



**Njeru v Njeru (Environment and Land Appeal E021 of 2023)  
[2025] KEELC 5904 (KLR) (2 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5904 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND APPEAL E021 OF 2023**

**AK BOR, J**

**JULY 2, 2025**

**BETWEEN**

**PHILIP NGARI NJERU ..... APPELLANT**

**AND**

**SAMUEL NYAGA NJERU ..... RESPONDENT**

**JUDGMENT**

1. This appeal arises from the judgment of Hon S.K Ngii, Principal Magistrate, delivered on 19/10/2023 in Embu ELC Case No. E029 of 2021 *Samuel Nyaga Njeru v Philip Ngari Njeru*. The Respondent, Samuel Nyaga Njeru had sued the Appellant, Philip Ngari Njeru seeking a declaration that the Appellant was holding the land known as Nthawa/Riandu/3901 (the suit land) in trust for him. He sought an order directing the land registrar to register him as the proprietor of the suit land as well as costs of the suit.
2. The Respondent and the Appellant are brothers. The Respondent's case was that in September 2020, he and his brother Philip entered into an agreement vide which he would buy the Appellant's land measuring ½ acre at the agreed price of Kshs. 350,000/=. He claimed that they had a mutual understanding that the money would come from the Respondent selling some of his assets which he sold including livestock, a plot at Block B Kamucege, leased rice farm and rice crop through which he raised over Kshs. 500,000/=. He claimed that on 9/12/2020 while selling the plot at Block B Kamucege at the advocates' office, they both agreed that the proceeds from the sale would be deposited in the Appellant's account at the Co-operative Bank of Kenya Limited, which would cover the agreed full purchase price for the suit land and the excess would be used for the development on the land.
3. The Respondent averred that he agreed on the understanding that an agreement would be formalised later. That the Appellant allowed him to take immediate possession of the suit land and helped him begin developments by putting up a permanent house, cultivating miraa on the land among other developments. The Respondent stated that with the encouragement of the Appellant, he moved into



- the house and had been living there with his family ever since. He claimed that on various dates in March 2021, the Appellant began acts inconsistent with giving vacant possession to him by demanding that he vacates the suit land and issued an eviction notice which amounted to breach of the agreement.
4. The Appellant filed a defence and counterclaim and conceded that the sum of Kshs. 400,000/= was deposited in his account. However, he denied that the money constituted consideration for the purchase of the suit land and denied the existence of a written agreement between him and the Respondent. It was his case that the Respondent requested to deposit the proceeds of the sale of his land at Kamucege into the Appellant's account.
  5. The Appellant claimed that he granted the Respondent, his wife and their children permission to reside on the suit land temporarily as the Respondent sought alternative land elsewhere and that he gave them one of his rental units on the suit land to occupy. He explained that he gave the Respondent access to the suit land on the understanding that the Appellant would not engage in acts of development of the land which the Respondent disregarded and cultivated khat on the portion he had given him. He claimed that he still held the money which the Respondent deposited in his account. In his counterclaim, he sought an order to evict the Respondent from the suit land as well as an order that he held the sum of Kshs. 400,000/= in trust for the Respondent. He also sought costs of the suit and counterclaim.
  6. In its judgment, the trial court found in favour of the Respondent. The court held that the Respondent had proved on a balance of probabilities that the sum of Kshs. 350,000/= out of the Kshs. 400,000/= deposited into the Appellant's bank account was on account of payment of the purchase price for the suit land. The trial court found that the receipt of the purchase price by the Respondent even in the absence of an agreement for sale, followed by grant of vacant possession of the suit land to the Respondent which he developed with the full knowledge of the Appellant resulted in a constructive trust against the Appellant's title in favour of the Respondent.
  7. Being aggrieved by the decision of the Learned Magistrate, the Appellant lodged this appeal. In the Memorandum of Appeal filed on 3/11/2023, the appellant faulted the Learned Magistrate for holding that the Respondent had proved the existence of a trust without considering the circumstances under which a person can acquire such rights. The trial court was also faulted for erroneously finding that the Appellant had agreed to sell the suit land to the Respondent while failing to consider that the Respondent occupied the Appellant's land as a licensee and not a purchaser.
  8. The other ground was that the trial court failed to consider that the Respondent had indicated his intention to deposit money in the Appellant's account as security but not for purchase of the suit land. The Learned Magistrate was not faulted for not finding that the Appellant was holding Kshs. 400,000/= in trust for the Respondent and that it was not paid as consideration for the purchase of the suit land. The Appellant sought to have the judgment of the Learned Magistrate delivered on 19/10/2023 set aside and in its place, an order substituted allowing the counterclaim dated 13/5/2021.
  9. The appeal was canvassed through written submissions. Parties filed and exchanged written submissions which the court has considered. The issue for determination is whether the court should allow the appeal and set aside the findings of the trial court and in its place enter judgment in terms of the counterclaim filed by the Appellant.
  10. It is not in dispute that the Respondent deposited the sum of Kshs. 400,000/= into the Appellant's bank account. What is in dispute is whether that money was intended as the purchase price for the suit land. The Respondent's case primarily is founded on the assertion that there was an oral agreement between him and the Appellant for the sale of the suit land, and that pursuant to this agreement, he paid the full purchase price, was granted possession, and carried out significant developments on the



suit land with the Appellant's knowledge and encouragement. The trial court accepted this argument while noting that during the hearing, the Respondent's testimony was materially corroborated by his mother, Viata Njeru, who told the court that the Appellant had expressed a clear intention to sell the suit land to the Respondent and that she encouraged the transaction even though she was not part of the negotiations or a witness when the payment was made.

11. The trial court also relied on the deposit slip produced by the Respondent which showed that the funds were deposited by the Respondent, with the stated purpose being land sale. The court reasoned that if the payment had been made pursuant to the agreement dated 9/12/2020, it would have been deposited by the purchasers named in that agreement. Moreover, that the agreed mode of payment in that agreement was a bank transfer, not an over the counter cash deposit. This court finds no reason to interfere with the finding of the trial court.
12. The other issue is whether a constructive trust arose in favour of the Respondent. A constructive trust is an equitable remedy imposed by the court to prevent unjust enrichment where it would be unconscionable for the legal owner of property to deny the interest of another. The trial court relied on *Willy Kimutai Kitilit v Michael Kibet* [2018] KECA 573 (KLR) where the Court of Appeal held that a constructive trust may be inferred even in the absence of a written agreement as envisaged under Section 38(1) of the *Land Registration Act* and Section 3(3) of the *Law of Contract Act*.
13. The trial court concluded and this court agrees with that finding, that the receipt of the purchase price by the Appellant, coupled with the grant of possession and the Respondent's substantial developments on the suit land with the Appellant's knowledge and permission, gave rise to a constructive trust. The Appellant's claim that he merely allowed the Respondent to reside temporarily on the suit land is inconsistent with the Respondent's continued and significant investments on the suit land.
14. The appeal lacks merit and is dismissed. The Respondent will have the costs of the appeal.

**DELIVERED VIRTUALLY AT EMBU THIS 2<sup>ND</sup> DAY OF JULY 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Fundi Kimanzi for the Appellant

Mr. Muriuki Muriithi for the Respondent

