



**Tanui v Chalia & 2 others (Environment and Land Case 46 of 2014)
[2026] KEELC 662 (KLR) (11 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 662 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 46 OF 2014**

CK NZILI, J

FEBRUARY 11, 2026

BETWEEN

MARY WANJIKU TANUI PLAINTIFF

AND

LUCY CHEPKOROS CHALIA 1ST DEFENDANT

ISABELLA OBONYO 2ND DEFENDANT

TAPRANDICH CHANGWANY KIPCHUMBA 3RD DEFENDANT

JUDGMENT

1. The plaintiff approached this court through a plaint dated 17/3/2014, which was later amended on 24/2/2025, seeking:
 - a. Declaration that the 3rd defendant holds Title No. Trans Nzoia/Suwerwa/239 in trust and an order for him to surrender the title for cancellation, execute a transfer in default, the Deputy Registrar to do so.
 - b. Permanent injunction restraining the defendants, their servants and or agents from interfering with the plaintiff's activities on title No. Trans Nzoia/Suwerwa/239.
2. It was contended by the plaintiff that he purchased plot No. 239, Suwerwa Settlement Scheme, on 26/4/2009, from the 1st defendant at Kshs. 400,000/= which she cleared in full, took vacant possession and has remained thereon, utilizing the land up to date.
3. The plaintiff averred that the 3rd defendant allegedly claims the land to be hers and has been interrupting the occupation or preventing or interrupting the use, with express permission of the 1st defendant.
4. The plaintiff averred that upon conducting an official search at the lands registry, she established that the title holder has been the 3rd defendant since 24/3/2014. The plaintiff averred that it was an implied



term in the rule that the 1st defendant would liaise with the 3rd defendant so that a discharge of charge and a transfer from the Settlement Fund Trustee could issue in her favour.

5. The plaintiff averred that the defendants have no proprietary rights on the suit land; the 3rd defendant obtained the title to the same fraudulently, illegally, and through misrepresentation, in cohorts with the 2nd defendant.
6. The 1st and 2nd defendants opposed the suit through a statement of defence dated 16/4/2014. The 1st defendant averred that she purchased the suit land from the 3rd defendant in July 2003, took vacant possession to date, and has never sold to the plaintiff as alleged or at all.
7. The 1st and 2nd defendants denied that the plaintiff has been utilising or staying on the suit land, since it has always been in their possession. The 1st and 2nd defendants without prejudice to the foregoing aver that the 1st defendant in 2003, had authorized the husband of the plaintiff, as his nephew, to stay on the suit land as a caretaker, which act did not constitute a sale to him, otherwise, the land belongs to her and that the plaintiff has no documents to indicate the alleged sale.
8. The 1st and 2nd defendants averred that the title to the suit land was being processed in the name of the 1st defendant as the rightful owner of the land, who the 2nd defendant duly authorised to plough the land in 2013, only for the plaintiff to prevent the same, yet she has no proprietary right over the land to enable her enjoy the alleged quiet possession and user rights. The 1st and 2nd defendants term the suit as disclosing no cause of action, incompetent, ambiguous, and inept.
9. Through a reply to defence dated 30/5/2014, the plaintiff denied that her late husband was solely authorised to use the land as a caretaker; otherwise, the 1st defendant voluntarily executed the sale agreement dated 26/4/2004, and duly received the full purchase price for the land.
10. Mary Wanjiru Tanui initially testified as PW1 on 2/11/2022, before she stepped down. She relied on a witness statement dated 17/3/2014 as her evidence-in-chief. She told the court that she bought the suit land from the 1st defendant 10 years ago from the 1st defendant, where she used to reside up to 2014, but her occupation was interrupted by the 2nd defendant, claiming purchaser's rights, who chased her away using a tractor that he had come with to till the land.
11. PW1 relied on the chief's letter dated 21/5/2013 and an official search certificate as P. Exhibits No. (1) and (2). Earlier, the plaintiff had told the court that since she was chased away from the land, she was now a squatter in Nyeri. PW1 said that she knew the 1st defendant very well, for she was the step-mother to her husband, who was then the area chief of Suwerwa, Makutani, and Kapsara.
12. PW1 told the court that Sabella Obonyo was the daughter of the 1st defendant. She produced the sale agreement with the 1st defendant, who sold her Plot No. 239 for Kshs. 400,000/=. PW1 said that she signed the sale agreement before the area chief, who took over from her late husband, Mr. Simon Ruto.
13. Further, PW1 said that after buying the suit land, she continued using it for almost 5 years before she fell sick, only for a daughter of the seller's daughter to start interfering with her occupation while conspiring with the 2nd defendant. PW1 said that the area chief then wrote a letter dated 21/5/2013 confirming the sale.
14. PW1 said that after buying the land, she was not taken to the Land Control Board, since they declined to do so. PW1 said that the area chief also wrote to the police for her land use and protection by a letter dated 28/6/2015; her follow-up for the title deed was unsuccessful.



15. PW1 said that all her original documents were in the house before she was chased away in a neighbouring Plot No. 25 after her husband passed on. PW1 said that she was also in Plot No. 764, Trans Nzoia, belonging to the wife of the son of Tanui, Nancy Wanjiru Langat.
16. PW1 produced a copy of the title as P. Exhibit No. (3). The letters from the chief dated 21/5/2015 and 28/6/2015 were initially sent to Nancy, who had sued her in Kitale CMC No. 134 of 2021, in which eviction orders were issued. She produced the letter containing the case dated 24/11/2021 and the order dated 23/11/2021 as P. Exhibit No. 3(a) and (b). The sale agreement dated 26/4/2004 was marked as PMI-1(a).
17. Though the defendants were duly served with a hearing notice and affidavit of service dated 16/9/2025, duly filed, they did not show up at the hearing.
18. The plaintiff filed written submissions dated 5/12/2025. On the ownership of the suit land, the plaintiff submits that she lawfully purchased the same from the 1st defendant and paid full consideration of Kshs. 400,000/=, took vacant possession in 2004 and has been utilizing it peacefully and openly, until the 2nd defendant started to lay claim to the land.
19. The plaintiff submits that the suit land was fraudulently transferred and registered in the name of the 3rd defendant. Reliance is placed on Section 26(1) of the Land Registration Act and *Elijah Makeri Nyangw'ra -vs- Stephen Mungai Njuguna & Another (2013) eKLR*.
20. On whether the land is held in trust for the plaintiff, the plaintiff submits that her equitable interest crystallized upon full payment of the purchase price. The plaintiff further submits that the registration of the suit land in the name of the 3rd defendant did not extinguish her equitable interest but created a constructive trust. Reliance is placed on *Willy Kimutai Kitilit -vs- Michael Kibet (2018) eKLR*. The plaintiff submits that she has proved on a balance of probabilities, lawful purchase, possession, and use of the suit land.
21. The issues calling for my determination are:
 - (a) If the plaintiff has established that the registration of the title to the suit land was in breach of and subject to a trust.
 - (b) If the plaintiff is entitled to the reliefs sought.
 - (c) What is the order as to costs?
22. The plaintiff's cause of action is that she bought the suit land from the 1st defendant for value, paid the total consideration, took vacant possession, but the 1st and 2nd defendants declined to facilitate its registration, and instead colluded to frustrate her occupation, and chased her away.
23. Further, the plaintiff blames the 3rd defendant for causing the land to be registered under his name through fraud, misrepresentation, and illegality, since she had an overriding interest in the land, which she urges the court to declare. In her evidence, the plaintiff testified that the 1st defendant was a step-mother to her late husband, who willingly sold the land to her for value.
24. Whereas the 1st and 2nd defendants admits that the plaintiff late husband used to live on the land, as a caretaker, they deny that there was any sale agreement, as alleged or at all, otherwise they insist that the land belongs to the 2nd defendant, who was authorized by the 1st defendant to take possession in 2013, which unfortunately, the 2nd defendant purported to frustrate and chased her away from utilizing the land.



25. Black's Law Dictionary, 9th Edition, defines trust as a right enforceable in equity, to the beneficial enjoyment of property which another holder has legal title, as a property interest held by one person (trustee), at the request of another (settler), for the benefit of a third party (beneficiary).
26. A constructive trust is defined as an equitable remedy imposed by the court against one who has acquired property by wrongdoing, where the intention of the parties cannot be ascertained and where the circumstances of the case are such as could demand that equity treats the legal owner as a trustee, or where a person who is already a trustee take advantage of his position for his own benefit. See Halsbury's Laws of England Vol. 16 paragraph 1452-3.
27. In *Diasproperty Limited & another -vs- Githae & 8 others* [2025] KESC 19 (KLR), the respondent had proceeded to sell the entire suit property measuring 264 acres to the 1st and 2nd appellants, who, during the sale, knew that the 1st respondent was in possession. The trial court declared there existed a constructive trust in respect of the 200 acres by virtue of placing him in possession and having received the money, with the understanding that they would convey the 200 acres to the buyer.
28. At the Court of Appeal in Civil Appeal No. E157 of 2023, the court affirmed the decision. The Court of Appeal held that under Section 28(b) of the *Land Registration Act*, trusts constitute overriding interests, and it was a necessary equitable remedy to enable the 1st respondent obtain justice as against the unconscionable conduct of the appellants.
29. In *Kabui -vs- Kabui* Civil Appeal 415 of 2018 [2024] KECA 1396 [KLR] (11th October 2024) (Judgment), partes had entered into an oral sale agreement to sell one acre of land to be excised from L.R. No. Chania/Kangoni/2088 for Kshs. 70,000/= . Kshs. 40,000/= had been paid and vacant possession given on the understanding that the transfer would be effected on the clearance of the balance. The trial court ordered the eviction of the purchaser for breach and a refund of his deposit.
30. The court said that constructive trust, proof of the parties' intention is immaterial, and applies to guard against unjust enrichment. The court held that in a resulting trust, as opposed to constructive trust, courts will look into the circumstances of the case, presume or infer the transferor's intention. Further, the court said that a resulting trust, as a general rule, automatically arises in favour of a person who advances the purchase money, and that whether or not the property is registered in his name or that of another is immaterial.
31. The court in the *Kabui -vs- Kabui* (supra), based on the circumstances, held that the parties intended that the said acre of the suit land would eventually be transferred in favour of the appellant. The court, guided by *Macharia Mwangi & 87 others -vs- Davidson Mwangi Kagiri* [2014] eKLR, held that the respondent had created a constructive trust in favour of the appellant and could not renege on that duty.
32. The court, further guided by *Gurdev Singh Birdi & Another -vs- Abubakar Madhbuti* [1997] KECA 13 (KLR), held that where a contract sale of land does not make time of the essence, equity requires that time be made of such essence before the contract can be rescinded. In this case, the court held that since the contract was oral, and the appellant had made improvements on the land by erecting a matrimonial home, the rescission without notice was not lawful. The court, in the circumstances, said that it was only right and just that the appellant's proprietary rights be safeguarded to continuously occupy the said parcel of land, and a title deed issued in favour of the respondent be interfered with.
33. Applying the foregoing case law to this suit, there is an admission that the 1st defendant is the step-mother of the plaintiff's late husband, who had at one stage allowed the step-son to live on the suit properties, allegedly as a caretaker. The plaintiff narrates that the occupation was not permissive but



- translated into a formal sale agreement, where she paid a deposit before the area chief, as per the sale agreement produced herein. Letters have also been produced confirming that, indeed, the plaintiff was a bona fide purchaser for value.
34. The plaintiff has pleaded and testified that she occupied the suit premises for over five years before she was taken ill and was eventually chased away from the land when her husband passed on.
 35. The 1st and 2nd defendants have not refuted the plaintiff's evidence and version of her facts by substantiating the contents of their statement of defence. Equally, the 3rd defendant has not disputed that the title deed held by him is subject to overriding interests, by way of a constructive trust in favour of the plaintiff. Failure to file a defence or attend court to support a statement of defence or cross-examine a plaintiff renders the claim uncontroverted. See *Imperial Health Sciences Kenya Limited -vs- Wiseway Freighters Limited* [2018] eKLR, *Kenya Power and Lighting Company Limited -vs- Mohamed Dahir Molole* [2022] eKLR, and *Acceler Global Logistics -vs- Gladys Nasamba Waswa & Another* (2020) eKLR.
 36. Evidence denotes the means by which an alleged matter of fact, the truth of which is submitted for investigation, is given in court. The facts as pleaded and testified by the plaintiff have not been controverted. See *CMC Aviation Ltd -vs- Kenya Airways Ltd (Cruisair Ltd)* [1978] KECA 9 (KLR).
 37. In *Shah & 7 others -vs- Mombasa Bricks & Tiles Limited & 5 others* [2023] KESC 106 (KLR), the court said that a constructive trust arises when a party with the legal title to the property conducts himself in a manner to deny the other party beneficial interest in the property acquired.
 38. The court said that overriding interests under Sections 25, 26, and 28 of the [Land Registration Act](#) includes trusts and that constructive trusts could arise in various circumstances, including in land sale agreements. The court said that constructive trusts were an equitable remedy imposed by law whenever justice and good conscience demand.
 39. In *Diasproperty Ltd & Another -vs- Githae* (supra), an administrator of the deceased estate, while aware that the father had sold 200 acres of the property to the 1st respondent in 1986, filed succession proceedings, obtained a grant, then caused the entire property to be in his name jointly with the siblings.
 40. The familial relationship between the plaintiff and the 1st defendant has not been disputed. Entry into the land by the plaintiff and her late husband is admitted by the 1st and 2nd defendants. Acknowledgement of a sale and evidence of payment of consideration of Kshs. 400,000/= is admitted. The 1st and 2nd defendants did not dispute the correspondence through the area chief, one of whom was a successor to the office of the plaintiff's late husband. Use of the land for over five years has not been disputed.
 41. Evidence of notice to vacate the land, if at all, that the plaintiff was a mere licensee is not before the court. The 1st defendant alleged that she bought the land from the 3rd defendant.
 42. Evidence by way of a sale agreement is missing. The 2nd defendant, as a child of the 1st defendant, must have known the occupation of the plaintiff when she allegedly bought the suit land in 2013. The circumstances herein show that the 1st defendant obtained a deposit and some other payments from the plaintiff and put her in vacant possession, intending to transfer the suit land to her.
 43. The upshot is that I find that the facts and the conduct of the parties depict an intention to create a constructive trust or a resultant trust. The court proceeds to allow the claim.



44. The 3rd defendant shall sign the transfer forms in favour of the plaintiff within 2 months from the date hereof; in default, the Deputy Registrar to sign. An eviction notice shall issue for 3 months.
45. Costs to the plaintiff.
46. Orders accordingly.

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

In the presence of:

Court Assistant - Dennis

Wanyonyi for the plaintiff - present

No appearance for the defendants

HON. C.K. NZILI

JUDGE, ELC KITALE.

