



King'ori v Wangari & another (Both Sued as the Administrators of the Estate of Kongori Njau Makanja) (Environmental and Land Originating Summons 533 of 2014) [2025] KEELC 6081 (KLR) (19 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6081 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 533 OF 2014
JO OLOLA, J
SEPTEMBER 19, 2025

BETWEEN

SIMON NDIRANGU KING'ORI PLAINTIFF

AND

JOSEPH KING'ORI WANGARI 1ST DEFENDANT

PETER NDIRANGU WANGARI 2ND DEFENDANT

BOTH SUED AS THE ADMINISTRATORS OF THE ESTATE OF KONGORI NJAU MAKANJA

JUDGMENT

Background

1. This suit was initially instituted as Nyeri HCCC No. 203 of 2011 (OS). It was transferred to this Court and given its current reference on 27th November 2014.
2. By an Originating Summons dated 19th December 2011, Simon Ndirangu King'ori (the Plaintiff) prays for orders as follows:
 1. That the deceased, King'ori Njau Makanja (deceased) was registered as the proprietor of the parcel of land L.R NO. Nyeri/Gatarakwa/850 in trust for the benefit of the Applicant, Simon Ndirangu King'ori to the extent of at least a third share thereof.
 2. That it be declared that the administration of the estate of King'ori Njau Makanja (deceased) in respect of the parcel of land LR No. Nyeri/Gatarakwa/850 is subject to a trust in favour of the Applicant Simon Ndirangu King'ori as aforesated.



3. That the trust in favour of the Applicant Simon Ndirangu King'ori over the parcel of land L.R No. Nyeri/Gatarakwa/850 be determined and the share thereof be registered in the name of the Applicant within the pending Nyeri High Court Succession Cause No. 395 of 2002 in the Estate of King'ori Njau Makanja (deceased).
4. That costs be provided for.
3. The Originating Summon is supported by an Affidavit sworn by the Plaintiff wherein he avers that even though LR. No. Nyeri/Gatarakwa/850 (the suit property) was solely registered in the name of his father, the said King'ori Njau Makanja, it was purchased jointly between himself and his father at a consideration of Kshs. 1,500/=. It is the Plaintiff's case that upon purchase, they took exclusive possession and jointly worked and repaid the loan due to the Settlement Fund Trustees (SFT)
4. Further the Plaintiff avers that together with his wife, children and his father, they exclusively occupied and worked on the land as the other family members lived in their ancestral home in Othaya. He avers that upon his father's death in 1987, the other children of the deceased moved into the land and occupied portions thereof leaving the Plaintiff with only about 1/3 portion of the land.
5. Peter Ndirangu Wangari and Joseph King'ori Wangari, both sued as the Administrators of the Estate of King'ori Njau Makanja (the Defendants) are opposed to the grant of the orders sought by the Plaintiff. In a Replying Affidavit sworn by the 1st Defendant on 2nd April 2014, the Defendants, deny that the late King'ori Njau Makanja held the title for the suit property in trust for the Plaintiff. The 1st Defendant avers that as at the time the land was allocated to the deceased, the Plaintiff was a little boy in Primary School and could not assist in the acquisition of the land.
6. It is the Defendant's case that the Plaintiff only worked for a brief period in 1965 as an untrained teacher after which he started working on the suit property which belonged to the deceased.
7. At the trial herein, the Plaintiff called two (2) witnesses while the Defendant called three (3) witnesses in support of their case.

Analysis and Determination

8. I have carefully perused and considered the pleadings filed herein by the parties, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions filed by the Defendants. The Plaintiffs did not file any submissions.
9. By this suit, the Plaintiff urges the court to declare that his father, one King'ori Njau Makanja (now deceased) was registered as the proprietor of the parcel of land known as Nyeri/Gatarakwa/850 (the suit property) in trust for himself to the extent of one third (1/3) share of the land. He has further urged the court to determine the trust and to direct that his share be registered in his name.
10. It is the Plaintiff's case that he purchased the suit land jointly with his father and that his contribution was Kshs. 661.50 while his father made a contribution of Kshs. 838.50. The Plaintiff told the court that upon the said purchase his father and himself jointly took exclusive possession of the suit property and that thereafter, they had jointly repaid the loan owed to the Settlement Fund Trustees (SFT)
11. On their part, the two Defendants who are sued as the Administrators of the estate of the said King'ori Njau Makanja deny that the deceased had held the land in trust for the Plaintiff. They assert that the deceased solely purchased the property through a loan advanced by the SFT and that he had single handedly repaid the same.



12. As it were, there was no dispute that the suit property was registered in the name of King'ori Njau Makanja who passed away in March 1987. What was in dispute was the contention by the Plaintiff that the deceased held one third (1/3) of the suit land in trust and for the benefit of the Plaintiff.
13. It is trite law that he who alleges must prove. In that respect, Section 107 of the Evidence Act, Cap 80 of the Laws of Kenya provides as follows:

“ 107. Burden of Proof

1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
14. At the trial herein, the Plaintiff told the court that he contributed the sum of Kshs. 661.50 towards the purchase of the land. He told the court that he had the capacity to help his father to purchase the land as in the year 1964 when the land was purchased, he was already working as a tailor and that he had also worked at a White Man's farm. The Plaintiff told the court there was an arrangement between him and his father that they would share the land equally even though he had only been using some 3 acres out of the parcel of land measuring in total 84 acres.
 15. The Plaintiff did not explain why his use of the land had only been restricted to the 3 acres which he told the court he was using to grow pyrethrum. While he told the court that they were only staying on the land together with his father and mother, it was apparent that his late father had more than one wife and that a number of them resided on the very same property.
 16. The Plaintiff's own witness Simon Kariuki Ndirangu (PW2) told the court in cross examination as follows:

“ I know the Plaintiff's father and his two wives. They were the first on the land. I do not know if the wives had children. The Plaintiff was one of the children. The Children were residing on the suit property. They kept goats and cows and also planted wheat. The Plaintiff was one of those cultivating.”
 17. John Mbogo King'ori (DW2) was a son to one of the wives of the Plaintiff's father and hence a step-brother to the Plaintiff. DW2 told the court that their father had three (3) wives and that each of them had their portion of the land. He further told the court that the Plaintiff and his mother were shown their portion and told to go occupy the same. According to DW2, the family divided the land with their 3 mothers after their father died.
 18. That position was indeed corroborated by the Plaintiff's own sister Teresiah Muthoni Wairia (DW3). According to DW3, the whole family lived on the land. It indeed emerged from the testimony of DW3 that the two Defendants are the children of their other sister and that what the Plaintiff was claiming was the portion that had been given to the mother of the two Defendants.
 19. From the material placed before the court, the suit property was allocated to the late King'ori Mwangi Makanja on 20th January 1964 by the SFT. While the Plaintiff told the court he had helped purchase the land, he conceded that he had only finished class 8 in the year 1963. He did not produce any documents to support that position claiming that all the documents he had in support of payments to the SFT were destroyed by water.



20. It was telling that he agreed with his siblings that after his father died in 1987, the family had taken out money from the father's account and paid up the balance of the money that was due to the SFT. It was difficult to see why the Plaintiff had allowed the family's participation on the payment if indeed the land only belonged to him and his father.
21. In the premises herein, I was not persuaded that the Plaintiff had established either his contribution to the purchase of the land and/or his entitlement thereto on the basis of a trust.
22. Accordingly, I find and hold that the Plaintiff has failed to establish his case on a balance of probabilities. The same is dismissed with costs to the Defendants.

JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 19TH DAY OF SEPTEMBER, 2025

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J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Ms. Matata Advocate holding brief for Mr. C.M. Kingori Advocate for the Plaintiff
- c. Mrs. Maina Advocate for the Defendants

