



**Lila v Gohil (Environment & Land Case 203 of 2018)
[2023] KEELC 19008 (KLR) (25 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 19008 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 203 OF 2018
NA MATHEKA, J
JULY 25, 2023**

BETWEEN

KANTABEN PRABHUDAS NATHA LILA PLAINTIFF

AND

DR. VINOD RAI NATHA LILA GOHIL DEFENDANT

JUDGMENT

1. The plaintiff is the registered owner of parcel number Mombasa/Block XVII/653 measuring approximately 0.1220 acres. The plaintiff acquired the suit property after inheriting the same from her late husband Prabhudas Natha Lila Gohil who died testate on the April 24, 2010. Sometimes on August 25, 2014 a caution dated August 1, 2014 was registered by the defendant claiming interest over the suit property. The plaintiff avers that the defendant has been threatening to evict the plaintiff from the suit property on numerous occasions and has caused the plaintiff unnecessary and unwanted interference with the plaintiff's peaceful enjoyment of the suit property. The plaintiff avers that the suit property is her matrimonial home and that the defendant's actions are contrary to the legal provision on the sanctity of the title and peaceful and quiet enjoyment of property by the plaintiff. The plaintiff prays as against the defendant for;
 1. A declaration that the plaintiff is the registered owner of the suit property known as Mombasa/Block XV11/653.
 2. An order that the caution lodged by the defendant be lifted.
 3. A permanent injunction against the defendant his agents' servant, employees or workmen or anyone working under his instructions, from accessing, entering and/or interfering with the suit property in any manner adversely interfering with the rights and interest of the Plaintiff to quiet, peaceful occupation and enjoyment of the suit property known as Mombasa/Block XVII/653.



4. Cost of the suit.
2. The defendant avers that his late Father, Natha Lila Gohil was registered as the absolute proprietor of the land comprised in Title No. Mombasa/Block XVII/653 [Original Land Reference No.1149 Subdivision No.653 of section XVII, Mombasa Island - CR No.9200] on June 20, 1946. That by his late Father's last Will and Testament, he gave devised and bequeathed (*inter alia*) the Property to the Defendant and his brothers, Prabhudas Natha Lila (Prabhudas) and Chimanlal Natha Lila (Chimanlal) as tenants in common in equal shares. That by an instrument of Transfer signed on May 25, 1962 and registered at the land Titles Registry, Mombasa on May 28, 1962 the Executors of the estate of the Defendant's late Father (1) Hemkunvar daughter of Devchand, (2) Damji Lila and (3) Lalji Laxman Gohil transferred the Property to the Defendant's Prabhudas and Chimanlal as tenants in common in equal shares. When the Defendant's late Father died on August 6, 1960, his brother Chimanlal and the Defendant were living in America and England respectively whilst Prabhudas was living in Kenya. Sometime in 1973, Prabhudas informed Chimanlal and the Defendant that there was a real fear that if this Property continued to be held in the names of the Defendant and Chimanlal the Government of Kenya would nationalize the same on account of them being non-citizen and thereafter he advised them that Chimanlal and the Defendant Transfer to him their undivided 2/3rd share in the Property on the understanding that he would hold those shares in trust for the Defendant and Chimanlal.
3. Upon Chimanlal and the Defendant agreeing to that advice, Prabhudas forwarded an instrument of Transfer drawn by U. K. Doshi & Doshi, Advocates of Mombasa, to Chimanlal in America who executed the same and thereafter forwarded it to the Defendant in England where he executed the same whereafter he returned it to Prabhudas in Mombasa. This instrument of Transfer was to the effect that the Defendant's and Chimanlal's undivided 2/3 share in the Property was being transferred to Prabhudas in consideration of a sum of Kshs.200,000.00 which although receipt of the said sum was acknowledged in the said instrument of Transfer, the said amount was never paid on account of the undertaking given.
4. During the Defendant's frequent visits to Kenya, whenever he asked Prabhudas regarding their aforesaid understanding, he confirmed to the Defendant that he was holding the Property on the aforesaid understanding and that his wife, Kantaben Prabhudas Natha Lila Gohil (Kantaben) was also aware of this understanding. Kantaben, the Plaintiff herein, had also personally told the Defendant during the said visits that she as aware that money was owed to him on the property and that the same would be paid to him in future. The Defendant had also spoken to Kantaben's Son Praphoolchandra Prabhudas Gohil regarding the aforesaid understanding and he too had confirmed to the Defendant that the Property belonged to all the three brothers, Chimanlal, Prabhudas and the Defendant and that the Defendant's share in the Property is 1/3 as he was advised by his (Praphoolchandra's) late Father, Prabhudas. Prabhudas died on April 24, 2010 leaving his last will and Testament to the effect that he bequeaths (*inter alia*) the Property to Kantaben; and when the Defendant took up the issue of his share in the Property with Kantaben, she refused to acknowledge that she is holding the same in trust for the Defendant. Therefore, the Defendant prays that the Plaintiff's suit be dismissed with costs to it.
5. This court has carefully considered the evidence and submissions in this matter. L.R Parcel No. Mombasa/Block XVII/653 measuring 0.1220 ha was initially registered in the Natha Lila Gohil (deceased), the father to Prabhudas Natha Lila Gohil (husband to the Plaintiff), Chimanlal Natha Lila and Vinodrai Natha Lila (Defendant). Upon his demise, his executors Hemkunvar d/o Devchand, Damji Lila and Laiji Laxman Gohil distributed the suit land among his three sons to hold as tenants in common in equal share on 25th May 1962 (PEX-5). On August 17, 1973, Chimanlal Natha Lila and Vinodrai Natha Lila (Defendant) transferred their undivided two-thirds share of the suit land to



Prabhudas Natha Lila Gohil (husband to the Plaintiff) for consideration of Kshs 200,000/=, and the said transfer was registered on 23rd April 1974 (PEX-6). Prabhudas Natha Lila Gohil held the suit land until his demise on 24th April 2010 when his wife, the Plaintiff became the registered proprietor as seen from the certificate of title dated 26th September 2011 (PEX-1). She came into proprietorship following her appointment as the administrator of his estate on 20th September 2010 in Mombasa High Court Succession Cause No. 175 of 2010 In the matter of the Estate of the Late Prabhudas Natha Lila Gohil (deceased) (PEX-4).

6. The Defendant registered a caution against the title of the suit land on 25th August 2014 and maintained that the Plaintiff held the suit land in trust of himself and his brother Chimanlal Natha. It was the Defendant's case that the suit land was bequeathed upon himself, the Plaintiff's husband and Chimanlal Natha by their late father Natha Lila Gohil in equal shares. The Defendant contended that Prabhudas Natha advised him and Chimanlal Natha in order to avoid the suit land reverting back to the Government of Kenya on account of their lack of citizenship, they transfer their interest in the suit land to him (Prabhudas) since he had Kenyan citizenship. He denied receiving Kshs 200,000/= from Prabhudas for the said transfer that took place on 17th August 1973, and insisted that it was agreed that Prabhudas Natha would hold their share in trust for him and Chimanlal Natha. He further contended that he and Chimanlal Natha lived outside Kenya, and whenever he visited Kenya, Prabhudas Natha would assure him that he was holding the suit land in their trust. He insisted that the Plaintiff (his sister-in-law) was well aware of this arrangement, as well as the Plaintiff's son Praphoolchandra Prabhudas Gohil (DW-2). DW2 testified in court that the suit land was owned collectively by his late father and his two brothers and that his father only held in the trust of his uncles.
7. From the Plaintiff's cross-examination, the court found that the suit land was transferred into the name of Prabhudas Natha on account of his Kenyan Citizenship. The Plaintiff admitted that the suit land was in the name of the brothers then it was transferred to her late husband's name due to the nationalization that was taking place in Tanzania. It is also certain from the Plaintiff's testimony that at the time of transfer, it was only the Plaintiff's husband who was a Kenyan citizen. The action of the brothers in transferring the suit land was to secure the suit land from reverting back to the Government for lack of citizenship.
8. From the evidence adduced, the court can establish that the brothers had a common intention of protecting the suit land from reverting back to the Government. Therefore, during the transfer of their interest to the Plaintiff's late husband, the intention was for him to hold it in trust. The common intention was that they would have beneficial interest despite the legal ownership reflecting Prabhudas Natha as the registered owner. This points to the creation of a constructive trust, which is inferred from the conduct and intention of the parties. Based on the common intention of the parties, equity imposes a constructive trust, against the actions of the legal owner to hold the suit land for himself. The title of the suit land was transferred from the Defendant and Chimanlal Natha to Prabhudas Natha based on the promise that would be protected for nationalization and possibly turn over to the rightful beneficiaries at a later time. The Plaintiff therefore cannot refuse or hold back the suit land and claim sole ownership, when the Defendant demands his share of it. The Court of Appeal in the case of *Twalib Hatayan Twalib Hatayan & anor v Said Saggat Ahmed Al-Heidy & others* (2015) eKLR, while dealing with the issue of trust stated as follows;
9. Dealing with the first issue, 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).”



10. 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...” Trusts are created either expressly (by the parties) or by operation of 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 Butterworths 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.
11. 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 para1453). 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...
12. 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 *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 (see. *Snell’s Equity* at p.177) (*supra*)....”
13. In the case of *Peter Ndungu Njenga v Sophia Watiri Ndungu* (2000) eKLR the Court stated that;

The concept of trust is not new. In case of absolute necessity, but only in case of absolute necessity, the court may presume a trust. But such presumption is not to be arrived at easily. The courts will not imply a trust save in order to give effect to the intention of the parties. The intention of the parties to create a trust must be clearly determined before a trust is implied.”
14. In the instant case the defendant has demonstrated that there was a confidential/fiduciary relationship that existed between the parties at all material times and that Prabhudas Nathi made a promise to use his citizenship to protect the suit land, and it is on this premise that they transferred their interest in the suit land to him. As a result of this constructive trust, it would be inequitable for the plaintiff to claim sole beneficial ownership in the suit property at the exclusion of the defendant. As discussed herein, this court finds the plaintiff holds the suit land in trust of her brothers-in-law, the defendant and Chimanlal Natha, and cannot solely claim it at their exclusion. The Plaintiff’s suit is therefore unmerited and is dismissed with no order as to costs since the parties are relatives.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF JULY 2023.



N.A. MATHEKA
JUDGE

