



REPUBLIC OF KENYA



KENYA LAW
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**Maingi v Maingi & 3 others (Civil Appeal 310 of 2019)
[2025] KECA 1436 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KECA 1436 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL 310 OF 2019
J MOHAMMED, LK KIMARU & AO MUCHELULE, JJA
JULY 31, 2025**

BETWEEN

CHARLES IRUNGU MAINGI APPELLANT

AND

SERGIUS KIUNGI MAINGI 1ST RESPONDENT

GERALD WAKARO MAINGI 2ND RESPONDENT

ELIZABETH WAMBUI MAINGI 3RD RESPONDENT

ESTHER GATHONI MAINGI 4TH RESPONDENT

*(An appeal from the judgment and order of the Environment and Land Court
(L.N. Waithaka, J.) made on 19th February 2019 in Nyeri ELC No. 177 of 2019)*

JUDGMENT

Background

1. By way of an originating summons, Sergius Kihungi Maingi, Gerald Wakaro Maingi, Elizabeth Wambui Maingi and Esther Gathoni Maingi (the 1st to 4th respondents) instituted proceedings claiming a beneficial interest in land parcel LR No. Chinga/Gathera S45 (the suit property), asserting that Charles Irungu Maingi (the appellant) held the property in trust for himself and the respondents in equal shares. They prayed for an order directing that the suit property be subdivided into equal portions and the resultant titles be transferred to all the parties. In the alternative, they sought a declaration that they had acquired title to a portion of the suit property by way of adverse possession.
2. The respondents' evidence was that the suit property originally belonged to their grandfather, one Irungu Maingi, who passed away in 1953. Irungu Maingi had two wives: Wairima Irungu and Kirigo Irungu. Wairima had a son, Maingi Irungu. Kirigo also had a son named Maingi Irungu, who was the



appellant's father who died in 1952. Upon his death, his widow (Wachuka) remarried Maingi Irungu, the son of Wairima Irungu, who is the respondents' father.

3. The respondents averred that the deceased patriarch, Irungu Maingi, had two parcels of land, each of which was allocated to one of the two households. The suit property was one such parcel. At some point, the respondents' mother took possession of one of the parcels and planted tea on it in 1970. The appellant was later granted a portion of the suit property, together with the tea plantation thereon, upon his marriage in 1978. The respondents alleged that the appellant fraudulently and through misrepresentation caused the suit property to be registered solely in his name without acknowledging the respondents' beneficial interests. They contended that the registration was subject to a customary trust under Kikuyu Customary Law in favour of all siblings, entitling each to an equal share.
4. The appellant denied the claims and stated that upon the death of his father, only he and his sister, Kirigo survived him. He averred that the respondents had been settled on another parcel of land, Chinga/Kiguthu/522 which belonged to his stepfather. He denied that the respondents had ever been in possession of the suit property. The appellant stated that he permitted his mother to cultivate tea on the suit property as a means of livelihood and further allowed her daughter, Asumpta Njoki, to reside on the property to assist her. Upon Asumpta's demise, she was interred on the property. Her daughter, the 3rd respondent, later came to assist with tea picking.
5. The appellant further denied that the registration of the suit property in his name was subject to any trust, and asserted that the alternative claim of adverse possession was untenable, as the respondents had not demonstrated continuous and uninterrupted possession of the suit property.
6. The Environment and Land Court (ELC) (L. N. Waithaka, J.) held in part as follows:

“On whether the suit property is subject to a trust in favour of the applicants (the respondents herein), having determined that the applicants and the respondent belong to the same household and there being evidence that the respondent was registered as the proprietor of the suit property while still a minor to hold in trust for himself and his father's house, I find and hold that his registration as the proprietor of the suit property is subject of a customary trust in favour of the applicants... However, based on the evidence adduced in this case which shows that the applicants' use and occupation of the suit property is distinct from that of the respondent, I decline to order that the applicants are entitled to an equal share of the suit property and instead order that the applicants are entitled to the portion of the suit property which they are currently in possession of.”
7. Dissatisfied with the judgment, the appellant lodged this appeal on six grounds, which may be summarized that the learned Judge:
 - a. failed to consider the evidence on record and made findings not supported by the evidence or pleadings;
 - b. erred in finding that the land was held in trust for both households, whereas it was held in trust solely for the first house;
 - c. misdirected herself in determining that the respondents were children of the deceased; and
 - d. failed to appreciate the distinct lineage of the appellant from the respondents, thereby conflating the two houses.



Submissions by Counsel

8. At the hearing, the appellant was represented by learned counsel Mr. Karweru, who had filed written submissions. There was no appearance on behalf of the respondents, despite service, and their counsel had not filed any submissions.
9. Mr. Karweru briefly highlighted his submissions, reiterating that the appellant belonged to the first house (Kirigo's), while the respondents were from the second house (Wairima's). Counsel contended that the suit property had been registered in trust for the first house, and the respondents were now attempting to claim it by sowing confusion regarding their entitlement.
10. Counsel outlined the family lineage: Irungu Maingi had two wives— Kirigo Maingi (1st wife) and Wairima Irungu (2nd wife). Kirigo bore one son, Maingi Irungu (the appellant's father), who was married to Wachuka Maingi and had two children: the appellant and Kirigo. Upon the death of Maingi Irungu, in 1952, Wachuka was inherited by Maingi Irungu (son of Wairimu) in accordance with Kikuyu customary law, and they had six (6) children, including the respondents.
11. Counsel submitted that despite the common maternal link, under Kikuyu customary law, the appellant and the respondents belonged to separate houses. He submitted that during the land consolidation process, land was allocated by houses, and the suit property was allocated to the house of Kirigo, while land parcel Chinga/Kiguthu/522 was allocated to the house of Wairima. Counsel faulted the trial court for failing to properly distinguish between the two houses, thereby arriving at an erroneous conclusion.

Determination

12. Having carefully considered the record of appeal, the submissions, the authorities cited and the applicable legal principles, we are mindful of our duty as the first appellate court as articulated by this Court in *Peter M. Kariuki v Attorney General* [2014] eKLR is to:

“...reconsider the evidence adduced before the trial court and re-evaluate it to draw our own independent conclusions, and to satisfy ourselves that the conclusions reached by the trial Judge are consistent with the evidence...”
13. The primary issue for determination in this appeal is whether the appellant held the title to the suit property in trust for the benefit of other family members.
14. It is undisputed that while the appellant is the registered proprietor of the suit property, the respondent's grandfather was initially registered as the proprietor in 1958, during his minority. The appellant contends that this parcel of land was intended for his father, who passed away in 1952. It was his further contention that as the sole surviving son of his father, the suit property was registered in his name with the intention that he would inherit it absolutely.
15. In his testimony, the appellant asserted that none of the respondents, save for the 3rd respondent, reside on the suit property, as they occupy another parcel of land allegedly inherited from their mother. He further submitted that the 3rd respondent only took up residence on the suit property to care for their mother, who had been allocated a portion thereof for subsistence through tea cultivation.
16. The respondents, however, contend that the registration of the suit property in the appellant's name was made in trust for all siblings, including the respondents.



17. The law on customary trust is now settled. To establish such a trust, a claimant must demonstrate specific elements as outlined by the Supreme Court in *Isack Kieba M’Inanga v Isaaya Theuri M’Lintari & Another* [2018] eKLR. The Court held:

“...a customary trust, as long as it 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* (now repealed).”

18. The Court further elaborated that the existence of a customary trust is a question of fact, determined by examining the nature of the landholding and the intentions of the parties. The following elements are indicative of a customary trust:

1. The land was, prior to registration, family, clan, or group land.
2. The claimant belonged to such family, clan, or group.
3. The claimant’s relationship to the group was not so remote as to render the claim frivolous.
4. The claimant might have been entitled to be registered as an owner or beneficiary but for some intervening circumstances.
5. The claim is against a registered proprietor who is a member of the same family, clan, or group.

19. Upon re-evaluating the evidence, we find that these elements are satisfied in the present case. Although the appellant argues that a customary trust cannot be presumed solely on the basis of a shared maternal lineage, we find that the ELC correctly found that the parties were siblings. This was evidenced by their shared grandfather, the deceased Irungu Maingi, who was the original registered owner of the suit property. Furthermore, although they had different fathers, the shared maternal relationship was sufficient, in the circumstances of this case, to infer the existence of a customary trust.

20. Accordingly, we are satisfied that the appellant held the suit property subject to a customary trust in favour of the respondents and that the ELC did not misapprehend either the law or the facts in arriving at its determination.

21. In view of the foregoing, we find no merit in the appeal. The judgment and orders of the ELC are hereby upheld. Given the familial relationship between the parties, we direct that each party shall bear their own costs of this appeal.

22. It is so ordered.

DATED AND DELIVERED AT NYERI THIS 31ST DAY OF JULY, 2025

JAMILA MOHAMMED

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JUDGE OF APPEAL

L. KIMARU

.....

JUDGE OF APPEAL

A. O. MUCHELULE

.....



JUDGE OF APPEAL

I certify that this is a true Copy of the original

Signed

DEPUTY REGISTRAR

