

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC NO. E043 OF 2025

FRIDAH CHEYECH KANYONGU

(Suing as the Administratrix of the Estate of

WILSON

YAKIYAK

KANYONGU

(Deceased)-----PLAINTIFF

VERSUS

THE COUNTY GOVERNMENT OF

WEST POKOT-----

1ST DEFENDANT

THE CHIEF OFFICER, INDUSTRIALIZATION,

INVESTMENT & CO-OPERATIVES, COUNTY

GOVERNMENT OF WEST POKOT-----2ND

DEFENDANT

JUDGMENT

1. The plaintiff is the legal representative of the late Wilson Yakiyak Kanyongu (deceased), who was the owner of **L.R. No. West Pokot/Chepareria/1653**, now subdivided into **L.R. No. West Pokot/Chepareria/3185** and **3186**, hereinafter the suit lands, have sued the defendants following non-payment of the purchase price or consideration despite taking possession, use, and occupation of the suit lands and erecting permanent developments thereto, as belonging to the public.

2. The plaintiff prays for:-
 - (a) **Declaration that the defendants' continued occupation of the suit property is illegal.**
 - (b) **Permanent injunction from remaining or trespassing upon and interfering with the suit lands.**
 - (c) **Eviction.**
 - (d) **Mesne profits or damages for trespass.**
 - (e) **Costs**
 - (f) **Any other relief which the court may deem fit and expedient to grant.**
3. The defendants opposed the suit through a statement of defence dated **10/11/2025**. The defendants deny the particulars of breach of contract or unlawful occupation, and the alleged particulars of damages alluded thereto.
4. At the trial, Fridah Cheyech Kanyhongu testified as PW1. She relied on a witness statement dated **12/9/2025** as her evidence -in-chief. Her evidence is that her late father owned land Title No. **West Pokot/Chepareria/1653**, which she had offered to sell to the defendants, and after successful registration and consideration, a survey was done, and portions were shown pending formal subdivision and transfer process to the defendants.

5. PW1 said that eventually the defendants entered upon, took possession, and developed the suit properties, pending the subdivision and transfer process. Later, PW1 said that her late father finalised the subdivision process into Title Nos. **West Pokot/Chepareria/3185** measuring **0.60 Ha** and **3186** measuring **0.39 Ha**.
6. Despite the above, PW1 said that the defendants have failed, refused, and or neglected to pay the agreed consideration. PW1 said that her rights to ownership of land, use, and occupation have been violated as the land has been taken over without payment of consideration or compensation.
7. PW1 relied on copies of the title deeds for **West Pokot/Chepareria/3185** and **3186**, limited grant ad litem dated **16/8/2012**, letter of offer dated **16/8/2012**, valuation report dated **26/11/2024**, and a letter dated **3/2/2023** as **P. Exhibit No. (1) - (6)**.
8. In cross-examination, PW1 said that the purchaser was initially the defunct Municipal Council of Chepareria, now succeeded by the 1st defendant, with effect from **2012**. PW1 said that no deposit for the consideration was paid and that the defendants have been in occupation for the last **13 years**, where

they have erected permanent structures which are under use, as per the valuation reports.

- 9.** PW1 said that the land is now valued at **Kshs.36,000,000/=**. Further, PW1 said that the offer by her late father was accepted, after which vacant possession was handed over while awaiting consideration, the formal transfer and registration of the titles in favour of the defendant.
- 10.** The defendants opted to call no witnesses in support of their statement of defence.
- 11.** The plaintiff submits that the offer of the defendants when they took possession in **2013** was **Kshs.13,000,000/=**, which to date has not been paid despite occupation and use of the suit lands. The plaintiff submits that several promises by the defendants have not been met to remedy the breach, hence subjecting the plaintiff to loss and damage. The plaintiff, therefore, terms the use, occupation, and possession of the suit lands unjustified, illegal, unconstitutional, and hence the prayers sought.
- 12.** Learned counsel, Mr. Magal, for the defendants, submitted that the failure to pay the plaintiff was not intentional. It is submitted that whereas it is admitted that the agreement for sale had been entered into by

the defunct Chepareria Municipal Council, which commenced the development on the land before the defendants took over in **2013**, and continued with the development, use, and occupation, they were not aware of the non-payment.

- 13.** Learned counsel submitted that there has been no refusal to pay for the suit lands and that, though there were ongoing negotiations, the father passed on before the negotiations culminated in a formal agreement. Learned counsel submitted that the County Government of West Pokot has invested so much in the said properties, hence the orders sought are untenable.
- 14.** Learned counsel submitted that since the plaintiff has admitted that they received no consideration for the land parcels, the court should order the County Government to pay for the value of the suit properties with no order as to costs or mesne profits, for the defendants have always acted in good faith to an extent of attempting the aborted negotiations.
- 15.** In a rejoinder, learned counsel Mr. Khisa submitted that the 1st defendant took over the assets of the defunct Council and its liabilities, hence cannot be heard to say that it was not aware of the debt. The

learned counsel submitted that even the interim order of the court was not adhered to, and that the plaintiff had suffered enough at the mercy of the defendants.

- 16.** The issues calling for my determination are:
- i. If there is a valid and enforceable land sale agreement between the plaintiff and the 1st defendant.***
 - ii. Whether the 1st defendant succeeded the Municipal Council of Chepareria, which entered into the sale agreement under the repealed Local Government Act, and was liable for the legal action.***
 - iii. If the 1st defendant is a trespasser.***
 - iv. If the plaintiff is entitled to the reliefs sought.***
 - v. What is the order as to costs?***

- 17.** There is no dispute that the letter of offer dated **16/8/2022**, which is the subject matter in this suit, and the negotiations, promises, and the acceptance of the offer by the plaintiff were made to the defunct Municipal Council of Chepareria, now succeeded by the 1st defendant. The 1st defendant, while admitting that it is the successor in title to the defunct

municipality, says that it was not privy to the existing liability.

- 18.** In **J.A.S. Kumenda & another -vs- Clerk Municipal Council of Kisii & 6 others [2013]** **eKLR**, the court said that county governments were the presumption successors of the local authorities under the repealed Local Government Act, and were the ones to proceed with any pending legal actions by the defunct local authorities pursuant to **Section 33** of the Sixth Schedule to the Constitution.
- 19.** In **Republic -vs- Town Clerk of Webuye County Council & Another [2014]** **eKLR**, the court held that the rights accrued as a result of litigation were preserved upon repeal of the Local Government Act under **Section 33** of the Six Schedule in the Constitution under the transition to Devolved Government Act, **2012**, the transitional authority was mandated to prepare and validate in assets and liabilities of the local authorities.
- 20.** The Registration for Transfer of Assets and Liabilities required an audit of all existing assets and liabilities with the Auditor General through an Integrated National and County Assets Register.

- 21.** In ***Interim County Secretary County Government of Kakamega -vs- Republic Ex parte Ali Adam & Another [2017] eKLR***, the court concluded that the legal rights and liabilities of the defunct local authorities were to accrue in favour of and be sustained against their successors, namely the County Governments and not the National Government.
- 22.** In ***Republic -vs- Town Clerk, Municipal Council of Mombasa Ex parte Victory Construction Co. Ltd [2016] eKLR***, the court held that county governments are the legal successors to the defunct municipal councils who should inherit their obligations and liabilities. See also ***Gateway Insurance Co. Ltd -vs- Treasurer Nairobi County Government & Others***.
- 23.** **Section 6** of the County Governments Act provides that a county government can enter into a contract, acquire, purchase, or lease any land. **Section 6(4)** thereof provides that all contracts lawfully entered under this Section shall be valid and binding on the county government. **Sections 55, 56, and 57** of the Urban Areas and Cities Act **2011** provide that all assets and liabilities of the local authorities were

assumed and taken over by the respective county governments.

- 24.** From the foregoing, the 1st defendant cannot escape liability to the claim after having taken over the suit land as its assets. I find that the 1st defendant is liable for the claim.
- 25.** It is trite law that parties are bound by the terms and conditions of their agreement. Agreements must be kept. In **Meso Multipurpose Society Limited -vs- Luore Company Limited and others, Civil Appeal No 127 of 2020 (2026)KECA 332(KLR) (27th February 2026)(Judgment)**, the court held that a party basing his case on a sale agreement must show that the agreement was concluded by proving the essential ingredients of a valid contract, namely offer, acceptance, consideration, intention to create legal relations, capacity and legality.
- 26.** In this suit, the defendants do not deny that the six ingredients of a valid contract as pleaded by the plaintiffs, which were followed by the taking of vacant possession of the two parcels of land immediately the contract was consummated, and the commencement of development thereon, and the exclusive use, possession, and occupation to date.

27. The defendants, though admitting that a commitment and promise to pay consideration was made, causing a legitimate expectation of the seller, who willingly allowed for the taking up possession, developments, and utilising the suit lands, do not explain why the consideration has not been paid to the plaintiff. See **William Muthee Muthiani -vs- Bank of Baroda [2014] eKLR.**
28. The plaintiff has urged the court to find that in the absence of payments, the defendants have no basis to remain on the suit lands, let alone use or occupy them. The questions for this court to answer are whether time was of the essence, and secondly, in the absence of a default clause in the agreement, the contract is still valid and enforceable or in the obtaining circumstances, what was the intention of the parties from their documentation due to the freedom to contract and the doctrine of the four corners of a contract interpretation.
29. In **Trustees -vs- Pereira & 2 others (Suing as the Registered Trustees of Goan Community, Mombasa) & another [2026] KECA 295 (KLR),** the court said that when parties reduce their terms and conditions in an instrument, parole evidence

may not, except in exceptional circumstances, be introduced to vary, contradict, or construe the instrument.

- 30.** In this suit, the parties signed a written sale agreement and went ahead to act as per the contract, including taking over vacant possession, using and developing public facilities, while awaiting the formal subdivision and transfer of the suit lands.
- 31.** The plaintiff handed over the suit lands in anticipation that the defendants would honour the sale agreement. Equally, after the 2nd defendant took over in **2010**, it continued using and developing the suit lands as public land, regardless of whether the titles had been transferred as public land to it or not. On the other hand, the plaintiff allowed the use, occupation, and the developments despite non-payment of any consideration as he processed the subdivision and the transfers. In my view, the parties acquiesced to the delay and the conduct of each other, thereby keeping the transaction alive.
- 32.** In **RTS Flexible Systems Limited -vs- Molkerei Alois Müller GmbH [2010] UKSC 14**, the court said that whether or not there is a binding contract between parties depend on what was communicated

between them, words or conduct and whether it leads to an objective conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the foundation of the same.

- 33.** The law is that a party basing a claim on a contract must show that it is not void and has a legal existence. Learned counsel for the defendants submitted that since public funds were expended in developing the land for public purposes, it would be against public interest to grant the reliefs sought. Learned counsel submitted that the plaintiff is only entitled to the consideration as an equitable relief.
- 34.** The defendants have not pleaded that the contract of sale is invalid, void, illegal, or unenforceable. Correspondence as recent as the eve of the suit produced before the court shows that parties still believe the sale agreement is on course, hence the valuation reports on the current worth of the parcels of land.
- 35.** All that the plaintiff is saying is that the defendants have frustrated the completion and transfer; they have been ready to effect the transfers, hence the

reason that the subdivisions were made in readiness for completion.

- 36.** The defendant, on the other hand, sends valuers to the land that have come up with reports showing the developments therein belonging to it. The plaintiff now holds titles capable of being transferred to the defendants, the only problem being that the 1st defendant is yet to honour its part of the bargain.
- 37.** In view of the finding that the plaintiff and the 1st defendant have a binding contract, the next issue is whether the 1st defendant is a trespasser to the suit lands. In **Doshi v Chemutut & 7 others (Civil Appeal E020 of 2023) [2025] KECA 776 (KLR) (9 May 2025) (Judgment)**, the court, relying on the case law of **Charles Ogejo Ochieng -vs- Geoffrey Okumu [1995] KECA**, defined trespass as injury to a possessory right whose ingredients, as per **William Kamungo Gakui -vs- Eustace Gitonga Gakui [2014] KECA 39 [KLR]**, are proof of immediate and exclusive possession of the land.
- 38.** In **M'Mukunya -vs- M'Mbijiwe [1983] eKLR**, the court said that a claimant in a tort of trespass must prove that they had the right to immediate entry and possession of the suit property, and that the

defendant went into the land without the plaintiff's permission and or consent.

- 39.** From the facts and documents in this suit, the 1st defendant's entry into, occupation, use, and development of the land with effect from **1992** to date, was permitted, approved, consented to, and acquiesced by the seller and the successor in title on account of a valid letter of offer, acceptance, and future promise to pay the consideration. The court finds that the 1st defendant is not on the land as a trespasser.
- 40.** The next issue is whether the plaintiff is entitled to the **Prayers No. (a), (b), (c), and (d)**. **Prayer (a)**, in view of the findings that entry into the land was consensual based on a valid sale agreement, is not merited. A permanent injunction perpetually restraining a commission of an act by the defendant in order to protect the rights of the plaintiff. A permanent injunction fully determines the right of the parties before the court. It is normally issued after hearing the parties based on the substantive merits of the case. In **KPLC -vs- Sheriff Molena Habibi [2018] eKLR**, the court said that a permanent injunction perpetually restrains the

commission of an act by the defendant in order to protect the rights of the plaintiff.

- 41.** *Mesne* profits are defined by **Section 2** of the Civil Procedure Act as profits which the person in wrongful possession of such property actually received. See **Rajan Shah t/a Rajan Shah & Partners [2016] eKLR. Order 27 Rule 13** of the Civil Procedure Rules provides that a court, in a recovery of a land claim, may grant *mesne* profits.
- 42.** In **Njeri Kimani -vs- Joseph Njoroge Murigi & Others HCC No. 819 of 2009**, the court termed *mesne* profits as in the nature of special damages, that must be specifically pleaded and strictly proved. See also **Karanja Mbugua & Another -vs- Marybin Holdings Co. Ltd [2014] eKLR**. From the facts and evidence tendered, I do not think the plaintiff has proved wrongful entry or possession. I think the plaintiff is not entitled to the three prayers sought.
- 43.** It is trite law that courts can only grant orders or reliefs that may have been pleaded and prayed for. In **Lamba -vs- National Social Security Fund & another (Civil Appeal E168 of 2021) [2023] KECA 124 (KLR) (3 February 2023) (Judgment)**,

the court said that courts can only grant orders that are prayed or make appropriate orders as it may deem fit, if the need arises in the course of trial.

- 44.** In **Caltex Oil (K) Ltd -vs- Rono Ltd Civil Appeal No. 97 of 2008**, the court said that since specific performance was granted, special damages in the alternative for breach of contract could not be granted. In this suit, I think, given the circumstances of the case, it is in the interest of justice to explore other equitable and appropriate reliefs apart from the ones specifically sought by the plaintiff.
- 45.** The plaintiff has not specifically pleaded and particularized *mesne* profits or justified why she should be granted general damages for trespass in view of the delay in procuring subdivision and letters of administration in order to subdivide and transfer the land to the 1st defendant. The court, therefore, shall determine if the plaintiff is entitled to specific performance.
- 46.** In **Gharib Suleiman Gharib -vs- Abdulrahman Mohamed Agil Civil Appeal No. 112 of 1998**, the court said that the jurisdiction to order specific performance is based on the existence of a valid and enforceable contract. Such a relief is issued where a

party cannot obtain a sufficient remedy by awarding damages in the interest of justice. In **Thrift Homes Ltd -vs- Kenya Investment Ltd [2015] eKLR**, specific performance was termed as an equitable remedy granted where there is no alternative remedy.

- 47.** Specific performance can be denied if there is undue influence or if it could cause more hardship to the defendant, where the cost of performance is wholly out of proportion to the benefit that performance will confer on the claimant. See **Amin Abdul Kadir Hawa -vs- Rabinder Nath Anand & Another [2012] eKLR**.
- 48.** Courts are now embracing the doctrines of equity, due to the merciless contractual provisions as held in **Michuki -vs- Michuki (2014) eKLR**. In **Steadman -vs- Steadman [1976] AC 540**, the court held that if one party to an agreement stands by and leads the other party to incur expenses or prejudice, his position on the faith of the agreement being valued, he will not then be allowed to turn around and assert that the agreement was enforceable.
- 49.** In **Macharia Mwangi Maina & Others -vs- Davidson Mwangi Kagiri [2014] eKLR**, the court

observed that the respondent, having put the appellant in possession of the suit premises, created an overriding interest in their favour concerning ownership of the property.

50. In **Gimala Estates Ltd & Others -vs- Finance Corporation & Another [2016] eKLR**, the court held that examples of frustrations include a change in the law and a supervening event. In **Mwangi Macharia & Others -vs- Davidson Mwangi Kagiri (supra)**, the court held that a court of equity, equity shall suffer no wrong without a remedy, and no man should benefit from his wrongdoings.
51. In **Gurdev Singh Birdi -vs- Abubakar Madhubuti CA No.165 of 1996**, the court said that specific performance was a just and equitable discretionary remedy which the court can grant unless there was a good reason not to do so.
52. In **Shah & 7 Others -vs- Mombasa Bricks & Tiles Ltd [2023] KESC 106 [KLR]**, the court said that constructive trust is imposed by law whenever justice and good conscience require. Its end could be imported in a land sale agreement to defeat a registered title, or when there is unconscionable or inequitable behaviour, or where there will be unjust

enrichment. The court said that courts are entrusted with the responsibility to adjudicate disputes and administer justice.

- 53.** The plaintiff relies on **P. Exhibit No. (4)** where the defunct Town Council of Chepareria communicated its acceptance of a bid by the late Mr. Willison Kanyongu, to have them purchase land Title Nos. **West Pokot/Chepareria/1653** for **Kshs. 13,000,000/=**. The letter expressed the Town Clerk's commitment to pay the amount in instalments once funds were released. The 1st instalment was due in August, **2013**; the bidder was supposed to surrender the titles in his possession once he received the last payment from the defunct council.
- 54.** Further, the letter requested the bidder to allow the council to use the said land for development purposes while awaiting the formal signing of an agreement on the first payment. The bidder accepted the offer on **16/8/2012**. The acceptance was witnessed by the Town Clerk, who appended his signature to the letter.
- 55.** Through **P. Exhibit No. (5)**, the government valuer has valued **L.R. No. West Pokot/Chepareria/3185**

and **3186** at **Kshs. 20,000,000/=** and **Kshs.16,000,000/=**, respectively, as at **26/11/2024**. The valuation report shows that the defendants have made improvements on both parcels of land. **P.Exhibit No (6)** shows that on **3/2/2023**, the plaintiff wrote a demand letter seeking consideration.

56. Three basic rules underpin the formation of a contract, namely an agreement, an intention to enter into a contractual relationship, and consideration. The subject matter must be certain. There must be a positive contractual obligation born out, which can be an oral or written agreement in existence. See **Keith Garvey -vs- Richardo Richardo [2011] JMCA Civ 16[2011] JMCA Civ 16.**

57. In **Obiero -vs- Otwenge Civil Appeal No. 145 of 2019 [2025] KECA 541 [KLR] (21st March 2025) (Judgment),** the court said that the Land Control Act does not unlike **Section 3(3)** of the Law of Contract Act and **Section 38(2)** of the Land Act, save for the operation of the doctrine of constructive trust or proprietary estoppel, nor expressly proved that they do not apply to controlled land transaction. The court said that although the purposes of the two statutes

are apparently different, they both limit the freedom of contract by making the contract void and unenforceable. The court said that since the doctrines of constructive trust and proprietary estoppel apply to oral contracts which are void and enforceable, the court's view, and by analogy, was that they equally apply to contracts which are void and enforceable for lack of a Land Control Board Consent, especially in breach of the Land Control Act, have unreasonably delayed in performing the contract.

- 58.** The court held that under **Articles 10(1)(b)** and **159 (2)(e)** of the Constitution, courts are bound to interpret the law and, while exercising judicial authority, to protect and promote the purpose and the principles of the Constitution and in doing so consequential proving in the 6th Schedule of the Constitution should be construed with the alterations, adaptations and exceptions necessary to bring it into conformity with the Constitution, to avoid injustice occasioning to parties, particularly those where vendors after receiving the purchase monies refuse to complete the transactions, and or offer for sale the

same property to another party who agrees to pay more for the land.

- 59.** The court cited with approval **Mwangi Macharia & Others vs Davidson Mwanig Kagiri** (*supra*), and **Willy Kimutai Kitilit -vs- Michael Kibet [2018] eKLR** for tempering the adverse effects that the strict application of the provision of the Land Act, otherwise occasion to parties who contract become void and unenforceable for lack of a Land Control Board Consent.
- 60.** The court said that the plaintiff had remained in possession and effected development on the suit premises, hence a constructive trust was created in his favour. The court said that the possession and occupation constituted an overriding interest within the provisions of **Section 28** of the Land Registration Act.
- 61.** In this suit, there is no dispute that the defendants took possession of the land and effected development with the full consent of the deceased after entering into a legally binding contract.
- 62.** The defendants have been utilising, developing, and possessing the land for the last **14** years. All that remains is payment of the consideration and the

transfers in favour of the 1st defendant. The subdivisions have been effected. In **Aly (As Trustee of the Wakf of Ali Bin Mohamed, alias Muses Mohamed & 2 others -vs- Islamic Foundation [2026] KECA 62 (KLR)**, a letter of offer had been retracted, and there was a refusal to execute any further documents. Possession of the 2 acres had taken place, and the carrying out of construction without approvals, consent, or knowledge of the respondent. The appellant had alleged trespass and illegal occupation. The trial court dismissed the suit and allowed a counterclaim for the Land Registrar to hive off and or excise a portion and transfer it to the respondent.

63. On appeal, the court cited with approval **Patel -vs- Singh [1987] KECA 21 [KLR]** and **David Sironga Ole Tukai -vs- Francis Arap Muge & Others [2014] KECA 155 [KLR]**, that no court ought to enforce any illegal contract or allow itself to be used as an instrument of enforcing an illegal contract. The court dismissed the respondent's counterclaim and allowed the appellant to secure possession of the land and administer it as a Wakf.

- 64.** In **Mwatela & Another -vs- County Government of Mombasa [2024] KEELC 13 999 [KLR]**, the County Government had offered to purchase the land in **2013-2017**. A sale agreement had been signed and a deposit paid. The court ruled the contract valid and enforceable. The court held that the defendant's promise created a legitimate expectation obligating the defendant to honour the agreement despite potential legal defects.
- 65.** In this suit t, the plaintiff has performed his part of the bargain. She says she has at all times been ready and willing to complete the transfer. See **Sista Wambugu -vs- Kamau Njuguna [1983] eKLR**. In **Thomas Openda -vs- Peter Martin Ahn [1984] eKLR**, the court said that where a contract is still in existence, a party may sue for specific performance. In **Mwangi Macharia & others -vs- Davidson Mwangi (supra)**, the court cited **Article 159 2(4) (a)** of the Constitution, that justice should be administered to all without undue regard to procedural technicalities, equity should suffer no wrong without a remedy, no man should benefit from his own wrongdoing, and equity detest unjust enrichment.

- 66.** The other issue to be addressed is the consideration. In **Johnson Ngarari Mwaura -vs- Andrew Murugu Maina & Another, Mombasa Civil Appeal No. 550 of 2019**, the issue was whether the agreement was void or enforceable for lack of consideration.
- 67.** The court cited *Chitty on Contracts Vol. 1, General Principles 25th Edition para 3-151*, that executed consideration consists of mutual promises, making it an immediate binding contract from which neither party can withdraw, though of course performance cannot be claimed till the appointed time.
- 68.** In this suit, the consideration was to be cleared in instalments and equally, the balance after successful registration of the transfer. The way the parties fashioned their contract amounts to a future promise constituting a valid executory consideration. In **Charles Mwirigi Miriti -vs- Thananga Tea Growers Sacco Ltd & another [2014] eKLR**, the respondent had argued that the sale agreement was not valid for lack of consideration, while the 2nd respondent was raising the defence of lack of privity to the contract.
- 69.** The court cited *Halsbury's Law of England Vol. 22, 5th Edition para 308*, that an executory consideration

consists of a promise of an act or forbearance, which becomes binding the moment the promises are exchanged, and that each party's promises are in consideration for that of the other.

- 70.** The parties herein were exchanging promises hinged on the availability of good faith and disbursement of funds by the predecessor to the 1st and 2nd defendants.
- 71.** At the time the contract was signed, nothing had been done yet to fulfill the future promise. That notwithstanding, the parties appear to have duly performed on each side most of the future promises. The plaintiff testifies that sellers' promises or acts have substantially been performed, notwithstanding non-payment.
- 72.** The defendant does not refute the evidence of the plaintiff. The only issue raised is the change of the law and the character of the purchase after the **2010** Constitution came into effect.
- 73.** Frustration in law refers to a fundamental change, a state of things, rendering performance impossible, which blame of either side. See **Davis Contractors Ltd -vs- Fareham UDC [1956] AC 696.**

- 74.** The defendants pleaded financial hardship and the transition from Municipalities to Counties, saying that they were not privy to or aware of the debt.
- 75.** In **Kwanza Estates Limited -vs- Jomo Kenyatta University of Agriculture and Technology (Petition E001 of 2024)[2024] KESC74 [KLR] (6th December 2024) (Judgment)**, the court held that the doctrine of *force majeure* has been expanded to include events caused by both human actions and natural occurrences, defining situations beyond the control of parties that prevented them from meeting contractual obligations.
- 76.** The court held that self-induced frustrations could not be relied upon to terminate a contract and that, before applying the doctrine, courts have to look at the agreement. The court said that a party was not absolved from performing their contractual obligation simply because it has become more expensive or more difficult.
- 77.** The court said that financial hardship alone did not automatically discharge the party of its obligations. The court said that in the absence of a termination clause, there was no evidence of an exit window by

the parties out of the agreed terms upon change of circumstances.

- 78.** In this suit, despite the delay and the change of the circumstances, the parties continued to regard the contract of sale as valid and enforceable. There is no evidence that parties varied their terms and conditions or that each gave the other a termination, eviction, or notice of default.
- 79.** To deliver substantive justice, I think it would be unjust and not in the interest of justice to find the defendants as trespassers on the land. They went in, took possession, and have expended a colossal amount of public funds on the suit lands over the years.
- 80.** The plaintiff has also delayed in subdividing and transferring the land parcels to her name after her late father passed on, and obtaining title deeds so as to effect the transfers. Equally, the 1st defendant has breached the letter of offer by not paying any instalment for the suit lands.
- 81.** The most appropriate remedies are:
 - (a) An order for specific performance is hereby issued to compel the 1st defendant to perform the contract vide the letter of offer.**

- (b) The plaintiff is hereby compelled to surrender all the compliance documents or instruments, and to hand over to the defendants within 90 days, all the original title documents,
- (c) The defendants shall, upon execution of the transfer documents by the plaintiff, release to her the agreed consideration of Kshs. 13,000,000/= together with interest at the court's rates per annum, from the date it fell due, within 90 days from the date hereof.
- (d) Costs for the suit to the plaintiff.

82. Orders accordingly.

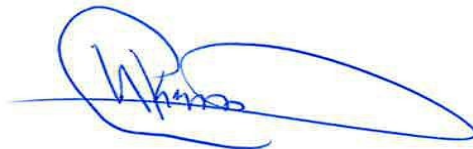
Judgment dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **11th** day of **March 2026**.

In the presence of:

Court Assistant - Dennis

Mr. Magal for the defendant present

Khisa for the plaintiff present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**