



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC SUIT NO. 165 OF 2011

MNN.....PLAINTIFF

VERSUS

DNK.....1ST DEFENDANT

JOSEPH MOFFAT KILIOBA

ANDREW KIMARA

PETER DEYAHS

GEORGE CHIPA

JOHN NJUGUNA MBURU

(Being sued as officials and pastor in charge of **PENTECOSTAL EVANGELISTIC**

FELLOWSHIP OF AFRICA.....2ND DEFENDANT

DAVID NJENGA NDUNGU.....3RD DEFENDANT

JUDGMENT

1. The plaintiff and the 1st defendant lived together for several years. When the plaintiff and the 1st defendant started living together in 1986, the 1st defendant was married to one, JWN (hereinafter referred to only as “Julia”) under civil marriage. The 1st defendant referred to the plaintiff as his second wife although there is no evidence that the two were formally married either traditionally or otherwise. In any event, I doubt if the 1st defendant having entered into a statutory marriage with Julia could have entered into any other valid marriage ceremony with the plaintiff during the subsistence of that earlier marriage. The 1st defendant and the plaintiff however held themselves out as a husband and wife from 1986 until around 2011 before the filing of the present suit by the plaintiff.

2. At the center of the dispute between the parties are two parcels of land known as Lari/Bathi/T.xxx and Lari/Bathi/T.xxx. The two parcels of land are subdivisions of land parcel number Lari/Bathi/T.xxx(hereinafter referred to as “the suit property”). In her plaint dated 6th April, 2011 filed in court on 13th April, 2011, the plaintiff averred that on or about September, 2008, the plaintiff and the 1st defendant decided to acquire jointly the said parcel of land known as Lari/Bathi/T.xxx (the suit property) from one, Mungai Komu at a consideration of Kshs. 900,000/-. The plaintiff averred that it was agreed between the plaintiff and the 1st defendant that the plaintiff would contribute half of the purchase price while the remaining half would be contributed by the 1st defendant’s other wife, JWN (Julia) and that the property would initially be registered in the name of the plaintiff and Julia jointly. The plaintiff averred that it was further agreed that at a later date, the suit property would be subdivided into two portions so that each party would have her separate share. The plaintiff averred that the 1st defendant was charged with the responsibility of facilitating and coordinating the sale transaction between the plaintiff, Julia and the vendor, Mungai Komu. The plaintiff averred that the 1st defendant was in the circumstances her trustee in respect of the transaction.

3. The plaintiff averred that pursuant to the said arrangement, she applied for and was advanced a loan in the sum of Kshs. 450,000/- by Barclays Bank of Kenya Limited, Limuru Branch which amount she delivered to the 1st defendant as her share of the purchase price for the suit property. The plaintiff averred that she learnt subsequently that through acts of deceit, fraud and in violation of the agreement that she had entered into with the 1st defendant, the 1st defendant illegally and unlawfully caused the suit property to be transferred and registered in his own name and thereafter subdivided it into two portions, Lari/ Bathi/T. xxx and Lari/Bathi/ T. xxx (hereinafter referred to only as “Plot No. xxx” and “Plot No. xxx” respectively) which he sold off to the 3rd and 2nd defendants respectively without the plaintiff’s knowledge.

4. The plaintiff averred that by virtue of her contribution to the purchase of the suit property, she had a beneficial interest therein and as such the registration of the 1st defendant as the sole proprietor thereof did not confer upon him absolute rights over the suit property. The plaintiff averred that the 1st defendant held a half portion of the suit property in trust for her. The plaintiff averred further that Plot No. xxx and Plot No. xxx were sold to the 3rd and 2nd defendants respectively by the plaintiff in breach of the said trust. The plaintiff averred that the 2nd and 3rd defendants were aware when purchasing the two parcels of land that the 1st defendant had no authority to sell the same and that the 1st defendant held the same in trust for the plaintiff.

5. The plaintiff sought judgment against the defendants jointly and severally for; a declaration that the plaintiff contributed to the purchase of Lari/Bathi/T.xxx (the suit property) and as such she was entitled to either Plot No. xxx or Plot No. xxx being the products of the subdivision of the suit property, a declaration that the registration of the suit property and subsequently the subdivisions thereof in the name of the 1st defendant did not confer upon the 1st defendant absolute rights over the same, a declaration that either Plot No. xxx or Plot No. xxx was held by the 1st defendant in trust for the plaintiff as a contributor to the purchase of the suit property, a declaration that the sale of Plot No. 286 and Plot No. xxx was illegal and as such null and void *ab initio*, an order that the 1st defendant do transfer Plot No. xxx or Plot No. xxx to the plaintiff and, in the alternative, an order that the 1st defendant do declare the proceeds of sale of Plot No. xxx and Plot No. xxx and pay to the plaintiff half of the same together with interest.

6. The 1st defendant filed a statement of defence on 21st June, 2011 to the plaintiff’s claim. The 1st defendant admitted that the plaintiff and he lived as a husband and wife. The 1st defendant denied that the plaintiff was involved in the purchase of the suit property. The 1st defendant averred that he purchased the suit property alone from Mungai Komu and that neither the plaintiff nor his other wife Julia were involved in the transaction. The 1st defendant averred that he did not purchase the suit property on behalf of the plaintiff or any other person. The 1st defendant averred that if at all the plaintiff secured a loan of Kshs. 450,000/- as she claimed in the plaint, the loan was for her other projects and not for paying a portion of the purchase price for the suit property.

7. The 1st defendant averred that as the registered proprietor of the suit property which he purchased for valuable consideration, he had a right to subdivide and transfer portions thereof to third parties. The 1st defendant averred that the subdivision of the suit property and the transfer of portions thereof namely, Plot No. xxx and Plot No. xxx to the 3rd and 2nd defendants respectively was lawful and denied that any fraud or deceit was involved. The 1st defendant also denied that he was the plaintiff’s trustee and that he breached the said trust by registering the suit property in his name and subsequently subdividing and selling the portions thereof to the 2nd and 3rd defendants.

8. The 2nd and 3rd defendants filed a joint statement of defence on 28th June, 2011. The 2nd and 3rd defendants denied the plaintiff’s claim in its entirety and averred that they were strangers to the averments contained in paragraphs 5 to 15 of the plaint. The 2nd and 3rd defendants averred that before they purchased Plot No. xxx and Plot No. xxx they conducted searches that revealed that the same were registered in the name of the 1st defendant. The 2nd and 3rd defendants averred that the said searches never revealed that any of the properties was held by the 1st defendant on behalf of the plaintiff. The 2nd and 3rd defendants averred that if there was any trust relationship between the plaintiff and the 1st defendant, the same concerned only the two. The 2nd and 3rd defendants averred that during the period that they dealt with the 1st defendant they were not aware of the plaintiff.

9. The 2nd and 3rd defendants averred that the plaintiff never raised any objection to the sale of Plot No. xxx and Plot No. xxx in their presence. The 2nd and 3rd defendants averred that the plaintiff had no interest in the suit property and as such her claim had no basis. The 2nd and 3rd defendants averred in the alternative that the plaintiff had no *locus standi* to file this suit and reserved a right to raise the issue as a preliminary objection. The 2nd and 3rd defendants averred further without prejudice that they were innocent purchasers of Plot No. xxx and Plot No. xxx for valuable consideration without notice of the plaintiff’s alleged interest therein after conducting due diligence.

10. The plaintiff amended her plaint on 13th May, 2013 the effect of which was only to join the officials of the 2nd defendant, Pentecostal Evangelistic Fellowship of Africa to the suit. The amendment did not introduce any new cause of action. The defendants also amended their statements of defence but did not introduce any new issue save for the names of the officials of the 2nd defendant. At the trial, the plaintiff gave evidence and called two witnesses. The 1st defendant gave evidence but did not call any witness while the 2nd and 3rd defendants did not appear in court for the trial. In her evidence, the plaintiff relied entirely on her witness statement dated 6th April, 2011 that was filed in court together with the plaint and produced the documents attached to her list of documents dated 6th April, 2011 as exhibits. In the statement, the plaintiff to a large extent reiterated the contents of the plaint that I have highlighted above. The plaintiff’s witnesses, JWM (PW2) and JMK (PW3) also adopted their witness statements dated 6th April, 2011. In her witness statement, PW2 narrated what transpired when she accompanied the plaintiff to the office of the District Officer on 17th January, 2011 and 19th January, 2011 to lodge a complaint about the 1st defendant’s attempt to sell the suit property. PW2 stated that after hearing all the parties which included the plaintiff, the 1st defendant and representatives of the 2nd defendant, the District Officer assured the plaintiff that the transaction will not be approved by the Land Control Board and that later, she learnt from the plaintiff that the transaction had been approved by the Land Control Board on 2nd March, 2011 despite the assurances that the plaintiff had been given earlier.

11. The gist of the evidence by PW3 was that at the request of the plaintiff, he accompanied her to the Land Control Board(board) meeting that took place at Lari Division on 2nd March, 2011. He stated that the Land Control Board meeting took place at the District Officer’s office.

He stated that the meeting was attended by the 1st defendant, the 1st defendant's other wife, Julia and the persons who were introduced as the purchasers of the suit property. He stated that the plaintiff and the 1st defendant were heard by the board and after deliberations, they were told that the transaction had been approved by the board.

12. In his evidence, the 1st defendant also relied entirely on his witness statement dated 13th November, 2013. The 1st defendant produced the documents that were attached to his list of documents of the same date as exhibits. In his witness statement, the 1st defendant stated that he married Julia through a civil marriage in 1972 and that he met the plaintiff in 1986 and started cohabiting with her at Limuru. He stated that his relationship with the plaintiff turned sour in January, 2011. The 1st defendant thereafter reiterated the contents of his defence. He stated that he purchased the suit property at Kshs. 900,000/- which he paid in full after which the property was transferred to him. He stated that after acquiring the suit property, he subdivided the same into two portions which he sold to the 2nd and 3rd defendants. The 1st defendant reiterated that neither Julia nor the plaintiff contributed towards the purchase of the suit property. The 1st defendant stated that the reason for selling the suit property was to enable his daughter one, MWN to travel to Britain. The 1st defendant stated that he sold the suit property with the full knowledge of the plaintiff and Julia. The 1st defendant stated that this suit was an afterthought brought by the plaintiff for the purpose of covering her past misdeeds.

13. After the end of evidence, the parties made closing submissions in writing. The plaintiff filed her submissions on 16th April, 2019 while the 1st defendant filed his submissions on 28th June, 2019. The 2nd and 3rd defendants did not make any submissions. I have considered the evidence and the submissions by the parties who participated at the trial. The parties did not frame and file in court statement of agreed issues. In their submissions, each party framed its own set of issues for determination. From the pleadings, the following in my view are the issues that arise for determination in the suit before the court:

- a) Whether the plaintiff contributed towards the purchase of Lari/Bathi/T.xxx (the suit property).
- b) Whether the 1st defendant held a half portion of the suit property in trust for the plaintiff.
- c) Whether the subdivision of the suit property into two portions and the sale of the said portions namely, Lari/Bathi/T. xxx and Lari/Bathi/T. xxx to the 2nd and 3rd defendants by the 1st defendant was carried out in breach of the said trust.
- d) Whether the 2nd and 3rd defendants had notice of the plaintiff's interest in Lari/Bathi/T. xxx and Lari/Bathi/T. xxx while purchasing the same.
- e) Whether the plaintiff is entitled to the reliefs sought in the amended plaint.
- f) Who is liable for the costs of the suit?

Whether the plaintiff contributed towards the purchase of the suit property.

14. I am persuaded by the evidence given by the plaintiff that she contributed towards the purchase of the suit property. The facts placed before the court by the plaintiff in proof of her contribution towards the purchase of the suit property are so interlinked to be coincidental. The plaintiff told the court that they agreed with the 1st defendant and the 1st defendant's wife, Julia to purchase the suit property from the then registered owner thereof Mungai Komu at a consideration of Kshs. 900,000/- of which the 1st defendant's wife would contribute Kshs. 450,000/- and the plaintiff, Kshs. 450,000/-. The 1st defendant produced in evidence as part of Defence Exhibit 1 a copy of the sale agreement dated 7th November, 2008 between the representatives of Mungai Komu; Samuel Njuguna Mungai and James Ngugi Mungai and, the 1st defendant in respect of the suit property. In the agreement, the purchase price was agreed at Kshs.900,000/-. The plaintiff led evidence that she borrowed Kshs. 450,000/- from Barclays Bank of Kenya which she gave to the 1st defendant in cash as her contribution of the purchase price for the suit property. I am satisfied from the evidence adduced by the plaintiff that she borrowed the said sum of Kshs. 450,000/-. The plaintiff applied for this amount of Kshs. 450,000/- on or about 13th October, 2008. The loan was approved and credited to her account on 21st October, 2008. The plaintiff withdrew Kshs. 450,000/- on 31st October, 2008. This is the amount that plaintiff told the court that she gave to the 1st defendant as her share of the purchase price for the suit property. As I have mentioned above, the agreement for the purchase of the suit property was made on 7th November, 2008. According to the agreement, the 1st defendant paid the full purchase price of Kshs. 900,000/- in cash on the same date of the agreement and had the suit property transferred to his name. At the hearing, the court asked the 1st defendant how he managed to raise the purchase price of Kshs. 900,000/- The 1st defendant admitted that he was not employed. He told the court that a sum of Kshs. 500,000/- was given to him by his daughter who lives in Britain and the rest were the proceeds of sale of a parcel of land that he owned in Kitale. The 1st defendant did not place any evidence before the court showing that he owned land in Kitale that he sold to raise part of the purchase price for the suit property. There was also no evidence of the sale of the alleged parcel of land and receipt of the proceeds thereof. There was also no evidence that his daughter sent to him Kshs. 500,000/-. Considering the evidence adduced before the court in totality, I am convinced that the sum of Kshs. 450,000/- which the plaintiff borrowed from Barclays Bank and withdrew from her account on 31st October, 2011 was given to the 1st defendant as part of the plaintiff's contribution of the purchase price for the suit property and that the said amount was part of Kshs. 900,000/- that was paid to Mungai Komu's representatives in cash on 7th November, 2011 in settlement of the purchase price for the suit property. Due to the foregoing, it is my finding that the plaintiff contributed Kshs. 450,000/- towards the purchase of the suit property.

Whether the 1st defendant held a portion of the suit property in trust for the plaintiff and whether the subdivision of the suit property by the 1st defendant and the sale of the portions thereof to the 2nd and 3rd defendants was in breach of the trust.

15. The suit property was registered under the Registered Land Act, Chapter 300 Laws of Kenya (now repealed) the same as Plot No. xxx

and Plot No. xxx. The 1st defendant had denied that he held the suit property in trust for the plaintiff. The 2nd and 3rd defendants on the other hand had contended that searches that they carried out on the titles of Plot No. xxx and Plot No. xxx did not reveal that the properties were held in trust for the plaintiff. I am in agreement with the argument by the defendants that the registration of the 1st defendant as the proprietor of the suit property and subsequently the portions thereof namely, Plot No. xxx and Plot No. xxx conferred upon the 1st defendant absolute ownership of the said parcels of land together with all the rights and privileges associated with such ownership and that such rights were not liable to be defeated save as was provided in the Registered Land Act, Chapter 300 Laws of Kenya (now repealed).

16. That position of the law is provided for in sections 27 and 28 of the Registered Land Act which has been reproduced in sections 24 and 25 of the Land Registration Act, 2012. There is however a proviso in section 28 of the Registered Land Act which provides that the rights of a proprietor of land set out above are subject to any duty or obligation such proprietor may have as a trustee. In Kanyi v Muthiora [1984] KLR 712, Chesoni, Ag J.A stated as follows at page 721:

“Section 143 of the Registered Land Act did not apply as there was no question of rectification of the register but a transfer by a trustee to a beneficial owner. The registration of the suit land in the name of Kanyi under the Registered Land Act did not extinguish Nyokabi’s rights under Kikuyu customary law. Kanyi was not relieved from her duty or obligation to which she was a trustee to Mathiora’s land: see proviso to section 28 of the Act and Gatimu Kinguru –vs- Muya Gathangi [1976] KLR 253. There was overwhelming evidence of a trust in favour of Nyokabi.”

In John Gitiba Buruna & Another v Jackson Rioba Buruna, Court of Appeal at Kisumu, Civil Appeal No. 89 of 2003, the court stated as follows:

“Although the rights of a registered proprietor of land are indefeasible under section 28 of the Registered Land act, such registration does not as the proviso to section 28 states relieve a proprietor from any duty or obligation to which he is subject as a trustee.”

17. It is clear from the foregoing cases that the 1st defendant’s title over the suit property and the subdivisions thereof could be impeached on account of any duty that he owed as a trustee to the plaintiff. In Mwangi Mbothu & 9 others v Gachira Waitimu & 9 Others (1986) eKLR, the court stated that:

“The law never implies, the court never presumes a trust but in case of absolute necessity. The court will not imply a trust save in order to give effect to the intention of the parties. The intention of the parties to create trust must be clearly determined before a trust will be implied.”

18. I am satisfied that the plaintiff has proved the existence of a trust relationship between her and the 1st defendant in relation to the suit property. In Njenga Chogera v Maria Wanjira Kimani & 2 Others [2005] eKLR, the Court of Appeal stated as follows on the nature and proof of trust:

“It was argued on behalf of the appellant that there was no sufficient evidence to prove customary law trust. On our own re-evaluation of the evidence we are satisfied that there was ample evidence of the history of the suit land and of the relevant customary law on which the learned judge could find as he did.”

19. In Juletabi African Adventure Limited & another v Christopher Michael Lockley [2017] eKLR, the Court of Appeal stated as follows when dealing with a case similar to the one before this court:

“ 27. In Twalib Hatayan Twalib Hatayan & Anor vs. Said Saggat Ahmed Al-Heidy & Others [2015] eKLR, this Court examined and stated the law on trusts 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 trusts. Given that the two are closely interlinked, it is perhaps pertinent to look at each of them in relation to the matter at hand. A constructive trust is an equitable remedy imposed by the court against one who has acquired property by wrong doing. ... It arises where the intention of the parties cannot be ascertained. If the circumstances of the case are such as would demand that equity treats the legal owner as a trustee, the law will impose a trust. A constructive trust will thus automatically arise where a person who is already a trustee takes advantage of his position for his own benefit (see Halsbury’s Laws of England supra at para 1453). As earlier stated, with constructive trusts, proof of parties’ intention is immaterial; for the trust will nonetheless be imposed by the law for the benefit of the settlor. Imposition of a constructive trust is thus meant to guard against unjust enrichment. ...

A resulting trust is a remedy imposed by equity where property is transferred under circumstances which suggest that the transferor did not intend to confer a beneficial interest upon the transferee ... This trust may arise either upon the unexpressed but presumed intention of the settlor or upon his informally expressed intention. (See Snell's Equity 29th Edn, Sweet & Maxwell p.175). Therefore, unlike constructive trusts where unknown intentions maybe left unexplored, with resulting 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)." Emphasis added

28. Applying the emphasized principles to the case before us, all indications are that a resulting trust arose as between the respondent and the 1st appellant. As stated in the authority above, a resulting trust will automatically arise in favour of the person who advances the purchase money. Whether or not the property is registered in his name or that of another, is immaterial. It is common ground that all the purchase money for both the vehicle and the parcel was advanced by the respondent. The parcel and vehicle were therefore held in trust for the respondent by the 1st appellant. See also Charles K. Kandie vs. Mary Kimoi Sang [2017] eKLR."

20. As I have held earlier in this judgment, the plaintiff contributed Kshs. 450,000/- towards the purchase of the suit property on the understanding that she would be registered as a co-owner of the suit property and subsequently she would get her separate share of the property after subdivision. The responsibility of purchasing the suit property was left to the 1st defendant. As agreed, the 1st defendant purchased the suit property but caused the same to be registered in his sole name as the proprietor. The 1st defendant proceeded thereafter to subdivide the suit property into two and to sell the portions thereof to the 2nd and 3rd defendants. From the foregoing, I am satisfied from the dealings between the plaintiff and the 1st defendant that a resulting trust was created in favour of the plaintiff in relation to the suit property. In my view, the 1st defendant held a half portion of the suit property in trust for the plaintiff and could not deal with the suit property without consulting the plaintiff. It follows therefore that the subdivision of the suit property by the 1st defendant into two portions and the sale of the said portions to the 2nd and 3rd defendants without the consent of the plaintiff were carried out by the 1st defendant in breach of trust.

Whether the 2nd and 3rd defendants had notice of the plaintiff's interest in the suit property and the subdivisions thereof that they purchased.

21. In Muthuita v Wanoel[1982] KLR 166 at pages 169 and 170, Potter J.A stated that:

"In Gatimu Kinguru v. Muya Gathangi [1976] KLR 253 Madan J(as he then was) held that the absence of any reference to a trust in the instrument of acquisition of the land does not affect the enforceability of the trust as the provisions of section 126(1) of the Registered Land Act as to the reference to the capacity as trustee in the instrument of the acquisition are not mandatory but merely permissive. That decision has been followed and in my respectful opinion it is correct. In the High Court the learned judge correctly directed himself as to the functions of a first appellate court and as to the relevant provisions of the Registered Land Act, and having carefully reviewed the evidence, found that the appellant was registered as proprietor of the suit premises as trustee for himself and the three plaintiffs. In my view there was ample evidence of the history of the suit land and of the relevant customary law on which the learned judge could find as he did. With respect I agree with the learned judge."

22. It was not necessary for the plaintiff's interest in the suit property as a trustee to be noted in the register of the suit property. The fact that the 2nd and 3rd defendants' searches did not reveal the trust cannot therefore defeat the plaintiff's interest in the suit property and the subdivisions thereof that were sold to the 2nd and 3rd defendants. In any event, I am satisfied from the evidence on record that the 2nd and 3rd defendants were aware of the plaintiff's claim over the properties that they were purchasing. The 2nd and 3rd defendants purchased Plot No. xxx and Plot No. xxx at the same time and appeared before the Land Control Board for consent on the same day. The evidence adduced by the plaintiff, PW2 and PW3 that the plaintiff appeared before the Land Control Board at Lari and objected to the sale of Plot No. xxx and xxx to the 2nd and 3rd defendants was not controverted. In his evidence in cross-examination, the 1st defendant admitted that the plaintiff and PW2 appeared before the Land Control Board and objected to the sale. The 2nd and 3rd defendants having purchased Plot No. xxx and Plot No. xxx despite the objection by the plaintiff did so at their own risk. They are therefore not innocent purchasers for value without notice of the plaintiff's interest as they have claimed in their defence.

Whether the plaintiff is entitled to the reliefs sought in the plaint.

23. I am satisfied that the plaintiff has proved her case against the defendants on a balance of probabilities. The plaintiff sought several reliefs that I have set out at the beginning of this judgment. From the findings I have arrived at above, I am of the opinion that the plaintiff is entitled to the declarations sought in prayers (a), (b), (c) and (d) of the amended plaint. The plaintiff is however not entitled to an order compelling the 1st defendant to transfer Plot No. xxx and Plot No. xxx to her as sought in prayer (e) of the amended plaint. First, the two parcels of land are not registered in the name of the 1st defendant and as such he cannot transfer the same. The plaintiff should have sought the cancellation of the transfer of the two plots to the 2nd and 3rd defendants. That would have reverted the titles of the same to the 1st defendant who could then be in a position to transfer the same to the plaintiff. That was not done and as such the two properties remain registered in the names of the 2nd and 3rd defendants despite the court's finding that the same were transferred to them illegally. Secondly, the plaintiff is only entitled to one of the plots and not both. The plaintiff had sought as an alternative prayer, an order for payment of half of the proceeds of sale of Plot No. xxx and Plot No. xxx to the 2nd and 3rd defendants. I am of the view that this relief would satisfy the trust that was held by the 1st defendant in favour of the plaintiff. It will be sufficient compensation for her loss. The plaintiff is therefore entitled to prayer (g) of the plaint.

Who is liable for the costs of the suit?

24. As was stated in the case of Jasbir Singh Rai & Others v Tarlochan Singh Rai and 4 others [2014]eKLR, costs follow the event. In this case, the plaintiff has succeeded in her claim against the defendants. No reason has been advanced by the defendants why the court should deny the plaintiff the costs that she has incurred in this suit.

Conclusion:

25. In conclusion, I hereby enter judgment for the plaintiff against the defendants jointly and severally in terms of prayers (a), (b), (c), (d) and (g) of the amended plaint dated 29th April, 2013. From the evidence on record, the 2nd and 3rd defendants paid a total of Kshs. 1,400,000/- for Plot No. xxx and Plot No. xxx. Under prayer (g) of the amended plaint which has been granted by the court, the defendants shall pay to the plaintiff Kshs. 700,000/- being half the proceeds of sale of Plot No. xxx and Plot No. xxx together with interest at court rates from the date hereof until payment in full. The plaintiff shall have the costs of the suit.

Delivered and Dated at Nairobi this 5th day of May 2020

S.OKONG'O

JUDGE

Judgment read through Microsoft Teams Video Conferencing platform in the presence of;

N/A for the plaintiff

N/A for the 1st defendant

N/A for the 2nd and 3rd defendants

Ms. C. Nyokabi- Court Assistant