



**Karui v Githinji (Environment & Land Case 720 of 2014)
[2023] KEELC 16584 (KLR) (28 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16584 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 720 OF 2014
JO OLOLA, J
MARCH 28, 2023**

BETWEEN

MARY WANJIKU KARUI PLAINTIFF

AND

MWANGI KARUI GITHINJI DEFENDANT

JUDGMENT

1. By her Complaint dated and filed on December 18, 2014, Mary Wanjiku Karui prays for Judgment against the defendant for:
 - (a) A declaration that the Defendant holds 1/2 share of Kiine/Kiangai/652 in trust for the Plaintiff;
 - (b) The determination of the said trust and an order for the Land Registrar (to) register the Plaintiff appropriately as (the) owner of half share thereof; and
 - (c) Costs and any other order necessary to give effect thereof.
2. Those prayers arise from the Plaintiff's contention that at all times material the Defendant was the registered proprietor of all that parcel of land known as Kiine/Kiangai/652 measuring approximately 2.35 Ha. or thereabouts. The Plaintiff avers that the said parcel of land was initially registered in the name of their father Jackson Karui and that the Defendant came to be registered as the owner by way of transmission after acquiring Letters of Administration for the Estate of the said Jackson Karui alias Githinji.
3. It is the Plaintiff's case that the subsequent registration of the Defendant as the proprietor of the suit property was under an implied trust that he was to hold the same on his behalf and in trust to the extent of 1/2 share on behalf of the Plaintiff. The Defendant has however refused and continues to



deny the Plaintiff not only the half share but has also restricted her use thereof and threatened her with unlawful eviction.

4. But in his statement of defence dated February 17, 2015, Mwangi Karui Githinji (the Defendant) denies the Plaintiff's claim and avers that the suit as filed is incompetent, bad in law and an abuse of the court process.
5. The defendant avers further that he became solely registered as the proprietor of the land upon filing a Succession Cause with the full knowledge and consent of the Plaintiff. He denies any implied trust over his registration and or that he holds 1/2 share of the land in trust for the Plaintiff.

The Plaintiff's Case

6. At the trial herein, the plaintiff (PW1) testified as the sole witness in her case. She told the Court that the Defendant is her brother and that their father Jackson Karui passed away in April 1976. Relying on her Statement dated and filed herein on December 18, 2014, the plaintiff told the court that she was residing on the suit property which was initially registered in their father's name until the defendant demolished her house in 2021.
7. The plaintiff told the court her brother came to be registered as the proprietor of the land after he filed Nyeri High Court Succession Cause No. 46 of 1985 and was made the administrator of the estate. The plaintiff told the court the land was so registered on her behalf and that of the defendant and that each of them should hold half a share. The plaintiff told the court that her brother has of late been restricting her use of the land and that he had threatened her with eviction.
8. On cross-examination, the plaintiff told the court she was not sure when the defendant came to be registered as the proprietor of the suit property. She further told the court she was aware there was another case involving the defendant and one of their brothers by the name George. She however denied appearing in that case as a witness.
9. The plaintiff told the court there was no family meeting before the defendant filed the Succession Cause and hence she was unaware when the same was filed. She denied filing an application to revoke the grant issued to the defendant and told the Court the only case she has ever filed against her brother was one of assault and for the demolition of her house.

The Defendant's Case

10. The defendant (DW1) equally testified as the sole witness in his case at the trial. He told the Court he inherited the suit property from his father who gave it to him during his lifetime. Following his father's death, he filed Nyeri High Court Succession Cause No. 46 of 1985 upon which the land was transmitted to his name.
11. The defendant denied the the plaintiff co-owns the land with himself. He told the court the plaintiff had severally brought the same dispute to court claiming the defendant obtained the land through forgery.
12. The defendant told the court that when their father died in April 1976, the plaintiff was at her husband's place in Nanyuki. He further told the court the Plaintiff now lived in Karatina but not on the suit property. Their entire family were present in court during the Succession proceedings and he did not hold the land in trust for any of them.



13. On cross-examination, the defendant told the court the plaintiff was previously married but had left her husband in 1999. He told the court his father gave him the land but he did not do a transfer to his name. He came to acquire the land after filing the succession cause at the High Court.
14. The defendant further told the court that during the Succession proceedings, the Plaintiff was at her husband's place and that she was not in court. Other than the succession cause, his sister had not filed any other case in regard to the suit property. He told the court the Plaintiff had filed an assault case. He however denied being taken to court for demolishing the plaintiff's house stating the plaintiff had no house on the suit property.

Analysis And Determination

15. I have carefully perused and considered the pleadings filed herein, the testimonies of both the plaintiff and the defendant as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the Parties herein.
16. The plaintiff and the defendant are respectively a brother and sister. The plaintiff urges the court to find that her Defendant brother holds half-share of the parcel of land known as Kiine/Kiangai/652 in trust for herself. She urges the Court to determine the said trust and to direct the Land Registrar to register herself as the proprietor of half of the suit property said to be measuring approximately 2.35 Ha.
17. As was stated by the Court of Appeal in *Charles K. Kandie -vs- Mary Kimoi Sang* 2017 eKLR:

“It is settled that the onus lies on a Party relying on the existence of a trust to prove it through evidence. That is because:

“The law never implies, the Court never presumes, a trust, but in case of absolute necessity. The Court will not imply a trust save in order to give effect to the intentions of the Parties. The intention of Parties to create a trust must be clearly determined before a trust will be implied.”

(See *Gichuki -vs- Gichuki* (1982) KLR 285 and *Mbothu & 8 others -vs- Waitimu & 11 others* (1986) KLR 171).
18. In the matter before me, it was not in dispute that the Plaintiff and the Defendant are a sister and brother, being the daughter and son respectively of the late Jackson Karui. From the material placed before the Court, the said Jackson Karui who passed away on 23rd April, 1976 was the first registered owner of the suit property upon its registration on April 10, 1963.
19. It was also apparent that sometime in July 1985, the defendant herein instituted Nyeri High Court Succession Cause No. 46 of 1985: In the matter of the Estate of Jackson Karui pursuant to which he was on August 20, 1987 issued with a Confirmed Grant of Letters of Administration. A month later on September 21, 1987, the defendant was by way of transmission registered as the proprietor of the suit property.
20. It is the plaintiff's case that the suit property was transmitted to the defendant's name with an implied caveat in customary trust which was not notable or registrable on the title.
21. While confirming that indeed the Plaintiff is his sister and that the parcel of land was formerly registered in their father's name, the Defendant asserts that his father had given him the suit land during his lifetime even though the same was not transferred to his name. It was the Defendant's case that he filed the Nyeri High Court Succession Cause No. 46 of 1985 for purposes of having the property formally



transferred to his name. He told the Court that as at the time he filed the cause, the Plaintiff was married in Nanyuki and that he did not inherit the land in trust for the Plaintiff or any other family member.

22. As it were, the defendant did not present any evidence of when or how his deceased father had “given” unto him the suit property. The evidence on record was that his father died intestate and that he had to initiate the succession cause before the High Court for the distribution of the estate. He did not pay any consideration for the land but inherited what was hitherto the family home.
23. While the Defendant asserts that as at the time he inherited the suit property his Plaintiff sister was married in Nanyuki, there was no evidence of any such marriage adduced before the Court. It was indeed the Plaintiff’s case that she lived with her two children in her mother’s house until the same was demolished allegedly by the Defendant during the existence of this case.
24. In the absence of any such marriage, the Plaintiff was indeed entitled to a share of her father’s land. However while the Plaintiff prays to be granted one half share of the suit property measuring some 2.5 Ha., it was the Plaintiff’s own testimony that their father left behind six (6) children. Given the Defendant’s testimony that their brother George Mundia had been given a separate parcel of land being L.R No. Iriaini/Chehe/203, I find and hold that the Plaintiff is entitled to 1/5 of the suit property.
25. Accordingly I hereby direct and order as follows:
 - (a) A declaration is hereby made that the Defendant holds 1/5 share of the parcel of land known as Kiine/Kiangai/652 in trust for the Plaintiff.
 - (b) The said trust is hereby determined forthwith and an order is accordingly issued to the Land Registrar Nyeri directing him to register the Plaintiff appropriately as the proprietor of the said 1/5 portion of L.R No. Kiine/Kiangai/652.
 - (c) Each Party shall bear their own costs.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI THIS 28TH DAY OF MARCH, 2023.

In the presence of:

Mr. H. K. Ndirangu holding brief for Nderi for the Plaintiff

Ms Wanjiru for the Defendant

Court assistant - Kendi

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J. O. OLOLA

JUDGE

