



Brenchly (Appealing as the legal representative of the Estate of David Lee Brenchly – Deceased) v Imathiu (Environment and Land Appeal E076 of 2022) [2024] KEELC 13420 (KLR) (20 November 2024) (Judgment)

Neutral citation: [2024] KEELC 13420 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E076 OF 2022**

CK NZILI, J

NOVEMBER 20, 2024

BETWEEN

SUSAN MWARI BRENCHLY (APPEALING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF DAVID LEE BRENCHLY – DECEASED) APPELLANT

AND

PETER KIRIMA IMATHIU RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. L.N Juma – SRM delivered on 25.11.2022 in Meru CMC ELC No. 8 of 2020)

JUDGMENT

1. The appellant, who was the plaintiff at the lower court by an amended plaint dated 26.4.2021, as the legal representative of the estate of David Lee Brenchly, (deceased, a former husband, sued the respondent for breach of trust regarding L.R No's. Nyaki/Munithu/1480 and 1481 which were bought and developed, through the respondent since a non-citizen could not do so. She sought:
 - a. An order compelling the respondent, to execute transfer instruments in favor of her in default, the Executive Officer of the court to do so.
 - b. Permanent injunction restraining the respondent, his family members, representatives, employees, servants, agents, or anybody from entering into, trespassing onto, or interfering with her quiet, peaceful, exclusive, undisturbed, and uninterrupted possession, cultivation, user and enjoyment of the suit parcels of land.
2. The respondent opposed the claim through a statement of defense dated 30.4.2021 invoking the doctrine of ei qui affirmat, non ei qui negat, incumbit, probatio, and actori incumbit, onus probandi.



3. The respondent averred that in 1990, he solely entered into a sale agreement with one Edward Mwangi for the sale and purchase of L.R No's. Nyaki/Munithu/1481, 1480, and 1489, measuring 4.5 acres which were paid for in installments as agreed between the parties.
4. Again, the respondent averred that between 1996/1997, he subdivided L.R No. Nyaki/Munithu/1479 into L.R No's. 1664 and 1665, transferring the latter through a sale to Charles Kathurima Murithi.
5. The respondent averred that he sought a loan of Kshs.150,000/= from the deceased to enable him to pay the vendor the balance of the purchase price, which he did on the condition that he would lease out to the deceased the two portions for 99 years or until his death which was the earliest.
6. Further, the respondent averred that he also agreed to the offer by the deceased where after the deceased, paid the loan amount directly to the vendor Edward Mwangi Kabuchii and a further Kshs.150,000/=, being the purchase price of trees erected on the two parcels belonging to the respondent. The respondent denied that the deceased purchased any land from him or that there was a trust created, howsoever and whatsoever, since he only leased the two parcels of land for 99 years or until the deceased passed on whichever came earlier.
7. The respondent averred that in 1993, the deceased approached him and offered to buy L.R No's. Nyaki/Munithu/1480 and 1481 to enable him to register architectural plans with the defunct Meru Municipal Council as he intended to build a house for his then-wife Marlyn Brenchely, and he accepted the offer, applied to the land control board consent to transfer which application was rejected, since the deceased was a non-citizen.
8. Similarly, the respondent averred that the two agreed to revert to the original agreement of a lease as the deceased had arrived at an alternative and was not willing to pursue Kenyan citizenship.
9. The respondent averred that the only willingness he had was to transfer the said parcels of land to the deceased before the consent to transfer was declined and before both of them had agreed to revert to their earlier agreement of a lease. He denied the contents of the stated emails and demands as per paragraphs 9, 10, and 11 of the plaint.
10. Through a reply to the defence dated 18.5.2021, the appellant maintained that the respondent bought the suit land for and as a trustee of her late husband; hence, the respondent had no factual or legal defense to the claim.
11. At the trial, Susan Mwari testified as PW 1. She relied on a witness statement dated 21.1.2020 as her evidence in chief.
12. PW 1 told the court that she was from Kennewick W.A 9933 and that she was born and brought up in her father's home at Gaita, Central Imenti sub-county and got married to the late David Lee Brenchely, who passed on on 8.5.2015.
13. PW 1 told the court that her late husband came to Meru as a missionary to establish Kenya Methodist University while teaching at the Methodist Training Institute and the respondent was one of his students and is now a Methodist Reverend, after her late husband procured him an opportunity to go for further studies in the United States of America (USA).
14. According to PW 1 her late husband equally organized for the respondent to be accommodated at her father-in-law's house for 2 years while studying in the U.S.A, since he was his best man during the wedding.



15. Again, PW 1 added that her late husband gave the respondent money to buy 2½ acres of land on his behalf as he had no Kenyan resident status for Kshs.300,000/= and Kshs.50,000 for the water connection and a water tank.
16. PW 1 said that the seller of the land also sold another one acre each to the respondent and Rev. Charles Kathurima since the seller, Edward Mwangi Kabuchii, was selling 4½ acres, but her late husband would only afford 2½ acres at the time.
17. PW 1 insisted that the suit parcels of land were transferred to the respondent to hold in trust for the deceased. PW 1 relied on copies of the limited letter of grant ad litem, title deeds application for consent, land control board email dated 13.5.2015, letter dated 6.8.2019 from the chief Ngine location, an acknowledgment receipt of Kshs.25,000/=, a letter from Barclays Bank of Kenya Meru Branch for Kshs.300,000/- letter from Kiruai Water Association referring to Kshs.30,000/=, over the water tank, reply from the respondent regarding the water tank, demand letter to the respondent and lastly, a letter dated 13.8.2010, from the deceased to the farm manager as P. Exh No. 1-13 respectively. She denied the alleged lease of the suit parcels of land to the deceased.
18. In cross-examination, PW 1 told the court that she got married to the deceased in 2001, following his divorce from Marlyn Brenchley, who gave her the history of the suit parcels.
19. PW 1 confirmed that the deceased did not file any suit for the parcels of land, during his lifetime. Further, PW 1 said that after her husband passed on, the respondent made a promise through an email to transfer the suit land to her after the burial.
20. PW 1 said that her late husband and the respondent were very close, such that the latter had made several promises to transfer the land to him to the extent that the deceased did not prefer any claim in court for the same before he passed on. PW 1 said that she sued the respondent after he broke a promise made to her to transfer the suit land. Equally, PW 1 said that there was nothing produced by the respondent indicating that Kshs.300,000/= paid to the seller was a loan advanced by her late husband to the respondent.
21. Charles Mutwiri Miriti testified as PW 2. He relied on a witness statement dated 18.3.2022 as his evidence in chief.
22. PW 2 told the court that the late David Brenchley came to Meru County as a Methodist Church Missionary based at Methodist Training Institute as a teacher. Further that the deceased bought 2½ acres of land at Kshs.300,000/= on 11.2.1993 and showed him receipts for both the land and payments for water connectivity and the water tank.
23. Moreso, PW 2 told the court that since the deceased was an expatriate, he registered the suit parcel in the name of the respondent to hold in trust for him. As a result, PW 2 said that the respondent surrendered the two title deeds in his presence to the deceased on 11.2.1993.
24. PW 2 added that the respondent in efforts to transfer the land, filed an application for land control board consent. Further, PW 2 stated that the respondent and the deceased were very close, and both were ordained ministers of the gospel, hence the reason that the deceased was not worried about the transfer till he passed on. PW 2 said that the respondent had, even through email, expressed willingness to the appellant to transfer the land only to change tune in March 2019.
25. PW 2 denied that the respondent made any development on the suit land. He denied that the deceased had been leased out the two parcels of land by the respondent. PW 2 confirmed that both the deceased and the respondent visited his home in Chaaria and informed him about the purchase of the land by the deceased.



26. Peter Kirima Imathiu testified as DW 1. He told the court that he was a professional hospital Chaplin working with Providence Health in the U.S.A. He relied on copies of title deeds and official search certificates for L.R No. Nyaki/Munithu1480 & 1481 as D. Exh No. 1, 2, 3 & 4 respectively.
27. In cross-examination, DW 1 admitted to not possessing any sale agreements or acknowledgment receipts from the seller, as evidence of purchasing the suit parcels of land. Equally, DW 1 admitted that the seller of the suit parcels of land was not among the listed witnesses in support of his defense. Asked about a loan allegedly advanced to him by the deceased, DW 1 said that he had no such correspondence since it was a verbal agreement, which his wife was privy to, though she was not among the listed witnesses.
28. DW 1 admitted that he had no evidence for making a request for a loan from the deceased who offered or wrote a cheque for a loan advanced to him.
29. PW 1 could not recall the date, month, and the year when he sought and was advanced a loan by the deceased. Additionally, DW 1 could not recall the date and the month when he bought the suit parcels of land or when the deceased offered to buy the land from him.
30. Asked about the rejection of the land control board application, DW 1 admitted to not possessing anything to show that the request to transfer the land to the deceased was unsuccessful on account of non-citizenship.
31. DW 1 denied writing an email to the appellant promising to transfer the suit land to her. DW 1 confirmed that he had a very close relationship with the deceased. DW 1, in re-examination, said that he had no copies of the sale agreements with Edward Mwangi, for it was done in good faith between the two of them with no independent witness for the sale. DW 1 admitted signing the land control board consent application form alongside the deceased, who equally had prepared architectural plans to build a house on the suit parcels of land.
32. DW 1 said that after the defunct Meru Municipal Council rejected the architectural plans, the deceased differed with his foreign wife on the plans to build a home in Kithoka; otherwise, they later agreed that the deceased would continue to occupy and use the land until he passed on.
33. Wilfred Kaburu and Charles Kathurima Murithi testified as DW 2 and 3, respectively. They relied on witness statements dated 24.5.2021 as their evidence in chief. They all said that the respondent was the sole purchaser of the suit parcels of land with no participation of the late David Brenchley in the sale. On his part, DW 2 stated that he witnessed the sale of the two parcels of land from Edward Mwangi Kabuchii in 1990, since he was part of the negotiations for the same. Equally, DW 3 said that he bought a subdivision L.R No. Nyaki/Munithu/1665 from the respondent. He however, admitted that he never witnessed any money changing hands between the seller and the purchaser, nor could he recall the date, month, and year the purchase price was paid or from whom it was paid.
34. DW 2 confirmed that the deceased was also a Methodist minister at the time while the respondent was a student and was therefore not privy to any land transaction involving the two. DW 2 denied seeing any documents showing the respondent as the purchaser of the suit parcels of land. Similarly, DW 2 denied witnessing the respondent making deposits for the purchase of the land to the seller.
35. Similarly, DW 3 admitted that he was not privy to any money transactions involving the respondent and the seller. He could not recall when the land was bought, nor did he witness any sale agreement. He said that he was not privy to the date, months and year the purchase took place. Additionally, DW 3 said that he could not tell whether the deceased used to work in Meru or if he was a friend of the respondent. After the close of the defense testimony, the trial court dismissed the suit.



36. The appellant, through a memorandum of appeal dated 13.12.2022, faults the trial court for:
- i. Failing to find and hold that the respondent had admitted in writing that the two subject parcels of land belonged to the appellant's late husband and had equivocally expressed willingness in writing to transfer them to her.
 - ii. Failing to allow the claim after it rightfully found and held that the respondent's title to the land were not good titles.
 - iii. Failing to hold that prayer (a) of the amended plaint had the effect of the cancellation of the respondent's titles to subject land parcels.
 - iv. Failing to appreciate, find, and hold that the appellant had met the elements for a claim based on resulting trust.
 - v. Failing to find and hold that the surrounding circumstances had established a resulting trust.
 - vi. Faulting her for not suing or availing the seller of the suit parcels of land as witnesses, yet he was unavailable and unnecessary due to the available evidence and the admission made by the respondent.
37. This court made appeal directions for the appeal to be canvassed by way of written submissions to be filed by 30.10.2024. In written submission dated 14.11.2024, the appellant referred to the submissions filed on 16.8.2022 and 26.9.2022. On the first ground of appeal, the appellant submitted that the respondent had agreed to transfer the suit properties to the appellant, through the email communication produced as P. Exh.7. Further, the appellant submitted that the trial court disregarded that piece of evidence, yet it was an admission that the appellant was the beneficial owner of the suit properties.
38. On the finding that the respondent's titles to the suit parcels of land were not good titles, the appellant submitted that her late husband had paid full purchase price for the suit parcel of land and the trial court ought to have upheld that the claim. She submitted that the trial court held that she did not pay for the cancellation of titles, yet the court was empowered by Section 99 of the *Civil Procedure Act* to make appropriate orders.
39. Subsequently, the appellant submitted that prayer (a) of the amended plaint was self-explanatory and sought for an order to compel the respondent to transfer the suit properties to her. Regarding the resulting trust, the appellant submitted that she had met the conditions by paying the purchase price and being in possession of the suit properties through agents.
40. On grounds 5 and 6 of the appeal, she submitted that it was not necessary to sue or call the original owner of the suit parcels of land as a witness to demonstrate the existence of a resulting trust.
41. The respondent relied on a submission dated 29.10.2024. On whether the appeal is merited, the respondent submitted that the appellant relied on hearsay and inconclusive emails to claim the resulting trust. Reliance was placed on Article 40 of *the Constitution*, Sections 24,25 and 26 of the *Land Registration Act* Sections 107-109 of the *Evidence Act*, Black's Law Dictionary 9th Ed *Juletabi African Adventure Limited & another vs Christopher Micheal Lockley, Civil Appeal No.75 of 2016*, Mumo vs Makau (2002) 1 EA.170, Twalib Hatayan & another vs Said Saggat Ahmed Al-Heidy & others (2015) eKLR, Anthony Francis Wareham t/a AF Wareham & 2 others vs Kenya Post Office Savings Bank (2004) and Peter Ndungu Njenga vs Sophia Watiri Ndungu (2000) on the elements of trust.



42. Further, the respondent submitted that his title deeds were conclusive proof of ownership and could only be disproved through a higher evidentiary threshold. Reliance was placed on *Toroitich Suter vs William Toroitich & 3 others* (2017) eKLR and *Elijah Makeri Nyangwara vs Stephen Mungai Njuguna & another* (2013) eKLR.
43. The role of this court in handling an appeal is set out in section 78 of the *Civil Procedure Act*. The court has to reassess, rehearse, and re-evaluate the record of the trial court and come up with independent findings on facts and the law, while giving credit to the trial court that had the benefit of seeing and hearing the witnesses testify. See *Gitobu Imanyara & others vs. Republic* (2016) eKLR, *Selle & another vs Associated Motor Boat Co. Ltd* (1968) E.A 123.
44. In *Nkube vs Nyamuso* (1983) KLR 403, the court observed that an appellate court would not usually interfere with the finding of facts by a trial court unless it was based on no evidence or there was a misapprehension of the evidence or the trial court is shown have acted on wrong principles in reaching its conclusion. So having gone through the pleadings, evidence tendered the grounds of appeal and the caselaw cited. The issues calling for my determination are:
- i. If the appellant pleaded and proved that the purchase, transfer, and registration of L.R No. Nyaki/Munithu/1480 and 1481 to the name of the respondents subject to trust in favor of the late David Brenchley.
 - ii. If the respondent breached the trust bestowed upon him by the deceased in failing to transfer the suit parcels of land to the appellant.
 - iii. If the appeal has merits.
 - iv. What is the order as to costs?
45. The doctrine of constructive trust or resulting was defined in *Macharia Mwangi Maina & others vs. Davidson Mwangi Kagiri* (2014) eKLR. The court said thus:
- “A constructive trust is based on common intention which is an agreement, arrangement or understanding actually reached between the parties and relied on and acted upon by the claimant.”
46. In *Zipporah Wanjiru Mwangi vs Zipporah Wanjiru Njoroge* (2017) eKLR, the court observed that for a constructive trust to arise, there must be evidence of bargain (common intention), agreement and detrimental reliance resulting in an equitable fraud or unconscionable denial of a right. In *Black’s Law Dictionary 9th Edition*, constructive trust is defined as:
- “The right enforceable solely in equity to the beneficial enjoyment of property to which another person holds the legal title a property, interest held by one person (the trustee) at the request of another (the settlor) for the benefit of a third party (the beneficiary).”
47. In *Twalib Hatayan* (supra) the court held thus:
- “A constructive trust is an equitable remedy imposed by the court against one who has acquired the property by wrongdoing..... It arises where the intention of the parties cannot be ascertained. If the circumstances of the case are such as would demand that equity treats the legal owner as a trustee, the law will impose a trust. A constructive trust will thus



automatically arise where a person who is already a trustee takes advantage of his position for his own benefit”.

48. In *Archer & another vs. Archer & 2 others* (Civil Appeal 39 of 2020 (2023) KECA (298) (KLR), the court held thus:

“A constructive trust is therefore generated where through some prior agreement or bargain a trustee takes a fiduciary role which he or she cannot be allowed to disavow, and where the assertion of absolute beneficial ownership, thereby becomes unconscionable as a result of his or her previous dealings and actions.” The court cited *Twalib Hatayan supra* that constructive trust is meant to guard against unjust enrichment.

49. In *Ngao vs Kitheka* (Civil Appeal 152 of 2019 (2024) KECA 21 (KLR) (25th January 2024 (Judgment), the court held thus:

“The common intention may be proved by direct evidence, that is by way of an agreement or express word and communication between the parties that they have beneficial interests in the subject property or maybe interred by the court from the parties action and conduct. The types of evidence from which the courts are most often asked to infer include contributions (direct and indirect), to the deposit of the mortgage installments or general housekeeping”.

50. In *MNK vs POM Initiative for Strategic Litigation in Africa (ISLA); Amicus Curiae* (Petition 9 of 2021 (2023) KESC 2 KLR (family) 27th January 2023, the Supreme Court of Kenya held thus:

“on our part on an evaluation of the evidence, we are convinced that the two parties contributed to the acquisition and development of the suit property, which led to their proprietary rights. “In England, courts have long recognized that the common intention of the parties at the time of purchase is sufficient to give rise to a constructive trust, which can be inferred from conduct other than making financial contributions to cohabitants”.

51. Applying the foregoing case law to the facts in this appeal, it is not in dispute that the late David Brenchley and the respondent signed an application for land control board consent on 28.5.1993, relating to L.R No. Nyaki/Munithu/1480 and 1481, in which the respondent agreed to transfer the two parcels of land to the deceased. The application was made less than three months after the two parcels of land were registered in the names of the respondents on 10.2.1993. In the email dated 13.5.2015, the respondent wrote to the appellant thus:

“We shall follow the legal process in Kenya not only to safeguard my integrity and leave my conscience intact but also to safeguard the gain of living as law-abiding individuals in our motherland, Kenya. My last email to David in regard to this property had a candid explanation of why we should follow the legal process..... because the previous owner's son had put a caveat on the land. In his last email to me, he acknowledged that the access road, which is between his property and Mr. Julius Ndereba's home..... I hope this note helps to give you an insight into my thoughts and soul around your land in Kenya. Count on me to ensure you get every inch of this land and use it the way you feel would help to forge a future which you and David would have wanted for your kids”.

52. In the note written and signed by Edward Mwangi Kabii, on 24.5.1992 he acknowledged receipt of Kshs.25,000/= for the existing buildings water tank and other items on the property which he



- previously owned in Meru, which developments, according to him, henceforth belonged to the new owner. Further, in the letter dated 15.11.1993, the bank manager of Barclays Bank of Kenya Meru Branch confirmed receipt of the deceased's letter dated 22.10.1993 over a cheque of Kshs.300,000/= that was presented by the seller to the bank on 6.2.1993 as payment for land. The payment was received by the seller less than four days before the land transfers were effected, and the title deeds was issued to the respondent on 10.2.1993.
53. Section 3 (3) of the *Law of Contract Act* was excluded by Sub-Section (7) thereof in contracts made before 1.6.2003. All that was required then was taking possession of the suit property in part performance of the contract or an acknowledgment. See Peter Mbiri Michuki vs Samuel Mugo Michuki (2014) eKLR.
 54. The evidence by the appellant was that the suit parcels of land were bought, developed, and occupied by the deceased and his family but registered in the names of the respondent as a trustee, on account of the deceased being a non-Kenyan citizen who could not own the land on his own.
 55. On his part the respondent denied that there was an intention to found a trust. In his view, the monies sent by the deceased were a loan advanced to him on the condition that the respondent would lease the said land for 99 years or until David Lee Brenchley passed on, whichever came the earliest.
 56. Section 43 of the *Land Registration Act* provides that a lease to confer an interest in land instrument. See Mega Garment Ltd vs Ministry Jadva Parbat & Co. EPZ Ltd (2016) eKLR. The law is that he who avers must prove the existence of specific facts for the court to make a finding on his behalf. It is the respondent who pleaded that he had leased his land for 99 years or during the lifetime of the deceased. The terms and conditions of the lease, as executed were not spelled out. Anyone who witnessed it was not spelt out as to who called or indicated.
 57. In the application for land control board consent, there is an indication in the document that what the respondent was doing was transferring his interest in the two parcels of land to the deceased as a purchaser and not a lease. There is a clear difference between a lease and a transfer. Already, the deceased had taken possession of the land, which possession the respondent did not object to until the deceased passed on in 2015. In the email dated 13.5.2015, the respondent did not refer to a lease at all. In my view, therefore, and given a clear indication of the status of the land, the respondent was estopped in law from reneging on his earlier representation as opposed to a lease and not sale.
 58. In Chom Jeum Suk Kim and another vs E.J Austin and others (2013) eKLR, the court observed that even if a lease is unregistered, it may be enforceable as a contract between the parties for the period stated in the document.
 59. In the absence of any reference in the documents exchanged between the deceased, appellant and the respondent, I find no basis to hold that the deceased and the respondent had an existing lease in the manner that the respondent had pleaded. Nevertheless, Article 65 (1) of *the Constitution* provides that a non-citizen can hold a leasehold tenure for 99 years.
 60. The next issue is whether the suit parcels of land were registered in the names of the respondents subject to trust. The respondent invoked the doctrine of *ei qui affirmat non ei qui negat, incumbit probatio, and actori incumbent onus probandi*. See Republic vs Public Procurement Administrative Review Board and three others that in proving of a negative task is always difficult and often impossible and the burden of proof in any particular case depends on circumstances in which a claim arises. See Anne Kiprono Ropkoi & another (2005) 1 EA 334.



61. In this appeal, the appellant's case was that the respondent undertook the transaction on behalf of her late husband and made a promise to the deceased and to her to transfer the suit parcels of land but reneged on the same.
62. In *Juletabi African Adventure Ltd & another vs. Christopher Michael Lockley* (2017) eKLR, the respondents had made a substantial deposit into the 1st appellant's account for the 2nd appellant to undertake a land transaction on his behalf but upon completion of the transaction, the 2nd appellant, misrepresented that he could not hold the title as a foreigner. The appellants were requested to surrender the logbook and a title deed and transfer the same, but despite agreeing to do so, they failed to honor the promise. The appellant denied the existence of any trust in favor of the respondent. They maintained that the monies advanced were a loan recoverable only as a debt and not through trust. The trial court held in favor of the respondent. On appeal, the court found that the respondent was an honest witness who had given a detailed account and paper trail of the fund he had transferred to the 1st appellant.
63. The court held that the registration of the property in favor of the 1st appellant, did not divest him of his interest. The court cited *Twalib Hatayan* (supra), that courts readily look at the circumstances of the case and presume or infer, the transferor's intention. The court said that a resulting trust would automatically arise in favor of a person who advances the purchase money and whether or not the property is registered in his name or that of another is immaterial. The court, therefore, held that given that the respondent, advanced all the purchase money, the parcel, and the vehicle were therefore held in trust for the respondent by the 1st appellant.
64. In this appeal, the respondent is relying on an event brought about by his breach of contract by the transaction of the application for land control board consent. He, at the same time, wants the court to believe that after the transfer was frustrated, he agreed with the deceased that he should grant him a 99-year lease of enjoyment of the property during his lifetime, whichever came earlier. What the respondent did not plead and testify is what his consideration was in the whole transaction. Evidence that there was an agreement to advance a loan of kshs.300,000/= and Kshs.55,000 for the water connection and water tank is missing similarly, when and how the respondent repaid the loan is equally missing.
65. A man should not be permitted to take advantage of his own wrong. A court should not be allowed to perpetuate unjust enrichment. See *Surya Holdings Ltd & others vs C.F.C Stanbic Bank Ltd* (2014) eKLR.
66. A constructive and resulting trust are trusts imposed by law, whenever justice and good conscience are required to remedy an aggrieved party to obtain restitution, as held in *Hussey vs Palmer* (1972) 3 ALL ER 744. In *Arumba vs. Mbeya & another* (1988) KLR 121, the court held that a resulting or constructive trust was proportionate to the appellant's expenditure created where a person spends money on building and improvements on another person's land with the agreement of that person, but without the intention of a gift or loan. See also *Bilons vs Bilons* (1957) E.A Yogendra P. Patel vs *Pascale Mireille Baksh & others* (2006) eKLR, *Murdock vs Murdock* (1975) 1 SCR 423 and *Moore vs Crawford* 130 US 122, 128 (1989).
67. In *Willy Kimutai Kitilit vs Michael Kibet* (2018) eKLR, the court held that the doctrines of constructive and proprietary estoppel are part of our laws.
68. I think I have said enough to show that the totality of the evidence by the respondent pointed to an intention to create and found a trust. The respondent was unable to rebut the presumption of trust. He was unable to give details on where, for how much, and the manner in which he obtained titles



to the suit land, in the absence of payment of consideration. The respondent was unable to explain how he enabled the deceased and his family to take possession of the suit parcel land and exclusively develop then until 2015.

69. Similarly, evidence was led that the respondent willingly surrendered the original title deeds to the deceased and, equally, willingly signed the application form for land control board consent and attended a land control board meeting with the intention to surrender and transfer the suit parcels of land. All these facts taken together and in total leave no doubt in any mind that the respondent held the two title deeds in trust for the appellant's deceased husband.
70. A single witness may prove the facts required to find a cause of action. There is no requirement in law for the quality of witnesses to testify. All that is necessary is the quality of the evidence. Facts in issue may also be proved through admission by the opposite party. The acknowledgment receipt dated 24.5.1993 was enough proof that Edward Mwangi Murithi Kibuchii had received consideration of Kshs.300,000/= and Kshs.25,000/= for his development on the land from the deceased.
71. DW 2 and 3 were strangers to the purchase price of Kshs.300,000/= and Kshs.25,000/= received by the seller from the deceased. The two defense witnesses were unreliable witnesses who could not tell the most essential features of the transaction.
72. The upshot is that I find merits in the appeal. It is allowed. The respondent shall forthwith surrender the suit parcel of land to the appellant and sign the transfer forms in favor of the appellant within 30 days from the date hereof in default of the Deputy Registrar of the court shall do so.
73. Costs of the appeal and at the lower court to the appellant.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON
THIS 20TH NOVEMBER, 2024**

In presence of

C.A Kananu

Miss Lagat for Kibe Muigai for the appellant

Miss Gideon for the respondent

HON. C K NZILI

JUDGE

