



**Kariuki v Irungu (Environment & Land Case E002 of 2021)  
[2023] KEELC 19093 (KLR) (28 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 19093 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE E002 OF 2021**

**JO OLOLA, J**

**JULY 28, 2023**

**BETWEEN**

**JULIETA WANGECHI KARIUKI ..... PLAINTIFF**

**AND**

**TERESA WAMBUGU IRUNGU ..... DEFENDANT**

**JUDGMENT**

**Background**

1. By the Originating Summons dated May 12, 2021, Julieta Wangeci Kariuki (the Plaintiff) asserts that she is entitled to inherit Agricultural Plot No. 1906 and Village Plot No. V.5 188 Solio Ranch Settlement Scheme in Laikipia Central District and urges the Court to determine the following questions:
  1. Was the issuance of Letters of Offer for Agricultural Plot N. 1906 and Village Plot No. V.5 188 in the name of Gathoni Kariuki absolute and/or was Gathoni Kairuki to hold the land in trust for the Plaintiff?
  2. Who should amongst the Plaintiff, the Defendant and/or all the children of Gathoni Kariuki inherit Agricultural Plot No. 1906 and Village Plot No. V.5 188 Solio Ranch Settlement Scheme?
  3. Who should bear the costs?
2. The Originating Summons is supported by an Affidavit sworn by the Plaintiff wherein she deposes at the relevant Paragraphs 2 to 13 thereof as follows:
  2. That Gathoni Kariuki is my late mother who died on April 24, 2014 Annexed marked JW1 is a copy of the death certificate;



3. That in the year 2009 and 2010 persons who had no land, were poor and needy were being allotted land at what was being referred to as Solio Ranch on recommendation of the administration;
  4. That as a needy person, I applied and was recommended;
  5. That at the time I had no identity card and was advised that I could use my late mother's identity card and my mother would at a later date transfer the land to me. Annexed marked JW2 is my identity card copy issued on 27<sup>th</sup> October, 2010;
  6. That my mother was thus offered by the Ministry of Lands Agricultural Plot No. 1906 and Village V.5 188 at Solio Ranch Settlement. Annexed is the letter of offer marked JW3 of 22<sup>nd</sup> April, 2010;
  7. That thereafter I made the necessary payments and receipts were issued in the name of my mother. Annexed are the receipts marked JW4;
  8. That the processing of Title documents to facilitate transfer did not happen as expected and my mother died before the same were processed;
  9. That after the demise of my mother I filed Othaya PM Succession Cause No. 63 of 2019 relating to Solio assets.
  10. That my siblings were aware of the position that my mother's registration was to hold the property in trust for me and all consented;
  11. That the Defendant who is my sister-in-law protested and laid claim to the property;
  12. That the Court in its Judgment of 23<sup>rd</sup> April, 201 held it for lack of jurisdiction (sic) to determine the issue in trust in probate proceedings. Annexed marked JW5 is the Judgment; and
  13. That before the assets can be distributed the issue of whether my mother held the property for me or not has to be determined.”
3. Teresa Wambui Irungu (the Defendant) is opposed to the Plaintiffs claim. In a Replying Affidavit shown to be sworn on 1<sup>st</sup> September, 2021 but filed herein on 3<sup>rd</sup> August 2021, the Defendant avers as follows at the relevant Paragraphs 3 to 13:
3. That the application is frivolous, vexatious and an abuse of the Court process;
  4. That Gathoni Kariuki (deceased) was my mother in law as I was married to his late son Joseph Irungu Kariuki;
  5. That I got married to the late Joseph Irungu Kariuki in the year 1999 and were blessed with three children namely James Kariuki, Ian Mwangi and Charles Njuguna;
  6. That in the year 2000, I started living with my mother-in-law as my late husband had built me a house in the same land as she was living is located in Othaya;
  7. That the land parcels Agricultural Plot No. 1906 and Village Plot No. V.5 188 Solio Ranch Settlement Scheme were transferred to my late mother-in-law in the year 2009 absolutely;
  8. That in the year 2011, my late husband had informed me that his mother was the owner of the subject land parcels and proceeded to show me where they were situated;



9. That when I went to visit the said land in the company of my husband, we found that the land had not been cultivated nor was there any building constructed on it;
10. That the Plaintiff resides at Karima within Othaya in the same land as I reside;
11. That when I got married, the Plaintiff was still residing at Karima and has continued to reside there up to-date;
12. That this application is a fishing expedition and calculated to ensure that my children and I are disinherited (from) what rightfully belongs to my mother-in-law;
13. That in the interest of justice, the application should be dismissed with costs.”

### **The Plaintiff’s Case**

4. The Originating Summons proceeded by way of viva voce evidence. At the trial, the Plaintiff called three witnesses in support of her case.
5. PW1 – Julieta Wangeci Kariuki is the Plaintiff and a farmer in Othaya. In support of her case, she reiterated the averments made in the Supporting Affidavit to the Originating Summons.
6. On cross-examination, PW1 told the Court that the parcels of land were given in 2010 and that that was about 5 years before her mother passed away. She further told the Court that her mother became ill when PW1 was issued with the Identity Card and the mother could not therefore transfer the land. PW1 conceded that she had not produced any documents in Court to demonstrate that her mother was ill for a long period of time.
7. PW2 – Charles Nderitu Kathuri is a farmer in Othaya and the former Assistant Chief of Thuti Sub-location. He told the Court both Parties herein are residents of Thuti Sub-location where he served as the Assistant Chief from 1999 to 2016. PW2 testified that the parcels of land in dispute were recorded in the name of the Plaintiff’s mother since the Plaintiff did not have an identity card. He told the Court they used a Police Abstract and registered the name of the Plaintiff’s mother. As at the time, the Plaintiff was in great need and the Administration used to give her food as a destitute.
8. On cross-examination, PW2 told the Court that at the relevant time, the Plaintiff had left her husband and returned to live in their home with her children. He told the Court he did not know why the Plaintiff could not change the identity card in time to be issued with the land in her name.
9. PW3 – Elizabeth Wangui Kariuki is a resident of Othaya and a sister to the Plaintiff. She told the Court the Plaintiff was given the land after she left her husband and returned home with her small children. PW3 told the Court that the Plaintiff had at the time lost her identity card and that is why they used the mother’s identity card.
10. On cross-examination, PW3 conceded that she was not present when the land in issue was allocated and that she was only told about the allocation.

### **The Defence Case**

11. On her part, the Defendant testified as the sole witness in her case. Testifying as DW1, she told the Court she was married to the Plaintiff’s brother Joseph Irungu and that she had inherited the parcels of land in dispute as the same belonged to her mother-in-law.
12. DW1 further testified that her mother-in-law passed away in the year 2014 and that until the year 2019 when her husband passed away in a traffic accident, they were the ones who were utilizing the land.



13. On cross-examination, DW1 conceded they were previously residing in Nakuru with her husband as at the time the parcels of land were allocated. She told the Court they came back in 2013 and that her mother-in-law told her the parcels were allocated to widows and the elderly. DW1 conceded further that as at the time the land was allocated, the Plaintiff had left her husband and returned home.

### **Analysis And Determination**

14. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions placed before me by the Learned Counsel for the Plaintiff as well as those filed by the Defendant who was acting in person.
15. By her Originating Summons dated May 12, 2021, Julieta Wangeci Kariuki (the Plaintiff) asserts that she is entitled to inherit two parcels of land referred to as Agricultural Plot No. 1906 and Village Plot No. V.5 188 situated at Solio Ranch Scheme in Laikipia Central District. By virtue of that entitlement, the Plaintiff urges the Court to determine that the Letters of Offer for the two parcels of land issued in the name of her mother Gathoni Kariuki were so issued for the mother to hold the same in trust solely for herself and not for the Defendant or any other children of the said Gathoni Kariuki.
16. On the other hand, Teresa Wambugu Irungu alias Wambui (the Defendant) is opposed to the issuance of the said orders. According to the Defendant, the said parcels of land were absolutely registered in the name of Gathoni Kariuki and given her marriage to Gathoni Kariuki's son Joseph Irungu Kariuki, she was the one entitled to inherit the parcels of land after both Gathoni and her husband passed away.
17. From the material placed before me, the genesis of this suit is the Othaya Succession Cause No. 63 of 2019; In the Matter of the Estate of Gathoni Kariuki (Deceased). From a perusal of the Judgment delivered by the said Court on 23<sup>rd</sup> April 2021, it is apparent that the said Gathoni Kariuki passed away sometime on 24<sup>th</sup> April, 2014. Some five (5) years after her death, the Plaintiff herein instituted the said Succession proceedings and sought to have the suit properties herein transferred to herself as the absolute owner thereof.
18. While her four sisters named as beneficiaries in the Succession Cause did not object, the Defendant who is a widow of the Plaintiff's brother Joseph Irungu Kariuki was dissatisfied with the proposed distribution. Accordingly, by an Affidavit of Protest sworn on December 3, 2020, she sought to have the subject parcels of land transferred to herself on account that the entire estate of the late Gathoni Kariuki had been bequeathed to her husband who had apparently also just passed away a few months before the Plaintiff lodged the succession proceedings.
19. Having heard the dispute and in her decision rendered on April 23, 2021, the Honourable M. N. Munyendo, Principal Magistrate, determined that the question as to whether the late Gathoni Kariuki had held the subject properties in trust was before the wrong forum and that the same could only be addressed before this Court. A month later, the Plaintiff moved to this Court seeking a determination that the properties were registered in the name of her mother but solely in trust for herself.
20. In support of her case, the Plaintiff told the Court that the suit properties were being issued by the Provincial Administration to the needy and destitute sometime in the year 2010. It was her case that as at the said time, she did not have an identity card and that she was advised that she could use her late mother's identity card to obtain registration and thereafter the mother would transfer the land to her name.



21. In support of that position, the Plaintiff produced a letter dated April 22, 2010 from the Director Land Adjudication and Settlement. The said letter addressed to the Plaintiff's mother Gathoni Kariuki of ID/No. 5486014 reads in the relevant portion as follows:

Settlement Plot – Letter Of Offer

I am pleased to inform you that your request for a settlement plot has been successful.

The Government through the Settlement Fund Trustees has offered you Agricultural Plot No. 1906 of approximately 1.54 Ha. and Village Plot No. V.5 188 of approximately 0.2 Ha. at Solio Ranch Settlement Scheme in Laikipia District.

In pursuant thereto, please note that you are required to report to the District Land Adjudication and Settlement Officer, Laikipia Central District so that you are shown the plot boundaries and be issued with a letter confirming this before documentation.

This offer is valid for five years from the date of this letter. Within this period, you should pay Kshs.11,525.50 outright or in instalments, as administrative costs for the plot and be documented accordingly. Failure to pay this money outrightly within one year will result in the principal amount earning an interest at the rate of 6.5% per annum.”

22. In addition to the letter, the Plaintiff produced two receipts for payments being for Kshs.1,200/- made on June 27, 2012 and for the sum of Kshs.12,000/- made on March 28, 2013. Just like the Letter of Offer both receipts were in the names of the Plaintiff's mother. According to the Plaintiff, even though the receipts were in the name of her mother, it was herself as the Plaintiff who had organized for and made the payments.
23. The extract of the Plaintiff's identity card produced herein in evidence was unclear and the Court was unable to discern the correct year of her birth therefrom. It was however apparent from her own testimony and that of her witnesses in Court that as at the time of the allocation of the suit properties, she had been married and had several children before she parted ways with her husband and returned home.
24. While it was not clear from her own testimony why she did not have an identity card at the time, it was apparent that she was already an adult and was expected to have an identity card. Her sister Elizabeth Wangui Kariuki who testified as PW3 was forthright that her sister had lost her identity card at the time and hence the resort to use the mother's identity card. That much was indeed supported by their former Area Assistant Chief – Charles Nderitu Kathuri (PW2) who told the Court that they had used a Police Abstract and registered the Plaintiff's mother's name in trust for herself. It was however not clear to me why an abstract was needed if the mother's identity card was being used for the purpose.
25. As to what would amount to a trust, the Court of Appeal had this to say in *Twahib Hataya Twahib & Another -vs- Said Saggar Ahmed Al-Heidy & Others* (2015) eKLR:

“Trusts are created either expressly (by the Parties) or by operation of the law. An express trust arises where the trust property, its purpose and beneficiaries have been clearly identified (see Halsbury's Laws of England Vol. 16 Butteworths 1976 at Para. 1452). In this case, we have a definite property and beneficiary. The purpose/intent for which the property was bought remains in dispute. This negates the existence of an express trust herein. 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 (see Black's Law Dictionary (supra) ).

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 intentions is immaterial; for the trust will nonetheless be imposed by the law for the benefit of the settler. Imposition of a constructive trust is thus meant to guard against unjust enrichment ...

This leaves us with resulting trusts; upon which the appellants had laid their claim. 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 (see Black's Law Dictionary) (supra). This trust may arise either upon the unexpressed but presumed intention of the settlor or upon his informally expressed intention (see Shell Equity 29<sup>th</sup> Edition; Sweet & Maxell P. 175). Therefore, unlike constructive trusts where unknown intentions may be 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 (see Shell Equity at P. 177) (supra).”

26. In the matter before me, while the Plaintiff asserted that the suit properties were registered in trust solely for herself, both the Letter of Offer produced in support of her case as well as the two receipts for payment indicate that the offer was made to the late Gathoni Kariuki whose name also appears in the receipts as the one who made the payments. There was nothing placed before the Court to show that the Plaintiff had either through herself or the help of the Provincial Administration applied for the suit properties nor was there anything to suggest that the Plaintiff who was said to be needy and destitute is the one who paid for the plots of land.
27. It was indeed telling that PW3 who testified in support of her case conceded that she was not present when the Plaintiff was allocated the land. Indeed the Plaintiff did not deny the Defendant's contention that following the death of Gathoni Kariuki in 2014, it was the Defendant and the Plaintiff's brother Joseph Irungu Kariuki who had been utilizing the suit properties for a period of five (5) years.
28. In the circumstances herein, it was apparent to me that the Plaintiff seized upon the death of her brother earlier in the year 2019 to lodge the Succession Cause that was filed at the Othaya Law Courts later that same year in a desperate attempt to stop her sister-in-law from inheriting the suit lands.
29. It follows that I was not persuaded that the Plaintiff had proved that the registration of the suit properties in the name of the late Gathoni Kariuki was in trust for herself.
30. In the premises, I find no merit in the Originating Summons dated May 12, 2021. The same is hereby dismissed with costs.

**JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI THIS 28<sup>TH</sup> DAY OF JULY, 2023.**

In the presence of:

Ms Mwangi holding brief for Kiminda for the Plaintiff



Ms Teresa Wambugu Irungu – the Defendant present in person

Court assistant – Kendi

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**J. O. OLOLA**

**JUDGE**

