



Inn re Estate of the Late Mary Wanjiru Ruoro (Deceased) (Succession Cause 39 of 2020) [2023] KEHC 2380 (KLR) (27 March 2023) (Judgment)

Neutral citation: [2023] KEHC 2380 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 39 OF 2020
RN NYAKUNDI, J
MARCH 27, 2023**

**IN THE MATTER OF THE ESTATE OF THE LATE MARY WANJIRU
RUORO (DECEASED)**

BETWEEN

LINA CHEPNGETICH ROTICH & 15 OTHERS PROTESTOR

AND

RUTH WAIRIMU RUORO PETITIONER

JUDGMENT

1. What is pending for determination is the protest to the confirmation of the grant that was pursuant to the summons for confirmation of grant dated June 9, 2021 made by Ruth Wairimu Ruoro. There are 15 protestors on record.
2. The 1st protestor Lina Chepngetich Rotich claimed that she purchased a parcel of land from James Kiragu Waweru who purchased the same from Mburu Ndungu who purchased from Samuel Kimani Njoroge who purchased from the late Richard Ruoro Wagura who was the registered proprietor. The said Richard Ruoro Wagura had obtained consent from the land control board to transfer the property to Samuel Kimani Njoroge who passed on before the transfer of the property. He stated that a petition for administration of the estate of Richard Ruoro Wagura and a grant of letters of administration was issued to the late Mary Wanjiru Ruoro who died before she could effect the transfer of the parcel. He stated that he purchased the property for valuable consideration during the lifetime of the deceased and the said portion ought to be listed as a liability.
3. The 2nd protestor, Peter Kispalat Lelei swore his affidavit of protest and stated that he purchased 5 acres in LR no 8451/23 from the deceased for a sum of Kshs 325,000/- which he paid for in full and took possession of the parcel. The deceased died before she could effect the transfer and he urged that he be listed as a liability of the estate.



4. The 3rd protestor, Vonventure Kiplimo Murgor swore an affidavit of protest and stated that he purchased 0.809 Hectares from Raphael Wanjagi Kamau and the purchase price was paid for in full. The said Raphael purchased the property from Richard Ruoro Wagura who had obtained consent to transfer the property but passed away before he could effect the same. Grant of letters of administration were issued to the deceased who died before she effected the transfer. He sought to be included as a creditor to the estate.
5. The 4th protestor, James Kibet Ngetich stated that he purchased the property from Edith Warugu Njoroge who purchased the same from Samuel Kimani Njoroge who wrote a letter confirming to have sold the portion to her and requested the chairman Ainabkoi Land Control Board to transfer the said portion. He urged to be included as a liability to the estate.
6. The 5th protestor Joseph Tengelei filed an affidavit of protest stating that he purchased a portion of land from Joseph Njogu Kinuthia for valuable consideration. He had purchased the same from Richard Ruoro who was the registered proprietor of the property. He had made an application to obtain consent to transfer the same from the Ainabkoi Land Control Board but Richard Ruoro Wagura passed on before the transfer was effected. Further, that Mary Wanjiru Ruoro who was appointed an administrator of the estate and the parcel was distributed to her but she passed on before transferring the parcel. He asked to be included as a liability to the estate.
7. The 6th protestor Rose Jepkoech Birgen swore her affidavit of protest and stated that she is the widow of the late Kirwa Sammy Sawe who had purchaser's interest from the late Basilisa Murrey who purchased a portion measuring 5 acres known as LR No 8451/15 from the late Richard Ruoro Mugura. She also purchased a portion measuring 4 acres in LR No 8451/15 from the late Mary Wanjiru Ruoro who died before she could effect any of the transfers. She asked to be included as a liability to the estate.
8. The 7th protestor Louis Maurice Kenyani stated that his ate father Alfred Mavisi Muhandale purchased a portion of and measuring one acre from Samuel Kimani Njoroge who had purchaser's interest in parcel LR No 8451/2 where his parents had established their matrimonial property on the said parcel but the late Richard Ruoro passed away before transferring the said parcel. The property was then transferred to the deceased herein who died before transferring the property. He sought to be included as a liability to the estate.
9. The 8th protestor, Samuel Cheruiyot Kiptok swore an affidavit of protest stating that he purchased 2 ½ acres from Janet Wanjiru Karimi who purchased the property from Richard Ruoro who had made an application to the Ainabkoi Land Control board to transfer the property but he passed on before effecting the transfer. The property was then transferred to the deceased herein who passed on before effecting the transfer. He sought to be included as a liability to the estate.
10. The 9th protestor, Sarah Cherop Kemei swore an affidavit of protest and stated that her late husband John Kipruto Kemei who purchased 10 acres from the late Richard Ruoro in parcel number LR No 8451/2. They occupied the property and Richard Ruoro passed on before transferring the property. The property was then transferred to the deceased herein who passed on before transferring it. The protestor sought to be included as a liability to the estate.
11. The 10th protestor, James Kipruto Komen alongside Stella Jerop Chebii filed an affidavit of protest stating that they bought a portion of land measuring 3 acres from Zipporah Wangechi Rwengo who had purchased the property from Samuel Kimani Njoroge who had purchased the land from Richard Ruoro. He had made an application to the land control board for transfer but the same was not effected before he died. The property was transferred to the deceased as an administrator of the estate of Richard



- Ruoro and she passed on before transferring the property. He sought to be included as a liability to the estate.
12. The 11th protestor, Samson K Ketter stated that he purchased 2 acres of land from David Kipkurgat who had purchaser's interest from Mburu Ndungu who purchased the portion from Samuel Kimani Njoroge who purchased the portion from Richard Ruoro, the registered proprietor. That the late Richard Ruoro made arrangements to obtain a consent for the transfer but he passed on before the transfer. Once a petition was filed the property was transferred to the deceased herein as the administrator of the estate ,and she passed on before transferring the property. He sought to be included as a liability to the estate.
 13. The 12th protestor, Abraham Kiplagat Misoi swore an affidavit of protest stating that he purchased 17 acres of land in parcel LR No 8451/23 from Richard Ruoro and the purchase price was paid in full. The protestor made an application to Ainabkoi Land Control Board for consent and the same was approved but Richard Ruoro passed on before effecting the transfer. The property was then transferred to the deceased as an administrator of the estate of Richard Ruoro and passed on before she effected the transfer. He sought to be included as a liability to the estate as a creditor.
 14. The 13th protestor, Patrick Karanja Macharia swore an affidavit of protest stating that his late father, Paul Macharia purchased 52 acres from Richard Ruoro who passed on before transferring the property. The same was transferred to the deceased herein who was appointed an administrator of the estate. She passed on before transferring the land and the protestor sought to be included among the liabilities of the estate.
 15. The 14th protestor, Henry Kipkogei Rono swore an affidavit of protest stating that on diverse dates, he purchased a portion of land measuring 14 acres from John Ruoro, the son of the deceased herein. She then purchased another portion measuring 12 acres from Stephen Kirunga who had purchaser's interest from Richard Ruoro and 2 acres from Ann Ruoro, a daughter to the deceased. That Richard Ruoro passed on before transferred the property and the parcel was then transferred to the deceased herein who died before transferring the same. He sought to be included as a liability to the estate.
 16. Obadiah Kipchumba Mutai, the 15th protestor, stated that he purchased a portion of land measuring 2 acres from Kamau Kimenyu, Peter Kiarie Kamau and Samuel Kamau and paid the purchase price in full. They had purchased the parcels from Samuel Kimani Njoroge who had purchaser's interest from Richard Ruoro. That Richard Ruoro passed on before transferring the property and the same was transferred to the deceased herein upon her appointment as the administrator of the estate. He sought to be included as a liability of the estate as she had passed on before transferring said property.
 17. Calvin Chepchumba Mase, a 16th protestor, swore an affidavit of protest stating that he purchased 4 acres of land from Wallace Kariuki Mbutiru on November 16, 2010 from Richard Ruoro who had obtained consent from the Ainabkoi Land Control Board but he passed on before effecting the transfer. The deceased herein was appointed the administrator of the estate and passed on before effecting the transfer of the property and thus he sought t be included as a liability to the estate.

Respondent/Petitioner's Case

18. The petitioner/co administrator filed a further supporting affidavit on December 13, 2022 stating that out of the 15 protestor she only disagreed with 4 protestors namely.

Von Venture Kiplimo Murgor

Abraham Kiplagat Misoi

Patrick Karanja Machar1a



Henry Kipkogei Rono

19. She stated that with regards to protest by Von Ven Ture Kiplimo Murgor his entitlement is only 0.71 hectares which is equivalent to 2 acres instead of the claimed size of 0.089 hectares. That with regards to protest by Abraham Kiplagat Misoi, he is only entitled to 17 acres not 17 and a quarter acres. That with regards to protest by Henry Kipkogei Rono he is only entitled to 22 acres. That with regards to the protest by Patrick Karanja Macharia, it is very clear from the evidence produced by the protestor that he is only entitled to 24 acres. This is clearly evidenced by the Confirmation of Grant of the estate of Macharia Ndar1 dated 8th March 2013 attached to the protest.
20. She further informed the court that PCEA Church is entitled to 1 acre though they have not filed a protest. That a Mrs Rono Of Moi University is also entitled to 4 acres having purchased the same from Wallace K Mbituru. She has also not filed a protest. She stated that the residue of the land that will remain after distribution of the parcels claimed by the protestors should be shared equally amongst the beneficiaries.
21. She urged the court pray to the court to confirm the distribution of the other properties since nobody has protested against their distribution. These are:
Thika Municipality Block 14/410
Eldoret Municipality Block 15/1546
Eldoret Municipality/bl0ck21(king'0ng'0)/2584
Lr No. 8451/5(ir. 39181)
22. She stated that she had instructed her advocates to hold a meeting with all the protestors or their advocates with a view of agreeing on how their parcels of land will be excised from the main title and the costs implication of that exercise.

Analysis & Determination

The applicable law:

23. The *prima facie* evidence from the protestors places their claim within section 93 of the [Succession Act](#). The 9th Edition of the [Black Law dictionary](#) defines a bonafide purchase as “one who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claim or equities against the seller’s title, one who has in good faith paid valuable consideration for property without notice of prior adverse claim. A bonafide purchase for value without notice is commonly referred to as Equity’s darling. Doctrines and Maxims of equity are a source of law in Kenya by virtue of Section 3(1) of the [judicature Act](#) which posits thus
24. The additional question arises whether *bonafide* purchaser should similarly be protected in the situation in which there has been no administration of the intestate estate? There is no question that the beneficiaries have the power to sell or convey land, save that according to the Succession Act that real property descends directly to them upon the death of the intestate. Even though the beneficiaries have the power to sell the land, the good faith purchaser in this type of cases should only be protected if he acted within the statutory provisions which governs purchase and sale of land in Kenya. It has also to be established that the land was free from debt or that the deceased died intestate. In the instant case, the protestors relied on the representations of the heirs that they had power to sell and the doctrine of caveat emptor should apply.



25. As the co administrator only disputes four protestor's claims, it follows that the issue for determination is whether the protestors are entitled to be included as liabilities to the estate. And if so, to what extent.
26. Vonventure Kiplimo Murgor, the 3rd protestor claims 0.809 Ha from the estate of the deceased. There is no dispute that he is entitled to a portion of the estate. I have considered the sale agreement he attached to his protest and the same shows that the agreement was on 0.809 Hectares. It is my considered view that he is entitled to the acreage as per the sale agreement.
27. Abraham Kiplagat Misoi, the 12th protestor was seeking 17 acres and therefore the same is in agreement with the position of the co administrator.
28. Patrick Karanja Macharia, the 13th protestor produced sale agreements which indicates that the parcel of land that was purchased by his father Macharia Ndari was 52 acres. However, the further affidavit of Ruth Wairimu Ruoro acknowledges only 24 Acres with no explanation notes as to what happened to the rest of acreage as captured in the sale agreement dated January 15, 1976. This purchase from clause 2 of the sale agreement denotes that the 52 Acres was to be excised from LRNO 8451/2 owned by a Limited Company known as Karathimo Ltd comprising 180 Acres. (One hundred and eighty acres). Here it has to be conceded that there is an error apparent in the certificate of confirmation annexed to these proceedings. In this case the good faith purchaser should be protected.
29. Henry Kipkogei Rono, the 14th protestor, is claiming 28 acres from the estate and produced three sale agreements annexed as HK(1), HK(2) and HK(3) for the portions of land measuring 10 acres, 4 acres, 2 acres and 12 acres all out of the land known as LR No 8451/23 (Kiraito farm). The same amounts to 28 acres in total. In the premises I find that he is entitled to 28 acres as the co administrator does not dispute that he is entitled to part of the estate.
30. The rights which accrue from the fiduciary relationship between the purchaser and seller, fall within the ambit of constructive trust. The elements of this remedy was properly expounded in the case of *Muschinski v Dodds* (1985) 160 CLR 583, 613 in which court remarked as follows: "As a remedy (the constructive trust) can only properly be understood in the context of the history and the persisting distinctness of the principles of equity that enlighten and control the common law. The use or trust of equity, like equity itself, was essentially remedial in its origins. In its basis form it was imposed, a personal obligation attaching to property, to enforce the equitable principle that a legal owner should not be permitted to use his common law rights as owner to abuse or subvert the intention which underlay his acquisition and possession of those rights. This was consistent with the traditional concern of equity with substance rather than form. In time, the relationships in which the trust was recognized and enforced to protect actual or presumed intention became standardized and were accepted into conveyancing practice (particularly in relation to settlements) and property law as the equitable institutions of the express and implied (including resulting) trust. Like express and implied trusts, the constructive trust developed as a remedial relationship superimposed upon common law rights by order of the Chancery Court. The constructive trust can properly be described as a remedial institution which equity imposes regardless of actual or presumed agreement or intention (and subsequently protects) to preclude the retention or assertion of beneficial ownership of property to the extent that such retention or assertion would be contrary to equitable principle. Equity acts consistently and in accordance with principle. The old maxim that equity regards as done that which ought to be done is as applicable to enforce equitable obligations as it is to create them and, notwithstanding that the constructive trust is remedial in both origin and nature, there does not need to have been a curial declaration or order before equity will recognize the prior existence of a constructive trust ... Where an equity court would retrospectively impose a constructive trust by way of equitable remedy, its availability as such a remedy provides the basis for, and governs the content of, its existence inter partes



independently of any formal order declaring or enforcing it. In this more limited sense, the constructive trust is also properly seen as both ‘remedy’ and ‘institution’. Indeed, for the student of equity, there can be no true dichotomy between the two notions.”

31. The foundation of this doctrine is part of our jurisprudence as adopted by the court of appeal in the cases of: *Juletabi African Adventure Limited & Another vs Christopher Michael Lockley* (2017) and *Twalib Hatayan Twalib Hatayan & another vs Said Saggar ahmed –al Heidy & Others* (2015) eKLR it is stated:

“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).”

Under the *Trustee Act*, “... the expressions “trust” and “trustee” extend to implied and constructive trust, and cases where the trustee has a beneficial interest in the trust property...”

In the absence of an express trust, we have trusts created by operation of the law. These fall within two categories; constructive and resulting trusts. Given that the two are closely interlinked, it is perhaps pertinent to look at each of them in relation to the matter at hand. A constructive trust is an equitable remedy imposed by the court against one who has acquired property by wrong doing. ... 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 (see *Halsbury’s Laws of England supra* at para 1453). As earlier stated, with constructive trusts, proof of parties’ intention is immaterial; for the trust will nonetheless be imposed by the law for the benefit of the settlor. Imposition of a constructive trust is thus meant to guard against unjust enrichment. ...

A resulting trust is a remedy imposed by equity where property is transferred under circumstances which suggest 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 p 175). Therefore, unlike constructive trusts where unknown intentions maybe left unexplored, with resulting trusts, courts will readily 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 the person who advances the purchase money. Whether or not the property is registered in his name or that of another, is immaterial.

According to the prevailing view, and considering both affidavits by the protestors and rejoinder of the respondent, I find very little contradiction in so far as the assumed obligations which gave rise to the basic duty to transfer nominal title in the property to the protestors. What makes the establishment for the application of the remedial of constructive trust is the extend in which the property in question was secured to warrant avoidance of unjust enrichment. The contestation carried out by the protestors and the respondent are



such that there is no conflict as to what was intended by the parties to the intestate estate.
It follows that the following orders shall abide:

32. Considering the further affidavit of the respondent, I find that the said Mrs Rono mentioned in paragraph 9 be included among the liabilities and the PCEA church as well for 4 acres and 1 acre respectively.

In the premises the protest succeeds to the extent that;

The following protestors be included as beneficiaries to the estate;

Linet Chepngetich Rotich – 1.2 acresLR 8451/23

Peter Kipsalat Lelei – 5 acresLR 8451/23

Vonventure Kiplimo Murgor – 0.809 Ha LR 8451/5

James Kibet Ngetich – 2 acresLR 8451/5

Joseph Tengelei – 3 acres LR 8451/5

Rose Jepkoech Birgen 5 acresLR 8451/23

4 acres - LR 8451/5

Louis Maurice Kenyani – 1-acreLR 8451/5

Samuel Cheruiyot Kiptok – 2 ½ acresLR 8451/23

Sarah Cherop Kemei – 10 acresLR 8451/23

James Kipruto Komen – 3 acresLR 8451/23

Samson K Ketter – 2 acresLR 8451/23

Abraham Kiplagat Misoi – 17 acresLR 8451/23

Patrick Karanja Macharia – 52 acresLR 8451/2

Henry Kipkogei Rono – 28 acres LR 8451/23

Obadiah Kipchumba Mutai – 2 acresLR 8451/5

Calvin Chepchumba Mase – 4 acres LR 8451/5

33. It is evident from this formula that the balance of the intestate estate remain to be awarded to the beneficiaries in equal shares pursuant to Section 37, 38, as read conjunctively with Section 39 of the [law of Succession Act](#). Being a family matter, no order as to costs is permissible

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 27TH DAY OF MARCH 2023

R NYAKUNDI

JUDGE

30 days stay of execution permissible

In the Presence of Chesso for Kalya & Co Advocates

tummandassociate@gmail.com , Kalyacounsel@gmail.com

