



REPUBLIC OF KENYA



**Munguti & 6 others v Zibu & 9 others (Civil Appeal
260 of 2018) [2022] KECA 631 (KLR) (8 July 2022) (Judgment)**

Neutral citation: [2022] KECA 631 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 260 OF 2018
W KARANJA, AK MURGOR & J MOHAMMED, JJA
JULY 8, 2022**

BETWEEN

**HENRY MULI MUNGUTI 1ST APPELLANT
HENRY MWAKE 2ND APPELLANT
DAVID NYUNGU 3RD APPELLANT
MICHAEL KIOKO 4TH APPELLANT
PENINA MUMBE 5TH APPELLANT
ALICE WANGECI 6TH APPELLANT
GOOD HOPE REHABILITATION CENTRE 7TH APPELLANT**

AND

**CYRUS ROBERT SALA ZIBU 1ST RESPONDENT
DR. KLAUS- HERBERT RICHTER 2ND RESPONDENT
STEVE MAKAU 3RD RESPONDENT
PETER KIMEU MWANGANI 4TH RESPONDENT
LILIAN KATUNGE MUEMA 5TH RESPONDENT
PETER MAN'GALA 6TH RESPONDENT
GIDEON KIOKO KIVANGULI 7TH RESPONDENT
PETER MUSAU 8TH RESPONDENT
JUMA OLIVER MASILA 9TH RESPONDENT
MUTUKU KATALA 10TH RESPONDENT**



*(Appeal from the Judgment and decree of the Environment and Land
Court at Makueni (Mbogo, J.) delivered on 20th June 2018 in ELC
No. 78 of 2017 (formally Machakos Civil Case No. 13 of 2014))*

JUDGMENT

1. In this appeal, the appellants, are aggrieved by the decision of the trial court that determined that a resulting trust was created over Plot No. 3792 (*the subject plot*) where the appellants, and in particular the 1st appellant, Henry Muli Munguti was found to be a trustee of the 2nd respondent, Dr. Klaus-Herbert Richter, in respect of the subject plot, funds, moveable and immovable assets registered in the names of the 1st appellant's agents, spouses, servants and or appointees.
2. The facts surrounding the dispute are that sometime in 1991 whilst visiting Kenya, the 2nd respondent, a missionary envisioned;
 - a.) Bringing together willing volunteers ready to help the deserving needy in the society;
 - b.) Co-ordinating like-minded organizations in the area of poverty eradication, children's welfare and rehabilitation of drug addicts;
 - c.) Introducing proposed projects to other donors to facilitate funding as well as technical assistance; and
 - d.) Identifying areas in which he could exercise his vacation as a volunteer.
3. It was during this inaugural visit to the Country that the 2nd respondent met the 1st appellant, who he found also shared his vision. Thereafter, between 1997 and 2003, the 2nd respondent established a small business for the 1st appellant to sustain him. A children's home and drug addiction rescue and rehabilitation centre where the 1st appellant was to be fully engaged was also set up. The 2nd respondent constructed a house for the 1st appellant on a plot at the Hillside which was named "Elbingerode House" where the rescued children were initially housed.
4. The respondents' case was that the 1st appellant was instructed by the 2nd appellant to register an organization known as (Hope Bell Rehabilitation Centre) on or about the year 2008. Based on a budget for operations and prospective acquisitions, the 2nd respondent would remit money to the 1st appellant through Western Union or some other medium. The 1st appellant later confirmed that Hope Bell Rehabilitation Centre was fully registered and the name was changed to "Good Hope Rehabilitation Centre" (GHRC), the 7th appellant, under Certificate Number 26422.
5. Besides remitting money to the 1st appellant to cover the costs of the operations and management of the children's home and the rehabilitation centre, the 2nd respondent stated that he also remitted money to him for the purchase of land for construction of the home and centre; that the 1st appellant purchased three plots namely;
 - i) an unsurveyed plot from one Mr. Peter Mwau Kyama. This land was later surveyed as Plot No. 3792, or the subject plot registered in the 1st appellant's name;
 - ii) an unsurveyed Plot from Mr. Peter Mwau Kyama which was later registered in the name of the 7th appellant as Plot No. 3763.



- iii) an unsurveyed plot from Timothy Mutuku Mateng'e (now deceased) which was later registered in the 7th appellant's name. This where the children home is constructed and later came to be known as Plot No. 3762.

Other movable assets were also purchased.

6. To support the activities of the 7th appellant, the 2nd respondent brought together other like-minded donors, one of which was the International Federation of the Blue Cross (IFBC). The new donors then insisted on a reorganisation of GHRC's management, including a separation of the children's home from the rehabilitation centre, the establishment of operational committees, the opening of bank accounts with reputable banks, proper registration of the 7th appellant, as well as proper accounting together with the regular conduct of audits by auditors appointed by the IFBC. Upto 2013, the 1st appellant remained a salaried director of the 7th appellant, but he did not have any voting rights in the board.
7. Following the conduct of an audit of the 7th appellant's accounts in relation to the donor funds received, which audit was completed in February 2013, gross malpractices on the management of donor fund remittances was discovered. As a consequence, the donors suspended all further donations to the 7th appellant and demanded a refund of the monies for unexplained expenditure, and prosecution of the 1st appellant and persons adversely mentioned in the audit report. The 2nd respondent for his part demanded the documentation relating to registration of the 7th appellant. When the file could not be traced at the Societies Registry, the respondents were advised to lodge a fresh application which resulted in the issuance of Certificate No. 39956.
8. With the issuance of a new registration certificate, the file in respect of Certificate Registration number 26442 resurfaced, following which, the 1st appellant took full control of the operations of the 7th appellant and denied the 2nd respondent access to the children's home. Notwithstanding the 1st appellant's actions, the 2nd respondent asserted that an implied trust had come into existence between himself and the 1st appellant, with the 2nd respondent as the Founder of the 7th appellant, and the 1st appellant as an interim trustee. The respondents were in effect the beneficiaries.
9. Consequently, the respondents pray for judgment against the appellants and sought for;
- a) A declaration that the relationship between the 2nd respondent and the 1st appellant starting from the year 1991 up to 2013 resulted in the creation of an implied trust.
 - b) A declaration that the 1st, 2nd, 3rd, 4th, 5th and 6th appellants are trustees of the 2nd respondent and the donor friends of the 2nd respondent for all set-ups, systems, documents, entities, funds, movable and immovable assets now registered in the name of the 1st appellant, the, 1st appellant agents, spouse, servants and/or appointees of the 7th appellant.
 - c) A declaration that all accounts currently operated in the name of the 7th appellant and the funds therein are assets of the trust of the 2nd respondent and the donors.
 - d) A declaration that the implied trust between the 2nd respondent and the 1st appellant graduated to and became a public trust in which the respondents and the people of Makueni County are the beneficiaries thereof.
 - e) A declaration that the existing society known as Good Hope Rehabilitation Centre registration Number 26442 is an asset/entity of the respondents and the current officials hold such an office as trustees.



- f) A mandatory injunction compelling the 9th defendant (the Registrar of Societies) to substitute the current officials of the 7th appellant within a period of thirty (30) days with officials appointed by the respondents.
 - g) A mandatory injunction compelling the 1st, 2nd, 3rd, 4th, 5th and 6th appellants by themselves, their agents and/or servants to surrender all bank accounts and the deposits therein, movable and immovable assets in his custody and/or currently in the name of the 7th appellant to the respondents.
 - h) A mandatory injunction compelling the 1st appellant to register the subject plot in the name of the 7th appellant.
 - i) A perpetual injunction restraining the 1st, 2nd, 3rd, 4th, 5th and 6th appellants by themselves their servants and/or agents from interfering with the operations of the 7th appellant.
10. The appellants denied the respondents' claims but admitted that the IFBC was a donor to the 7th respondent. The 1st appellant claimed that he was responsible for introducing IFBC as a donor of the 7th appellant. The appellants also admitted that some donors had recommended the formation of committees to assist the Board in the running of the 7th appellant and that the 2nd respondent in his capacity as one of the donors assisted in the formation of committees. It was contended that the parallel registration of the 7th appellant under Certificate of Registration Number 39956 is the subject matter of a suit namely, Nairobi HCCC No. 140 of 2013 which matter is still pending hearing and determination by the court.
11. At the hearing, the respondents called 3 witnesses, while the 1st appellant testified on behalf of the appellants. The 2nd respondent who was PW1 stated that he met the 1st appellant when he was on holiday at the South Coast in Kenya in 1991; that the rehabilitation centre was as a result of seeing many children in the 1st appellant's home area suffering from drug addiction; that as a result he found a sponsor to construct a home for them and would remit monies to the 1st appellant for the construction works; that together with the remittances, the 2nd respondent also sent instructions as to the purpose of the monies. He produced numerous remittance advices dating back to March 2003 upto December 2009 showing substantial amounts of money that were sent to the 1st appellant. Though there was no contract between them, in his view, a mutual trust existed between them. The 2nd respondent stated that the purpose of sending the money to the 1st appellant was for the development of the children's home, education, land purchase for construction and activities to address the drug addictions.
12. Steve Makau, the 3rd respondent testified as PW2 and supported the evidence of the 2nd respondent. He stated that he was a board member of the children's home and that the money which constructed the home was remitted by the 2nd respondent to the 1st appellant; that the assets were for the community and not for the 1st appellant; and that the assets should be returned to the community.
13. The 1st appellant was DW1. He stated that he managed the rehabilitation centre. He denied working with the 2nd respondent to undertake the development of the community project, but confirmed having received monies through his account with instructions on the purposes for which the funds were to be utilised. He stated that the rehabilitation centre belonged to him and that the 2nd respondent was not a sponsor of the home and rehabilitation centre; that he sourced for funds from other sponsors not connected to the 2nd respondent. He stated that he used his own money to purchase the subject plot.



14. He also denied that the 2nd respondent and other donors sent him money for construction of the centre; that they never paid him any salary. He agreed that at times the 2nd respondent would give him money as a gift. It was his evidence that the subject plot had two greenhouses and that a sponsor had bought the materials for construction of the greenhouses that were erected on it. He stated that the donors name was IFBC; that he purchased the pump for the borehole. He claimed to have obtained the purchase money from the sale of a parcel of land, but admitted that he had not annexed any sale agreement; that he built the kitchen and children's home from his own money given to him by a South African donor.
15. In determining the dispute, the learned judge was satisfied that the oral and documentary evidence proved that the money remitted to the 1st appellant by the 2nd respondent was for the purchase of three properties for the benefit of the community, as a consequence of which, an implied trust was established between the 2nd respondent and the 1st appellant, with respect to the subject plot which was registered in the 1st appellant's name; and that as a consequence, it was held in trust by him for the 2nd respondent.
16. The appellants were aggrieved, and have brought this appeal on grounds that the trial court failed to evaluate and analyse the parties' evidence; that the court wrongly stated that the 1st appellant had admitted that the subject plot ought to have been registered in the name of Good Hope Rehabilitation Centre when he did not make such admission, and that the court was therefore biased; in finding that a resulting trust was created when no such evidence was produced or conditions for reaching such a finding were established; in failing to interpret the provisions of the Law of Contract in relation to the subject plot and in failing to appreciate that the 1st appellant was entitled to acquire property; in failing to appreciate the 1st appellant's evidence that the 2nd respondent did not donate his own money, but sourced for funds from third parties and that the 7th appellant had other donors not related to the 2nd respondent; in finding that the 1st to 6th appellants were trustees of the 2nd respondent for all funds, moveable and immovable assets registered in the names of the 1st appellant's agents, spouses, servants and or appointees of the 7th appellant; and in determining issues that do not fall within the remit of the Environment and Land Court.
17. Learned counsels Mr. Anzala for the appellants and Mr. Munyiithia for the respondents filed written submissions and informed us that, they would be relying in their submissions in their entirety. In their written submissions, the appellants asserted that the subject plot which was located in Mangelete Scheme, Mtito Andei, was rightly registered in the 1st appellant's name, and in support of this assertion, the 1st appellant produced a sale agreement dated 8th May 2010, a Certificate of ownership, a letter dated 14th January 2014 from the Ministry of Lands Housing and Urban Development and a Deed Plan; that therefore, he was the indefeasible owner of the subject plot. In this regard, the appellants cited section 23 of the Registration of Titles Act, and *Joseph N.K. Arap Ng'ok vs Moiyo Ole Keiwua & 4 others* [1997] eKLR and *Boniface Awour & Another vs Victor Otieno Nyadimo & 2 others* [2017] eKLR. It was argued that the respondents had not demonstrated that the appellants had acquired the property fraudulently or with funds from the 2nd respondent with the intention of creating a trust; that no evidence was produced to show that the 2nd respondent had financed the purchase of the plot. The appellants cited the case of *Heart beat Limited v Ng'ambwa Heartbeat Community Children's Home & Rescue Centre* [2018] eKLR in extenso to support the proposition that there was nothing that demonstrated a clear intention that the 1st appellant would hold the subject plot in trust for the 2nd respondent or that the 1st appellant admitted that the subject plot ought to have been registered in the name of GHRC, the 7th respondent.



18. With regard to the existence of a resulting trust, it was submitted that the donor proceeds in question were for the benefit of the 7th appellant; that its officials are David Ndunda Nyungu (Chairman), Henry Mwake (Vice Chairman), Michael Kioko (Secretary) and the 1st appellant as (Treasurer); that nothing supported the existence of a resulting trust between the 1st appellant and the 2nd respondent, or his donor friends who were in any event not identified.
19. It was further submitted that the trial court was wrong in finding that all funds, movable and immovable properties were held in the name of the 1st appellant, his spouse and agents on trust for the 2nd appellant for the reason that it was not pleaded or shown that the 1st appellant received any funds from the 2nd respondent and channelled them to his spouse or agent; that the 1st appellant, his spouse and agent have a constitutional right to own property; that the order purported to be made against third parties who were not joined to the suit and so did not have an opportunity to respond to the allegations.
20. Finally, the 1st appellant asserted that the trial court had no jurisdiction to grant prayers (b) (c) and (d) as they were not concerned with the environment or land use; that in making those orders, the court arrogated to itself jurisdiction that it does not have. In support of this contention, the case of *Samuel Kamau Macharia & 2 others v Kenya Commercial Bank Ltd & 2 others* [2012] eKLR was cited.
21. On their part, the respondents submitted that, there was sufficient evidence to prove that the 1st appellant was a trustee of the 2nd respondent and that the trial judge reached the right conclusions, and gave effect to the parties' intentions; that in his defence, the 1st appellant admitted having received money from the 2nd respondent, and documentary evidence by way of bank transfers and email communications providing instructions on the purposes for which the monies were intended demonstrated that the 1st appellant received monies; that the evidence showed that the 1st appellant executed agreements for the purchase of land for the 7th appellant and registered two out of three plots in the 7th appellant's name; and that the subject plot was registered in the 1st appellant's name. The respondents contended that the plots were all purchased with funds sourced and remitted by the 2nd respondent for the benefit of the public and the children of Makueni County. It was asserted that the prayers sought were declarations in respect of the land, buildings, immovable property and investment thereon, that were to be held in trust. In support of this contention, the respondents relied on the case of *Juletabi African Adventure Limited and another v Christopher Michael Lockley* [2017] eKLR.
22. Turning to the issue that the learned judge misdirected himself by holding that the 1st appellant was a trustee of the 2nd respondent for all funds, movable and immovable assets registered in the name of the 1st appellant, his agent, spouse and/or appointees of the 1st appellant, it was submitted that a resulting trust in favour of the 2nd respondent and his donor friends was created for the reason that the 1st appellant was a salaried director at the 7th appellant, and admitted on oath during cross-examination that since 1991, he had received money from the 2nd respondent for the children's home.
23. The 1st appellant also admitted that various donors supported the home, and that the 2nd respondent was Chairman of one of the donors, IFBC, Germany; that in view of the evidence of emails and transfer of funds to the 1st appellant, the burden of proof shifted to the 1st appellant, to identify the source or sources of the funds that he used to purchase the subject plot; that the 1st appellant did not demonstrate that the subject plot was purchased from his own means; and that therefore, the learned judge was right in holding that a resulting trust had come into existence in favour of the 2nd respondent. The case of *Munyu Maina vs Hiram Gathiba Maina* [2013] eKLR was cited to support the contention that a registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances, including any and all interest which need not be noted on the register.



24. With respect to the 1st appellant's submission that the funds were received from other donors not connected to the 2nd respondent, it was asserted that the evidence clearly showed that the 2nd respondent would send money to the 1st appellant, and that later, he brought in other donors who made their donations through him. It was further stated that at the trial, the 2nd respondent produced a list of German donors who the appellants did not know, and that the 1st appellant failed to provide a list of donors not connected to the 2nd respondent; and that without such evidence, there was nothing to show that the 7th appellant had other donors independent of the 2nd respondent, with the result that the only donor was the 2nd respondent for whom a resulting trust was established.
25. Finally, with regard to whether the issues determined fell within the jurisdiction of the Environment and Land Court it was submitted that the suit revolved around the ownership of the subject plot which was registered in the 1st appellant's name and that the 2nd respondent demonstrated that three plots namely, 3762, 3763 and the subject plot were purchased by the 1st appellant with funds remitted by the 2nd respondent, but only Plot Nos. 3762 and 3763 were registered in the name of the 7th appellant for the benefit of less fortunate children and the residents of Makueni County, while the subject plot was registered in the 1st appellant's name; that Article 162 (2) (b) vests the Environment and Land Court with a jurisdiction to hear matters relating to the use and occupation of land, and accordingly these being matters concerning a dispute over land, the trial court was well within its jurisdiction to hear and determine them.
26. We have considered the grounds of appeal, the oral and documentary evidence, and the submissions by counsel for the parties. This is a first appeal and we are duty bound to re-evaluate the evidence and arrive at our own independent conclusions also taking into account that unlike the trial court, we did not see or hear the witnesses. – See *Selle v Associated Motor Boat Co.* [1968] EA 123.
27. With this in mind, the issues falling for our consideration in the disposal of this appeal are;
- i) Whether the learned judge rightly found that the 2nd respondent demonstrated that the funds sent to the 1st appellant were sourced from the 2nd respondent and third parties;
 - ii) Whether the 7th appellant received funds from other donors not connected to the 2nd respondent;
 - iii) Whether a resulting trust was created in favour of the 2nd respondent, over all funds, movable and immovable assets registered in the appellants' and the 1st appellant's name as well as his agents and spouse's, servants or appointees names and;
 - iv) Whether the matters pertaining to the orders made were within the jurisdiction of the Environment and Land Court.
28. Beginning with whether the 2nd respondent demonstrated that he sourced for the funds remitted for the 7th appellant. In order to determine the issue, we are required to reanalyse the evidence that was before the trial court. It is not in dispute that the 2nd respondent sought to establish a community development project that comprised of a children's home and rehabilitation centre called the GHRC. It is not also in dispute that the 1st appellant agreed to assist the 2nd respondent establish the project. Also agreed was that, the 1st respondent would source for donor funds, which would be remitted to the 1st appellant to undertake the development and to oversee the day to day operations.
29. The evidence overwhelmingly discloses that the 2nd respondent regularly remitted funds for the project to the 1st appellant's account. The record is replete with remittance advices evincing the transmission of funds to the 1st appellant. In support of the transmissions were instructions from the 2nd respondent



to the 1st appellant that directed him on the purpose of such funds. The instructions were evidenced by documents and email communications between the 1st appellant and the 2nd respondent. As observed by the learned judge, the monies remitted were amongst other things intended to purchase properties upon which the children's home and rehabilitation centre were to be constructed.

30. For his part, the 1st appellant admitted to having a mutual relationship with the 2nd respondent, and also to having received funds that were remitted to him. This is fortified by the statement of defence at paragraph 8 where it stated that, "*The 1st defendant admits receiving some money from the 2nd defendant as one of the donors of the 11th defendant ...*" In other words, the 1st appellant did not deny receiving money from the 2nd respondent at all.
31. Regarding whether the 7th appellant received funds from other donors not connected to the 2nd respondent, the evidence is unequivocal that the 2nd respondent remitted substantial amounts to the 1st appellant for construction of the home and rehabilitation centre. There was no evidence showing that the 1st appellant received donor funds that were independent of the 2nd respondent. Furthermore, the 1st appellant was unable to particularise or identify any independent donor who had remitted funds to him. Though he admitted that the funds came from IFBC, the evidence is clear that this donor was connected to the 2nd respondent, and was central to the project envisioned by the 2nd respondent. So that, any funds from this donor were clearly connected to the 2nd respondent and intended for the benefit of the 7th appellant.
32. With respect to the claim that the 1st appellant had the means by which to purchase the subject plot and assets, it cannot be overlooked that, there was no documentary, or other evidence that supported this claim. As such, since the totality of the evidence pointed to the available monies having been from donor funds connected to the 2nd respondent, the only conclusion that can be drawn is that the funds remitted by the 2nd respondent were for the benefit of the 7th respondent and the community at large.
33. Against this backdrop, the record shows that the 1st appellant purchased 3 plots, namely Plot Nos. 3762 and 3763 that were registered in the 7th appellant's name. But the third plot which was the subject plot was registered in his name. The 2nd respondent's complaint is that it was following an audit carried out together with other donors; that it was subsequently discovered that the subject plot purchased with donor funds remitted by the 2nd respondent was registered in the 1st appellant's name, instead of in that of the 7th appellant.
34. This brings us to the next issue of whether or not a resulting trust was created over the subject plot that was discovered to have been registered in the 1st appellant's name. At this juncture, we observe that the learned judge rightly appreciated that the dispute between the parties specifically revolved around ownership of the subject plot and assets thereon that were acquired using donor funds remitted by the 2nd respondent and other donors.
35. After analysing the evidence comprising email communications providing instructions and the remittance advises evidencing remittances of monies intended for the purchase of properties to benefit the children's home and rehabilitation centre, the learned judge concluded thus;

"From the evidence on record, it is apparent that the three (3) plots i.e. 3762, 3763 and 3792 were purchased during the time when the second plaintiff and the first defendant were in communication. Plot number 3762 was purchased from one Timothy Mutuke Mutange between 2005 and 2008, while plots numbers 3763 and 3792 were purchased from one Peter Kyama. Plot number 3763 was registered in the name of the 11th defendant while plot number (sic) was registered in the name of the 1st defendant. The plaintiffs contend



that the latter plot was purchased using funds provided by the second plaintiff even though the second defendant registered it in his name which the plaintiffs say was contrary to their intention.”

Having so found the learned judge went on to conclude that;

“...it is clear that the purchase money was either advanced by the 2nd plaintiff or through his efforts. The defendants and more particularly the 1st defendant admitted that he received funding from the second plaintiff. In my view there was an implied trust between the second plaintiff and the 1st defendant. It follows therefore that plot number 3792 which was registered in the first defendant’s name is being held by him subject to trust.”

36. In ascertaining whether a resulting or implied trust in favour of the 2nd respondent came into existence over the subject plot, what the court was required to discern was whether a nexus existed between the funds received by the 1st appellant from the 2nd respondent, and the purchase of the subject plot subsequently registered in his name and comprising other assets existing and being thereon.

37. According to the *Black’s Law Dictionary*, 9th Edition; a trust is defined as;

“1. The right, enforceable solely in equity, to the beneficial enjoyment of property to which another holds legal title; a property interest held by one person (trustee) at the request of another (settlor) for the benefit of a third party (beneficiary).”

Halsbury’s Laws of England, 4th Edition Vol 48 para 507 sets out a resulting trust thus;

“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 in 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 a 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”.

38. In the case of *Twalib Hatayan Twalib Hatayan & Another v Said Saggat Ahmed Al-Heidy & Others* [2015] eKLR, the question of a resulting trust was discussed thus;

“The resulting trust is a remedy imposed by equity where a property is transferred under circumstances which suggests that the transferor did not intend to confer a beneficial interest upon the transferee... 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 175) therefore unlike constructive trust where unknown intentions may be left unexplored with resulting trust courts will readily they 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 a person



who advance 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)).

39. As we have seen above, the 2nd respondent remitted substantial amounts to the 1st respondent whose purposes was to develop and construct a children's home and rehabilitation centre. Indeed, the evidence shows that the 1st appellant purchased three properties namely Plot Nos. 3762 and 3763, that were registered in the 7th appellant's name, and the subject plot that was registered in his name. The 1st appellant did not demonstrate that he purchased the subject plot through his own personal means, or that donor funds not connected to the 2nd respondent were used in its purchase. What the evidence does point to was that, the plots, including the subject plot were purchased with funds remitted by the 2nd respondent, to the 1st appellant. And instead of registering the subject plot in the 7th appellant's name, the 1st appellant wrongfully registered it in his own name. This in effect would mean that, its registration in the 1st appellant's name, automatically created a resulting trust in favour of the 2nd respondent from whom the remitted donations for the purchase of the plots originated. We are therefore satisfied that, the learned judge rightly concluded that a resulting or implied trust was created over the subject plot, and that as a consequence, the 1st appellant in whose name the subject plot is registered holds it in trust for the 2nd respondent, and the community at large.
40. As concerns the final issue of whether the trial court was wrong in granting the orders in prayer b), c), and d), we begin by observing that a consideration of the appellants' defence and the documentary and oral evidence does not disclose that any objection was raised in respect of the specific orders sought. But having said that, save for prayer c) which is concerned with the 7th appellant's bank accounts, we are satisfied that the orders, mainly declaratory in nature, were clearly concerned with land, and the trust over the subject plot and related assets. And since Article 162 (2) (b) of the *Constitution* vests the Environment and Land Court with a jurisdiction to hear matters relating to the use and occupation of land, and the matters in this dispute being concerned with the subject plot and related assets, we find that the ensuing orders were well within the jurisdiction of the court to grant.
41. In sum, save for the order concerning prayer c), the appeal is dismissed in substantial part, with costs to the respondents.

It is so ordered.

DELIVERED AND DATED AT NAIROBI THIS 8TH DAY OF JULY, 2022.

W. KARANJA

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JUDGE OF APPEAL

A. K. MURGOR

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JUDGE OF APPEAL

J. MOHAMMED

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

