



Oyunge v Chweya (Civil Suit 117 of 2015)
[2023] KEELC 19880 (KLR) (20 September 2023) (Judgment)

Neutral citation: [2023] KEELC 19880 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
CIVIL SUIT 117 OF 2015
M SILA, J
SEPTEMBER 20, 2023

BETWEEN

JOYCE BANGE OYUNGE PLAINTIFF

AND

GERALD OTWABE CHWEYA DEFENDANT

JUDGMENT

(Suit by plaintiff claiming that the defendant is registered as proprietor of the disputed land in trust for her; plaintiff contending that she was married to the defendant in a ‘come-we-stay’ relationship; that the defendant was a man of straw and that she suit land was purchased and developed solely with her money; no evidence of marriage and evidence insufficient to invite a presumption of marriage; sale agreement drawn in name of defendant and money to purchase the land being from the account of the defendant; no evidence that the plaintiff deposited this money into the defendant’s account; court not persuaded that the plaintiff has proved that the purchase price emanated from her; no proof that any of the materials used to develop the property were purchased by the plaintiff; no evidence that the property was purchased in trust for the plaintiff; plaintiff’s suit dismissed with costs)

A. Introduction And Pleadings

1. The defendant is the registered proprietor of the land parcel Nyaribari Chache/B/B/Boburia/8433 (hereinafter simply referred to as ‘the suit property’) having obtained registration as sole proprietor on 26 April 2010. The property was thereafter developed.
2. Through a plaint filed on 30 March 2015, the plaintiff contends that the suit property was purchased using her money and therefore the defendant holds the same in trust for her. She pleaded that in the year 2008 she was running a wines and spirits shop at Uhuru Plaza in Kisii Town whereas the defendant was a trainee cellphone repairer. That in the course of time, they developed a platonic relationship,



which grew into a romantic one, resulting in a 'come-we-stay' relationship as 'husband and wife' at the plaintiff's residence in Jogoo Estate, Kisii. She averred that from her savings and loan acquired from Kenya Women Finance Trust (KWFT), and merry-go-round 'chamas', she raised Kshs. 450,000/= which was used to buy the suit property. She pleaded that the premises was however registered in the defendant's name in view of their relationship. She further pleaded that she raised an additional sum of Kshs. 700,000/= from KWFT and 'chamas' to buy building materials which she deposited on the suit property. She claims that subsequently the defendant physically and psychologically abused her and eventually kicked her out of their shared residence but used the building materials deposited by her to develop a house on the suit property. She contends that the defendant is for all intents a trustee over the suit property and that he was a man of straw at the time the property was purchased. In the suit, she seeks the following orders (paraphrased for brevity) :-

- a. A declaration that the defendant holds the title Nyaribari Chache/B/B/Boburia/8433 as trustee in favour of the plaintiff.
 - b. Cancellation of the title deed of the defendant to the suit property and in lieu thereof title be issued in name of the plaintiff.
 - c. An order for the eviction of the defendant from the suit property.
 - d. Costs of the suit.
3. The defendant filed defence where he refuted all the claims of the plaintiff. He denied ever marrying the plaintiff, or staying with her as husband and wife, or ever sharing a residence with her. He added that the plaintiff is married to one Bonface Oyunge and have children together. He denied that the plaintiff ever lived at Jogoo Estate but in a flat within Kisii Town. He denied ever receiving assistance from the plaintiff to purchase the suit property. He pleaded that he was the one who purchased the suit property using his own resources through two sale agreements dated 24 April 2010 and 21 May 2010. He asserted that he single handedly constructed his home on the suit property. He denied being a man of straw.

B. Evidence Of The Parties

4. The plaintiff relied on a pre-recorded statement as part of her evidence in chief. In that statement, she stated that she was a business woman engaged in the wines and spirits business and she ran her operations from Uhuru Plaza, Kisii (sometimes also referred to as "Ouru Plaza"). She stated that in the year 2008, the defendant was a cellphone repairer in adjacent premises managed by one 'Peter.' She stated that she and the defendant developed a platonic relationship; that she learnt from the defendant that he was struggling to make ends meet and he did not have means, and he would at times go hungry; that whenever she had meals she would offer to share the same with the defendant whom she would invite from his engagement as a trainee cellphone repairer. That by and by, seeing the diligence manifested by the defendant, she purchased tools necessary for him to undertake his own phone repairs. She stated that it was agreed between them that she would offer space to the defendant out of her business premises and he would sell phone accessories on her behalf. She proceeded to aver that their platonic relationship blossomed to a romantic one and they moved together in a 'come-we-stay' relationship as husband and wife. She stated that in the course of time the business at Uhuru Plaza grew and she was able to put up a second wines and spirits shop at the main matatu terminus in Kisii Town; that since she could not physically manage the two shops, they agreed that the defendant would run the shop at Uhuru Plaza. She averred that she used to bank the proceeds of sale in her own accounts at Equity Bank and Cooperative Bank.



5. She continued to state that in April 2010, after she had raised some money from loans with KWFT she considered it appropriate to buy a parcel of land. She approached one Mary Mokeira (Mary) and requested her to scout for land where she could put up a home. Mary reported back that the suit land was on sale; that the land had earlier been sold by one Kenneth Oyaro Samwel (Kenneth) to one Peter Kemuma Obegi (Peter), who had purchased the land on behalf of his daughter, Kwamboka Obegi (Kwamboka) though title had not issued to them. She stated that it was agreed that she could purchase the land from David Obegi (David), a brother of Kwamboka, though Kenneth would be noted as the seller. She stated that she called David and they agreed at the purchase price of Kshs. 400,000/=. She informed the defendant of this and advised him that she would obtain a loan of Kshs. 250,000/- from Chindiba Self Help Group of which she was a member, and Kshs. 130,000/= from her savings. She stated that it was agreed that she would finance the purchase, but it is the defendant's name, in his capacity as her husband, which would appear in the sale agreement. She added that she trusted the defendant and did not have any fears that anything untoward would subsequently occur.
6. She stated that a further sale agreement was entered on 31 May 2010 for sale of what had remained of the suit property from the first sale, being a portion measuring 17 X 70 feet, at a consideration of Kshs. 50,000/=. She was named as a witness in this second sale agreement. She stated that this second purchase was also financed by her from loan proceeds from KWFT. She claims to have obtained a loan of Kshs. 100,000/=:, and from it, she invested Kshs. 50,000/= in her business. She proceeded to state that the title was transferred to the defendant as her 'husband.'
7. She averred that after this purchase, she stopped banking sale proceeds in her accounts, after a discussion with the defendant, where he proposed that a business account be opened in his name so that all sale proceeds would be deposited therein, on the basis that consolidating banking into one business account instead of many would improve their credit rating, as better cash flow would be reflected. She stated that on 8 August 2011, she obtained a loan of Kshs. 150,000/= to buy building materials as she and the defendant intended to put up a home on the suit property. She added that on 12 November 2012, she obtained another loan of Kshs. 150,000/= from KWFT which she again spent on purchase of building materials. She also claimed to have obtained advances from Self Help Groups that she was a member of and deposited building materials valued at Kshs. 700,000/=:.
8. She contended that her relationship with the defendant began going through a rough patch after he was registered as proprietor of the suit property. She claimed that the defendant began arriving home in the wee hours of the morning, drunk, and that he would entertain various women at their home, and would be randy with barmaids whenever she was away in Nairobi to purchase business stock. She alleged that her enquiries were met with indifference and later with physical assaults. She claimed that on 25 February 2012, the defendant accused her of having illicit affairs and came to her business premises at the Kisii matatu terminus, grievously assaulted her and destroyed business stock. She averred that she reported to the police and obtained a P3 form but did not follow up the issue after the defendant sought her forgiveness; that they made up and continued with their relationship; that the position changed on 24 October 2014 after the defendant was charged with the offence of causing grievous harm to him.
9. She stated that the business at the Kisii matatu terminus did not perform well after destruction of the business stock and after she was fraudulently evicted from the stall where she was running one business. She claimed that upon loss of the business at the matatu terminus, the defendant informed her that she was not welcome at the business in Uhuru Plaza because 'nothing had ever existed between (them).' She claims that it dawned on her that the defendant had wormed his way into her heart, taken advantage of her sympathy, established himself on a pedestal, and elbowed her out. She alleged that the defendant built a home on the suit property using the materials that she had purchased and took in another woman, one Juliet, who is married to one Ongiri. She stated that owing to the ill-treatment,



- she visited her area Chief, one Mr. G.M. Opanga, who wrote a letter to help her place a caution on the suit property. She stated that though she stopped conducting business at her old premises at Uhuru Plaza, the rent invoices still read her name as late as March 2014. She contended that before she invited the plaintiff into her business, the plaintiff was a man of straw without ability to meet his own basic needs, and that he occupied a position of trust which enabled him to acquire title to the suit property.
10. In court, she elaborated on her above statement by giving oral evidence. She insisted that the defendant is her husband, though they are separated, and asserted that they cohabited between the years 2007 and 2012. She averred that at the time she cohabited with the defendant, she had a shop for electronics and wines and spirits. She exhibited the business permit. She also exhibited her bank statements from Cooperative Bank. She stated that she gave the defendant Kshs. 380,000/= to enter into the sale agreement with Kenneth since she was away.
 11. Cross-examined, she confirmed that her name does not appear in the sale agreement of 24 April 2010 and she was not present when the sale agreement was executed. She acknowledged that the defendant withdrew money from his own account at K-Rep Bank on 23 April 2010, which was a day before the sale agreement was signed. She claimed that this was her money which she gave the defendant on 22 April 2010. She however had nothing to show that she gave the defendant this money. She reiterated that she lived with the defendant in a 'come-we-stay' relationship but they did not get any children. She stated that she already had two children with one Oyunge, whom she described as her former husband, before she came to be in a relationship with the defendant. Her business was in premises rented by the said Oyunge. She was not aware that Oyunge charged the defendant rent. She nevertheless subsequently testified that the defendant occupied a shop rented by Oyunge. She claimed that the defendant paid school fees for her children as they were married and that she used to send him money to pay the water bills. She testified that the defendant had his own account with K-Rep Bank in 2010 and that he had his own business in 2011 after they disagreed. She has never lived on the suit property which she said is occupied by the defendant and another woman. She claimed that the defendant was running her business and that they had two shops; she claimed that he was running one of the shops and the profits were banked at K-Rep Bank. She testified that the defendant was charged with a criminal offence after he assaulted her. This was Kisii Criminal Case No. 3134 of 2014; the defendant was acquitted. She testified that their relationship ended on 25 February 2012 after he assaulted her. The criminal case was filed two years later. She claimed that she was not aware that the suit property could be registered in their joint names. She acknowledged that it was the defendant who paid stamp duty on the transfer to his name but asserted that she was the one who paid the purchase price. She did not have receipts for the building materials that she alleged to have purchased. She claimed to have been making Kshs. 30,000/= per day out of her business. She stated that she now lives at Sameta with her two children and that the defendant does not support them.
 12. Re-examined, she testified that the defendant established his business in 2012 after they separated. She herself parted with Oyunge in the year 2000. She was not aware of any rent agreement between the defendant and the said Oyunge.
 13. PW-2 was David Herald Obegi. His evidence was that he was aware that Kennedy was selling the suit land and that he acted as agent between him and the plaintiff. He testified that he accompanied the plaintiff when she went to sign the sale agreement as a witness and that he also signed it as a second witness. He claimed that the defendant entered into the sale agreement on behalf of the plaintiff. Cross-examined, he testified that he was under the impression that the defendant signed the agreement in his capacity as husband to the plaintiff.
 14. With the above evidence, the plaintiff closed her case.



15. The defendant testified as the sole witness in respect of his case. He described himself as a phone technician and vendor of phone accessories. He had a witness statement which he adopted. In it, he stated that he has known the plaintiff since 2008; that she was a neighbor at the place that he was employed, by one Peter, as a phone repair technician. He mentioned that the plaintiff was selling women accessories and other merchandise. He stated that he spoke to her and she agreed to sublet her space where he used to pay Kshs. 5,000/- per month from 2008 to 2009; that the plaintiff subsequently moved to Kisii bus park and he paid her goodwill of Kshs. 100,000/= since her lease with the landlord was still subsisting. He added that he would pay rent using her name till October 2014 when he renewed the lease with the landlord. To his knowledge, the plaintiff was married to Mr. Oyunge who was the original lessee of the premises. Again, to his knowledge, the plaintiff lived in other premises while he lived in Jogoo Estate till December 2014 when he moved to the suit property. He asserted that he was employed and was able to pay his rent at Jogoo and afford his meals. He denied ever staying with the plaintiff at any time as husband and wife. He stated that the plaintiff was insincere in claiming that she operated two shops at the same time when in fact she moved out of Ouru Plaza to the matatu terminus. He averred that he operated savings accounts at K-Rep Bank, Cooperative Bank and Bank of Africa since 2007 and the accounts are personal, not joint with the plaintiff. On the suit property, he contended that he scouted for the same himself. He was aware that the land had initially been bought by Peter from Kennedy, but before the transaction could be completed, the owner decided to sell it to him and refunded the amount received. He insisted that he singlehandedly paid the purchase price through his savings at K-Rep Bank; that he withdrew the sum of Kshs. 300,000/= on 23 April 2010 and added another Kshs. 80,000/= from his business. The balance of Kshs. 20,000/= was to be paid upon transfer. He elaborated that on 21 May 2010, a second agreement was entered into for a portion that was to serve as a road and he paid Kshs. 50,000/= for it; in that agreement, the plaintiff appeared as a witness. He pointed out that the plaintiff has not demonstrated that they banked any money jointly and refuted that she ever banked any coin into his account. He stated that he obtained the plan for the house sometimes in 2013 and he alone bought the building materials. On payment of school fees, he claimed that the plaintiff would request him to pay school fees for her children and have the same deducted from the rent of Kshs. 5,000/=. He added that he has been having a business permit from the year 2011 and that to his knowledge, the plaintiff has none, as she operates from a road side.
16. In court, he produced as exhibits bank statements from K-Rep Bank from 1 August 2007 to January 2009; the sale agreements of 24 April 2010 and 21 May 2010 and an undated acknowledgement for Kshs. 20,000/= being payment of the balance of the purchase price. He exhibited his business permit of 31 December 2011 to demonstrate that he was operating a phone accessories and repair shop. He produced the building plan and hardware receipts to emphasize that he was the one buying building materials. He testified that the plaintiff was a distant relative and married so they could not be lovers. He asserted that he purchased the suit property from the proceeds of his business and denied that he was registered as proprietor of the suit land as trustee of the plaintiff. He averred that the plaintiff was not even aware that he had bought the suit property as she was not a witness to the agreement; he claimed that he only called her to witness the second agreement where he was paying for the road which was not part of the land.
17. He was cross-examined on the nature of transaction he had and he reiterated that he bought the land from Kennedy. There had been an earlier transaction that Kennedy had. He admitted being charged in Kisii Criminal Case No. 3134 of 2014. He denied that in the said case, he stated that he was related to the plaintiff. The proceedings were put to him. They show that he had testified, after he had been put on his defence, that he had been married to the plaintiff for seven years and that she was unfaithful. Part of his evidence was also to the effect that he had opened a shop for the plaintiff at the (bus) stage to operate and that he left it to her after they parted ways. He was cross-examined on the bank statements



produced and he acknowledged that they were for the year 2009 and do not show the debit of the funds. He stated that he had the withdrawal slip though he did not produce it as an exhibit. He asserted that he only paid fees on behalf of the plaintiff as a loan which was repaid though he had not produced evidence of the same. On why the plaintiff was a witness in the agreement, his explanation was that he needed a witness and she was the one closest to him at the time. On the assault case, he contended that he was framed so that he could be jailed and the plaintiff have an opportunity to change the title at the lands office. He insisted that his only interaction with the plaintiff was that she was his neighbor at his place of business and that she also sublet him part of her shop. He eventually took over her premises by paying her goodwill of Kshs. 150,000/=. He did not have documentation of this as it was oral.

18. With the above evidence, the defendant closed his case.

C. Analysis And Disposition

19. I invited counsel to file submissions, which they did, and I have taken these into account before arriving at my decision.

20. It is of course the contention of the plaintiff that though the defendant is the registered proprietor of the suit property, he holds the same as her trustee, for reason that it is her (plaintiff) who provided the money to buy the suit land and the money to buy building materials. She claims that the defendant was a man of straw who could not be able to buy the suit property or develop it. It is also her assertion that she is married to the defendant and that the property was purchased during the marriage. It is upon this that she relies on Section 28 of the Land Registration Act, 2012, which provides that trusts are overriding interests which may subsist without them being noted in the register.

21. It needs to be understood that the burden of proof is upon the plaintiff. Indeed, in his submissions, Mr. Nyamurongi, learned counsel for the plaintiff, did acknowledge this position, and he provided various authorities on the same, all of which are on fours that the burden of proof is on he who asserts as espoused in Section 107 (1) of the Evidence Act, which provides as follows :-

S.107 (1) – Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.

22. From the above, it was upon the plaintiff to prove the fact that she is married to the defendant; that she paid the purchase price for the suit land; that she paid for the building materials used to develop the land; and to prove, that for all intents and purposes, the defendant holds the suit property in trust for her.

23. Starting with the question of marriage, the plaintiff avers that she married the defendant in what she describes as a ‘come-we-stay’ relationship. Her evidence on her alleged cohabitation with the defendant was rather ambivalent, if not wholly contradictory. It will be recalled that in court, she testified that she cohabited with the defendant from the year 2007 to 2012. However, in her evidence recorded in her statement, she did state that she met the defendant in the year 2008 when he was a trainee technician. She in fact stated that at first, they only had a platonic relationship, and that it was later that this developed into a romantic relationship, but this cannot be reconciled with the claim that they started cohabiting in the year 2007. The issue of cohabitation was of course denied by the defendant and the plaintiff needed to prove it. She never called any witness to corroborate her evidence that they cohabited with the defendant. She of course relied on the criminal proceedings where the defendant did state that he was married to her for seven years. I do not think that this can help her. The status of marriage is one of law, not dependent on what one believes to be the relationship or what one orally avers. A person can say that he/she is married to another, but that by itself cannot be proof of marriage. Even assuming that the plaintiff lived together with the defendant, that does not equate to marriage. The plaintiff herself



stated that she was married to one Mr. Oyunge; she in fact bears that name as her surname. She never provided any evidence that she was divorced from him.

24. . The Supreme Court in the case of MNK v POM; Initiative for Strategic Litigation in Africa (ISLA) (Amicus Curiae) (Petition 9 of 2021) [2023] KESC 2 (KLR) (Family) (27 January 2023) (Judgment), had occasion to elaborate on the instances that a marriage may be presumed. The Court stated as follows :

64. We find it prudent at this juncture to lay out the strict parameters within which a presumption of marriage can be made:

1. The parties must have lived together for a long period of time.
2. The parties must have the legal right or capacity to marry.
3. The parties must have intended to marry.
4. There must be consent by both parties.
5. The parties must have held themselves out to the outside world as being a married couple.
6. The onus of proving the presumption is on the party who alleges it.
7. The evidence to rebut the presumption has to be strong, distinct, satisfactory and conclusive.
8. The standard of proof is on a balance of probabilities.

65. The above notwithstanding, we are of the view, that the doctrine of presumption of marriage is on its deathbed of which reasoning is reinforced by the changes to the matrimonial laws in Kenya. As such, this presumption should only be used sparingly where there is cogent evidence to buttress it.

66. In the same breath, we would be remiss if we did not point out that marriage is an institution that has traditional, religious, economic, social and cultural meaning for many Kenyans. However, it is becoming increasingly common for two consenting adults to live together for long durations where these two adults have neither the desire, wish nor intention to be within the confines of matrimony. This court recognizes that there exists relationships where couples cohabit with no intention whatsoever of contracting a marriage. In such contexts, such couples may choose to have an interdependent relationship outside marriage. While some may find this amoral or incredible, it is a reality of the times we live in today.

67. For instance, a person may have been in a marriage before and the marriage is no more due to death of a spouse or divorce. Due to their prior experiences, such persons may choose to have an interdependent relationship outside of marriage. For others, it may just be their desire never to marry but have a partner without the confines of marriage. Where such situation is evident and there is no intention whatsoever of contracting a marriage, the presumption of marriage must never be made where this intention does not exist. It must always be remembered that marriage is a voluntary union. As such, courts should shy away from imposing ‘marriage’ on unwilling persons.

25. As noted above, marriage is an institution arising out of a voluntary union, and the same should not be imposed on a person. There must therefore be very clear evidence before the presumption of marriage can be given effect. In our case, if at all the plaintiff cohabited with the defendant, I am not persuaded



that the cohabitation can be said to have been for a long time. At most, it was only four years. The parties never had any children together. There is also no evidence that the parties held themselves out to the world that they were a married couple. In other words, I am not persuaded from the evidence that the plaintiff has demonstrated that the presumption of marriage ought to apply given the facts of this case. A presumption of marriage would have invited the court to declare the property matrimonial, but this cannot happen in the circumstances of this case.

26. Having failed to demonstrate that the presumption of marriage can apply, the plaintiff can only succeed by demonstrating that the land was purchased and developed using her money, and that the defendant is only holding the title as a trustee. I am afraid that the plaintiff has failed to provide sufficient evidence, on a balance of probabilities, to show that the land was bought by her own funds and the developments also made using her own resources.
27. Starting with the purchase of the land, the sale agreement of 24 April 2011 only has the name of the defendant as purchaser. The plaintiff is nowhere mentioned in the sale agreement; she does not even appear as a witness. Despite the plaintiff contending that the money to buy the land came from her, I am not persuaded that the evidence is sufficient to lead one to this conclusion. It will be recalled that it was her evidence that she borrowed Kshs. 250,000/= from Chindiba Self Help Group and topped the same up with her own savings of Kshs. 130,000/=. It will again be recalled that the plaintiff acknowledged that the money paid was withdrawn from an account of the defendant at K-Rep Bank. You would thus expect that the plaintiff would have evidence that she actually deposited the sum of Kshs. 250,000/=: borrowed from Chindiba Self Help Group, into the account of the plaintiff. You would also expect the plaintiff to produce evidence of withdrawal from her savings account of this amount of Kshs. 130,000/= and subsequent deposit of it into the account of the defendant. This was never provided. It is also not clear how this money was received from Chindiba Self Help Group if at all. Was it given to her by way of cash or cheque? Was it deposited into her account? This was never elaborated and nobody from Chindiba Self Help Group was ever called to testify on the distribution of these monies, if at all. On the same point, if at all money was borrowed from Chindiba Self Help Group, then you would expect that there be evidence of repayment of this loan. No such evidence was ever tendered.
28. It will be recalled that there was a second agreement dated 21 May 2010 with the defendant as purchaser, which agreement shows that it is for a further portion of 13 x 70 feet purchased for Kshs. 50,000/=. Again the plaintiff is not recorded therein as purchaser, or that the defendant was buying the land jointly with her, or on her behalf. The plaintiff is only described as a witness in the sale agreement and nothing more. There are in fact two witnesses noted therein, and it is goes without saying that being a witness cannot elevate one to a purchaser of the land. There is also no credible evidence that the defendant was entering into second agreement as trustee of the plaintiff. There is similarly no evidence that the purchase price of Kshs. 50,000/= was contributed by the plaintiff. In her evidence, the plaintiff stated that she took a loan of Kshs. 100,000/= from KWFT and she directed Kshs. 50,000/= to settle the purchase price. The plaintiff did not produce a single bank statement from KWFT. If it was a loan, you would expect that there be a loan application, a letter of offer, and deposit of this amount of Kshs. 100,000/= into her account. There is none. You would also expect that there be evidence of withdrawal of this money. There is no such evidence. If the alleged loan was being paid back, you would expect to see deposits into the bank. There are none. What the plaintiff produced was a sort of a card which is handwritten alleging that it was from KWFT showing the sum of Kshs. 150,000/= and entries alleging repayment. I doubt that banks operate in this way. Money must be withdrawn and deposited into an account and there are generated deposit and withdrawal slips. None were availed. In essence, the plaintiff has failed to demonstrate that she ever availed this sum of Kshs. 50,000/=: as she has claimed, towards the sale agreement of 21 May 2010.



29. The other bit of the plaintiff's case is hinged on the contention that she purchased the building materials which she claimed were valued at Kshs. 700,000/=. Again, you would expect the plaintiff to provide a receipt showing purchase of these materials. Not a single receipt was exhibited by the plaintiff. There is thus absolutely no evidence that the plaintiff made any purchase of building materials.
30. Despite the plaintiff claiming that the defendant was a man of straw, who could not even afford a meal, the defendant did tender evidence that he operated accounts as at 2007 through 2009, which appear to have had money coming in and going out. He could not be a man of straw as asserted by the plaintiff. It also does not add up that the plaintiff would allege that the defendant was a man of straw, yet admit that it was him who paid the stamp duty for the registration of the land into his name.
31. It will be observed from the above discourse that I am not persuaded that the plaintiff has proved to the required standard that the suit land was bought using her money or that it was developed using her money.
32. The long and short of it is that the plaintiff has failed to prove her case on a balance of probabilities. In fact, I absolutely do not believe the plaintiff. I think that she is merely cooking up a story that she purchased the suit land when the truth of the matter is that she did not. I do not know the motivation of the plaintiff. Maybe it is simply human cupidity, or the plaintiff wishes for reasons that I cannot tell, to hit back at the defendant. Maybe it is a relationship gone sour, or maybe it is something else. That I cannot tell with certainty. What I am certain of is that the plaintiff has failed to provide any credible evidence that the suit property was bought using her money or that it was developed using her money. Having failed to demonstrate this, this court cannot hold that the defendant is registered as proprietor of the suit property as trustee for the plaintiff.
33. The result is that the plaintiff's suit is hereby dismissed. There had been an order of inhibition issued, pending hearing and determination of this suit. This order is hereby lifted and the defendant is at liberty to deal with the suit property as he so wishes. The last issue is costs. The plaintiff will pay the defendant's costs of this suit.

Judgment accordingly.

DATED AND DELIVERED AT KISII THIS 20TH DAY OF SEPTEMBER 2023

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

