

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ELC CASE NO. 110 OF 2015

NILS STAFFAN WIRELL
PLAINTIFF

-VERSUS-

EMILY CHEPKOSGEY
DEFENDANT

JUDGMENT:

1. The Plaintiff instituted the present suit vide a Plaint dated on 29.01.2015 and Amended on 2nd May, 2019, against the Defendant, seeking the following ORDERS;
 - i. **An order that the joint ownership of parcel No. ELDORET MUNICIPALITY BLOCK 14/360 by the Plaintiff and the Defendant be and is hereby severed.**
 - ii. **A declaration that the plaintiff is the sole and absolute shareholder of the parcel No. ELDORET MUNICIPALITY BLOCK 14/360 and all the household good, equipment and fittings therein.**
 - iii. **A declaration that the Defendant holds and is registered as a Co-owner of the property No. ELDORET MUNICIPALITY BLOCK 14/360 in trust for the plaintiff.**
 - iv. **An Order that upon the severance of the joint ownership the property No. ELDORET MUNICIPALITY BLOCK 14/360 be sold at the market value and the**

- proceeds of the sale be used to pay the mortgage debt due to Nordea Bank in Sweden and the remainder of the proceeds be apportioned accordingly.
- v. An alternative prayer in terms of paragraph 11 and 12 above.
 - vi. An Order declaring that the defendant is accountable to the plaintiff in respect of all household goods and fittings and equipment amounting to Kshs. 5,000,000/=
 - vii. An order do issue to the Deputy Registrar authorizing her to sign any document the defendant may refuse to sign.
 - viii. Costs of this suit together with interest at Court rates.
 - ix. Any other or alternative relief which this Honourable Court deems fit to grant.

Plaintiff's Case:

2. The plaintiff avers that he solely sourced for funds by charging his properties in Sweden and securing a loan from Nordea Bank in Sweden to enable him purchase land parcel No. ELDORET MUNICIPALITY BLOCK 14/360 (hereinafter referred to as the suit land) measuring approx. 0.2Ha together with the developments thereon.

3. Pursuant to the said purchase, the suit land was jointly registered in the names of the plaintiff and the defendant as joint owners of the leasehold interest.
4. It is the plaintiff's claim that the registration of the suit land in their joint names was as a result of the close relationship and friendship between him and the defendant and maintained that the joint registration did not confer upon the defendant any proprietary rights over the suit land, particularly because the consideration price was paid solely by the plaintiff without any contribution by the defendant.
5. The plaintiff further averred that he incurred additional expenses of Kshs. 5.3 million and 3 million in building and refurbishing the servant's quarters and renovating the main house respectively.
6. It is also the plaintiff's claim that they entered into a Memorandum of Understanding (MOU) with the defendant, wherein they agreed with the defendant to dispose off the suit land to enable the plaintiff offset the loan in Sweden and the remaining balance would be used to purchase another portion of land for the defendant and build another house.
7. However, the defendant refused to honor the said MOU hence the filing of the instant suit. The plaintiff maintained that the joint ownership of the suit land has been severed and the defendant only holds the suit land in trust for the plaintiff. He outlined the particulars of trust thereto majorly premised on the reason that the plaintiff solely paid the

consideration price and financed the improvements thereon without any contribution from the defendant.

8. In the alternative and without prejudice to the foregoing, the plaintiff prayed for a declaration that he is the substantial shareholder of the suit land, all household goods, equipment and fittings therein and further that if the defendant is interested in having the suit land and the developments and improvements thereon, then the defendant be ordered to pay the plaintiff the full value of the suit land, all household goods, equipment and fittings or the value of a substantial share thereof.
9. It was his contention that the defendant's actions are inconsistent with the rights of the plaintiff as the owner of the suit land and very prejudicial to the plaintiff.
10. In conclusion, the plaintiff urged the court to allow his claim and grant the prayers sought in the Amended Plaint.

Defendant's Case:

11. The plaintiff's suit was opposed. The Defendant filed a Statement of Defence and Counter-Claim dated 13.06.2015, Amended on 30.05.2019 and Further Amended on 09.07.2019, wherein she denied all the allegations raised in the amended plaint and put the plaintiff to strict proof thereof.
12. The defendant stated that she cohabited with the plaintiff as husband and wife since the year 2010 and during their

cohabitation, the plaintiff presented her to the rest of the world as his wife.

13. It is her claim that on or about 17.03.2011, she jointly purchased the suit land and the erections thereon with the plaintiff, vide a sale agreement dated 17.03.2011. It is her contention that she single-handedly sourced and negotiated the purchase of the suit land and the erections thereon.
14. It is further her claim that she contributed to the purchase of the suit land hence the joint ownership/registration, which she maintained conferred upon her proprietary rights over the suit land. She thus dismissed the averments contained in paragraph 4A of the amended plaint.
15. She also denied the averments contained in paragraphs 5 of the amended plaint and put the plaintiff to strict proof thereof. In further response, it was her claim that the four bedroomed house and the servant's quarter were part of the developments on the suit land at the time of the purchase. She added that the suit land was purchased together with all the moveable properties as itemized in Schedule 2 of the Sale Agreement dated 17.03.2011.
16. It is her claim that in addition to contributing towards the purchase of the suit land, she has substantially renovated and made substantial improvements on the entire property and the erections thereon.
17. She denied the contents of paragraphs 7,8,9 and 10 of the Amended Plaint including the particulars of trust outlined

therein and maintained that she does not hold the suit property in trust for the plaintiff and put the plaintiff to strict proof thereof.

18. In the Amended Counter-claim, she reiterated the contents of her defence and maintained that she is entitled to a share in the property.
19. She sought judgment against the plaintiff/defendant in the counter-claim for: -
 - a. The Joint Ownership between the plaintiff and the defendant over land parcel number ELDORET MUNICIPALITY BLOCK 14/360 be severed and be divided equally between the plaintiff and the defendant with the option of the defendant buying out the plaintiff's half share of the property upon valuation of the property.

Trial:

20. The Plaintiff's case proceeded for hearing on 11.05.2022. Simon Kipkoech Mining testified as PW1. He informed the court that he is a Director of Research and he teaches medical doctors. He adopted his witness statement as his evidence in chief.
21. He also stated that he knows the plaintiff and the defendant who were friends.
22. On cross-examination, he reiterated that he knows the plaintiff and the defendant as friends. It was his testimony

- that he was not aware that the defendant was granted a co-habitant visa.
23. He also admitted that the suit property is registered in the joint names of the plaintiff and the defendant and the property was previously owned by Ugandan Missionaries.
 24. It was his testimony that he was not aware under what arrangements the property was purchased, and that he was not privy to the sale agreements.
 25. He stated that he only became aware that the plaintiff had taken a mortgage, after the parties had parted ways.
 26. When referred to an order of the court, it was his testimony that the same could not be implemented as the attempted mediation could not go on.
 27. He stated that there was another Memorandum of Understanding which the parties signed. He however conceded that it is the mediation agreement that should prevail. He also confirmed that the MOU was drawn and signed by Judge Robert K. Limo, who was appointed Judge in the year 2011.
 28. On re-examination, it was his testimony that the defendant was brought in to fast-track the registration of the property. Further, that the MOU could not work as the plaintiff had lost his three houses in Sweden.
 29. The Plaintiff testified as PW2. He adopted his witness statement dated 24.08.2021 as his evidence in chief.

30. He also produced his Bundle of documents which appears from page 17 to 62 to be produced as Pexh. 1, a Supplementary Bundle of Documents which appear on pages 78 to 149 and produced Pexh. 3.
31. He also produced the documents contained in the bundle dated 30.09.2021 from pages 159 to 252 and which he produced as Pexh. 4.
32. The Memorandum of Understanding was however marked for identification (PMFI 5) and the same was to be produced by the maker of said MOU.
33. On cross-examination, it was his testimony that he knew the defendant in the year 2010. When referred to the statement dated 25.09.2017, he confirmed that they had intended to start a family with the defendant. That he went to Sweden on 20.03.2011 and the defendant joined him on 16.04.2011. He acknowledged that he is the one who facilitated the defendant's travel to Sweden.
34. He confirmed that he assisted the defendant to have a co-habitant Visa in May 2012. That the defendant later got a Habitat Permit in June, 2012 in order to study at a local university.
35. When referred to a questionnaire on page 234 of the plaintiff's bundle on Part D, he confirmed that he has indicated that he was planning to marry the defendant and that they had a fixed relation.

36. He further confirmed that on Part B on the same document, he had indicated that the defendant was to stay with him in his house in Sweden and that they also had a Villa in Eldoret. He admitted that the villa referred to the suit property herein, also known as L.R. Eldoret Municipality/ Block 14/360.
37. It was his testimony that they purchased the suit property from Montague Formani and Elizabeth Asta Formani and they paid the entire purchase of Kshs. 14,000,000/= and that the money came from the account of the defendant.
38. He further conceded that that the Transfer indicated that they were joint transferees and that the title deed was issued indicating that they were joint owners.
39. He testified that the defendant had no money of her own in her account since she did not have any income and that he is the one who sent the money to the defendant's account. He maintained that the evidence that he sent money to the defendant's account is on page 199.
40. He added that he received 1410522 Swedish Kroner on 21.11.2011 and the following day, he sent 810900 Swedish Kroner to the defendant's account. That the explanation is contained on page 98 and 102, which shows that the amount was transferred to the defendant's account.
41. He however conceded that he did not have bank statements to show that the money was sent to the defendant's bank account.

42. When referred to his statements on pages 195 to 222, he admitted that the same does not indicate that the money was transferred to the defendant's account at Imperial Bank.
43. It was also his testimony that the defendant left Sweden in December, 2012 and came back to Kenya to live in the Villa, which they jointly owned at Elgon View.
44. He further conceded that they had agreed to equal sharing of the property or in the alternative one would buy off the other. On the other hand, it was also his testimony that he had no intention of selling the house as he has retired and he wanted to occupy the same since he had obtained a visiting professorship at Moi University.
45. He denied the averments that he had agreed to buy a $\frac{1}{2}$ an acre portion for the defendant at Elgon View and build her a house similar to the Villa.
46. It was his contention that they tried mediation but it did not work. He however admitted to have signed 6 mediation settlements and which were finally adopted by a judge. He stated that it is not true that the only issue he had with the mediation is that he wanted to impose his own value. It was his testimony that he did not agree with the mediation agreements which he signed.
47. It was his claim that the value of the suit property was Kshs. 25,000,000/= as at 2017. That the government valuer gave the value of the suit property as Kshs. 27,500,000/= as at February 2021.

48. He denied the claims made that he is demanding that the suit property be valued at Kshs. 40,000,000/=. He confirmed that he has not engaged another valuer to value the suit property. He however stated that the estimated value to expect is between Kshs. 40 - 45 million.
49. It was further his testimony that he wants the property to be sold by way of public auction. That Highlands Valuers advised him that if the property is sold through bidding, the price would go up.
50. He went on to state that he had a mortgage of 1,400,000/= Swedish Kroner with an interest of 2.5%. He however confirmed he had cleared the mortgage.
51. Further, he testified that he is the one who deposited Kshs. 150,000/=at the offices of Kamau Lagat, which the defendant used to reinforce the perimeter wall which had collapsed. He dismissed the averments that the perimeter wall and internet repairs costs Kshs. 5,000,000/=. He stated that it would costs about Kshs. 1,000,000/=to put up a three bedroomed bungalow.
52. In conclusion, it was his testimony that he would go with what the MOU stated and confirmed that the MOU was drafted and signed by Robert Limo and at the time of the same, he was aware that the said Robert Limo was going to be appointed judge.
53. On re-examination; he restated that his relationship with the defendant was boyfriend and girlfriend and the said

relationship ended in December, 2012 and thus lasted only 2 years. He therefore stated that the issue of breach of promise to marry does not arise.

54. He stated that the defendant joined a tourism college while in Sweden. When referred to the document at page 234 of his documents, he confirmed that the same was an application for a visa but maintained that the said document is not conclusive evidence that he was going to marry the defendant. He also admitted that he is the one who tendered the said document to the Embassy.
55. He also clarified that even though the purchase money came from the defendant's account, he is the one who used the loan proceeds and channeled the same to the defendant's account. He informed the court that he had provided the translated copies of his bank statement as well as the originals.
56. When referred to the mediation agreements, it was his testimony that the defendant did not contribute any monetary contribution. He however admitted that the defendant has been residing on the suit property,
57. He maintained that the mediation agreement was not binding upon him and that is why the court allowed him to proceed with the hearing of the case.
58. On the issue of the MOU, it was his testimony that he witnessed the defendant sign the MOU of the suit property. He maintained that the defendant is a trustee of his lawful

- property. That he only purchased the suit property with the defendant because he was a foreigner and he wanted a local who knew the country's laws.
59. He further restated that the loan which he took has not been cleared. That he has only cleared about 2.5% of the loan. That he entered into the MOU in order to repay the loan that he had taken.
 60. It was also his testimony that he had not been shown any evidence that the defendant had used Kshs. 5,000,000/= in renovating the suit property. He maintained that he is the one who financed the renovations and that the evidence of the financing can be found on pages 124 to 149 of his bundle. He maintained that the said emails had not been challenged by the defendant.
 61. Justice Robert K. Limo testified as PW3. He stated that he is currently a High Court Judge stationed in Kitale, having joined the bench in July, 2014. That prior to joining the bench, he was in private practice, practicing in the name and style of Limo R.K. & Co. Advocates.
 62. It was his testimony that the Memorandum of Understanding entered on 28.09.2013 between Nils Staffan Wirell and Emily Chepkosgey, was as a result of an agreement that was reached by the two parties which he then reduced into the MOU as per their instructions. He confirmed that the MOU was in respect of Eldoret Municipality Block 14/360 which had developments thereon.

63. He went on to state that the two parties were in a relationship and were cohabiting together. That the said Nils Steffan has a problem with a loan which he had secured in his home country, Sweden. That the plaintiff was desirous of servicing the loan and he therefore wanted the property to be sold in order to service the loan. That the concern of the defendant was however where she was going to live.
64. He confirmed that he listened to both parties and drafted the MOU, read the same to them and they both signed and he also counter-signed. He thereafter produced the said MOU as Pexh. 8 in support of the case.
65. On cross-examination, it was his testimony that the parties went to him in a sober state of mind and they both executed the MOU willingly, and nobody exhibited that he/she was under any pressure.
66. He further stated that the plaintiff had quite a number of documents that showed that he had taken a loan and the loan was due. It was also his testimony that the plaintiff was working on a contract and what he was earning was insufficient to service the loan. He confirmed having seen the documents but conceded that he could not recall the exact amount of the loan due as Kshs. 14 million.
67. He maintained that he was not aware of anything that happened after he drew and signed the MOU, neither was he privy to the mediations thereafter.

68. There was no re-examination. The plaintiff thereafter closed his case.
69. The defence case proceeded for hearing on 16.09.2025. The defendant, Emily Chepkosgey testified as DW1. She stated that she is a businesswoman, a farmer and a Director of Chamber of Commerce, Uasin Gishu, representing women in business. She adopted her witness statement as her evidence in chief.
70. She also confirmed knowing the plaintiff, who was her husband as they cohabited from the year 2010 to 2016, both in Kenya and in Sweden.
71. It was her testimony that in the course of their cohabitation, they acquired properties including the suit property herein where she has been living since the year 2011 to date.
72. She testified that they entered into a sale agreement and purchased the suit land jointly. She also confirmed that the title is in their joint names and they own the suit land on the ration of 50:50.
73. She produced the documents in her List of Documents dated 14.08.2019 as Dexh. 1 - 24 and the Further List of Documents dated 21.10.2022 which were marked as Dexh. 25 - 29 respectively. The documents in the list of documents dated 08.03.2023, which had valuation reports were produced and marked as Dexh. 30 & 31 respectively.
74. She further stated that the matter had been referred to mediation and they reached several settlements. That it was

ruled that they share out 50:50 and they file valuation reports.

75. It was her contention that they both signed the mediation agreement and maintained that they did not agree on any loan repayment issue that would go against the share of 50:50.
76. She reiterated that they had agreed on everything at the mediation except the valuation. That the Government valuer put the value of the property at Kshs. 27,000,000/= while her private valuer put the value at Kshs. 28,000,000/=. She however stated that she has not seen any valuation report by the plaintiff.
77. In concluding her evidence in chief, she asked the court to order that they go as per the mediation report and they buy themselves out with her first and if she is unable, they sell it out and share the proceeds. She stated that she would be willing to pay the plaintiff his share of Kshs. 13,000,000/= within 60 days or such time as the court may order and that each party to bear their own costs.
78. On cross-examination, she dismissed the allegations that they are before court because they did not agree or reach a conclusion in the matter. She however conceded that she could not remember of any order by Hon. Odeny J. stating that there were any unresolved issues by the parties. That she is also not aware of any orders by Obaga J. that some

- issues remained unresolved. She stated that Mr. Kizito (now Judge) presided over the mediation and most issues were resolved in the mediation.
79. She confirmed that she was aware of the MOU dated 28.09.2013 but averred that the same had been overtaken by events. It was her testimony that she signed the document under duress. That she signed the document with a vague signature.
80. She confirmed that they lived with the plaintiff as husband and wife since the year 2010. When referred to the document dated 03.08.2012, she stated that the same was an application to the Registrar of Marriages in which she stated that she intended to get married. When referred to the document dated 07.06.2011, it was her testimony that she was applying to travel as they intended to marry and denied the allegation that she was applying to travel for academic purposes. It was also her testimony that she did not state that they were married but that she stated that they lived as husband and wife.
81. When referred to the document dated 28.03.2011, she admitted that the bank stated that opens a personal account but conceded that the same did not give the account number. She further admitted that there was no statement to show her account details
82. She conceded that from the MOU, it was stated that the property was purchased through a mortgage facility in

Sweden. Further, it is also contained in the MOU that once the property is sold, Kshs. 14,000,000/= would be used to service the loan in Sweden and the balance of Kshs. 4,000,000/= to be used to buy a ½ acre plot to put up a matrimonial house for the parties to live in. She also confirmed that it was contained in the MOU that the suit property is to be leased out and the money to be used to settle the loan.

83. On re-examination, it was her testimony that when they purchased the property, they were living as husband and wife. That they cohabited from the year 2010 to 2016 and even went to Sweden on a spousal visa.
84. She reiterated that when they purchased the property in the year 2011, it was 50:50 contribution. That it was not an issue where each one of them sourced the funds from.
85. It was her testimony that she had not asked that she be refunded her contribution because it would negate the 50:50 joint ownership. She maintained that she did not enter into any agreement to refund the plaintiff any interest. That the purchase price was Kshs. 10,000,000/= and Kshs. 4,000,000/= for the movables. She admitted that she was shown that there was a loan over the property.
86. With regards to the MOU, it was her testimony that in view of the mediation settlement agreements, the MOU was

overtaken by events. She further reiterated that the property is jointly registered in their joint names.

87. On conclusion of the re-examination, the Defence thereafter closed their case.
88. Upon close of the defence case, this court issued directions on the filing of final written submissions. The plaintiff filed his submissions together with authorities on 17.10.2025 while the defendant filed her submissions together with authorities on 12.11.2025 together with authorities, which I have read and duly considered.

Analysis and Determination:

89. I have carefully considered and reviewed the pleadings herein, the testimonies by the parties and their witnesses, the respective exhibits, rival submissions as well as the mediation settlement agreement in totality.
90. Before delving into the issues for determination, I wish to restate that this matter was referred to court annexed mediation process and a partial settlement agreement reached and which was subsequently adopted as an order of the court by Hon. Lady Justice M. Odeny J. on 20.11.2019. The said settlement was reduced into 6 partial mediation settlement agreements.
91. For clarity purposes, I wish to reproduce the findings/conclusions in the said partial mediation settlement agreements as hereunder: -

92. 1st Partial Mediation Agreement dated 05.09.2019;
- i. Land Parcel No. Eldoret Municipality Block 14/360 is owned by Nils Staffan Wirell and Emily Chepkosgey
 - ii. There is a title deed in respect of the said parcel of land issued on 21.04.2011 in the names of Nils Staffan Wirell Swedish PP No. 90750195 and Emily Chepkosgey ID No. 14724083 measuring approx. 0.2108Ha.
 - iii. The property has a perimeter wall in three and $\frac{1}{4}$ sides with a main house with 4 bedrooms and a 2-bedroom servants' quarters.
93. 2nd Partial Mediation Agreement dated 05.09.2019;
- i. That the parties entered into a purchase/sale agreement dated 17.03.2011 with the former owners Montague Forman and Elizabeth Asta Foreman to purchase the house/land parcel No. Eldoret Municipality Block 14/360.
 - ii. The initial deposit of Kshs. 3,000,000/= was sent by Nils Staffan Wirell to Emily Chepkosgey who then paid the vendors.
 - iii. The entire purchase price was Kshs. 10,400,000/=
 - iv. That out of the balance of Kshs. 7,400,000/= the plaintiff paid Kshs. 400,000/=
 - v. The parties can no longer live together and cannot both live in the house herein.
94. 3rd Partial Mediation Agreement dated 09.09.2019;

- i. The suit land being land parcel No. No. Eldoret Municipality Block 14/360 be valued by a neutral valuer.
95. 4th Partial Mediation Agreement dated 11.09.2019;
- i. The joint ownership between the plaintiff and the defendant over land parcel No. Eldoret Municipality Block 14/360 be severed and partitioned equally between the plaintiff and the defendant.
 - ii. The defendant to have the first option to buy out the plaintiff upon valuation, within a period to be agreed, at market price.
 - iii. The plaintiff to exercise the 2nd option to purchase, upon default of the defendant in clause (2) above. The option to be exercised within a period to be agreed and at market price upon valuation by independent valuer.
96. 5th Partial Mediation Agreement dated 11.10.2019;
- i. The valuation report will give guidance on the market price for purposes of starting the process of negotiations on buying each other out.
 - ii. The parties agree that the county valuer Uasin Gishu County to carry out valuation with each party being at liberty to bring their own valuers.
 - iii. The parties agree that the valuation be done within 3 months from today and the report be filed in court within the said period.

- iv. The parties to share the government valuer's costs equally.
 - v. The parties to shoulder the costs of their respective valuers.
 - vi. The timelines for buying each other out shall be set by the advocates for the parties, within 21 days of the Report of the County Valuer being filed and parties notified.
97. 6th Partial Mediation Agreement dated 17.10.2019;
- i. The County Surveyor with title documents to facilitate valuation
 - ii. Parties and their advocates be at liberty to attend the valuation.
98. All the 6 partial mediation settlement agreements were adopted by the court (Hon. M. Odeny J.) on 20.11.2019 as orders of the court in partial determination of the dispute between the parties herein.
99. However, at the conclusion of the mediation process, there were some issues which the parties were unable to agree on and thus remained unresolved and which the mediator, vide the Mediator's Confidential Report dated 17.10.2019, referred to the court for determination.
100. Thus, in view of the above, this court's determination is only limited to the unresolved issues which the parties were

unable to agree on and the same will therefore form the basis of this court's issues for determination: -

- a. *Whether there is a loan due and whether the said loan will be taken into account if and when the property is sold.*
- b. *What was each party's contribution and whether the same should be taken into account if and when the property is sold.*
- c. *Who should bear the costs of the suit.*

Whether there is a loan due and whether the said loan will be taken into account if and when the property is sold;

101. It is the plaintiff's case that there is a loan due and owing. That he secured a loan facility of 1410522 Swedish Kroner and transferred 810900 Swedish Kroner to the defendant's account, which funds were used in purchasing the property.
102. It is his contention that he single-handedly purchased the property and even financed the renovations thereon without any contribution from the defendant at all.
103. In support of his averments, he produced the translated bank statement as well as the original statements as contained in pages 195 - 222. He also heavily relied on the MOU produced by PW3 as Pexh. 8 in further support of his claim.

104. In the end, he urged the court to be guided by the agreement contained in the MOU and to direct that the suit property be sold and the proceeds therein to be used in settling the loan due and owing to the Swedish Bank. It is further his claim that any balance remaining should then be divided between the defendant and himself.
105. The defendant on the other hand maintained that the MOU heavily relied upon by the plaintiff as the basis of the existence of the loan and the same being taken into account in the event of the sale of the suit property had been overtaken by events upon the filing of the suit herein and further by the Mediation Settlement Agreement reached by the parties and duly adopted by the court.
106. Before delving into the merits of this issue, it is important for this court to consider the effect of the said issue in light of the existence of the Mediation Settlement Agreements, and in particular the 4th partial mediation settlement agreement.
107. The 4th partial mediation settlement agreement provided that the joint ownership between the plaintiff and the defendant over land parcel No. Eldoret Municipality Block 14/360 be severed and partitioned equally between the plaintiff and the defendant.
108. In essence therefore, the effect of allowing this issue and directing that the loan be taken into account if and when the property is sold would amount to varying the mediation

order above, which directed that the same be partitioned equally.

109. Further and without prejudice to the foregoing, although from the testimony of PW3 and the statement contained in pages 195 to 222, it is clear that there may have been a loan, the purpose of the said loan is not clear. Further, on cross-examination, the plaintiff conceded that the statements produced does not indicate that the money was transferred to the defendant's account in Imperial Bank.
110. In view of the foregoing, it is the finding of this court that the effect of determining whether or not there was a loan taken and whether the same should be taken into account if and when the suit property is sold would amount to varying and/or reviewing the mediation settlement agreement duly adopted as an order of the court on the 20.11.2019 and the same is therefore not tenable.

What was each party's contribution and whether the same should be taken into account if and when the property is sold;

111. The second issue seeks to determine the contribution made by each of the parties towards the purchase of the suit property and whether the same should be taken into account if and when the property is sold.
112. It is the plaintiff's claim that he solely financed the purchase of the suit property and the developments therein and

further financed the renovations thereto. That he took out a loan facility in his country Sweden, transferred the funds to the defendant's bank account which were then used for the payment of the purchase price. He stated that the defendant did not make any contribution towards the purchase of the suit property since she had no income at the time of the purchase.

113. The defendant on the other hand maintained that she made an equal contribution towards the purchase of the suit property hence the registration of the property in their joint names. It was her testimony in court that the source of the funds was contributed by each party.
114. I have noted that the issue of contribution made by each party was dealt with in the 2nd partial mediation settlement agreement, wherein it was stated that the entire purchase price was Kshs. 10,400,000/-. That the initial deposit of Kshs. 3,000,000/= was sent by Nils Staffan Wirell to Emily Chepkosgey who then paid the vendors, leaving a balance of Kshs. 7,400,000/=
115. It was further agreed that out of the balance of Kshs. 7,400,000/=the plaintiff paid Kshs. 400,000/=.
116. It is important to note that both the plaintiff and the defendant together with their respective advocates were present in the said session and they duly signed the mediation agreement in partial settlement of the dispute herein. Mediation is a process controlled by the parties

themselves and the mediator only acts as a neutral party to assist the parties in resolving their dispute.

117. The plaintiff cannot therefore run away from the mediation settlement agreements which he fully participated in and duly signed and state that the same is not binding upon him or that he does not agree with the same.
118. Section 36 of the Civil Procedure (Court Annexed Mediation) Rules, 2022 provides as follows: -

36. Enforcement of settlement agreements

(1) Upon the adoption of a settlement agreement, the court shall issue an order or decree in the terms of the agreement.

(2) A decree and an order arising from the adoption of a settlement agreement shall be enforceable as any other order or decree of the court.

(3) No appeal shall lie against a decree or order of the Court arising from a settlement agreement.

(4) ...

119. In the case of **Alios Finance Kenya Limited v Country Farms Limited (Civil Appeal E005 of 2020) [2022] KEHC 11012 (KLR)** the court described the effect of the adoption of a Mediation Settlement Agreement by the Court, in the following terms:

“Any agreement filed with the Deputy Registrar or Magistrate or Kadhi as the case may be shall

be adopted by the Court and shall be enforceable as a Judgment or order of Court.

Notably, once a mediation agreement is signed, it becomes final and binding on the parties. Mediation agreements were in the nature of consents. It is for that reason that this court considered the consequences and implications of entering a consent.”

120. In the premises therefore, I find that this issue was sufficiently handled by the 2nd Partial Mediation Settlement Agreement and varied by the 4th Partial Mediation Settlement Agreement which resolved that the property be partitioned equally between the plaintiff and the defendant and determining the same would amount to varying the order of the court issued on the 20.11.2019 without sufficient basis. This issue is therefore untenable.
121. In conclusion, I wish to reiterate the binding nature of Settlement Agreements arising out of mediation process. The plaintiff has not provided any basis on the grounds of fraud, collusion or an agreement contrary to the policy of the court, to warrant the setting aside of the settlement agreements and disregarding the directives therein.

Who should bear the costs of the suit;

122. The general rule is that a successful party should ordinarily be awarded costs of the suit unless the court, for good reason, directs otherwise.
123. However, given the nature and circumstances of the dispute herein, I will direct each party to bear their own costs of the suit.

CONCLUSION:

124. In conclusion, it is the finding of this court that the dispute herein as contained in the Amended Plaintiff dated 02.05.2019 and the Further Amended Defence and Counter-claim was duly determined vide the Mediation Settlement Agreements adopted as orders of the court on 20.11.2019.
125. Consequently, parties are hereby directed to fully comply with the provisions contained in the 4th and 5th Partial Settlement Agreements dated 11.09.2019 and 11.10.2019 respectively within 90 days from the date of this judgment.
126. Each party to bear their own costs of the suit.
127. It is so ordered.

DATED, SIGNED and DELIVERED virtually at **ELDORET** on **12TH day of FEBRUARY, 2026.**

HON. C. K. YANO
JUDGE

In virtual presence of; -

Mr. Makokha for Plaintiff.

No appearance for Mr. Yego for Defendant.

Court Assistant - Laban

ORIGINAL