



**Our Lady of Grace School Foundation Ltd. (Formerly Known As Libra Institute) v
Registered Trustees of Franciscan Sisters of St. Anne, Lwak & another (Environment and
Land Case Civil Suit 42 of 2020) [2025] KEELC 5401 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5401 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE CIVIL SUIT 42 OF 2020
SO OKONG'O, J
JULY 17, 2025**

BETWEEN

**OUR LADY OF GRACE SCHOOL FOUNDATION LTD. (FORMERLY KNOWN
AS LIBRA INSTITUTE) PLAINTIFF**

AND

**REGISTERED TRUSTEES OF FRANCISCAN SISTERS OF ST. ANNE,
LWAK 1ST DEFENDANT
SISTER JULIANA AKUMBA MISORE 2ND DEFENDANT**

JUDGMENT

1. The Plaintiff is a company limited by guarantee incorporated in Kenya under the [Companies Act](#), Chapter 486, Laws of Kenya. The 1st Defendant is a corporate body established under the Land (Perpetual Succession) Act, Chapter 164, Laws of Kenya. The 2nd Defendant is a female adult of sound mind and is sued as the then Mother Superior of the 1st Defendant.
2. The Plaintiff instituted this suit against the Defendants through a plaint dated 8th July 2020. The Plaintiff averred that it was registered as Libra Institute but by a resolution of the company and with the approval of the Registrar of Companies, it changed its name to Our Lady of Grace School Foundation Limited. The Plaintiff averred that the post-election violence occasioned by the disputed results of the 2007 Kenya's Presidential Election resulted in great human catastrophe. The Plaintiff averred that the children from Kanyakwar and Kajulu within Kisumu County, who were being supported and assisted by well-wishers, were left stranded with nowhere to go. The Plaintiff averred that these children's education, shelter, food and security were threatened. The Plaintiff averred that its benefactors sought a solution to the problems these children were facing.



3. The Plaintiff averred that its benefactor, known as the Dominican Religious Community of St. Martin de Porres of the Dominican Friars, Vicariate of East Africa (hereinafter referred to as “the Dominican Friars of East Africa”), an international organisation, was supporting the said children from Kanyakwar and Kajulu. The Plaintiff averred that the said children were then under the care of another organisation known as Fr. Tom’s Kids (herein referred to as ‘FTK’). The Plaintiff averred that the Dominican Friars of East Africa started raising funds towards getting a shelter for these homeless children whom they were supporting. The Plaintiff averred that the Dominican Friars of East Africa, by the instruments of its establishment, had no authority to hold assets in Kenya.
4. The Plaintiff averred that the Dominican Friars of East Africa through their Superior, Fr. Leon Eugene Martiny made an international fund-raising appeal to purchase land where they would settle the said children who had been rendered homeless with no access to education, shelter or security. The Plaintiff averred that the Dominican Friars of East Africa received funds from an international donor, the School Sisters of Notre Dame, which offered to purchase for them two parcels of land, namely, Kisumu/Konya/2195 and Kisumu/Konya/5373, at a total cost of Kshs. 20,000,000/-. The Plaintiff averred that in addition to the two parcels of land purchased with donor funds, the Dominican Friars of East Africa purchased two other parcels of land, namely, Kisumu/Mukendwa/271 and Kisumu/Mukendwa/273, from their own funds.
5. The Plaintiff averred that the Dominican Friars in New York objected to its local arm, the Dominican Friars of East Africa, having educational vocations in their name in Kenya due to their religious vocation, which was their main objective. The Plaintiff averred that the Dominican Friars of East Africa sought a local Catholic religious organisation which could agree to have the said parcels of land, Kisumu/Konya/2195, Kisumu/Konya/5373, Kisumu/Mukendwa/271 and Kisumu/Mukendwa/273 (hereinafter referred to as “the suit properties”) registered in its name to hold in trust for Fr. Tom’s Kids (FTK) or its legal representative. The Plaintiff averred that the Dominican Friars of East Africa approached the 1st Defendant, which is a local Catholic religious organisation, which agreed to have the suit properties registered in its name until such time that FTK would have a legal standing to hold the suit properties in its own name.
6. The Plaintiff averred that the Dominican Friars of East Africa and the Defendants engaged Mitch Menezes Advocate to draw up a trust deed to be executed by the parties to formalise the relationship between the two organisations. The Plaintiff averred that due to an oversight, the trust deed was not executed by the two organisations and registered as required by law. The Plaintiff averred that the suit properties were subsequently transferred and registered in the name of the 1st Defendant with a clear understanding that they were to be held in trust for a legal organisation that FTK would nominate on behalf of the beneficiaries, who were the children being cared for by FTK.
7. The Plaintiff averred that it was the owner of the suit properties, notwithstanding that it was not registered as such. The Plaintiff averred that given the circumstances under which the suit properties were acquired and registered in the name of the 1st Defendant, a resulting trust was created in its favour over the suit properties. The Plaintiff prayed for judgment against the Defendants for;
 - a. An order of a temporary injunction to restrain the Defendants, their agents or servants or any other person from dealing with the suit properties pending the hearing and determination of the suit.
 - b. A declaration of a resulting trust of the proprietary interest in the suit properties in favour of the Plaintiff.



- c. An order of specific performance compelling the Defendants to execute the transfer documents and perform such functions that will convey the suit properties into the names of the Plaintiff and in default, the Deputy Registrar of the court to execute the transfer documents and perform such functions to convey the suit properties into the name of the Plaintiff.
 - d. Costs of the suit.
 - e. Interest on (d) above.
8. The Defendants filed a joint statement of Defence on 25th March 2021. The Defendants denied all the allegations in the plaint save as expressly admitted. The Defendants averred that the unregistered entity known as “Fr. Tom’s Kids” (FTK) which was to assist the school children who were affected by the post-election violence of 2007/2008, was supported by a congregational order of priests within the Catholic Church known as the Dominican Friars, whose Kenyan arm was the Dominican Friars Kenya. The Defendants averred that the Dominican Friars Kenya had the power and authority to hold assets in Kenya. The Defendants denied the Plaintiff’s claim that the Dominican Friars of East Africa had no authority to own or hold assets in Kenya.
 9. The Defendants averred that the funds for the purchase of the parcels of land known as Kisumu/Konya/2195 and Kisumu/Konya/5373 were raised from donors and well-wishers by the Dominican Friars and Father Leon Martiny along with other persons in the name of Dominican Friars. The Defendants averred that the said properties were owned by the Dominican Friars and were to be dealt with in accordance with the relevant Canon Law of the Catholic Church. The Defendants admitted that the parcels of land known as Kisumu/Mukendwa/271 and Kisumu/Mukendwa/273 were purchased by the Dominican Friars from their own funds. The Defendants reiterated that the Kenyan arm of the Dominican Friars could hold and own property in Kenya.
 10. The Defendants averred that the institutions sitting on the suit properties were founded and run in collaboration with the 1st Defendant owing to the expertise and experience that the 1st Defendant had in the management of similar institutions. The Defendants denied that there was an understanding that the 1st Defendant would hold the suit properties until such a time that FTK would have a legal standing to own the properties.
 11. The Defendants averred that they were not parties to the instructions given to Mitch Menezes Advocate to draw up a trust deed to be executed by the parties. The Defendants denied that the alleged trust deed was not signed and registered due to an oversight.
 12. The Defendants averred in the alternative that the Plaintiff, whose ownership and directorship was strange and unknown to the Defendants was not the legal organisation that was to hold the suit properties for and on behalf of Fr. Tom’s Kids (FTK). The Defendants denied that the Plaintiff was registered to hold the suit properties for FTK and denied that a resulting trust was created in favor of the Plaintiff in respect of the suit properties.
 13. The Defendants averred that the Dominican Friars and the 1st Defendant were religious orders or congregations of priests and sisters respectively within the Catholic Church and all property acquired by them can only be dealt with in accordance with the Canon Law of the Catholic Church regarding the handling of Catholic Temporal Goods which requires that dispositions of such property can only be done by the local Bishop. The Defendants averred that the suit was inviting the Defendants to undertake an act that is contrary to the Canon Law.
 14. The Defendants contended that the suit was an attempt to defraud them as the legal owners and the Dominican Friars as the beneficial owners of the suit properties. The 2nd Defendant averred that there



was no valid cause of action against her as she and the 1st Defendant were separate and independent, with the 1st Defendant being a legal entity that can sue or be sued in its own name. The 2nd Defendant averred that she as an individual, had no mandate to make decisions for the 1st Defendant and could not take responsibility for the acts and omissions of the 1st Defendant.

15. The Plaintiff filed a reply to defence on 15th April 2021 in which it joined issue with the Defendants in their statement of defence save for the admissions. The Plaintiff reiterated that the Dominican Friars were categorical that they did not wish to hold any property in their name. The Plaintiff denied that they were out to defraud the 1st Defendant and the Dominican Friars of the suit properties. On the 2nd Defendant's contention that the suit raised no cause of action against her, the Plaintiff submitted that the 2nd Defendant was sued because her name appeared in the title documents, and, as such she bore responsibility to address the issues raised by the Plaintiff, which she never did despite demands made by the Plaintiff.
16. At the trial, the Plaintiff called Father Martin Martiny (PW1) as its first witness. PW1 stated that when he was born, he was named Leone Engine Martin, and when he took his priestly vow, he adopted the name Father Martin Martiny. He stated that he was an American citizen and a Catholic priest. He told the court that he was a member of the Dominican Friars based in the U.S.A. at the time of his testimony. He adopted his witness statement filed in court on 6th May 2021 as his evidence in chief. He stated that the 1st Defendant and the Plaintiff were known to him. He stated that he exchanged several emails with the 1st Defendant. He stated that he was a priest in Kisumu, Kenya, for about 14 years until about 2014. He stated that while in Kenya, he exchanged some emails with the Defendants. The emails dated 3rd March 2019, 4th March 2019, 29th October 2018 and 30th October 2018 were produced as P.EXH. 1 (a), (b), (c), and (d) respectively.
17. On cross examination by the advocate for the Defendants, PW1 stated as follows: He came to Kenya in 2000. There were several opportunities to sponsor the children. Starting of a school was motivated by a desire to help children in Kanyakwar who had been affected by the post-election violence. The execution of the project was to be undertaken within the structures of the Catholic Church. The funding for the project came from other organisations within the Catholic church. The organisations within and outside the country agreed to fund the project because it was a project of the church. Dominican Friars of East Africa to which he belonged was the initiator of the project.
18. The Dominican Friars of East Africa had a chapter in Kenya known as Dominican Friars Kenya. Dominican Friars of East Africa was the same as Dominican Friars Kenya. Dominican Friars Kenya incorporated trustees for owning properties. He was aware that Father Thomas Heath was one of the first registered trustees of Dominican Friars Kenya. Our Lady of Grace was first known as Our Lady of Grace School. It was under Father Thomas Kids. The school was named after Father Thomas. Father Thomas was killed in a robbery incident around 2005. Dominican Friars Kenya was allowed to own property. They could, however, not own a property in their name as Dominican Friars Kenya. Their request to run the school as Dominican Friars was rejected by the head office in New York. The request was turned down due to possible liability. They were asked to find someone who could take liability. The rejection of the request was relayed on the phone from their head office in New York. The idea was to keep the properties within the church and to transfer them to a group/entity with strong Dominican connection. They came up with the Plaintiff in order to achieve their objectives. They were advised on how to go about forming the Plaintiff. The idea was to help Catholic children and children from other denominations. There was no alienation of property belonging to the Catholic church. The Canon law did not come into play. If a property belonging to the Catholic church is to be disposed of, the local Bishop must be involved.



19. He told the court that the local Bishop had no objection to what they were doing, although there was no formal authorisation in the form of a written document. He stated that the intention was to put the property in the name of the Franciscan Sisters, and since the Franciscan Sisters could not hold the property, they had to put it in another name. They wanted to preserve the property for the church and did not want to lose the property. They were not alienating the property from the church. He was not aware until it became an issue that the Plaintiff was initially known as Libra Institute. He was not aware of the change of the name of Libra Institute to the Plaintiff. He became aware of this development after leaving the country. He was not aware of the people who were behind Libra Institute. He only knew the people who were supporting the school. He did not know whether Libra Institute had any connection with the Catholic Church. He was not aware that Libra Institute (Libra) was a private company. He had no issue with a property of the church being held by a private company, provided it was held on behalf of the church.
20. PW1 reiterated that the Dominican Friars Kenya was not authorised to run the school in dispute. He denied that St. Thomas Aquinas was founded by the Dominican Friars and that it was a catholic school. He denied also that the Dominican Friars had another property opposite the Plaintiff's school. He told the court that any property they acquired was registered in the name of Franciscan Sisters of St. Anne Lwak. He stated that neither the Franciscan Sisters nor the Dominican Friars were willing to run the school. He stated that he has no problem with the suit properties being in the hands of a private institution, provided they were going to be used for the benefit of the children of Kanyakwar in accordance with the Kenyan law. He stated that it was only the private foundation that could run the school.
21. The Plaintiff's next witness was Father Ken Letoile (PW2). PW2 told the court that he was a Catholic priest with the Dominican Fathers and that he was the Prior Provincial of the Dominican Province while he was in Kenya. He stated that at the time of his testimony, he was a Parish priest in New York, U.S.A. He adopted his witness statement as his evidence in chief. He stated that he had some email communication with the 1st Defendant concerning the suit property. He wrote to Sr. Mary Aoko of the 1st Defendant in relation to the suit property. He wanted the titles for the suit properties transferred to the Plaintiff. He was the Prior Provincial at the time. He produced the letter dated 2017 as P.EXH.2. He told the court that the 1st Defendant was to hold the suit properties until Father Martiny found a suitable entity to run the school and when he found the Plaintiff, he asked the 1st Defendant to transfer the suit properties to the Plaintiff. He stated that that was the position of the Dominican Fathers. He stated that the Dominican fathers did not want to run the school as they did not want to take the responsibility associated with running of a school. He stated that the suit properties were purchased from the monies raised by Father Martiny, and the 1st Defendant was to hold the properties in trust until Father Martiny could find an entity that could run the school. They found the entity which was the Plaintiff. It was after they found the Plaintiff that they requested the 1st Defendant to transfer the suit properties to the Plaintiff. He stated that the Defendants refused to comply with their instructions. He stated that the position of the Dominican Friars on the matter had not changed. They could not run schools. He urged the court to compel the Defendants to transfer the suit properties to the Plaintiff forthwith.
22. On cross-examination by the Defendants' advocate, PW2 stated as follows: The funds for the purchase of the suit properties were raised by Father Martiny. He approached several donors to raise the funds. Dominican Friars did not raise the funds. The funds came from the School sisters of Notre Dame Canada. This was a women's religious community of sisters. It was a community of sisters within the Catholic Church. He was not present when the funds were being raised. He did not know how the appeal for the funds was made. He presumed that the funds were raised for the Our Lady of Grace



- school. The Plaintiff did not exist when Father Martiny was raising the funds. He was not aware that the funds for the purchase of the suit properties came from the account of the Dominican Friars Kenya, as he was not around at the time.
23. PW2 stated that the 1st Defendant was to hold the titles of the suit properties until they could find another religious community to adopt Our Lady of Grace school. He stated that he knew in general how the Plaintiff came about. He stated that the sponsors of the school were those whom Father Martiny approached to provide funding for the school. He told the court that when no religious community was found to adopt the school, the sponsors of the school formed themselves into the Plaintiff foundation to run the school so as to protect their interests in the school. He stated that the Plaintiff was not a religious organisation by law, but its members were Catholics. He was not aware that the Plaintiff was a private limited liability company known as Libra Institute. He stated that their goal was to keep the school functioning to educate the poor children, and their focus was the welfare of the children. He stated that if the Plaintiff could achieve that objective, then he had no problem with it. He stated that he was aware that there were other religious communities within the Catholic church who owned and run schools. He stated that some of those communities were in Kenya. He told the court that Father Martiny approached many of these communities to take over the responsibility of running the Our Lady of Grace school. This was according to what Father Martiny told him. He was not in Kenya at the time.
24. PW2 stated that the Dominican Friars in Kenya are under the authority and jurisdiction of the Dominican Friars of New York City for everything they do. He told the court that Father Martiny may have had the permission of the Provincial to raise funds but he was not in Kisumu at the time. He stated that Father Martiny sought permission to register the suit properties in the name of the Dominican Friars, but the permission was refused. He stated that he was not aware that the Dominican Friars Kenya owned several properties in their name in Kenya. He stated that the Dominican Friars did not run primary/elementary schools, and they did not want to take liability for such enterprises. He stated that they did not wish to assume the responsibility of running such a school in Kenya or elsewhere. He stated that he was not aware that the school was registered as a High School. He stated that Dominican Friars were not allowed to run High schools or elementary schools in their Province. He stated that the Friars could only be involved in teaching and not the management of schools. He stated that he was aware that the 1st Defendant was a Catholic organisation and that it was involved in the running of schools.
25. On re-examination by the Plaintiff's advocate, PW2 stated that the 1st Defendant was approached to run Our Lady of Grace school and it declined to do that. He stated that when a priest raises funds for a project the same are to be handled under the direction of the Provincial. He stated that the church funds were to be handled as per the Cannon Law. He told the court that Father Martiny was not successful in finding another religious community that could take over the management of Our Lady of Grace school. He reiterated that the Dominican Friars were only authorised to teach in schools run by other religious organisations but not to run the same.
26. The next witness was John Marcus Carrol (PW3). PW3 stated that the Plaintiff was known to him. He told the court that at the time of the filing of the suit, he was the Chairman of the Board of the Plaintiff. He stated that at the time of his testimony, the Board of the Plaintiff was being chaired by Carmen Armistead. He stated that he recorded a detailed written statement that was filed in court. He adopted the statement dated 6th May 2021 as his evidence in chief. He stated that he exchanged several emails with Father Martiny with regard to the matter in court and wished to have the same produced as exhibits. He stated that the Plaintiff authorised Dorothy Shiroya to sign documents on its behalf. He produced the resolution as P.EXH.3. He produced a notice of change of name of the



Plaintiff as P.EXH.4, and the constitution of the Plaintiff as P.EXH. 5. He also produced a letter dated 24th September 2018 showing the directors of the Plaintiff P.EXH.6.

27. On cross-examination by the Defendant's advocate, PW3 stated as follows: He was not a Catholic priest. He became interested in Our Lady of Grace School in 2011. A group of members of their church visited Kenya and in particular the school. That was how he came to know the school. He visited the school many times thereafter. He stated that the Plaintiff was not a limited liability company. It was a company limited by guarantee. The Plaintiff was initially known as Libra Institute. Dominican Friars wanted Father Martiny to return to New York, and someone to run the school. Father Martiny looked for an organisation that could run the school, but found none. He stated that their group from the U.S.A and other people from Kenya decided to run the school. They approached Anthony Gross, who told them that he had a company that he had formed but had not used. That was Libra Institute Ltd. They wanted to use the entity to own the land. The name of the entity was changed to the Plaintiff herein. He told the court that he had no idea of the registration number of the Plaintiff. He told the court that the Plaintiff was limited by guarantee. He stated that he was aware of the trust deed that was prepared by Mr. Menezes. He stated that the trust deed was not registered. He stated that the 1st Defendant was to hold the suit properties in trust until the same was transferred to another entity. He stated that he did not know why the trust deed was not registered. He stated that it was Father Martiny who could know.
28. PW3 stated that Father Martiny asked various religious organisations to take over the running of the school but they all declined. He told the court that it was after that that the sponsors of the school were asked to take over the school. He stated that their board was highly qualified to run the school. He stated that the intention was to put the school in the hands of a religious organisation within the Catholic Church. He told the court that the Plaintiff was not a religious organisation within the Catholic Church. He stated that he was not aware that permission of the church was required to put the suit properties in the hands of the Plaintiff. He stated that he and his friends had been funding the school. He stated that they had been raising half the budget of the school since they adopted the school in 2012. He stated that the Dominican Friars owned properties in the U.S.A and that the Dominican Friars in Kenya knew nothing about running a primary school. He stated that the school was not a secondary school. He stated that they did not make a representation that it was a secondary school. He stated that the school was registered as a primary school.
29. On re-examination by the Plaintiff's advocate, PW3 stated that the Plaintiff was a company limited by guarantee and the members of its Board were not paid for their services. He stated that the Plaintiff had a constitution that sets out what it could do and not do. He stated that the Plaintiff was not for profit.
30. The next witness was Dorothy Mapezi Shiroya (PW4). PW4 stated that she was a retired Principal of Ramogi Institute of Advanced Technology. She stated that she was a director in the Plaintiff's board of directors. She adopted her witness statement dated 8th July 2020 as her evidence in chief.
31. On cross-examination by the Defendant's advocate, PW4 stated as follows: She stood by the contents of the affidavit that she swore in support of the Plaintiff's interlocutory application. She started associating with the Plaintiff when she was nominated to its board in February 2018. By the time she joined the Plaintiff, it was already registered. She was a catholic by faith. When she joined the Plaintiff, she got a briefing on how the Plaintiff came about. She was told that it was a new foundation that had been formed to take charge of the school. She stated that she was not told that the school was formed by the Dominican Friars of East Africa.
32. She learnt that the school was set up by the Dominican Friars of East Africa after she joined the board. The school was initially known as Father Tom's Kids (FTK). Father Tom and Father Martiny were



Dominican Friars. When she joined the Plaintiff, its name was as it was at the time of filing suit. She was not a director in the board of the Plaintiff when the Plaintiff was registered in 2010. PW4 stated that she did not know those behind Libra Institute. She stated that she was not part of the Plaintiff on 29th May 2018. She stated that her role was to raise funds for the school. She stated that she joined the Plaintiff when the whole process of formation had been completed. She stated that the suit properties were not registered in the name of the 1st Defendant because the same belonged to the Catholic church. She told the court that the trust deed was never executed as its execution was overtaken by events when Father Martiny left the country for the U.S.A. She stated that there was no other school adjacent to the Our Lady of Grace school. She stated that she was not aware that the Dominican Friars were involved in running of schools in Kenya. She stated that she was not aware that the Dominican Friars of East Africa had expressed a desire to run the school.

33. The Plaintiff's last witness was Mitchell James Bradley Menezes (PW5). PW5 stated that he was an advocate of the High Court admitted in 1998 and was a partner in the firm of L. G. Menezes & Co. Advocates. He stated that the Plaintiff was known to him. He adopted his witness statement filed in court on 14th January 2022 as his evidence in chief. He told the court that he handled the transactions involving the purchase of the suit properties on behalf of the Dominican Friars. He stated that Action Aid Kenya was the vendor while Franciscan Sisters of St. Anne Lwak, the 1st Defendant, were the purchasers. He produced the sale agreement dated 19th May 2008 as P.EXH.7, the transfer of land for Kisumu/Konya/2195 as P.EXH.8 and the transfer of land for Kisumu/Mukendwa/271 as P.EXH.9. He also produced the Land Control Board consents for the transaction involving the two plots as P.EXH.9 and P.EXH.10 respectively. He produced copies of the title deeds for Kisumu/Konya/2195 and Kisumu/Konya/5373 as P.EXH.11 and P.EXH.12, respectively. He stated that he also had a draft trust deed. He stated that after the post-election violence, the situation was unsafe. He told the court that there were children who were stranded in the Dominican Friars compound who were about 300. The children had sought refuge in the compound. The area was unsafe. He stated that the Dominican Fathers particularly, Father Martiny started a children's home. They then started looking for land to set up a school in which they could take these children to learn. That was when they found the suit properties. He stated that the School Sisters of Notre Dame, based in Canada, purchased the properties for them. He stated that Father Martiny was the Vicar.
34. PW5 stated that Father Martiny informed him that the funds came from the School Sisters of Notre Dame to the Dominican Friars' Account and were for the purchase of the suit properties. PW5 stated that Father Martiny told him that he had asked their leader in New York (Father Dominic Izzo) for permission to register the suit properties in the name of the Dominican Friars. He stated that Father Dominic consulted on the issue and communicated that they did not want the properties registered in the name of the Dominican Friars. He told the court that Father Martiny was the local boss in Kenya. He stated that Father Martiny talked to the 1st Defendant and asked if the property could be registered in the name of the 1st Defendant. He stated that the communication was verbal and that the 1st Defendant was to hold the properties in trust for the organisation that would be identified later. He stated that it was on that understanding that he was instructed to draft a trust deed. He stated that the trust deed was between the Dominican Friars and the 1st Defendant. He told the court that the 1st Defendant was to hold the suit properties in trust. He stated that the trust deed was not executed because at that time, Father Martiny was talking to other institutions who had expressed interest in taking over the responsibility of running the school but this did not materialise. He produced the draft trust deed as PEXH.13 and correspondence with Njoroge & Co. Advocates dated 18th April 2008 and 13th May 2008 as P.EXH. 14 (a) and P.EXH. 14 (b). He also produced a letter dated 19th July 2008 that he wrote to the Dominican Friars and a copy of a banker's cheque for Kshs. 20,000,000/= as P.EXH.16. PW5 also produced copies of two cheques that were received by his firm dated 25th March



- 2008 for Kshs. 19,500,00/= and Kshs. 500,000/= as P.EXH. 17 (a) and 17 (b) respectively. He stated that the suit properties were registered in the name of the 1st Defendant to hold in trust awaiting further instructions from Father Martiny. PW5 told the court that he had heard of the Plaintiff. He stated that the Plaintiff was initially registered as Libra before it changed its name to the Plaintiff.
35. On cross-examination by the advocate for the Plaintiff, PW5 stated as follows: He was instructed that the Dominican Friars wanted to purchase the suit properties and other items at a consideration of Kshs. 20,000,000/=. His client was the Dominican Friars, and the vehicle for the purchase of the properties was the 1st Defendant. The Dominican Friars was a religious order born about 800 years ago. He had not heard of the Dominican Friars Kenya Registered Trustees. When shown the certificate of incorporation of the Dominican Friars Kenya Registered Trustees, he stated that the name Thomas Heath rang a bell. He stated that the registered trustees could own and hold a property. He stated that he did not know much about the School Sisters of Notre Dame, Canada apart from the fact that they paid the purchase price for the suit properties. He stated that he received two (2) cheques from Dominican Friars for the purchase of the suit properties. He stated that the conversation that resulted in the suit properties being registered in the name of the 1st Defendant was necessitated by the fact that although the Dominican Friars could hold property, the Dominican Friars Provincial Council said that they did not want to take up the responsibility of running a school in Kenya. He stated that he was not told why they did not want to take that responsibility.
36. PW5 stated that the suit properties should be transferred to the Plaintiff based on the instructions he received as to what the intention of Father Martiny was. He stated that the suit properties were to be held by a Christian organisation that would use them for education. He told the court that the trust deed was not signed because it was separate from the sale transaction. He stated that Father Martiny told him that the 1st Defendant had agreed to hold the suit properties temporarily. He stated that Father Martiny was at that time talking to other organisations who had expressed interest in running the school, but that did not work out and that was why the trust deed was not signed.
37. PW5 stated that John Carrol was known to him as he was the chairman of the Plaintiff. He stated that it was not true that father Martiny wanted to put the suit properties in private hands. PW5 stated that he was not aware that the 1st Defendant refused to sign the trust deed. He stated that the Plaintiff came about after the change of name of the company formerly known as Libra Institute. He stated that he knew nothing about Libra Institute. He stated that there was only a change of name of a company, meaning that the Plaintiff remained a private limited liability company. PW5 stated that there was no dispute that the Plaintiff was a private limited liability company. He stated that he did not know the intention of the people who contributed money for the purchase of the suit properties. He stated that the intention of Father Martiny was, however, that the suit properties would be held by any person or organisation who could offer education to the children. He stated that he was not aware that Dominican Friars had no authority to run schools. He stated that he could see the certificate of registration of Our Lady of Grace Secondary School. He stated that he noted that the manager/ sponsor of the school was the Dominican Friars. He stated that he did not say that Dominican Friars in Kenya were not allowed to run schools. He stated that Father Martiny told him that the head office had refused to permit them to run the school. He stated that he received his instructions from Father Martiny on behalf of the Dominican Friars.
38. The Defendants called Sister Mary Aoko Atwalla (DW1) as their sole witness. DW1 told the court that she was a nun and that she was given another name BENIGNA so she was also called Sister Mary Benigna. DW1 stated that she was the Mother Superior of the Franciscan Sisters of St. Anne. She stated that she was the head of the organisation worldwide. She stated that she was the chairperson of the Registered Trustees of the Franciscan Sisters of St. Anne Lwak and that the 2nd Defendant was known



to her, as she had taken over from her. She stated that the 2nd Defendant was to testify, but she was unwell and was in the hospital in Nairobi. She stated that the 2nd Defendant had authorised her to testify on her behalf. She adopted her witness statement dated 16th October 2024 as her evidence in chief. She stated that Our Lady of Grace Secondary School was known to her. She stated that they were educationists and were running schools. She stated that Our Lady of Grace School approached them to help them run the school. She was approached by Father Martiny(PW1) of the Dominican Friars.

39. DW1 stated that the Dominican Friars was a congregation of priests like them, and PW1 approached them on behalf of the Dominican Friars. She stated that she was contesting the Plaintiff's claim because when they were requested to assist Our Lady of Grace School, they were not told of the existence of the Plaintiff. She stated that she was only aware of the Dominican Friars. She stated that she did not know the Plaintiff, which was claiming the suit properties. She stated that they had no problem transferring the suit properties back to the Dominican Friars. She stated that she did not know whether the Plaintiff was from the Catholic church or not. She told the court that they filed a bundle of documents on 25th March 2021, together with their defence which she wished to produce as exhibits. She produced the certificate of incorporation of Dominican Friars Kenya Registered Trustees as D.EXH.1. She stated that the Dominican Friars could hold movable and immovable properties. She produced the certificate of registration of Our Lady of Grace Secondary School as D.EXH.2. DW1 stated that the manager of the school is indicated as Christopher L. Fedha, and the address of the Manager/Sponsor is given as Dominican Friars (Dominican). She stated that it was not true that the Dominican Friars had no mandate to run schools. DW1 produced an extract of Canon Law on how to handle the Catholic church's property as D.EXH.3. She stated that, according to Canon Law, the church property cannot be disposed of without the permission of the Bishop of the local jurisdiction. She produced the letter dated 17th July 2009 that confirmed the request from Father Martiny as D.EXH.4 and a letter from Dominican Friars dated 24th July 2009, which confirmed that the Dominicans run schools as D.EXH.5. She produced another letter to that effect from Father Martiny dated 15th August 2009 as D.EXH.6. DW1 produced another letter dated 31st August 2009 as D.EXH.7. The letter stated that the school was run by the Dominican Friars in collaboration with Franciscan Sisters of St. Anne Lwak. She produced as D.EXH.8 another letter dated 1st September 2009 to the same effect. DW1 also produced an undated letter by Father Martiny to Sister Vita, which confirmed that the school was a collaboration project. The letter was produced as D.EXH. 9.
40. When referred to the letter dated 27th November 2017 (P.EXH.2) said to have been addressed to her by Father Kenneth Letoile, she stated that she had never met the Father and did not recall seeing the letter. Concerning the email dated 30th October 2018, said to have been addressed by her to Father Martiny, she stated that she did not make any undertaking in this email to transfer the school to the Plaintiff. She stated that the school was funded by donors. She stated that she had never heard that the Plaintiff was funding the school. She told the court that the Dominicans were the initiators of the school, but they did not fully fund the school. She stated that she was not aware that the Dominicans refused to have the suit properties registered in their name. She stated that the Plaintiff was not known to her, and she did not know whether it had any relationship with the Catholic church. She stated that she was not aware that the Dominican Friars Kenya were prohibited by their mother Province from owning school land. She told the court that they had no problem transferring the suit properties to Dominican Friars. She stated that the 2nd Defendant should not have been sued in her personal capacity as the 1st Defendant was a corporate body. She urged the court to dismiss the suit.
41. On cross-examination by the Plaintiff's advocate, DW1 stated that she was not involved in the transfer of the suit properties to the 1st Defendant as she was not the Mother Superior then. She stated that she did not know Rev. Letoile. She stated that the Headquarters of the Dominican Friars was in the



U.S.A. When shown the letter dated 30th March 2019 addressed to her by Bro. Gideon Muchira, Vicar Provincial, she stated that Bro. Gideon Muchira was not the head of Dominican Friars (Dominican). She stated that the writer was the assistant head of the Dominican Friars in Kenya. She told the court that she could not transfer the suit properties to the Plaintiff on the strength of the said letter because she did not know Our Lady of Grace School foundation. She stated that she knew Father Martiny as he was the one in charge of the Dominicans in Kisumu. She confirmed that she wrote an email on 30th October 2018 to Father Martiny in which she told him that the issue of the school had been a pain on their neck.

42. DW1 stated that the 2nd Defendant did not share with her all the emails that she wrote and received on the issue. She told the court that she took over from the 2nd Defendant in 2011. DW1 stated that she knew Mr. Menezes as an advocate, but had not met him. She stated that she did not know who handled the acquisition of the suit properties on behalf of the Dominican Friars. She stated that the 2nd Defendant informed her that the suit properties were registered in the name of the 1st Defendant because the Dominican Friars were foreigners and, as such, could not hold land. She stated that the vulnerable children who were being assisted were called Father Tom's Kids. She stated that Father Tom died following a robbery incident, and the children were named after his memory. She told the court that she was not present when the suit properties were being acquired but participated in the fundraising. She stated that they were raising money so that the activities of Father Tom who was taking care of the children could continue. Father Tom who was a member of the Dominican Friars was offering education to the children among other activities. Father Tom was not acting alone. She stated that the school was registered as Our Lady of Grace School Trust.
43. On examination by the Court, DW1 stated that the suit properties were purchased by the Dominican Friars from funds that they raised from donors and friends. She stated that it was Father Martiny who was the initiator of the fundraising. She stated that at the time, Father Tom was deceased. She stated that she was told by the 2nd Defendant, who was also known as Sister Irene, that the suit properties were registered in the name of the 1st Defendant because the Dominican Friars were foreigners and could not hold land. She stated that there could have been other reasons. She stated that the 1st Defendant was to hold the suit properties for the Dominican Friars as long as they did not require them. DW1 stated that the 1st Defendant was ready and willing to transfer the suit properties to the Dominican Friars should they ask for the same.
44. After the close of evidence, the court directed the parties to make closing submissions in writing.

The Plaintiff's submissions

45. The Plaintiff in its submissions dated 13th January 2024 framed the following issues for determination;
 - a. Whether a resulting trust had been established between the 1st Defendant and the Plaintiff or any other party in respect of the suit properties;
 - b. Whether the Plaintiff was entitled to the prayers sought in the Plaint; and
 - c. Who should bear the costs of the suit?
46. The Plaintiff submitted that there was no dispute as to the source of the funds for the purchase of the suit properties and how they were purchased. The Plaintiff submitted that the funds used to purchase the suit properties were obtained through the fundraising initiative of Father Martin Martiny. The Plaintiff submitted that the headquarters of the Dominican Friars in New York did not approve the registration of the suit properties in the name of the Dominican Friars. The Plaintiff submitted that Father Martiny sought permission from their headquarters to register the suit properties in the name



of any Catholic organisation until such a time that the project would get a legal entity to hold such properties.

47. The Plaintiff submitted that the suit properties were registered in the name of the 1st Defendant not as the owner thereof but to hold the same for and on behalf of either the Plaintiff or the Dominican Friars. The Plaintiff submitted that the Dominican Friars wrote to the 1st Defendant both from its head office in New York U.S.A and East Africa Vicariate to transfer the properties to the Plaintiff but the 1st Defendant declined and/ or refused to act. On the definition of trust, the Plaintiff relied on, Halsbury's Laws of England, 4th Edition Volume 48^{^} at paragraph 597, Black's Law Dictionary 9th Edition, and the *Trustees (Perpetual Succession) Act*. The Plaintiff further relied on Heartbeat Ltd v. Ngambwa Heartbeat Community Children's Home & Rescue Centre [2018]eKLR, Twalib Hatayan &Anor v. Said Saggah Ahmed Al Heidy & 5 Others [2015]eKLR, Henry Muli Munguti & Others v. Cyrus Robert Sala Zibu, Supreme Court Application No. E009 of 2023, Arvind Shah & Others v. Mombasa Bricks & Tiles Ltd., Supreme Court Petition No. 18(E020) of 2022, Aliaza v. Saul (Civil Appeal 134 of 2017) KECA 583 (KLR) 24 (2022) KECA 583 KLR, William Kipsoi Sigei v. Kipkoech Arusei & John Junge (Civil Appeal 54 of 2016) KECA 446 (KLR) and Kiplangat Kotut v. Rose Kipngok [2019] KECA 921 (KLR)___.
48. The Plaintiff submitted that a resulting trust had been established based on the evidence of both the Plaintiff's and the Defendants' witnesses. The Plaintiff submitted that the 1st Defendant was a trustee and held the suit properties in trust. The Plaintiff submitted that if the court found that there existed a resulting trust, the court had to proceed and give effect to the terms of the trust. The Plaintiff submitted that the 1st Defendant had admitted that it was holding the suit properties in trust and urged the court to so find. The Plaintiff also prayed for the costs of the suit.

The Defendants' submissions

49. The Defendants in their submissions dated 31st January 2025 submitted that the Plaintiff's entire case was based on the fact that there existed a resulting trust in its favour over the suit properties. On how trusts are created, the Defendants cited Peter Ndungu Njenga v. Sophia Watiri Ndungu [2000] eKLR and Twalib Hatayan Twalib Hatayan & Anor v. Said Saggah Ahmed Al-Heidy & Others [2015] eKLR. The Defendants submitted that the funds that were used to purchase the suit properties were provided by the School Sisters of Notre Dame to the Dominican Friars Kenya. The Defendants submitted that the funds were raised using the name of Dominican Friars East Africa. The Defendants submitted that the Plaintiff was non-existent at the time the transactions were being undertaken and did not provide any funds that were applied towards the purchase of the suit properties. The Defendants submitted that the Plaintiff lacked locus standi to come to court to demand a declaration of a resulting trust in its favour because it was not a party directly or indirectly to the transactions leading to the registration of the suit properties in the name of the 1st Defendant.
50. On whether it was possible to imply or infer the existence of a resulting trust from the circumstances of the case, and find that it was the intention of the parties that the suit properties be held in trust for the Plaintiff, the Defendants submitted that the institutions sitting on the suit properties were founded and run in collaboration between the management of the school and the 1st Defendant owing to the expertise and experience the 1st Defendant had in the management of similar institutions. The Defendants submitted that the decision to register the properties in the name of the 1st Defendant was deliberate because the 1st Defendant had direct interest in the establishment that was to be set up on the properties. The Defendants submitted that from the nature of the involvement of the 1st Defendant in the process of the acquisition of the properties and their management, it was clear that they were not holding the suit properties for the benefit of any other person.



51. The Defendants submitted that the properties were purchased by the Dominican Friars. The Defendants submitted that the Plaintiff had nothing to do with the purchase or acquisition of the suit properties and had no right to a resulting trust as a provider of finances used to acquire the same. The Defendants submitted that PW1 knew that the suit properties would be registered in the name of the 1st Defendant as a trustee for the Dominican Friars. The Defendants submitted that the Plaintiff was not the Dominican Friars. The Defendants submitted that the interest of the 1st Defendant in the suit properties went beyond just holding them. The Defendants submitted that the 1st Defendant was to utilise the properties for education purposes only and was to pay land rent, rates, erect and maintain buildings thereon, take insurance and generally incur expenses in the development of the properties for the agreed purpose.

Analysis and Determination

52. I have considered the pleadings, the evidence on record and the submissions filed by the parties. I am of the view that the issues arising for determination in this suit are the following;

1. Whether a resulting trust has been established in favour of the Plaintiff in respect of the suit properties, which are registered in the name of the 1st Defendant;
2. Whether the Plaintiff is entitled to the reliefs sought; and
3. Who is liable for the costs of the suit?

53. Halsbury's Laws of England, 4th Edition, Volume 48 at Paragraph 597 cited by the Plaintiff defines a resulting trust as follows:

“A resulting trust is a trust arising by operation of law:

- i. Where an intention to put property into trust is sufficiently expressed or indicated, but the actual trust either is not declared in whole or in part or fails in whole or part; or
- ii. Where property is purchased in the name or placed in the possession of a person ostensibly for his own use, but really in order to effect a particular purpose which fails; or
- iii. Where property is purchased in the name or placed in the possession of a person without any intimation that he is to hold it in trust, but the retention of the beneficial interest by the purchaser or disposer is presumed to have been intended.”

54. In *Heartbeat Limited v. Ng'ambwa Heartbeat Community Children's Home & Rescue Center* [2018] eKLR also cited by the Plaintiff, the Court of Appeal stated that:

“Moving on to the pertinent issue of whether there was evidence of a resulting trust in favour of the respondent, we are cognizant that the onus lay with the respondent to prove the same through evidence. See *Juletabi African Adventure Limited & Another vs. Christopher Michael Lockley* – Civil Appeal No. 75 of 2016 (unreported). It was upon the respondent to establish that it was the parties' intention that the appellant would purchase and hold the suit parcels in trust for it...”



55. In *Peter Ndungu Njenga v. Sophia Watiri Ndungu* [2000] eKLR cited by the Defendants, the Court of Appeal stated as follows:

“The concept of trust is not new. In case of absolute necessity, but only in case of absolute necessity, the Court may presume a trust. But such presumption is not to be arrived at easily. The Courts will not imply a trust save in order to give effect to the intention of the parties. The intention of the parties to create a trust must be clearly determined before trust is implied.”

56. In *Twalib Hatayan Twalib Hatayan & Anor v. Said Saggat Ahmed Al-Heidy & Others* (supra), cited by both parties, the Court of Appeal stated as follows on resulting trust:

“A resulting trust is a remedy imposed by equity where property is transferred under circumstances which suggest that the transferor did not intend to confer a beneficial interest upon the transferee (see *Black’s Law Dictionary*) (supra). This trust may arise either upon the unexpressed but presumed intention of the settlor or upon his informally expressed intention. (See *Snell’s Equity* 29th Edn, Sweet & Maxwell p.175). Therefore, unlike constructive trusts where unknown intentions maybe left unexplored, with resulting trusts, courts will readily look at the circumstances of the case and presume or infer the transferor’s intention. Most importantly, the general rule here is that a resulting trust will automatically arise in favour of the person who advances the purchase money. Whether or not the property is registered in his name or that of another, is immaterial (see. *Snell’s Equity* at p.177) (supra)...”

57. The court of Appeal in *MB v. BBAM* (Civil Appeal 181 of 2020) [2022] KECA 895 (KLR) (28 April 2022) (Judgment) (with dissent - Sole Kantai, JA) stated as follows;

“This is for the reason that the presumption of a resulting trust is rebuttable. Gary Watt’s text book on *Trusts and Equity* 3rd Edition at page 153; clearly states that much as there exists the presumption of a resulting trust, it should be recognised that the presumption “... is easily rebutted by evidence that the transferor intended the transfer to take effect in some other way. It may be that the transferor intended an outright gift, or that he intended the transfer of property by way of loan or some other contractual arrangement.”

58. The burden was on the Plaintiff to prove that the 1st Defendant held the suit property in trust for it. The Plaintiff and the Defendants agree that the suit properties were purchased by the Dominican Friars from the funds which they received from the donors and other well-wishers through the fundraising activities initiated by Father Martin Martiny himself a member of the Dominican Friars and then the Vicar Provincial for the Dominican Friars in Kenya.

59. I am satisfied from the evidence on record that the suit properties were registered in the name of the 1st Defendant to hold in trust for the Dominican Friars. The Defendants witness, DW1 told the court in her evidence in chief that, “We have no problem transferring the suit properties to Dominican Friars.” On examination by the court, DW1 stated that, “We were to hold the properties for Dominican Friars as long as they did not ask for it. We are ready and willing to transfer the property to the Dominican Friars should they ask for it.” These statements are a clear admission by the Defendants that the 1st Defendant holds the suit properties in trust for the Dominican Friars.

60. As the beneficial owner of the suit properties, the Dominican Friars had the right to direct the 1st Defendant on how to deal with the suit properties, including giving the 1st Defendant instructions



to transfer the suit properties to a third party. From the record, the suit properties houses, Our Lady of Grace School (hereinafter referred to only as “the school”), which was founded by the Dominican Friars to provide education, shelter, food and security for homeless and other needy children who were initially known as Father Toms’ Kids. I am satisfied from the evidence of PW1 and PW2 that the Dominican Friars Headquarters in New York did not approve the registration of the suit properties in the name of the Dominican Friars East Africa that would have given them the responsibility of running the school a responsibility which they were not prepared to undertake. I am also satisfied from the evidence on record that following the refusal by Dominican Friars head office in New York to take on the responsibility of running the school, PW1 was given the go ahead to look for a catholic religious community that could take over the running of the school and the suit properties but did not succeed in getting any. The Defendants did not deny the Plaintiff’s claim that the 1st Defendant was not willing to take on the responsibility of running the school.

61. From the evidence of PW2 and his letter dated 27th November 2017 to DW1, it is apparent that the Dominican Friars decided to hand over the running and management of the school and its properties to a Trust established in Kenya. From the evidence on record, the Dominican Friars engaged an advocate, Mr. Anthony Gross, to establish the Trust and have the suit properties transferred to it. It appears that the Dominican Friars were advised by their legal advisers to use a foundation instead of a trust as a vehicle to run and manage the school. Their legal advisers sold them an off-the-shelf company, Libra Institute Limited, which was a company limited by guarantee. The company Libra Institute thereafter changed its name to Our Lady of Grace School Foundation Limited, the Plaintiff, on 29th May 2018.
62. From the evidence on record, following the acquisition/establishment of the Plaintiff, Our Lady of Grace School Foundation Limited, different members of the Dominican Friars who were involved in supporting the school requested the 1st Defendant to transfer the suit properties to the Plaintiff. The request was first made by the Dominican Friars’, Province of Saint Joseph, New York through PW2’s letter dated 27th November 2017(P.EXH.2) before the establishment of the Plaintiff. This was followed by a series of correspondence between PW1 and DW1. See P.EXH. 1(a) to 1(d). PW5 told the court that Father Gideon Muchira of the Dominican Friars of Eastern Africa had informed the 1st Defendant that the Dominican Friars had no interest in the school. In her evidence on cross-examination, DW1 admitted that she received a letter dated 30th March 2019 from Father Gideon Muchira, Vicar Provincial of the Dominican Friars of Eastern Africa, in which he informed her that the Dominican Friars had no interest in the school and the land on which it was situated and advised her to transfer the land to the Plaintiff. DW1 referred to Bro. Gideon Muchira as “assistant head of the Dominicans in Kenya.” DW1 stated that she could not act on Bro. Gideon Muchira’s letter because she did not know the Plaintiff. In response to PW1’s request that she transfer the suit property to the Plaintiff, DW1 responded that under Kenyan law, “whoever possesses the title deed is the owner of the property without question.” This is not the correct legal position.
63. The suit properties were registered in the name of the 1st Defendant under the Registered [Land Act](#), Chapter 300 Laws of Kenya (now repealed). Sections 27 and 28 of the Registered [Land Act](#) provide as follows:

“27. Subject to this Act –

- a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;
- b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together



with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease.

28. The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject –
- (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - (b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 30 not to require noting on the register:

Provided that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee.”

64. In *John Gitiba Buruna & Another v. Jackson Rioba Buruna*, Court of Appeal at Kisumu, Civil Appeal No. 89 of 2003, the court stated as follows:

Although the rights of a registered proprietor of land are indefeasible under section 28 of the Registered *Land Act*, such registration does not as the proviso to section 28 states relieve a proprietor from any duty or obligation to which he is subject as a trustee.”

65. From the foregoing, it is clear that the registration of the 1st Defendant as the owner of the suit properties is subject to any obligation it may have as a trustee. It is my finding that the 1st Defendant holds the suit properties in trust for the Dominican Friars. What I have agonised over is whether the Plaintiff can enforce that trust against the 1st Defendant. In other words, can a non-beneficiary of a trust sue the trustee? I am of the view that the fiduciary duty owed by the 1st Defendant as a trustee in respect of the suit properties is to the Dominican Friars. The same could be extended to the Plaintiff if the Plaintiff had demonstrated that the Dominican Friars had transferred their beneficial interest in the suit properties to the Plaintiff. What I have before me are just correspondence from different members of the Dominican Friars. I do not doubt from the said correspondence that there was an intention by the Dominican Friars to have the suit properties transferred to the Plaintiff and that the 1st Defendant has no valid reason for refusing to effect the transfer. What is missing is a legally binding agreement or instrument between the Dominican Friars and the Plaintiff transferring their beneficial interest in the suit properties held by the 1st Defendant to the Plaintiff. I believe that the 1st Defendant who has no beneficial interest in the suit properties would have no reason not to honour such agreement/instrument. In the absence of such an agreement or instrument conferring upon the Plaintiff an interest in the suit properties that would in turn create a trust relationship between it and the 1st Defendant, only the Dominican Friars could bring a suit to enforce the duties owed to it by the 1st Defendant as a trustee of the suit properties.
66. For the foregoing reasons, it is my finding that the Plaintiff has failed to establish that there is a resulting trust in its favour in respect of the suit properties registered in the name of the 1st Defendant.



67. Given my findings above, the Plaintiff is not entitled to the orders sought against the Defendants in its plaint. On the issue of costs, due to the nature of the dispute between the parties, which involves the ownership and management of properties meant to benefit needy children, and the fact that the Plaintiff had a genuine complaint against the Defendants, which it brought to court in good faith, I will order that each party bears its costs of the suit.

Conclusion

68. In conclusion, the Plaintiff's suit is dismissed. Each party shall bear its costs of the suit.

DELIVERED AND SIGNED AT KISUMU ON THIS 17TH DAY OF JULY 2025

S. OKONG'O

JUDGE

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Ms. Okaka h/b for Mr. Yogo for the Plaintiff

Mr. Otieno D. for the Defendants

Ms. J. Omondi-Court Assistant

