to speak with full authority on behalf of the Project Kenya International Limited Board in all proceedings to recover Ring Road properties and to report back to Project Kenya Inc. Board of Directors.”

75. That being the case, I did not find any basis for the assertion by the Defendants that the two Plaintiffs had no locus standi to initiate this suit.
76. The crux of this matter is the Plaintiffs’ claim that they are the ones who purchased the suit properties and that three of them were registered in the name of the 1st Defendant as a trustee and that the other one had remained in the name of the 2nd Defendant pending clearance of the balance of the purchase price which, according to the Plaintiffs, had since been paid.
76. According to the 1st Defendant however, he did not hold the properties in trust for anyone. Instead, it was his case that he did purchase the properties largely from donations received from well-wishers following the death of his wife on 30th March 2007. Despite his contention that he had received the sum of Kshs. 6,230,862 as consolation from well-wishers between 1st April 2007 and 11th October 2007, the 1st Defendant did not however table any evidence of such donations.
77. From the material placed before the court, it was apparent that the 1st Plaintiff had first visited Kenya as a Missionary in the year 2001. During that mission, she visited several churches and interacted with many people. One of those people she met was the 1st Defendant who was then a Pastor at Orbit Baptist Church in Kayole, Nairobi.
78. Upon her return to her local Blount Christian Church in Maryville, USA, the 1st Plaintiff did report to her fellow congregants that there were many children in Kenya who were in need and who could be offered help through sponsorship. The church agreed to help and they started several missions to Kenya.
79. At the trial herein, the 1st Plaintiff (PW3) told the court that on her fourth visit to Kenya, in September 2002, she again met the 1st Defendant who informed her together with her host, one Dr. Weckesser, that he had left Kayole in Nairobi and was now moving to Nyeri in Central Kenya. The 1st Defendant then invited them to visit Nyeri.
80. Some one year later in September 2003, the 1st Plaintiff visited Nyeri for the first time and the 1st Defendant introduced her to the leadership of the Nyeri Baptist Church where the 1st Defendant was now serving. It was not in dispute that at the meeting, the church leadership presented the 1st Plaintiff with a proposal requesting assistance for various projects for their church.
81. On her return to the US, the 1st Plaintiff did present the proposals to the Missions Department of the Blount Christian Church. The proposals were accepted and hence the birth of what they called Project Kenya Inc. (USA). It was evident from the materials presented to the court that the project thereafter got quite involved in offering assistance to children in need partnering with the Nyeri Baptist Church and other churches in Central Kenya.
82. At the trial herein, the Plaintiffs played a video clip said to have been recorded in January 2007 (Pexh3) capturing various activities that were being sponsored by the Project. It was evident from my watching of the same that both the 1st Plaintiff and the 1st Defendant were actively involved in the programs that were sponsored by the project.



83. Asked about the extent of those activities in cross-examination, herein the 1st Defendant confirmed the position responding as follows:-

“We had a feeding program. We were also sponsoring children for purposes of schooling. They also helped us to put up a building to empower youth with skills. We also had free medical camps.”

84. It was the Plaintiffs’ case that given their expanding activities in Kenya, they decided to have their own physical office in Kenya to host and coordinate their operations. It was then, according to the Plaintiffs, that they tasked the 1st Defendant to help them scout for land for purchase.

85. The Plaintiffs told the court that in March 2007, the 1st Defendant helped them to identify the Ring Road Properties. The same was initially one parcel of land that had been sub-divided into four plots that were initially registered in the names of the 2nd Defendant, a fellow member of the Nyeri Baptist Church and his wife Jane Mirigo Kinyanjui.

86. While the Defendants denied it, it was the Plaintiff’s case that they bought the properties in the name of the 1st Defendant after the 1st Defendant told them that being a foreign entity, Project Kenya Inc (USA) could not legally purchase such property in Kenya in its name. It was further the Plaintiffs’ case that they purchased the properties in the name of the 1st Defendant to hold them as a trustee until such a time that the 1st Plaintiff and the said Project Kenya Inc (USA) would be able to register an NGO in Kenya to run their operations and to whose name the suit properties would eventually be transferred.

87. In support of that position, the Plaintiffs produced a Memorandum dated 8th May 2007 (Page 130 of Plaintiffs bundle) executed by the 1st Plaintiff as Executive Director Project Kenya on the one hand and the 1st Defendant as a board member of an entity known as S.O.K.A on the other hand. That Memorandum reads in the relevant part as follows:-

“It is the understanding of Project Kenya Board of Directors that the purchased property title will be placed in the name of Rev. Peter W. Kamau. We also agree that Rev. Kamau and his son Joseph will occupy the house as their personal residence. At such a time as Project Kenya teams travel to Kenya they will also occupy the property. It is the expectation of Project Kenya, Inc. to place the title of the land into the name of S.O.K.A the Kenya NGO once the registration is completed. However, the house will remain the residence of Rev. Peter Kamau and his son Joseph Kamau once the transfer is made.

All decisions in regard to this property will be discussed with Project Kenya board of directors prior to any construction, or changes made to the current status of the property. It is the vision of Project Kenya Inc to expand the future ministry using this property....”

88. The 1st Defendant was cross-examined at length on the said document by Mr. Mugambi, Learned Counsel for the Plaintiffs. His response is captured on the court record as follows:-

“I confirm I signed the Memorandum on 8/5/2007. Teri was in the country then. It is true it states I was to be put in occupation of the property but it would remain in the name of SOKA.

It is true part of it was to remain in the name of SOKA. It is true by then some money had been paid to the seller although no agreement had been signed. We had already started the process but the final document had not been signed.



The project was not their entity. It is true it was to be transferred to SOKA.

It is true on 14/5/2007 I went to Gathiga Mwangi Advocates. By then Teri had left the country. I was representing her interests.

It is true Teri and her team visited the property before it was bought. I think she was doing that on behalf of her partners in the USA. I knew some team members like Nancy Meredith, Dr. Weckesser, Bill Backus and others. Those were the most regular.”

89. Arising from the foregoing, it was evident that the 1st Defendant was as far back as the year 2007 aware that the suit properties did not belong to him. The owners had allowed him and his son to reside on the suit properties pending the formation of the NGO named S.O.K.A to which they intended to transfer the ownership once its registration was complete.
90. From the material placed before the court, SOKA was an acronym for the ‘Springs of Kartatismos Africa,’ an NGO mooted by Project Kenya Inc to ensure accountability of the projects that they were funding. In her testimony before the court, the 1st Plaintiff told the court that S.O.K.A was established to enable them have a working NGO on the ground in Kenya to manage the project Kenya funded programs as well as future grants.
91. In order to facilitate the transmission of funds, the 1st Plaintiff told the court that they opened an account in Suntrust Bank and issued ATM Cards to the 1st Defendant together with one Bernard Kabaruru who was instrumental in the formation of the NGO, and gave them authority to withdraw funds as and when necessary.
92. As it would turn out, the Project Kenya Inc Board members subsequently became unhappy with the way SOKA was being operated and some of the activities it was undertaking. That is what led them to incorporate the 2nd Plaintiff as the body to which the suit property was to be transferred.
93. Arising from the foregoing, it was clearly the intention of Project Kenya International Inc to purchase the properties for its own use. The 1st Defendant was aware of that position when he executed the Memorandum of Understanding on 8th May 2007. That position did not change when he executed the Sale Agreement between himself and the 2nd Defendant on 14th May 2007 purporting to be the purchaser of the suit properties.
94. The probative force of the evidence adduced by the Plaintiffs and their witness was unassailable in proof of the fact that the nature of the engagement between the Plaintiff, stemming from the “mother” entity known as Project Kenya Inc (USA) in 2006 to the establishment of the 2nd Plaintiff in Kenya in May 2010, and the subsequent registration of the three properties in the name of the 1st Defendant was based on the concept of a trust relationship.
95. Upon careful consideration of the testimonies for the Plaintiffs’ witnesses and those of the Defendants, I was left with no doubt in my mind that the 1st Defendant was acting in the sale transactions of the suit properties as an agent and trustee of the Plaintiffs.
96. While the 1st Defendant purported to have utilized contributions from unidentified and unknown well-wishers to purchase the properties, the Plaintiffs have demonstrated that between 14th May 2007 and 9th October 2009, they did wire a sum of Kshs. 8,146,000/= into the 1st Defendant’s account (Page 169 of Plaintiffs’ bundle). And while the 1st Defendant pleaded that the purported well-wishers were consoling him for the loss of his wife who passed away on 30th March 2007, it was clear to me that the monies sent by the Plaintiffs were not for that purpose. As early as 9th September 2006, some 6 months before the 1st Defendant’s wife, Ruth, would pass away, the Plaintiffs had wired a sum of US,



Dollars 6,000/= to the 1st Defendant's account. The 1st Defendant conceded receipt of the money into the account then jointly operated with his now deceased wife.

97. Considering a matter similar to this in *Jutelabi African Adventure Limited & Another –vs- Christopher Michael Lockley* [2017] eKLR, the Court of Appeal held as follows:

“According to the Black’s Law Dictionary, 9th 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 trust. 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 law of England supra at Par 1453). As earlier stated, with constructive trusts, proof of parties’ intention is immaterial for the trust will nonetheless be imposed by the law to the benefit of the settlor. Imposition of a constructive trust is thus meant to guard against 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 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 29th Edn, Sweet & Maxwell P. 175). Therefore, unlike constructive trusts, courts will readily look at the circumstances of the case and presume or infer the transferor’s intention. Most importantly, the general rule here is that 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 (See Snell’s Equity at P. 177 Supra).

98. In the matter herein, the 1st Defendant clearly received money for the purchase of the suit properties from the Plaintiffs. He acknowledged that fact in various correspondences with them and executed the Memorandum dated 8th May 2007 in testament of that fact. Before he became consumed with greed and avarice, the 1st Defendant acknowledged the fact that the suit properties were being purchased by the Plaintiffs. His own father-in-law, Pastor Martin Murigi (PW2), the father to his deceased wife Ruth, knew him before the purchase of these properties and thereafter. Testifying at the trial herein, PW2 was candid and forthright. He told the court that during his conversations with the 1st Defendant and his now deceased daughter, he came to learn that Project Kenya was buying property for use as a centre for providing for needy children and for its offices. He told the court that the land was bought in May 2007 and that the 1st Defendant’s family stayed there as well as the 1st Plaintiff whenever she was in Kenya.
99. As was held by the House of Lords in the case of *Gissing –vs- Gissing* [1971] AC 886, a resulting trust is created when a property is purchased by one party and the purchase price is paid in whole or in part



by another person on the understanding that the person paying the money will receive an interest in the property. The paper title is held by one party with a trust that “results” back to the person who provided the money.

100. In *Oxley –vs- Hiscock* [2005] 3WLR 715, the House of Lords again held as follows:-

“When money is provided by two or more parties on the basis that they should have a shared interest in the property, and if there is an agreement on how much each party should have in the property that is conclusive. But if there is no agreement their beneficial interest is based on the parties’ contributions to the purchase price and the whole course of dealing between them in relation to the property.”

101. In executing the Memorandum dated 8th May 2007, the 1st Defendant was aware of the purpose the Plaintiffs had for the suit property. He committed himself to the fact that any decisions in regard to the suit premises could only be made upon discussion with the Plaintiffs. He re-committed himself to that position when he visited the USA in July 2008. His claim that he paid any monies in regard to the premises was unsupported by any evidence and went against the Memorandum he executed in so far as there was no consultation with the owners. If indeed he incurred any expenses, he could not claim the same from anyone as he was the author of his own misfortune.

102. In committing himself to the Memorandum that was executed on 8th May 2007, both the 1st Defendant and the 1st Plaintiff agreed in the penultimate paragraph as follows:

“Project Kenya Inc plans to partner with S.O.K.A as we continue the work God has called us to in ministering to the poor and vulnerable throughout Africa. All parties understand that this partnership has been established in order to preach the Gospel of Jesus Christ, and make him famous where ever we serve. All parties understand that any activity conducted on this property will be open knowledge to all members of Project Kenya and S.O.K.A board of directors at all times.”

103. While his partners remained committed to the noble goals which they had set out for, it was clear to me that the 1st Defendant had deviated from that path. By deceptively and dishonestly turning around to claim the property bought by the Plaintiffs for its missionary purposes, the 1st Defendant was clearly trying to reap from where he had not sowed. In his last minute zeal to acquire the suit property, the 1st Defendant and his unreliable witnesses had clearly forgotten the advise that Apostle Paul gives to Christians like themselves in the Book of Galatians 6:7-9 wherein the Apostle writes as follows:

“Do not be deceived, God cannot be mocked. A man reaps what he sows. Whoever sows to please their flesh, from the flesh will reap destruction; whoever sows to please the Spirit, from the Spirit will reap eternal life. Let us not become weary in doing good, for at the proper time we will reap a harvest if we do not give up.”

104. Having kept the Plaintiffs’ property against their will from the year 2010 to-date, the 1st Defendant is certainly guilty of trespass. In law, once trespass to land is established, it is actionable per se, and indeed no proof of damages is necessary for the court to award general damages. The issue which then arises is the measure of such damages.

105. In the matter before me, the Plaintiffs have asked for mesne profits in the sum of Kshs. 30,000/- per month from the month of September 2010 until such a time that the 1st Defendant shall grant them vacant possession. Looking at the totality of the circumstances herein, I was not persuaded that the property would have fetched Kshs. 30,000/= per month in the year 2010. In my considered view a



sum of Kshs. 15,000/= per month from the time of trespass would be reasonable compensation to the Plaintiffs.

106. In his counterclaim against the Plaintiffs, the 1st Defendant has sought general damages for defamation. It was the 1st Defendant's case that the Plaintiffs had damaged his reputation by circulating a letter dated 7th September 2010 wherein they accused him of stealing a sum in excess of \$ 100,000/=. It was his case that the letter had depicted him as a corrupt and unworthy person who is not fit to hold the position of a Pastor at the Nyeri Baptist Church.
107. As it were, the jurisdiction of this court is well established in Article 162 (2) (b) of *the Constitution* of Kenya as well as Section 13 of the *Environment and Land Court Act* 2012. That jurisdiction limits it to determining disputes related to the environment, the use and occupation of, and title to land. The claim based on allegations of defamation is therefore certainly not in the right forum. Even if it were, it can be seen from my findings herein above on the character and conduct of the 1st Defendant in regard to this transaction, that the claim for defamation had no basis.
108. As regards to 2nd Defendant, it was his case that he was contracted to sell the suit properties to the 1st Defendant and not the Plaintiffs herein. It was further his case that he had declined to release the title for Plot No. 1287 because the 1st Defendant had failed to pay him the balance within the agreed time.
109. From a perusal of the material placed before me, it was evident that the 2nd Defendant was also being very economical with the truth. Asked in cross examination about the transaction by Mr. Kiminda, Learned Counsel for the 1st Defendant, the 2nd Defendant responded as follows:-

“The sale transaction was between me and Peter Wanjohi. I transferred 3 plots of mine to him.

I later came to learn there was Terri Crane claiming a fourth plot. She had wired some money to me from the US. I volunteered to refund the money. She declined to take back the money. I am still ready to refund.

110. It was difficult to believe that account offered by the 2nd Defendant. First and foremost, he was an active congregant of the Nyeri Baptist Church. As stated by the 2 witnesses for the Plaintiffs and conceded by the 1st Defendant himself, the 1st Plaintiff and Project Kenya Inc USA were around the time of the sale transaction deeply involved in various projects with the Nyeri Baptist Church. They had not only fed and sponsored needy children around Nyeri town but had also constructed a building for the church. As a member of the church, the 2nd Defendant must have been aware of these activities.
111. Indeed in cross-examination by counsel for the Plaintiffs, the 2nd Defendant conceded that he was the Secretary of the Children's Ministry at the Baptist Church in the year 2007 and that he knew the 1st Plaintiff as well as Project Kenya. He also conceded that he knew the NGO named S.O.K.A and the fact that it would take up part of the property.
112. Secondly, before he was enjoined as a party in this suit, the 2nd Defendant had agreed to be a witness of the 1st Defendant. In that respect the 2nd Defendant had prepared a witness statement filed herein on 27th April 2012. While in court he now claims to have later heard of the 1st Plaintiff claiming a fourth plot, this is what he states at Paragraph 2 nad 3 of that statement.

“Ultimately, I was approached by Pastor Harun Muchugia and John Mwangi Kinyari on behalf of the defendant Mr. Peter Wanjohi Kamau. I offered the properties at Kshs. 10 million.



After lengthy negotiations the sale was agreed at Kshs. 8,500,000/-. It was during the negotiation process that I met Teri Crane the 1st Plaintiff who I learnt was one of the friends of the defendant and a sponsor of the project. She was present throughout the process but did not attend the formal signing of the agreement on the 14th May 2007 since she was leaving the country the same day.”

113. That being the case, it was evident that the 2nd Defendant knew there was a project in the offing when he sold the land and that the same was being sponsored by the 1st Plaintiff. That must also be the reason that when the 1st Plaintiff wired to him the balance of the purchase price in the sum of Kshs. 364,000/= on 10th June 2010, he received the money and kept it to-date.
114. While the 2nd Defendant contended that he had rescinded the agreement with the 1st Defendant, he never produced any notice of rescission that was served either upon the 1st Defendant or the 1st Plaintiff whom he knew was a sponsor of the Project that was to be put on his land.
115. In her testimony before the court, PW3 detailed the circumstances under which the sum of Kshs. 364,000/- was paid to the 2nd Defendant on 10th June 2010. The 2nd Defendant has never refunded the money paid to him and to date he retains both the full purchase price and the title for the Plot No. 1287.
116. In the premises, I am persuaded that the Plaintiffs have demonstrated beyond doubt that the 1st Defendant was engaged as their agent and trustee in the purchase of the suit properties and that the same were registered in the 1st Defendant’s name to hold as such trustee. In the same breadth, I am persuaded that the Plaintiffs had discharged their contractual obligations in relation to Plot No. 1287 and that there is no basis whatsoever why the title for the same remains in the name of the 2nd Defendant.
117. Accordingly, I hereby enter Judgment for the Plaintiffs and do make the following orders:
 - a). A declaration is hereby issued to the effect that the 1st Defendant holds the properties known as Nyeri Municipality/Block 1/1285, Nyeri Municipality /Block 1/1286, Nyeri Municipality Block /1287 and Nyeri Municipality Block 1/1446 in trust for the Plaintiffs.
 - b). An order is hereby issued directing the 1st Defendant to transfer forthwith the properties known as Nyeri Municipality/Block 1/1285, Nyeri Municipality /Block 1/1286 and Nyeri Municipality Block 1/1446 to the 2nd Plaintiffs.
 - c). An order is hereby issued directing the 2nd Defendant to forthwith execute the transfer and other necessary documents/instruments of transfer in regard to the property known as Nyeri Municipality Block 1/1287 to the 2nd Plaintiff.
 - d). An order is hereby issued directing the 1st Defendant to deliver vacant possession of the suit properties known as Nyeri Municipality/Block 1/1285, Nyeri Municipality /Block 1/1286 and Nyeri Municipality Block 1/1446 to the Plaintiffs within 30 days from the date of this Judgment.
 - e). The Plaintiffs are hereby awarded mesne profits payable by the 1st Defendant assessed at Kshs. 15,000/- per month from September 2010 until the date of delivery of vacant possession of the suit properties.
 - f). The 1st Defendant’s counterclaim is hereby struck out with costs.
 - g). The costs of this suit shall be borne by the 1st Defendant.



DATED, SIGNED AND DELIVERED AT NYERI THIS THURSDAY 3RD DAY OF OCTOBER, 2024.

J. O. OLOLA

JUDGE

In the presence of:

Mr. Mugambi for the Plaintiffs.

Mr. Kiminda for the 1st Defendant.

Ms. Wanjohi holding brief for Karweru for the 2nd Defendant.

Court Assistant: Kendi

