



Koech v Gitonga & 4 others (Environment and Land Case 212 of 2017) [2026] KEELC 1924 (KLR) (9 April 2026) (Judgment)

Neutral citation: [2026] KEELC 1924 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 212 OF 2017**

MAO ODENY, J

APRIL 9, 2026

BETWEEN

SAMUEL KIPNGENO KOECH PLAINTIFF

AND

AGNES WAMBUI GITONGA 1ST DEFENDANT

THE SETTLEMENT FUND TRUSTEES 2ND DEFENDANT

THE HON. ATTORNEY GENERAL 3RD DEFENDANT

THE CHIEF LAND REGISTRAR 4TH DEFENDANT

THE DISTRICT LAND REGISTRAR NAKURU 5TH DEFENDANT

JUDGMENT

1. By an amended Plaint dated 30th August 2024, the Plaintiff herein sued the Defendants seeking the following orders:
 - a. A declaration that the Plaintiff and the 1st defendant had jointly purchased the suit land from the 2nd Defendant.
 - b. A declaration that the 1st defendant is holding the suit land in trust solely for the plaintiff,
 - c. An order terminating the trust and having the plaintiff registered as owner of the suit land in lieu of the 1st defendant.
 - d. A declaration that the plaintiff has overriding interest over the suit land.
 - e. An order directed to 1st and 2nd defendants to transfer the suit land to the plaintiff in lieu of the 1s defendant and in default an officer of this Honourable Court do the same on their behalf.



- f. An order directed to the 4th and 5th defendants to have the plaintiff registered as owner of the suit land in lieu of the 1st defendant.
- g. A permanent injunction do issue against the 1st defendant and the 2nd defendant by themselves and/or their agents and/or servants from interfering with the plaintiff's quiet occupation of the suit land; trespassing on the suit land or disposing or charging the same or dealing with it in any manner until the hearing and determination of this suit.
- h. Costs of this suit

Plaintiff's Case

- 2. PW1, Samuel Kipngeno Koech, adopted his witness statement dated 3rd August 2016, as his evidence in chief and stated that he entered into a land sale agreement dated 10th April 2002 with the 1st Defendant Agnes Wambui Gitonga for parcel No. Sondu River/Settlement Scheme Plot No. 552/51 measuring 7 ^{1/2} acres at a consideration of Kshs,375,000/= which he paid in full.
- 3. PW1 further stated that upon payment of the purchase price he took possession of the suit, he fenced, built a house and has been farming, rearing livestock and poultry on the suit land.
- 4. It was PW1's testimony that the 1st Defendant showed him an allotment and the charge document from the Settlement Fund Trustee and produced a list of documents dated 3rd August 2016 as Pex Nos. 1 to 7 & 8. He also stated that the 1st Defendant got a title in her name.
- 5. Upon cross-examination by Mr. Siahi, PW1 stated that he bought the suit land from the 1st Defendant at her house and the Assistant Chief signed the agreement. He also stated that the Defendant sent someone to show him the suit land but showed him the documents, which indicated that she was the owner.
- 6. PW1 further testified that the 1st Defendant informed him that she had a loan balance with the Settlement Fund Trustee of Kshs. 6000/= and would transfer the land after completion of payment of the loan.
- 7. Upon re-examination by Mr. Migiro, PW1 stated that he is in possession of the suit land and the 1st Defendant has never told him to vacate.
- 8. PW2, Elijah Kiplangat Koech, adopted his witness statement dated 28th September 2021, as his evidence in chief and stated that the Plaintiff is his younger brother.
- 9. It was PW2's testimony that they went to the 1st Defendant's home and wrote an agreement. He stated that the Plaintiff had told him that he was looking for land to buy, therefore he called him and introduced him to the 1st Defendant who is a neighbour. PW2 also testified that the 1st defendant does not stay on the suit land.
- 10. Upon cross-examination by Mr. Siahi, PW2 stated that the 1st defendant wanted to sell the suit land, and he told her to give him one week to look for the plaintiff who wanted to buy the land, and that he had a photocopy of a title deed.

Defendant's Case

- 11. DW1, Agnes Wamboi Gitonga, adopted her witness statement dated 26th October 2016, as her evidence in chief and produced a list of documents as Dex No. 1 to 10.



12. DW1 stated that she lives in Lanet, in Nakuru County, and that she got the suit land which is situated in Kuresoi Molo, in 1978, and took possession. It was her testimony that the majority of the people in that area are Kalenjins and she is a Kikuyu.
13. DW1 further stated that in 1992, there were tribal clashes, whereby she was a victim and left in 1997, and that it is not true that she had advertised the land for sale. DW1 testified that in 2002, the plaintiff, the brother and the Assistant Chief came to her home and that they entered into a sale agreement. She claimed that the Assistant Chief told her that there was no way Kikuyus would go back to the land.
14. It was DW1's evidence that she did not take the plaintiff to the suit land, but they had agreed at a consideration of Kshs. 50,000/= per acre for the 7.5 acres. She confirmed that in 2016, she did not have the title deed to the suit land but later got the title deed in her name.
15. Upon cross-examination by Mr. Migiro, DW1 stated that she knew the Plaintiff and that he went to her house in Free Area, Nakuru, with his brother PW2 and the Assistant Chief, whereby she instructed her son to write the sale agreement. She confirmed that the plaintiff paid her Kshs.290,000/= and was to pay the balance but she gave him possession of the suit land.
16. According to DW1, she got the land from Settlement Fund Trustee and gave a copy of the charge to the Plaintiff. DW1 confirmed that the Plaintiff paid Kshs 475,000/= and has not given the Plaintiff a notice to vacate the suit land. The Defendant further admitted that she used the money as she had a school fees problem and that the Plaintiff has built a house on the suit land.
17. DW1 also stated that she got the title deed in 2018 after paying Kshs. 5,444/= to the Settlement Fund Trustee.

Plaintiff's Submissions

18. Counsel for the Plaintiff filed submissions dated 17th February 2026, and identified the following issues:
 - a. Whether the 2002 agreement and the parties' conduct created an enforceable beneficial interest in equity notwithstanding Land Control Board consent requirements, including by constructive trust / proprietary estoppel.
 - b. Whether the 1st Defendant, upon receiving the consideration and placing the plaintiff in possession became a constructive trustee, and whether the trust binds the title as an overriding interest under the [Land Registration Act](#), 2012 (ss. 25(2) and 28).
 - c. Whether the 2018 registration/title in the 1st defendant's name (procured during pendency of the suit) is impeachable and/or the register rectifiable under the [Land Registration Act](#) (ss. 26 and 80), and what consequential orders should issue against the land registry and/or SFT to perfect the Plaintiff's title.
 - d. Whether the suit (or any relief) is barred by limitation, given the trust character of the claim ([Limitation of Actions Act](#), s. 20) and fraud/mistake postponement (s. 26).
 - e. Whether the defence allegations of coercion/undue influence and alleged illegality defeat the Plaintiff's equitable relief, and who bears the evidential burden ([Evidence Act](#), ss. 107-112; *Munyu Maina v Hiram Gathiha Maina* [2013] KECA 94 (KLR)).
19. On the first issue, counsel relied on the doctrine of constructive trust/ proprietary estoppel, and submitted that constructive trust is imposed by the court to prevent unjust enrichment and to bind the conscience of a legal holder where it would be unconscionable to deny another's beneficial entitlement,



- and cited the cases of (*Hatayan & another v Al-Heidy & 5 others* [2015] KECA 713 (KLR); *Maina & 87 others v Kagiri* [2014] KECA 880 (KLR).
20. Mr. Migiro further submitted that controlled transactions in agricultural land are void without Land Control Board consent (*Land Control Act*, s. 6; application time limits, s. 8; refund, s. 7; possession offence, s. 22). However, the Court of Appeal has held that lack of consent does not, in appropriate cases, preclude enforcement of constructive trust/proprietary estoppel to prevent injustice and relied on the cases of *Willy Kimutai Kitilit v Michael Kibet* [2018] KECA 573 (KLR); *Maina & 87 others v Kagiri* [2014] KECA 880 (KLR).
 21. It was counsel's submission that a title is prima facie evidence of ownership but is impeachable for fraud/misrepresentation or illegal/unprocedural/corrupt acquisition (*Land Registration Act*, s. 26(1) (a)-(b)). The court has power to rectify/cancel entries (*Land Registration Act*, s. 80). Fraudulent titles cannot be sanctified by registration and relied on the cases of *Arthi Highway Developers Ltd v West End Butchery Ltd & 6 others* [2015] KECA 816 (KLR); *Elijah Makeri Nyangw'ra v Stephen Mungai Njuguna & another* [2013] KEHC 5046 (KLR).
 22. Similarly, counsel submitted on the doctrine of lis pendens and stated that the court will not allow dealings designed to defeat pending litigation over land and relied on the case of *Baber A Mawji v United States International University & another* [1976] eKLR).
 23. Mr. Migiro submitted that even if the land is "agricultural land" in a land control area and the 2002 agreement is a controlled transaction, the court should enforce the plaintiff's beneficial entitlement through constructive trust/proprietary estoppel on the concrete facts that the 1st defendant received the consideration and placed the plaintiff in possession, and then later attempted to defeat that interest by procuring title in her own name.
 24. Counsel submitted that transactions without the Land Control Board Consent are null and void, however, binding appellate authority recognizes that the *Land Control Act* cannot be deployed mechanically to facilitate unconscionable retention of land where the vendor has taken the purchase price, delivered possession, and then seeks to reprobate the transaction for opportunistic gain. In *Willy Kimutai Kitilit v Michael Kibet*, (supra) the Court of Appeal upheld specific performance based on constructive trust in circumstances materially analogous to the present case: a written sale, purchase price paid, purchaser in possession, no Land Control Board consent, and the vendor later obtained title and sought to evict.
 25. It was counsel's submissions that the decision explicitly confronts the competing Court of Appeal line in *David Sironga Ole Tukai v Francis Arap Muge* (which rejected equitable doctrines to override statutory voidness) and resolves the tension by holding that the applicability of constructive trust/proprietary estoppel depends on the circumstances, and that equity may apply by analogy even where the contract is unenforceable for lack of Land Control Board consent.
 26. Mr. Migiro stated that accordingly, a defendant who accepts the plaintiff's money, yields possession, and stands by while the plaintiff changes position cannot fairly invoke the *Land Control Act* as a technical shield to keep both land and money. Most notably, the *Willy Kimutai* case (supra) and the constructive trust line expressly acknowledge Section 7 yet still enforce the purchaser's entitlement where equity demands. That the court's role is not to rewrite the *Land Control Act* but to prevent the Statute's use as a vehicle for fraud and unjust enrichment on the proven facts.
 27. It was counsel's submission that the plaintiff is not asking the court to sanction wrongdoing; the plaintiff is asking the court to vindicate a beneficial interest that arose because the 1st defendant induced payment, delivered possession, and then sought to resell.



28. Counsel relied on the case of *Maina & 87 others v Kagiri* (Civil Appeal 6, 26 & 27 of 2011 (Consolidated)) [2014] KECA 880 (KLR), where the Court of Appeal held that, where the vendor received purchase price, put purchasers in possession, and later sought to defeat the purchasers' interests, an implied/constructive trust arose and proprietary estoppel applied; the vendor could not renege.
29. Mr. Migiro further submitted that the *Land Registration Act* provides that proprietorship is subject to the proviso that it does not relieve a proprietor from duties as a trustee, and it enumerates "trusts including customary trusts" as overriding interests binding registered land even if not noted. As a result, once a constructive trust is established on evidence, the 1st defendant's registration cannot be treated as an absolute answer; it is subject to the plaintiff's beneficial entitlement.
30. It was the Plaintiff's case that registration obtained and maintained to defeat a known beneficial interest, especially during pending litigation, falls squarely within the grounds upon which our land registration law permits challenge and court-ordered rectification. Counsel relied on the doctrine of *lis pendens* and the case of *Baber A Mawji v United States International University & another* [1976] eKLR.
31. Counsel stated that the 1st Defendant procured the title in 2018 while the claim was pending to defeat the plaintiff's interest and to manufacture a technical advantage, which conduct supports rectification and the type of consequential orders the court may craft under the ELC Act's broad remedial mandate (including specific performance, declarations, and injunctions).
32. Mr. Migiro submitted that the *Limitation of Actions Act* sets a six-year period for actions founded on contract and certain other actions, and it prescribes special regimes for trust property and fraud/mistake. Most importantly for the plaintiff's pleaded trust case, the statute provides under Section 20, that limitation periods do not apply to actions by a beneficiary under a trust to recover trust property in the trustee's possession (or in cases of fraud/fraudulent breach of trust).
33. Additionally, where an action is based upon fraud, or where the right of action is concealed by fraud, limitation does not begin to run until the plaintiff discovers the fraud or could with reasonable diligence have discovered it. (*Limitation of Actions Act*, S. 26)
34. The 1st Defendant alleged coercion/undue influence and illegality, counsel submitted that the court should test the narrative against conduct: acceptance/retention of consideration, delivery of possession, long acquiescence to open occupation, and later repudiation.
35. According to counsel, the 1st Defendant's statement of Defence alleges that she was pressured by local administration and told she would never return to her land, and that the plaintiff took advantage of tribal clashes to obtain the agreement. On the other hand, the plaintiff relied on: (i) a written agreement; (ii) third-party witness testimony that the sale was initiated by the 1st defendant (advertised) and executed in the presence of witnesses; and (iii) the 1st defendant's long failure to take effective steps to rescind, refund, or recover possession despite plaintiff's open occupation and development.
36. Counsel therefore urged the court to grant the orders as prayed in the Plaintiff with costs.

Defendant's Submissions

37. Counsel for the 1st Defendant filed submissions dated and identified the following issues for determination:
 - a. Whether the sale agreement dated 10th April 2002 was valid and enforceable.



- b. Whether lack of Land Control Board consent renders the agreement void.
 - c. Whether the charge in favour of the 2nd Defendant invalidated the transaction.
 - d. Whether the agreement was procured through coercion and undue influence.
 - e. Whether the Plaintiff is entitled to the prayers sought.
38. On the first issue as to whether lack of Land Control Board consent renders the agreement void, counsel submitted that if there was an agreement between the Plaintiff and the 1st Defendant, the same is unenforceable due to lack of consent of the Land Control Board and cited Section 6 (1) of the [Land Control Act](#) Cap 302 Laws of Kenya.
39. According to counsel, the suit Land is an agricultural land and the agreement between the Plaintiff and the 1st Defendant involved the sale of agricultural land and no consent of the Land Control Board had been applied for and obtained authorizing the transaction, hence the transaction was rendered null and void by operation of the law. Counsel further relied on the cases of David Sironga Ole Tukai v Francis Arap Muge & 2 others [2014] eKLR, and Christopher Kioi & another v Winnie Mukolwe & 4 others [2018] eKLR.
40. On the issue as to whether the sale agreement dated 10th April 2002, was valid and enforceable, counsel stated that the 1st Defendant testified that at the time of entering into the sale agreement the suit property was still charged to the Settlement Fund Trustees, and that she was not registered owner of the suit property, as she only became the registered owner on 5th July 2018. Further, despite knowledge of the charge on the suit property, the Plaintiff still proceeded to execute the sale agreement between himself and the 1st Defendant, hence the agreement was void.
41. On the issues as to whether the charge in favour of the 2nd Defendant invalidated the transaction, counsel submitted that under the conditions of allotment and charge issued by the Settlement Fund Trustees, the land could not be transferred without prior written consent. Further, Section 90 of the [Land Act](#) protects the rights of a chargee and prohibits dealings inconsistent with the charge. According to counsel, the Plaintiff admitted in cross-examination that he knew the property was charged yet proceeded with the transaction, therefore entered into a transaction he knew was irregular and contrary to statutory provisions. Counsel relied on the doctrine of nemo dat quod non habet and submitted that the Defendant could not give what she does not have.
42. On the issue as to whether the agreement was procured through coercion and undue influence, it was counsel's submission that the 1st Defendant testified that she is a widow and that the area had experienced ethnic clashes in 1992 and 1997, and she feared the recurrence of violence in an election year therefore sold 7½ acres for Kshs. 375,000/= (approximately Kshs. 50,000/= per acre), which was grossly undervalued, which circumstances demonstrate undue influence and coercion. Counsel relied on the case of Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd [2017] KECA 152 (KLR), where the Court of Appeal stated that undue influence arises where one party exploits the vulnerability or dependency of another. According to counsel, the presence of the Assistant Chief, political tension, historical ethnic violence, and gross undervaluation of land strongly support the Defendant's testimony that the agreement was not entered freely.
43. On the last issue as to whether the Plaintiff is entitled to the reliefs sought, counsel submitted that the sale agreement for the sale of the land was void ab initio and relied on the case of National Bank Of Kenya Ltd -v- Pipeplastic Samkolit (k) Ltd & Another [2001] eKLR, where the Court held that courts cannot rewrite contracts or sanitize illegal transactions, and urged the court to dismiss the Plaintiff's case with costs.



Analysis And Determination.

44. The issues for determination are as follows:
- a. Whether the sale agreement dated 10th April 2002, between the Plaintiff and the 1st Defendant is valid and enforceable.
 - b. Whether the 1st Defendant upon receiving the consideration and allowing the Plaintiff to take possession of the suit land created a constructive trust. Whether the trust binds the title as an overriding interest under the *Land Registration Act*.
 - c. Whether the agreement was procured through coercion and undue influence.
 - d. Whether the Plaintiff is entitled to the prayers sought.
45. It is not in dispute that the Plaintiff and the 1st Defendant entered into a land sale agreement for the suit property dated 10th April 2002. This fact was admitted by the 1st Defendant who stated that he instructed her son to draft the agreement which was signed by both parties and witnesses. The Defendant also admitted that she sold the suit land for Kshs. 50,000/= per acre, which the Plaintiff paid in full.
46. Section 3(3) of the *Law of Contract Act*, Cap 23 establishes the legal requirements for a valid agreement where the disposition of an interest in land is concerned. It provides that such a contract must be in writing, signed by all involved parties, and attested by a witness present at the time of signing.
47. The provision expressly states as follows:
- “3(3)No suit shall be brought upon a contract for the disposition of an interest in land unless
- (a) the contract upon which the suit is founded—(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 is present when the contract was signed by such party.”
48. It should be noted that Section 3(3) of the *Law of Contract Act*, came into force in June 2003, the same does not apply to agreements entered into before the commencement. Section 3(7) provides as follows:
- “The provisions of subsection (3) shall not apply to any agreement or contract made or entered into before the commencement of that subsection.”
49. There is no doubt that the agreement met the threshold for a valid agreement, as it was in writing, signed by the parties and attested by witnesses. This agreement was entered into in 2002, before the commencement of Section 3 (3) of the Contract Act, therefore, even if it was done orally, and the parties had performed or were willing to perform their part of the contract, the same would not have been defeated by lack of being reduced into writing.
50. The previous Section 3 of the *Law of Contract Act* provided as follows:
- “No suit shall be brought upon a contract for disposition of an interest in land unless the agreement upon which the suit is founded, or some Memorandum or note, thereof is in writing and is signed by the party to be charged or by some person authorized by him to sign it.



Provided that such a suit shall not be prevented by reason of the absence of writing, where an intended purchaser or lessee who has performed or is willing to perform his part of a contract.

- i, Has in part performance of the contract taken possession of the property or any part thereof; or
- ii. Being already in possession, continues in possession in part performance of the contract and had done some other act in furtherance of the contract.”

51. It is on record that the Plaintiff and the 1st Defendant entered into a sale agreement of the suit land, paid the full purchase price, took possession and is still in possession. The 1st Defendant does not deny that she entered into the sale agreement, what she claims is that she was coerced into selling the land to the Plaintiff due to the election clashes in the area.

52. The Defendant did not raise this issue of coercion until after she had been sued to perfect the terms of the agreement to transfer the land to the Plaintiff. If this were the case, she should have raised it immediately after the sale in 2002, and rescinded the agreement or reported the matter to the relevant authorities for investigation and action to be taken. There was neither a report nor correspondence on the coercion.

53. The 1st Defendant claimed that she was coerced and was forced to sign the agreement under duress. It was incumbent upon the 1st Defendant to demonstrate that she was forced to enter into the agreement against her free will through threats, intimidation, or unlawful pressure, rather than acting voluntarily. There was no evidence to show that she was threatened or put under pressure to enter into the agreement. It is on record that she instructed the son to draft the agreement.

54. Duress is broadly defined in Black’s Law Dictionary, 8th edition as:

“a threat of harm made to compel a person to do something against his her will or judgment”

and strictly, as:

“the physical confinement of a person or the detention of a contracting party’s property.”

55. Similarly, the particulars of duress, coercion, and undue influence must be pleaded and proved by a party alleging them as was held in the case of Mohamed Ahmed Abdun & another v Mini Bakeries (MSA) Limited [2019] KECA 341 (KLR). The 1st Defendant attempted to lay blame on the Plaintiff at paragraph 9 where he listed some particulars of deceit and fraud but did not back it up with evidence and proof of the duress and coercion.

56. In the case of John Mburu vs. Consolidated Bank of Kenya [2018] eKLR, the Court of Appeal echoed the words of the Privy Council in Pao On vs. Lau Yiu Long [1980] A.C. 614 that in determining whether duress is established:

“Duress, whatever form it takes, is a coercion of the will so as to vitiate consent. Their Lordships agree that in a contractual situation commercial pressure is not enough. There must be present some fact on which could in law and be regarded as coercion of his will so as to vitiate his consent...In determining whether there was coercion of will such that there was no true consent it is material to enquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal



remedy, whether he was independently advised; and whether after entering the contract he took steps to avoid it.”

57. The court finds that the Defendant entered into the sale agreement willingly, without duress and therefore the same was valid and enforceable.
58. Having found that the sale agreement dated 10th April 2002, between the Plaintiff and the 1st Defendant was valid, entered into voluntarily, met the threshold of a land sale agreement, the Plaintiff having paid the full purchase price and given possession by the 1st Defendant, and does not suffer from any defects, is the Plaintiff entitled to the reliefs sought?
59. The 1st Defendant procured the title during the pendency of this suit and having entered into the agreement for sale of the suit land, it was prudent for her to transfer the land to the Plaintiff and not renege on the terms of the agreement. The allegations of duress were an afterthought which should not be used as a gimmick to deny the Plaintiff of the land that he bought, paid for and is in occupation of. The 1st Defendant cannot have her cake and eat it. She cannot be allowed to keep the Plaintiff's money and the land.
60. The 1st Defendant also raised an issue of the lack of consent of the Land Control Board and stated that the transaction was null and void. The court is cognizant of Section 6 (1) of the Land Control Act Cap 302 Laws of Kenya, which provides that transactions on agricultural land without the consent of the Land Control Board are null and void.
61. However, courts have applied equitable principles to protect a purchaser who has paid for land but lacked consent, to prevent sellers from using legal technicalities to retain both the money and the land as in the case of *Willy Kimutai Kitilit v Michael Kibet* [2018] KECA 573 (KLR), where the court held;

“It was not in dispute that the appellant sold a 2acre portion of his land comprising of 2.440 Hectares to the respondent in 2008. He gave possession of the land to the respondent who fenced the land and developed a portion of half an acre by planting trees. The respondent paid the last installment of the purchase price in 2010. However, the appellant did not transfer the 2 acres to the respondent and instead caused the whole land to be registered in his name on 4th December, 2012, and filed a suit for eviction of the respondent thereafter. By the time the appellant caused himself to be registered as the proprietor of the whole piece of land he was a constructive trustee for the respondent and it would be unjust and inequitable to allow the appellant to retain the 2 acres that he had sold to the respondent in the circumstance of the case as we have held in essence that, the lack of the consent of the Land Control Board does not preclude the court from giving effect to equitable principles, in particular the doctrine of constructive trust, we find that the trial court reached the correct decision and therefore the appeal has no merit”

62. The lack of a Land Control Board consent does not preclude the court from giving effect to equitable principles and in this case a constructive trust where the Plaintiff has fulfilled his part of the contract. The Defendant cannot be allowed to keep the money and the land and allege lack of Land Control Board Consent.
63. This leads me to the issue whether the Plaintiff is entitled to an order of specific performance, in the case of *Reliable Electrical Engineers Ltd. V Mantrac Kenya Limited* (2006) eKLR, the court stated that:

“Specific performance like any other equitable remedy is discretionary and the Court will only grant it on well settled principles”



“The Jurisdiction of specific performance is based on the existence of a valid enforceable contract. It will not be ordered if the contract suffers from some defect, such as failure to comply with the formal requirements or mistake or illegality, which makes the contract invalid or enforceable. Even when a contract is valid and enforceable, specific performance will however not be ordered where there is an adequate alternative remedy. In this respect damages are considered to be an adequate alternative remedy where the claimant can readily get the equivalent of what he contracted for from another source. Even when damages an adequate remedy specific performance may still be refused on the ground of undue influenced or where it will cause severe hardship to the defendant.”

64. An order of specific performance is an equitable relief, which is discretionary and can only be granted where there is a valid enforceable contract. A court cannot grant such an order if the contract suffers from any illegality or unfulfilled terms of the contract.

65. Similarly, in the case of *GURDEV SINGH BIRDI & NARINDER SINGH GHATORA as Trustees of Ramgharia Institute of Mombasa v Abubakar Madhbuti* [1997] eKLR the court held that:

“the plaintiff must show that he has performed all the terms of the contract which he has undertaken to perform, whether expressly or by implication, and which he ought to have performed at the date of the writ in the action, However, this rule only applies to terms which are essential and considerable. The court does not bar a claim on the ground that the plaintiff has failed in literal performance, or is in default in some non-essential or unimportant term, although in such cases it may grant compensation.”

66. In this particular case, the Plaintiff paid the full purchase price and took possession of the suit land. The Defendant did not transfer the land to the Plaintiff as part of her obligations in the agreement and that is why this matter is in court. There would be no reason why the court should not grant an order of specific performance to perfect the terms of the agreement on behalf of the 1st Defendant who has not complied with the terms.

67. The court is empowered under Section 80(1) of the *Land Registration Act* to cancel a title which was procured unprocedurally. The Section provides as follows:

“(1) Subject to subsection (2), the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.”

68. I have considered the pleadings, the evidence on record, the submissions by counsel and find that the Plaintiff has established his case on a balance of probabilities and proceed to make the following determination:

a. A declaration is hereby issued that the Plaintiff is the rightful owner of the suit land and that the 1st defendant is holding the title in trust solely for the plaintiff,



- b. An order is hereby issued that the 1st Defendant do transfer the suit land parcel No. Sondu River/Settlement Scheme Plot No. 552/51, to the plaintiff in default the Deputy Registrar to execute the transfer documents on behalf of the 1st Defendant.
- c. An order is hereby issued directing the District Land Registrar Nakuru to cancel the title in the 1st Defendant's name and rectify the same in the name of the Plaintiff.
- d. An order of a permanent injunction is hereby issued against the 1st defendant by herself and/or her agents and/or servants from interfering with the plaintiff's quiet occupation of the suit land; trespassing on the suit land or disposing or charging the same or dealing with it in any manner.
- e. Costs of this suit to the Plaintiff.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 9TH DAY OF APRIL 2026.

M. A. ODENY

JUDGE

