



REPUBLIC OF KENYA



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**Njuguna v Nyakinyua Investment Co Ltd (Environment & Land Case
55 'B of 2022) [2025] KEELC 4689 (KLR) (18 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4689 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 55 'B OF 2022**

**JM ONYANGO, J
JUNE 18, 2025**

BETWEEN

KIONGO NJUGUNA PLAINTIFF

AND

NYAKINYUA INVESTMENT CO LTD DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit vide a Complaint dated 26th June 2012, amended on 25th July 2013 and further amended on 5th June 2023. He sought the following Orders against the Defendant: -
 - a. An order of injunction refraining/restraining the Defendant from alienating, entering, disposing and/or dealing in whatsoever manner with Plot Number 77 (Ruiru/Mugutha Block 1/6119).
 - b. A declaration that Plot Number 77 (Ruiru/Mugutha Block 1/6119) belongs to the Plaintiff.
 - c. In the alternative, the Defendant refunds Kshs 550,000 to the Plaintiff with interest.
 - d. Damages.
 - e. Costs of the suit with interest.
 - f. Any other order that this Honourable Court deems fit to grant.
2. The Plaintiff contends that sometime in 2006, he purchased Plot Numbers 76 and 77 to be excised from Land Parcel Number Ruiru/Mugutha Block 1/5463 belonging to the Defendant at a consideration of Kshs 550,000/= for each plot. The Plaintiff further contends that upon subdivision, Plots 76 and 77 were registered as Land Parcel Numbers Ruiru/Mugutha Block 1/6118 and Ruiru/Mugutha Block 1/6119, respectively. It is the Plaintiff's claim that upon payment of the total purchase price of Kshs 1,100,000, he immediately took possession of the two Plots, where he built a house



and cultivated crops. He avers that in 2011, the Defendant transferred Plot 76 (Land Parcel Number Ruiru/Mugutha Block 1/6118) to him but refused to transfer Plot 77 (Land Parcel Numbers Ruiru/Mugutha Block 1/6119, also referred to as “the suit property”), prompting him to file this suit.

3. The Defendant filed a Statement of Defence dated 1st July 2014 in response to the allegations made against it. The Defendant denied the Plaintiff's claims over ownership of the suit property and maintained that the Plaintiff never completed the payment of the purchase price of the two plots, which were Kshs 1,100,000 per plot. The Defendant contended that the Plaintiff only paid a total of Kshs 1,100,000 for one plot, and as a result, it only transferred Plot Number 76 (Land Parcel Number Ruiru/Mugutha Block 1/6118) to him.
4. The Defendant further averred that in the absence of any agreement in relation to the sale of the suit property, the declaration sought by the Plaintiff ought not be granted. The Defendant thus urged the court to strike out the suit for being frivolous and vexatious.

Plaintiff's Case

5. The matter proceeded for hearing of the Plaintiff's case on 24th May 2023 and on 13th November 2024. The Plaintiff testified as PW1. He adopted his witness statement dated 26th June 2012 as his evidence in chief.
6. He testified that he purchased Plot Nos. 76 and 77 from the Defendant at the price of Kshs 550,000 each. It was also his testimony that he paid the sum of Kshs 1,100,000 into the Defendant's Advocates' (M/s Kimani Githongo & Company Advocates) account. He added that he was issued with receipts for the payment, save for the payment of the initial deposit of Kshs 250,000. He stated that he had the original deposit slip for the same.
7. He explained that he was given possession of the two plots when he finished paying the full purchase price; however, the Defendant only conveyed to him Plot No. 76 but refused to transfer Plot No.77(the suit property). He urged the court to declare that the suit property belongs to him and order the Defendant to transfer the same to him. He also sought an injunction against the Defendant, preventing it from dealing with the suit property.
8. He produced the documents in his bundle of documents dated 26th June 2012 as Plaintiff's Exhibits 1-10 in support of their case as follows; cheque for Kshs 250,000 to Kimani Githongo & Co. Advocates as Plaintiff's exhibit 1, receipt No.6571 from Kimani Githongo & Co. Advocates as Plaintiff's exhibit. 2, receipt No. 5347 from Kimani Githongo & Co. Advocates as Plaintiff's exhibit 3, receipt No. 5636 from Kimani Githongo & Co. Advocates as Plaintiff's exhibit. 4, receipt No. 4768 from Kimani Githongo & Co. Advocates as Plaintiff's exhibit. 5, receipt No. 5151 from Kimani Githongo & Co. Advocates as Plaintiff's exhibit 6, title document for Ruiru/Mugutha Block 1/6118 as Plaintiff's exhibit 7, caution for Ruiru/Mugutha Block 1/6118 as Plaintiff's exhibit 8, demand letter dated 15/6/2012 as Plaintiff's exhibit 9 and receipt serial number 2175551 as Plaintiff's exhibit 10.
9. On cross-examination, he stated that there was no formal agreement between him and the Defendant regarding the suit property and that they never obtained consent from the Land Control Board. He asserted that Plot number 77 was a mutation of Land Parcel Number Ruiru/Mugutha Block 1/6118 (the suit property). However, he admitted that he had neither tendered the mutation nor the physical subdivision plan as evidence. He further stated that he had not exhibited a copy of the title or green card to the suit property as evidence. He added that he had obtained a search for the suit property when he filed the suit. He contended that he did not have written evidence relating to the agreed purchase price for each plot.



10. On re-examination, he confirmed that Land Parcel Number Ruiru/Mugutha Block 1/6119 (the suit property) exists. He stated that he exhibited a receipt issued to him upon lodging cautions against the titles to the two properties. He maintained that he was in possession of the suit property.

Defendant's Case

11. The defence case proceeded for hearing on 17th March 2025. Nduta Ndirangu, the chairlady of the Defendant, testified as DW1. She relied on her witness statement dated 9th September 2014 as her evidence in chief. She explained that the Plaintiff bought only one Plot, which was transferred to him upon completion of payment. She maintained that the Defendant never entered into any sale agreement with the Plaintiff. She urged the court to dismiss the Plaintiff's suit.
12. On cross-examination, she confirmed that the Defendant sold the Plaintiff one Plot measuring one acre at a cost of Kshs 1,100,000. She added that the Plaintiff was interested in buying two Plots but only ended up paying for one. She stated that she could not remember the plot number of the Plot bought by the Plaintiff.
13. She explained that the receipt issued to the Plaintiff indicated Plot Nos 76 and 77 because the Plaintiff initially intended to buy the two plots but ended up paying for only one. She maintained that there was no indication of the remaining balance on the receipt because the Plaintiff was only buying one plot; however, she admitted that the Plaintiff was in possession of both Plot 76 and 77. She testified that the Defendant never entered into written sale agreements with the purchasers of plots; instead, they would ask purchasers to pay the agreed purchase price of a plot in the Defendant's Advocates account.
14. On re-examination, she confirmed that the Defendant had requested the Plaintiff to vacate Plot 77 (the suit property). The defence case was thereafter marked as closed.
15. Upon closure of the defence case, the parties were directed to file and serve their final written submissions. The Plaintiff filed his submissions dated 14th April 2025, while the Defendant filed its submissions dated 16th May 2025 together with authorities, which I have read and considered.

Plaintiff's Submissions

16. Counsel submitted that there was no written sale agreement for the sale of the plots between the parties. Counsel further submitted that the agreement was verbally communicated through the directors of the Defendant, a fact which he contends was confirmed by DW1. Counsel added that the Defendant was therefore estopped from demanding a written agreement, having admitted that the transactions were conducted absent of the written agreements.
17. Counsel contended that the payment for the plots was done vide the Defendant's Advocates (M/s Kimani Githongo & Co Advocates) account, the same Advocates on record for the Defendant in this suit. Counsel contended that the receipts issued by the said firm of Advocates indicated that the payment was for Plot Nos 76 and 77 and not for only one plot as alleged by the Defendant.
18. Counsel asserted that it was dishonest on the part of the Defendant to renege on a well-established way of doing business by refusing to honour its part of the bargain. Counsel argued that the Plaintiff had proved his case on a balance of probability. He urged the court to enter judgment for the Plaintiff as prayed in the amended Plaint dated 5th June 2023.

Defendant's Submissions

19. Counsel for the Defendant identified the following issues for determination:



- (i) whether there was a contract and the terms thereof between the parties;
 - (ii) whether the contract (if any) was a proper contract for disposition of an interest in land;
 - (iii) whether the terms of the agreement were fulfilled;
 - (iv) whether there is any certainty of the suit property; and
 - (v) whether the legal provisions in respect of disposition of an interest in agricultural land were complied with.
20. On whether there existed a contract between the parties, counsel submitted that both parties admitted that there was an oral agreement for the purchase of Plots 76 and 77, however, there were no witnesses to confirm the terms of the said agreement. Counsel further submitted that the parties differed on the purchase price of the plots and that the receipts of the sum of Kshs 1,100,000 relied on by the Plaintiff did not indicate whether that was the full purchase price.
21. Counsel relied on Sections 107 to 110 of the *Evidence Act* in support of his submission. Counsel further relied on the decision in the cases of *Makenzi & Another vs Yeshe* [2023]eKLR and *Mathu & 3 Others vs Stewart*[2024]eKLR in submitting that the Plaintiff had failed to prove any of the terms of the contract or to successfully rebut the Defendant's evidence in any way. Counsel further submitted that the Plaintiff had not discharged his burden of proof, given the absence of any clarity of the purchase price for each of the plots.
22. On whether there was a proper contract for the disposition of an interest in land, counsel relied on Section 3 (3) of the *Law of Contract Act* to submit that any disposition of an interest in land ought to be in writing. Counsel further submitted that the oral agreement entered into between the parties was invalid hence it could not convey any property to the Plaintiff. Counsel added that due to the foregoing, the Plaintiff could not be granted the order of declaration sought in the Plaintiff.
23. On whether there was certainty on the identity of the suit property, counsel faulted the Plaintiff for failing to tender evidence to show how Plot Nos. 76 and 77 were transformed into Land Parcel Number Ruiru/Mugutha Block 1/6119. Counsel contended that the Plaintiff ought to have tendered evidence in form of mutation forms, subdivision scheme or any other document that connects the payment receipts to the suit premises, which would have assisted the court. Counsel added that even if the court were to uphold the terms of the alleged oral agreement between the parties, no nexus was established between the payment receipts and the suit property (Land Parcel Number Ruiru/Mugutha Block 1/6119). Counsel argued that the lack of clarity of the subject matter or the suit premises disentitled the Plaintiff to any relief in respect of the suit property.
24. On whether the legal provisions in respect of disposition of an interest in agricultural land were complied with, counsel contended that the title to Land Parcel Number Ruiru/Mugutha Block 1/6118 adduced by the Plaintiff indicated that the said parcel was agricultural land. Counsel further contended that given the proximity of the said parcel to the suit property (Land Parcel Number Ruiru/Mugutha Block 1/6119), it was safe to presume that the suit property was also agricultural land hence parties required consent of the Land Control Board to transfer pursuant to Section 6 of the Land Control Board Act. Counsel argued that in the absence of the said consent then the transaction between the parties with regard to the suit property was void. Counsel added that the Plaintiff could not, therefore, seek a declaration in his favour in a void transaction.
25. In conclusion, counsel urged the court to dismiss the Plaintiff's suit with costs.



Analysis and Determination

26. I have carefully considered the pleadings filed, the oral evidence, the exhibits produced and the rival submissions. In that regard, it is this court's considered view that the issues arising for determination are: -
- a. Whether there was a valid agreement between the parties for the sale of Plot No. 77.
 - b. Whether Plot No. 77 is Land Parcel Number Land Parcel Number Ruiru/Mugutha Block 1/6119.
 - c. Whether the Lack of Land Control Board Consent affects the transaction between the Plaintiff and the Defendant
 - d. Whether the purchase price paid by the Plaintiff in respect of plot no. 77 is recoverable.
 - e. Who should bear the costs of the suit?

(a) Was there a valid agreement between the parties for the sale of Plot No. 77?

27. The Plaintiff presented his testimony in court, giving an account of how he purchased Plot Numbers 76 and 77 in 2006 at a consideration of Kshs 550,000 each. The two plots were to be excised from Land Parcel Number Ruiru/Mugutha Block 1/5463 belonging to the Defendant. The Plaintiff has claimed that he immediately took possession of the two plots upon payment of the total purchase price of Kshs 1,100,000, where he built a house and cultivated crops. He avers that in 2011, the Defendant transferred Plot 76 (Land Parcel Number Ruiru/Mugutha Block 1/6118) to him but refused to transfer Plot 77 (Land Parcel Numbers Ruiru/Mugutha Block 1/6119), the suit property. The Plaintiff produced payment receipts issued by the Defendant's advocates (Kimani Githongo & Company Advocates) indicating that the payments made were for Plots 76 and 77. The Plaintiff also produced a receipt dated 14th February 2011, issued by the Lands Department for the payment of registration of titles for Land Parcel Numbers Ruiru/Mugutha Block 1/6118 and Ruiru/Mugutha Block 1/6119, a Caution he registered against the title to Land Parcel Number Ruiru/Mugutha Block 1/6119, and a demand letter dated 15th June 2012 addressed to the Defendant demanding the Transfer of Land Parcel Number Ruiru/Mugutha Block 1/6119 to the Plaintiff.
28. In response to the Plaintiff's claim, it has been submitted for the Defendant that Section 3 (3) of the Law of Contract Act states that any disposition of an interest in land ought to be in writing therefore the oral agreement entered into between the parties was invalid hence it could not convey any property to the Plaintiff.
29. Section 3 of the Law of Contract Act provides that: -
- “No suit shall be brought upon a contract for the disposition of an interest in land unless—
- (a) the contract upon which the suit is founded—
 - (i) is in writing;
 - ii) is signed by all the parties thereto; and
 - (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:



Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the *Auctioneers Act* (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.”

30. In her testimony, DW1 admitted that the practice during the period the Plaintiff purchased the plots was that there were no written agreements for sale. The purchasers would simply pay the agreed purchase price to the Defendant’s advocates (Kimani Githongo & Company Advocates) and they would in turn be issued with receipts and take possession of the purchased plot.
31. Even though the statute is clear on the requirement of a written contract for the disposition of an interest in land, the courts have in appropriate cases declared that despite the absence of a valid contract, a constructive trust exists where a vendor has been paid the purchase price in full, put the purchaser in possession but refused to transfer the land.
32. In the case of *Macharia Mwangi Maina & 87 Others vs Davidson Mwangi Kagiri* [2014] eKLR the Court of Appeal observed that:

‘...a constructive trust is based on “common intention” which is an agreement, arrangement or understanding actually reached between the parties and relied on and acted on by the claimant. In the instant case, there was a common intention between the appellants and the respondent in relation to the suit property. Nothing in the *Land Control Act* prevents the claimants from relying upon the doctrine of constructive trust created by the facts of the case. The respondent all along acted on the basis and represented that the appellants were to obtain proprietary interest in the suit property. Constructive trust is an equitable concept which acts on the conscience of the legal owner to prevent him from acting in an unconscionable manner by defeating the common intention.”
33. In the instant case, the Plaintiff did not plead that there was a constructive trust and even though the court would have been inclined to declare a constructive trust, the issue of identification of the suit property which I shall deal with under Issue (b) presents a challenge.

(b) Whether Plot No. 77 is Land Parcel Number Ruiru/Mugutha Block 1/6119

34. Sections 107 and 108 of the *Evidence Act* provide as follows:

“ 107

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

35. As earlier stated, the Plaintiff produced payment receipts issued by the Defendant’s advocates (Kimani Githongo & Company Advocates) indicating that the payments made were for Plots 76 and 77. The Plaintiff also produced a receipt dated 14th February 2011, issued by the Lands Department for the payment of registration of titles for Land Parcel Numbers Ruiru/Mugutha Block 1/6118 and Ruiru/



Mugutha Block 1/6119. The Caution he registered by the Plaintiff was against the title to Land Parcel Number Ruiru/Mugutha Block 1/6119.

36. However, I am constrained to agree with counsel for the Defendant that the Plaintiff ought to have tendered evidence in form of mutation forms, subdivision scheme or any other document that connects the payment receipts to the suit premises, which would have assisted the court in establishing a nexus between the payment receipts and the suit property (Land Parcel Number Ruiru/Mugutha Block 1/6119). In the absence of any primary documents linking plot no. 77 and the suit property, it is my finding that the Plaintiff failed to discharge the burden of proving that plot No. 77 is the same as Land Parcel Number Ruiru/Mugutha Block 1/6119.

(c) Whether the Lack of a Land Control Board Consent affects the transaction between the Plaintiff and the Defendant

40. Section 6 of the *Land Control Act* Cap 302 states;

“(1) Each of the following transactions that is to say— (a) the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a Land Control area; (b) the division of any such agricultural land into two or more parcels to be held under separate titles, other than the division of an area of is void for all purposes unless the Land Control Board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act”.

41. Section 6(3) of the said Act provides that the section does not apply to transmission of land by virtue of the will or intestacy of a deceased person, unless that transmission would result in the division of the land into two or more parcels to be held under separate titles or a transaction to which the Government or the Settlement Fund Trustees or (in respect of Trust land) a county council is a party.
42. The transaction in question did not fall within the exempted transactions.
43. Section 7 of Land Contract Act provides that if any money or other valuable consideration has been paid in the course of a controlled transaction that becomes void under this Act, that money or consideration shall be recoverable as a debt by the person who paid it from the person to whom it was paid, but without prejudice to section 22.

(d) Whether the purchase price paid by the Plaintiff in respect of plot no. 77 is recoverable.

44. It is not in dispute that the Plaintiff paid the sum of Kshs. 1,100,00/= to the Defendant’s advocates being the purchase for the land he bought from the Defendant. What is in contention is whether he paid for two plots or one. The receipts produced by the Plaintiff clearly indicate that the payment was in respect of plots No. 76 and 77. I did not find DW1 to be a truthful witness when she alleged that the payment was for only one plot as she was not even sure of which plot was paid for. Additionally, she was unable to explain why the receipts bore plots No. 76 and 77 and why the balance was not indicated. The fact the Defendant put the Plaintiff in possession of the two plots pending transfer of the titles into his name also reinforces my belief that the Plaintiff paid for two plots although the Defendant only transferred one to him.
45. As earlier observed in this judgment, Section 7 of the *Land Control Act* entitles the Plaintiff to recover any amount paid under a contract which is void for lack of Land Control Board consent.



46. Additionally, the court is alive to the doctrine of unjust enrichment which is founded upon the remedy of restitution to counter unjust benefit on the realization that to allow a defendant to retain such a benefit would result in his unjustly enriched at the plaintiff's expense. In the present case, it would not be in the interest of justice to allow the Defendant to keep both the land and the money he received from the Plaintiff as this would amount to unjust enrichment.
47. This being a court of both law and equity, is bound to deliver substantive rather than technical justice in line with Articles 10 (1) and Article 10 (2) (b) of the Constitution of Kenya, 2010 which provide the legal framework that underpins the application of equity in dispute resolution. Additionally, Article 159(2) (e) of the Constitution mandates this court to promote the purpose and principles of the Constitution, in exercising its judicial authority.
48. Based on the above principles, it is my finding that to avoid unjust enrichment by the Defendant, the Plaintiff is entitled to a refund of the sum of Kshs. 550,000 being the purchase price for plot No. 77 together with interest.

(d) Costs

49. It is trite law that costs generally follow the event and, in this case, I find that the Plaintiff is entitled to costs of the suit.

Conclusion

50. The upshot of the above is that the Plaintiff has proved his case against the Defendant on a balance of probabilities and I therefore enter judgment for the Plaintiff and make the following final orders:
- a. The Defendant shall refund the Plaintiff the sum of Kshs. 550,000/=.
 - b. The costs of this suit shall be borne by the Defendant
 - c. Interest on (a) at court rates from the date of filing suit until payment in full.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 18TH DAY OF JUNE 2025.

.....
J. M ONYANGO
JUDGE

In the presence of:

1. Miss Kiarie for Mr. Mwaura for the Plaintiff
2. Mr. Kimani for the Defendant.
3. Court Assistant: Hinga.

