



REPUBLIC OF KENYA



**KENYA LAW**  
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**Laban v M'Ananua (Environment and Land Appeal E037 of 2023)  
[2024] KEELC 7320 (KLR) (23 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 7320 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E037 OF 2023  
CK NZILI, J  
OCTOBER 23, 2024**

**BETWEEN**

**LUCY KANINI LABAN ..... APPELLANT**

**AND**

**JULIUS NKUNJA M'ANANUA ..... RESPONDENT**

*(Being an appeal from the Judgment of the principal magistrate's court at Nkubu  
– EM Ayuka – SRM delivered on 20.4.2023 in Nkubu ELC E026 of 2021)*

**JUDGMENT**

1. The court is asked by the appellant, who was the plaintiff at the lower court, to find that the trial court was wrong in:
  - a. Dismissing the suit.
  - b. Failing to find that she was an innocent purchaser for value who had paid a deposit of Kshs.510,000/=.
  - c. Failing to find that she was entitled to restitution of the total purchase price paid to the respondent.
  - d. In misinterpreting the law on restitution.
  - e. In failing to consider her evidence, written submissions and the law.
  - f. In being biased against her.
  - g. Arriving at judgment full of errors against the weight of the available evidence was a travesty of justice.



2. The mandate of this court is to relook or reappraise the entire record of the trial court and arrive at independent findings as to facts and the law, while mindful that the trial court had the benefit of seeing and hearing the witnesses testify. See *Gitobu Imanyara & others vs Republic* (2016) eKLR and *Seascapes Ltd vs Development Finance Company (K) Ltd* (2009) KLR 384.
3. The primary pleadings at the lower court were the appellant's plaint dated 7.7.2021. In it, the appellant claimed that the deceased Julius Mati Mutea had entered into a sale agreement on 9.7.2015 to purchase 2 acres out of L.R No. Abogeta/L. Kiringa 156, owned by the respondent's father (deceased) for Kshs.760,000/=. The appellant averred that the respondents had agreed to prosecute the succession case for his late father subdivide and obtain all the necessary documents to ensure that he transferred the land to the purchaser.
4. The appellant averred that the deceased paid Kshs.500,000/= as a deposit leaving a balance of Kshs.260,000/=: which was payable upon the successful transfer of title to her name. Additionally, the appellant averred that vacant possession took place upon the payment of the deposit.
5. In breach of the said agreement, the appellant averred that on 10.3.2021 and 26.3.2021, the respondent's son or agents chased her away from the suit land and warned her from entering or using the land. Further, the appellant averred that the respondent had also failed to subdivide, execute (transfer), or register the 2 acres and or avail the completion documents, hence causing her to incur loss and damages in terms of the Kshs.510,000/= loss of enjoyment of the land and proprietary right out of the sale. The appellant prayed for a restitution of the purchase price, physical and general damages.
6. From the record of appeal, it appears the respondent failed to enter an appearance despite service and the summons to enter an appearance on 17.7.2021, as evidenced by an affidavit of service sworn by Baylon Mutahi on 22.7.2021.
7. At the trial, Lucy Kanini Laban testified as PW 1. She told the court that she was the legal representative of the estate of the late Julius Mati Mutea (deceased), pursuant to a limited grant of letter of administration ad litem issued in *Nkubu PMCC Misc. Succession Cause No. 15 of 2021* dated 20.5.2021. PW 1 stated that the respondent sold to her late husband 2 acres of land out of L.R No. Abogeta/Lower Kiringa/156, to which he paid Kshs.500,000/=: as per the sale agreement dated 9.7.2015, but defaulted in effecting the transfer and instead chased her away from the occupation of the suit land after her husband passed on in 2020, effectively leasing out the land to a third party. PW 1 said that she was present during the sale agreement. She prayed for specific performance or a refund of the deposit with costs and interests. The appellant relied on the sale agreement dated 9.7.2015, demand letter dated 26.3.2021, and limited grant ad litem as P. Exh Nos. (1), (2) & (3).
8. Following the closure of the appellant's case, the trial court dismissed the suit on 20.4.2023, triggering this appeal. The respondent was served with the record of appeal by way of the registered post going by the affidavit of service by Sally Nyambego on 20.9.2024. He did not participate in the appeal.
9. The issues calling for my determination are:
  - a. Whether there was a valid sale agreement between the parties capable of being enforced by the court.
  - b. Whether there was a breach of the sale agreement.
  - c. If the appellant was entitled to a specific performance or refund of the deposit.
  - d. If the appeal has merits.



- e. What is the order as to costs?
10. It is trite law that courts do not re-write contracts; parties are bound by the terms and conditions in the sale agreement, and a court will only enforce the said terms and conditions, unless vitiated by illegality, undue influence, fraud, or lack of capacity to enter into the said agreement.
  11. In *Collins vs Ogango* (Civil Appeal 427 of 2018 (2024) KECA 19 (KLR) 25<sup>th</sup> January 2024 (Judgment)), the court cited Blacks Law dictionary 9<sup>th</sup> edition, pp 213 that a breach of contract is a violation of a contractual obligation by failing to perform one's promise, by repudiating it or by interfering with another party's performance and that any breach gives rise to a claim for damages on top or alongside other remedies.
  12. Courts of law rely on the contents of a contract and not parole evidence in determining how the parties agreed and reduced into writing. A sale of land agreement has to comply with Section 3 (3) of the *Law of Contract Act* and Section 38 of the *Land Act*. The sale agreement dated 9.7.2015 has not been attacked on account of illegality, undue influence, impossibility to perform, voidability or fraud.
  13. From the contract relied upon by the parties, the same was executed and witnessed in compliance with the law of contract on land. The respondent acknowledged receipt of Kshs.500,000/= and that vacant possession would take place upon execution of the sale agreement. The duties of the respondent were clearly indicated in the sale agreement. The balance of the purchase price was to be cleared upon successful subdivision, transfer, and registration of title in favor of the appellant. In default, the offended party was to be compensated with Kshs.1,520,000/=. There is evidence that the appellant issued a default notice dated 26.3.2021. The sale agreement bound the initial parties and the successors in title. See *Broadspect Investment Ltd vs. Francis Njoroge Mwangi* (2017) eKLR.
  14. As of 30.7.2019, when the initial purchaser passed on and the appellant took over the estate, she had a right to pursue his right to a refund or enforce the sale agreement. The appellant now holds a limited grant ad litem to pursue the right to the refund or specific performance. In *Charles Kamau Njoroge vs Mary Wakamba Ndungu* (2020) eKLR, the court said that a contract may be vitiated if the mistake was fundamental, such as mistake as to the nature of the subject matter of the contract.
  15. An order for specific performance is an equitable remedy granted at the discretion of the court where there is a valid contract, which if granted, will not entail great hardship to the parties and where the title of the vendor is not in doubt. See *Oscar Ochieng and another vs Prilscot Co. Ltd* (2018) eKLR.
  16. As to other available remedies in *Kimakia Cooperative Society vs Green Hotel Ltd* (1988), KLR 242, the court observed that where damages are at large and cannot be quantified, the court may have to assess damages upon conventional yardstick, but if the specific loss is to be compensated, a party has to be given a chance to process the loss.
  17. In this appeal, the appellant had proved payment of Kshs.510,000/=. There was also evidence of removal from vacant possession after her late husband passed on. A court of law should not sanction any illegality or be a party to unjust enrichment. The respondent, after retaking vacant possession, did not make an offer for the refund of the deposit or demand for the balance in exchange of the title deed. The sale agreement became vitiated by the lack of land control board consent within six months of the transaction. See *David Sironga Ole Tukai vs Francis Arap Muge and others* (2014) eKLR.
  18. The legal remedy of unjust enrichment is restitution as equity shall suffer no wrong without a remedy, and equity detests unjust enrichment as held in *Macharia Mwangi Maina & others vs Davidson Mwangi Kagiri* (2014) eKLR. The doctrines of equity are part of our laws and must be enforced by



courts as held in *Shah and 7 others vs Mombasa Brick & Tiles Ltd and others* (Petition E020 of 2022) (2023) KESC 106 (KLR) (28<sup>th</sup> December 2023) (Judgment).

19. In *Willy Kitilit vs Michael Kibet* (2018) eKLR, the court held that the doctrines of constructive trust and proprietary estoppel are applicable and enforceable to land, subject to the circumstances of the case.
20. In this appeal, the appellant makes an admission that the land has not been subdivided and transferred to the name of the respondent, who could pass a good title to her. The land was also reportedly leased out to a third party. A refund of the deposit would, in the circumstances, be an appropriate remedy. By receiving the money and putting the appellant into possession, a constructive trust accrued in favor of the appellant. It would therefore be unconscionable to remove the appellant from occupation and the same time, retain the deposit.
21. I find the holding by the trial court occasioned gross injustice to the appellant. The appeal is allowed. The order of dismissing the lower court suit is set aside and replaced with an order allowing the appellant' claim in terms of a refund of Kshs.510,000/=, with interest at court rates from 26.3.2021 till payment in full.
22. The appellant did not provide evidence of general and special damages. The claim is disallowed. Costs of the suit at the lower court and before this court to the appellant.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 23<sup>RD</sup> DAY OF OCTOBER, 2024.**

**In presence of**

C.A Kananu/Mukami

Ms. Kerubo for appellant

**HON. C K NZILI**

**JUDGE**

