



Jotham v Nguo (Sued as the Administrator of the Estate of Jotham Nguo Nyaga) (Environment and Land Case E003 of 2023) [2025] KEELC 6011 (KLR) (11 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6011 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE E003 OF 2023
AK BOR, J
SEPTEMBER 11, 2025**

BETWEEN

BILIA WAMBETI JOTHAM PLAINTIFF

AND

JANET GACEKE NGUO (SUED AS THE ADMINISTRATOR OF THE ESTATE OF JOTHAM NGUO NYAGA) DEFENDANT

JUDGMENT

1. The Plaintiff filed the originating summons dated 30/12/2022 seeking a declaration that the Defendant holds 0.17 hectares (ha) out of the land known as Ngandori/Kirigi/6181 under a constructive trust on her behalf. She sought to have the Land Registrar register her as proprietor of that portion of land as well as the costs of the suit.
2. The Defendant is the Plaintiff's stepmother and the administrator of the estate of her late father, Jotham Nguo Nyaga (the late Jotham Nguo). It was the Plaintiff's claim that since she was working, she agreed with her father that she would buy land. That in 1972, she purchased 2 acres of land from Njeru Thirikwa for Kshs. 550/= paid over time and a coat worth Kshs. 30/=. She exhibited the agreement for sale. She claimed that since as a woman she did not have an identity card at the time, she agreed with her father to have the land registered in his name. That her father told her to take possession, build her house and develop the land, which she did. Later, her father acquired Ngandori/Kirigi/203 which on 22/8/1996 was amalgamated with the land she had bought being Ngandori/Kirigi/2332 measuring 0.81 ha.
3. The consolidated parcel became Ngandori/Kirigi/5312 measuring 2.83 ha. Her father subdivided Ngandori/Kirigi/5312 into Ngandori/Kirigi/5382 to 5385 and transferred Ngandori/Kirigi/5384 to the African Independent Pentecostal Church of Africa; Ngandori/Kirigi/5382 to Esthery Ngito, Ngandori/Kirigi/5385 measuring 0.64 ha to the Plaintiff and retained Ngandori/Kirigi/5383 measuring 1.20 ha.



4. The Plaintiff averred that Ngandori/Kirigi/5383 was subdivided into Ngandori/Kirigi/6181 measuring 0.40 ha and 6182 measuring 0.80 ha and the Defendant was registered as the proprietor of Ngandori/Kirigi/6181 after the succession case. She claimed that when her father told her to occupy the land measuring 0.81 ha which she bought from Njeru Nthirikwa, she occupied it and developed the land with the knowledge and consent of her father. That the developments included a permanent three storied house occupied by tenants and which extends into Ngandori/Kirigi/6181 by about 0.17 ha.
5. She sought to have the court declare that since her father held 0.81 ha in trust for herself, the balance of 0.17 ha should be hived out of Ngandori/Kirigi/6181, which she has occupied since 1975. She claimed that after finalising the succession cause that was filed without her knowledge, the Defendant began demanding that she demolish her home and the three-storied house, which in her view would be impractical and impossible.
6. The Defendant contended that the late Jotham Nguo was the sole purchaser and was the sole registered owner of Ngandori/Kirigi/2332. She denied that there was an agreement between the Plaintiff and her father to the effect that the late Jotham Nguo purchased Ngandori/Kirigi/2332 on behalf of the Plaintiff. She contended that the late Jotham Nguo did not permit the Plaintiff to develop the land as the Plaintiff claimed that he had given the Plaintiff land during his lifetime. She maintained that her late husband told the Plaintiff to develop her given portion of land being parcel 5385 and that through a valid court order, the Plaintiff was directed to demolish all the structures she built on the land. It is not clear which land she is referring to.
7. The Defendant contended that the agreement produced by the Plaintiff was a forgery and the late Jotham Nguo did not participate in its making. That after the late Jotham married her, he gave the Plaintiff and her mother a portion of land as their inheritance and that the Plaintiff was given parcel 5385. That he retained the remainder of the land, that is parcel number 5383 which was to be for her and her children while the remaining child of the first wife being Esthery Ngito would inherit what was given to her. She added that the Plaintiff was given land early after she divorced her husband and stubbornly demanded to be given land by her father. She urged that parcel 5383 was not subject to any form of trust and that the Plaintiff is not entitled to such a declaration. She averred that this suit is intended to disinherit her and her children.
8. The case was heard on 24/4/2024 when the Plaintiff gave evidence and then sought an adjournment to prepare a fresh trial bundle. She was cross-examined on 13/3/2025 after tendering photographs of the land in evidence together with records for the suit land. She called her brother, Patrick Ndwiga Jotham as a witness whose evidence was that the translation of the agreement from Kiambu to English was correct.
9. The Defendant testified. She stated that the Plaintiff was not given any land when her late father's estate was distributed because he had given her land during his lifetime. She conceded that the Plaintiff had built a storeyed house on her land but denied that her late husband allowed her to build it. She claimed that the Plaintiff moved to her land after her father's death. It was her evidence that the Plaintiff had 1 ½ acres while she had 3 acres which had not been subdivided.
10. Upon conclusion of the hearing, the court directed parties to file and exchange written submissions which it has read and considered. The Plaintiff submitted that she bought 2 acres of land from Njeru Thirikwa and that her evidence was not challenged. She added that she had proved the existence of a constructive trust and that she had occupied the portion since 1975 and that she led evidence to show that she purchased the land and paid consideration for it. She relied on Samuel Kariuki Mwangi & Another v Njeru Mwangi (1986) KLR on the equitable rights of a person in possession of land.



11. The Defendant submitted that the existence of a trust was a question of fact to be proved through evidence and relied on *Kazungu Fondo Shutu v Japhet Noti Charo & Another* [2021] eKLR. She urged that there was no express declaration by the late Jotham Nguo who was the proprietor of the land that could be evidence of creation of an express trust. She maintained that the Plaintiff failed to produce evidence to show that a trust was created over Ngandori/Kirigi/6181. She added that no trust was created in favour of the Plaintiff.
12. The Defendant submitted that parcel number 6181 registered in her name resulted from the subdivision of parcel number 5312 and that the Plaintiff had already been allocated parcel number 5385 by her father in his lifetime just as her sister was allocated another part of the subdivided portions. That by leaving a portion of land in his name, the late Jotham Nguo indicated how he wished to have his land inherited.
13. The issue for determination is whether the Defendant holds 0.17 ha out of Ngandori/Kirigi/6181 under a constructive trust on behalf of the Plaintiff. In *Shah & 7 Others v Mombasa Bricks & Tiles Limited & 5 others* [2023] KESC 106 (KLR), the Supreme Court addressed the doctrine of constructive trust exhaustively. The Court stated that a constructive trust was a right traceable from the doctrines of equity and arose in connection with the legal title to property when a party conducts himself in a manner to deny the other party beneficial interest in the property acquired. That a constructive trust would thus automatically arise where a person who is already a trustee takes advantage of his position for his own benefit.
14. It is not disputed that parcel no. 6181 resulted from the subdivision of parcel 5383. The Plaintiff asserted that she purchased parcel 2332 measuring approximately 2 acres (0.81 ha), which was registered in her father's name due to constraints on women to have identity cards at the time. She stated that the late Jotham Nguo subsequently combined this parcel of land with parcel 203 which he had acquired to form parcel no. 5312. He then subdivided parcel no. 5312 parcels 5382 to 5385.
15. The Plaintiff produced an agreement dated 9/2/1972 between her and Njeru Thirikwa. In the agreement, the Plaintiff agreed to buy 2 acres of land from Njeru at Kshs. 600/= and a coat. The Plaintiff maintained that according to the agreement, she paid the full amount and that she gave Njeru Kshs. 30/= to buy a coat. In the agreement translated to English, Njeru Thirikwa acknowledged that he had been paid the full amount as agreed.
16. Despite the Defendant claiming that the sale agreement was a forgery, she did not call any evidence to prove this allegation and in the absence of such evidence, the court finds no basis to discredit the agreement. The Plaintiff also explained that as a woman, she land could not have been registered in her own name in 1972.
17. The court notes that parcel number 2332 measuring 0.81 ha, which the Plaintiff claims to have purchased in 1972 from Njeru Thirikwa, was transferred to the late Jotham Nguo in 1975. If the position before 1979 was that women did not have identification cards, then it is highly probable that the land, which the Plaintiff purchased, could possibly have been registered in her father's name.
18. The Defendant did not dispute that the Plaintiff has occupied and developed the portion of land in dispute. Her main contention was that the Plaintiff commenced these developments after the death of Jotham Nguo. The Plaintiff produced photographs showing various developments on the suit land, including a wooden structure and a three-storied permanent building. The photographs were not challenged by the Defendant and they show that the first floor of the building is significantly older than the upper floors which are incomplete which suggests that the development of the building was done in phases.



19. While the Defendant maintained that the construction began only after the death of Jotham Nguo, she did not call an independent witness to corroborate that assertion. The grant of letter of administration issued to the Defendant shows that the late Jotham Nguo died on 20/11/2006. The Defendant filed the succession cause in 2016 without involving the Plaintiff. Based on the evidence adduced, the court finds it improbable that the Plaintiff would have invested on land that she did not own.
20. The Defendant's claim is that her late husband subdivided parcel no. 5312 and gave a portion to his first house and a separate portion to the Plaintiff. The fact that the late Jotham allocated one of the subdivided portions to the Plaintiff corroborates the Plaintiff's assertion that she purchased land in 1972 and that it was registered in her father's name. That must have been the reason why he gave the Plaintiff land separately from other beneficiaries. It is noteworthy that he gave the Plaintiff parcel no. 5385 measuring 0.64 hectares, yet the parcel she claims to have purchased measured 0.81 hectares. The difference of 0.17 hectares corresponds to the portion in dispute.
21. The court finds that the Plaintiff's actions and conduct are consistent with her account that she took possession of a portion of the suit land in 1975 and started developing it with the knowledge and approval of her father. The court is satisfied that the Plaintiff has proved her case on a balance of probabilities and finds that the Defendant holds 0.17 hectares out of parcel Ngandori/Kirigi/6181 under a constructive trust on behalf of the Plaintiff.
22. The Land Registrar is directed to register Plaintiff as the proprietor of 0.17 ha out of Ngandori/Kirigi/6181. The Plaintiff will meet the costs of the subdivision and excision of 0.17 ha out of Ngandori/Kirigi/6181.
23. Since the parties are members of one family, each party will bear its costs.

DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF SEPTEMBER 2025.

K. BOR

JUDGE

In the presence of: -

Ms. Bilia Wambeti, the Plaintiff in person

No appearance for the Defendant

