



**M'Mpango & another (Suing as the legal representatives of Nahashon M'Kiambati M'Mpango) v MM'R & another (Environment and Land Appeal E030 of 2022) [2023] KEELC 21863 (KLR) (22 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21863 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E030 OF 2022  
CK NZILI, J  
NOVEMBER 22, 2023**

**BETWEEN**

**ROSALIA KAGURI ..... 1<sup>ST</sup> APPELLANT**

**CHARITY MAKENA ..... 2<sup>ND</sup> APPELLANT**

**SUING AS THE LEGAL REPRESENTATIVES OF NAHASHON M'KIAMBATI  
M'MPANGO**

**AND**

**MM'R ..... 1<sup>ST</sup> RESPONDENT**

**GMM ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. L.N Juma Senior Resident Magistrate in CM ELC NO. 136 of 2019 delivered at Meru on 31.5.2022)*

**JUDGMENT**

1. The appellants were the plaintiffs in the lower court by a plaint dated 24.9.2019 sued the respondent alleging their late father Nahashon M'Kiambati M'Mpango was the recorded owner of LR No. Ruiiri/Rwarera/211 totaling to 14.80 acres (hereinafter the suit land). They averred that in 2018 it was discovered that the respondents had fraudulently caused a subdivision of the suit land into L.R No.4257 and 4258 and transferred the parcels into their names.
2. As a result, the appellants averred they filed objections No's 2489, 2938, 4293, 4569, 1501 and 1694 with the land adjudication office which was dismissed on the ground it was a family dispute.
3. Therefore, the appellants prayed for:



- a. An order that the respondents excise 6.80 acres out of LR No.4257 and 4258 in favour of the 1<sup>st</sup> appellants in default the Land Adjudication Officer Ruiru to do so.
  - b. An order that the district land surveyor Meru and that the land adjudication officer Ruiru Rwarera excise 2 acres in favour of Eunice Gacheke and in 1 acre in favour of Isabella Kairuthi from LR No. Ruiru/Rwarera 4251 and 4258.
  - c. An order of injunction restraining the respondents therein, agents, servants, or those working at their behest or agents and servants from interfering with their quiet use and peaceful occupation of the two parcels of land.
  - d. The plaint was accompanied by witness statements and a list of documents dated 24.9.2019. A further list of witness statements and documents dated 16.2.2021.
4. The respondent opposed the claim through a statement dated 15.10.2020, terming the appellant's allegations as untrue, strange and false.
  5. The respondents admitted that the appellant's father had 3.80 acres of land bordering their land which they ought to pursue through succession. While admitting there were objection proceedings, the respondents averred the dismissals were based on merits but not on account of family issues, which dismissals the appellants failed to appeal against.
  6. Further the respondent averred they had occupied, developed and possessed their parcels of land exclusively for over 20 years hence the appellant's claim was extinguished by Sections 7 & 38 of the *Limitation of Actions Act*.
  7. The respondents averred the court lacked jurisdiction for the process of adjudication and registration had come to an end after all the objections were dismissed. The statement of defence was accompanied by witnesses' statements and a list of documents dated 15.10.2020 and a further list of witnesses' statements dated 3.2.2021.
  8. At the trial Rosalia Kaguri the 1<sup>st</sup> appellant told the court that the 1<sup>st</sup> respondent was his brother-in-law, while the 2<sup>nd</sup> respondent was her nephew. She adopted her witness statement dated 24.9.2019 as her evidence in chief. she said she was bringing the suit as cousins and legal representatives of the estate of Nahashon M'Kiambati M'Mpango their father. She said the land was given to her by the late Hon. J. Angaine in 1989 and registered the land in the name of her deceased father totaling 14.80 acres. PW 1 told the court she allowed her late father to stay on the land with effect from 1969 and when the mother to the 1<sup>st</sup> respondent was chased from their land she offered her 2 acres to reside on and eventually registered the two acres in favour of the 1<sup>st</sup> respondent.
  9. Further, PW 1 told the court she gave her sister Eunice Gacheke and nephew James Mwitia two acres and one acre respectively, out of her land, for they had nowhere to live.
  10. The 1<sup>st</sup> appellant said she gave her late father 3 acres of her land and remained with a balance of 6.80 acres.
  11. PW 1 told the court in 2018 she visited the land office Meru to check the status of her land only to discover the respondents had fraudulently shared her land amongst themselves, following which she unsuccessfully filed the alluded objections, with the land adjudication office. PW 1 said the land was recorded in her father's name since women in those days did not own land. She denied that the 1<sup>st</sup> & 2<sup>nd</sup> respondents had lawfully bought her land. She said her father passed on in 2007. PW 1 produced a limited grant, letter from the Land Adjudication Officer, chief's letter, funeral program, death certificate, objection proceedings, a consent as P. Exh No's. 1-7.



12. In cross-examination PW 1 clarified that her late father merely gave to the 2<sup>nd</sup> respondent a portion of the land and not the 1<sup>st</sup> respondent. She denied that the respondents had bought any land from her late father. PW 1 said the 2<sup>nd</sup> respondent was her nephew and when her sister was chased away from her land due to a court order, she generously and voluntarily gave her two ha of her land to settle her family.
13. PW 1 said that the respondents illegally took away her land and sub divided it equally. PW 1 further admitted a meeting took place in her lawyer's offices after the service of summons to enter appearance where the respondents surrendered half of their land.
14. In cross-examination, PW 1 said she used to work in Nairobi and therefore settled her father on the land to do farming and constructed a house for him, who left the land for his Kithoka homestead after he grew old and sickly. PW 1 said she was advised by the land adjudication officer to file a Minister's appeal after her objections were dismissed. PW 1 said it was true a consent was entered into by the parties for the respondents to surrender four hectares of land to her. PW 1 confirmed the respondents were the ones occupying the land and had construed permanent houses on it.
15. PW 1 in re-examination confirmed the 1<sup>st</sup> respondent was her brother-in-law while the 2<sup>nd</sup> respondent was a nephew. She said she never suspected that the respondents would fraudulently subdivide or transfer her land to themselves, otherwise, she was only helping her sister to settle down. She said she was not aware that title deeds for the land had been issued when she filed the objection.
16. Isaiah Buuri testified as PW 2. He adopted his witness statement dated 1.2.2021 as his evidence in chief. As a land surveyor, his evidence was that he was commissioned to undertake land survey works in Ruiru Rwarera, Kiirua, Nkando, Ntumburi and Kibirichia areas in 1969. She said the 1<sup>st</sup> appellant had made an application for allocation of land in Ruiru Rwarera through the then Minister for Lands. He said her application was successful and the land was registered in the name of her late father, since women then were not allowed to own land. He said the 1<sup>st</sup> appellant's late father had not made any application for any and so he was holding the land in favour of the 1<sup>st</sup> appellant.
17. In cross-examination PW 2 said there was no record showing that the land was held by the deceased a trustee. He could not confirm if the deceased sold or transferred the suit land.
18. PW 2 insisted that the applicant for the land was the 1<sup>st</sup> appellant and not her late father since he was the one who drafted the letter, which the 1<sup>st</sup> appellant signed and took it to Mr. Rufus Kiambati. He said he later on confirmed that the land was allocated to the 1<sup>st</sup> appellant.
19. Isabella Gitonga testified as PW 3 and adopted her witness statement dated 1.2.2021, as her evidence in chief. Her testimony was that in 1969, the 1<sup>st</sup> appellant had applied and was allocated 14.80 ha of land in Ruiru Rwarera area which she registered in the name of her late father given women could not own land. PW 3 said her sister as an employee with young kids she requested her late father to go and live on the land and keep watch over it.
20. PW 3 said after her sister Jane Kanario was chased away from her home, PW 1 offered 2 acres out of the land which she registered in the name of her son the 2<sup>nd</sup> respondent a minor at the time.
21. PW 3 said after their late father grew older and sickly, he retired to his Kithoka residence leaving Jane Kanario staying on the land out of request by PW 1.
22. GMM the 2<sup>nd</sup> respondent testified as DW 1. His evidence was that the adjudication process in Ruiru/ Rwarera area concluded in the 1990s. He said the suit land was transferred to them by his grandfather the late Nahashon Kiambati in 1990, out of the original parcel No. 211 before the adjudication process ended. He denied there was any collusion with land officers to defraud the appellants of any land. He



- said it was only after they had been on the land for 30 years, that the appellant's objections were lodged as per P. Exh No. (6), whose awards were never appealed against; He said title deeds had already been issued.
23. DW 1 said he grew up in Mwirine area but moved out when his father the 1<sup>st</sup> respondent lost a court case. He said it was the 1<sup>st</sup> respondent who talked to his grandfather and acquired L.R No's. 4257 and 4258 as resultant subdivisions of LR No. 211. DW 1 acknowledged a consent which was signed and filed in court on 30.7.2020 to surrender some acres before his statement of defence was filed. He said his late grandfather had gifted him 2 acres and later on sold to him an extra 2 acres at Kshs.90,000/=
  24. DW 1 said the 1<sup>st</sup> appellant was all aware of the transaction between him and the deceased since she used to attend family meetings. He had no minutes for the alleged meetings in 1980. DW 1 termed the sale and transfer of the two parcels of land as lawful and procedural. He said the respondent had been on the land from 1990 until 2018, when the dispute arose. DW 1 told the court the consent was procured through duress and undue influence.
  25. DW 2 was M'Rwito M'Rincuni. He told the court that he knew the 2<sup>nd</sup> appellant for they were allocated the suit land at the same time and in the same locality. DW 2 confirmed the respondents came to the suit land in 1990 from an unknown area and erected permanent buildings on it.
  26. DW 2 said he moved into the area in 1961 and acquired a land slightly bigger than the 2<sup>nd</sup> appellant's land. DW 2 said it was the late M'Kiambati who sold the land to the respondents but he was never called as a witness to the sale agreement. DW 2 said the 1<sup>st</sup> respondent used to rear cattle on behalf of his late grandfather and so he was gifted with 2 acres of the land and eventually bought an extra 2 acres.
  27. The trial court delivered its judgment and dismissed the appellant's suit. The appellants by memorandum of appeal dated 16.6.2022 faults the trial court for:- not considering their evidence; concluding the respondent title to the land was valid; admitting the consent signed between the parties and at the same time taking evidence in court; for applying the law of contract as the only source of the law in the matter not finding that the appellants had proved fraud against the respondents; not applying Section 107 of the *Evidence Act* yet the respondents had given contradictory evidence and lastly; failing to appreciate the appellants claim, witnesses and their documentary evidence.
  28. The appellant relied on written submissions dated 19.10.2023 and isolated five issues for the court's determination namely; consideration of the evidence, legality of the respondent's titles; the implications of the consent to compromise the suit; the application of the *Law of Contract Act* and the burden of proof.
  29. On the other hand, the respondents, relied on written submissions dated 16.10.2023. On ground numbers 1, 2, 4, 6, 7 & 8 of the memorandum of appeal the respondents urged the court to find the appellants had failed to impeach their titles to land on account of fraud, misrepresentation, illegality, unprocedural or acquisition through corrupt means. Reliance was placed on Mutsonga vs Nyati (1989) KLR 428, Section 107-109 of the *Evidence Act* and Article 40 (3) of *the constitution*.
  30. On ground number 3 of the memorandum of appeal, the respondents submitted the consent order dated 20.7.2020 was wrongly filed in the appellants' list of documents, since it had been repudiated before its adoption as per the application dated 22.2.2021. Reliance was placed on Millicent Wambui vs Nairobi Botanical Gardening Ltd (2013) eKLR.
  31. On ground number 5 of the memorandum of appearance the respondents submitted the trial court was right in applying the *Law of Contract Act* since no documentary evidence was produced to show that the appellants were the original allottees of the suit land; the evidence offered was scanty; the



- claim was time-barred under Section 7 of the *Limitation of Actions Act*. Reliance was placed on Haron Onyancha vs Public Service Commission and another (2017) eKLR and Iga vs Makerere University (1972) E.A 65.
32. Further, the respondents submitted the claim was res-judicata since the issue had been raised before the land adjudication officer and substantively determined and the appellants had jumped the gun and prematurely filed the suit without exhausting the statutory remedies under the *Land Adjudication Act* (Cap 284). Reliance was placed on Abdalla Mangi Mohammed and 5 others vs Lazarus Benja & others (2020) eKLR.
33. The issues commending themselves for the court's determination are:
- i. Whether there was binding consent to settle the suit before the filing of the respondent's defence and the hearing of the suit.
  - ii. If the respondents had pleaded the repudiation of the consent dated 30.7.2020.
  - iii. If the appellants had pleaded that the respondent's title to the suit land was subject to trust.
  - iv. If the appellant had pleaded and proved the respondent's titles to the suit land was obtained fraudulently, illegally, unprocedurally and subject to their overriding interests.
  - v. If the respondent had pleaded and proved the defence of non-exhaustion of internal disputes mechanism and repudiation or illegality of the consent order and the entitlement of the suit land on account of adverse possession.
  - vi. If the appellant were entitled to the reliefs sought.
  - vii. Whether the appeal has merits.
  - viii. What is the order as to costs?
34. It is trite law that parties are bound by their pleadings and issues flow from the pleadings. See Raila Amollo Odinga vs IEBC (2017) eKLR. The appellant's claim was captured in the plaint dated 24.9.2019. In paragraph 6 the 1<sup>st</sup> appellant had pleaded the circumstances leading to the acquisition of 14.80 ha land in Ruiru/Rwarera area and in its registration in the name of her late father.
35. In paragraph 7, the 1<sup>st</sup> appellant had pleaded how her late father moved to occupy the land on her behalf in 1969 from his residence in Kithoka and how she allowed the mother to the 1<sup>st</sup> respondent to move into two acres of her land and how two acres of her land were registered in the name of the 1<sup>st</sup> respondent by her sister while the 1<sup>st</sup> appellant was a minor. Further, the appellants pleaded in paragraphs 9, 10, and 11 of the plaint of how the suit land was distributed under their instructions to her sister and the balance of 6.80 acres entrusted to their late father to occupy on their behalf.
36. In paragraphs 12 – 14 of the plaint the appellants had averred in 2018 how they discovered the illegal subdivisions and transfers of 6.80 acres by the respondent leaving a balance of h 0.80 acres. In paragraph 15 thereof the appellants had averred their claim was for 6.80 acres, which they had entrusted to their late father part of which was occupied under their permission by the respondents through their sister.
37. The appellants had prayed for the declaration that 6.80 acres as held subject to their overriding rights and interests and for a permanent injunction. After summons to enter appearance were served on the respondents, they personally entered filed a memorandum of appearance dated 30.7.2020. Before entry of appearance, the appellants had requested for interlocutory judgment by a notice dated 20.2.2020. From the lower court file, an original consent dated 30.7.2020 duly executed by the parties and witnessed by the advocate representing the appellants was filed. From the face of the consent,



there is no doubt that it was executed by the respondents for the signatures appearing therein were the same signatures those appearing in the memorandum of appearance by the respondents. From the lower court file, the parties had sought the trial court to formally adopt the consent in open court on 15.9.2020 and 15.10.2020. On 15.10.2020 the respondents through their current lawyers filed a memorandum of appearance and a defence dated 15.10.2022. The statement of defence was silent on the consent aforementioned. Similarly, when the respondents filed their witness statement dated 3.2.2021 none mentioned let alone repudiated the consent on account of coercion, illegality or undue influence. Further, the appellants filed a supplementary list of documents dated 16.2.2021 which included the consent an original copy. The filing triggered an application dated 22.2.2021, by the 2<sup>nd</sup> respondent seeking to expunge the consent to compromise the suit from the court record. The application was supported by an affidavit sworn by the 2<sup>nd</sup> respondent terming the consent as fraudulent, misleading, procured by force, illegality, coercion and duress.

38. The 1<sup>st</sup> respondent had not signed any authority to plead in favour of the 2<sup>nd</sup> respondent, nor did he appear as a witness to repudiate and sustain his defence. In a lengthy replying affidavit sworn on 4.3.2021, the 1<sup>st</sup> appellant opposed the applications and explained the circumstances leading to the consent to compromise the suit in the presence of all her family members. In a ruling dated 27.7.2021, the court held there was a supplementary list of documents and the signing of the consent would be interrogated through cross-examination.
39. The original consent was already in the court record as alluded to above. During the further hearing, the consent was produced as an exhibit on 16.11.2021. It was not objected to. Its contents basis and circumstances leading to its execution were also laid bare by PW 1. The respondents did not put any questions to PW 1 regarding the alleged coercion, illegality, duress, fraud and or misrepresentation as a means of discrediting the consent as stated by DW 1 in his affidavit sworn on 22.2.2021. The earlier affidavit by PW 1 regarding the consent was not challenged. PW 2 was also not cross-examined on the illegality of the consent.
40. In his defence, DW 1 never attacked or disputed the contents of the consent or laid any basis to discredit it. Even though DW 1 admitted signing the consent after he was served with the plaint dated 16.7.2020 and to its filing in court on 30.7.2020, before he filed the statement of defence he did not lay material to advance the basis why the court should reject the consent.
41. In re-examination DW 1 admitted that his mother was the one who persuaded him to sign the consent, he was initially willing to surrender part of the land but changed his mind, since the land was his birthright. DW 1 failed to call his mother as a witness to sustain his allegations that she threatened him to sign the consent. The 1<sup>st</sup> respondent who was a signatory to the consent was not called to testify let alone disown it. In *Ransa Co. Ltd vs Manca Francesco & others* (2015) eKLR, the court said all the particulars of fraud must be pleaded and proved.
42. In a dissenting judgment Hon. Lady Justice Martha Koome, Judge of appeal as she then was, now the Chief Justice held, that substantive injustice and prejudice would be caused to the appellant should the consent be adopted. The court cited with approval *Kasmir Wesonga Ongoma and another vs Wanga* (1987) eKLR and *Flora Wasike vs Desmond Wambeolla* (1980) 1 KAR that a consent order had a contractual effect and could only be set aside on grounds which justify the setting aside of a contract.
43. In *Broke Bony Liebig Ltd vs Methya* (1975) E.A 266, the court said it could not interfere with a consent judgment except where there were good grounds for varying or rescinding the contract between the parties.



44. In *SMN vs ZMZ & 3 others* (2017) eKLR and *Board of Trustees NSSF vs Michael Mwalo* (2015) eKLR, the court said to impeach a consent judgment, it must be shown that it was obtained by fraud, collusion or contrary to the policy of the court.
45. In *Eunice Wanjiru Gathithi vs Cannon Insurance (K) Ltd* (2021) eKLR the court cited Setton on judgments and Orders 7<sup>th</sup> Edition Vol. 1 page 124 that prima facie an order made in the presence and with the consent of counsel was binding on all the parties the proceedings or actions and can only be varied or discharged if there was evidence of collusion, fraud or it was contrary to the policy of the court or was given without sufficient material facts.
46. Applying the foregoing persuasive and binding case law, the burden was on the respondents to impeach the consent. The respondents consciously signed the consent with full knowledge of all material facts since they had the plaint. No evidence was tendered that the appellants misrepresented any facts or used undue pressure, force or coercion on the respondents to enter into the consent. It is an obligation for the courts to encourage Alternative Dispute Resolution (ADR) under Article 159 (2) (2) of *the Constitution*. PW 1 swore on oath how family negotiations were undertaken after the plaint was served upon the respondents. The change of mind on the part of the 2<sup>nd</sup> respondent came almost 3 months after the consent was filed before the trial court. The respondents failed to disclose to their lawyers on record that they had already entered an appearance in person and filed a consent to settle the suit.
47. The advocates on record filed a memorandum of appearance instead of a notice of appointment. The statement of defence was silent on the consent. The witness statements by the respondents were silent on the consent. The change of heart came through an application almost six or so months after the consent was filed. I find the respondents were estopped in law from denying the obvious facts on the contents of the consent. Strangely the 1<sup>st</sup> respondent did not object to the consent by the time DW 1 testified, yet his title deed was affected by the consent. My finding is that the consent was binding to the parties.
48. Coming to the pleadings, the appellants had pleaded the doctrine of customary, constructive, resultant trust and fraud. The 1<sup>st</sup> appellant had pleaded the registration of the suit lands in the name of her late father was subject to a constructive trust.
49. In *Heartbeat Ltd vs Ng'ambwa* (2018) eKLR, the court cited with approval *Juletabi Africa Adventure Ltd & another vs Michael Lockley C.A No. 75 of 2016*, that it was upon the respondent to establish that the parties' intention was that the appellant would purchase the land and hold it in trust for it.
50. The appellants in compliance with Section 107 – 112 of the *Evidence Act* had pleaded and testified on the circumstances in which the land was acquired and registered in the name of their deceased father who continued to live there at the request of the 1<sup>st</sup> appellant. The 1<sup>st</sup> appellant led evidence of how her sister, the wife of the 1<sup>st</sup> respondent and the mother of the 2<sup>nd</sup> respondent was chased away from her husband's land and was settled in her two acres of the suit land who instead recorded the two acres in the name of the 2<sup>nd</sup> respondent. The 1<sup>st</sup> appellant led evidence through PW 3 a land surveyor at the time on her application to acquire the land from the minister of land. All these facts and evidence were not challenged through rival pleadings and or evidence. The intention to create a trust was clear.
51. Other than a general denial, the respondents failed to dispute the circumstances before and during registration and in the manner the respondents moved into the land courtesy of the sister to the appellants out of the African milk of generosity as held in *Mbui vs Maranya* (1993) eKLR.
52. The 1<sup>st</sup> respondent and who is the brother in law to the appellants failed to challenge the facts and the evidence tendered by PW 1 & 2 that indeed his family was extended generosity and settled on the land



- on terms by the appellants. The 1<sup>st</sup> respondent after negotiations were made opted to surrender the land to the 1<sup>st</sup> appellant. He did not dispute the consent at all before the trial court. The 2<sup>nd</sup> respondent did not produce any authority to plead and testify on behalf of his father, the respondent.
53. The appellants led evidence that they held overriding rights enforceable in equity to the beneficial enjoyment of the titles held by the respondents. The circumstances leading to the settlement on the land would only have been challenged by the 1<sup>st</sup> respondent and his wife under whose relationship with the appellants the 2<sup>nd</sup> respondent became a beneficiary in trust of the suit land.
54. In *Twalib Hatayan & another vs Said Saggar Ahmed Al-Heidy* (2015) eKLR, the court said under the *Trustee Act*, the expression trust and trustee extend to implied and constructive trust and trusts are created either expressly or by agreement of parties or by operation of the law. The court said constructive and resulting trust was by operation of law the former being imposed by the court where the property was acquired by wrongdoing and also arises where the intention of the parties may not be ascertained, but circumstances, where equity would treat the legal owner as a trustee or where a party already a trustee takes advantage of his position for his own benefit, in which case the proof of party's intention becomes immaterial.
55. In this appeal, the appellant's evidence as to the circumstances up to 1990 remained unshaken by the 1<sup>st</sup> respondent and by extension the 2<sup>nd</sup> respondent. The wrongdoing and deceitful means and the taking advantage of the situation of the appellants remained unshaken. It is the quality of evidence that matters to prove facts. In this appeal, the facts as pleaded by the appellants and proved in evidence on the concept of trust remained unchallenged by the respondent.
56. In *Kiebia vs M'Lintari* (2014) eKLR the court cited with approval *Nyambura Kamau vs Humphrey Mbaka Nyeri* C.A No. 342 of 2010 that trust is proved through evidence and as a matter of fact and that overriding rights and interest need not be listed in the register of title to land. The respondents knew the overriding rights of the appellants before they acquired their title in 2017. The land adjudication officer had no right to hear disputes on titled land in 2018/2019. The proceedings and award made therein was a nullity as per *Macfoy vs United Africa Company Limited* (1961) 3 All E.R 1169.
57. Matters of trust are and cannot be time-barred as per Section 26 of the *Limitation of Actions Act*. The respondents failed to lead any evidence on adverse possession. From the appellant evidence entered the suit land as licensees and the permission of the appellants. See *Kweyu vs Kweyu* C.A No. 8 of 1990, *Mbui vs Maranya* (supra), *Njenga Kimani vs Kimani Ng'ang'a Wainaina* (2017) eKLR, 173 and *Samuel Kihamba vs Mary Mbaisi* (2015) eKLR.
58. The permissive entry was with respect to 2 acres only and not on the rest of the appellant's land. In my view, it is apparent the respondents entered into a consent filed on 30.7.2020 to compromise the suit with the appellants in that context. No wonder the 1<sup>st</sup> respondent did not pursue his defence after 30.7.2020. His non-appearance to sustain his defence and support his son should have left the trial court with no option but to infer that he did not intent to challenge how he had acquired the second title. The appeal has merits and is hereby allowed. The lower court suit is allowed with costs. The upshot is I find the titles to the suit land held by the respondents were subject to the rights of the appellants and proceed to invalidate them.
59. The titles shall revert to the names of the deceased before the subdivision and the transfers, in the initial status to be dealt with as per the *Law of Succession Act*.
60. Costs to the appellants



**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON  
THIS 22<sup>ND</sup> DAY OF NOVEMBER 2023**

**In presence of**

C.A Kananu/Mukami

Mukaburu for Gikunda for respondents

Mutungu for appellant

**HON. CK NZILI**

**ELC JUDGE**

