



Poriot (Suing as the Legal Representative of the Estate of the Late Chepokamolot Katong'o - Deceased) & another v Atodosia (Environment and Land Case 12 of 2023) [2026] KEELC 626 (KLR) (11 February 2026) (Judgment)

Neutral citation: [2026] KEELC 626 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 12 OF 2023
CK NZILI, J
FEBRUARY 11, 2026**

BETWEEN

**JACOB PORIOT (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE CHEPOKAMOLOT KATONG'O - DECEASED) 1ST PLAINTIFF
MARGARET RIALEM 2ND PLAINTIFF**

AND

CHEPOSOYWON ATODOSIA DEFENDANT

JUDGMENT

1. The plaintiffs initially instituted this suit vide a plaint dated 1/9/2023, which was later amended on 14/4/2025. The plaintiffs sought:-
 - a. A declaration that the defendant, who is a co-wife, holds title L.R. No. West Pokot/ Chepkono/56 (hereinafter the suit parcel), on her own behalf and in trust for the plaintiffs.
 - b. An order that the defendant subdivides the suit parcel into three equal portions and transfer to the plaintiffs and the estate, and in default, the deputy registrar is to sign the documents for the subdivision and subsequent transfer.
 - c. Costs of the suit.
 - d. Any other reliefs.
2. The 1st plaintiff sued as the legal representative of the estate of the deceased mother, who was a co-wife alongside the 2nd plaintiff and the defendant of the late Atodosia Chemwoto, who passed on on 18/6/2023, and was the registered owner of the suit parcel vide a title deed issued on 3/10/1997.



3. The plaintiffs aver that the defendant has denied the co-widows and their children the use of the suit parcel, yet they hold equal rights over the suit parcel.
4. The plaintiffs aver that as a result of the acts of the defendant, a caution dated 5/4/2013 on the title to the suit parcel, which was duly registered on 8/4/2013, was only for it to be withdrawn on 16/2/2022, paving the way for the suit parcel being transferred to the defendant on the same day, and a title deed was issued to her.
5. The plaintiffs term the changes illegal, unlawful, null, and void. Further, the plaintiffs aver that if at all the registration and issuance of the title deed to the defendant was procedural, the same must have been done on the understanding that the defendant would hold the same in trust for her benefit and that of them and their families.
6. The plaintiffs aver that they are beneficially entitled to the suit parcel since it is ancestral land, in which they have been in continuous use of part of the suit parcel, with the defendant's full knowledge.
7. The plaintiffs aver that the acts of the defendant amount to and have breached the said overriding interests which have been subsisting by denying them occupation of the suit parcel, embarking to sell, and failing to recognize the entitlement of other widows and children of the deceased over the suit parcel. The plaintiffs contend that the actions of the defendant are malicious, illegal, and unlawful, meant to disinherit them and their children.
8. The defendant opposed the suit through an amended statement of defence dated 5/5/2025. The defendant avers that the deceased was registered as the title holder to the suit parcel in 1972, following the financial help of her brothers and mother.
9. The defendant avers that though the suit parcel was acquired for her benefit, it was registered in the name of her deceased husband, because, under the Pokot culture, women were not allowed to be registered as land owners.
10. Further, the defendant denies that the suit parcel is ancestral land. She insists that it was transferred to her by the deceased during his lifetime since he had acknowledged her exclusive entitlement to the same.
11. The defendant denies the allegations on the caution. On the contrary, the defendant avers that the deceased had several other parcels of land measuring over 150 acres; the alleged existence of a trust is misplaced and not based in law.
12. Similarly, the defendant avers that the suit is an abuse of the court process as there was no fraud, mistake, or illegality in the transfer of the suit parcel to her by the deceased.
13. Through a reply to the amended statement of defence dated 27/6/2025, the plaintiffs contend that the deceased had also received financial assistance from the late grandfather's father to acquire the suit parcel on his own behalf and on behalf of his brothers from the late Lopolee Loucho. The plaintiffs further stated that since the purchase price was not raised in full, given that part of the suit parcel was sold to the late Limkoo, and as a result, the deceased acquired only 33 acres of the suit parcel.
14. The plaintiffs insist that Parcel No. 447 is 69 acres and not 150 acres, and 70 acres could not have been bequeathed to the defendant as alleged in the will.
15. At the trial, Jacob Poriot testified as PW1. He adopted his late mother's witness statement dated 1/9/2023 as his evidence-in-chief. He also produced as exhibits documents contained in the list of documents dated 1/9/2023 and 14/4/2025, namely: copies of the title deed for L.R. No. West Pokot/Chepkono/56; official search dated 11/7/2023; caution dated 5/4/2013; notice of caution dated



- 16/4/2013; letter dated 20/7/2022; funeral programme; limited grant ad litem; death certificate as P. Exhibits. Nos. 1-9, respectively.
16. As the firstborn of the second house, PW1 stated that his late mother was married to the deceased in 1971, and he was born in 1973. PW1 stated that the defendant was married many years ago, his late father had two parcels of land, which include the suit parcel and Parcel No. 447, all occupied by all three houses, where his late father was interred.
 17. Further, PW1 stated that his late father was the registered owner of the suit parcel allegedly transferred to the defendant. PW1 denied the contents of the defendant's witness statement that she had solely bought the suit parcel to be entitled to be registered as the owner.
 18. Regarding the alleged will, PW1 stated that it was allegedly executed while the deceased was sick and through undue influence. He said that he had not challenged the will before the probate court, especially paragraph 8, which states that the suit parcel was given to the defendant.
 19. According to PW1, P. Exhibits. No. 1 and 5 indicate that parcels No. 732 and 450 are occupied by Emmanuel, while the suit parcel was transferred to the defendant to hold in trust for the other houses. PW1 insisted that the suit parcel had been cautioned since 2013, only to be lifted without a justification or notice.
 20. Margaret Rialeem testified as PW2. She adopted her witness statement dated 1/9/2023 as her evidence-in-chief. Cross-examined, PW2 stated that she is the third widow of the deceased who took part in placing the caution on the suit parcel. Further, PW2 said that she used to reside on the suit parcel where two of her children were born. PW2 insisted that the suit parcel belongs to her late husband and is held in trust by the defendant. PW2 disputed the authenticity of the will and its contents. She denied having in possession other parcels of land. She insisted that all children have an interest in the suit parcel.
 21. The defendant testified as DW1. She adopted her witness statement dated 5/10/2023. DW1 insisted she bought the suit parcel with the exclusive financial assistance of her mother and brother. DW1 said that the land initially was only registered under her late husband's name out of respect, who later willingly and consciously transferred it to her during his lifetime. DW1 denied holding the land in trust since the other widows did not contribute to its acquisition. She produced a copy of the will dated as D. Exhibit. No. 1.
 22. In cross-examination, DW1 denied knowledge of the caution and insisted that the other widows did not live on the suit parcel but used to till thereon. She, however, did not produce a sale agreement or any other evidence supporting the purchase.
 23. The plaintiffs in written submissions dated 4/12/2025 isolated three issues for determination. On whether the transfer of the suit parcel was legal in light of the existing caution, the plaintiffs rely on Section 73 of the Land Registration and Munyu Maina -vs- Hiram Gathiha Maina (2013) eKLR. They submit that the cautioner was not notified before the caution was withdrawn, and thus the transfer was done through procedural irregularities, where the plaintiffs were denied an opportunity to defend their rights.
 24. Regarding whether the suit parcel is held in trust by the defendant, the plaintiffs submit that from the evidence, statutes, and cases relied on establish that there exists a customary and resulting trust. Relying on Section 28(b) of the *Land Registration Act*, the plaintiffs submit that trusts are overriding interests affecting land, whether noted on the title or not.
 25. The plaintiffs also submit that trust is not defeated upon registration, since it arises out of familial history, occupation, and intentions. The plaintiffs submit that trust may be inferred and need not be



- written, as held in *Isack M’Inanga and Kiebia -vs- Isaaya Theuri M’Lintari* (2018)eKLR and *Kanyi -vs- Muthiora* (1984) eKLR.
26. Further, the plaintiffs submit that the suit parcel is ancestral and belongs to the late Atodosia Chemotwo, where they have lived openly, peacefully, and cultivated, where their rights would have been considered despite the concealed transfer.
 27. On constructive trust, the plaintiffs submit that it is imposed where property is obtained through abuse of position, misrepresentation, lack of good faith, and unjust enrichment.
 28. Regarding whether the alleged will is admissible, the plaintiffs submit that its validity should be tested in the probate and administration court and not this court, and therefore, the defendant's reliance is misplaced and unsustainable.
 29. The defendant filed written submissions dated 16/12/2025. On whether the suit parcel is held in trust, the defendant submits that the deceased's will did acknowledge that the defendant's family financed the purchase, and intended to have the defendant as a beneficial owner and not a trustee. The defendant also submits that the plaintiffs are the widows of the deceased, and it is insufficient to establish a trust.
 30. The defendant relied on Sections 3 and 5 of the Trusts Act, Section 6 of the [Matrimonial Property Act](#), Section 107 of the [Evidence Act](#), and *Karanja -vs- Karanja* (1995) eKLR.
 31. Further, the defendant submits that the plaintiffs have not discharged the evidential burden, as he who alleges must prove. Reliance is placed on *Muthoni vs Nyirenda* (2012) eKLR and Section 9 of the Wills Act since the deceased's will is unchallenged.
 32. From the pleadings and evidence adduced in this suit, the issues commending for my determination are;
 - i. Whether the defendant holds the suit parcel in trust for the plaintiffs.
 - ii. Whether the plaintiffs have proved their beneficial interest in the suit land.
 - iii. What is the order as to costs?
 33. The law on trusts under the [Trustee Act](#), "... the expressions 'trust' and 'trustee' extend to implied and constructive trust, and cases where the trustee has a beneficial interest in the trust property...
 34. In *Twalib Hatayan Twalib Hatayan & Anor -vs- Said Saggah Ahmed Al-Heidy & Others* [2015] eKLR, the court, citing the Black's Law Dictionary, 9th Edition; held trust is defined as a right, enforceable solely 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). The court observed that trusts are created either expressly (by the parties) or by operation of law. An express trust arises where the trust property, its purpose, and beneficiaries have been clearly identified. See *Halsbury's Laws of England*, Vol 16, and *Butterworths 1976* at para. 1452.
 35. The court went further and held that, 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. Given that the two are closely interlinked, it is perhaps pertinent to examine each in relation to the matter at hand. A constructive trust is an equitable remedy imposed by the court against one who has acquired property by wrongdoing. See *Black's Law Dictionary* (supra). It arises where the intention of the parties cannot be ascertained. If the circumstances of the case are such as would demand that equity treat the legal owner as a trustee, the law will impose a trust.



36. A constructive trust will thus automatically arise where a person who is already a trustee takes advantage of his position for his own benefit. See Halsbury's Laws of England (*supra*), at para. 1453. As earlier stated, with constructive trusts, proof of parties' intention is immaterial; for the trust will nonetheless be imposed by the law for the benefit of the settlor.
37. Constructive trust is thus meant to guard against unjust enrichment. This trust may arise either upon the unexpressed but presumed intention of the settlor or upon his informally expressed intention. See Snell's Equity 29th Edn, Sweet & Maxwell p.175.
38. With resulting trusts, courts will readily look at the circumstances of the case and presume or infer the transferor's intention. Most importantly, the general rule is that a resulting trust will automatically arise in favour of the person who advances the purchase money. Whether or not the property is registered in his name or that of another is immaterial. See Snell's Equity at p.177 (*supra*).
39. In *Shah & 7 others -vs- Mombasa Bricks & Tiles Limited & 5 others* [2023] KESC 106 (KLR), the court held that the *Trustee Act* defines a "trust" and "trustee" as extending to implied and constructive trusts. A constructive trust was an equitable instrument that served the purpose of preventing unjust enrichment. Trusts were created either expressly, where the trust property, its purpose, and the beneficiaries were clearly stated, or established by the operation of the law. Like in the instant case, where it was not expressly stated, the trust may be established by operation of the law. A constructive trust is a right traceable from the doctrines of equity. It arises in connection with the legal title to property when a party conducts himself in a manner to deny the other party a beneficial interest in the property acquired. Constructive trust would thus automatically arise where a person who was already a trustee took advantage of his position for his own benefit.
40. The plaintiffs claim that they have lived and brought up children on the suit parcel until the second wife of the deceased was married. It is also undisputed that the plaintiffs and their children have also developed and have been tilling the suit parcel with the full knowledge of the defendant.
41. Section 28 of the *Land Registration Act* provides: Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register:
 - (a)
 - (b). Trusts, including customary trust.
42. In the case of *Isack M'Inanga Kiebia* (*supra*), held that a customary trust, as long as the same can be proved to subsist, upon a first registration, is one of the trusts to which a registered proprietor is subject under the proviso to Section 28 of the Registered *Land Act*. Under this legal regime (now repealed), the content of such a trust can take several forms. For example, it may emerge through evidence that part of the land, now registered, was always reserved for family or clan uses, such as burials, and other traditional rites. It could also be that other parts of the land, depending on the specific group or family setting, were reserved for various future uses, such as the construction of houses and other amenities by youths graduating into manhood.
43. The court further held that categories of a customary trust are therefore not closed. It is for the court to decide, based on evidence, as to which category of such a trust subsists as to bind the registered proprietor. Each case has to be determined on its own merits and quality of evidence. It is not every claim of a right to land that will qualify as a customary trust. If the said holding is for the benefit of other members of the family, then a customary trust would be presumed to have been created in favour of such other members, whether or not they are in possession or actual occupation of the land.



44. Some of the elements that would qualify a claimant as a trustee are:
- 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 his or her claim idle or adventurous.
 - d. The claimant could have been entitled to be registered as an owner or other 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.
45. The court also observed that customary trusts, as well as all other trusts, are overriding interests. These trusts, being overriding interests, are not required to be noted in the register. However, by retaining the proviso to Section 28 of the Registered *Land Act* (now repealed), in Section 25 of the *Land Registration Act*, it can be logically assumed that certain trusts can still be noted in the register.
46. Once so noted, such trusts, not being overriding interests, would bind the registered proprietor in terms noted on the register. The rights of a person in possession or actual occupation of land, as previously envisaged under Section 30 (g) of the Registered *Land Act*, have now been subsumed in the “customary trusts” under Section 25 (b) of the *Land Registration Act*. Thus, under the latter Section, a person can prove the existence of a specific category of a customary trust, one of which can arise, although not exclusively, from the fact of rightful possession or actual occupation of the land.”
47. Customary trust is a concept of intergenerational equity, where land is held by one generation for the benefit of succeeding generations, as held in *Mbui Mukangu -vs- Gerald Mutwiri Mbui C.A No. 281 of 2001*. In *Muthuita -vs- Muthuita [1982 – 88] 1KLR 42*, the court held that a customary law trust is proved by leading evidence on the history of the suit property and the relevant customary law on which the trust is founded. See *Nguramuk -vs- Kilekwang (ELC Case E027 of 2023 [2025])*.
48. Under Sections 107-109 of the *Evidence Act*, he who alleges must prove. The defendant alleges that she purchased the suit parcel through the financial assistance of her mother and brothers. The sale and purchase of land is a process sanctioned by the law. It includes the execution of a sale agreement, or previously, a memorandum or oral agreements would suffice. The onus was therefore on the defendant to lead evidence on the purchase and call parties to the sale as witnesses to corroborate her evidence. Evidence on payment receipts for the sale has not been adduced as well.
49. The defendant did not deny or produce evidence to rebut the plaintiffs’ allegations that the land is ancestral land and that the caution was fraudulently lifted. The plaintiffs, in their reply to the amended statement of defence, state that the deceased had been assisted by his late father and brothers, who sold part of the suit parcel to raise part of the purchase price. The intention was to acquire the land on his own behalf and that of his brothers, and family at large. This lays the basis of the land being ancestral land as claimed by the plaintiffs.
50. Issues on the validity or otherwise of the will are not within the jurisdiction of this court to determine. Similarly, this court declines to issue an order directing the subdivision of the suit parcel.
51. The court, having found that title L.R. No. West Pokot/Chepkono/56 is held in trust, directs that the same be subdivided into 3 equal shares and transferred to the 3 wives of the deceased within 2 months, from the date hereof. In default, the Deputy Registrar to sign the transfer forms.



52. This being a family matter, there shall be no orders as to costs.

53. Orders Accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT
KITALE ON THIS 11TH DAY OF FEBRUARY 2026.**

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant Dennis

Wafula for the defendant present

Nabwile for the plaintiff present

