



REPUBLIC OF KENYA



KENYA LAW
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**Njeru v Njeru (Environment and Land Appeal 91 of 2015)
[2025] KEELC 5882 (KLR) (22 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5882 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL 91 OF 2015**

AK BOR, J

JULY 22, 2025

BETWEEN

NJOKA NJERU APPELLANT

AND

BENARD MUGO NJERU RESPONDENT

JUDGMENT

1. This appeal arises from the decision of the Land Disputes Tribunal (the Tribunal) rendered on 8/1/2009 in Case No. 149 of 2007 (Embu Award no. 14 of 2009). Being dissatisfied with the Tribunal's award, the Appellant lodged an appeal before the Eastern Province Land Disputes Appeal Tribunal at Embu. However, following the establishment of the Environment and Land Court (ELC) under the *Environment and Land Court Act*, 2011 and in accordance with Practice Directions No. 1617 of 2012, all pending appeals before the Provincial Land Disputes Appeals Committees were transferred to the nearest ELC for hearing and determination. That is how this appeal is now before this court.
2. The dispute concerns ownership of the land known as Ngandori/Kiriari/394 (the suit land), measuring approximately 7.5 acres. The Appellant and the Respondent are brothers. In the case before the Tribunal, the Appellant sued the Respondent claiming that the Respondent was registered as the owner of the suit land to hold it in trust for their family. The Appellant claimed that the land originally belonged to their late father, Njeru M'Mwati who died in 1948.
3. He contended that during the land demarcation process, their mother, Ruth Gicuku, was given 7.5 acres of the land which was registered in the Respondent's name to hold it in trust for the family. The Appellant explained that they wanted to subdivide the land in 1973 but the Respondent convinced their mother that he would subdivide the land after they attained the age of 18 years. He averred that the Respondent had been occupying and working on the land since 1960 to date.



4. The Appellant claimed that he lived on the land from 1960 to 1970 before he purchased his own 2-acre piece of land where he lives to date. He mentioned that he was born in 1941 while the Respondent was born in 1938. He stated that their mother had never developed the suit and that their brother Elias Ndwiga Njeru had built a semi-permanent house on the land, planted 1800 tea bushes, 150 stems of coffee, and was carrying out subsistence farming on a ¼ acre of the disputed land. He was claiming half share of the suit land. He urged that a third brother, Elias Ndwiga Njeru, filed a case against the Respondent over the same land and was awarded 2 acres.
5. The Appellant called one witness, Musa Njagi Maimiti to testify in support of his case. Although it is not clear what his relationship was with the Appellant, his testimony was that as the mother of the Appellant, Ruth Ciambutu wished her land to be registered in the name of Bernard Mugo, the Respondent. He was born in 1931 and participated in the demarcation of the land in dispute.
6. In response, the Respondent asserted that the suit land is his. He explained that he got his identity card in 1959 which qualified him to get the land. It was his case that he occupies and works on the suit land which he had developed it since 1960. He contended that their mother was sick for four months and none of his brothers took care of her and neither did the Appellant attend her burial.
7. After hearing the parties, the Tribunal made the following decision:
 - a. The parcel of land in dispute is Ngandori/Kiriari/394 comprising of 7.5 hectares.
 - b. The plaintiff Njoka Njeru (the Appellant herein) is second brother to the defendant Bernard Mugo Njeru (the Respondent).
 - c. We have noted that Elias Ndwiga Njeru who is a third brother had filed a case with the defendant on the same disputed land and was awarded two (2) acres out of the 7.5 hectares.
 - d. The plaintiff does not neither occupy nor work on the said parcel of land. He lives on a 2 acre piece of land elsewhere.
 - e. The defendant occupied and worked on the land since 1960 to date.
 - f. The defendant has the official title deed pertaining to the land. The title deed is no. Ngandori/Kiriari/394 registered in the name of Bernard Mugo Njeru.
 - g. Bernard Mugo Njeru to continue occupying and working on the land without interference.
8. The appeal was canvassed through written submissions. The Appellant submitted that the Respondent held the suit land in trust for the Appellant and relied on *Isaack M'Inanga Kiebia v Isaaya Theuri M'Lintari & Another* [2018] eKLR on the doctrine of customary trust and urged that he met all the prerequisites set out in that decision. He relied on the evidence of Musa Njagi Maimiti who confirmed to the Tribunal that he was there during the demarcation and that the suit land was allocated to the parties' mother. Additionally, that he testified that his brother Elias Ndwiga Njeru lived on the suit land and had developed it. The Appellant faulted the Tribunal for failing to appreciate that his brother was awarded part of the land because it was family held which the Respondent held in trust for the family.
9. The Appellant also relied on Section 28 of the *Land Registration Act*, which he submitted recognised customary trusts as overriding interests over land even without their being noted on the land register. He urged that having established that a customary trust existed in his favour, it was only fair that the remaining portion comprising 5.5 acres be divided equally between him and the Respondent.



10. On his part, the Respondent submitted that the Appellant had not established the relationship between him and the Respondent and that he had not provided any certificate of birth or witnesses to establish his relationship with the Respondent. Further, that the Appellant was not a party to the Tribunal case in which Ndwiga Njeru was the Plaintiff and that the Appellant could not therefore bring up the facts of that case as his own. The Respondent's counsel questioned how many brothers there were and what would happen if another brother showed up to claim the suit land. The Respondent urged that there was no basis for faulting the finding of the Tribunal.
11. The issue that falls for determination in this appeal is whether the Respondent, Bernard Mugo Njeru, holds the suit land in trust for the Appellant, Njoka Njeru. The Appellant's claim is that the suit land is subject to a customary trust. In *Isaack M'Inanga Kiebia v Isaaya Theuri M'Lintari & Another* [2018] KESC 22 (KLR) the Supreme Court set out principles to guide in determining the existence of a customary trust. The Court stated that it was not every claim of a right to land that would qualify as a customary trust. That what is essential is the nature of the holding of the land and intention of the parties. That if the said holding was 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 were in possession or actual occupation of the land. The Court summarised some of the elements that would qualify a claimant as a trustee as :- that the land in question was before registration, family, clan or group land; the claimant belongs to such family, clan, or group; the relationship of the claimant to such family, clan or group is not so remote or tenuous as to make his/her claim idle or adventurous; the claimant could have been entitled to be registered as an owner or other beneficiary of the land but for some intervening circumstances; and that the claim is directed against the registered proprietor who is a member of the family, clan or group.
12. In the present case, the land is registered in the name of the Respondent. What is especially significant is the evidence provided by the Appellant from a previous case involving their brother, Elias Ndwiga in District Land Tribunal Case No. 39 of 2003, in which Ndwiga sued the Respondent over the same land. In those proceedings, the Respondent admitted that the land was allocated to him by the clan.
13. The Tribunal noted that the witnesses in that case who were elders from the clan committee involved in the demarcation process testified that the suit land was family land and that it had been registered in the Respondent's name to hold in trust for the family. They testified that it was the Respondent's mother who had requested that the suit land be registered in the Respondent's name. Based on this, the Tribunal awarded Ndwiga 2 acres out of the suit land.
14. Although, strictly speaking, the Tribunal lacked jurisdiction to determine disputes involving ownership of land as can be gleaned from Section 3(1) of the repealed *Land Disputes Tribunals Act* which limited the Tribunal's jurisdiction to matters relating to boundaries, trespass, occupation, and use of land, the proceedings before the Tribunal offer useful insight on the history of the suit land and cannot be disregarded altogether in the present case. The fact that a portion of the suit land was previously awarded to Elias Ndwiga under similar circumstances provides strong evidence that the suit land was indeed held by the Respondent in trust for his brothers.
15. It is apparent that while determining the Appellant's claim before it, the Tribunal relied heavily on the fact that the Appellant was not occupying the suit land. The Supreme Court clarified in the *Isaack M'Inanga Kiebia* case that possession or actual occupation of the land is not a requirement to establish a customary trust and that what matters is the nature of the holding of the land and the intention that the land was to benefit other family members. The Court held that a customary trust fell within the ambit of the proviso to Section 28 of the repealed Registered *Land Act*, while the rights of a person in



possession or actual occupation, were overriding interests and fell within the ambit of Section 30(g) of the Registered *Land Act*.

16. This court is satisfied that the Appellant has established, on a balance of probabilities, the existence of a customary trust over the suit land and that the appeal has merit. The court finds that the Respondent holds land parcel Ngandori/Kiriari/394 in trust for the Appellant.
17. The decision or award of the Land Disputes Tribunal rendered on 8/1/2009 in Case No. 149 of 2007 (Embu Award No. 14 of 2009) is set aside. Since 2 acres out of the 7.5 acres were already given to the parties' other brother, Elias Ndwiga, based on the decision in Embu District Land Tribunal Case No. 39/2003, it means that the remaining land is 5.5 acres.
18. In light of the fact that the Respondent has utilised and developed the suit land since the 1960's, it is only fair and just that the Appellant be allocated 2 acres out of the 5.5 acres comprising the suit land. Each party will bear its costs of the appeal.

DELIVERED VIRTUALLY AT EMBU THIS 22ND DAY OF JULY 2025.

K. BOR

JUDGE

In the presence of: -

Ms. Muthoni Ndeke for the Appellant

Mr. Gichuki Momanyi for the Respondent

