



**Muchiri v Muchiri & 2 others (Environment and Land Appeal  
E002 of 2022) [2025] KEELC 4204 (KLR) (3 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4204 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E002 OF 2022**

**JA MOGENI, J**

**JUNE 3, 2025**

**BETWEEN**

**HANNAH GACHAMBI MUCHIRI ..... APPELLANT**

**AND**

**CATHERINE WAIRIMU MUCHIRI ..... 1<sup>ST</sup> RESPONDENT**

**NANCY WANJIRU KIMANI ..... 2<sup>ND</sup> RESPONDENT**

**JANE NJERI NGETHE ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal against the entire Judgment and decree in ELC Case  
Number E019 of 2020 at the Environment and Land Court Ruiru  
by Hon C.K KISLANGANI (SPM) delivered on 16th December 2022)*

**JUDGMENT**

1. The Appellant, Hannah Gachambi Muchiri,(Anna) was the Defendant before the Environment and Land Court (ELC) in Ruiru before Hon CK Kisiangani (SPM) wherein the Plaintiffs had sought for a declaration that each is entitled to her particular acreage of the suit property, that the land should be subdivided and each to get a title for her own share of land and that the Defendant be ordered to execute transfers in respect of each subdivision to the person entitled thereon. In her Defence the Defendant contended that she was the registered owner of land parcel number Ruiru/Ruiru East/Block 3/98 and that the Plaintiffs have no right over the same. It is the Defendant's averment that there is no trust between her and the Plaintiffs with regard to the suit property and therefore whether she sells the suit property or has disputes over the suit property with third parties is of no consequence to the Plaintiffs.
2. The Defendant further contends that the Plaintiffs have no legal claim over the land parcel number Ruiru/Ruiru East/Block 3/98 and that if there be any claim which however is denied the same has been overtaken by events. That any contractual agreement if there be which is denied is caught up by the Limitation of Actions.



3. A brief background of the case is that the Plaintiffs sued the Defendant claiming for their share in land parcel number Ruiru/Ruiru East Block 3/98 which was purchased in partnership of all of them but the Defendant refused to give them their share and has registered it in her name. They allege that being family members the Defendant who worked for the Teachers Service Commission had access to buying shares in Mwalimu Investments Company Limited and that the Defendant invited them to join her in purchasing the suit land herein which is approximately 8 acres which they agreed on and that the Defendant informally wrote to them showing the acreage that each of them is entitled to.
4. That they agreed that the Defendant be registered owner of the land and hold it in trust for them but that the Defendant has started selling part of the land to third parties who are unknown to the Plaintiffs as a result the said third parties have registered cautions against the said land and the Defendant is being sued by the third parties who are now claiming purchasers interest to the land. This was the reason for the Plaintiffs failing ELC Suit No. E019 of 2020.
5. On her part the Defendant denied all the allegations in the Plaint and averred that she is the registered owner of the suit property and that the Plaintiffs had no rights of the suit property and that she is entitled to dispose or deal with the property in which ever manner she deemed fit. She also denied the existence of a trust and averred that if there was any claim which she denied it was time-barred. It was her contention that whereas she had been given money by the Respondents for the purchase of the suit property, the Plaintiffs refused to give her money for subdivision.
6. It was her case that she cannot also spent her own money to get the suit property back from third parties which the Respondents had not refunded despite notice issued to them. Given the situation she decided that she would not transfer the suit property to any of them and that she will keep it since it belongs to her alone.
7. In his Judgment, the learned Magistrate Kisiangani, SPM found that the Appellant was registered as proprietor of the suit land in trust for herself and the Plaintiffs. That the Defendant owes the Plaintiffs portions of the suit land and that each of them is entitled to their particular acreages of the land. Given this finding the Learned Magistrate allowed the prayers in the Plaint filed on 22/12/2020.
8. The Learned Magistrate further found that the Plaintiffs/Respondents had adduced credible evidence imputing the existence of a trust and ordered that the trust by the Appellant be terminated, that the title held by her be cancelled, and titles be issued in favour of the Plaintiffs/Respondents as per the acreage paid for.
9. The Appellant was aggrieved with this Order, and filed this Appeal in which she impugns the entire Judgment of the trial Court. In her Memorandum of Appeal, she raises Grounds of Appeal, inter alia, that, the trial Court erred in finding that a trust existed; in entertaining the Counterclaim despite the fact that none of the Respondents had taken out Letters of Administration for the Estate of the late Kukwai; entertaining allegations of fraud outside the period prescribed by the *Limitation of Actions Act*; failing to find that the Appellant had properly acquired title to the suit property by transmission; relying on evidence that had been produced by witnesses who were not competent to produce the same; and in ordering that the suit property be shared in equal portions between the Appellant and the Respondents. For these reasons, the Appellant contended that the trial Court arrived at the wrong decision in its Judgment, and urged us to set aside the Judgment and Decree of the trial Court and grant orders of eviction and demolition of houses and any other structures that the Respondents have erected on the suit property. The Appellant also prayed for costs.
10. The appeal was canvassed by way of written submissions.



## Submissions by Counsel

11. At the hearing of the Appeal, the Appellant was represented by G. K. Gatere & Company Advocates while the Respondents were represented by learned Counsel, G.M Muhoro Advocate. Both Counsel filed their written submissions. It is the Appellant's submission that there was no evidence that the Respondents had been in occupation of the suit property. Further that the claim was time-barred having been filed after twelve (12) years since suit property was acquired on 1/09/1987 and the Respondents commenced the action on 22/12/2021. The Appellant further submitted that the Learned Magistrate erred by failing to recognize that the suit violated Section 7 of the Limitation of Actions Act and also that the order issued was incapable of enforcement having failed to indicate the acreage to accrue to each party.
12. The Appellant relied on the cases of Koinange & 13 Others vs Koinange (1986) KLR 23, Nairobi Civil Appeal No. 76 of 2014 David Sironga Ole Tuka vs Francis Arab Mugo, ELC Appeal No. 50 of 2019 Patrick Mbase vs Ochieng, Rajput vs Divisional Integrated Development Programs Co. Ltd ELC No. 50 of 2020 and Mabuti vs Nancy Wamboi & Another ELC No. 211 of 2014.
13. On their part the Respondents filed their submissions and held the position that the issues raised for determination was before the Magistrate in the Lower Court and which the Court duly considered and pronounced itself in the Judgment which now the Appellant purports to have the Court reverse on the grounds as she has set out. That given the position taken the Appellant, there is nothing new in the Appellant's submissions other than what was rejected with reason by the Lower Court.
14. On the denial of existence of a trust, the Respondents submitted that the Appellant at the hearing wholly the Defendants' evidence including the fact that she received money from the Respondents to buy the land on both hers and the Respondents' behalf and she informed them that the land is Ruiru/ Ruiru East Block 3/398.
15. As such they submitted that it is immaterial that she is registered a sole proprietor of the said land. The issue before the Court was not the validity of her title but whether she held the same on trust for the Respondents.
16. Regarding the question of Limitation of Actions and its applicability to the suit the Respondents claim was that they wanted Court to find that there was a valid trust and that she held the same in trust for the Respondents. The legal principle of Limitation of Actions does not apply in such situations and it is clearly stated so under Section 42 (k) of the said Act.
17. It is the submission of the Respondents that the 1<sup>st</sup> Respondent is demised but that at the time the Court was giving directions in this matter the Advocates for the Respondents informed the Court of the death of the 1<sup>st</sup> Respondent. Even so, Rule 9 of Order 25 is applicable and so the Appellant is the Plaintiff in this appeal and the Respondents are the Defendants. The course of action certainly survived as against the surviving Respondents. This particular case however is peculiar in that the Court had found each Defendant/Respondent entitled to a particular acreage of the suit premises.
18. The 1<sup>st</sup> Respondent in the Plaint was entitled to an acreage of 2<sup>1</sup>/<sub>2</sub> Acres. The Appellant never applied for her substitution as under Order 25 rule 4(1) of the Civil Procedure. It is submitted therefore on behalf of the 1<sup>st</sup> Respondent that the cause of action as against her has abated and so whatever the outcome of the Appeal, the estate of the 1<sup>st</sup> Respondent shall have its 2 ½ Acres intact. It is therefore submitted by all the Respondents that the Appellants Appeal falls short of the required standard of proof and all the Grounds of Appeal fail to prove that the Appellant's Appeal has merit and it should be dismissed with costs.



## Determination

19. I have carefully considered the pleadings, the rival submissions of the parties, the authorities cited and the law. In this first appeal, the duty the first appellate Court is to re-evaluate, re-assesses and re-analyze the evidence given in the Court below and reach its own conclusion on the issues raised. This duty was restated by the Court of Appel in in *Eva Naima Kaaka & Another v Tabitha Waithera Mararo [2018] eKLR (Civil Appeal 132 of 2017)* as follows:-

“This being a first appeal, the duty of this Court is to consider the evidence, re-evaluate it and make its own conclusion bearing in mind that an appellate Court would not normally interfere with a finding of fact by the trial Court unless it was based on misapprehension of the evidence or that the Judge was shown demonstrably to have acted on a wrong principle in reaching such conclusion.”

20. The Appellant testified that the Respondents did not have a valid contract for the purchase of the suit property and that even if there were which however there is not one, then due to limitation of time it is overtaken by events. Further that there cannot be a trust established since she never held any property in trust for the Respondents. It is the Appellant’s contention that the Respondents are not entitled to any land.

21. In cross-examination, the Appellant conceded that she indeed received money to purchase the suit property for the Respondents and she even allocated the acreage to each Respondent based on their contribution. She however contested that when the suit property was under threat she used a lot of money to protect the suit property from the threat. Further the Appellant contests that the Respondents did not give her the money to facilitate the subdivision of the suit property. This being the case it was her position that she cannot buy land for the Respondents and also subdivide it for them.

22. The Respondents just held that they gave the Appellant money to purchase the suit property for the Respondents and that the Appellant even wrote to them and informed them of the acreage that had accrued to each party as a result of the purchase. Which was based on the fact that the Appellant worked for Teachers Service Commission and the suit property was being bought on a share process to those who worked at the Commission.

23. From the evidence that was led by the parties, it is apparent that the Respondents purchased their suit property through the Appellant. The evidence of DW1, in particular was not controverted by the Appellant, and I find that the trial Court did not err when it found that the Appellant held the suit property in trust for the Respondents. The trial Court observed as follows:

“I have considered all the evidence on record and I find that the fact that the Plaintiffs gave money to the Defendant for the purchase of the suit land has not been disputed. The Defendant confirmed this in Court during cross-examination and stated that according to the contributions the 1<sup>st</sup> Plaintiff is entitled to 2 ½ acres, the 2<sup>nd</sup> Plaintiff 2 acres and the 3<sup>rd</sup> Plaintiff 1 acre. The Defendant’s reason for registering the suit land in her name and not giving the Plaintiffs their share is that they failed to pay the monies for sub-division and for the completion of the legal process. She told the Court that the Plaintiffs also di not assist her in Court and at the CID offices when two people had laid claim on the land herein. I find that inasmuch as there was no written agreement between the parties herein on their transaction for the Defendant to purchase the land on their behalf, it is on record that the same existed because the Defendant confirmed that the Plaintiffs gave her money for the



purchase and she even confirmed the acreage that each of them is entitled to. Due to this admission, she cannot escape the fact that she owes the Plaintiffs their land.”

24. From the trial Court’s position, the Appellant was holding the suit property in trust for the Respondents. It is not contested that the Appellant was registered as proprietor of the land when she purchased shares and balloted for the suit property and she was issued with a title deed. On her part, DW1 stated that the Defendant who is her elder sister came to them with the proposition to purchase the suit property from Mwalimu Investments Limited from which she could buy the shares because she worked for the Teachers Service Commission. This was because the Defendant told them that she could not afford to buy a huge piece alone. They agreed to her proposal and made a contribution that allowed them to purchase 8 acres. After the purchase the Defendant informed them that the land reference number was Ruiru/Ruiru East Block 3/98 and she gave them a schedule of the portion of land for each of them according to their individual contributions.
25. The Black’s Law Dictionary, 10<sup>th</sup> Edition defines a trust as:-

“ A fiduciary relationship regarding property and charging the person with title to the property with equitable duties to deal with it for another’s benefit; the confidence placed in a trustee; together with the trustee’s obligations toward the property and the beneficiary. A trust arises as a result of a manifestation of an intention to create it.”
26. It is trite law that a Court will not ordinarily presume the existence of a trust, but may do so to give effect to the intention of the parties, otherwise the party alleging the existence of a trust must prove it. In *Peter Ndungu Njenga vs. Sophia Watiri Ndungu* [2000] eKLR (Civil Appeal No. 2 of 2000), the Court of Appeal held 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.” (Emphasis added)
27. While a formal Sale Agreement can be the basis for a trust, trusts can also arise in other situations, such as through express declarations, implied or resulting trusts, constructive trusts, or in the context of strict settlements. Whereas Section 3(3) of the Law of Contract refers to the requirements for a valid contract, it is possible that a trust can exist independently of those contract law requirements.
28. The evidence led by the parties herein indicates that it was the intention of Appellant and the Respondents to purchase and share the suit property in portions that corresponded with the contributions of each party. It is also clear also that the Appellant had engaged in various dealings with a view to securing her interest in the suit property. This included getting a surveyor to show her the beacons, obtaining the title to the suit property and seeking funds for sub dividing the suit property. Further she also resolved the issue of a third party who had laid a claim to the suit property.
29. Applying the aforementioned principles to the instant Appeal, we find that the Appellant intended to share the suit property with the Respondents. The fact that the suit property is registered in the Appellants’ name is immaterial and does not vitiate the Respondents’ right to the suit property as the Appellant remains a constructive trustee in regard to the suit property. In the circumstances of this case, the Respondents would suffer injustice if they are denied their share of the suit property. The doctrine of constructive trust therefore comes into play to ensure that the Respondents herein, as the rightful owners retain a portion of the suit property that the Appellant had wholly registered in her name.



30. On the Appellant's contention that there was no written contract that the Respondents could depend on as provided for under Section 3(3) of the Law of Contract. This cannot be anywhere near the truth, because property can be held in trust even if there's no formal Sale Agreement in the sense of a contract as defined by Section 3(3) of the Law of Contract. As already stated above, while a formal Sale Agreement is often the basis for a trust (where the seller holds the property on trust for the purchaser), other situations can also give rise to a trust.
31. The Supreme Court in the case of *Shah & 7 Others v Mombasa Bricks & Tiles Limited & 5 Others* (Petition 18 (E020) of 2022) [2023] KESC 106 (KLR) (28 December 2023) (Judgment [2023] KESC 106 (KLR)) quoting from Halsbury's Laws of England 4<sup>th</sup> edition, volume 48 at paragraph 690 states as follows on constructive trusts:-

“A constructive trust will arise in connection with the legal title to property whenever one party has so conducted himself that it would be inequitable to allow him to deny to the other party a beneficial interest in the property acquired. This will be so where: (1) there was a common intention that both parties should have a beneficial interest; and (2) the claimant has acted to his detriment in the belief that by so acting he was acquiring a beneficial interest. The relevant intention of each party is the intention reasonably understood by the other party to be manifested by that party's words or conduct notwithstanding that he did not consciously formulate that intention or even acted with some different intention which he did not communicate. The first question is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the property, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. Such an agreement will be conclusive. Where the evidence is that the matter was not discussed at all, the Court may infer a common intention that the property was to be shared beneficially from the conduct of the parties. In this situation direct contributions to the purchase price by the party who is not the legal owner, whether initially, or by way of mortgage instalment, will readily justify the inference necessary to the creation of a constructive trust. Exceptionally the agreement, arrangement or understanding may be arrived at after the date of the original acquisition. Once common intention has been established, whether by direct evidence of common agreement or by inference from conduct, the claimant must show that he acted to his detriment in reliance on the agreement. The final question to determine is the extent of the respective beneficial interests. If the parties have reached agreement, this is conclusive. Where there is no agreement as to the extent of the interest, each is entitled to the share the Court considers fair having regard to the whole course of dealing between the parties in relation to the property.”

32. The Court stated that a constructive trust is thus an equitable instrument which serves the purpose of preventing unjust enrichment. The Canadian Supreme Court in *Soulos v Korkontzilas*, [1997] 2 SCR 217, a case which involved a land dispute stated as follows, as to the purpose of constructive trust:

“The constructive trust is an ancient and eclectic institution imposed by law not only to remedy unjust enrichment, but to hold persons in different situations to high standards of trust and probity and prevent them from retaining property which in “good conscience” they should not be permitted to retain. While Canadian Courts in recent decades have developed the constructive trust as a remedy for unjust enrichment, this should not be taken as expunging from Canadian law the constructive trust in other circumstances where its availability has long been recognized. Under the broad umbrella of good conscience,



constructive trusts are recognized both for wrongful acts like fraud and breach of duty of loyalty, and to remedy unjust enrichment and corresponding deprivation. While cases often involve both a wrongful act and unjust enrichment, constructive trusts may be imposed on either ground.”

33. On the issue of limitation under Section 7 of Limitations Act, this Section 7 addresses actions to recover land, establishing a twelve-year limitation period from when the right of action accrues. Indeed there is a time limitation on bringing an action for an equitable trust in land. The *Limitation of Actions Act* in Kenya, specifically Section 20, provides exceptions to the general limitation periods for certain actions, including those concerning trust property. However, a key exception is that actions concerning fraud or fraudulent breach of trust are not subject to the general limitation periods.
34. The *Limitation of Actions Act* provides that actions concerning trust property are not subject to the general limitation periods if they relate to:-
- i. A fraud or fraudulent breach of trust.
  - ii. A breach of trust where the trustee was a director or officer of a company and the beneficiary is also the company.
  - iii. A breach of trust committed by a trustee who is also a beneficiary.
35. In the instant case the breach of trust was committed by a trustee who is also a beneficiary.
36. From the record, therefore it is my finding that the Learned Magistrate appreciated the pleadings and considered the evidence on record in support of both parties. It is my finding that the Learned Magistrate correctly applied the applicable principles of law to the said evidence and arrived at the correct conclusion.
37. In the end result, this Appeal is without merit and it is dismissed with costs to the Respondents.
- Orders Accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 3<sup>RD</sup> DAY OF JUNE 2025 VIA MICROSOFT TEAMS.**

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**MOGENI J  
JUDGE**

In the presence of:

Mr. Gatere for the Appellant

1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents - Absent

Mr. Melita – Court Assistant

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**MOGENI J  
JUDGE**

