



REPUBLIC OF KENYA



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**Dwiko v Kavatha & 5 others (Environment & Land Case E068 of 2022)  
[2025] KEELC 1408 (KLR) (19 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1408 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E068 OF 2022**

**A NYUKURI, J  
MARCH 19, 2025**

**BETWEEN**

**WANZA DWIKO ..... PLAINTIFF**

**AND**

**SHADRACK MUTISIYA KAVATHA ..... 1<sup>ST</sup> DEFENDANT**

**DANIEL MASAKU KAVATHA ..... 2<sup>ND</sup> DEFENDANT**

**JOSHUA KEEN ..... 3<sup>RD</sup> DEFENDANT**

**GRACE MUMBUA ..... 4<sup>TH</sup> DEFENDANT**

**IRENE NGIMA MUREITHI ..... 5<sup>TH</sup> DEFENDANT**

**LAND REGISTRAR, MACHAKOS ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Introduction**

1. This suit was commenced by way of plaint dated 11<sup>th</sup> September, 2022, whereof the plaintiff sought against the defendants jointly and severally for the following orders;
  - a. A declaration that the Estate of the Late Peter Ndolo Ndwiko is the bonafide owner of L.R No. Mavoko Town Block 3/2840 and any dispositions in favour of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants by way of leases and/or transfers are illegal, null and void;
  - b. A declaration that any sub-division, and/or alienation of L.R No. Mavoko Town Block 3/2840 in favour of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants is illegal and/or unprocedural and therefore null and void;



- c. A declaration that the in favour of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants, whether by themselves or their agents, proxies and servants or any one claiming under them are trespassers and illegal occupiers of the suit land;
  - d. An order for eviction of the in favour of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants their agents and/or anyone claiming under them;
  - e. General damages against the in favour of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants for trespass.
  - f. General damages against the 6<sup>th</sup> defendant for misfeasance in public office and dereliction of duty.
  - g. A permanent injunction restraining the Defendants whether by themselves or their servants or their agents from dealing, alienating, transferring, disposing, sub-dividing, constructing, trespassing, interfering, charging and/or howsoever dealing with L.R No. Mavoko Town Block 3/2840;
  - h. Costs of the suit and interest on the damages;
  - i. Any other relief that the Honourable court may deem just and fit to grant.
2. The plaintiff averred that he was the administrator of the estate of the late Peter Ndolo Dwiko who was the registered proprietor of the parcel of land known as LR. NO. Mavoko Town Block 3/2840, which property was bequeathed to the plaintiff through the deceased will dated 10<sup>th</sup> December, 1984 and resealed by the High court on 10<sup>th</sup> May, 2012 vide High Court P & A Case No. 25 of 2012.
  3. He stated that the 6<sup>th</sup> defendant has frustrated his efforts in having the suit property transmitted to him which forced him to file Machakos SR. Misc. Application no. E003 of 2022 to enforce his rights of fair Administrative Action and right to property under Article 47 and 40 of *the Constitution*. He further complained that on 6<sup>th</sup> September, 2022, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants with their agents trespassed on the suit property and illegally caused wanton destruction thereon of indigenous trees, interfered with the beacons and erected structures thereon. He accused the 1<sup>st</sup> to 5<sup>th</sup> defendants of trespass, illegal dispossession and land grabbing.
  4. The 1<sup>st</sup> and 2<sup>nd</sup> defendants entered appearance and filed statement of defence dated 26<sup>th</sup> September, 2022. They denied the plaintiff's claim and stated that the suit property was gifted to their father one Jonathan Kavatha Ndolo by the plaintiff's late father, but that the plaintiff's father passed on before he effected a formal transfer in favour of Jonathan Kavatha Ndolo.
  5. The 3<sup>rd</sup> and 4<sup>th</sup> defendants filed statement of defence dated 4<sup>th</sup> October, 2022. They denied the plaintiff's claim and averred that they lawfully purchased ten acres part of the suit property from the late Jonathan Kavatha Ndolo as the latter had been gifted the suit property by his late brother Peter Ndolo Ndwiko.
  6. The plaintiff withdrew his claim against the 5<sup>th</sup> defendant.
  7. The suit proceeded to hearing by way of viva voce evidence. The plaintiff presented one witness while the defendants presented two witnesses.

### **Plaintiff's Evidence**

8. PW1 was Muanza Dwiko. He adopted his witness statement as evidence in chief. He also produced the documents attached to his list of documents dated 11<sup>th</sup> September, 2022 as P. exhibit 1 to 16 and the list of documents dated 27<sup>th</sup> February, 2023 as P. exhibit 17 to 25.



9. His testimony was that the suit property belonged to his late father and that at no time did the deceased gift the same to the father of the 1<sup>st</sup> and 2<sup>nd</sup> defendants. He stated that his late father wrote a will on how his property was to be dealt with. He also stated that he had sought to have the suit property transmitted to his name in vain due to malice and mala fides of the 6<sup>th</sup> defendant in collusion with the 1<sup>st</sup> and 2<sup>nd</sup> defendants. That the 1<sup>st</sup> and 2<sup>nd</sup> defendants have always intended to unlawfully dispossess him of the suit property. That his late father had entrusted several title documents to Jonathan Kavatha his brother but that the latter abused his position of trust by interfering with the suit property. He further stated that on 6<sup>th</sup> September 2022 the 1<sup>st</sup> to 5<sup>th</sup> defendants trespassed on the suit property cut down trees and erected a semi-permanent structure thereon without any right.
10. On cross-examination he stated that he knew where the suit property was located and that he is unable to travel to Kenya because of the threats on his life. Regarding the email of 8<sup>th</sup> September, 2020, he stated that the same was vague and had indications of copy and paste. He denied authoring the said email. He stated that he sent the defendants email asking for evidence that the suit property was gifted to their father.
11. He further stated that his father lived in California USA. That his father passed on 10<sup>th</sup> December, 2003 and that he sought for a grant in the USA. That the will refers to plot No. 636 and that his father was member No. 633. In re-examination he stated that the photographs he produced in evidence show that the trees on the suit property had been destroyed. He further stated that at the time of the will, the suit property had not been surveyed and that it was then referred to as plot number 636. Further that he has title to the suit property as the Land Registrar's refusal to register him as owner was quashed by the court. That marked the close of the plaintiff's case.

#### **Defendants' case**

12. DW1 was Daniel Masaku Kavatha. He testified that the plaintiff was his cousin and his father was known as Jonathan Kavatha. He adopted his witness statement as his evidence in chief. He produced documents attached to his list of documents dated 26<sup>th</sup> September, 2022. He denied trespassing on the suit property and stated that the suit property was gifted to his father Jonathan Kavatha Ndolo by the late Peter Ndwicko Ndolo and that his father took possession more than three decades ago. Further that he has been in possession and use of the same. He termed as false the plaintiff's assertion that the suit property was bequeathed to him by his father.
13. On cross-examination he stated that when the plaintiff's father was in the USA, his father was the caretaker of his parcels of land. He stated that his father was given the land by the plaintiff's father. He confirmed that it was the plaintiff's father who purchased the suit property. He further stated that he had no written evidence that his father was gifted the suit property as the gifting was verbal and that there were witnesses including his uncle Joseph and one Philip Mwobia. He denied having seen the will done by the plaintiff's father but stated that he was aware that he had done a will.
14. He further averred that he did not know that plot number 636 is the one that was registered as the suit property. He also stated that before registration of the suit property the same was owned by Lukenya Ranching. He stated that the will stated that the plaintiff was to get the suit property and that if he did not survive the deceased, then Jonathan Ndolo Kavatha would get it. He stated that Jonathan Ndolo Kavata died in 2019.
15. On being shown the email he had produced in evidence, he stated that it did not indicate his name and that no names are indicated therein. He stated that the email produced did not show the whole thread.



Having been referred to the minutes produced by himself, he confirmed that none of the plaintiff's family members was in attendance of the meeting stated in the minutes of 22.9.2022.

16. Regarding the letter dated 19<sup>th</sup> July 2022, he stated that there were two email addresses including his own email address of "Danielmaxxxx@gmail.com". He stated further that his father sold the suit property to the 3<sup>rd</sup> and 4<sup>th</sup> defendants and that the witness family has been in possession of the suit property for over 30 years. That they removed their developments on the land when they wanted to sell. Further that at the time of sale he did not know that the land was in the name of the plaintiff. He stated that the developments on the land were done by the purchaser and that the purchaser does not live on the land.
17. In re-examination, he stated that his father having been verbally gifted the suit property he accepted the gift.
18. DW2 was Josiah Keen the 3<sup>rd</sup> defendant. He stated that the 4<sup>th</sup> defendant was his wife. He adopted the witness statement dated 7.3.2022 as his evidence in chief. He produced his filed documents as exhibits. His evidence was that together with the 4<sup>th</sup> defendant, they purchased 10 acres of land from Jonathan Kavatha to be excised from the suit property at a consideration of Kshs. 5, 000, 000/= which sum he paid. That he was assured by the vendor and his children including the 1<sup>st</sup> and 2<sup>nd</sup> defendants at the time of sale that he had been gifted the suit property by the late Peter Ndewiko Ndolo. That he got vacant possession of the purchased portion. That he has been in peaceful occupation of the same since 2015.
19. On cross-examination he stated that he deals in real estate in Nairobi and understands matters regarding sale and transfer of properties. He stated that he appeared before an advocate during sale transaction which advocate represented both parties. That the vendor never gave him a copy of title and that this concerned them. That he purchased the suit property on seeing minutes of the clan showing that 1<sup>st</sup> and 2<sup>nd</sup> defendants' father was gifted the suit property.
20. He further testified that he did not obtain a search and that he was informed that the title had not been processed and that he had not seen the allotment letter. He stated that Lukenya Ranching informed him that their records showed that the owner of the suit property was the vendor's brother called Peter Ndolo Ndewiko. That he was also informed by the vendor that Peter Ndolo Ndewiko was deceased and that at the time he purchased the suit property he knew that Mr. Ndolo Ndewiko was already deceased.
21. The witness informed court that he was aware that property of the deceased person ought to be distributed according to his will and that he did not inquire about administration of the deceased because the vendor had already been gifted the suit property. He stated that at the time of purchase, there was a title deed in regard to the suit property. Further that he contacted the children of Ndolo Ndewiko but that he could not reach them.
22. Upon being referred to his sale agreement, he stated that it meant that he was to be protected from legal disputes and denied that the same was a precaution because the land belonged to a deceased person. He conceded that he had not produced any document showing status of the suit property at the time of purchase. He confirmed that the current status were as per the photographs produced by the plaintiff as P. exhibit 12.
23. He stated that currently he was farming on the land and that he took possession in 2015 and that he has been maintaining status quo as ordered by court. He stated that he purchased 10 acres. In re-examination he stated that Mr. Kavatha sold him 10 acres of land and the he had no reason to doubt him. That marked the close of the defence case.



24. Parties filed written submissions in support of their respective cases. On record are submissions filed by the plaintiff dated 29<sup>th</sup> November 2024 and submissions filed by the 1<sup>st</sup> to 4<sup>th</sup> defendants dated 30<sup>th</sup> January, 2025.

### **Plaintiff's submissions**

25. Counsel for the plaintiff submitted that the plaintiff demonstrated ownership of the suit property by producing search certificate and documents from Lukenya Ranching and Farming Co-operative Society Ltd together with his late fathers will.
26. Concerning the defendants' assertion that the suit property was gifted to the 1<sup>st</sup> and 2<sup>nd</sup> defendants' father the late Jonathan Kavatha, counsel submitted there was no evidence of such gift having been made and even the allegations of a verbal gift were never proved as no witnesses thereto testified. Counsel further submitted that the email produced by the defendants lacked credibility, and did not meet the threshold of Section 106B of the Evidence Act for want of Certificate of Electronic evidence. Counsel observed that the email was incomplete.
27. Regarding the 3<sup>rd</sup> and 4<sup>th</sup> defendants contention that they purchased the suit property from Jonathan Kavatha, counsel argued that the 3<sup>rd</sup> defendant confirmed that he deals in real estate and knows processes in land acquisition; that they never obtained search before purchase or obtain consent from the administrator of the estate of Peter Ndolo Ndwicko. Counsel argued that the 3<sup>rd</sup> defendant admitted having trespassed on the suit property.
28. It was also submitted regarding gifts inter vivos that for a gift over immovable property to be effected, it has to be in writing or by deed or there should be a transfer of the property to the beneficiary during the lifetime of the donor. Reliance was placed on the cases of *The Estate of Godana Songoro Guyo*(2020)e KLR and *The Registered Trustees Anglican Church of Kenya Mbeere Dioces v The Rev. David Waweru Njoroge*(2007)e KLR. Counsel concluded that the alleged gift was unenforceable for want of compliance with the law.
29. On trespass, counsel argued that the plaintiff pleaded trespass against the defendants which was confirmed by the evidence of the 3<sup>rd</sup> defendant who stated that he was in possession of the suit property. Reliance was placed on the case of *Kenya Power & Lighting Company Ltd v Fleet Wood Enterprises Limited* for the proposition that trespass is actionable per se without proof of damage. Counsel submitted and proposed that a sum of Kshs. 800,000/= would be reasonable award for damages for trespass.

### **1<sup>st</sup> to 4<sup>th</sup> Defendants' submissions**

30. Counsel for the 1<sup>st</sup> to 4<sup>th</sup> defendants submitted that the plaintiff had failed to prove his case as his evidence was both speculative, inconsistent and rooted in hearsay. Counsel submitted that the plaintiff relied on what he was told concerning trespass hence his allegations were not proved. Counsel referred to section 107 to 109 of the Evidence Act.
31. It was submitted for the defendants that the suit property had been gifted to the 1<sup>st</sup> and 2<sup>nd</sup> defendants' father and that his family had been in occupation of the same for decades as shown by the email of 8<sup>th</sup> September, 2020 which counsel argued showed that the plaintiff was aware that the suit property was gifted to Jonathan Kavata.
32. Counsel also argued that the 3<sup>rd</sup> and 4<sup>th</sup> defendants purchased the suit property from Jonathan Kavatha upon him explaining to them that the suit property was a gift from his brother. Counsel also contested the plaintiff's position that he was administrator of his father's estate. Counsel argued that no evidence



was produced before court to prove that assertion and that there are inconsistencies and defects in the grant produced. Counsel argued that as the grant referred to Dolo Dwiko and not Ndolo Ndwiko, it referred to a different person. Counsel referred to the case of *Tonje & 2 Others –v-s Tonte & Another*(2004) eKLR for the proposition that where there is no grant of letters of administration, a plaintiff claiming on behalf of a deceased person lacks capacity. Counsel argued that the court should not rubberstamp fraud and referred to the case of *Aliaza v Saw (Civil Appeal 134 of 2017)*(2022)KECA 583 (KLR(24 June 2022) Judgement.

### **Analysis and determination**

33. The court has carefully considered the pleadings, evidence and parties’ rival submissions. The issues that arise for this court’s determination are as follows;
  - a. Whether the estate of the late Peter Ndwiko Ndolo is the lawful proprietor of the suit property.
  - b. Whether the suit property was gifted to Jonathan Kavatha by the late Peter Ndolo Ndwiko.
  - c. Whether the defendants have trespassed on the suit property, and;
  - d. Which orders should issue in the circumstances of this case.
34. It is not disputed that the suit property is registered in the name of the late Peter Ndwiko Ndolo. The certificate of official search demonstrate that the suit property was registered in the name of Peter Ndwiko Ndolo on 10<sup>th</sup> June 2008. Section 26 of the *Land Registration Act* provides for conclusiveness of title and the exception thereto as follows;
  1. The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
    - a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or
    - b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
  2. A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.
35. Therefore, registration vests in a proprietor absolute and indefeasible rights, unless there is evidence that the acquisition of such title was by fraud, misrepresentation, illegality or corruption, whether or not the registered proprietor was party thereto.
36. In this case, there is no challenge on the legality of the registration of the suit property in the name of the late Peter Ndwiko Ndolo. The defendants’ only defence is that the suit property is no longer the property of the estate of Peter Ndwiko Ndolo as he had gifted the same to Jonathan Kavatha the father of the 1<sup>st</sup> and 2<sup>nd</sup> defendants.
37. A gift means the voluntary transfer of property to another without compensation. A lifetime gift also known as a gift inter vivos is a gift between the living and it means “ relating to, or involving property conveyed not by will or in contemplation of an imminent death, but during the conveyor’s lifetime. (See Black’s Law Dictionary 11<sup>th</sup> Edition).



38. Disposition of an interest in land whether by gift, sale, charge, mortgage, lease or otherwise, is governed by the provisions of the [Land Registration Act](#). There is a mandatory procedure for a disposition of an interest in land prescribed in the [Land Registration Act](#), 2012. Section 36 thereof provides as follows:
36. Dispositions and dealings affecting land.
1. A lease, charge or interest in land shall not be disposed of or dealt with except in accordance with this Act, and any attempt to dispose of any lease, charge or interest in land otherwise than in accordance with this Act or any other law, shall not, extinguish, transfer, vary or affect any right or interest in that land, or in the land, lease or charge.
  2. Nothing in this section shall be construed as preventing any unregistered instrument from operating as a contract.
39. In the case of *Annah Muthoni Ileri v William Njeru Mbogo* [2020] eKLR, the court held that a gift of a parcel of land is valid upon compliance with the necessary registration formalities. Similarly, in the matter of *The estate of Waitathu Kagwai alias Waitathu Kugwu Nyeri HC 475/2013* the court spelt out three conditions for fulfilment in awarding a gift as discussed in the Halsbury Laws of England as firstly; the person making the transfer actually intends to make a gift by transferring the same; secondly, the donee must accept the gift and agree to have the gift transferred to him and lastly, there has to be delivery of the gift.
40. Also in the matter of *The Estate of the late Gedion Manthi Nzioka HCSC No. 122/2010(2015)eKLR* where the court relying on Hulsbury’s laws of England 4<sup>th</sup> edition Vol. 20 (1) Para 32/51 with respect to incomplete gifts, stated as follows;
- “if a gift is to be valid the donor must have done everything which according to the nature of the property comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do”.
41. Therefore, for a gift of an interest in land done inter vivos, to be valid, the donor must demonstrate the intention of such disposition by either transferring the gift to the donee or where the land is not registered, the donor must state in writing that he or she has vested the interest in such land in the donee, the donee must accept the gift and there has to be the delivery of the land.
42. In the instant case, I have considered the defences and the evidence presented by the defendants and none of the defendants stated when the suit property was allegedly gifted to the late Jonathan Kavatha. The defendants relied on an alleged email of 8<sup>th</sup> September 2020 allegedly authored by the Plaintiff. The plaintiff denied authoring the email and alleged forgery. I have considered the email and the same does not state that the suit property was gifted to Jonathan Kavatha. In any event, as the email was contested by the plaintiff as being a forgery, the defendants did not present evidence of an expert in digital evidence to demonstrate that the same indeed originated from the plaintiff. Besides, the author of the email is not the owner of the land, Peter Ndwiko Ndolo. In the premises, I find and hold that the email of 8<sup>th</sup> September 2020 is not evidence that the suit property was gifted to the late Jonathan Kavatha. The defendants alleged that the gift was done orally, yet no evidence for oral gifting was presented.
43. As stated above, for a gift to vest immovable property from one person to another must be in written. Therefore, there being no written document or transfer of the suit property by the late Peter Ndwiko Ndolo in favour of Jonathan Kavatha to demonstrate that Peter Ndwiko Ndolo gifted or transferred the suit property to Jonathan Kavatha, I find and hold that the defendants did not prove that the suit



property was gifted to Jonathan Kavatha by the late Peter Ndwiko Ndolo. Since the suit property was not owned by Kavatha at the time of the sale agreement dated 3<sup>rd</sup> June 2015, I find and hold that the sale dated 3<sup>rd</sup> June 2015 between Jonathan Kavatha and the 3<sup>rd</sup> and 4<sup>th</sup> defendant is invalid and unenforceable for want of capacity to sell on the part of Jonathan Kavatha. The agreement shows that at the time of sale of the suit property the vendor thereof Jonathan Kavatha was not the registered proprietor and the fact that the parties referred to the need for the vendor being deemed to have obtained consent of all persons who may be legally entitled to object to the sale demonstrates, that the parties knew that the sale was likely invalid. In the premises I find and hold that the sale between Jonathan Kavatha and the 3<sup>rd</sup> and 4<sup>th</sup> defendants dated 3<sup>rd</sup> June 2015 is invalid and unenforceable for want of capacity.

44. The plaintiff presented the will of the late Peter Ndwiko Ndolo dated 10<sup>th</sup> December 1984 and grant of letters of administration which demonstrated that he was the administrator of the estate of the late Peter Ndwiko Ndolo. There being no challenge on the legality of the registration of the suit property in the name of Peter Ndwiko Ndolo, I find and hold that his estate is entitled to quiet enjoyment thereof without interference from the defendants.
45. On trespass, the plaintiff alleged that the 1<sup>st</sup> to 5<sup>th</sup> defendants had trespassed on his land. The 1<sup>st</sup> defendant testifying on his behalf and on behalf of the 2<sup>nd</sup> defendant stated that they were in possession of the suit property. The 3<sup>rd</sup> and 4<sup>th</sup> defendants confirmed having possession of 10 acres of the suit property and conducting farming thereon. Therefore, it is clear that the plaintiff has proved that the defendants are in trespass thereon. I therefore find and hold that the defendants have trespassed on the suit property and therefore they ought to be restrained from interfering with the same; removed from the suit property and ordered to pay damages for trespass.
46. It is trite that trespass is actionable per se without proof of actual damage. The plaintiff herein submitted for damages in the sum of Kshs. 800, 000/= . Since the defendants have been in occupation of the suit property which measures 8.6 hectares, and the fact that the trespass began on 6<sup>th</sup> September 2022 and has gone on for about two years and six months as of today, I am of the opinion that a sum of Kshs. 500, 000/= shall be reasonable compensation for general damages for trespass.
47. The plaintiff accused the 6<sup>th</sup> defendant of dereliction of duty, mala fides and misfeasance in public office. I hold the view that questions of dereliction of duty, mala fides and misfeasance in public office are questions that must be answered by a specific public officer. In this case, no specific officer was named in regard to these actions. In addition, the plaintiff did not particularize how he was frustrated by the acts of the 6<sup>th</sup> defendant or how the 6<sup>th</sup> defendant abused power or the acts of the 6<sup>th</sup> defendant constituting mala fides and therefore, I find and hold that the plaintiff did not prove his case against the 6<sup>th</sup> defendant and therefore the same is hereby dismissed with no order as to costs.
48. In the end I find and hold that the plaintiff has proved his case against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants herein to the required standard and I enter judgment for him against the said defendants jointly and severally as follows;
  - a. A declaration is hereby made that the Estate of the Late Peter Ndolo Ndwiko is the bona fide owner of L.R No. Mavoko Town Block 3/2840 and any dispositions in favour of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants by way of leases and/or transfers are illegal, null and void;
  - b. A declaration is hereby made that any sub-division, and/or alienation of L.R NO. Mavoko Town Block 3/2840 in favour of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants is illegal and/or unprocedural and therefore null and void;



- c. A declaration is hereby issued that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants, whether by themselves or their agents, proxies and servants or any one claiming under them are trespassers and illegal occupiers of the suit land;
- d. An order is hereby issued that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants their agents and/or anyone claiming under them, shall vacate the suit property in 90 days of this judgment and in default, eviction orders to issue.
- e. General damages for trespass in the sum of Kshs. 500, 000/= are awarded in favour of the plaintiff against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants. Interest thereon shall run from the date of this judgment.
- f. A permanent injunction is hereby issued restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants whether by themselves or their servants or their agents from dealing, alienating, transferring, disposing, sub-dividing, constructing, trespassing, interfering, charging and/or howsoever dealing with L.R No. Mavoko Town Block 3/2840;
- g. Costs of the suit are awarded to the plaintiff and shall be borne by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants.

49. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY THIS 19<sup>TH</sup> DAY OF MARCH, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.**

**A. NYUKURI**

**JUDGE**

In the presence of;

Mr. Maingi for the plaintiff

Mr. Ngolya for the 1<sup>st</sup> to 4<sup>th</sup> defendants

No appearance for the 6<sup>th</sup> defendant

Court Assistant: M. Nguyai

