



REPUBLIC OF KENYA



**KENYA LAW**  
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**Baya v Balazs (Environment and Land Appeal E014 of 2023)  
[2025] KEELC 8203 (KLR) (25 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8203 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND APPEAL E014 OF 2023  
FM NJOROGE, J  
NOVEMBER 25, 2025**

**BETWEEN**

**EVANS TABU BAYA ..... APPELLANT**

**AND**

**FULOP OLGA BALAZS ..... RESPONDENT**

*(Being an appeal arising from the Judgment and Decree of Hon. D. Wasike  
(PM) delivered on 22/3/2023 in Malindi CM Land Case NO. E34 of 2021)*

**JUDGMENT**

1. The Appellant herein being aggrieved by the Judgment of Hon. Wasike, PM, delivered on 22<sup>nd</sup> March 2023 filed a memorandum of appeal dated 19<sup>th</sup> April 2023 challenging the judgment on the following grounds: -
  1. That the Learned Magistrate erred in law and in fact in evaluating the evidence and arrived at the wrong finding that the appellant had not contributed anything to the purchase of Title No. Gede Majimboni 1394 and Title No. Kilifi Weru 19 and that the Appellant held the suit properties in trust for the respondent;
  2. That the Learned Magistrate erred in law and fact in evaluating the evidence and arrived at a wrong finding that the Respondent had contributed to the purchase of 1 acre of Plot No. 39 Ganda;
  3. That the Learned Magistrate erred in law and fact in granting the respondent a relief in respect of Plot No. 39 Ganda that had not been applied for by the respondent in the suit;
  4. That the Learned Magistrate erred in law and fact in dismissing the appellant's counterclaim.



2. In that regard, the Appellant seeks that that the appeal be allowed with costs to the appellant; that the judgment and decree of Hon. D. Wasike, Principal Magistrate, delivered on 22<sup>nd</sup> March 2023 be set aside and be substituted with a judgment and decree allowing the appellant's counterclaim in its entirety with costs and dismissing the respondent's suit with costs; and that the Appellant be awarded costs of this appeal.
3. The appeal was heard by way of written submissions.
4. Accordingly, counsel for the Appellant filed written submissions dated 16<sup>th</sup> August 2024 wherein he submitted that the Magistrate had found that the Appellant had not contributed to the acquisition of Title No. Gede Mijomboni 1394 and 17.7 acres within Kilifi Weru 19, and that he held the properties in trust for the Respondent. Counsel argued that the purchase agreements and construction agreements, as well as prior undertakings, evidenced joint acquisition. Sections 107, 108, and 109 of the *akn ke act 1963 46 Evidence Act*, Cap. 80, were cited to show that the evidential burden rested on the Respondent to prove sole ownership. Counsel further submitted that receipts relied upon by the Respondent did not prove payment of the land purchase price and that the evidence of PW2 did not contradict the Appellant's contributions. Counsel added that the Magistrate failed to consider that the Appellant was already in possession and cultivating part of the land before the respondent joined.
5. Counsel further submitted that the Magistrate had found that the Respondent contributed to and was entitled to half share in 1 acre of Plot No.39 Ganda. Counsel argued that evidence showed that the Appellant purchased 4 acres of the plot prior to the parties' relationship and that the agreement relied upon by the Respondent related only to a refund of Ksh.175,000 - to one Priscilla Jumwa following a botched sale transaction, and not acquisition of ownership. The relief granted in respect of this acre was therefore unsupported by evidence.
6. Counsel further submitted that it is settled law that a court has no jurisdiction to grant reliefs not pleaded, rendering the Magistrate's award of such reliefs concerning Plot 39 Ganda erroneous.
7. Counsel for the Respondent filed submissions dated 25<sup>th</sup> October 2024 wherein he argued that the trial court correctly found the Respondent to be the sole proprietor of an acre of Plot No.39 Ganda, Gede Mijomboni 1394, and 17.7 acres of Kilifi Weru 19. He relied on Section 107 (1) and (2) of the *akn ke act 1963 46 Evidence Act* and reproduced the evidence adduced at trial by both sides. Counsel submitted that the Appellant failed to produce any payment receipts or agreements to substantiate his alleged contributions while the Respondent adduced sale agreements, acknowledgements of part payment for construction, cash withdrawal receipts, and Western Union transfers which he asserted fully financed the acquisition and development of the properties.
8. Counsel argued that the trial Magistrate properly applied the law on resulting trusts, citing *Munyu Maina v Hiram Gathiha Maina* [2013] KECA 94 (KLR), *R.K. v S.N.M & 2 Others* [2018] eKLR, *L.N. v S.M.M* (2013) eKLR, *Arumba v Mbega & Another* (1988) KLR 121, *Yogendra Pusshotam Patel v Pascale Mireilla Baksh & 2 Others* (2006) eKLR, and *Charles K. Kandie v Mary Kimoi Sang* [2017] KECA 775 (KLR). Counsel argued that these authorities support the presumption of a resulting trust in favor of the person who advances the purchase money, regardless of registration, and that parole evidence is admissible to establish the parties' contributions and intentions.
9. Finally, counsel submitted that the Appellant's own admissions, including reliance on the Respondent for financial support and failure to repay monies for a motor vehicle, demonstrated that he did not contribute to the acquisition of the suit properties. Accordingly, she urged the Court to dismiss the appeal with costs.



10. This being a first appeal, I am mindful that the duty of this court as set out in the decision of *Selle & Another versus Associated Motor Boat Co. Ltd & Others* (1968) EA 123 is to reconsider the evidence, evaluate it and draw its own conclusion of facts and law, and this court will only depart from the findings by the trial court if they were not based on evidence on record; where the said court is shown to have acted on wrong principles of law as was held in *Jabane versus Olenja* (1968) KLR 661, or where its discretion was exercised injudiciously as held in *Mbogo & Another versus Shah* (1968) EA 93.
11. It is thus necessary at this point to set out the nature of the claim before the trial court, the evidence adduced and the decision of the trial court.
12. The suit before the trial court was instituted by the Respondent through a Plaint dated 22<sup>nd</sup> March 2021, wherein she claimed ownership of all those parcels of land known as Plot No. 39 Ganda, Gede Majimboni 1394 and 17.7 acres of Kilifi Weru 19. The Respondent claimed that following an intimate relationship with the Appellant which began in the year 2014, and decision to invest in Kenya, she solely purchased the aforementioned suit properties, including the Appellant in the sale agreement as a co-purchaser, in order to hold in trust for her while she was away in her home country, Hungary; that the Appellant even agreed to sign an undertaking to that effect, and not to sell any part of the suit properties without the consent of the Respondent; vide a letter dated 1<sup>st</sup> March 2021, the Appellant issued her with a 7 days' notice of his intention to sell the suit properties without her consent. Disturbed by the breach of undertaking, the Respondent thus filed the primary sought and sought a declaration that she is the lawful and only proprietor of the suit properties; a permanent injunction restraining the Appellant from entering, trespassing, selling, or transacting with the suit properties; any other appropriate reliefs; and costs of the suit.
13. The Appellant filed a statement of defence and counterclaim dated 26<sup>th</sup> April 2021 wherein he averred that he solely owns Plot No. 39 Ganda having purchased the same in 2005 long before he met the Respondent. He narrated that the Respondent assisted him to refund a sum of Kshs. 175,000 - on 17<sup>th</sup> March 2018 to one Priscilla Jumwa when a sale over the same plot did not go through between the said Priscilla and the Appellant.
14. The Appellant pleaded that the two plots, Gede Mijomboni 1394 and the 17.7 acres within Kilifi Weru 19 were purchased as a joint venture between himself and the Respondent, which could not continue following misunderstandings that emanated thereafter. He averred that he requested the Respondent to buy him out but when she declined to do so, he gave her a notice of his intention to dispose of his share in the two properties. The Appellant claimed that they held the two properties (Gede Mijomboni 1394 and the 17.7 acres within Kilifi Weru 19) in common having contributed to purchase of the same, and he thus counterclaimed for- a declaration that they own Gede Mijomboni 1394 and the 17.7 acres within Kilifi Weru 19 in common and that each has an equal undivided share, as well as a declaration that he is the sole owner of Plot No. 39 Ganda; an order of subdivision of Gede Mijomboni 1394 and the 17.7 acres within Kilifi Weru 19 into two equal undivided shares, and for an order for the transfer to the Appellant of his half undivided share, any other just relief, and costs of the suit.
15. The matter proceeded to full hearing during which the Respondent testified and called one other witnesses. The Appellant was the sole witness in his case.
16. Fulop Olga (PW1) adopted her witness statement dated 17<sup>th</sup> March 2021 and produced copies of sale agreements dated 21<sup>st</sup> December 2016 (PEXh 1), 17<sup>th</sup> March 2018 (P.Exh 2) and 2<sup>nd</sup> July 2016 (P.Exh 3); undertaking (PEXh 4); letters from Mwarandu & Co. Advocates (PEXh 5 and 7); letters from Kadima & Kadima Advocates (PEXh 6 and 8); schedule of works (PEXh 10); acknowledgment of payment (PEXh



- 11); Agreement of acknowledgment of part payment (PEXh 12); and cash withdrawal receipts (PEXh 13).
17. The Respondent testified that after paying for the first two plots, which she was shown by the Appellant, he told her there was another plot owned by Juma Majali and he was selling the same for Kshs. 175,000 -. She agreed to pay the amount as long as her name would be on the sale agreement. She narrated that the Appellant would request her to buy more land and she would send money from Europe for fencing, buying seeds, manure and to pay workers; that when she came to Kenya to see the progress there was nothing to see but that the Defendant had mismanaged her other investments under his care. That was when their relationship soured.
18. The Respondent told the court in cross-examination that she paid for the properties in cash at an advocates' office. She testified that she only included the Appellant in the agreement since they were in an intimate relationship and that as a foreigner, she could not solely own land then. She added that she was forced to purchase land in Lango Baya where the Appellant engaged in cassava farming and a certain woman there demanded payment of Kshs. 175,000 -. That she ultimately paid the said amount. She was not aware how the Appellant had acquired the said plot which he had tried to sell to Priscilla.
19. Kingi Chapa (PW2) told the court that he has been the Respondent's personal driver from the year 2015. He testified that the Appellant and Respondent bought properties together but that they were all paid for by the Respondent as the Appellant was jobless. He told the court on cross-examination, that the plot in Gede was purchased by the Respondent who paid Kshs. 1,000,000 - as consideration, and that the agreement was done at Khaminwa & Company Advocates; that he had witnessed the agreement; that the purchase price was paid partly in cash and the balance on a later date. He added that Kilifi Weru 19 was paid in cash in full before the same advocates, though he was not sure of the purchase price.
20. On his part, the Appellant adopted his written statement dated 6<sup>th</sup> July 2021. He exhibited a sale agreement for the Ganda plot as D. Exh 1, and another agreement for sale of the same plot to Priscilla as D. Exh 2. He narrated that when Priscilla could not complete the purchase price, she demanded a refund of the Kshs. 175,000 already paid. He did not have the money and so he requested the Respondent to assist. She did assist on condition that she is in the agreement. He exhibited as D. Exh 3, an agreement for refund of money. The Appellant also exhibited an agreement for the purchase of the Gede plot as D. Exh 4, and a construction agreement between himself and the Respondent and a contractor, as D. Exh 5. He told the court that he gave a deposit of Kshs. 70,000 - for the Gede plot and that the Respondent paid Kshs. 1.1 million for purchase of the same. He admitted that the Respondent paid Kshs. 7.3 Million in respect to D. Exh 5 and was financing the construction.
21. He testified that he bought 17.7 acres of the Weru plot (Kilfi Weru 19) in September 2014 for a consideration of Kshs. 15,000 per acre and that he took possession upon payment of the deposit. He stated that the Respondent came in later in 2015 when she visited the said plot and when he was asked by the ranch officials to make further payment. He exhibited an agreement with Weru Ranch over the said plot as DExh 6. The Appellant further testified that in sum, he paid Kshs. 100,000 for this plot but he later discovered that he had purchased the same from alleged wrong officials of the ranch. He confirmed that he did not have any agreement with the said wrong officials. He added that when the Respondent partnered with him, they entered into another agreement (D.Exh 6) for 17.7 acres at a consideration of Kshs. 885,000 -; that he contributed Kshs. 120,000 - to that amount. He did not however have any evidence of the same. He confirmed that at one point, the Respondent bought him a car worth Kshs. 700,000 - which he later sold and kept the money to himself. He affirmed that the Respondent would send her money for different issues and that as a farmer, he had money of his own.



22. Upon considering the pleadings, evidence adduced, and submissions by both parties, the trial court delivered its judgment on 22<sup>nd</sup> March 2023. The trial court found that the Respondent had contributed in the purchase of 1 acre of Plot No. 39 Ganda and that a constructive trust had been established by the Appellant in signing the agreements for the sale and purchase of Gede Mijimboni 1394 and 17.7 acres in Weru Ranch and that he failed to prove his contribution toward their purchase. The court entered judgment in the following terms:
1. A declaration be and is hereby issued that the Plaintiff Fulop Olag Balazs is the lawful and sole proprietor of all those parcels of land known as Gede Mijimboni 1394 and 17.7 acres of Kilifi Weru 19;
  2. A permanent injunction is hereby issued restraining the defendant, his servants, agents, representatives and or any persons acting under the Defendant's authority from entering upon, trespassing, selling, transferring, disposing and or transacting with all those parcels of land known as Gede Mijimboni 1394 and 17.7 acres of Kilif Weru 19;
  3. A declaration be and is hereby issued that the Plaintiff is entitled to a refund of Kshs. 175,000 - being the amount paid in regard to 1 acre of Plot No. 39 Ganda and the same be refunded to her by the Defendant within 90 days from today's date failure to which the Defendant does transfer to the Plaintiff ½ acre of plot no. 39 Ganda;
  4. The counterclaim fails and is dismissed;
  5. The Defendant to bear the costs of the counterclaim and the suit.

### **Analysis And Determination**

23. It is trite law that he who alleges must prove. Section 107(i) of the *akn ke act 1963 46 Evidence Act* provides that
- “Whoever desires any court to give Judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
24. In this appeal, the fundamental question for determination is whether the learned trial magistrate erred in finding that the Respondent solely financed the acquisition of the suit properties (Gede Mijimboni 1394 and 17.7 acres of Kilif Weru 19), thereby creating a resulting trust in her favour, and whether the Appellant proved his alleged contributions sufficient to warrant a finding of joint ownership. Additional to this is whether the trial court erred in granting relief in respect of Plot No. 39 Ganda when the same was allegedly not specifically pleaded or proved.
25. The burden of proof, as already established, lies with the person asserting a fact, in this case, the Appellant who alleged joint contribution of the purchase price for Gede Mijimboni 1394 and 17.7 acres of Kilif Weru 19. Section 107 of the *akn ke act 1963 46 Evidence Act* places the evidential burden upon him. Mere assertions or allegations without documentary or credible oral evidence cannot suffice to discharge this burden.
26. Having perused the record, I find that the Respondent exhibited a copy of a sale agreement (P.Exh 3) and paid in cash the sum of Kshs. 1,100,000 - for the purchase of Gede Mijimboni 1394. The Appellant on the other hand claimed that he had already paid a deposit of Kshs. 70,000 - and the Respondent came in later to complete the purchase price. While this assertion by the Appellant was not substantiated with any evidence whatsoever, it was also not supported by the contents of the sale



agreement which favored the Respondent's narrative. According to that agreement, the part payment was recorded as Kshs. 800,000 - and not Kshs. 70,000 - as alleged by the Appellant.

27. In relation to the 17.7 acres at Kilifi Weru 19, the Respondent claimed that she paid Kshs. 885,000 - for the same and as per the agreement (P.Exh 1), she paid a deposit of Kshs. 500,000 and the balance was to be paid at a later date. The Appellant did not refute this claim. Instead, he stated that he had initially paid Kshs. 100,000 - for 20 acres, which he later discovered, the said vendors were not members of Weru Group Ranch. Subsequently, together with the Respondent, he entered into another agreement (P.Exh 1) where the Respondent paid the sum of Kshs. 885,000 -. Notably, the Appellant again failed to exhibit any evidence to support payment of the Kshs. 100,000 - or the said first agreement with the wrong people. His claim for contribution was therefore unsubstantiated.
28. The Respondent averred that her decision to include the Appellant in the agreement was purely so he could hold the properties in trust as they were having an affair and since she was a foreigner and could not at the time put her name solely as the purchaser.
29. The Court of Appeal in *Juletabi African Adventure Ltd & another v Christopher Michael Lockley* [2017] KECA 118 (KLR) explained the law on trust clearly as follows: -

“27. In *Twalib Hatayan Twalib Hatayan & Anor vs. Said Saggat Ahmed Al-Heidy & Others* [2015] eKLR, this Court examined and stated the law on trusts as follows: -

“According to the Black's Law Dictionary, 9th Edition; a trust is defined as

“1. The right, enforceable solely in equity, to the beneficial enjoyment of property to which another holds legal title; a property interest held by one person (trustee) at the request of another (settlor) for the benefit of a third party (beneficiary).”

Under the *akn ke act 1929 28 Trustee Act*, “... the expressions “trust” and “trustee” extend to implied and constructive trust, and cases where the trustee has a beneficial interest in the trust property...”

In the absence of an express trust, we have trusts created by operation of the law. These fall within two categories; constructive and resulting trusts. Given that the two are closely interlinked, it is perhaps pertinent to look at each of them in relation to the matter at hand. A constructive trust is an equitable remedy imposed by the court against one who has acquired property by wrong doing. ... It arises where the intention of the parties cannot be ascertained. If the circumstances of the case are such as would demand that equity treats the legal owner as a trustee, the law will impose a trust. A constructive trust will thus automatically arise where a person who is already a trustee takes advantage of his position for his own benefit (see *Halsbury's Laws of England supra* at para 1453). As earlier stated, with constructive trusts, proof of parties' intention is immaterial; for the trust will nonetheless be imposed by the law for the benefit of the settlor. Imposition of a constructive trust is thus meant to guard against unjust enrichment. ...



A resulting trust is a remedy imposed by equity where property is transferred under circumstances which suggest that the transferor did not intend to confer a beneficial interest upon the transferee ... This trust may arise either upon the unexpressed but presumed intention of the settlor or upon his informally expressed intention. (See Snell's Equity 29th Edn, Sweet & Maxwell p.175). Therefore, unlike constructive trusts where unknown intentions maybe left unexplored, with resulting trusts, courts will readily look at the circumstances of the case and presume or infer the transferor's intention. Most importantly, the general rule here is that a resulting trust will automatically arise in favour of the person who advances the purchase money. Whether or not the property is registered in his name or that of another, is immaterial (see Snell's Equity at p.177) (supra)." Emphasis added

29. Applying the emphasized principles to the case before us, all indications are that a resulting trust arose as between the respondent and the 1<sup>st</sup> appellant. As stated in the authority above, a resulting trust will automatically arise in favour of the person who advances the purchase money. Whether or not the property is registered in his name or that of another, is immaterial. It is common ground that all the purchase money for both the vehicle and the parcel was advanced by the respondent. The parcel and vehicle were therefore held in trust for the respondent by the 1<sup>st</sup> appellant."
30. Bearing the above principles in mind, I find that the trial magistrate was justified in finding that the Appellant had failed to establish his contribution towards the acquisition of the two parcels. This Court finds no misdirection on evidence or law in that regard. The evidence on record supported the inference of a resulting trust in favour of the Respondent, I therefore see no basis to disturb the trial court's finding on that.
31. On the issue of Plot No. 39 Ganda, the Appellant contended that the trial court granted reliefs not specifically sought in the Respondent's pleadings. I have carefully examined the plaint. While the Respondent claimed ownership of Plot No. 39 Ganda alongside the other two parcels, the relief ultimately granted was a conditional refund of Kshs. 175,000 - or, in default, transfer of half an acre of the said plot. This was based on evidence that the Respondent paid the said amount to assist the Appellant in refunding monies to a third party, Priscilla Jumwa, after a failed sale. The Respondent herself testified that the payment was made on condition that her name be included in the transaction. Equally, the Appellant did not deny this.
32. That evidence, in my view, justified the court's finding that the Respondent was entitled to either reimbursement or proportionate interest in the plot to the extent of her contribution. Although the Respondent may not have specifically prayed for refund or transfer in those exact terms, she prayed for any other relief the court deems fit. In my view, the court was entitled to grant that relief as it clearly flowed directly from the parties' pleadings and evidence.
33. As already, established, the counterclaim was unsubstantiated and based on unsupported allegations. The trial court rightly dismissed the same.
34. In view of the foregoing, I find no merit in this appeal. It is hereby dismissed with costs.

**DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 25<sup>TH</sup> DAY OF NOVEMBER 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

