



REPUBLIC OF KENYA



**Kimani v Kimani & 5 others (Land Case E003 of 2023)  
[2025] KEELC 6609 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6609 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
LAND CASE E003 OF 2023  
MN GICHERU, J  
SEPTEMBER 30, 2025  
IN THE MATTER OF DECLARATION OF CONSTRUCTIVE TRUST  
AND  
IN THE MATTER OF LAND PARCEL LOC.3/MUKURIA/980**

**BETWEEN**

**FRANCIS WAMUCHWE KIMANI ..... APPLICANT**

**AND**

**PAUL MUNGAI KIMANI ..... 1<sup>ST</sup> RESPONDENT**

**JOHN MACHARIA KIMANI ..... 2<sup>ND</sup> RESPONDENT**

**JOSEPHAT KIMEMIA KIMANI ..... 3<sup>RD</sup> RESPONDENT**

**JANE NYAMBURA MWANGI (SUED AS THE ADMINISTRATOR OF THE  
ESTATE OF PETER MWANGI KIMANI-(DECEASED) ..... 4<sup>TH</sup> RESPONDENT**

**LAND REGISTRAR MURANG'A ..... 5<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. This Applicant seeks the following orders against the Respondents.
  - i. A declaration that a constructive trust exists in respect of L.R. No. Loc.3/Mukuria/980, suitland, and that by operation of law, the Applicant is entitled to the suit land.
  - ii. An Order for determination of the trust and the suit land to be transferred to the Applicant who was a bona fide purchaser for value.



- iii. A permanent injunction restraining the Respondents by themselves, their agents, servants, employees or any person from selling, leasing, charging, transferring, subdividing or other howsoever interfering with the Applicant's quiet, peaceful, actual and exclusive possession, cultivation, use, development and enjoyment of the suit land.
  - iv. An order directing the 5<sup>th</sup> Respondent to cancel the title deed for the suit land and to issue a fresh title for the suit land to the Applicant.
  - v. Any other relief in the interests of justice.
  - vi. The costs of these proceedings to be borne by the Respondents.
2. The Applicant's case is as follows. The suit land belonged to the late Peter Mwangi Kimani who was the father the Applicant and the 1<sup>st</sup> to 4<sup>th</sup> Respondents. On 13-9-2004, the Respondents sold the suit land to the Applicant. The purchase price was Kshs. 250,000/= part of the purchase price was paid in kind in form motor vehicle No. KLZ 432 Toyota Hilux pick up serial No. RN25280673, engine number 12R 1440945 valued at Kshs 180,000/=. The balance of Kshs 70,000/= was paid to the Respondents in cash on various dates including 6-3-2005, 19-9-2005 and 15-10-2005 when the final installment was paid. The Applicant was put in possession of the suit land on the date of the agreement. Everything went on well until around November 2017 when the four Respondents changed their minds. During the proceedings in Kigumo Magistrates Succession Cause No. 25 of 2013, the four Respondents denied having sold the suit land to the Applicant. From then, they sent land brokers and potential buyers who revealed to the Applicant that the suit land was up for sale. The Applicant feels aggrieved by the conduct of the Respondents. Having sold the land to the Applicant, they are now estopped from contesting the sale. Since taking possession of the suit land, the Applicant has developed it by planting bananas, avocados, macadamia and coffee whose value exceeds Kshs. I Million. For the above and other reasons, the Applicant prays for the above orders.
3. In support of his case, the Applicant filed the following evidence.
  - i. Supporting affidavit dated 21-8-2023.
  - ii. Copy of agreement to distribute the property of Kimani Karanja dated 26-9-1999.
  - iii. Copy of sale agreement for the suit land dated 13-9-2004.
  - iv. Copy of (iii) translated from Kikuyu language to English language.
  - v. Copy of certificate of confirmation of grant in P2 A No.25/2013 at Kigumo Magistrates Court dated 17-11-2017.
  - vi. Copy of crop valuation report dated 17-8-2023.
  - vii. Copy of letter from area chief dated 17-8-2023.
  - viii. Copy of further affidavit dated 19-9-2023.
  - ix. Witness statements by the Applicant, Joseph Ngure, Elijah Mwangi, Kimemia Mungai and Samuel Kimani.
4. The 1<sup>st</sup> to 4<sup>th</sup> Respondents filed a replying affidavit dated 5-9-2023 in which they respond as follows. One, this suit is an abuse of the Court process because the issues herein have been litigated upon in two courts of competent jurisdiction rendering it res judicata. Two, the suit does not disclose a constructive trust as the alleged agreement is void ab initio. Three, there are two judgments in SPMCC Kigumo P&A 25/2013 and Murang'a High Court Appeal case No. P & A No. 1 of 2018 which dismissed



the Applicant's suit twice. There was no appeal against the decision of the High Court. This suit is therefore a mischievous attempt to prolong litigation and the law of adverse possession upon which it is anchored is not applicable to this case. For the above and other reasons, the four Respondents pray that the summons be dismissed with costs.

5. In support of their defences the Respondents filed the following evidence.

- i. The replying affidavit dated 5-9-2023.
- ii. Copy of certificate of confirmation of grant dated 17-11-2017.
- iii. Copy of judgment in P & A Appeal No. 1 of 2018 dated 13-12-2022.
- iv. Copy of ruling in SPMCC Kigumo Cause No. 25/2013.
- v. Other documents.

6. At the trial on 25/2/2025 and 8-4-2025, a total of seven witnesses testified.

They included the Applicant and his five witnesses and John Macharia Kimani, the second Respondent on the part of all the Respondents.

There was no deviation by the witnesses from the narratives contained in their pleadings, witness statements and the documents filed. In short, the Applicant insisted that he bought the suit land from his brothers while the Respondents insisted that they did not sell their inheritance to the Applicant.

7. Counsel for the parties filed written submissions dated 11-4-2025 and 28-5-2025 respectively.

The issues identified by the Respondents counsel are as follows.

- i. Whether adverse possession ought to be determined before distribution.
- ii. Whether the Applicant could claim the suit land under adverse possession yet he was beneficiary of the estate of the land himself.
- iii. Whether this Court has jurisdiction to determine this dispute in view of it having been determined by two other Courts.
- iv. Whether failure to describe the size of the suit land is fatal to the Applicant's case.

On the other hand, the Applicant identified two issues for identification as follows.

- i. Whether or not upon promulgation of *the Constitution* of Kenya 2010, the doctrine of constructive trust can be invoked to legalise a contract voided by operation of law in order to dispense justice and if so, whether the Applicant is deserving of the reliefs sought.
- ii. Whether or not the 1<sup>st</sup> to 4<sup>th</sup> Respondents have created a constructive trust in favour of the Applicant by virtue of his paying the purchase price and them receiving it in respect to the suit property.

8. I have carefully considered the evidence adduced in this case by both sides including the affidavits, the witness statements, the documents, the written submissions and the law cited therein. I find that the issues as identified by both sides will determine the dispute. I make the following findings on the issues.

9. On the 1<sup>st</sup> issue, I find that the Applicant's suit is not based on the doctrine of adverse possession. Neither the originating summons nor the submissions have mentioned adverse possession. Out of the six(6) prayers in the originating summons, none is for adverse possession. The Applicant is categorical that his claim is based on the doctrine of constructive trust. This finding covers the second issue raised by the Respondents.



10. On the third issue, I find that the this Court has jurisdiction to determine the dispute because the Applicant seeks title to the suit land. He also seeks to continue using and occupying the land. A dispute relating to the use and occupation of, and title to land is within the jurisdiction of this Court by virtue of Article 162(2) (b) of the Constitution and Section 13 of the Environment and Land Court Act.

In its judgment dated 13-12-2022, the High Court clearly stated that the Appellant's (Applicant's) claim did not lie in the High Court but in land court.

(The Appellant's claim to the said property lies in the land court and not in this court acting as a Probate and Administration Court”.

See paragraph 19 of the judgment dated 13-12-2022.

Neither the High Court nor the Lower Court decided on the validity of the sale agreement between the Applicant and Respondents or the implications of his occupation of the suit land with the authority of the Respondents after they received the purchase price of Kshs. 250,000/= from the Applicant. Yet this is the crux of the matter in this dispute. The High Court and the lower Court decided correctly because what was in issue in the case before them was who was entitled to inherit the suit land and nothing more.

11. Regarding the final issue raised by the Respondents, I find that the ratio decidendi in the case of Wilson Kazungu Katana and 101 Others vs. Salim Abdalla Laekshwein [2015] Eklr has no application in this case because it was all about adverse possession while this case concerns a constructive trust.

12. Coming now to the Applicant's first issue, I find that the Constitution of Kenya 2010 vide Article 10 thereof has elevated Equity above statutory law in the hierarchy of norms. It provides as follows in part

1. “ The national values and principles of governance in this Article bind all state organs, state officers, public officers and all persons whenever any of them-
  - a. Applies or interprets this constitution.
  - b. Enacts, applies or interprets any law, or
  - c. Make or implements public policy decisions.”
2. “ The national values and principles of governance include-
  - (b) human dignity, equity...”

Equity being a Constitutional value is no longer relegated to the lowest position in the hierarchy of norm as it had been put by Section 3(1) (c) of the judicature Act.

In the case of Willy Kimutai Kitilit vs. Michael Kibet [2018]eKLR, the Court of Appeal had this to say about equity.

“Thus, since the current Constitution has by virtue of Article 10(2) (b) elevated equity as a principle of justice to a constitutional principle and requires courts in exercising judicial authority to protect and promote that principle among others, it follows that the equitable doctrines of constructive trust and proprietary estoppel are applicable and supersede the Land Control Act...”

The facts of the case in the case of Kitilit (supra) were similar to the facts of this case because in Kitilit's case a party who had sold land and put the other party in possession was pleading



absence on the consent of the Land Control Board to seek to nullify the sale. In this case, the Applicant having been put in possession by the Respondents and he having paid the full purchase price, the doctrines of constructive trust and proprietary estoppel apply to his case. It was unconscionable for the Respondents to deny that they received the purchase price from the Applicant. I found overwhelming evidence of the sale agreement which is not only corroborated by the evidence of Elijah Mwangi Kamau who drove motor vehicle No. KLZ 432 to the home of the Respondents but also admitted by John Macharia Kimani (DW 1) who confirmed that the vehicle is still at the home of the Respondents. This is as per his evidence when he testified on 8/4/2024. Equity cannot allow the Respondents to keep their land and the Applicant's money and vehicle. It is unconscionable and the Court cannot allow this to happen.

As correctly submitted by the Applicant's counsel, even the Supreme Court of Kenya has held that a constructive trust is part of equitable jurisdiction and it is not created by agreement but imposed by the Court by operation of law where necessary to prevent unconscionable and inequitable conduct. This was one of the holdings of the Court in case of *Shah and 7 Others vs. Mombasa Bricks and Tiles Ltd and 5 Others* [2023]. This finding covers the second issue raised by the Applicant in the written submission.

13. For the reasons given above, I find that the Applicant has proved his case against the Respondents on a balance of probabilities. I find merit in the originating summons which I allow in terms of prayers 1,2,3,4 and 6.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**M.N. GICHERU JUDGE.**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Applicant's Counsel – Mr Muiruri

1<sup>st</sup> to 4<sup>th</sup> Respondent's Counsel – Mr T.M. Njoroge

