



# THE JUDICIARY



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**  
**ELC E018 OF 2023**

**MARGARET MURIMA NJOROGE .....PLAINTIFF**  
**VERSUS**  
**INSHWIL BUILDERS ENGINEERING LIMITED..... DEFENDANT**  
**AND**  
**BENSON GITHAKWA & 38 OTHERS.....INTERESTED PARTIES**

## **JUDGMENT**

- 1) The Plaintiff seeks the following reliefs against the Defendant.
  - (a) **An order of specific performance of the contract dated 17-9-2013 requiring the Defendant herein to give immediate vacant possession and/or transfer of land parcel No. Kakuzi/Kirimiri Block 7/383 a portion of land measuring 50 acres that was to be excised out of land titled Kakuzi/Kirimiri Block 7 /249 to the Plaintiff herein.**
  - (b) **A decree be issued directing the Defendant to absolutely transfer L.R. Kakuzi/Kirimiri Block 7/383, suit land to the Plaintiff who will in turn transfer the same to the concerned interested parties herein.**
  - (c) **In the alternative to (a) above the Defendant do refund the purchase price at the current market price together with interest at Court rates from the date of the purchase price to date.**
  - (d) **Costs of this suit.**
  - (e) **Interests in (b) and (c) above.**
  - (f) **Any other relief that the court may deem fit and just to grant.**

This is as per the further amended plaint dated 26-5-2024.

- 2) The Plaintiff's case is as follows. Firstly, before 17-9-2013, she met a director of the Defendants, one Patrick Gukura Muraya who had a parcel of No. Kakuzi/Kirimiri Block 7/249 part of which the Defendant wished to sell. There was an oral agreement between

the two that the Plaintiff could market the land for the Defendant with a view to eventually buying some of the land. The Plaintiff immediately took possession of the land she intended to buy and built roads and drainage. Secondly, on 17-9-2013, the Plaintiff and the Defendant entered into a sale agreement where she was to purchase 50 acres which was to be excised from the Defendant's land. According to the sale agreement, the purchase price was Kshs 65,000,000/=. A sum of Kshs, 6,500,000/= was to be paid to the Defendant by the Plaintiff on the date of the agreement and the balance of Kshs. 58,5000,000/= was to be paid within 121 days. Thirdly, after the Plaintiff paid the first instalment of Kshs 6,500,000/= to the Defendant, she entered into agreements with third parties who include the interested parties herein. Pursuant to those agreements, the Plaintiff was able to pay to the Defendant a total of Kshs 58,500,000/=. The third parties who include the interested parties took possession of their respective parcels sold to them by the Plaintiff. Some of them have built residential homes on the land while others are farming thereon. Fourthly, earlier in the year 2014, the Defendant had subdivided the original land into three parcels which include parcel numbers Kakuzi/Kirimiri Block 7/318, 382 and 383. The land occupied by the Plaintiff and the interested parties is parcel number 383. It measures 20.22 hectares or 50 acres. Fifthly, the Plaintiff was not able to pay the full purchase price within the agreed period but there was an oral arrangement between the Plaintiff and the Defendant which allowed the Plaintiff to pay outside the agreed period. In this regard, the Defendant received payments up to and including 19-8-2014 when it received the last payment of Kshs 500,000/=. The Plaintiff would have continued paying the installments as agreed but a case arose where the Defendant was sued by a company which claimed the entire original suit land No. 249. This case lasted until September 2022 but the Defendant was successful and was declared the owner of the land. Finally, when the plaintiff asked the Defendant to transfer to her the 50 acres that she bought, the Defendant's position was that she was in breach of the sale agreement and she is entitled to the partly paid purchased price, less the 10% liquidated damages for breach. The Plaintiff insists that the Defendant accepts the balance of the purchase price and then transfers the land to her because neither her nor the interested and third parties will accept any refund as they have been in occupation of the land that they bought since the year 2013. It is when they failed to reach an agreement with the Defendant that she filed this suit.

- 3) In support of her case, the Plaintiff filed the following evidence.
- (i) **Plaintiff's witness statements dated 2-6-2023 and 24-2-2025.**
  - (ii) **Copy of sale agreement dated 17-9-2023.**
  - (iii) **Copies of letters from the Defendant's advocate dated 26-5-201, 27-5-2015 and 2-3-2023.**
  - (iv) **Copy of judgement in ELC Murang'a Case No. 67 of 2018.**
  - (v) **Copy of certificate of official search for L.R. No. Kakuzi/Kirimiri Block 7/383 dated 21-11-2023.**
  - (vi) **Copies of correspondence by the parties and their advocates dated 4-3-2015, 3-12-2014, 31-10-2014, 23-5-2013, 30-5-2013 and 12-2-2014.**
  - (vii) **Copy of title deed for L.R.No. Kakuzi/Kirimiri Block 7/383.**
  - (viii) **Copy of mutation form for LR No. Kakuzi/Kirimiri Block 7/249 dated 21-1-2014.**
  - (ix) **Copy of letter of consent dated 19-12-2013.**
  - (x) **Copy of certificate of Registration for MEGG properties Company Limited.**
  - (xi) **Copies of payment schedules showing dates and amounts of money paid by the Plaintiff to the Defendant.**
  - (xii) **Copies of sixteen photographs showing men and an excavator working on some land.**
- 4) In its further amended statement of defence dated 4-10-2024, the Defendant makes the following averments. One, the claims by the Plaintiff and the interested party are *res judicata* because they ought to have been raised in **Murang'a ELC Case No 67 of 2018, Mugumoini Farmers Co. Ltd Vs. Inshwil Builders Engineering Co. Ltd and Other Interested parties** involving the same subject matter being L.R. No. Kakuzi/Kirimiri Block 7/37, 381,382 and 383 that were part of the subdivision of the mother title to No. Kakuzi/Kirimiri Block 7/7. Two , the Plaintiff's claim against the Defendant is incompetent, bad in law, frivolous, vexatious and time barred under the Limitation of Actions Act. Three, the sale transaction arising out of the sale agreement dated 17-9-2013 is voidable under **Sections 6 and 7 of the Land Control Act**. Four, the Plaintiff is in breach of the sale agreement for failure to pay the balance of the purchase price of Kshs. 58,500,000/= within the agreed period of 121 days. The Plaintiff only paid a total of Kshs. 50,700,000/= and she is entitled to a refund of Kshs. 44,200,000/= after a
-

deduction of Kshs. 6,500,000/= being the 100% liquidated damages under clause a (d) of the sale agreement.

5) The Defendant's case is as follows. One, it is in agreement with the Plaintiff as to the agreement for sale of 50 acres of land. Two, the Plaintiff has only paid a total of Kshs 50,700/= and not the pleaded amount of Ksh 58,500,000/=. Due to the breach of the sale agreement the Plaintiff is only entitled to 44,200,000/= which is the net after deduction of Kshs 6,500,000/= being the liquidated damages in the sale agreement. The Defendant denies that he is the party in breach of the sale agreement. Three, it is the Defendant who is in possession of the suit land and the photographs filed by the Plaintiff are of land Parcel No. Kakuzi/Kirimiri Block 7/250 and not from the suit land. Four, the sale agreements by some of the interested parties especially Mary Muthoni Gatiaga, Richard Maina Waweru, Ann Njoki Maina and Kamuingi Self Help Group were entered into long after the Plaintiff had breached the sale agreement between her and the Plaintiff. Again out of the forty(40) interested parties only Benson Kiriko Githakwa, James Kiumbuku Mwaura, Mary Muthoni Gatiaga, Richard Maina Waweru, David Ndua Munugu, Joyce Wambui Mucheru, Festus Kariuki Kabugi, Henry Ndegwa, Dixon G. Ngure, Rosemary W. Gatimu, Joseph Wahogo Karuiru, Kamuingi Self Help Group and Pauline W. Kimani have attached their sale agreements. The rest of the interested parties who are twenty five (25) in number have not attached any sale agreements between themselves and the Plaintiff. There are also three people whose sale agreements are filed yet they there are not listed as interested parties. They include Anne Muthoni Karanu, James Mburu Gichui, Madrin Waveti Mburu and Anne Njoki Maina.

For the above and other reasons, the Defendant prays for the dismissal of the Plaintiff's suit with costs.

6) In support of its case, the Defendant filed the following evidence.

- (i) Witness statements by Patrick Newton Gukura Muraya and Paul Githui Murage dated 16-11-2025 and 6-2-2025.**
  - (ii) Copy of the sale agreement dated 17-9-2013.**
  - (iii) Copy of title deed for L.R. No. Kakuzi/Kirimiri Block 7/249 measuring 72.0622 hectares.**
  - (iv) Copies of letters dated 23-1-2015, 21-5-2015, 27-5-2015 and 29-6-2015.**
  - (v) A copy of page 13 of the Star Newspaper of Thursday 21<sup>st</sup> May 2015.**
-

- (vi) **A copy of the demand letter by the Plaintiff dated 27-1-2020.**
- (vii) **A copy of the mutation form for the subdivision of L.R. No. 249 to create L.R. Nos.381, 382 and 383 measuring 45.5, 6.08 and 20.22 hectares respectively.**
- (viii) **A copy of the title deed for L.R. No. 383 measuring 20.22 hectares (50 acres and L.R. No. 37 measuring 92.861 hectares.**
- (ix) **Copy of pleadings and judgment in case No. 67 of 2018 at ELC Murang'a .**
- (x) **Other relevant documents.**

7) The interested parties filed witness statements by Benson Githakwa, James Kiumbuku Mwaura and Paul Wanyoike Mburu. They also filed sale agreements by the following persons. Nancy Watiri, Leah Wanjogu Mutuaruhiu, Florence W. Gitau, Smart Mother Rungiri, Mary Wabui Muikamba, Esther Njoki Gachoki, Peter Kagecha Ngari. James Gaitho, Martha Mwangi, Mary Muthoni Gatiaga, Richard Maina Weru and Ann Njoki Maina, Joyce Wambui Mucheru, Rosemary Wanjiru Gatimu, Joseph Wahogo Karuiru, Ann Muthoni Karuru, Dixon Gichohi Nguni, Kamuingi Welfare Association, Henry Ndegwa Manji, James Mburu Gichuhi and Madrine Weveti Mburu, Kabugi Festus Kariuki, David Ndua Munugu, Pauline Wambui Kimani and Beatrice Nyokabi Ngugi. All these agreements were between the above mentioned persons and the Plaintiff.

The other evidence included by the interested parties comprises of –

**(a) Copies of receipts proving payment of various amounts.**

**(b) Photographs of nappier grass, fruit trees, trees and houses standing on some land.**

8) The witness statements by the three witnesses are to the following effect. One, the interested parties bought land from the Plaintiff with the knowledge of the Defendant. Two, some of the interested parties have built their homes on the suit land and have been there for long. Those who have permanent houses on the land included James Kiumbuku Mwaura, Joseph Wanyoike Mburu and Francis Ngigi Mburu. Other interested parties have also occupied the suit land and are involved in farming thereon.

9) At the trial on 6-5-2025, 24-6-2025 and 28-7-2025 a total of Six(6) witnesses testified. They included the Plaintiff, Patrick Gukura , Paul Githiu Murage, Benson Githakwa, James Kiumbuku and Paul Wanyoike Mburu.

Each side reiterated their case during the trial. None of them deviated from the pleadings and the summarizes in paragraph 2,5 and 7 above. No amount of cross-examination would make them deviate from their stated positions.

10) After the conclusion of the trial, the court ordered a visit to the suit land with a view to establishing who is in occupation of the suit land. The visit which was by the Deputy Registrar took place on 22-9-2025. The parties and their counsel were present. According to the report the Plaintiff was able to point out the following things.

**(a) Areas where she claimed to have built a school where the Deputy Registrar saw various structures that had been demolished.**

**(b) A borehole.**

**(c) An incomplete stone structure said to have been a pig sty.**

**(d) Vandalized transformer and a KPLC pole.**

**(e) Beacons**

**(f) Construction materials**

**(g) Burnt wooden structure**

**(h) Painted walls**

**(i) Various demolished walls**

**(j) Various unfinished structures**

**(k) The pig sty had various compartments**

**(l) Road after every two plots**

The Defendant's director claimed to have made the roads mentioned in (l) above. He said that there was no school, no KPLC Poles or transformer, no borehole and no farming. He said that he has been farming on the land for 21 years and he has been harvesting.

The 2<sup>nd</sup> interested party James Kiumbuku Mwaura pointed out the following.

**(i) A semi permanent house for his servant.**

**(ii) A piece of land between the semi permanent house and a pig sty.**

The 5<sup>th</sup> interested party Paul Wanyoike Mburu pointed out an iron sheets house which he is said to have occupied since May 2014.

Paul Ngigi pointed out his homestead with two semi permanent houses built of iron sheets. The compound was fenced and there was evidence of people residing in the said houses. Benson also pointed out his land which is fenced with a barbed wire fence and there was burnt napier grass on the land.

11) Attached to the report are forty five photographs taken during the visit to the land. These photographs show the following items on the land.

- (a) Several heaps of building stones.**
- (b) Several anchor rods to support electric poles.**
- (c) Roads**
- (d) Several beacons**
- (e) Two electric poles**
- (f) Two vandalized transformers**
- (g) Grevillea trees**
- (h) A shallow well**
- (i) Fallen electric poles**
- (j) Several abandoned building foundations**
- (k) A water reservoir**
- (l) Construction sites**
- (m) Abandoned house walls**
- (n) Several surveying beacons**
- (o) A number of semi permanent houses**
- (p) A gate**
- (q) An orange tree**
- (r) A fence**

The whole area is ravaged by what looks like a recent fire.

12) The Defendant's counsel was expected to have filed written submissions by 19-3-2026 but as I write this judgment on 7-4-2026, no such submissions have been filed. The Plaintiff's counsel filed written submissions dated 27-3-2026 while the interested parties filed theirs dated 7-4-2026. The issues framed by the Plaintiff's counsel are as follows.

- (a) Whether the suits offends Section 4(1) (a) of the Limitation of Actions Act.**
  - (b) Whether the Plaintiff's claim is voidable under Sections 6 and 7 of the Land Control Act.**
-

- (c) Whether the claim by the Plaintiff is denied by the Defendant.**
- (d) Whether the Defendant was properly represented in court.**
- (e) Whether the Plaintiff's claim is disputed by the Defendant.**
- (f) Whether the Plaintiff is entitled to the reliefs sought in the further amended  
plaint.**

The issues identified by the interested parties are as follows.

- (a) Whether the Plaintiff's claim is res judicata.**
- (b) Whether the Plaintiff's claim is statute barred.**
- (c) Whether the Plaintiff's claim should be allowed as prayed.**
- (d) Who should bear the costs of the suit.**

13) I have carefully considered all the evidence adduced in this case by all the parties including the witness statements, documents, testimonies at the trial, evidence from the site visit, written submissions and the law cited therein. I agree with the learned counsel for the parties that that the issues identified are the right issues. I wish to add four more. I do so under **Order 15 rule 2** of the **Civil Procedure Rules**.

- (a) Whether the amount of purchase price paid to the Defendant was Kshs. 58,500,000/= or Kshs. 50,700,000/=**
- (b) Whether all the partly paid purchase price was received within the agreed 121 day or afterwards.**
- (c) Whether the Defendant ever put the Plaintiff and interested parties in possession of the 50 acres.**
- (d) Whether the doctrines of constructive trust and proprietary estoppel apply in this case.**

14) I find that the amount of purchase price paid by the Plaintiff to the Defendant is Kshs. 50,700,000/= and not Kshs. 58,500,000/=. The first reason for this finding is that the Plaintiff has no evidence in form of bank in slips or bank transfers to prove the figure of Kshs. 58,500,000/=. Her only evidence is a schedule that she made by herself. More cogent evidence is necessary especially because the Defendant disputes the figure. The second reason is that the Plaintiff has given different figures at different times as the amount paid to the Defendant. In her letter to the Deputy Commissioner Murang'a South dated 14-1-2015 the Plaintiff states-

**“... I have purchased the fifty acres on Plot No. Kakuzi/Kirimiri Block 7/383 after paying Kshs. 50,700,000/= of the purchase price...”**

Secondly in the Star Newspaper of Thursday May 21, 2015 at Page 13 under the headline “*Woman fears for life in Kenol Land Saga*” it is reported as follows towards the end of the story.

**“ She said she bought the land for Kshs 51 Million and has spent Kshs 36 Million developing it...”**

If the amount was Kshs. 50,700,000/= in 2015, how did it rise to Kshs. 58,500,000/= or any other figure at the time of the filing of the suit? The Plaintiff has not explained this to the required standard. Her lack of consistency creates doubt in how she arrived at the higher figure. Her witness statements also lack details on this very crucial aspect requiring strict proof. Finally, the Defendant does not dispute receipt of Kshs. 50,700,000/= from the Plaintiff.

15) It is my finding that some of the purchase price was paid outside the agreed 121 days. When the Defendant’s witness testified on 24-4-2025, he insisted that did not receive any payment from the Plaintiff after 17-1-2024. However, there is the letter by the Plaintiff’s counsel dated 12-2-2014 which reads in part as follows.

**( b) “ Margaret Murima Njoroge has already paid you a sum of Kshs 32,800,000/= leaving a balance of Kshs 32,200,000/= ...”**

Since the Defendant acknowledges receipt of Kshs. 50,700,000/= in total and only Kshs. 32,800,000/= had been received by 12-2-2024, then the difference of Kshs 17,900,000/= was paid after 17-1-2014 and outside the 121 days agreed in clause 1(b) of the sale agreement dated 17-9-2013. Secondly, the schedule of payments at page 82 and 83 of the Plaintiff’s trial bundle shows payments received on 19-8-2024 way after the 121 days agreed between the Plaintiff and the Defendant.

16) As to whether the Defendant ever put the Plaintiff into possession of the 50 acres, I find that he did and there is overwhelming evidence on this. Firstly, the sale agreement at **Clause 1 (c)** provides the following.

**“(c) The Vendor has agreed to give possession to the Purchaser upon signing this agreement.”**

The Plaintiff was not precluded from taking possession from 17-9-2013 which was the date of the agreement. Secondly the agreement starts by describing itself as “**supplemental**”. It states,

**“ This supplemental agreement is made...”**

By calling itself supplemental it means that there was an earlier agreement or arrangement between the parties. This supports the evidence by the Plaintiff that she started developing the land long before the agreement was recorded. Thirdly, the schedule of payments at page 82 of the Plaintiff’s trial bundle shows that the Defendant started by receiving payments from the Plaintiff on 25-6-2013 which is almost 3 months before the date of the sale agreement. Fourthly, the letter dated 12-2-2024(supra) states as follows in paragraphs ( c) and (d) .

**( c) “ The 50 acres Margaret Murima Njoroge is buying from you has already been subdivided and deposits received from various third party buyers for sale”.**

**( d) “ Part of the delay in completing this transaction was caused by the fact that infrastructure developments i.e. building of roads, power installation etc had to be undertaken in order to attract buyers. This infrastructural development has cost a substantial sum of money and resources thereby enhancing the value of your entire property...”**

Finally, the site visit by the Honourable the Deputy Registrar confirmed the testimony by the Plaintiff that she was put in possession by the Defendant and she in turn put the interested parties in possession. The homes of some of the interested parties, the foundation sites, the vandalized transformers, the water reservoir, the vegetation that has survived the fires, the abandoned house walls, the building materials, the electric poles still in place, the anchor rods to mention but a few are a clear testimony of the Plaintiff’s presence on the suit land and her heavy financial expenditure thereon. They say a picture is worth a thousand words. The 45 paragraphs filed by the Deputy Registrar tell the whole story of the Plaintiff’s occupation of the suit land.

17) It is my finding regarding the Plaintiff’s first issue that the Plaintiff has not lost possession of the suit land because some of the interested parties are still in occupation and more importantly her vacating the land was through thuggery rather than through a lawful process. Since she was put in possession by Defendant and there is no lawful process removing her from the land, she is on constructive possession of the suit land.

---

Her claim is not for recovery of the suit land. It is for the completion of the transaction started before 17-9-2013 so that she can get title to the 50 acres that she paid for.

- 18) The Plaintiff's claim is not voidable under **Sections 6 and 76 of the Land Control Act** for reasons to be given when dealing with the issue of constructive trust.
- 19) On the question of whether the Defendant was properly represented in Court by one Patrick Muraya, I find that it was. The witness said that he is a director of the Defendant. He said this on oath. Under Section 62 of the Evidence Act, all facts, except the contents of documents, may be proved by oral evidence. D.W.1's testimony is court in sufficient evidence that he is a director of the Defendant. He did not have to carry any document other than his identify card to prove this and he was not asked for his identify card. The Plaintiff too did not have any evidence to show that the person who testified in court was not a director of the Defendant.
- 20) The Plaintiff's claim in this case is not *res judicata*, she was not a party in ELC Case No. 67 of 2018. The only way for her to have become a party in the case was for the Defendant to join her through third party proceedings under **Order 1 rule 15 of the Civil Procedure Rules**. The Defendant could only have done this if it had a claim against her. Since the Plaintiff was neither sued by the Plaintiff in ELC No. 67 of 2018 nor joined by the Defendant through third party proceedings, she never became a party to the suit. For this suit to be *res judicata*, the issue in dispute in this case should have been heard and finally determined in ELC 67 of 2018. The issue in dispute in ELC 67 of 2018 was whether the Defendant in this case had lawfully acquired land parcels Nos. Kakuzi/Kirimiri Block 7/37,249,250 and 445 from Mugumoini Farmers Co. Ltd. The dispute in this case is whether the Defendant should transfer L.R. No. Kakuzi/Kirimiri Block 7/383 to the Plaintiff or not. The Plaintiff in this case was not a necessary party in ELC No. 67 of 2018. Had she been a necessary party, she would have been sued or lawfully joined. Neither of two ever happened. This suit cannot therefore be *res judicata*.
- 21) As per the finding at paragraph [15] above, the Defendant accepted payment of the purchase price outside the agreed 121 days in the sale agreement. It therefore acquiesced and this acquiescence disqualifies it from seeking to rely on clause 9 of the sale

agreement dated 17-9-2013 to seek damages for breach. The Defendant should have refused to accept part payment of purchase price after the 121 days. By accepting part payment of purchase price, the Defendant waived its right to rely on the breach clause. In the case of **Yusuf Mohamed Jiwa t/a Jiwa Properties and another vs. Mwangi and 2 others**, the Court of Appeal re-affirmed that acquiescence arises where a party, with knowledge of their rights, stands by and allows another to act inconsistently with those rights without objection.

Again, the Defendant is estoppel from blowing hot and cold on the breach clause. **Section 120 of the Evidence Act** provides as follows.

**“...When one person has , by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between him and such person or his representative, to deny the truth of that thing.”**

The Defendant having accepted part payment from the Plaintiff outside the agreed period of 121 days cannot now be allowed to rely on the breach clause to its advantage and to the detriment of the Plaintiff who believed that the Defendant had waived its right to rely on the breach clause.

22) Since the case of case of **Macharia Mwangi Maina and 87 Others vs. Danson Mwangi Kagiri to the case of Willy Kitilit vs. Michael Kibet 218 eKLR**, the Court of Appeal and all the courts below it have applied the doctrine of constructive trust and proprietary estoppel to avert an injustice. In the recent decision in the case of **Rural Development Services Ltd vs. African Cotton Industries Limited. Civil Appeal No. E062 of 2021**, Nyeri the Court of Appeal had this to say at paragraph 43 of the judgement dated 25-3-2026.

**“ We agree with the principle emerging that where vendors obtain full purchase price, part with possession to the extent that the purchasers occupy and develops the properties in question, justice and fairness demand that vendors do not turn to Section 7 of the Land Control Act to enrich themselves or benefit to the detriment of the purchasers.”**

In the case of **Willy Kimutai Kitilit vs. Michael Kibet Civil Appeal No. 51 of 2015**, the facts were similar to the facts of this case. The vendor had received the purchase price and put the purchaser in possession. He later sought invoke the provisions of Section 6 and 7 of the Land Control Act. The Court of Appeal held as follows at Paragraph 24 of the judgment delivered on 17-5-2018.

**“ There is another stronger reason for applying the doctrines of constructive trust and proprietary estoppel to the Land Control Act. By Article 10(2) (b) of the Constitution of Kenya, equity is one of the national values which binds the courts in interpreting any law (Article 10(1) (b) ). Further, by Article 159 (2) (e) , the courts in exercising judicial authority are required to protect and promote the purposes of the constitution...”**

At paragraph 25, the Court continued.

**“...Thus, since the current constitution has by virtue of Article 10(2) (b) elevated equity as a principle of justice to a constitutional principle and requires courts in exercising judicial authority to protect and promote that principle, among others, it follows that the equitable doctrines of constructive trust and proprietary estoppel are applicable to and supersede the Land Control Act where a transaction relating to an interest in land is void and unenforceable for lack of consent of the Land Control Board.”**

Applying this doctrine to this case, the question to ask is this.

Is it conscionable for the Defendant to have received Kshs. 50,700,000/= in the years 2013 and 2014 , (more than 12 years ago) from the Plaintiff, put the Plaintiff in possession of 50 acres of his land, let her develop it by building roads and occupying and then in the year 2026 , say that he will refund Kshs. 44,200,000/= only?

I find that it would be most unconscionable of the Defendant to do as above. With all the earlier mentioned decisions and Article 10 of the Constitution, the court has the tools and mandate to avert such a gross injustice. Equity is no longer where it was placed by Section 3 of the Judicature Act. Before the enactment of the Constitution of Kenya 2010, equity was below the constitution, the written laws, and the common law. It was low in hierarchy. Since the year 2010, equity is now a constitutional value which binds all state organs, state officers etc whenever any of them applies or interprets the Constitution .

23) If one prorates Kshs. 50,700,000/= to Kshs 65,000,000/= and 50 acres, one finds that at the time of the sale agreement in August and September 2013, Kshs 50,700,000/= would have purchased 39 acres of the suit land. It is my considered finding that if the Defendant transfers 39 acres of the suit land in the area where the Plaintiff had built infrastructure of roads, buildings and electricity , that would put her back to the position that she would have been in the years 2013 and 2014. The Kshs. 50,700,000/=, would have bought 39 acres of the suit land. The Defendant suffers no prejudice because he has been keeping the Plaintiff’s money for over 11 years. Though no evidence has been adduced by either

on the current value of land in the area, it is obvious that land prices have gone up since the years 2013/2014.

24) In conclusion and for the reasons already given I enter judgment for the Plaintiff against the Defendant in the following terms.

- (a) **An order of specific performance is hereby issued requiring the Defendant to give immediate vacant possession of 39 acres to be excised out land parcel No. Kakuzi/Kirimiri Block 7/383 which measures 50 acres. This land to be in the area where the Plaintiff had put up the developments noted in paragraph 11 of this judgment.**
- (b) **A decree to be issued directing the Defendant to transfer the said 39 acres out of the suit land to the Plaintiff who will in turn transfer the same to the concerned interested parties.**
- (c) **In alternative to (a) above the Defendant do refund the current market value of the 39 acres awarded in (a) above.**
- (d) **Costs of this suit to the Plaintiff and the interested parties.**
- (e) **Interest in (c) and (d) to the Plaintiff and the interested parties.**
- (f) **If any documents or instruments are necessary for the subdivision and transfer of the 39 acres to the Plaintiff and the interested parties, the Deputy Registrar of this Court is hereby authorized to execute such documents or instruments on behalf or in place of the Defendant, if the Defendant fails to execute them.**

**It is so ordered.**

**Dated, Signed and Delivered virtually at Murang'a this 21<sup>st</sup> day of April, 2026.**

**M.N. GICHERU  
JUDGE.**

**Delivered online in the presence of :-**

**Court Assistant – Anthony  
Plaintiff's Counsel – Mr Gatonye  
Defendant's Counsel – Mr Kanyi Ndurumo  
Interested parties' counsel – Miss Ndavuta.**