



Kibiri & 5 others v Harambee Savings and Credit Co-operative Society Limited (Environment & Land Case 4 of 2021) [2024] KEELC 1149 (KLR) (29 February 2024) (Judgment)

Neutral citation: [2024] KEELC 1149 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE 4 OF 2021
LN GACHERU, J
FEBRUARY 29, 2024
(FORMERLY MILIMANI ELC CASE NO. E191 OF 2020)**

BETWEEN

**JOSEPH KARANJA KIBIRI 1ST PLAINTIFF
JOSEPH KARURI WAINAINA 2ND PLAINTIFF
JOYCE KANYIRI MUTHUURI 3RD PLAINTIFF
JOHN FRANCIS NYAGA 4TH PLAINTIFF
EPHANTUS GATHIITHI 5TH PLAINTIFF
WILLIAM GUANDARU WAIGANJO 6TH PLAINTIFF**

AND

**HARAMBEE SAVINGS AND CREDIT CO-OPERATIVE SOCIETY
LIMITED DEFENDANT**

JUDGMENT

1. The Plaintiffs herein brought this suit against the Defendant, vide a Plaint dated 16th October 2020, and sought for Judgement against the Defendant for the following Orders: -
 - (a) A permanent injunction restraining the Defendant by themselves, servants, agents and/or employees from trespassing, occupying, living, staying, alienating, selling, transferring and/or interfering in any way with the plaintiffs' quiet possession, use, occupation, development and proprietorship of their respective portions of the suit property.
 - (b) A declaration to the effect that the Plaintiffs are bona fide allottees and therefore owners of their respective portions of the suit property.



- (c) A mandatory injunction directing the Defendant to order subdivision of Murang'a Block 3/239, for purposes of processing titles in the Plaintiffs' names.
 - (d) Upon compliance with prayer (b) above, an order to issue directing the Defendant to execute transfer documents with respect to the respective shares of the Plaintiffs within the suit property for purposes of issuance of titles in the Plaintiffs' names.
 - (e) In the event of non-compliance with prayer (c) above, this Honourable Court do direct the Deputy Registrar to execute all the instruments and/or documents that will be necessary for the purposes of effecting the transfer of the respective portions of the suit property to the Plaintiffs.
 - (f) A mandatory injunction directing the Defendant to put the Plaintiffs into their respective portions of the suit property.
 - (g) Costs of the suit.
 - (h) Interest on (g) above.
 - (i) Any other remedy/relief that this Court may deem fit to grant.”
2. In their statement of claim, the Plaintiffs averred that they are members of the Defendant, a registered Society under the Cooperative *Societies Act*, CAP 490, through the Defendant's Murang'a branch. They further averred that the Commissioner of Lands through an allotment letter dated 7th December 1990, allocated the Defendant's Murang'a branch land parcel number Muranga/block 3/329, to construct affordable houses for its member at an affordable price.
 3. That in year 1992, the Defendant's Murang'a branch shelved its plan to construct the said affordable houses for its members as that was adjudged to be expensive and it opted instead, to sell vacant land to its members.
 4. It is the Plaintiffs' contention that in year 1998, the Defendant conducted a balloting exercise at Ihura Stadium, Murang'a County, whereby the Plaintiffs were allocated portions of the suit land.
 5. The Plaintiffs contended that they made the necessary payments to the Defendant (comprised of processing fees, facilitation fees, survey fees, Municipal Council rates, and other expenses totaling to about (Ksh.22,000/=), per portion of land of the suit property, which payment the Plaintiffs made, and was acknowledged by the Defendant's Murang'a branch, who issued the Plaintiffs with allotment letters in respect of their respective portions of the suit land.
 6. Therefore, the Plaintiffs averred that they are bona fide purchasers, having paid in full the purchase price for their respective plots within the suit property.
 7. They contended that the Defendant has breached the contract executed with the Plaintiffs by writing a letter to the Director of Survey dated 30th March 2015, wherein the Defendant requested the said Director of Survey to cancel all sub-divisions of the suit property on grounds that it was not sanctioned by the Defendant's Headquarters.
 8. The Plaintiffs also contended that the Director of Survey acted upon the said instructions and cancelled all the resulting subdivisions carried out on the suit property. The Defendant further breached the contract by failing to put the Plaintiffs into possession of their respective portions of land.
 9. It was the Plaintiffs contention that, unless the Court comes to their aid, they are apprehensive that the Defendant, having called for the cancellation of the subdivided portions of land allocated to them,



could dispose of the same to third parties as the property's values have gone up since 1998, when the Plaintiffs balloted for and were allocated their respective portions of the suit property.

10. The suit is resisted by the Defendant who filed a Statement of Defence dated 16th April 2021, wherein it denied all the allegations made in the Plaint.
11. It was the Defendant's claim that the subdivisions and the transaction referred to by the Plaintiffs were conducted by its Muranga branch, without having the transaction sanctioned by the Defendant's headquarter and therefore, the said transaction was null and void.
12. Further that the communication and the alleged payments were made by the Plaintiffs to the Defendant's Muranga branch without the involvement of the Defendant herein, and therefore, the Defendant denied receipt of such monies.
13. The Defendant urged the Court to dismiss the Plaintiffs suit with costs, since the Plaintiffs ought to pursue their remedy in the proper forum, and the jurisdiction of the Court had been denied.
14. The suit proceeded by way of viva voce evidence, wherein the Plaintiffs called three witnesses, and the Defendant called one witness and closed its case.

Plaintiffs' Case.

15. PW1; Joseph Karuri Wainaina; who is the 2nd Plaintiff herein told the court that he lives in Kangema area. He adopted his witness statement dated 21st March 2023, as his evidence in chief. He also produced his bundle of documents as the P. Exhibits 1-31. It was his further testimony that he is one of the Plaintiffs herein, and he purchased and was allocated plot No. 23, whereas the other Plaintiffs were allocated Plots No. 50, 4, 82 and 31 respectively.
16. In his witness statement, he reiterated that the Defendant's Muranga branch, initiated housing project to benefit its members where it was proposed to construct houses for its members at affordable prices.
17. The witness further alleged that the Plaintiffs and other members balloted, and after allocation of their respective plots, they paid the facilitation fees as requested, and they paid the said amount on diverse dates through the Defendant's Muranga branch.
18. He also testified that upon payment of the purchase price, the Plaintiffs became bonafide purchasers for value, and owners of their respective plots, within the suit land.
19. Further, that the Defendant promised to put the members who had purchased and paid the plots into possession, and also have the titles processed in their names.
20. He further testified that the Defendant vide its letter dated 30th March 2015, breached the contract it had entered with the members, the Plaintiffs included, by directing the Director of Survey to cancel all resultant subdivisions of the suit land on allegations that the same was not sanctioned by the Defendant's headquarter.
21. Therefore, the Defendant declined to proceed with the process of processing the title deeds into the names of the Plaintiffs and have also declined to update them on when the title deeds would be processed in their names.
22. He also testified that the Defendant has breached the Contract by failing to put the Plaintiffs into possession of their respective portions of land, despite numerous promises to do so.
23. Again, that the Defendant has threatened to allocate the suit property to other members or third parties, and the Plaintiffs are apprehensive that the Defendant will make good its threat.



24. In cross exam, the witness confirmed that he was giving evidence for himself and the 1st Plaintiff who is now deceased. He confirmed that the allotment letter was issued to Harambee Sacco, Muranga branch, and the Plaintiffs balloted for the plots, and paid the money to the said Muranga branch.
25. He confirmed that the only amount of money paid is what is stated in the Plaint, being ksh. 14,500/= and 7500/= totaling to Ksh 22,000/=, and there was no other amount of money paid.
26. It was his further evidence that they have not sued Murang'a branch, as a Defendant nor the Director of Survey.
27. In re exam, he stated that he did not have any problem with Murang'a branch nor Director of Survey, and that is the reasons why they have not sued him.
28. He reiterated that the letter that stopped the survey was from the Headquarter, and had Headquarter, which is the Defendant herein not interfered, the Plaintiffs would have gotten their plots.
29. PW2; John Francis Nyaga, told the Court that he is a retired Police Officer, who was based in Muranga County, and is a member of Harambee Sacco, through Muranga branch. He adopted his witness statement dated 21st March 2023, which witness statement reiterated the allegations made in the Plaint. He also adopted the documents produced as his exhibits in court, and it was his evidence that he had an exhibit to show that he was a member of Harambee Sacco.
30. It was his further evidence that he balloted for the plots in 1998, and after succeeding, he paid Ksh 14,500/=, which he deposited in the account given to him, and he later paid Ksh 7500/=, as survey fees.
31. In cross exam, he stated that for Muranga branch, there are 141 members of Harambee Sacco, and he had authority from each of them to testify in court on their behalf
32. He also testified that after paying the initial amount, there was no purchase price indicated. Further that the Allotment Letter was in favour of Harambee Co-operative Sacco Ltd, and the said allotment letter shows the payment to be made.
33. In re exam, he confirmed that he had the list of all the members and that the demand letter indicated the plot numbers, and his plot was acknowledged by Muranga branch.
34. PW3, Ephantus Gathiithi Gachanja, also adopted his witness statement, which statement reiterated the allegations made in the Plaint. He further told the court that the evidence produced in court supports his claim.
35. In cross exam, he confirmed that at the time of balloting, he was the Assistant Chief of Nyakihai Sub Location, but he retired in 2006. Further, he confirmed that he paid ksh 14,500/= to Harambee Sacco, Muranga branch, and his Letter of allotment is signed by the officials of Muranga branch.
36. In re exam, he confirmed that he was a member of Harambee Sacco, Muranga branch, who was supposed to benefit from the suit property which was to be allocated to them by the Defendant.

Defendant's Case.

37. DW1, Tikoishi Naikuni, the Legal Officer of the Defendant adopted his witness statement dated 14th February 2023, as his evidence in chief. He also produced the list of documents as Exhibit's 1-3.
38. In his evidence, he alleged that the Plaintiffs paid for the suit property at Muranga branch, which branch did not have the mandate to dispose of the property. It was his further evidence that the



only officials with authority to execute the documents on behalf of the Defendant were the National Chairman, Secretary and Treasurer.

39. It was his evidence that the Muranga branch officials had no authority to enter into any Contract on behalf of the national officials, and that was the reasons why the Defendant wrote the letter dated 30th March 2015, which was issued to cancel the subdivisions of the suit property.
40. In cross exam, he confirmed that Clause No. 39.2(3) states that the branch shall offer all the services offered at the Headquarter.
41. However, he reiterated that the branch officials did not have authority to enter into any Contract with any entities. It was his further evidence that Harambee Sacco branches, did not have authorities over contractual matters.
42. It was his allegations that the Muranga branch of the Defendant, issued allotment letters to members, and the said branch did not have mandate to issue such allotment letters. Further, that any document issued by the branch ought to have been signed by the national officials, and therefore, the said Muranga branch officials had no authority to sign contractual documents.
43. It was his contention that the Muranga branch officials signed the allotment letters and received monies for the alleged plots, and the said officials did not have mandate from the headquarter.
44. He confirmed that the process was cancelled because it was not sanctioned by the headquarter, and the monies should have been paid to the headquarter, but not Muranga branch, and the allotment letters ought to have been signed by national officials.
45. However, it was his evidence that the initial allotment letter was issued to Harambee Sacco, Muranga branch, where the land is situated and there was no evidence of failure to comply by Muranga branch.
46. In re exams, he confirmed that the HQ requested for the property to be subdivided, but the letter was not acted upon, and if they had gotten the title deed, maybe, they could have subdivided the land and allocated the subdivisions.
47. Thereafter, the parties filed their respective written submissions, which this Court has carefully read and considered. The Plaintiffs filed their submissions through Kinyua Mwaniki & Wainaina Advocates, wherein they urged the court to find that the Plaintiffs have proved their case on the required standard. The Plaintiffs set out three issues for determination being,
 - i. who is the lawful owner of the suit property?
 - ii. whether the subdivision and transaction relating to suit property by the branch was valid?
 - iii. whether the Plaintiffs are entitled to the prayers sought?
48. In answer to the above issues, the Plaintiffs relied on various decided cases among them the case of John Muchiri Mbuthia vs Rebecca Were Mutanda & Another (2015) eklr, where the Court held;

“In the case of Rukaya Ali Mohamed vs. David Gikonyo Nambacha & Another Kisumu HCCA No. 9 of 2004, Warsame J. [as he then was] stated as follows;

“... once allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud mistake or misrepresentation or that the allotment was outrightly illegal or it was against public interest. In



other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.”

49. The Plaintiffs also relied on the case of Kenya Power & Lighting Co. Limited v Sheriff Molana Habib (2018) eKLR, where the court held;

“A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.”

50. On mandatory injunction, the Plaintiffs relied on the case of Maher Unisaa Karim vs Edward Oluoch Odumbe (2015) eKLR, the Court held;

“The test for granting a mandatory injunction is different from that enunciated in the Giella vs Casman Brown case, which is the locus classicus case for prohibitory injunctions. The threshold in mandatory injunctions is higher than in the case of prohibitory injunctions and the Court of Appeal in the case of Kenya Breweries Ltd vs Washington Okeyo (2002) EA 109, had occasion to discuss and consider the principles that govern the grant of mandatory injunctions. The Court of Appeal held that the test for grant of a mandatory injunction was as correctly stated in VOL 24 of Halsbury’s Laws of England 4th Edition paragraph 948 that: -

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally, be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is simple and summary one which can be easily remedied, or if the defendant attempts to steal a match on the plaintiff, a mandatory injunction will be granted on an interlocutory application.”

51. It was the Plaintiffs further submissions that they were entitled to the costs of the suit and for this submissions, they relied on the case of Republic vs Rosemary Wairimu Munene, Ex-Parte Applicant Vs Ihururu Dairy Farmers Co-operative Society Ltd Judicial Review Application No 6 of 2014 as cited in Cecilia Karuru Ngayu v Barclays Bank of Kenya & another (2016) eKLR, where the court held;
52. On the part of the Defendant, its submissions were filed on 10th August 2023, by Oraro & Co Advocates and it responded to the three issues set out by the Plaintiffs. The Defendant relied on the case of Maseno University Savings and Credit Co-operative Society Limited v Stima Savings and Credit Co-operative Society Limited (2020) and Jacob Ernest Ambala Odondi vs Violet Shikuku(2021)eKLR., wherein it was held that for there to be a binding contract between parties, three elements must be proved; Offer, Acceptance and Consideration.
53. It was the Defendant’s further submissions that the Plaintiffs did not avail any evidence to bring themselves within the exceptions stated in the above cases to make their case enforceable, since there was no evidence of payment of consideration.
54. The above being the evidence as availed by the parties herein in their respective pleadings, evidence adduced in court by the witnesses, and the written submissions, this court has carefully considered the same, and renders itself as follows;



55. From the available evidence, there is no doubt that the Plaintiffs herein balloted for their respective plots from the Defendant's Muranga Branch. From the exhibits produced in court, it is evident that the Plaintiffs paid some charges at the account given by the Defendant's Muranga branch. Therefore, the Plaintiffs expected to be issued with their respective title deeds upon subdivision of the suit property.
56. It is also evident that there were various communications in regard to the allocation of the alleged suit property. Eventually vide a letter dated 30th March 2015, the Defendant directed the Director of Survey to cancel the subdivisions of the suit property, and halt the survey work. The said cancellation of the subdivision culminated into this suit.
57. The above are the undisputed facts. The court finds the issues for determination are as formulated by the parties. These issues are;
- i. who is the lawful owner of the suit property?
 - ii. whether the subdivision and transaction relating to the suit property by the branch are valid?
 - iii. whether the Plaintiffs are entitled to the prayers sought?
 - iv. who should bear the costs of the suit?
- 58.
- (i) Who is the lawful owner of the suit property.

The Plaintiffs herein had averred that the suit land belonged to the Defendant's Muranga branch, where the Plaintiffs were members. In their submissions, the Plaintiffs averred that they had availed sufficient evidence such as the Letters of allotment dated 7th December 1990, to confirm that the suit land being UNS. Residential Plot- Muranga Municipality, Plan No. TP/ 56/1/VIII/226A, which was later referred to Block 3/239- Muranga Municipality, was allocated to Harambee Sacco, Muranga branch, which branch later intended to allocate subdivisions of the suit land to its members.
59. On its part, the Defendant has alleged that the suit land belongs to the Defendant, or Harambee Sacco HQS, and not Murang'a branch. It submitted that the original Allotment letter was addressed to the Harambee Sacco Hq, and the only reasons for such address was because the property was allocated to the Defendant, but not its Muranga branch. Further that the Demand for rates for the suit property was addressed to the Defendant, Harambee Cooperative Society, but not Murang'a branch.
60. The court has seen a copy of the Letter of Allotment dated 7th Dec 1990, and has noted the said letter is addressed to Harambee Cooperative Society, Muranga. The letter confirms that the said Cooperative Society was allocated Uns-residential plot in Murang'a Municipality. There were charges to be paid and the letter was a copy and it indicated on the top of it that the Original was sent to Harambee Sacco Hq.
61. A reading of this letter shows that the letter is addressed to Harambee Cooperative, Muranga. A casual look at the said letter would inform one that the allotment was to Muranga branch. If the Commissioner of lands had intended to Allocate the suit land to Harambee Cooperative Society HQ, as alleged by the Defendant, there was nothing that would have prevented the said letter being addressed to the said Co-operative Society HQ, as is evident from the communication that followed.
62. There were several other communications which confirm that the suit land was acquired for Muranga branch, as is evident from the letter dated 21st August 2013, wherein the AG. Chief Executive Officer, of the Cooperative had asked to be furnished with a full list of all the beneficiaries of the project and the respective payments.



63. Further, in the letter dated 19th November 2014, the same AG. Chief Executive Officer, indicated in the said letter “we are in the process of acquiring the title deeds for the entire block of land and plans are at advanced stage..... In the meantime, I would advise you liaise with the former branch officials together with members of the scheme with a view of coming up with a list of all members of the housing scheme and their documentary evidence showing payments towards the housing scheme.”
64. The above communication is a confirmation that the HQ acknowledged that the suit land is for Muranga branch, and the members were expected to benefit from the housing scheme. This court will concur with the authority cited by the Plaintiffs being the case of Rukaya Ali Mohammed Vs David Gikonyo Nambacha Another HCCA No. 9 of 2004(Kisumu), where the court held that once the letter of allotment is issued and the allotment meets the conditions therein, the letter of allotment confers absolute right of ownership.
65. In answer to issue No. 1 above, this court finds and holds that the suit land belongs to Harambee Sacco, Muranga branch, and that is why the HQ in its various letters had endorsed the project at hand and had indicated it was in the process of subdividing the land and it required list of beneficiaries, and evidence of their payments.
66. Whether the subdivisions and transaction relating to the suit property by Defendant’s Muranga branch was valid?
The Plaintiffs relied on Clause No.39.2(iii) and (iv) of the Defendant’s by laws which state;
- (iii) Branches shall offer all services as may be offered by the headquarter and in line with the society operational policies and procedures
 - iv) Every member shall belong to one electoral zone, provided that a member may be served at the head office or any branch.
67. The Plaintiffs also submitted that the letters dated 2nd July 1998, and 16th July 1998, were a confirmation of approval for subdivision of the suit property. There were requests made by the HQ for such subdivisions. Indeed, the Court has seen the said letters and also the one dated 21st August 2013, wherein the HQ, had sought to be furnished with full list of all the beneficiaries of the project.
68. On its part, the Defendant submitted that the referred transactions were not signed by the mandated officials as provided by clause no 65, 66 and 67 of the Defendant’s by laws. Further, the Defendant alleged that no purchase price was paid by the Plaintiffs for the said parcels of land.
69. However, this court has seen several letters from the Defendant’s HQ, which letters sanctioned the transactions, and even indicated that the HQ, had requested for subdivisions of the suit property. The Defendant cannot turn around and deny the transactions that it had earlier sanctioned.
70. This court will rely on the case of Royal British Bank Vs Turquand (1856) 6 E&B 327, which case formulated the so-called “Indoor-Management Rule”, also known as “the Rule in Turquand’s case”, which holds that persons transacting with a Company are entitled to assume that internal Company’s rules are complied with, even if they are not. The essence of the Rule in Turquand’s case is that the Company’s indoor affairs are the Company’s business.
71. Further, in the case of Mahony Vs East Holyford Mining Company Ltd (1875) LR 7 HL 869, the Court held as follows:

“When there are persons conducting the affairs of the Company in a manner which appears to be perfectly consonant with the articles of association, those so dealing with them externally



are not to be affected by irregularities which may take place in the internal management of the company.”

72. It is evident that the Plaintiffs herein dealt with the Defendants Muranga branch, and they should therefore not be affected by the irregularities of internal management.
73. In the Turquand rule, the position under the contract law is that any third party may enforce a contract against a company if the obligations arising there under were assumed by the company or an officer thereof with ostensible authority. See the case of Florence Wangu Mwangi & Another vs British American Insurance Company Ltd & Another (2010) eKLR.
74. The Defendant herein is a “body corporate” and, therefore, akin to a Company pursuant to Section 12 of the Cooperative [Societies Act](#) (CAP 490) which states as follows:
- “Upon registration, every Society shall become a body corporate by the name which it is registered with perpetual succession and a common seal and with the power to hold movable and immovable property of every description, to enter into contracts, to sue and be sued and do all things necessary for the purpose of or in accordance with its by-laws.”
75. Applying the Rule in Turquand’s case, this Court is bound to enquire whether the aforesaid By-Laws of the Defendant can reasonably be expected to have been within the Notice of the Plaintiffs herein, who are outsiders in relation to the Defendant. Section 13 of the Cooperative [Societies Act](#) read as follows:
- “The by-laws of a Cooperative society shall, when registered bind the Cooperative and the members thereof to the same extent as if they were signed by each member and combined covenants on the part of each member for himself and for his personal representatives to observe all the provisions of the by-laws”.
76. Pursuant to the foregoing provision of the law, the Plaintiffs could be deemed to have had Notice of the Clause 39.1(i) and Clause 39.2(iii) of the Defendant’s By-Laws which require approval by the Defendant’s headquarters in transactions involving the disposal of land. However, the Defendant’s Muranga branch allowed the Plaintiffs to transact as they did, received their money and sought blessings of the HQ to have the land subdivided.
77. The HQ communicated severally with its Muranga branch over the list of beneficiaries and their payments. The Defendant was therefore aware of the transactions herein involving its Muranga branch and the members, the Plaintiffs included. Therefore, this court cannot hold and find that the said transactions, which the Defendant was aware of, was null and void. The subdivisions and transactions over the suit property were valid, and the Defendant cannot disown them now.
78. In arriving at the above decision, the Court has considered the following as material facts: firstly, the Plaintiffs are members of the Defendant’s Murang’a branch, and they balloted for their respective portions of the suit land at Ihura Stadium in Murang’a County. Secondly, the Defendant through its Murang’a branch received various payments from the Plaintiffs in respect to purchase of suit land, consequent to which, the suit land was sub-divided and the Plaintiffs allocated their respective shares thereof.
79. Therefore, the key steps in the process of allocating parts of the suit property to the Plaintiffs were performed by the Defendant’s Murang’a branch. Thirdly, the Defendant’s letter dated 14th March 2007, to the Commissioner of Lands informing him/her of its By-Laws (which require land



- transactions to be approved by Defendant's headquarters) was not copied to or shared with the Plaintiffs.
80. The Defendant has not denied that its Murang'a branch lacked the requisite legal capacity or authority to enter into transactions with the Plaintiffs in respect of the suit land. Rather, what the Defendant found objectionable was the conduct of its Murang'a branch, particularly, subdivision and allocation of portions of the suit land to the Plaintiffs without the authorization of the Defendant's headquarters.
81. The Defendant has justified the directions which it issued to the Director of Surveys in its Letter of 30th March 2015, seeking for cancellation of the subdivisions of the suit land claimed by the Plaintiffs on grounds that its Murang'a branch had not obtained the necessary approval from Defendant's headquarters. The Defendant referred to its own By-Laws specifically Clause 39.1(i) and Clause 39.2(iii) thereof which provide for the approval by the Defendant's headquarters in transactions involving the disposal of land.
82. In the case of *Jacinta Kelly & 4 Others Vs Michael Fraser* [2012] U K P C 25, the Court held as follows:
- “An agent cannot be said to have authority solely on the basis that he has held himself out as having it. It is, however, perfectly possible for the proper authorities of the company (or, for that matter, any other principal) to organize its affairs in such a way that subordinates who would not have authority to approve a transaction are nevertheless held out by those authorities as persons who are to communicate to outsiders the fact that it has not been approved by those who are authorized to approve it or that some particular agent has been duly authorized to approve it. These are representations which, if made by one held out by the company to make representations of that kind, may give rise to an estoppel.”
83. Further, in the case of *Freeman and Lockyer (A firm) Vs Buckhurst Park Properties (Mangal) & Another* [1964] 1 ALL E.R. 630, the court held as follows:
- “An ‘apparent’ or ‘ostensible’ authority, on the other hand, is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the ‘apparent’ authority so as to render the principal liable to perform any obligations imposed on him by such contract... The representation when acted upon by the contractor by entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether or not the agent had actual authority to enter into the contract.”
84. The Plaintiffs are all members of the Defendant and this means that the Defendant has in its custody their contacts and was unlikely to encounter great difficulties in communicating to the Plaintiffs the provisions of its By-Laws which the Defendant was appraising the Commissioner of Lands of in 2007, were the Defendant so minded. Knowing full well that the Plaintiffs had balloted for and made payments in respect of the suit land in 1998, and which entitled the Plaintiffs to be informed of all issues related to the suit land. It is curious that the Defendant chose to keep the Plaintiffs in the dark regarding its grievances with its Murang'a branch concerning the suit property.
85. It is the finding and holding of the Court that the “Indoor-Management Rule” and the doctrine of apparent/ostensible authority are both applicable to the instant case. The Court holds and finds that the Defendant clothed its Murang'a branch with the apparent/ostensible authority to execute a



contract of sale of portions of the suit property with the Plaintiffs. The Defendant cannot turn around and seek refuge in its by laws after allowing the Plaintiffs and its Muranga branch to go the whole hog.

86. For the avoidance of doubt, even if the Defendant's Muranga branch failed to comply with the by law, this non-compliance did not invalidate the contract for the disposal of the suit land executed between the Plaintiffs and the Defendant's Muranga branch and thus the transactions were valid.

87. Whether the plaintiffs are entitled to the prayers sought?

It is evident that the Defendant herein directed the Director of Surveys to cancel the subdivisions of the suit property, which the land was claimed by the Plaintiffs herein vide its letter of 30th March 2015. This letter was issued after so many years after the Plaintiffs allegedly paid for their respective parcels of land. The letter did not direct refund of the monies paid, but continued to retain the monies paid to it by the Plaintiffs in the 1998, for purchase of their individual portions of the suit property.

88. As this court observed earlier, the Defendant had knowledge of these transactions and had sanctioned the Said transactions through various communications either to the Muranga branch or the lands officer. The Defendant cannot therefore claim that it had come to its realization prior to writing the letter that the subdivisions and transactions had not been sanctioned by the Society's HQ, and therefore the same should be treated as null and void. Failure to make a reference for the monies paid meant that the Defendant is attempting to enrich itself by retaining the Plaintiffs' monies.

89. The Court of Appeal in the case of *Macharia Mwangi Maina & 87 Others -Vs- Davidson of Mwangi Kagiri*[2014]e KLR, addressed the issue of unfair enrichment in the following terms:

“This court is a court of equity; equity shall suffer no wrong without remedy. No man shall benefit from his own wrong doing, and equity detests unjust enrichments. This court is bound to deliver substantive rather than technical or procedural justice”.

90. Therefore, the Defendant's action is against the principle of fairness and thus, it would be contrary to the dictates of good conscience and against the interests of justice for this Court to allow the Defendant to keep to for itself both the funds paid by the Plaintiffs in respect of their respective portions of the suit property as well as the suit plots purchased by Plaintiffs.

91. As the court found earlier, the Defendant sanctioned its Murang'a branch with the ostensible authority to transact with the Plaintiffs in respect to the suit land, it would be unreasonable to expect the Plaintiffs to be fully-informed of the limitations of that authority. Accordingly, the Defendant is estopped from relying on its own By-Laws to wiggle out of a transaction executed by its Murang'a branch exercising apparent authority donated by the Defendant. Therefore, this court finds and holds that the Plaintiffs are entitled to the prayers sought.

92. Who should bear costs of the suit?

As provided by Section 27 of the *Civil Procedure Act*, costs are awarded at the discretion of the court. However, costs follow the event and is awarded to the successful litigant. The Plaintiffs are the successful litigants and are thus awarded costs of this suit.

93. In the case of *Morgan Air Cargo Limited v Evrest Enterprises Limited* [2014] eKLR the court noted that;

“The exercise of the discretion, however, depends on the circumstances of each case. Therefore, the law in designing the legal phrase that “Cost follow the event” was driven by the fact that there could be no “one-size-fit-all” situation on the matter. That is why section



27(1) of the Civil Procedure Act is couched the way it appears in the statute; and even all literally works and judicial decisions on costs have recognized this fact and were guided by and decided on the facts of the case respectively. Needless to state, circumstances differ from case to case.

94. Having considered the availed evidence, and having addressed and dealt with the highlighted issues, as above, this court finds and holds that the Plaintiffs have proved their case against the Defendant herein on the required standard of balance of probabilities.
95. For the above reasons, judgement is entered for the Plaintiffs against the Defendant herein in terms of prayers No: (a), (b), (c), (d), (e) and (f) of the Plaint dated 16th October 2020.
96. Further, the Plaintiffs are entitled to costs of the suit and interest thereon from the date of this Judgement to date of payment in full.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 29TH DAY OF FEBRUARY 2024

L. Gacheru

Judge

Delivered online in the presence of:

Joel Njonjo – Court Assistant

Mr Mwaniki for the Plaintiffs

M/s Kavagi for the Defendant

L. Gacheru

Judge

29/02/2024.

