



REPUBLIC OF KENYA



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Njogu & 8 others v Thuo Investment Company Limited (Environment and Land Case 42"B" of 2022) [2025] KEELC 8561 (KLR) (4 December 2025) (Judgment)

Neutral citation: [2025] KEELC 8561 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 42"B" OF 2022**

JA MOGENI, J

DECEMBER 4, 2025

BETWEEN

JANE WAIRIMU NJOGU 1ST PLAINTIFF
AGNES NYAMBURA MAINA 2ND PLAINTIFF
ANASTACIA WANJIKU KIVILA 3RD PLAINTIFF
AGNES WANGECHI 4TH PLAINTIFF
CATHERINE NJERI NDUATI 5TH PLAINTIFF
MARY WANJIKU NDUATI 6TH PLAINTIFF
GRACE MUTHONI WAITHAKA 7TH PLAINTIFF
MARY WAITHERA KIMANI 8TH PLAINTIFF
MARGARET WANJIRU NDUATI 9TH PLAINTIFF

AND

THUO INVESTMENT COMPANY LIMITED DEFENDANT

JUDGMENT

1. This case concerns a sale of land bought by the Plaintiffs from the Defendant known and identified as plots Nos. 755, 757 and 759 measuring 3 acres (hereinafter 'suit properties') to be carved from or out of the said LR Block No. 1/6428 identified and shown to them by Mr Joseph Njoroge Thuo, a Director and Shareholder in the Defendant Company.
2. That the Plaintiffs upon visiting the Defendant offices and having been given a firm representation and/or promise by Joseph Njoroge Thuo, a Director and Shareholder in the Defendant Company completed the payments in order to get their 3 acres of piece of land.



3. The Plaintiffs made their payments for the suit property on 19/07/2022 of Kesh 1,300,000 through the Account No. 0240293712630 Equity Bank and they were issued with receipt No. 137 dated 19/07/2011. A further payment of Kesh 250,000 was made on 29/07/2011 and the Defendants issued the Plaintiffs with a receipt No. 590 dated 28/09/2011 in respect of the cheque No. 000032 for the stated amount.
4. A further payment of Kesh 400,000 was paid to the Defendant on 3/03/2012 and the Plaintiffs were issued with receipt number 366 on even date. And the final payment was made of Kesh 300,000 was paid to the Defendant Company through cheque number 000034 of Kesh 300,0000 and a receipt No. 497 dated 9/02/2012 (I presume this is an error in date) was issued to the Plaintiff. Bringing the total amount of money paid for the suit property to Kesh 2,250,000 being the amount agreed upon as per the terms of the agreement between the parties. Which sale agreement however the Director Mr Thuo asked them to give back to him with attached forms but he later declined to give the agreements back to them.
5. That consequently the Plaintiffs were issued with Certificates of Ownership through the Defendant being Certificates of Allotment numbers 271A, 271B and 271C respectively for Block 1/6428 Thika Kabati. That after a long time of following up, the Plaintiffs realized Mr Thuo's un-willingness to give them the land they purchased leading to the Plaintiffs reporting the matter to the Criminal Investigations Department which led to the Criminal Case No. 1296 of 2020 which is still pending in Court.
6. That when they went to collect the forms and agreements, they found the offices had been locked and on inquiry they were told that the Defendant had vacated the offices at night.
7. The Plaintiffs filed an authority to plead dated 7th Day of February, 2022 for the 1st and 8th Plaintiffs to plead, sign and swear any Court documents pertaining to this case on their behalf. (See page 24 and 25 of the Plaintiff's bundle).
8. So, the Plaintiffs seek orders for specific performance against the Defendant compelling the Defendant to cause the titles for plot Nos. 255, 257 and 259 of Block 1/6428 THIKA KABATI to be registered into the Plaintiff's names. They therefore through their Plaint dated 7/02/2022 pray for;
 - a. An order of specific performance direction that the Defendant transfers to the Plaintiffs the 3 acres of piece of land immediately.
 - b. An order for specific performance directing that the Defendant transfers to the Plaintiffs; the 3 acres piece of land immediately.
 - c. An order that the Defendant transfers to the Plaintiffs the 3 acres piece of land for the titles of Plot No. 255, 257 and 259 in respect of the 3 acres of Block No. 1/6428 THIKA KABATI.
 - d. Costs of this suit together with interest thereon at Court rates.
 - e. Any such and further relief as this Honorable Court may deem fit to grant.
9. The Defendant in response filed a Statement of Defence dated 24/10/2022 sworn by Joseph Njoroge Thuo the Director of the Defendant Company and denied all averments of the Plaintiffs. He denied showing the Plaintiffs plots Nos 755, 757 and 759 that were to be curved out of LR Block 1/6428. At the same time the Defendant denied receiving any money through its Director to subdivide 3 acres of the whole parcel LR Block 1/6428 and transferring the same to the Plaintiffs.



10. The Director denies issuing the Plaintiffs with Certificate of Allotment Nos. 21A, 271 B and 271 C since the Plaintiffs had no interest in LR Block 1/6428.
11. At the same time the Defendant denies the existence of Criminal Case No. 1296 of 2020.
12. The Plaintiffs filed a reply to the Statement of Defence pursuant to leave granted by the Court on 26th October 2022 and reiterated their pleadings as per the Plaintiff in paragraphs 4, 6, 8-11, 12, 13-17, 18 and 19, 20 -25 and 28 and they prayed for the Defendant's Defence to be struck out and Judgment be entered for the Plaintiffs.

Evidence tendered by the Plaintiff

13. The Court gave directions on hearing of the suit which was heard virtually on 22/1/2025. Jane Wairimu Njogu testified as PW1. She told the Court that she is a retired Nurse and she adopted her witness statement as her evidence in chief and her List of Documents as exhibits which are at pages 46-47. She asked the Court to allow her prayers made in the Plaintiff.
14. Upon cross-examination she told the Court that she knew some of the Plaintiffs before the cause of action. It was her testimony that she has never purchased land before and so she did not know anything about due diligence and that she got to know about it after the cause of action.
15. She told the Court that she is now aware that before one purchases land one must do a search and also enter into a Sale Agreement. She testified that they paid Kesh 1.3 million on 8/07/2011 and they completed to pay for the suit property in May 2012 which is about ten (10) months. She testified that she had attached receipts showing the names of Agnes and others but the receipts do not bear the name of Mary Wairimu or Jane Nduati.
16. According to PW1 their group was a Merry-Go-Round Group but it was not registered. In total she stated that the property cost them Kesh 2.25 million.
17. When she was re-examined, she told the Court that from the statement of account the 1st name is Mary Waithera and she is the 8th Plaintiff. The other name is Jane Wairimu Njogu, she is the 1st Plaintiff. According to her testimony, each plot was sold for Kesh 750,000. She told the Court that at page 30 of the Plaintiff there is a receipt from Thuo Investment Company dated 19/07/2011 it shows an amount of Kesh 1,300,000.
18. Further, at page 32 the receipt is from the same Company it is dated 29th July 2011 for Kesh 250,000. That at page 34 the receipt is from Margaret Wanjiru and Catherine for Kesh 400,000 dated 3/05/2012. Yet the one at page 36 is from Agnes Wangechi and others and it is for Kesh 300,000.
19. At page 28 the documents reflect an amount of Kesh 1,300,000 and at page 33 the statement shows Kesh 400,000 and the bank statement at page 35 is for Kesh 300,000 and she told the Court adding all up that is how she arrived at the total figure paid to the Defendant.
20. With that the Plaintiffs' Counsel sought leave to drop a hard copy of the Plaintiff at the customer desk since the Plaintiff was not in the trial bundle and leave was granted. With that the Plaintiffs closed their case at the close of PW1's testimony.

Evidence Tendered by the Defendant

21. The Defendant testified as DW1. He did not call any other witness. He adopted his witness statement as evidence in chief and List of Documents as exhibits. He told the Court that his prayer is that the



- case be dismissed with costs. He further testified that he never took the Plaintiff's land but that the Plaintiffs failed to facilitate conveyancing money for processing of title and Surveyor's fees.
22. He testified that the Plaintiffs had instituted a case in Thika but the case was dismissed. It was his testimony that the land is still there and it exists.
 23. Upon cross-examination DW1 stated that he did not know all the Plaintiffs because he cannot know all his clients. He told the Court that it is his evidence in this Court that the Plaintiffs should come to his office and he will show them the land after they pay for the conveyancing fees. It was his testimony that at page 30 of the Plaintiff's bundle there is a receipt from Thuo Investment.
 24. At this point the Court noted that the Defendant did not have the documents relating to his case especially those in the Plaintiff's bundle and it stood down the witness to allow him to acquire the documents so that cross-examination can be continued in person – meaning in open Court. The hearing was rescheduled to 5/02/2025.
 25. On the date of the hearing both the Defendant and his Counsel failed to appear in Court. The Plaintiff prayed that the Court issues a Judgment date due to the failure of the Defendant to attend Court. However, the Court exercised its discretion and in line with Article 159 (2) (d) issued another date for the hearing of the case and also awarded the Plaintiff costs of the day.
 26. The date for the hearing was set for 28/4/2025 but the Defendants did not attend Court again. The Court thus issued a date for Judgment and directions on filing of submissions.

Submissions

27. Parties did not file written submissions.

Analysis and Determination

28. I have anxiously considered the pleadings, the evidence, the submissions and the authorities cited by both parties.
29. From the pleadings filed and the evidence tendered by the parties, there is no dispute that the parties entered into a Sale Agreement which however was not produced in Court.
30. The circumstances under which the Plaintiffs and the Defendant entered into an agreement for sale of the suit properties are not disputed. As a matter of fact, the Defendant testified and stated that the land is available and all that the Plaintiffs had to do was to go to his offices to be shown the land and that they had to pay the conveyancing fees.
31. The Defendant did not produce in Court the Sale Agreement but in its bundle of documents the Defendant produced a copy of the minutes which is a record of the meeting held on 17/10/2022 for Thuo Investments Limited.
32. At Min2/19: Position of the parcel of Land Mitubiri/Wempa Block 1/6428, it is stated that the Directors/Shareholders upon being served with pleadings concerning claim of interest in the suit property they reviewed their register and records and ascertained that the said land was subdivided in 2011 and the parcels were advertised. That all purchasers who had fully paid the purchase price were issued with title deeds. At the said meeting it was resolved that DW1 will represent the Company in the ELC Case No. 42 of 2022.
33. It is therefore clear that the Company acknowledged that the suit property was divided and the suit land allotted to the purchasers who fully paid up the purchase price.



34. The Plaintiffs herein have claimed to have fully paid up for purchase of the suit property and they were awaiting their title documents which upon sensing was not forthcoming led to their filing the instant suit.
35. This fact of claim by the Plaintiffs is however disputed by the DW1 who states in the witness statement that the Plaintiffs are all not known to him a fact he told the Court since he said he cannot know all his customers. He also stated that the Plaintiffs did not pay the full purchase price and cannot therefore claim specific performance.
36. I observed that DW1 demeanor was shifty and he kept avoiding to answer questions put to him by Counsel for the Plaintiffs claiming not to have documents which are well in the custody of his Counsel pointing to a witness who is not truthful. He did not also produce in Court the Sale Agreements he alleged to have been witnessed and duly executed by Advocates. He chose to speak about purchasers in general in his testimony avoiding altogether providing information on the Plaintiffs and chose to dismiss their claim by testifying that they did not pay the full purchase price. He however did not provide evidence of what the full purchase price was and how much the Plaintiffs failed to pay.
37. I do note that documents submitted by the Plaintiffs do not bear the Sale Agreement between the Plaintiffs and the Defendant. Therefore, I cannot verify the averments of both the Plaintiffs and the Defendant. It was incumbent upon the Plaintiffs to ensure the Sale Agreement is included in their documents.
38. Yet I cannot turn a blind eye to the testimony of the Plaintiffs that the Defendant took the Sale Agreements and he did not give the documents back to them. This speaks of a party that is cunning and conniving hell bent on ensuring that the Plaintiffs who have paid for their land miss both the land and their money.
39. The Defendant said in his testimony, “Their land is still there It is my evidence in this Court that the Plaintiffs should come to my office I show them the land after they pay for the conveyancing fees.” The question then is why allow this matter to drag for this long in Court why did the Defendant allow the Plaintiffs to file this matter in Court yet they should have resolved based on the admission of the Defendant.
40. The *Law of Contract Act* generally requires contracts for the disposition of an interest in land to be in writing and signed by all parties. Without a written agreement, it is challenging to prove the existence and terms of the sale in Court.
41. However, the Court may consider other forms of evidence under certain limited circumstances:
 - a. Proof of Oral Agreement with Part Performance: The Court may give effect to an oral contract for the sale of land if there is evidence of part performance, such as the buyer taking possession of the land and developing it, or making significant payments.
 - b. Constructive Trust: In cases where it would be unjust or inequitable to allow the seller to deny the sale (e.g. after the buyer has taken possession and made developments), the Court may find that the seller holds the land as a constructive trustee for the buyer, even without a formal written agreement.
 - c. Admissibility of Unregistered Documents: An unregistered sale agreement or other related document might be admissible in Court as proof of an oral agreement (not as proof of a completed transfer) in a specific performance suit.



42. Ultimately, the burden of proof is on the party seeking specific performance to demonstrate, on a balance of probabilities, that a valid and enforceable contract exists and that they have performed, or are ready to perform, their part of the agreement. The absence of the main agreement significantly weakens the case, though it is not an absolute bar if sufficient compelling alternative evidence and equitable circumstances are presented.
43. While a formal Sale Agreement can be the basis for a trust, trusts can also arise in other situations, such as through express declarations, implied or resulting trusts, constructive trusts, or in the context of strict settlements. Whereas Section 3(3) of the Law of Contract refers to the requirements for a valid contract, it is possible that a trust can exist independently of those contract law requirements.
44. The evidence led by the parties herein indicates that it was the intention of Plaintiffs to purchase the portions of the suit property advertised by the Defendant according to the portions that corresponded with the contributions of each party. It is clear that the Plaintiffs had engaged with the Defendant with a view to securing their interest in the suit property. This included paying up the amount needed to secure their portions and seeking to obtain respective titles to individual subdivided portions of the suit property.
45. Applying the aforementioned principles to the instant suit, I find that the Plaintiffs intended to purchase the suit property from the Defendant. The fact that the suit property is registered in the Defendants' name is immaterial and does not vitiate the Plaintiffs' right to the suit property as the Defendant remains a constructive trustee in regard to the suit property. In the circumstances of this case, the Plaintiffs would suffer injustice if they are denied their share of the suit property. The doctrine of constructive trust therefore comes into play to ensure that the Plaintiffs herein, as the rightful owners retain a portion of the suit property that the Defendant has wholly registered in its name.
46. It was Defendant's contention that there was no written contract that the Plaintiffs could depend on as provided for under Section 3(3) of the Law of Contract. This cannot be anywhere near the truth, because property can be held in trust even if there is no formal Sale Agreement in the sense of a contract as defined by Section 3(3) of the Law of Contract. As already stated above, while a formal Sale Agreement is often the basis for a trust (where the seller holds the property on trust for the purchaser), other situations can also give rise to a trust such as the instant case where the purchaser has paid up for the entire purchase price.
47. The Supreme Court in the case of *Shah & 7 Others v Mombasa Bricks & Tiles Limited & 5 Others* (Petition 18 (E020) of 2022) [2023] KESC 106 (KLR) (28 December 2023) (Judgment [2023] KESC 106 (KLR) quoting from Halsbury's Laws of England 4th edition, volume 48 at paragraph 690 states as follows on constructive trusts:-

“A constructive trust will arise in connection with the legal title to property whenever one party has so conducted himself that it would be inequitable to allow him to deny to the other party a beneficial interest in the property acquired. This will be so where: (1) there was a common intention that both parties should have a beneficial interest; and (2) the claimant has acted to his detriment in the belief that by so acting he was acquiring a beneficial interest. The relevant intention of each party is the intention reasonably understood by the other party to be manifested by that party's words or conduct notwithstanding that he did not consciously formulate that intention or even acted with some different intention which he did not communicate. The first question is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the property, there has at any time prior to acquisition, or exceptionally at some later date, been any



agreement, arrangement or understanding reached between them that the property is to be shared beneficially. Such an agreement will be conclusive. Where the evidence is that the matter was not discussed at all, the Court may infer a common intention that the property was to be shared beneficially from the conduct of the parties. In this situation direct contributions to the purchase price by the party who is not the legal owner, whether initially, or by way of mortgage instalment, will readily justify the inference necessary to the creation of a constructive trust. Exceptionally the agreement, arrangement or understanding may be arrived at after the date of the original acquisition. Once common intention has been established, whether by direct evidence of common agreement or by inference from conduct, the claimant must show that he acted to his detriment in reliance on the agreement. The final question to determine is the extent of the respective beneficial interests. If the parties have reached agreement, this is conclusive. Where there is no agreement as to the extent of the interest, each is entitled to the share the Court considers fair having regard to the whole course of dealing between the parties in relation to the property.”

48. The doctrine of constructive trust as a basis for granting specific performance comes from the fact where one person holds legal title to property but has acquired it or is holding it in a way that is unfair or against the common intention of the parties. It is an equitable remedy the Court imposes to prevent a party from being unjustly enriched, and it can be used to ensure fairness in property disputes where a party has acted unconscionably or the strict legal title does not reflect the true equitable interests, which may then lead to an order for specific performance to fulfill the trust's obligation.
49. Where the Court finds that a constructive trust is established, the Court in most circumstances has issued an order of specific performance to enforce the terms of that trust. Where the legal owner is compelled to take a specific action, such as transferring the property to the beneficiary, thereby rectifying the unconscionable situation.
50. Thus, the use of a constructive trust and specific performance is rooted in equity, which allows Courts to go beyond the strict letter of the law to ensure justice is done.
51. From the instant suit, I have noted that the Plaintiffs had a common intention, reliance, and a consequent unconscionable act by the Defendants denying them a proprietary right that had accrued through the payment for the subdivided parcels.
52. At the same time, the Court is cognizant of circumstances where the order of specific performance is not available and these are instances where if any of the following is true:
 - i. Specific performance would cause severe hardship to the Defendant.
 - ii. The contract was unconscionable.
 - iii. Money damages are an adequate remedy.
53. I have considered the above circumstances and realized that the Defendant testified and stated that the land is available. If the land is available as stated by the Defendant, then it is only proper and just that the Plaintiffs should be issued with their title deeds upon paying for the conveyancing fees as already testified.



54. Therefore, a constructive trust is thus an equitable instrument which serves the purpose of preventing unjust enrichment. The Canadian Supreme Court in *Soulos v Korkontzilas*, [1997] 2 SCR 217, a case which involved a land dispute stated as follows, as to the purpose of constructive trust:

“The constructive trust is an ancient and eclectic institution imposed by law not only to remedy unjust enrichment, but to hold persons in different situations to high standards of trust and probity and prevent them from retaining property which in “good conscience” they should not be permitted to retain. While Canadian Courts in recent decades have developed the constructive trust as a remedy for unjust enrichment, this should not be taken as expunging from Canadian law the constructive trust in other circumstances where its availability has long been recognized. Under the broad umbrella of good conscience, constructive trusts are recognized both for wrongful acts like fraud and breach of duty of loyalty, and to remedy unjust enrichment and corresponding deprivation. While cases often involve both a wrongful act and unjust enrichment, constructive trusts may be imposed on either ground.”

55. I have already addressed the issue of the circumstances when an order of specific performance can be granted. An important consideration in determining whether or not order of specific performance as opposed to damages is whether the former will do more justice than the latter. The Court of Appeal stated as much in *Gharib Suleman Gharib v Abdulrahman Mohamed Agil* LLR No. 750 (CAK) Civil Appeal No. 112 of 1998:

“The jurisdiction to order specific performance is based on the existence of a valid and enforceable contract and being an equitable relief, such relief is more often than not granted where the party seeking it cannot obtain sufficient remedy by an award of damages the focus being whether or not specific performance will do more perfect and complete justice than an award of damages.”

56. The Defendant did not deny receiving Ksh 2,250,000 from the Plaintiffs in fact he told the Court that the suit property is there and that the Plaintiffs should go to his office so he shows them the land which will only be transferred once they pay conveyancing fees. So, from my understanding of the testimony of the Defendant the only stumbling block standing in the way of completion is the Plaintiffs’ failure to perform their part of the transaction such as paying for the conveyancing fees which allow for the doing of the actual sub-division.

57. Since the Defendant testified about the availability of the land and his willingness to allow the Plaintiffs to access the land, it will not be fair for the Plaintiffs who have had to file this case to force completion, to expect or force them to accept a refund yet the suit property is available for them.

58. Though the Defendant mentioned that there is another suit filed and that another suit was filed by the Plaintiffs but was dismissed, since he did not provide any proof of all these suits, I therefore find no basis in the averments that are unsubstantiated.

59. Therefore, since the transaction involved sale to the Plaintiffs of parcels of land which they paid for and provided proof of payment which fact was not denied, so the specific parcels of land with all their qualities, equity and justice demand that the Plaintiffs get their particular portions and not a refund of the purchase price which they paid. I am therefore satisfied that the Plaintiffs have made out a case for granting the relief of specific performance.

60. In the end, I enter Judgment against the Defendant as follows:



- a. An order of specific performance is hereby issued directing that the Defendant transfers to the Plaintiffs the 3 acres of piece of land immediately.
 - b. An order is hereby issued that the Defendant transfers to the Plaintiffs the 3 acres piece of land for the titles of Plot No. 255, 257 and 259 in respect of the 3 acres of Block No. 1/6428 Thika Kabati.
 - c. The Plaintiffs are directed to pay the conveyancing fees to enable the excision and immediate transfer of specific parcels of Block No. 1/6428 Thika Kabati to each Plaintiff.
 - d. The costs of this suit together with interest thereon at Court rates is awarded to the Plaintiffs.
- Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 4TH DAY OF DECEMBER, 2025 VIA MICROSOFT TEAMS.

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MOGENI J

JUDGE

In the presence of:

Mr. Jaoko for the 1st – 9th Plaintiffs

Defendant – Absent

Mr. Melita – Court Assistant

