



**Ndiritu & another v Ndiritu (Environment & Land Case 189 of 2014)
[2025] KEELC 552 (KLR) (14 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 552 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 189 OF 2014
JO OLOLA, J
FEBRUARY 14, 2025**

BETWEEN

JOHN MBAUNI NDIRITU 1ST PLAINTIFF

BILHA WANGARI WANG'OMBE 2ND PLAINTIFF

AND

FRANCIS GICHUKI NDIRITU DEFENDANT

JUDGMENT

Background

1. By an Originating Summons dated 29th August, 2014, John Mbauni Ndiritu and Bilha Wangari Wang'ombe (the Plaintiffs) pray for a determination of the following:-
 1. Whether L.R. Nos. Mugunda/Rurii Block 1/82 and 201 are registered in the name of Francis Gichuki Ndiritu in trust for the plaintiffs and the defendant and in what proportions.
 2. Whether the said trust subsisting in respect of L.R. Nos. Mugunda/Rurii Block 1/82 and 201 registered in the names of Francis Gichuki Ndiritu should be determined and all the beneficiaries be granted their respective shares.
 3. That the costs of the suit be paid by the defendant.
2. The Originating Summons is supported by an Affidavit sworn by the 1st Plaintiff wherein he deposes that the two parcels of land were originally registered in the name of the Government of Kenya before being transferred to the name of their mother Beth Njeri Ndiritu.
3. it is the Plaintiffs' case that the two constituted trust property and that the Defendant acquired title thereto through corruption, misrepresentation and fraud and that the same should be rectified.



4. Francis Gichuki Ndiritu (the Defendant) is not opposed to the determination of the trust. It is however his case that due to the 1st Plaintiff's irresponsible lifestyle and propensity to sell land, the properties should not be registered in the name of the 1st Plaintiff but the same should be registered in the names of the 1st Plaintiff's children. The Defendant however concedes that his mother transferred the suit parcels to his name in trust for the entitled beneficiaries.
5. In respect of the 2nd Plaintiff, the Defendant denies that she is a beneficiary to the two parcels of land. The Defendant avers that the 2nd Plaintiff was married to their deceased brother but she later deserted her home and got married elsewhere. The Defendant accused the two Plaintiffs of colluding with each other with a view of selling off the land.

Analysis and Determination

6. I have carefully perused and considered the pleadings filed herein, the testimonies of the two witnesses who testified for the Plaintiffs and the evidence adduced at the trial. I have similarly perused and considered the submissions placed before me by the Plaintiffs. The Defendant neither testified at the trial nor did he file any submissions for the court's consideration.
7. By the Originating Summons as filed before the court, the two Plaintiffs plead that they are beneficiaries of the two parcels of land known as Mugunda/Rurii Block 1/Muthangira/82 measuring 6.070 Ha and Mugunda/Rurii Block 1/Muthangira/201 measuring 2.137 Ha. The Plaintiffs accuse the Defendant of fraudulently causing the two parcels of land to be transferred into his name. The two Plaintiffs assert that given their beneficial interest in the parcels of land, the Defendant's registration as the proprietor thereof is in trust for himself and the Plaintiffs. They have urged the court to determine the said trust and to accord each beneficiary their respective shares of the land.
8. From the material placed before the court, there was no dispute that the suit properties were prior to the year 2014 registered in the name of one Beth Njeri Ndiritu. The said Beth Njeri Ndiritu was the mother of both the 1st Plaintiff and the Defendant herein. Beth was also the mother of one Joseph Wang'ombe who until his death in the year 1989, was the husband of the 2nd Plaintiff.
9. While rejecting the accusation that he had fraudulently transferred the suit properties into his name, the Defendant does not deny that he holds the same in trust for the entitled beneficiaries. In his Replying Affidavit sworn on 25th November, 2014, the Defendant asserts that the transfers of the suit properties were done in accordance with the wishes of their mother Beth who was at the time still alive but bedridden and incapacitated due to ill health.
10. In his pleadings filed before the court, the Defendant does not deny that the 1st Plaintiff as his brother is beneficially entitled to the suit property. It is his position that he has no objection to the determination of the trust save that the 1st Plaintiff's share should be registered in the name of his children and not the 1st Plaintiff. According to the Defendant the 1st Plaintiff is "a man of many women" with a high propensity to sell the land and it was therefore their mother Beth's wish that the 1st Plaintiff's share should go directly to his children.
11. In respect of the 2nd Plaintiff, the Defendant asserts that she is not entitled to any share of the said properties. While conceding that the 2nd Plaintiff was married to his brother Joseph Wang'ombe, the Defendant avers in his Replying Affidavit that following the death of his brother in 1989, the 2nd Plaintiff deserted their home and went and got married elsewhere. It was the Defendant's position that even the dowry that his brother had paid to the 2nd Plaintiff's family had been returned and the 2nd



Plaintiff had no more relationship with Beth's family and was only colluding with the 1st Plaintiff for purposes of obtaining the land and selling the same.

12. As it turned out, the Defendant did not testify at the trial and his assertions as made in the Affidavit remained unsupported by any evidence. On the other hand, the two Plaintiffs testified herein and accused the Defendant of violently pushing them out of the suit properties after forcibly taking custody of their ailing mother.
13. In particular, the 1st Plaintiff denied that their mother had given any instructions that the properties be registered directly in the names of his children. The said children who did not testify herein swore affidavits asserting that their father is the one who ought to be registered as the proprietor of the portion of land held in trust by the Defendant.
14. On her part, the 2nd Plaintiff denied leaving her matrimonial home and getting married elsewhere. On the contrary, the 2nd Plaintiff testified that it was the Defendant who had chased her away from the land following the death of her husband after she refused to marry the Defendant. She told the court that she later returned to the land after her mother-in-law, Beth, asked her to do so. The 2nd Plaintiff further told the court that she was claiming the portion of the land that belonged to her husband as she had children who were entitled to inherit their father's portion of the land.
15. As it were, there was no evidence placed before the court to demonstrate that the 2nd Plaintiff was married elsewhere and that the dowry paid by her husband had been returned to Beth's family. Even if that were the case, her children with the Defendant's brother would still clearly be entitled to the portion of the land due to their father.
16. In the circumstances, I was persuaded that the Plaintiffs had established that the Defendant's registration as the proprietor was in trust for the Plaintiffs and himself in equal shares as the sons of Beth Njeri Ndiritu. Accordingly, I hereby make the following orders:-
 - (1) It is hereby declared that LR. Nos. Mugunda/Rurii Block 1/Muthangira/82 and 201 are registered in the name of Francis Gichuki Ndiritu in trust for the Plaintiffs and the Defendant in equal shares.
 - (2) The said trust is hereby determined and the three beneficiaries should each be granted their respective shares of the two parcels of land.
 - (3) The Defendant shall bear the costs of this suit.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 14TH DAY OF FEBRUARY, 2025

In the presence of:

- a. Firdaus the Court Assistant.
- b. Mr. Waweru Macharia Advocate for the Plaintiffs
- c. No appearance for the Respondent

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J.O. OLOLA
JUDGE

