



REPUBLIC OF KENYA



KENYA LAW
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**Ngureti & 3 others v Ngureti & another (Environment and Land Case
97A of 2014) [2025] KEELC 7881 (KLR) (12 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7881 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND CASE 97A OF 2014**

**JM MUTUNGI, J
NOVEMBER 12, 2025**

BETWEEN

**RUTH WAMBUGI NGURETI 1ST PLAINTIFF
LYDIA MUTHONI MBURIA 2ND PLAINTIFF
LYNE WAMBUI 3RD PLAINTIFF
KAREN NGURETI 4TH PLAINTIFF**

AND

**MISHECK GATANA NGURETI 1ST DEFENDANT
EDWARD GITHIMU NGURETI 2ND DEFENDANT**

JUDGMENT

1. The Plaintiff Ruth Wambugi Ngureti, initiated the instant suit against her husband, Lucas Kamau Ngureti by way of a Plaint dated 3rd April, 2014. The Plaint was subsequently amended on 16th March, 2015 where 4 other Defendants were added and by the Amended Plaint the Plaintiff prayed for orders:-
 - a. A permanent injunction against the Defendant restraining him through himself his servants agents, employee or any one acting through him from selling, disposing, transferring and or charging land parcels Nos. Kabare Nyagithuchi 63, Kabare Njiku 433, Kabare Nyangati 1643, Kabare Nyangati 1645, plot No. 11 Gatungura, village plot Kutus and shares in Kivoti Company Ltd, Makengeria Partnership, Kenya Commercial Bank Ltd, Co-operative Bank Ltd, Gichugu Housing Co-operative Society Ltd, Co-operative Sacco, Kimunye Factory Company Ltd and KTDA.
 - b. A declaration that the Defendant holds land parcels Nos. Kabare Nyagithuchi 63, Kabare Njiku 433, Kabare Nyangati 1643, Kabare Nyangati 1645, plot No. 11 Gatungura, village plot Kutus and shares in Kivoti Company Ltd, Makengeria Partnership, Kenya Commercial



Bank Ltd, Co-operative Bank Ltd, Gichugu Housing Co-operative Society Ltd, Co-operative Sacco, Kimunye Factory Company Ltd and KTDA in trust for himself the Plaintiffs and their children.

- c. Determination of the said trust in as per paragraph 8 of the Plaintiff and or as the Court may deem fit and just.
 - d. Any other relief this honourable Court may deem fit and just to grant.
2. The Plaintiff further following the death of her husband (1st Defendant) was granted leave to further amend the Plaintiff and filed a further Amended Plaintiff dated 24th November 2020 and further Amended Plaintiff dated 12th November 2021 where the prayers were as follows:-
- a. A permanent injunction against the Defendant 1st and 2nd Defendants restraining, them, through themselves their agents, employees or any one acting through him their from selling, disposing, transferring and or charging land parcels nos. Kabare Nyagithuchi 63, Kabare Mutige 63, Kabare Nyagithuchi 357, Kabare Njiku 433,
 - b. A declaration that the Defendant 1st and 2nd Defendants hold land parcels Nos. Kabare Nyagithuchi 63, Kabare Mutige 63, Kabare Nyagithuchi 357, Kabare Njuku 433, in trust for themselves and the Plaintiffs.
 - c. Determination of the said trust in as per paragraph 14b of the Plaintiff and or as the Court may deem fit and just.
 - d. Any other relief this Honourable Court may deem fit and just to grant.
 - e. Costs and interest of the suit at Court rates.
3. The 1st and 2nd Defendants filed a joint defence dated 24th January, 2022 where they denied all the allegations and averments contained in the Further Amended Plaintiff. They specifically denied that their late father, Lukas Kamau Ngureti had transferred and had them registered as owners of the suit properties to hold the same in trust for the Plaintiffs or anybody else.
4. The Plaintiff's husband before his death had filed a defence dated 20th May 2014 denying the averments by his wife and in reply he averred any property he owned belonged to him absolutely having solely acquired the same through his own effort and that he had not disenfranchised any of his children. He denied that any property he owned was held in trust for the Plaintiff and or anybody else. After the initial Amendment, the 4th and 5th Defendants filed a joint defence and it was their position that they were bonafide purchasers for value without any notice and that land parcels Kabare Nyangati 1643 and 1645 were validly transferred to them by the 1st Defendant (Lukas Kamau Ngureti) free of any encumbrances.

Evidence of the Parties

5. The suit was part heard before Cheron, J who took the evidence of the 1st Plaintiff who testified on her own behalf and on behalf of the 2nd, 3rd and 4th Plaintiffs who are her daughters. The 1st Plaintiff affirmed the suit against the 3rd and 4th Defendants was withdrawn and the suit was against the 1st and 2nd Defendants who were her sons. The 1st Plaintiff in her evidence relied and adopted her witness statements and documents filed as per the lists dated 15th February 2021 and 22nd March 2021. The 1st Plaintiffs evidence was that she and her late husband purchased the four (4) suit properties namely Kabare Nyagithuchi 63, Kabare Mutige 63, Kabare Nyagithuchi 357, Kabare Njiku 433 together during her late husband's lifetime and that they caused the properties to be registered in the names of



- the 1st and 2nd Defendants, who were their sons to hold in trust for the family. The 1st Plaintiff explained that the properties were registered in her husband's name before they were transferred and registered in their two son's names. She affirmed her husband was buried in land parcel Kabare Mutige 63 where they had established their matrimonial home.
6. In cross examination the witness confirmed her husband and the sons had sold a portion of their land in Mwea to the 3rd and 4th Defendants. She confirmed that other than the four land parcels in dispute and the land in Mwea there was no other land. The witness stated she had been employed as a Community Development Officer while her husband was a teacher. She stated they pooled their resources to buy the four parcels of land. It was her further evidence that she and her husband agreed to have the four parcels of land transferred and registered in their two son's names (1st and 2nd Defendants) in trust for themselves and other members of the family. She however affirmed the agreement between her and her husband was not reduced into writing. The witness testified that her husband made applications to the Land Control Board for consent to transfer the parcels of land to their sons but she maintained the sons were only to hold the land in trust for all the family members including herself.
 7. The 1st Defendant, Misheck Gatana Ngureti, testified as DW1 and he affirmed the 1st Plaintiff was his mother and the 2nd, 3rd and 4th Plaintiffs were his sisters and the 2nd Defendant was his brother. The 1st Defendant testified that his late father gifted him land parcels Kabare Nyagithuchi 63 and Kabare Njiku 433 and had the parcels transferred and registered in his name after following due process including applying for and obtaining the consent of the Land Control Board. He explained that both his deceased father and his mother attended the Land Control Board. He stated that it was never intended that he was to hold the properties in trust for the Plaintiffs or anybody else and asserted that the transfers were absolute.
 8. The 1st Defendant further testified that his sisters (Plaintiffs) were allocated by their deceased father, land parcel Kabare Nyangati 1646 and that they are in occupation and continue to cultivate the same. The witness testified that they never had any dispute relating to the suit parcels of land during their late father's lifetime. The 1st Defendant adopted his witness statement dated 6th January 2021 as part of his evidence and relied on the documents exhibited in the Defendants bundles of documents as per list dated 11th March 2021 save for documents Nos 1-3 which were expunged by the Court.
 9. In cross examination the 1st Defendant stated that it was his father who had purchased the two properties that he transferred to him. He affirmed he had no document to show that his mother had given her consent to the transfers. He stated that his mother did not agree with his father's mode of distribution of the properties but stated that his father had made his wishes clear. He stated that his mother had not been registered as owner in any of the properties. He testified that his sisters wanted to have a share in the properties transferred to him and to his brother (2nd Defendant). The 1st Defendant confirmed that his mother resides on land parcel Kabare Mutige 63 which was transferred to the 2nd Defendant. He confirmed that was where the family homestead was located. He stated efforts to resolve the dispute through the Local Administration were not successful as his mother brought the matter to Court.
 10. The 2nd Defendant's evidence was in all material respects the same as the evidence adduced by his brother, the 1st Defendant. He relied on his written witness statement and effectively his evidence was that his late father distributed his property during his lifetime and that in doing so he followed due process. The 2nd Defendant affirmed that his late father gave him land parcels Kabare Mutige 63 and Kabare Nyagithuchi 357 and there was no arrangement agreement that he was to hold the land in trust for anybody. He affirmed his sisters were equally given land by his later father as well as his brother. He urged the Court to respect and uphold the wishes of his late father.



11. In cross examination the 2nd Defendant stated that when his father died he was buried on land parcel Kabare Mutige 63. He stated that were his mother to die, she would equally be buried on his land where the husband was buried. He said the family continues to hold family meetings on parcel Kabare Mutige 63. He stated the parcel of land given to his sisters and which they utilise was still in his father's name as they had not processed transfer to their names. He further stated that his mother lives with him in land parcel Kabare Mutige 63 as that was where their father had established the family homestead. He affirmed the sisters also stayed in the family homestead whenever they visited. He stated he had never threatened to evict his mother or his sisters from the homestead. He affirmed his sisters were given land parcel Kabare Nyangati 1646 and that each of them was to get 2.5 acres once the land was shared out between them.

Submissions, evaluation and determination.

12. The parties filed final closing submissions following the closure of the trial. The Plaintiffs submissions were dated 6th May 2025 and those of the Defendants were dated 3rd July 2025. I have reviewed the pleadings and the evidence and I have considered the submissions filed on behalf of the parties. The issues that arise for determination are as follows:-
 - i. Whether land parcels numbers Kabare Nyagithuci 63, Kabare Mutige 63, Kabare Nyagithuci 357 and Kabare Njiku 433 were transferred to the 1st and 2nd Defendants subject to customary trust?
 - ii. Whether the 1st and 2nd Defendants hold the suit properties in trust for themselves and the Plaintiffs, and if so, whether the trust should be determined?
 - iii. What reliefs orders should the Court grant?
13. The parties in the instant matter are close relatives being mother, daughters and sons. The family patriarch, Lukas Kamau Nguneti is deceased and before his death he had caused to be transferred the suit properties to his two sons, the 1st and 2nd Defendants, albeit with his wife, the 1st Plaintiff and the daughters objecting. The 1st Plaintiff protested that the distribution of the properties made by her husband was skewed in favour of the sons to the disadvantage of the daughters. The 1st Plaintiff contended the properties were acquired jointly by her and her husband during the subsistence of their marriage and were registered in her husband's name in trust for the family. The Plaintiffs thus contend the transfer by the 1st Plaintiff's husband to the 1st and 2nd Defendants of the suit properties was subject to trust in favour of the Plaintiffs being members of the family for whom Lucas Kamau Nguneti held the properties in trust for.
14. The Plaintiffs submitted the suit properties constituted family land acquired during the marriage of the 1st Plaintiff and Lucas Kamau Nguneti (now deceased) and to support this they relied on the minutes of the Family meeting held at Deputy County Commissioner's Office dated 8th October 2013 exhibited by the Defendants as "DEX19". The Plaintiffs argued that the deceased held the suit properties in constructive trust for all the family members and to support this proposition they placed reliance on the case of *Twalib Hatayan & Another -vs- Said Saggah Ahmed Al-Heidy & 5 Others (2015) eKLR* where the Court of Appeal explained how a constructive trust could arise. In the case the Court stated:-

“ --- In the absence of an express trust, we have trusts created by operation of the law. These fall within two categories; constructive and resulting trusts. A constructive trust is an equitable remedy imposed by the Court against one who has acquired property by wrong doing. It arises where the intention of the parties cannot be ascertained. If the circumstances of the



case are such as would demand that equity treats the legal owner as a trustee, the law will impost a trust.”

15. The Plaintiffs further relied on Section 28(b) of the *Kenya Land Registration Act, 2012* that provides that customary trust is an overriding interest over registered land that does not require to be noted in the register. In particular, the Plaintiffs contended land parcel Kabare Mutige 63 was the matrimonial home of the 1st Plaintiff where she had resided for over 60 years and where all the children were brought up and hence on the basis of the evidence qualified as property where customary trust was established and could not only belong to one person.
16. The Defendants in their submissions contended that the intentions of the Defendants late father were clear and explicit and that it was not his intention to create any trust, customary or otherwise. The Defendants argued the Plaintiffs had not led any evidence to prove there was a trust and placed reliance on the case of *Mbothu & 8 Others –vs- Waitimu & 11 Others (1986) eKLR* and *Githegi –vs- Mwaura (2022) KECA 466(KLR)*.
17. The Defendants also relied on the case of *Juletabi Africa Adventures Ltd & Another –vs- Christopher Michael Leckley (2017) eKLR* where the Court considered the burden of proof where a party relies on the existence of trust. The Court in the case stated:-

“It is settled that the onus lies on a party relying on the existence of a trust to prove it through evidence. That is because the law never implies, the Court never presumes a trust, but in case of absolute necessity. The Courts will not imply a trust save in order to give effect to the intention of the parties. The intention of the parties to create a trust must be clearly determined before a trust will be implied.”
18. In the present case there is no dispute that the 1st Plaintiff and the late Lucas Kamau Ngureti were married and the 2nd to 4th Plaintiffs and the 1st and 2nd Defendants were their children. The four properties the subject of the suit were acquired by the 1st Plaintiff and her late husband, during the subsistence of their marriage. Both the 1st Plaintiff and her late husband were employed and there can be no denial therefore, that each one of them must have contributed directly or indirectly to the acquisition and development of the suit properties. The 1st Plaintiff and her late husband established their matrimonial home on land parcel Kabare Mutige 63. The 1st Plaintiff to date resides in the matrimonial home on this property.
19. The 2nd Defendant to whom this property was transferred by the deceased affirmed that his mother indeed resides on this property and it was on this property their deceased father was buried and he further indicated, were his mother die, she would be buried on this property. Further, he admitted that whenever his sisters come to visit, they reside in the home left by their deceased father. Additionally, he confirmed, the family continued to hold their family meetings gatherings on this property where the family homestead was developed.
20. In the family meeting held with the Deputy County Commissioner on 8th October, 2013 at which the deceased was in attendance the deceased is recorded to have given his wishes inter alia as follows:-
 - i. No family land should be sold as they were given as a gift.
 - ii. Kabare Mutige 63 (Homestead). The family who has born a grandson under Mzee’s name – Lucas Kamau will be a beneficiary of the land.
21. It is evident that the deceased intention was that the transfer of the land housing the family homestead would not be absolute. It was his intention that that land parcel Kabare Mutige 63 remains within the



family and that explains why he said the family with a grandson bearing his name be registered. That was the 2nd Defendant's family. While it is the intention of the parties that requires to be ascertained before a trust is said to be in existence, I am on the evidence persuaded it was the intention of the deceased that land parcel Kabare Mutige 63 should outlive the current generation and it was for that reason he specifically referred to "the family with a grandson named after him"). The concept of intergenerational equity where the land is held by one generation for the benefit of succeeding generations was in my view what the deceased had in mind and to that extent his wish should be honoured.

22. On the evidence I therefore find and hold that the deceased intended that the family home be secured for the benefit of the future generation represented by his grandson. On the other properties there is no evidence to prove that there was any intention to create a trust and it is my determination that land parcels Kabare Nyagithuci 63, Kabare Nyagithuci 357 and Kabare Njiku 433 were registered in the respective names of the 1st and 2nd Defendants absolutely.
23. As the intention is evident that the deceased wanted land parcel Kabare Mutige 63 to remain within the family and pass to the grandson named after him, it is my determination that the 2nd Defendant was registered to hold the land in trust for the grandson, Lucas Kamau. The Plaintiffs also shall have a life interest in the suit property and shall have access and use of the family homestead without any charge.
24. I in the premises and after evaluation of the evidence find and hold that the Plaintiffs have partially proved their case on a balance of probabilities. I enter Judgment and make the following consequential orders:-
 1. A declaration be and is hereby issued that the 2nd Defendant, Edward Githimu Ngureti, is registered owner of land parcel Kabare Mutige 63 to hold in trust for Lucas Kamau, grandson of Lucas Kamau Ngureti (deceased).
 2. That Ruth Wambugi Ngureti, Lydia Muthoni Mburia, Lyne Wambui and Karen Ngureti have a life interest in land parcel Kabare Mutige 63 and are entitled to access and use of the family homestead without charge.
 3. The Land Registrar Kirinyaga is directed to amend the title records of land parcel Kabare Mutige 63 to reflect (1) and (2) above.
 4. The parties being family members to each bear their own costs of the suit.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 12TH DAY OF NOVEMBER 2025.

J. M. MUTUNGI

ELC - JUDGE

