



**Mbote v Mbote & another (Environment and Land Case 182 of 2019)
[2026] KEELC 605 (KLR) (9 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 605 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 182 OF 2019**

**MN KULLOW, J
FEBRUARY 9, 2026**

BETWEEN

PATRICIA KAMERI MBOTE PLAINTIFF

AND

EMILY WANJIRU MBOTE 1ST DEFENDANT

JACQUELINE ANNE NJERI MBOTE 2ND DEFENDANT

JUDGMENT

1. This is a dispute arising from an alleged land sale transaction involving a portion of land to be excised from Land Reference Number 1008/151 (Original Number 1008/39) situated in Karen, Nairobi. The Plaintiff seeks enforcement of the transaction against the legal representatives of the estate of the late William Njoroge Mbote, contending that she substantially performed her obligations while the deceased failed to complete the transfer.
2. The Defendants deny the existence of a valid and enforceable agreement and contend that the Plaintiff's claim is statute-barred and legally untenable. The Court is therefore called upon to determine whether, notwithstanding non-compliance with statutory formalities, the Plaintiff acquired an equitable interest capable of protection, and what reliefs, if any, should issue.

Plaintiff's Case

3. The Plaintiff's case is that at all material times the late William Njoroge Mbote (the deceased) was the registered proprietor of Land Reference Number 1008/151 (Original Number 1008/39) situated in Karen, Nairobi.
4. The Plaintiff and the deceased were related by marriage, the deceased being a paternal uncle to the Plaintiff's husband. In January 2005, the deceased offered to sell to the Plaintiff a portion measuring approximately 0.5 acres to be excised from the said parcel. Following negotiations, the parties entered



into a written agreement for sale in January 2005 at an agreed purchase price of Kenya Shillings Two Million Five Hundred Thousand (Kshs. 2,500,000).

5. Pursuant to the agreement, the Plaintiff paid an initial deposit of Kenya Shillings One Million One Hundred Thousand (Kshs. 1,100,000) on 24th January 2005. It was an express term of the contract that the balance of Kshs. 1,400,000 would be paid within fourteen (14) days of receipt of duly registered title documents in the Plaintiff's favour. Subsequently, at the request of the deceased and to facilitate completion of the transaction, the Plaintiff paid further sums of Kshs. 700,000 in August 2005 and Kshs. 500,000 in May 2007, bringing the total amount paid to Kshs. 2,300,000.
6. The Plaintiff avers that despite receipt of the substantial portion of the purchase price, the deceased failed, neglected and refused to finalize the subdivision and transfer process or to avail completion documents. The deceased's advocates similarly failed to respond to correspondence from the Plaintiff's advocates. Although the deceased, as a sign of good faith, allowed the Plaintiff to place a container on the designated portion of the land, the Plaintiff was unable to commence construction due to lack of title and approvals in her name. It was further agreed at a family meeting that the remaining balance of Kshs. 200,000 would be paid upon completion of the transfer, which never occurred.
7. The Plaintiff contends that the deceased and, following his death, the Defendants as his legal representatives have remained in continuous breach of the sale agreement by failing to procure subdivision approvals, provide rates and rent clearance certificates, furnish the original title, or execute transfer documents.
8. The Plaintiff asserts that the conduct of the deceased and his estate was malicious and in bad faith, intended to benefit from appreciation of the property's value. Despite formal demands and notice of intention to sue, the Defendants failed to complete the transaction, prompting the Plaintiff to seek reliefs including specific performance, permanent injunctive orders, or in the alternative a refund of Kshs. 2,300,000 together with interest and costs.

Defendants' Case

9. The Defendants' case is that save for matters expressly admitted, they deny all the allegations contained in the Plaintiff's case and put the Plaintiff to strict proof. They admit that the late William Njoroge Mbote was the registered proprietor of Land Reference Number 1008/151 (Original Number 1008/39) situate in Karen, Nairobi, but contend that they were not privy to any negotiations allegedly conducted between the deceased and the Plaintiff.
10. The Defendants state that they are strangers to the alleged agreement for sale, including any terms relating to the hiving off of a 0.5-acre portion, which they maintain is foreign and unsupported.
11. The Defendants further deny that there existed a valid and enforceable sale agreement, asserting that the alleged agreement relied upon by the Plaintiff is undated, its execution in January 2005 is denied, and its existence is put to strict proof.
12. They contend that the agreement is invalid in law, as it was not witnessed by an Advocate of the High Court of Kenya, an essential requirement for its enforceability. The Defendants also deny knowledge of or liability for the alleged payments, deposits, subdivision arrangements, possession, or completion obligations and maintain that the Plaintiff has failed to demonstrate any lawful contractual breach attributable to the deceased or his estate.
13. It is the Defendants' case that the Plaintiff's claim is time-barred, having been filed outside the statutory twelve-year limitation period prescribed under the *Limitation of Actions Act*. They assert that any alleged cause of action arising from the purported agreement is therefore bad in law, incompetent, and



unenforceable. On this basis, the Defendants deny all particulars of breach, reserve the right to raise a preliminary objection, and pray that the Plaintiff's suit be dismissed with costs.

Hearing

14. At the hearing of the suit, the Plaintiff testified as PW1 and called no other witnesses. She adopted her written witness statement dated 18th June 2025 as her evidence in chief and produced her trial bundle dated 18th June 2025, which comprised nine (9) documents, including the alleged agreement for sale, banker's cheques evidencing payments, correspondence exchanged between advocates, and demand letters. The Plaintiff's case was that she substantially performed her obligations under the agreement by paying Kshs. 2,300,000 and that the deceased failed to complete the subdivision and transfer.
15. The Defendants called two witnesses (DW1 and DW2). The witnesses testified on behalf of the estate of the deceased and challenged the Plaintiff's claim, including the existence, authenticity, and enforceability of the alleged agreement for sale. The Defendants also produced a defence bundle in support of their case.
16. At the close of oral testimony, the Court directed that the matter be disposed of by written submissions. Both parties complied with the directions and filed detailed written submissions addressing the issues arising from the pleadings and evidence on record.

Plaintiff's Submissions

17. In her submissions, the Plaintiff identified the issues for determination as: whether there existed a valid and enforceable agreement for sale, whether the Defendants as personal representatives were bound by the deceased's obligations, whether the claim was statute-barred, and whether the Court should grant specific performance or a refund with interest.
18. The Plaintiff submitted that although the agreement was not witnessed, it was signed by both parties, partially performed, and enforceable in equity through the doctrines of constructive trust and part-performance. She argued that failure to witness the agreement was a minor defect curable by equity.
19. The Plaintiff relied on several authorities in support of her position, including *Arvind Shah & 7 Others v Mombasa Bricks & Tiles Limited & 5 Others*, Petition No. 18 (E020) of 2022 [2023] KESC 106 (KLR) on constructive trusts and unjust enrichment; *Macharia Mwangi Maina & 87 Others v Davidson Mwangi Kagiri* [2014] eKLR on part-performance and overriding interests; *Centre Park Plaza Ltd v Rural Housing Estates Ltd*, Environment and Land Case E013 of 2021 [2021] KEELC 19864 (KLR) on limitation in land recovery claims; and *Jebungei & 4 Others v Serem & 2 Others* [2023] KEHC 1303 (KLR) on the power of courts to authorize the Deputy Registrar to execute transfer documents. The Plaintiff urged the Court to grant specific performance, or alternatively, a refund of Kshs. 2,300,000 with interest.

Defendants' Submissions

20. The Defendants framed their issues as: whether the alleged sale agreement was valid and enforceable, whether the Plaintiff proved payment and part-performance, whether the claim was time-barred, and whether the Plaintiff was entitled to the reliefs sought. They submitted that the alleged agreement was undated and not witnessed, rendering it invalid and unenforceable under Section 3(3) of the *Law of Contract Act*. The Defendants argued that equity could not be invoked to override a clear statutory provision and that the Plaintiff improperly shifted her case from contract to constructive trust.



21. The Defendants relied on authorities including *Diamond Trust Bank Kenya Ltd v Daniel Mwema Mulwa* [2010] eKLR on hierarchy of laws; *Ibrahim Mungara Kamau v Francis Ndegwa Mwangi* [2014] eKLR and *Joseph Ondiek Tumbo v Sony Sugar Co. Ltd* [2014] eKLR on delay defeating equity; *National Bank of Kenya Ltd v Ikinya & Another* [2023] KEHC 21071 (KLR) on burden of proof; and *Gitwany Investment Ltd v Tajmal Ltd & 3 Others* [2006] eKLR on strict proof of monetary claims. They further submitted that the Plaintiff failed to prove receipt of the alleged payments and that the suit, having been filed over a decade after the alleged cause of action, was statute-barred and ought to be dismissed with costs.

Issues for Determination

The court consider the following issues for determination:

1. Whether there existed a valid and enforceable agreement for the sale of a portion measuring approximately 0.5 acres out of Land Reference Number 1008/151 (Original Number 1008/39) between the Plaintiff and the deceased.
2. Whether the Plaintiff's claim is statute-barred under the *Limitation of Actions Act*
3. Whether the Plaintiff is entitled to the reliefs sought, and if so, which reliefs should issue, including costs.

Analysis and Determination

Issue No. 1: Whether there existed a valid and enforceable agreement for the sale of a portion measuring approximately 0.5 acres out of Land Reference Number 1008/151 (Original Number 1008/39) between the Plaintiff and the deceased

22. The Court's starting point is the law governing contracts for the disposition of an interest in land as it stood at the time the alleged transaction arose. The applicable statutory provision is Section 3(3) of the *Law of Contract Act*, which provides as follows:
- a. "No suit shall be brought upon a contract for the disposition of an interest in land unless—
 - 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 was present when the contract was signed by such party."
23. These requirements are mandatory. A contract for the sale of land must therefore be in writing, signed by the parties, and duly attested. The document relied upon by the Plaintiff, though reduced into writing and signed, was neither attested nor dated. It follows that the alleged agreement does not meet the statutory threshold and is incapable of enforcement as a contract simpliciter.
24. That conclusion does not defeat the Plaintiff's claim. Kenyan law has long recognised that equitable interests in land arise independently of formal contractual compliance. This position is now expressly codified under Section 38(2) of the *Land Act*, which excludes from statutory formalities the creation or operation of a resulting, implied, or constructive trust.
25. Equity intervenes to prevent unconscionable conduct and unjust enrichment. In *Arvind Shah & 7 Others v Mombasa Bricks & Tiles Limited & 5 Others* [2023] KESC 106 (KLR), the Supreme Court



affirmed that constructive trusts arise by operation of law from the conduct of the parties and are recognised as overriding interests under Section 28 of the *Land Registration Act*.

26. The evidence establishes that the Plaintiff paid a total sum of Kshs. 2,300,000, being a substantial portion of the agreed consideration, and that the deceased accepted those payments over time. The deceased further permitted the Plaintiff to take possession of the identified portion, including the placement of a container thereon. These acts are wholly inconsistent with preliminary negotiations or a gratuitous arrangement and are only explicable on the basis of a concluded land transaction.
27. The balance of the purchase price was expressly deferred pending subdivision and transfer, obligations that lay with the vendor. The Plaintiff cannot therefore be faulted for non-completion where performance was dependent on acts to be undertaken by the deceased.
28. The Court of Appeal in *Macharia Mwangi Maina & 87 Others v Davidson Mwangi Kagiri* [2014] eKLR held that where purchase money has been paid and possession granted, a constructive trust arises notwithstanding non-compliance with statutory formalities. The trust arises from the parties' conduct, not from the written instrument.
29. The Defendants' reliance on the absence of a formally compliant agreement is misplaced. While fatal to a purely contractual claim, it cannot defeat an equitable claim where the estate continues to retain substantial purchase monies without conveying the corresponding proprietary interest. Equity does not permit a party to retain the benefit of a transaction while repudiating its obligations.
30. The Court therefore finds, and so holds, that although the alleged agreement for sale is unenforceable as a statutory contract, the conduct of the deceased and the Plaintiff created a constructive trust over the portion measuring approximately 0.5 acres out of Land Reference Number 1008/151 (Original Number 1008/39) in favour of the Plaintiff.

Issue No. 2: Whether the Plaintiff's claim is statute-barred under the *Limitation of Actions Act*

31. The Defendants contended that the Plaintiff's claim is time-barred on the basis that the alleged agreement was entered into in January 2005, while the suit was instituted in 2018, well outside the twelve-year limitation period prescribed for actions founded on contract or for recovery of land. The Court is therefore required to determine the applicability of the *Limitation of Actions Act* to the claim before it, having regard to the nature of the cause of action disclosed.
32. Section 7 of the *Limitation of Actions Act* provides as follows: "An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person."
33. Similarly, Section 4(1)(a) of the Act provides that actions founded on contract may not be brought after the expiry of six years from the date the cause of action accrued.
34. However, limitation is not determined merely by the form in which a claim is pleaded, but by its substance. Where a claim is founded on equity, particularly on the existence of a constructive trust, different considerations apply. Section 20(1)(b) of the *Limitation of Actions Act* expressly provides: "None of the periods of limitation prescribed by this Act apply to an action by a beneficiary under a trust, which is an action—
 - (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee or previously received by the trustee and converted to his use."
35. The Court must therefore determine whether the claim before it is one founded on contract simpliciter, or whether it is a claim by a beneficiary seeking to enforce rights arising from a



constructive trust. As already determined under Issue No. 1, the Plaintiff's claim is anchored not on the enforceability of the sale agreement per se, but on the equitable doctrine of constructive trust arising from part performance and the conduct of the deceased.

36. In the present case, the evidence shows that the deceased repeatedly acknowledged the transaction, received substantial portions of the purchase price, sought additional payments on the premise of completing the transfer, and permitted the Plaintiff to take possession in part. There is no evidence that the deceased expressly repudiated the Plaintiff's interest during his lifetime. On the contrary, the dealings between the parties continued over the years, including correspondence and requests for facilitation of completion. Time, therefore, could not begin to run against the Plaintiff while the trust relationship subsisted and had not been openly disclaimed.
37. The Court further notes that to uphold the plea of limitation in the circumstances of this case would result in the Defendants retaining both the land and the substantial purchase monies paid by the Plaintiff. Such an outcome would offend the equitable principle against unjust enrichment and would be inconsistent with Article 159(2)(d) of *the Constitution*, which enjoins courts to administer justice without undue regard to technicalities.
38. The Court finds that the Plaintiff's claim is not statute-barred. The claim is founded on a constructive trust, to which the limitation periods under Sections 4 and 7 of the *Limitation of Actions Act* do not apply by virtue of Section 20(1)(b) of the Act. Consequently, the Defendants' plea of limitation fails.

Issue No. 3: Whether the Plaintiff is entitled to the reliefs sought, and if so, which reliefs should issue

39. Having found, under Issue No. 1, that a constructive trust arose in favour of the Plaintiff over a portion measuring approximately 0.5 acres out of Land Reference Number 1008/151 (Original Number 1008/39), and having further found, under Issue No. 2, that the Plaintiff's claim is not defeated by limitation, the Court must now determine the appropriate reliefs available in law and equity.
40. The Plaintiff sought, in the main, an order of specific performance compelling the Defendants, as legal representatives of the estate of the deceased, to complete the transaction and transfer the said portion of land. In the alternative, the Plaintiff sought a refund of the sums paid together with interest.
41. Specific performance is an equitable remedy, granted at the discretion of the Court. It issues where there exists a valid and enforceable obligation, where damages would not be an adequate remedy, and where the conduct of the party seeking the relief is blameless. The Court is guided by the well-settled principle that equity treats as done that which ought to be done.
42. In *Willy Kimutai Kitilit v Michael Kibet* [2018] eKLR, the Court of Appeal held that at Paragraph 26 "Upon the application of the equitable doctrines, the court in its discretion may award damages and where damages are an inadequate remedy grant the equitable remedy of specific performance."
43. In the present case, the Plaintiff paid a total sum of Kshs. 2,300,000 towards the agreed consideration of Kshs. 2,500,000. The balance of Kshs. 200,000 was expressly deferred pending completion of subdivision and transfer, obligations that lay with the vendor. The deceased failed to complete those obligations, not due to any default on the part of the Plaintiff, but due to his own inaction. The Plaintiff demonstrated readiness and willingness to complete the transaction and, in good faith, took possession to the limited extent permitted.
44. The Court is satisfied that damages would not constitute an adequate remedy in the circumstances of this case. The subject matter is a specific portion of land in Karen, whose location, character, and value are not readily replaceable by a monetary award. Moreover, to confine the Plaintiff to a refund after



more than a decade of delay would allow the estate of the deceased to benefit from its own default and from the appreciation of the land, a result equity cannot countenance.

45. The Defendants argued that defects in the agreement and the lapse of time disentitle the Plaintiff to specific performance. That argument cannot stand in light of the Court's finding that the Plaintiff's claim is anchored on constructive trust and part performance. Equity will not permit a trustee, or those claiming through him, to rely on technical deficiencies to defeat a beneficiary's interest.
46. That said, equity must also do justice to all parties. The Court notes that the Plaintiff did not pay the full purchase price, albeit for reasons attributable to the vendor. It would therefore be inequitable to order transfer without addressing the outstanding balance. Justice is achieved by ordering completion upon payment of the balance of the purchase price.

Final Orders:

- a. An order of specific performance is hereby issued compelling the Defendants, as the legal representatives of the estate of the late William Njoroge Mbote, to complete the subdivision and transfer to the Plaintiff a portion measuring approximately 0.5 acres out of Land Reference Number 1008/151 (Original Number 1008/39) upon payment by the Plaintiff of the balance of the purchase price in the sum of Kshs. 200,000 within thirty (30) days from the date of this judgment.
- b. The Defendants shall, within ninety (90) days from the date of this judgment, procure all requisite consents, approvals, and clearances, and shall execute all documents necessary to effect the subdivision and transfer in favour of the Plaintiff.
- c. In default of compliance, the Deputy Registrar of this Court is hereby authorized, pursuant to Section 98 of the Civil Procedure Act, to execute all documents and deeds as may be necessary to perfect the Plaintiff's title, and the Land Registrar is directed to register the transfer accordingly.
- d. The Plaintiff shall have the costs of the suit, together with interest thereon at court rates.

It is so Ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 9TH DAY OF FEBRUARY, 2026.

MOHAMED N. KULLOW

JUDGE

Judgment delivered in the presence of: -

Ms. Cheruto for Simiyu for the Plaintiff

Mr. Stanley Mwangi for Juma for the Defendant

Philomena W. Court Assistant

