



**Waithaka & 2 others v Tito (Environment and Land Case 556 of 2017)
[2025] KEELC 7510 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7510 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 556 OF 2017
MD MWANGI, J
OCTOBER 30, 2025**

BETWEEN

KURIA KIHARA WAITHAKA 1ST PLAINTIFF

MATHEW MWENDWA 2ND PLAINTIFF

MERCY BEATRICE AWORI 3RD PLAINTIFF

AND

JOHN JOSEPH TITO DEFENDANT

JUDGMENT

1. The Plaintiffs instituted this suit by way of a Plaint dated 23rd March 2017 seeking judgment against the Defendant for the following orders:
 - a. A declaration that the 1st, 2nd and 3rd Plaintiffs have a beneficial interest of ten (10) acres each in Title Kajiado/Kaputiel - North/26824.
 - b. An order compelling the Defendant to execute the necessary documents and take appropriate action to facilitate subdivision of title Kajiado/Kaputiel - North/26824 to provide for the respective shares of the Plaintiffs to the said property, failing which or in the alternative the Land Registrar Kajiado to execute the necessary documents and take appropriate action to facilitate the said subdivision of Kajiado/Kaputiel - North/26824 and provide for the respective shares upon said subdivision of title No. Kajiado/Kaputiel - North/26824 and provide for the respective shares of the Plaintiffs to the said property.
 - c. An order compelling the Defendant to execute Transfer forms in favor of the Plaintiffs for their respective shares upon the said subdivision of Title No. Kajiado/Kaputiel - North/26824, failing which or in the alternative, the Land Registrar Kajiado to execute transfer forms in favor



of the Plaintiffs for their respective shares upon the said subdivisions of title No. Kajiado/ Kaputiel - North/26824.

- d. Costs of this suit.
 - e. Interests on above at court rates until payment in full.
 - f. Any other relief as the court deems fits.
2. The Plaintiffs' case is that sometimes between late 2007 and early 2008, they jointly with the Defendant and other persons, namely, Joshua Kofa Jara, Alexander Orina Monari, Sammy Kipkoech Keter, and John Kimani Guchu, identified and agreed to purchase a parcel of land in Kajiado County known as Title Number KJD/Kaputiei - North/26824, measuring approximately 100.035 acres, at a purchase price of Kenya Shillings Forty Thousand (Kshs. 40,000/=) per acre. It was agreed among them that the purchase would be a joint venture, and that each participant would contribute according to the acreage he desired to acquire. A contribution of Kshs. 400,000/= entitled a purchaser to ten (10) acres, while Kshs. 800,000/= entitled one to twenty (20) acres.
 3. The joint purchasers nominated the Defendant to act as the lead joint purchaser to handle the transaction on behalf of all contributors, including negotiating with the vendor, executing the agreement, and securing the registration of the property. The Plaintiffs aver that they each contributed Kshs. 400,000/= to the Defendant between late 2007 and early 2008 and that the Defendant proceeded to pay the vendor and caused the suit property to be registered in his name on behalf of all contributors. They contend that the Defendant holds the said property in trust for all joint purchasers, including themselves, and that despite repeated requests since 2011, he has failed and/or refused to facilitate subdivision and transfer of their respective ten (10) acre portions. As a result, the Plaintiffs were constrained to register a caution against the property to protect their beneficial interest.
 4. It is the Plaintiffs' case that the Defendant's continued failure to effect subdivision amounts to breach of the trust under which he holds the property, thereby occasioning them loss and prejudice. They therefore seek the declaratory and consequential orders pleaded in the Plaint, together with costs and interest.
 5. The Defendant entered appearance through a Memorandum of Appearance dated 15th May 2017. Thereafter, he filed a Statement of Defence dated 19th November 2019. Upon his application, the Court on 17th June 2021 granted leave for the issuance of a Third Party Notice to other co-purchasers, namely, Joshua Kofa Jara, Alexander Orina Monari, Sammy Kipkoech Keter, and John Kimani Guchu. The court noted on 3rd November 2021 that these third parties had been duly served, but despite service, none entered appearance.
 6. The Defendant, on his part, admits that the property was indeed acquired jointly with the Plaintiffs and the other individuals mentioned, and that it was agreed he would act as the lead purchaser. He avers that the property was transferred to and registered in his name, not for his sole benefit, but in trust for all the co-purchasers. However, he disputes the Plaintiffs' assertion that each is entitled to ten (10) acres, contending instead that the property ought to be apportioned proportionately according to each party's financial contribution towards the purchase price and the related costs.
 7. The Defendant further avers that in completing the transaction, he incurred several expenses including stamp duty of Kshs. 80,000/=, legal fees, transfer costs and Land Control Board consent fees, which were to be shared equally among all co-purchasers. He adds that in 2013, the vendor, one Ruret Ene Naing'oyu Bomati commenced arbitration proceedings, which the Defendant defended at his own cost amounting to Kshs. 828,000/= in arbitral and legal fees. The arbitral tribunal, by an award dated 7th May 2015, dismissed the vendor's claim and upheld the validity of the sale.



8. According to the Defendant, these additional expenses, together with the purchase contributions, should be taken into account in determining each co-purchaser's proportionate share. He asserts that he has made several attempts to have the property subdivided accordingly, but that the Plaintiffs have declined to cooperate, insisting instead on a flat allocation of ten (10) acres each irrespective of contribution. He therefore urges this Court to dismiss the Plaintiffs' claim and to order that the suit property be subdivided and distributed among all co-purchasers in accordance with their respective contributions.
9. From the foregoing, it is not in dispute that the Defendant is the registered proprietor of Title Number KJD/Kaputiei - North/26824, having acquired it in the course of a joint purchase arrangement involving the Plaintiffs and others. What is contested, however, is the extent of each party's beneficial interest after subdivision.

Analysis Of Evidence

10. The plaintiffs called one witness, PW1, Mr. Kuria Kihara Waithaka, who testified on his own behalf and on behalf of his co-plaintiffs. PW1 adopted his witness statement dated 23rd March 2017 as his evidence in chief and produced the documents listed in his list of documents of even date, which were duly marked as PEXh 1–4.
11. PW1 testified that he and the co-plaintiffs were among eight persons who jointly agreed to purchase a parcel of land measuring approximately 100.035 acres situated in Isinya, off the Nairobi–Kajiado road. The Defendant, who was also one of the eight purchasers, was designated as the lead purchaser and was to spearhead the transaction on behalf of the group. Each of the Plaintiffs contributed Kshs. 400,000, which, according to PW1, was to cater for both the purchase price and all related transaction costs, entitling each contributor to ten acres of the suit property.
12. PW1 stated that the Defendant identified the land, liaised with the vendor, and coordinated the transaction. He further testified that apart from the Plaintiffs and the Defendant, other contributors; including the 3rd parties who did not enter appearance — were part of the joint purchasing arrangement.
13. During cross-examination by learned counsel Mr. Mukeli for the Defendant, PW1 confirmed that the land was identified and the total purchase price was understood to be Kshs. 4,000,000, though he could not state with certainty whether the Kshs. 400,000 contributed by each member included ancillary charges such as legal fees and stamp duty. He candidly acknowledged that there was no written agreement setting out the parties' respective obligations regarding those expenses.
14. PW1 further testified that he became aware of the Defendant's claim for reimbursement of additional expenses only after the filing of the defence and upon perusal of the Defendant's bundle of documents, which included a statement of claim by the vendor, Ruret Ene Naing'oyu Bomati, and an arbitral award dismissing that claim. He confirmed that neither he nor the other joint purchasers had refunded the Defendant any amount for the expenses allegedly incurred in connection with the transaction.
15. He further stated that the co-purchasers had disagreed on whether to subdivide the land and allocate individual portions, or to sell it as a single block and distribute proceeds. This disagreement, he said, was the genesis of the present dispute.
16. Under re-examination by Mr. Nyaribo, PW1 reiterated each Plaintiff's contribution of Kshs. 400,000 was intended to secure a ten-acre share of the property, and that the Plaintiffs sought the reliefs in the Plaint dated 23rd March 2017.



17. The Defendant, DW1, Mr. John Joseph Tito, testified on his own behalf. He adopted his witness statement dated 4th November 2022 as his evidence in chief and produced the documents listed in his list and bundle of documents of even date, which were marked as DEXh 1–25.
18. DW1 confirmed that he is an advocate of the High Court of Kenya and that he acted as lead purchaser in the joint acquisition of the suit property. He testified that the property was acquired for Kshs. 4,000,000, which amount was fully paid to the vendor’s advocates. According to DW1, each member’s entitlement to a portion of the property was directly proportional to his or her contribution to the purchase price. He stated that he was also one of the purchasers and that two of the eight members had contributed double, thereby entitling them to larger portions.
19. DW1 explained that the land was registered in his name to hold in trust for all the co-purchasers, and that the dispute over subdivision and allocation had prevented the formal transfer of individual shares. He asserted that it was not within his power to unilaterally cause the subdivision of the land, as this required the consensus and participation of all co-owners.
20. The Defendant further stated that in the course of the acquisition, he personally underwrote various expenses including legal fees, arbitration costs, and incidental payments of which collectively amounted to approximately Kshs. 1,128,400. These expenses, he said, were not part of the Kshs. 400,000 contributions but were separately incurred to complete the purchase and resolve subsequent disputes with the vendor.
21. In cross-examination by Mr. Nyaribo, DW1 reiterated that all contributions were paid directly to the vendor’s advocates and that the total purchase price was fully settled. He maintained that his claim for reimbursement was based on additional expenses he had borne on behalf of the group. He confirmed that he had not filed a counterclaim for those sums but had provided receipts and records of the expenditures.
22. In re-examination, DW1 restated that the Kshs. 4,000,000 purchase price did not cover the additional expenses he incurred. In response to questions by the Court, he specified the total outlay of Kshs. 1,128,400 represented the aggregate of verifiable costs associated with the transaction and the arbitral proceedings that followed. At the close of his testimony, DW1 emphasized that he continued to hold the title in trust for all the co-purchasers, including those who did not participate in these proceedings.

Analysis Of Submissions

23. In their submissions, the Plaintiffs identify four principal issues for determination: whether the suit property registered in the name of the Defendant is held by him in trust for the Plaintiffs; whether the Defendant may seek affirmative reliefs in his witness statement without having filed a counterclaim and whether the Plaintiffs are entitled to the reliefs sought in the Plaint.
24. The Plaintiffs’ case is founded on the factual assertion that together with the Defendant, they formed a group to purchase land in Kajiado County. Each member was to contribute a specific sum: Kshs. 400,000/= for ten acres and Kshs. 800,000/= for twenty acres. The Defendant was nominated as their representative to facilitate the transaction. It is the Plaintiffs’ case that they duly contributed their respective shares, but the Defendant, without consulting them, caused the property to be registered in his name alone. They therefore contend that the Defendant holds the land in trust for them to the extent of their respective contributions.
25. In advancing their position, the Plaintiffs placed reliance on Section 28(b) of the [Land Registration Act](#), which recognizes trusts, including customary trusts, as overriding interests in land not required to be noted on the register. They also invoked the definition of “trust” as contained in Black’s Law



Dictionary (9th Edition) to demonstrate that a trust entails a fiduciary relationship in which one party holds property for the benefit of another.

26. The Plaintiffs further relied on *Juletabi African Adventure Limited & another v Christopher Michael Lockley* [2017] KECA 118 (KLR), wherein the Court of Appeal affirmed that the existence of a trust is a question of fact to be proved by evidence, and that courts only imply a trust where the intention of the parties can be clearly discerned. They also cited *Twalib Hatayan & another v Said Sagga Ahmed Al-Heidy & 5 others* [2015] KECA 713 (KLR) to buttress their argument that trusts can arise by operation of law, either as constructive or resulting trusts, depending on the circumstances of the transaction. In particular, they submitted that the present case disclosed a resulting trust since the Plaintiffs contributed the purchase money, and the Defendant took registration of the property in his own name, thereby holding the land in trust for those who financed its acquisition.
27. To further support this position, the Plaintiffs placed reliance on the reasoning in *Behal (Suing as administrator to the Estate of the Late Vijay Behal) v Behal & another* [2024] KEELC 4021 (KLR), where the court found that despite registration being in the defendants' names, the evidence established a resulting trust in favour of the plaintiff who had contributed to the purchase. They submitted that the same reasoning applies herein, as the Defendant admitted holding the title in trust for the co-purchasers.
28. On the second issue, whether the Defendant could seek reliefs without filing a counterclaim, the Plaintiffs submitted that the Defendant had, during his testimony, purported to seek monetary reliefs for expenses allegedly incurred during arbitration proceedings relating to the same property. They argued that such reliefs could not properly be entertained in the absence of a formal counterclaim. The Plaintiffs placed reliance on *Koloi & 4 others v Lokwee & 2 others* [2024] KEELC 712 (KLR), where the court held that a defendant cannot seek remedies in the nature of affirmative reliefs within a defence absent a counterclaim, as doing so would be irregular and procedurally improper.
29. It was thus the Plaintiffs' position that the Defendant's claims for reimbursement were not properly before the Court, having not been pleaded by way of counterclaim, and should therefore be disregarded.
30. On the final issue, whether the Plaintiffs are entitled to the reliefs sought, the Plaintiffs reiterated that the Defendant's admission that he held the property in trust, coupled with the documentary and oral evidence adduced, sufficiently established the existence of a resulting trust in their favour. They referred once more to the reasoning in *Juletabi African Adventure Limited & another v Christopher Michael Lockley* (supra) and *Behal (Suing as administrator to the Estate of the Late Vijay Behal) v Behal & another* (supra), both of which affirmed that where parties contribute purchase money for land registered in another's name, a resulting trust automatically arises in favour of the contributors. Accordingly, the Plaintiffs urged the Court to enter judgement in their favour.
31. In his submissions, the defendant identifies a single substantive issue; namely, whether the suit property, Land Title Number KJD/Kaputiei - North/26824, should be subdivided and transferred to the Plaintiffs without first taking into account the expenses incurred by the Defendant in its acquisition.
32. The Defendant does not dispute that the Plaintiffs, together with other co-purchasers, contributed funds towards the purchase of the suit property, nor that he holds the said property in trust for them. What the Defendant asserts, however, is that in the course of executing his mandate as the lead purchaser, he incurred significant expenses on behalf of all the co-purchasers, including the Plaintiffs, and that these expenses have never been reimbursed. It is therefore his contention that equity and



- justice demand that such expenditure be taken into account before the property is subdivided and transferred.
33. The Defendant itemised the expenses as follows: legal fees for the sale transaction, stamp duty and registration costs amounting to Kshs. 300,000/=; legal fees incurred in arbitration proceedings amounting to Kshs. 500,000/=; and arbitrator's fees of Kshs. 328,400/= — making a total of Kshs. 1,128,400/=.
 34. In support of his argument, the Defendant placed reliance on the equitable doctrine of unjust enrichment, as expounded by R. Kuloba J. in *Samuel Kamau Macharia v Kenya Commercial Bank Ltd & Kenya Commercial Finance Co. Ltd* [2003] KEHC 725 (KLR). The Defendant drew the Court's attention to the principle that no person should be permitted to retain a benefit conferred upon him by another where it would be unconscionable to do so. He submitted that the Plaintiffs, having derived benefit from the Defendant's efforts and expenditure in securing the property, would be unjustly enriched if allowed to obtain subdivision and transfer without first reimbursing the Defendant.
 35. The Defendant further relied on the classical articulation of this doctrine in *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32, which was subsequently adopted by the Court of Appeal in *Chase International Investment Corporation & another v Laxman Keshra & 3 others* [1978] KECA 7 (KLR). He emphasized that, as recognized in those authorities, any civilized legal system must provide a mechanism to redress situations where one party has been unjustly enriched at the expense of another.
 36. Additionally, the Defendant referred to the scholarly exposition by Lord Goff of Chieveley and Professor Gareth Jones in their treatise *The Law of Restitution*, noting that the principle of unjust enrichment underpins the obligation to restore benefits obtained in circumstances where retention would offend conscience and equity. He submitted that this principle has been placed in the forefront of modern restitutionary jurisprudence, including the American Restatement of Restitution, which provides that "a person who has been unjustly enriched at the expense of another is required to make restitution."
 37. It was therefore the Defendant's submission that to permit the Plaintiffs to have the suit property subdivided and transferred to them without first reimbursing his out-of-pocket expenses would amount to unjust enrichment. He argued that the Court should recognize and protect his equitable right to restitution, particularly in view of the time value of money and the cost of inflation since the year 2008 when he undertook the transaction on behalf of all purchasers.
 38. In the alternative, the Defendant submitted that should the Court decline to order reimbursement, then the sums expended by him towards the acquisition and protection of the property ought to be deemed as part of his contribution to the purchase. In that regard, he prayed that the Court make an express finding that the amount of Kshs. 1,128,400/= forms part of his beneficial entitlement in the land.
 39. In conclusion, the Defendant reiterated that he was duly nominated by the Plaintiffs and the other co-purchasers to act as the lead purchaser; that he faithfully discharged that mandate; and that he incurred the said expenses solely for the benefit of the group. He submitted that the Plaintiffs had neither contested the fact of such expenditure nor tendered any evidence to show that the said amount had been reimbursed.
 40. Accordingly, the Defendant urged the Court to find that it would be inequitable and contrary to the dictates of natural justice to allow the Plaintiffs to obtain subdivision and transfer of their alleged



portions without accounting for the expenses incurred in the acquisition and protection of the property. He therefore prayed that the Plaintiffs' suit be dismissed with costs to the Defendant.

Issues for Determination

41. Upon careful consideration of the pleadings, the evidence adduced, and the parties' rival submissions, this court finds that the following issues arise for determination:
- i. Whether the Plaintiffs have established a valid claim to the suit property and its subdivision and transfer.
 - ii. Whether the Defendant is entitled to reimbursement or compensation for the expenses allegedly incurred in the acquisition of the said property.
 - iii. Whether, upon subdivision of the suit property, allowance ought to be made for the creation of access roads and other essential amenities, and consequently whether the co-purchasers are entitled to the exact acreages as bought.
 - iv. Who should bear the costs to the suit

Analysis and Determination

i. Whether the Plaintiffs have established a valid claim to the suit property and its subdivision and transfer.

42. The Plaintiffs' claim arises from a joint purchase arrangement under which they, together with other co-purchasers including the defendant, collectively contributed funds toward the acquisition of the suit property. The Defendant acted as the lead purchaser in whose name the title was registered for purposes of convenience in completing the transaction. The central question, therefore, is whether this arrangement created a beneficial interest in favour of the Plaintiffs and other co-purchasers, and whether such interest can now be lawfully recognized and enforced through subdivision and transfer.
43. The Defendant, while not disputing the joint acquisition, contends that the Plaintiffs have no enforceable claim until he is reimbursed the expenses allegedly incurred during the transaction and in later arbitration proceedings whose subject matter was the suit property.
44. In determining whether a beneficial interest arises where property is registered in one party's name but for the benefit of others, the court must be guided by the equitable doctrines of trusts, particularly resulting and constructive trusts. The concept of trust is a matter of fact or proof by evidence. The court of appeal held the position in the case of *Juletabi African Adventure Limited & another v Christopher Michael Lockley /2017| KECA 118 (KLR)* as follows:

“It is settled that the onus lies on a party relying on the existence of a trust to prove it through evidence. That is because:-

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

45. Trusts are created by the parties expressly or by operation of the law. The law will impose a trust even where none was intended, if the circumstances of the case so demand. A resulting trust will arise where a person contributes to the purchase price of property but the property is registered in the name of another. The law presumes that the one in whose name the property is registered holds it in trust for



the contributor(s). The court of appeal in the case of *Twalib Hatayan & Another v Said Saggar Ahmed Al-Heidy & Others* [2015] eKLR, where it held as follows:

“Trusts are created either expressly (by the parties) or by operation of law. An express trust arises where the trust property, its purpose and beneficiaries have been clearly identified (see. Halsbury’s Laws of England vol 16 Butterworths 1976 at para 1452). In this case, we have a definite property and beneficiary. The purpose/intent for which the property was bought remains in dispute. This negates the existence of an express trust herein. 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. (see Black’s Law Dictionary) (Supra). 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. In the present case, a constructive trust cannot be imposed or inferred since the suit premises were yet to be transferred to the third party.

Therefore, there is no unjust enrichment to be forestalled....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 (see Black’s Law Dictionary) (supra). 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 may be 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).... The general rule 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).”

46. The Court finds that the Plaintiffs, the Defendant and the Third Parties collectively contributed the purchase price of the suit property, with the Defendant as trustee. The registration of the title in his name, therefore, cannot extinguish the equitable interests of the Plaintiffs and other co-purchasers. Section 28(b) of the [Land Registration Act](#), No. 3 of 2012, recognizes trusts as overriding interests not requiring registration, as follows:

“Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register— (b) trusts including customary trusts.”



47. The Court is also mindful that certain co-purchasers, referred to herein as Third Parties, did not enter appearance or file any pleadings. Nonetheless, their inclusion in the original joint purchasing agreement and evidence of payment entitles them to recognition as beneficial owners.
48. Accordingly, the Court finds and holds that the joint purchasing arrangement between the Plaintiffs, the Defendant, and the Third Parties indeed created a resulting trust in favour of all contributors. Consequently, the Plaintiffs have established a valid claim to the suit property.

ii. Whether the Defendant is entitled to reimbursement or compensation for the expenses allegedly incurred in the acquisition of the said property.

49. The Defendant's position is that, although the suit property was purchased for the benefit of the co-purchasers, he solely incurred significant expenses in facilitating the transaction, including legal fees, stamp duty, and arbitration costs, amounting to Kshs. 1,128,400/=. It is his case that equity would not permit the Plaintiffs to take the benefit of the property without accounting for or reimbursing the sums he expended on their behalf.
50. This court stands guided by the doctrine of unjust enrichment as espoused by Kuloba J in Samuel Kamau Macharia v Kenya Commercial Bank Ltd & Kenya Commercial Finance Co. Ltd [2003] KEHC 725 (KLR), where the learned judge observed:

“Forming the foundation of quasi-contractual claims, such as actions for money had and received, and for money paid to a third party from which the defendant has derived a benefit, and equitable relief from undue influence and catching bargains, amongst other restitutionary claims, the idea of unjust enrichment or unjust benefit is intended to prevent a person from retaining money or some benefit derived from another which it is against conscience that he should keep, and he should, in justice, restore it to the plaintiff. The gist is that a defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to make restitution.”

51. The Court is in full agreement with this exposition of the law. The doctrine of unjust enrichment is founded upon fairness and good conscience. It seeks to ensure that no party profits at another's expense in circumstances where retention of such benefit would be inequitable. In *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32 at 61, the court held that:

“It is clear that any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognized to fall within a third category of the common law which has been called quasi-contract or restitution.”

52. It is not disputed that the Defendant, acting as the leader or trustee, facilitated the acquisition process of the suit property. The Plaintiffs themselves acknowledged his role in coordinating the purchase and registration. The Defendant tendered evidence of the specific expenses incurred, including receipts and invoices. The Plaintiffs did not controvert or demonstrate that these sums were ever reimbursed.
53. While the Court has already found that a resulting trust arose in favour of the Plaintiffs and co-purchasers, such a finding does not extinguish the Defendant's equitable entitlement to be reimbursed for expenses properly incurred in the execution of his fiduciary role. This court is a court of Equity and as a guiding maxim, Equity, decrees that “he who seeks equity must do equity.” It would therefore be



contrary to equitable justice to allow the Plaintiffs to benefit from the suit property without accounting for or reimbursing the Defendant for the expenses incurred in the course of executing their joint enterprise.

54. On the evidence before this Court, it is clear that the Defendant incurred costs on behalf of the co-purchasers in completing the sale transaction and attending to subsequent arbitration proceedings. These expenses, which have been particularized and not effectively rebutted, qualify as recoverable sums. Nonetheless, the Court notes that such reimbursement must not be construed as a proprietary entitlement or as conferring upon the Defendant an ownership share exceeding his beneficial interest. The equitable duty to refund merely ensures restitution of amounts actually expended, to prevent unjust enrichment, without altering the trust relationship.
55. Consequently, the Court finds and holds that while the Plaintiffs have established beneficial ownership of the suit property under a resulting trust, the Defendant is entitled in equity to reimbursement of the verifiable expenses he incurred in acquiring the same on their behalf.

ii. Whether, upon subdivision of the suit property, allowance ought to be made for the creation of access roads and other essential amenities, and consequently whether the co-purchasers are entitled to the exact acreages as bought.

56. The Court is mindful at the outset that the question posed is essentially a question of remedy and implementation: having found that the contributors enjoy beneficial interests in the land (as a resulting trust), how should the property be subdivided and what practical adjustments must the Court require so that the subdivision is lawful, orderly and equitable to all co-purchasers.
57. The court takes cognizance of the fact that a subdivision will automatically result at the minimum in the creation of access roads. Therefore, any apportionment of the land amongst the co-purchasers should take account of the realities of the subdivision.
58. Section 42 of the *Land Registration Act* expressly provides that:

“No part of the land comprised in a register shall be transferred unless the proprietor has first subdivided the land and duly registered each new subdivision.”

This provision makes it clear that any transfer of a portion of registered land must be preceded by lawful subdivision and registration of the new subdivided parcels.

59. Regulation 8 of the Physical and Land Use Planning (General Development Permission and Control) Regulations, 2021 provides detailed guidance on the requirements of a subdivision or amalgamation scheme. The regulation mandates that any developer undertaking a subdivision must design the scheme in conformity with the Third Schedule to the Act and the planning standards of the relevant authority. Specifically, the layout must provide for streets and access roads that comply with prescribed widths — a minimum of twelve meters for public-through roads and nine meters for private roads — and must include footpaths and cycle paths not less than two meters wide. The regulation further requires proper alignment of roads to facilitate natural stormwater drainage, observance of riparian reserves, wayleaves, and easements, and, where possible, preservation of natural flora and fauna in large-scale subdivisions.
60. Lawful subdivision must provide for access roads, truncations and utilities. Those mandatory deductions reduce the net area available for private allotment, and therefore no co-purchaser can insist on receiving the exact gross ten or twenty acres as originally bought. Subdivision and transfer must



proceed in accordance with the [Land Registration Act](#) and the [Physical and Land Use Planning Act](#) and its implementing regulations.

iv. Who should bear the costs to the suit

61. The issue of costs falls for determination. Section 27(1) of the [Civil Procedure Act](#), Cap 21 Laws of Kenya provides that:

“Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

62. The general rule, therefore, is that costs follow the event, meaning that the successful party should ordinarily be awarded the costs of the suit, unless the Court finds good reason to order otherwise.

63. In the present matter, this Court has found that the Plaintiffs and the Third Parties have established a valid beneficial interest in the suit property under a resulting trust, and are therefore entitled to subdivision and transfer of their respective portions. However, the Court has also found that the Defendant, having acted as trustee and facilitator of the acquisition, is equitably entitled to reimbursement of verified expenses incurred in that capacity.

64. In these circumstances, this is not a case where one side can be said to have wholly succeeded or wholly failed. Each party bears some responsibility for the incomplete formalization of their joint purchase enterprise and for the ensuing dispute. This court holds that costs are not to be used to penalize but to compensate for the trouble taken in litigation. Accordingly, the Court finds that this is an appropriate case in which each party should bear their own costs.

Final Disposition

65. The Court hereby makes the following orders:

- a. It is hereby declared that the Plaintiffs, the Defendant, and the Third Parties are co-purchasers and beneficial owners of the suit property being Kajiado/Kaputiel - North/26824 under a resulting trust, in accordance with their respective monetary contributions toward the purchase price.
- b. The Defendant, having acted as trustee and lead purchaser in the acquisition of the suit property, is entitled to reimbursement of verified expenses incurred on behalf of the co-purchasers before effecting subdivision including; legal fees, stamp duty, arbitration costs and the consequent subdivision fees. The costs of the subdivision too must be borne by all the parties equitably.
- c. The subdivision and transfer of the suit property shall be undertaken lawfully in accordance with the [Land Registration Act](#) (No. 3 of 2012), the [Survey Act](#) (Cap 299), and the [Physical and Land Use Planning Act](#) (No. 13 of 2019), with necessary allowances made for access roads and other essential amenities as required by statute and regulations.



- d. Each co-purchaser shall receive a proportionate share of the net subdivided land after deduction of portions required for access roads and public utilities.
- e. Each party shall bear their own costs of the suit.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 30TH DAY OF OCTOBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Mukeli for the Defendant

Mr. Owiro h/b for Mr. Ludi for the Plaintiffs

N/A for the Third Parties

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

