



**Suter v Chebet (Sued as the Legal Representative of James Cheboi Chesir - Deceased)  
(Environment and Land Case 77 of 2012) [2025] KEELC 5059 (KLR) (2 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5059 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE 77 OF 2012**

**CK NZILI, J**

**JULY 2, 2025**

**BETWEEN**

**PHILIP KIPLAK SUTER ..... PLAINTIFF**

**AND**

**JANE KIPSAITA CHEBET (SUED AS THE LEGAL REPRESENTATIVE OF  
JAMES CHEBOI CHESIR - DECEASED) ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff came to court through an amended amended plaintiff dated 11/11/2024. He seeks an order to bring to an end a trust existing between him and the defendant over Land Parcel No. Trans Nzoia/Suwerwa/584 and to have 7 acres out of the suit land transferred to him. It is averred that in 1964, his late father contributed to the purchase of the land and in 1994, he agreed with the defendant to become the registered owner to hold in trust the 7 acres.
2. The defendant opposed the suit through a statement of defence dated 9/7/2012, denying the alleged existence of a trust or contribution towards the purchase of Plot No. 584 Suwerwa Scheme or its successor to title or any other plot between their late parents as alleged or at all. On the contrary, the defendant averred that he was the absolute owner of land parcel No. Trans Nzoia/Suwerwa/584, formerly Trans Nzoia/Suwerwa/62.
3. The defendant denies holding 7 acres out of the suit land or any lesser acreage in trust, whether implied, express or otherwise, for the plaintiff. The defendant avers that in 1964 he solely purchased the suit land measuring 23 acres or thereabout at the Suwerwa Settlement Scheme. He says that the Settlement Fund Trustee proceeded to register him as such and took exclusive use and occupation of the suit land to date. The defendant avers that he later sold a portion measuring 3 acres or thereabout out of the suit land to a third party and retained a portion measuring approximately 20 acres, now registered under his name as land parcel No. Trans Nzoia/Suwerwa/584.



4. The defendant denies that the plaintiff or his late father had any rights over the suit land; otherwise, any such claim was statute-barred. Further, the defendant avers that the suit discloses no cause of action, is incompetent, bad in law, defective, frivolous, vexatious, misconceived and an abuse of the court process.
5. By a reply to defence dated 13/7/2012, the plaintiff maintained that the initial agreement was between their late father, but in 1994 they agreed with the defendant to be registered on their behalf, being the eldest paternal nephew and cousin to the plaintiff, concerning the 7 acres of land. He termed the claim as brought within time.
6. At the trial, Philip Kiplak Suter testified as PW1. He relied on a witness statement dated 8/2/2012 as his evidence-in-chief. PW1 told the court that the defendant is his first cousin. He added that in 1964, their parents jointly contributed in equal share and bought 20 acres out of the Suwerwa Settlement Scheme, and therefore each was entitled to 10 acres. PW1 said that in 1994, the families held a meeting to consider the defendant's work of maintaining the land, and decided to add him 3 acres out of their share. The plaintiff said that they also mutually agreed to have the defendant registered as the owner, to hold the 7 acres in trust, though each had retained a separate portion.
7. According to PW1, the defendant sold a portion of the 13 acres but now wants to extend and sell their share, having disposed of the rest behind their back. PW1 relied on a copy of an agreement dated 12/8/1994 and a certificate of official search for land parcel No. Trans Nzoia/Suwerwa/584 as P. Exhibit Nos. (1) and (2).
8. In cross-examination, PW1 confirmed that the land was bought in 1964, but had no documents from the then-owner, a Mr. Bill, for Kshs.600/=. PW1 told the court that he was born in 1947 and started working in 1963. PW1 said that the defendant used to plant maize and pyrethrum on the suit land, out of whose farm proceeds he could pay school fees between 1964 - 1968. Equally, he stated that some of the farm proceeds were used to offset the loan. PW1 contended that the settlement scheme did not issue his late father with a title deed, since it was the Settlement Fund Trustee who had to clear with the seller, after which his late father paid the Settlement Fund Trustee's loan for over a period of 30 years.
9. Equally, PW1 stated that all the records were left with the defendant to register the suit land in trust. PW1 had no statement of account, letter of allotment and or agreement or the trust before the court. PW1 stated that he became unwell between 1998 and 2012, when his late father signed P. Exhibit No. (1). PW1 said that over 8 people had bought the land from the defendant, though only one person was on the portion that he was claiming. PW1 said that the defendant became the registered owner on 8/4/1998, long after P. Exhibit No. (1) was signed on 12/8/1994. PW1 added that he had erected a house on his land in 1967, soon after he left school.
10. William Cheboi testified as PW2. He relied on a witness statement dated 8/2/2012 as his evidence-in-chief. PW2 associated himself with the evidence of PW1.
11. Jane Kipsaita Chebet testified as DW1. She relied on a witness statement dated 9/7/2012, signed by her late father. As the legal representative of the late James Cheboi Chesir according to a grant of letters of administration issued on 6/6/2012, she told the court that her late father purchased 23 acres of land from Suwerwa Settlement Scheme from the Settlement Fund Trustee and made a deposit of Kshs.500/=, with the balance of the purchase price extended as a loan, which he continued to repay.
12. DW1 said that her late father took possession of the suit land until he passed on. DW1 added that on 15/3/1990, her late father swore affidavit to regularize his name with the Settlement Fund Trustee and later applied to the Cherangani land control board for correction and addition of his name. DW1 said that he sold 3 acres of the land and was later issued with a title deed on 8/7/2004.



13. Similarly, DW1 denied the alleged trust between their parents or contribution for the purchase of the same from the plaintiff's late father; otherwise, the claim was being raised 48 years since 1964. DW1 relied on a letter of offer dated 15/12/1964, a loan offer dated 15/12/1964, a charge dated 15/12/1964, a receipt dated 5/3/1990, an affidavit dated 15/3/1990 and a letter of consent dated 26/8/1991 as D. Exhibits Nos. 1-6. In cross-examination, DW1 told the court that her late father passed on in 2014 as per the limited grant before the court.
14. The plaintiff relies on written submissions dated 28/3/2025. He submits that the suit land was acquired with the input of the two deceased brothers as per the pleaded or particularized trust. The plaintiff submits that the registration of the suit land on 8/4/1998 was subject to overriding interest under the Sections 27, 28, and 30 of the repealed Registered Land Act. Reliance is placed on *Shah & 7 Others -vs- Mombasa Bricks & Tiles Ltd & Others* [2023] KESC 106 [KLR]. The plaintiff submits that since DW1 did not file any witness statement, her oral testimony had no legal consequence.
15. The defendant relies on written submissions dated 17/3/2025. She submits that the amended amended plaint does not disclose the capacity in which the plaintiff is suing. Therefore, the defendant submits that by dint of Section 82(a) and (b) of the Law of Succession Act and Order 37 Rule 1(a) and (g) of the Civil Procedure Rules, the suit is wrongly instituted since despite the leave to regularize the irregularities on 7/11/2024 by consent of parties, the plaintiff failed to undertake any amendments. Reliance is placed on *Cyril J. Haroo & Another -vs- Uchumi Services Ltd & 3 others* (2014) eKLR, *Tecla Mwake Nyange -vs- Mutuku Kilewe* [2014] eKLR, and in *Diamond Trust Bank Ltd -vs- Sanlam General Insurance Ltd & Others*.
16. Again, the defendant submits that the mere fact of a family relationship or the fact that the registration of the land is in the name of the defendant did not automatically create a trust. The defendant also submits that the plaintiff has failed to prove the facts through evidence of the trust as held in *Salesio M'Itonga -vs- M'Arithi M'Athara & Others* [2015] eKLR, *Gichuki -vs- Gichuki Civil Appeal No. 21 of 1981* and *Juletabi African Adventure Ltd & Another -vs- Christopher Michael Lockley* [2017] eKLR. She submits that the plaintiff has failed to produce any document or record suggesting the holding of the title deed by the defendant in trust for his late father.
17. On whether judgment should be entered as prayed, the defendant submits that the suit land at the time of the alleged creation of trust was still government land in 1964 and 1994. The defendant submits that an allotment letter confers no interest in land until its terms and conditions are complied with, as held in *Torino Enterprises Ltd -vs- Attorney General* (Petition No. 5 (E006) of 2022). In this case, the defendant submits that the defendant's late father had no title that he could pass to the plaintiff's late father in 1964 and 1994, since he was not the registered owner at the time.
18. On eviction, the defendant, relying on *CW -vs- BG* [2019] eKLR, submits that the plaintiff has not issued an eviction notice under Section 152E of the Land Act, 2012, hence he is not entitled to the reliefs sought. As to costs, the defendant guided by *Little Africa Kenya Ltd v. Andrew Mwiti Jason* (2014) eKLR and *Jasbir Singh Rai & Others -vs- Tarlochan Singh Rai & Others* [2014] eKLR, urged the court to dismiss the suit with costs.
19. The ingredients to found a trust were set out in *Kiebia -vs- M'Linturi & Another* (Petition 10 of 2015) [2018] KESC 22 [KLR] (5<sup>th</sup> October 2018) (Judgment), an applicant must establish that:
  - (a) The land in question was, before registration, family, clan or group land.
  - (b) The claimant belongs to such a family, clan or group.



- (c) The relationship of the claimant to such family, clan, or group is not so remote or tenuous as to make the claim idle or adventurous.
  - (d) The claimant could have been entitled to be registered as an owner or beneficiary of the land but for some intervening circumstances.
  - (e) The claim is directed against the registered proprietor who is a member of the family, clan or group.
20. Trust is a matter of fact to be established by way of evidence. It all depends on the quality of evidence tendered and the circumstances of each case. In *Juletatbi African Adventures Ltd & Another vs Christopher Lockley* (supra), the court held that the intention of the parties to create a trust must be determined before a trust can be implied. The court cited *Twalib Hatayan Twalib Hatayan & Anor -vs- Said Saggar Ahmed Al-Heidy & Others* [2015] eKLR., that trust is a right solely enforceable 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).
21. As to resulting trust, the court held that it arises where a person advances money to a purchaser of property, whether or not it is registered in his name.
22. In *Peter Mbiri Michuki -vs- Samuel Mugo Michuki* [2014] KECA 342 [KLR], the court held Section 3(7) of the *Law of Contract Act*, which came into force in 2003, did not apply to oral contracts for the sale of land concluded before Section 3 of the Act came into force. The court cited *Mwangi & Another -vs- Mwangi* [1986] KLR 328, that the rights of a person in possession or occupation are equitable rights binding on the land and which the land is subject to. The court said that he who comes to equity must follow the land and whoever comes to court should not seek to unjustly enrich himself. See also *Peter Ndungu Njenga -vs- Sophia Watiri Ndungu* [2000] KECA 202 [KLR].
23. In *Maina (Sued on behalf of Maina Kihu (deceased) -vs- Kihu & Others (Civil Appeal 287 of 2019)* [2025] KECA 1075 [KLR] (5rh June 2025) (Judgment), there was no dispute that the late Maina Kihu had paid for the property, after it had been put on auction. Evidence of communication or request to do so as a trustee or contributor for the purchase by the others was lacking. The court cited *Kiebia -vs- M'Linturi* (supra), that the essential nature of the holding of land and the intention of the parties, whether or not they are in possession or actual occupation of the land, was critical. The court, in the circumstances, found the nature of holding of the suit property showed a trust ab initio.
24. In this suit, the plaintiff has narrated the events of 1964 and 1994. Other than producing the documents from the Settlement Fund Trustee, the defendant has not refuted the circumstances obtaining in 1964 and during the agreement in 1994, before the registration of the land in 1998. DW1 was not party to the sale agreement or the events of 1964 and 1994. The plaintiff's case is that trust was created by their late parents. The witness statement of James Cheboi Chesir did not address the events of 1964 and 1994.
25. The letter of offer has several anomalies, as it is lacking the date and signature of the Settlement Fund Trustee. The date it was accepted by the defendant is missing. The names Cheboi Chesir are different from those of the defendant. A statement of account showing that the defendant was the initial holder of the offer letter is missing. The charge, discharge of charge, transfer, registration and stamp duty payment in the name of the defendant are missing. DW1 was not privy to the happenings between the late brothers who acquired the suit land. Equally, her late father did not refute those arrangements before he passed on.



26. Looking at the totality of the evidence tendered by PW1 and PW2 vis a vis that of DW1, I am inclined to find that of the former credible and believable. As to the purported purchaser on the land, there is no indication that the defendant sold and transferred any interest in the suit land, going by the official search certificate. Whoever purchased land must have undertaken due diligence to ascertain the interest that the title register is subject to. See *Torino Enterprises -vs- Attorney General* (supra). The intention to found the trust is evident. The defendant knew of the status of the interests of his cousin in 1994. That is why he signed the agreement just before the registration of the title under his name.
27. As to the amendment of the plaint, a consent to that effect was given by the defendant on 7/11/2024. That is why the amended amended plaint dated 7/11/2024 came to be, by dropping the name of the 1<sup>st</sup> plaintiff. The plaintiff, in his witness statement and evidence, confirmed his interest in the land as one of the persons who was utilizing the land from 1964 up to 1967 together with the defendant. He was also a party to the agreement dated 1994. His interest in the land is manifest. The defendant never filed a further amended defence to refute that capacity.
28. The upshot is that I find the plaintiff has proved his claim to the required standard. The defendant holds the suit land in trust.
29. Therefore, the defendant is directed to transfer 7 acres out of the suit land to the plaintiff within 2 months from the date hereof; in default, the Deputy Registrar is to sign the transfer forms. Costs of the subdivision, transfer and registration are to be met by the plaintiff. There will be no order as to costs.
30. Orders accordingly.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 2<sup>ND</sup> DAY OF JULY 2025.**

In the presence of:

Court Assistant - Dennis

Wanyama for the defendant present

Bikunda for Katama Ngeywa for the plaintiff present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

