



**Mwangi v Raimbir (Environment and Land Appeal E013 of 2023)
[2025] KEELC 3882 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3882 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E013 OF 2023**

BM EBOSO, J

MAY 9, 2025

BETWEEN

WANJUGU MWANGI APPELLANT

AND

JAGAT SINGH RAIMBIR RESPONDENT

*(Being an appeal against the Judgment of the Chief Magistrate Court
at Meru, rendered by Hon J M Njoroge on 12/7/2023 in Meru Chief
Magistrate Court Civil [Environment and Land] Case Number 97 of 2019)*

JUDGMENT

Introduction

1. This appeal challenges the Judgment rendered on 12/7/2023 by the Chief Magistrate Court at Meru (Hon J M Njoroge) in Meru CMC E&L Case No. 97 of 2019. The appellant was the defendant and counterclaimant in the said suit. The respondent was the plaintiff. One of the key issues that fell for determination in the trial court was whether the respondent was entitled to an order of specific performance in relation to a land sale agreement dated 1/12/2008 through which the appellant sold to the respondent one (1) acre that was to be excised out of land parcel number Ngusishi Settlement Scheme/810. That is one of the key issues that fall for determination in this first appeal. Before I analyse and dispose the issues that fall for determination, I will briefly outline the parties' respective cases in the trial court; the grounds of appeal; and the parties' respective submissions on the appeal.

Background

2. The suit in the trial court was initiated by the respondent against the appellant vide a plaint dated 2/9/2019. He sought: (i) an order directing the appellant to excise and transfer one (1) acre to him out of land parcel number Ngusishi Settlement Scheme/ 810 in specific performance of the contract



- dated 1/12/2008 (the one acre will hereinafter be referred to as “the suit land”); (ii) an order of permanent injunction restraining the appellant against interfering with the respondent’s peaceful use and occupation of the suit land; (iii) costs of the suit.
3. The case of the respondent was that, vide an agreement dated 1/12/2008, he purchased from the appellant one (1) acre that was to be excised out of land parcel number Ngusishi Settlement Scheme/810. The agreed purchase price was Kshs. 250,000. He paid to the appellant Kshs. 120,000 on signing the agreement. He made a subsequent payment of Kshs 100,000 which was acknowledged by the appellant in writing. The balance, Kshs 30,000, was paid to the appellant in kind through purchase of clothes by the appellant from a garments shop run by the respondent and his wife. He contended that he took possession of the one acre in 2008 and remained in occupation and possession of the land, adding that in 2019, the appellant started threatening him with eviction and started interfering with his peaceful occupation and use of the one acre. He itemized what he termed “acts of interference by the appellant”.
 4. The respondent further contended that the appellant was in fragrant breach of the contract. He itemized particulars of what constituted the alleged breach. He denied receiving a refund of the purchase price from the appellant. He urged the trial court to grant him the above reliefs.
 5. The appellant contested the claim through a defence and counterclaim dated 11/9/2019. Her case in the trial court was that she entered into a sale agreement dated 1/12/2008 with the respondent for sale of one (1) acre that was to be excised from land parcel number Ngusishi Settlement Scheme/810. The agreed purchase price for the one acre was Kshs. 250,000. She admitted payment of Kshs. 220,000 to her by the respondent but contested payment of Kshs 30,000 in kind.
 6. The appellant further contended that, subsequent to entering into the sale agreement dated 1/12/2008, the respondent approached her before excision of the one acre and orally requested her to vary the contract to provide for two (2) acres at a purchase price of Kshs. 500,000. The appellant added that she accepted the respondent’s proposal and parties agreed to meet at their advocate’s office to “effect the changes in the agreement”. However, the changes were never effected. She denied interference and breach of the agreement. As an alternative defence, she contended that the respondent was in breach of the agreement.
 7. By way of counterclaim, the appellant contended that the sale was not completed on account of frustration and breach of contract by the respondent. She itemized various particulars of frustration and breach on part of the respondent. She stated that she procured all necessary completion documents pursuant to the sale agreement and communicated to the respondent, adding that she visited the respondent severally at his home to demand balance of the purchase price and to hand over the completion documents.
 8. The appellant further contended that it was only after she refunded to the respondent the purchase price that the respondent instituted the suit in the trial court. By way of counterclaim, she prayed for: (i) an order dismissing the respondent’s suit; (ii) an order decreeing eviction of the respondent and compelling the respondent to give vacant possession of the suit land to her; (iii) general damages; and (iv) costs of the counterclaim.
 9. Upon conducting trial and upon receiving submissions, the trial court rendered the impugned Judgment in which it found that the respondent had proved his case on a balance of probabilities and that the appellant had failed to prove her counterclaim. The trial court decreed that the one acre was to be excised from Ngusishi Settlement Scheme/810 or the resultant parcels. The trial court further decreed parties to bear their respective costs of the suit.



Appeal

10. Aggrieved by the findings and decree of the trial court, the appellant brought this appeal, advancing the following nine (9) grounds of appeal;
 1. That the Learned Magistrate erred in law and in fact by failing to find that the order granting leave to file the suit out of time was ultra vires and the court did not have jurisdiction to grant the said order.
 2. That the Learned Magistrate erred in law and in fact by failing to find that it had no jurisdiction to entertain the suit as the same was time-barred.
 3. That the Learned Magistrate erred in law and in fact by awarding the respondent an order for specific performance when there was no Consent from the relevant Land Control Board.
 4. That the Learned Magistrate erred in law and in fact by failing to find that the Sale Agreement was void due to failure to obtain the Consent from the relevant Land Control Board.
 5. That the Learned Magistrate erred in law and in fact by finding that it was the appellant who was in breach of the sale agreement.
 6. That the Learned Magistrate erred in law and in fact by granting an order for specific performance without considering the evidence on record that the appellant had rescinded the contract on account of breach by the respondent and had refunded the purchase price.
 7. That the Learned Magistrate erred in law and in fact by failing to find that the respondent had not paid the full purchase price.
 8. That the Learned Magistrate erred in law and in fact by failing to consider the appellants submissions on record.
 9. That the judgement was against the weight of evidence.
11. The appellant urged this court to allow the appeal with costs, set aside the impugned Judgment, and decree dismissal of the suit in the Lower court with costs.

Appellant's Submissions

12. The appellant filed written submissions dated 10/12/2024 through F.J Mugambi & Co. Advocates. On the contention that the court had no jurisdiction to entertain the suit because the suit was time-barred, counsel relied on Sections 4 and 27 of the [Limitation of Actions Act](#). Counsel submitted that the court had no jurisdiction to extend time for filing the suit because the respondent's claim was based on a contract dating over 11 years. Counsel argued that the respondent had not provided any reasons for the delay save that he learnt the appellant had not transferred the suit land to him when the appellant evicted his agents in 2019.
13. On the contention that the trial court erred in granting an order of specific performance in the absence of a consent from the relevant Land Control Board, counsel submitted that Ngusishi Settlement Scheme 810 was agricultural land and the parties had agreed that for the sale to be complete they required consent from the Land Control Board. Counsel submitted that failure to obtain consent of the Land Control Board rendered the transaction void hence the remedy of specific performance was not available.



14. On the respondent's obligations under the sale agreement, counsel submitted that clause 7 of the sale agreement provided that survey charges were to be borne by the respondent. Counsel added that clause 4 of the sale agreement provided that the respondent was to cater for transfer charges and stamp duty. Counsel argued that the respondent did not demonstrate to the trial court whether he fulfilled the above obligations or whether any form of frustration was occasioned by the appellant.
15. Counsel argued that the appellant fulfilled her obligations despite being frustrated by the respondent who she alleged changed the terms of the agreement verbally and failed to collect the completion documents, adding that the respondent refused to clear balance of the purchase price. It was submitted that the respondent frustrated the appellant for 11 years, prompting the appellant to rescind the contract and refund to him the purchase price.

Respondent's Submissions

16. The respondent filed written submissions dated 7/1/2025 through the firm of Mwenda Kinyua & Co Advocates. On the contention that the trial court erred in entertaining the respondent's claim which was time-barred under the Limitations of Actions Act, counsel submitted that the appellant ought to have challenged the granting of leave at the trial court and not at the appellate court. Counsel contended that the appellant only raised the issue in his written submissions. Counsel argued that leave to file suit out of time was properly granted and could not be challenged at the appellate stage.
17. On the contention that the trial court erred in granting an order of specific performance in the absence of consent of the Land Control Board, counsel submitted that the validity of transactions relating to agricultural land is to be determined in accordance with the *Land Control Act* which requires the consent of the Land Control Board to validate the transaction. Counsel argued that the initial sale agreement dated 1/12/2008 was for purchase of one acre of land to be excised from land parcel number Ngusishi Settlement Scheme/810 for Kshs 250,000.
18. Counsel argued that parties entered into a second agreement for the purchase of a further one acre at Kshs.250,000 for the respondent's sister who lived in Germany but it was an oral agreement contrary to Section 38 of the *Land Act*. Counsel contended that the agreement did not materialize because the respondent's sister never remitted the cash to buy the land and as such they did not vary the terms of the original contract.
19. Counsel submitted that the appellant exhibited the application form for consent of the Land Control Board dated 12/1/2010 and a letter of consent issued by Timau Land Control Board dated 12/1/2010 and the mutation forms, adding that there was consent relating to the subdivision and transfer of the suit land, hence the transaction was lawful.
20. On the allegation of breach of the agreement by the respondent, counsel submitted that the respondent was not in breach of the sale agreement, adding that the respondent paid full purchase price for the one acre. Counsel argued that the appellant did not refund to the respondent part of the purchase price as alleged. Counsel contended that during trial, the respondent testified that they entered into an agreement dated 1/12/2008 at a consideration of Kshs 250,000 out of which Kshs 120,000 was paid to the appellant on signing of the agreement and Kshs 100,000 was paid on 22/2/2008, leaving a balance of Kshs 30,000 which was paid in kind when the appellant took clothes worth Kshs 30,000 from the respondent's wife's shop.
21. Counsel argued that the appellant alleged that she refunded the purchase price vide a banker's cheque which the respondent denied. Counsel added that once the respondent discharged the legal burden of proof, the burden of proof shifted to the appellant. Counsel urged the court to dismiss the appeal.



Analysis and Determination

22. The court has read and considered the entire original record of the trial court; the record filed in this appeal; the grounds of appeal; and the parties' respective submissions. The court has also considered the relevant legal frameworks and jurisprudence. Taking into account the pleadings that informed the issues that fell for determination in the trial court, the grounds of appeal, and the parties' respective submissions in this appeal, the following are the seven (7) key issues that fall for determination in the appeal: (i) Whether the respondent's claim was statute-barred under the *Limitation of Actions Act*; (ii) Whether the contract between the appellant and the respondent was rendered void and unenforceable by the absence of consent of the Land Control Board; (iii) Whether the appellant breached the sale agreement between the two parties; (iv) Whether the respondent breached the sale agreement between the two parties; (v) Whether the respondent paid purchase price in full; (vi) Whether a refund of part of the purchase price [Kshs 200,000] was made to the respondent and received by him; and (vii) Whether the criteria for grant of the remedy of specific performance was met. I will be brief in my sequential analysis of the issues. Before I do that, I will briefly outline the principle that guides this court when exercising jurisdiction as a first appellate court.
23. The task of a first appellate court was summarized by the Court of Appeal in the case of *Susan Munyi v Keshar Shiani* (2013) eKLR as follows:
- “As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusion.
24. The principle was similarly outlined in *Abok James Odera t/a A J. Odera & association v John Patrick Machira t/a Machira & Co Advocates* [2013] eKLR as follows:-
- “This being a first appeal, we are reminded of our primary role as a first appellate court, namely to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way.”
25. Was the respondent's claim statute-barred under the *Limitation of Actions Act*? First, the issue of limitation period was never pleaded in the appellant's defence and counterclaim and was never raised through evidence. It was first raised through written submissions. Clearly, it was an unacceptable ambush by the appellant. The court has nonetheless considered the issue in the context of the pleadings and the evidence that were before the trial court.
26. In a claim for breach of contract, limitation period is reckoned from the date of the alleged breach. Limitation is not necessary reckoned from the date of the contract. The cause of action in a claim for breach of contract is deemed to have accrued on the date of the alleged breach.
27. Particulars of the respondent's claim are contained in paragraphs 3 to 7 of the plaint which read as follows:-
- “3 The plaintiff on 1/12/2012 bought parcel of Land L.R No. NGUSISHI/810 measuring one (1) acre from the defendant vide a written agreement dated 1/12/2008.



4. The plaintiff has been in occupation and use of the said land through agents since then.
5. The defendant has misrepresented to the plaintiff that the transfer process are on course.
6. The plaintiff further avers that the defendant has started threatening the plaintiff with eviction and interfering with the plaintiff's peaceful occupation and use of the said land.

Particulars of interference by the defendant

- a) Invading the plaintiff's land and overplanting on the plaintiff's land which is already cultivated
 - b. Poisoning the honey hives belonging to the plaintiff resulting in severe loss to the plaintiff
 - c. Removing the live posts and fencing posts erected by the plaintiff
7. The plaintiff avers that the defendant is in flagrant breach of contract and is out to defraud the plaintiff of his land

Particulars of fraud and breach of contract by the defendant

- a. Purporting to evict the plaintiff off from the land despite having sold the same to the plaintiff
- b. refusing/neglecting to transfer the land to the plaintiff

28. In his written statement which was adopted as part of his sworn testimony, the respondent stated as follows with regard to the breach.

“Recently I discovered that the defendant had not transferred the land and in the month of August 2019 she started to threaten the tenants on my land with eviction claiming that she had refunded the purchase price which is totally false.

29. On her part, through her pleadings and evidence, the appellant's case was that the contract was in force until 16/5/2019 when she rescinded it. Indeed, her letter dated 16/5/2019 reads as follows:

“Our instructions are that vide a meeting held on Saturday 8th May 2019 between yourself and the vendor at her residence, you were formally notified that you were in breach an agreement of sale referred to hereabove. [sic]

In the premises we hereby enclose a banker's cheque No. 3266 of Kshs. 200,000 being the refund of the money you have paid to respect (sic) of the said agreement less Kshs. 20,000 being the agreed damages under clause 10 of the agreement.

By this act, the vendor has rescinded the said agreement and does not longer consider herself bound by the terms of the said agreement.

It is our client's expectation that you will vacate and give up possession of land immediately on receipt of the cheque.”

30. From the above pleadings and evidence, and from the totality of the evidence that was on record, it was clear that the cause of action arose in 2019 when the appellant purported to rescind the contract. There



was nothing to suggest that the cause of action giving rise to the respondent's claim accrued prior to 2019. Indeed, the order enlarging time for filing of suit was superfluous because, from the totality of the evidence, it was unnecessary.

31. It is therefore the finding of this court that the respondent's claim was not statute-barred, and that the respondent's efforts to obtain an order enlarging time were superfluous and unnecessary.
32. Was the contract between the two parties rendered void and unenforceable by the absence of the consent of the Land Control Board? Again, the issue of absence of consent of the Land Control Board was never pleaded and was never canvassed through evidence. By way of submissions in this appeal, the appellant's counsel contends that the sale was rendered void because there was no consent of the Land Control Board. This is a contradiction of the appellant's defence and counterclaim and her evidence in which she contended that she obtained all the completion documents. The appellant pleaded as follows in paragraph 14 of her defence and counterclaim:

“The defendant avers that she had acquired all the necessary completion documents pursuant to the sale agreement entered between herself and the defendant and communicated the same to the plaintiff”

33. In her written witness statements which was adopted as part of her sworn evidence-in-chief, the appellant stated thus:-

We proceed (sic) to obtain consent from the Land Control Board to subdivide land parcel number Ngusishi Settlement/Scheme/810 and this same was subdivided with land parcel number Ngusishi Settlement/Scheme/1761 measuring approximately 2 acres to be transferred to Jagat Singh.

Once I was issued with the consent I informed Jagat Singh to pay me the balance of the purchase price so that he could take all his documents to enable him effect transfer. He did not pay me nor did he collect his completion documents despite the fact that I visited him severally in his home.”

34. Clearly, the argument by counsel for the appellant contradicts the pleadings and the evidence of the appellant. The appellant was categorical that consent was obtained. It emerges from the evidence on record that consent was obtained but the acreage which the appellant wanted to convey to the respondent was bigger than what the respondent had purchased. Secondly, the consent was in the wrong name. It was in the name of the respondent's sister.
35. Even if the court were to find that the appellant is entitled to raise the issue of consent at the appellate stage, the evidence on record indicates that the appellant sold the one acre to the respondent and allowed him to take possession. Having received purchase price, she held the land as a trustee. She cannot be allowed to invoke her own default as a basis for defeating the respondent interest in the suit land. [See Willy Kimutai Kitilit v Michael Kibet [2018] eKLR.]
36. For the above reasons, it is the finding of the court that the absence of consent of the Land Control Board was never pleaded as a defence and was not an issue for determination by the trial court because the appellant's position was that she duly obtained consent of the Land Control Board. Consequently, the contract was not voided by lack of consent of the Land Control Board.
37. Did the appellant breach the land sale agreement? Based on the evidence that was before the trial court, the appellant breached the sale agreement. First there was only one sale agreement between the two parties. The sale agreement was dated 1/12/2008. The agreement was for sale of one (1) acre. All the



- other oral proposals which the appellant alluded to in her pleadings and evidence did not constitute an agreement for sale of land as prescribed under Section 3(3) of the *Law of Contract Act*. The oral proposals were not part of the agreement dated 1/12/2008. The agreement dated 1/12/2008 was never changed to provide for sale of two (2) acres or to provide for a price of Kshs. 500,000.
38. Under the agreement dated 1/12/2008, the respondent was to pay Kshs. 120,000 on signing the agreement. The balance [Kshs. 130,000] was to be paid “immediately upon transfer”. Notwithstanding this, the appellant received a further sum of Kshs. 100,000 prior to transfer and allowed the respondent to take possession of the suit land.
 39. Under the mistaken belief that the agreement dated 1/12/2008 had been changed to provide for 2 acres and for a purchase price of Kshs. 500,000, the appellant purported to rescind the agreement dated 1/12/2008 on the grounds that the respondent had failed to pay Kshs.280,00 as balance of the purchase price. This was a breach because the contract was for sale of one acre at Kshs. 250,000. There was no contract for sale of two acres at Kshs 500,000.
 40. Upon issuing the ill-advised rescission letter dated 16/5/2019, the appellant purported to evict the respondent from the suit land. All these breaches happened because the appellant invoked a non-existent sale agreement/contract. The purported eviction was a breach.
 41. For the above reasons, it is the finding of this court that the appellant breached the agreement dated 1/12/2008 and that the breaches happened as from May 2019 when the appellant embarked on an ill-advised mission of rescission of a non-existent contract for sale of 2 acres at Kshs. 500,000/= and illegal eviction of the respondent in 2019.
 42. Did the respondent breach the sale agreement? The key covenant of the respondent was to pay purchase price. He paid the initial deposit of Kshs. 120,000. The balance was to be paid on transfer of the one (1) acre into his name. The respondent contended that he paid the balance in full but the appellant’s position was that an additional sum of Kshs. 100,000 was paid by the respondent. The appellant denied receipt of the sum of Kshs. 30,000.
 43. The respondent maintained that he paid the sum of Kshs. 30,000 in kind. Even if the court were to refuse to believe the respondent, under clause 2(b) of the sale agreement, balance of the purchase price was to be paid “immediately upon transfer”. There was no evidence that transfer was effected in favour of the respondent and the respondent was called upon to pay balance of the purchase price and failed to pay the sum of Kshs. 30,000 which the appellant alleges was outstanding.
 44. The appellant faulted the trial court for failing to find that the respondent breached the sale agreement. Citing clauses 4 and 7 of the sale agreement, counsel for the appellant argued that the respondent failed to show what efforts he made to fulfil obligations relating to stamp duty and survey charges. The burden of proof is on he who alleges. It was the duty of the appellant to tender evidence to demonstrate each of the limbs of the breaches she itemized. None was tendered. The evidence on record shows that the respondent provided a surveyor whom the appellant instructed to excise 2 acres instead of one. There was no evidence tendered to suggest that all necessary completion documents relating to the one acre that was sold to the respondent were availed to the respondent and the respondent failed to pay stamp duty and transfer charges to facilitate transfer of the one acre into his name. Consequently, the finding of the court on this issue is that there was no proof of breach of contract on part of the respondent.
 45. Did the respondent pay purchase price in full? First, the agreed purchase price was Kshs. 250,000 and the agreed acreage was one (1) acre. Secondly, the appellant admitted receipt of Kshs. 220,000. What was contested was the sum of Kshs. 30,000 which the respondent contended was paid in kind



as purchase price for clothes which the appellant took from a shop operated by the respondent and his wife.

46. The respondent testified that the appellant took from their shop cloths worth Kshs 30,000 in lieu of cash payment of the outstanding balance of the purchase price [Kshs 30,000]. His testimony was corroborated by DW2. Having filed a defence denying receipt of purchase price in full, the appellant elected to say nothing in terms of controverting the respondent's corroborated evidence. She did not utter a single word by way of denial. She chose not to make a denial on oath. Given that the respondent's evidence on payment of Kshs. 30,000 was corroborated by DW2, the trial court properly found that the respondent paid the full purchase price of Kshs. 250,000. That too is the finding of this court.
47. Was a sum of Kshs. 200,000 refunded to the respondent and received by him? The appellant produced and relied on a letter dated 16/5/20219 which allegedly rescinded the sale agreement and forwarded a cheque of Kshs 200,000 to the respondent. There was, however, no evidence of acceptance of the cheque by the respondent. There was no evidence of encashment of the cheque by the respondent. In his evidence under cross examination, the respondent testified that when the appellant attempted to rescind the sale agreement by presenting to him a cheque of Kshs 200,000 in 2019, he referred the appellant to his advocates.
48. It was the burden of the appellant to prove that the cheque of Kshs 200,000 was willingly accepted by the respondent and was duly uncashed by him. She did not tender that evidence despite having the opportunity to do so. She had the opportunity to apply for summons to issue compelling an officer of the issuing bank to attend and confirm encashment of the cheque and receipt of the proceeds by the respondent. She did not. Consequently, there was no evidence of willing acceptance of the cheque and encashment of the cheque by the respondent. Consequently, there was no basis for making a finding to the effect that the sum of Kshs 200,000 was refunded to the respondent. That is the finding of the court on this issue.
49. Did the respondent satisfy the criteria for grant of the remedy of specific performance? The jurisdiction to grant the equitable remedy of specific performance is exercised on the basis of well-settled principles. In their book THE LAW OF REAL PROPERTY, Seventh Edition, The Rt Hon Sir Roberty Megarry and Sir William Wade set out the following principles that govern the exercise of jurisdiction to grant the equitable remedy of specific performance in land disputes:

“This remedy is purely equitable, and in principle is confined to cases where the common law remedy of damages is inadequate. But land is always treated as being of unique value, so that the remedy of specific performance is available to the purchaser as a matter of course; and even though the vendor is merely concerned to obtain the purchase-money, so that he could be adequately compensated in damages for the purchaser's refusal to complete, the remedy of specific performance is equally available to him”

50. The two authors add as follows:

“Like other equitable remedies, specific performance is discretionary. However, the court's discretion is governed by settled principles. Examples of where the remedy may be refused include the following: i. In proper cases where there is mistake or great hardship, even though these do not invalidate the contract at law; ii. Where there has been delay causing injustice to the other party; iii Whether the vendor would be required “to embark upon difficult or uncertain litigation in order to secure any requisite consent or obtain vacant possession; iv. Where the property is being used for illegal purposes, which would make the purchaser liable to prosecution, even though on this ground he has no right to terminate the



contract; or v. Where the vendor's title is doubtful but he has failed to disclose the known cause of that doubt and the purchaser has agreed to accept any defects that there may be. In these cases the contract will remain binding at law, so that the party in default will be liable in damages, but equity will not assist with a decree of specific performance. On the other hand, specific performance may be decreed before the legal time for performance has arrived if there has been an anticipatory breach, e.g. by repudiation”

51. In *Gurdev Singh Birdi and Marinder Singh Ghatora v Abubakar Mahhubuti Civil Appeal No 165 of 1996*, the Court of Appeal outlined the following principle which guides our courts when exercising jurisdiction to grant the remedy of specific performance.

“It cannot be gainsaid that the underlying principle in granting the equitable relief of specific performance has always been that under all the obtaining circumstances in the particular case, it is just and equitable so to do with a view to doing more perfect and complete justice. Indeed...a plaintiff must show that he has performed all the terms of the contract which he has undertaken to perform, whether expressly or by implication, and which he ought to have performed at the date of the writ in the action.”

52. In *Reliable Electrical Engineers (K) Ltd v Mantrac Limited [2006] eKLR Maraga J [as he then was]* summed up the relevant principles as follows:

“Specific performance like any other equitable remedy is discretionary and the court will only grant it on well laid principles. The jurisdiction of specific performance is based on the existence of a valid enforceable contract. It will not be ordered if the contract suffers from some defect, such as failure to comply with the formal requirements or mistake or illegality, which makes the contract invalid and enforceable. Even when a contract is valid and enforceable, specific performance will however not be ordered where there is an adequate alternative remedy.”

53. In the suit giving rise to this appeal, the contract was for sale of one acre that was to be excised from Ngusishi Settlement Scheme/810. The agreed purchase price for the one acre was paid to the appellant in full. The respondent took possession of the one (1) acre in 2008 and enjoyed quiet possession of the land from 2008 until May 2019 when the appellant purported to rescind the contract on the ground that the respondent had failed to pay balance of the purchase price in the sum of Kshs 280,000. It emerges from the evidence on record that the appellant was grossly mistaken that there was an agreement for sale of 2 acres at Kshs 500,000 and that there was an outstanding balance of Kshs 280,000.
54. The appellant contends that she transferred to her son (DW 2) the portion of the land part of which she had sold to the respondent. Her son (DW 2) has been privy to the dispute and indeed appeared as his mother's witness. Despite being privy to the case and knowing the consequences of the orders sought in the suit, he elected not to apply for joinder as a party to the case. He did so despite being aware that what was in contest was the title which his mother had purported to transfer to him.
55. That is not all. In her own evidence, the appellant stated that she sold the one acre to raise money for college fees for her children who were in college. One of the children (DW 2) was the recipient of the very land that was sold to and held by the respondent and did not bother to seek joinder.
56. Taking into account all the above, the court comes to the conclusion that the criteria for grant of an order of specific performance was met.



57. In light of the above findings on the key issues in this appeal, I do not find merit in the appeal. The appeal is rejected and dismissed for lack of merit.
58. There are no special circumstances that would warrant a departure from the general principle on costs - that costs follow the event. Consequently, the appellant shall bear costs of the appeal.

DATED, SIGNED AND DELIVERED AT MERU THIS 9TH DAY OF MAY 2025

B M EBOSO [MR]

JUDGE

In the Presence of

Court Assistant - Doris

