



Akwalu (Suing as the Legal Representative of the Estate of Joseph M’akwalu M’amuru alias Joseph Gachui – Deceased) v Anampiu (Sued as the Legal Representative of the Estate of M’anampiu M’amuru Gatunga alias Anampiu Amuru – Deceased) (Environment & Land Case 33 of 2019) [2023] KEELC 17376 (KLR) (10 May 2023) (Judgment)

Neutral citation: [2023] KEELC 17376 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 33 OF 2019**

CK NZILI, J

MAY 10, 2023

IN THE MATTER OF THE LIMITATIONS OF ACTIONS ACT, CAP 22

SECTIONS 7, 37 & 38

AND

**IN THE MATTER OF THE LAND REGISTRATION ACT (NO. 3 OF
2012) AND LAND ACT (NO 6 OF 2012)**

BETWEEN

**GABRIEL MUTUA AKWALU (SUING AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF JOSEPH M’AKWALU M’AMURU ALIAS JOSEPH GACHUI –
DECEASED) PLAINTIFF**

AND

**RICHARD KARUTI ANAMPIU (SUED AS THE LEGAL REPRESENTATIVE
OF THE ESTATE OF M’ANAMPIU M’AMURU GATUNGA ALIAS ANAMPIU
AMURU – DECEASED) DEFENDANT**

JUDGMENT

1. The plaintiff as the legal representative of the estate of Joseph M’Akwalu M’Amuru alias Joseph Gichui took out an amended originating summons dated 25.11.2022 against the defendant who is described as a legal representative of M’Anampiu M’Amuru (deceased), claiming to adverse possession of 5.0 acres out of the defendants LR No’s Tigania/Thananga/1883, 1884, 1885, 1886, 1887, 1888, 1889, 1891, 1892, 1893 & 1894, which are the resultant subdivisions of the initial LR No’s. Tigania/Tea Scheme Thananga/38. He urged the court to declare him as entitled to the suit parcels on account of adverse possession or in the alternative on account of customary trust, order that the land be transferred to him



and lastly issue a permanent injunction barring and restraining the defendant from interfering with his quiet enjoyment, occupation, and possession of the suit premises. The origination summons was supported by a supporting affidavit, a list of witness statements, and documents all contained in the plaintiff's paginated bundle dated 25.11.2022.

2. The defendant opposed the amended originating summons to two replying affidavits sworn on 16.7.2019 and 19.9.2019 by M'Anampiu M'Amuru Gatunga. He acknowledged that the plaintiff was indeed occupying the suit parcels of land, but termed it as a permissive entry or occupation, since the land was allocated to him by the defunct Nyambene Tea Company as of right, being the only son of the late Kaumbuthu Gatunga, who owned the land initially. The defendant averred that he has developed the land which has tea bushes and that he only allowed the plaintiff to be registered as a tea grower on his behalf for the portion measuring approximately 1 ¼ acre of his land.
3. The defendant averred that the plaintiff had left his father's land, to his half-brother, that there was a previous suit namely Meru HCC No. 9 of 1987 over the same issues before this court, and that there has been no hostile use of his title to the land to found a claim on either adverse possession or trust.
4. Further, the defendant averred that the land was not ancestral in nature, the plaintiff's father used to cohabit with his late mother, he has his land elsewhere, there was no sharing of the land in equal shares as alleged, any structures on the land were erected by a licensee and that his decision to subdivide his land among his children was legal. The defendant averred that he only left the portion occupied by the plaintiff as LR No.1892 to transfer it to the plaintiff, who declined his offer. He averred that he withdrew the offer and filed Tigania CMCC No. 36 of 2019 against the plaintiff for eviction. The defense was accompanied by a list of witnesses and documents all forming part of the defendant's paginated bundle of documents dated 6.1.2023.
5. Subsequent to an interlocutory application dated 3.7.2019, parties consented to maintain the status quo as of 3.7.2020 with each party continuing to occupy the portion that they were occupying at the time. Parties also agreed to have a scene visit conducted in the presence of the Deputy Registrar on 9.7.2022 and a report was filed on 10.9.2022 capturing the features and the nature of developments on the suit land.
6. The plaintiff filed a further supporting affidavit dated 2.10.2019 disputing the contents of the replying affidavits stating that the defendant was his elder stepbrother whose registration of the land was meant to hold it in trust for him but had changed to conceal the family name to disinherit his brother.
7. During the hearing, the plaintiff testified as PW 1 and adopted his witness statement and a supporting affidavit dated 25.11.2022 as his evidence in chief. Similarly, he adopted his late father's statement before he passed on dated 3.7.2019 as part of his testimony.
8. PW 1 said that the suit parcels of land formed part of the initial LR No. Tigania/Tea Scheme/Thananga/38 which was allegedly subdivided without involving his late father though he used to cultivate and till the land with effect from 1960 until 1997 when he was exclusively granted occupation of the land, build a permanent house, planted 7000 tea plants, eucalyptus, and other assorted trees. He testified that while his mother was alive, she divided the land into half between the two sons, his late father and the defendant's late father, the boundary being a seasonal stream marked with mature trees aged over 30 years. Further, PW 1 said that despite the land being in the name of his late uncle, they have occupied it peacefully, notoriously, and with the knowledge of the defendant to own hence the reason that there were permanent buildings therein. It was the plaintiff's evidence that on 29.4.2019, the defendant subdivided the land into 12 portions without their knowledge or involvement fully aware of their occupation which has been without license or approval as alleged or at all. PW 1 said that the land was almost 11.36 acres but that his family occupies almost half of it with homestead therein



- for over 15 years. PW 1 produced a copy of the record for the initial Parcel No. 38 as P. Exh No. (1) KTDA growers receipt No. 0.26 as P. Exh No. (2) issued in 1975, copies of official searches for LR No. 1883 – 1894 as P. Exh No. 3 (a) – copies of an ID card as P. Exh No. 4 (a)-(c) proceedings of the dispute at the DCC’s offices on 11.6.2019 as P. Exh No. (5), photographs as P. Exh No. (6) (a) – (9).
9. Regarding the defense PW 1 admitted that they were related to the defendant and that the initial land belonged to their late grandmother.
 10. PW 1 admitted that he was born, bred, and brought up in the suit land currently aged 45 years, where he has developed the land as per the photographs appearing in his paginated bundle at paragraphs 41 & 45, with full knowledge of the defendant. He denied ever getting a notification to vacate the land or stop any developments thereto. PW 1 said that their late grandmother had gone to the extent of summoning a panel of elders to formally share out the land but only for her to pass on before its implementation until the matter went before the D.E.C. He also said that apart from him, over six of his siblings occupy the land.
 11. As to the registration in favor of the defendant PW 1 said following Ameru customs, the defendant’s father. As the firstborn son hence the reason he was recorded as the owner instead of his late grandmother, to hold the land in trust for his late father was to whether his late father had other siblings and where they live. PW 1 told the court that James bought some land elsewhere.
 12. PW 1 admitted that the suit land has had many claims including an action for the removal of a caution namely Civil Case No. 9 of 1987, where his father was the 5th defendant. He termed the occupation as long and meriting a declaration of trust for the portion that he was occupying and in which he has made many developments without any consent approval or authorization by the defendants since the land was ancestral in nature. Further, PW 1 told the court that there was no need for a counterclaim in the 1987 suit.
 13. PW 2 was James K. Kaumbuthu who adopted the witness statement dated 25.11.2022 as his evidence in chief. As the twin brother to the plaintiff’s late father, he told the court that the suit land was gathered by their late mother but registered under the names of his late brother given that women at the time could not be registered as land owners.
 14. PW 1 also said that they used to occupy the land until her late mother urged him to acquire his land elsewhere. His view was that the land belonged to the family though he had no claim over it. Regarding the developments on the land, PW 1 told the court that it was his late mother who planted them and would at all times deliver them to the factory. He said that the land was neither “uturo” nor “Ngwato”, but was initially a forest land of approximately 11 acres which was gathered by his late mother where they settled.
 15. PW 3 was Rebecca Karea Njara who adopted her witness statement dated 25.11.2022. As a sister-in-law to Joseph M’Amuru, the plaintiff’s late father and the defendant’s late father, her testimony was that by the time she was married in 1980, her father-in-law had two wives with the first house living elsewhere and the second house occupying the suit premises. She said that the suit land had a stepmother-in-law who had given firm instructions on the manner of sharing it before she passed on in 2010. She said that she was present at the meeting representing her husband as the firstborn son in the 1st house, at which time the defendant’s late father was present and assured his late mother that there was going to be no problem in sharing out the land so long as his children completed their education.
 16. The defendant testified as DW 1 and produced his witness statement and the replying affidavit of his deceased father dated 19.9.2019. He produced a limited grant for the estate of his deceased father as D. Exh No. (1). Cross-examined by the plaintiff’s counsel, he said that he was born in 1979 and all



- his evidence was what he had gathered from his relatives since at the time he was born he found the plaintiff on the land with various permanent buildings on it which are more than 10 years old.
17. DW 1 said that his late father was the registered owner of the land and that the plaintiff was a mere licensee of the land. He did not produce any such license or mention its terms and conditions.
 18. Similarly, DW 1 clarified the exact acreage and parcel that the plaintiff was occupying following the subdivisions of the land on 29.4.2019 was approximately 1 ¼ of an acre out of LR Tigania/Thananga/1893.
 19. DW 1 told the court that his late father conducted the subdivision with full notification and attendance by the plaintiff.
 20. Aggrieved by the subdivisions, DW 1 said that the plaintiff reported to the deputy County Commissioner Tigania as per P. Exh No. (5). His evidence was that his late father was at the time willing to transfer 1 ¼ acre of the land to the plaintiff. DW 1 told the court that his deceased father had willingly allowed the plaintiff to occupy the land as a close relative.
 21. Further, DW 1 told the court that his late father had filed a case over his dispute in Tigania law courts after the DCCS meeting. Additionally, the defendant clarified that there was another case where his late father was a 3rd defendant sued by Erastus Mbaabu ACC No. 9 of 1987 over LR No. 38. He denied that the plaintiff was occupying almost half of the suit land.
 22. At the close of the defense, parties were directed to file written submissions by 18.4.2023.
 23. Parties filed written submissions dated 27.3.2023 and 11.4.2023. the plaintiff relied on Sections 7, 13(1), 17 & 38 of the *Limitations of Actions Act* on the proposition of adverse possession and recovery of land; Section 28h of the *land registration act* on the overriding interests that need not be registered and section 7 of the *land act* and models of acquiring title to land. He framed 2 issues for determination one; whether the plaintiff has acquired the absolute title of a part measuring 5.0 acres of the suit land by adverse possession and two whether this court should issue an order of permanent injunction. On the first issue, he relied on the case of *Tabitha Waittherero Kimani vs Joshua Ng'ang'a* (2017) eKLR where it was held that the conditions for AP were set out as the occupation and use has to be open and notorious, continuous, exclusive, and actual which he had met. He also relied on the photographs produced as evidence of the extensive developments on the suit land. The plaintiff submitted that the possession and use have been continuous and without disruption for 44 years.
 24. Further, he submitted that the evidence of PW 2 & PW 3 was not controverted thus their evidence is prima facie truth. The plaintiff also submitted that their occupation has been peaceful, open, and continuous and that he has proved his case on the balance of probability to claim adverse possession was held in *Celina Muthoni Kithinji vs Safiya Binti Swaleh & 8 others* (2018) eKLR.
 25. On the issue of orders of permanent injunction, the plaintiff submitted that he is entitled to be protected from being prevented from enjoying his parcel since the defendant had already subdivided the suit land and was seeking potential buyers. He relied on Sections 24 (a) of the *land Registration Act* and *Robert Munene Muriungi vs Kinyua Mbaya* (2022) eKLR.
 26. On the other hand, the defendant submitted that the sole issue for determination is whether the entry into the suit land by the plaintiff was wrongful or consensual. He stated that when the land was registered in the name of the defendant on 29.6.1970, the plaintiff was an adult and that the defendant was an only son hence his registration. That he allowed the plaintiff to take possession of part of the land as his half-brother and at no time did he dispossess the defendant. Thus the plaintiff's possession of the suit land was with the consent of the defendant and he cannot therefore lay claim for adverse



- possession. He also submitted that the claim ought to have been brought on trust as held in *Njenga Kimani & 2 others vs Kimani Ng'ang'a K Wainaina* (2017) eKLR. Further, that there are no findings on the actual acreage of the land occupied by the plaintiff.
27. The court has carefully gone through the pleadings, evidence tendered and written submissions. The issues for the court's determination are:
- i. What is the nature of the plaintiff's occupation of the suit land?
 - ii. Whether the plaintiff has proved adverse possession or existence of a trust.
 - iii. If the plaintiff is entitled to the reliefs sought.
 - iv. What is the order as to costs?
28. The primary pleadings in this suit are composed of the amended originating summons dated 25.11.2022 the further supporting affidavit dated 2.10.2019, and the replying affidavit dated 19.9.2019. In the affidavit of service the plaintiff questions whose cumulative effect bordered on the manner of the entry to the land whether the entry was consensual or based on ancestral rights to the land, if there were any developments on the land who was the initial owner of the land circumstances under which the land was registered under the names of the defendant's deceased father if there was any intention to eventually equally share out the land; if the defendant breached the existing arrangement over the land and instead subdivided it among his children to the exclusion of the plaintiff and lastly if the said registration was subject to any overriding interests in favor of the plaintiff.
29. In his defense, the defendant told the court that the entry to the land by the plaintiff through his deceased father was permissive. He denied holding the land in trust for the plaintiff or any other person. The defendant averred that he merely allowed the plaintiff to utilize part of his tea plants and permitted him to be registered as a tea grower only and that the plaintiff was duly occupying 1 ¼ of his land and not half of the entire land as alleged. The defendant further averred that the initial owner of the land was his late father who acquired it from Nyambene tea co. ltd. In his supplementary affidavit, the plaintiff averred that the defendant was his step-elder brother whose registration of the land was meant to hold it in his trust of him but had since changed his real name with a view of disinheriting him.
30. It is trite law that parties are bound by their pleadings and issues flow from the pleadings. Both parties have pleaded on the concepts of adverse possession and customary trust. Adverse possession is a situation where an intruder enters a land belonging to the true owner and occupies it, openly, notoriously uninterruptedly, exclusively, and with the sole aim of owning it in a manner inconsistent with the rights of the registered owner.
31. In the case of *Samuel Kibamba vs Mary Mbaisi* (2015) as cited with approval in *Njenga Kimani and 2 others* (*supra*), the Court of Appeal was faced with the question of whether a close relative could sustain a claim based on adverse possession. The court held that this was a determination of fact and that the burden of proof lies on the claimant. The court said that it has to be careful since such a scenario was likely to create havoc for families and society if the concept of adverse possession was applied within families against close relatives. Further, the court said that a lot was needed for a close relative to prove such a claim because of the reason that it was common for relatives to allow each other possession and one would not expect them to be kicked out before 12 years merely to defeat any claim for adverse possession.
32. In *Tabitha Waitherero Kimani* (*supra*), the court stated that there are five basic conditions to be met to find adverse possession namely; open and notorious use of the property, with the knowledge of the true owner, continuous use of the land; exclusive use of the land; actual possession of the property.



33. As regards a customary trust, in *Ngugi vs Kamau & another* ELC 36 of 2020 (2022) KEELC 2261 (KLR) (23.6.2022) (judgment), the court cited with approval *Isack Kiebia M'Inanga vs Isaya Theuri M'Lintari & another* (2014) eKLR, on the five key elements to find a trust namely; that the land in question was before registration family, clan, or group land; the claimant belongs to that clan, family or group; that their relationship to such family, clan or group is not so remote to make the claim idle or adventures; that the claimant could have been entitled to be registered as an owner but for some intervening circumstances and lastly; that the claim was directed against the registered owner who is a member of the family, clan or group. The court also said that each case has to be on its own merits.
34. Further, the court cited with approval *James N. Kiarie vs Geoffrey Kinuthia & another* (2012) eKLR, where it was held that what was essential was the nature of the holding of the land and the intention of the parties and 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 favor of such other members whether or not they are in the possession or actual occupation of the land.
35. In *Kanyi vs Muthiora* (1984) KLR 712, the court said that registration in the name of a party did not extinguish the Kikuyu customary rights in favor of the opposite party neither could its relief him by her obligations or duties under Section 28 of the *Land Registration Act*. In the case of *Muthuita vs Muthuita*, 1982-1988 1 KAR 42, the court said that customary trust is proved by leading evidence since trust is a question of facts which a court can never imply unless there was an intention to create such a trust in the first instance.
36. Additionally, in *Peter Ndungu Njenga vs Sophia Watiri Ndugu* (2000) eKLR the court said that a court may presume a trust in cases of absolute necessity, to give effect to the intention of the parties whose intention must be determined before a trust was implied. In the case of *Henry Mwangi vs Charles Mwangi* Court of Appeal 245 of 2004, the court said that under Kikuyu customary law the eldest son inherits land as a Muramati to hold in trust for himself and other heirs hence his registration in the land would be subject to customary trust.
37. Applying the foregoing case law to the instant suit several issues are not in dispute in this matter. The actual and physical occupational development on the suit land alongside each other between the parties for over 60 years is admitted. The next question is the circumstances under which the plaintiff came into the land. The plaintiff has pleaded that the defendant was a close relative whose parents were brothers.
38. PW 3 an uncle of the plaintiff told this court that the late M'Anampiu M'Amuru Gatunga alias Anampiu Amuru and the late Joseph M'Akwalu M'Amuru alias Joseph Gachui were his brothers whose father passed on during the Mau Mau rebellion with the former being the eldest son. He clarified that the latter was his twin brother. He said that they never saw their father, were left with their mother, and subsequently paternal uncle Dickson Amuru inherited them. He told the court that in 1960 Michimikuru Tea Estate moved into their land while they were 56 years old and that his mother Margaret engaged the clan to be allocated land and since women had no ID cards the land was registered in the name of the eldest son the father to the defendant who was then less than 16 years to hold it in trust himself and the family measuring 11.36 acres. He told the court at the time the land was registered his late brother; the father of the plaintiff was already in occupation on a portion measuring approximately 5 acres which to date is occupied by the plaintiff. He denied that there was any license or authority to occupy it which PW 3 told the court that it was his late mother who planted 800 tea plants in line with the directives of KTDA before they could join a school with the plaintiff's late father. The witness explained that it was his late mother who directed the defendant's father to occupy the other



half on the western side of a stream separating the land into two halves. The witness also confirmed the evidence of PW 1 on the issuance of a KTDA number over his tea bushes.

39. Further, PW 3 clarified that he was not given any share of his ancestral or family land since he had purchased a portion elsewhere at Amugaa following the wishes of his late mother who did not want any congestion on the land. PW 3 confirmed that the original land was Tigania/Tea Scheme/38 which was later subdivided into 12 portions after the defendant's late father who upon the death of their mother hurriedly visited the land office and changed his name to M'Anampiu M'Amuru Gatunga to conceal his family name. This evidence was corroborated by a close relative namely PW 3 Rebecca Kareya Njara cross-examined by the defendant PW 2 & 3. Evidence was never shaken as to the family relationship between the parties and the manner of the acquisitions of the land. Further to this, the plaintiff produced a certified extract of the initial land as P. Exh No. 1 which indicates that the land register was opened on 29.6.1970 measuring approximately 4.6 ha in the name of Anampiu Amuru and a caution placed on it by KTDA. P. Exh No. 2 was the KTDA growers credit scheme in the name of Joseph Gachui issued on 15.5.1975. P. Exh 3 (a) was the official search indicating that the land came under the name of M'Anampiu M'Amuru Gatunga on 29.4.2019 after the sub-divisions were made. Additionally, the plaintiff produced his late father's ID card 2496169 showing the names Joseph M'Akwali M'Amuru again the plaintiff produced P. Exh No. 6 which are photographs showing extensively permanent developments on the suit land.
40. To counter the pleadings and the evidence the defendant relied on the replying affidavit sworn by his late father on 19.9.2019. In paragraph 4 the deceased admitted possession of his land by the plaintiff but based on consent. In paragraphs 5 & 6 of the replying affidavit, he denied any relationship with the deceased. In paragraphs 7 & 8 thereof he admitted the history of the land before its registration under his name but denied any adverse possession or trusteeship in favor of the plaintiff or any other person. In paragraph 10 he admitted allowing the plaintiff to register as a tea grower and an occupation of about 1 ¼ acres of his land.
41. In paragraph 13, the deceased admitted that PW 2 was a twin brother to the deceased who left the land for his father's land and who should be pursued to grant the plaintiff a share of the land. In a replying affidavit to the notice of motion dated 3.7.2019, the deceased denied that he acquired the land through his mother. In paragraph 7 thereof the deceased admitted that the plaintiff's grandmother was cohabiting with this Kaumbuthu Gatunga after his father passed on. He also admitted that the deceased was a twin brother to PW 2 in paragraphs 8 thereof. He also denied that his mother had any land or could have had the capacity to distribute the land. At paragraph 14 the deceased admitted that the plaintiff had erected permanent houses on the land.
42. In paragraphs 19, 20 & 21 thereof the deceased admitted that he subdivided the land and had notified the plaintiff that he was going to transfer to him the portion under occupation but the latter declined the offer. He thereafter filed Tigania PMCC No. 36 of 2019 terming the deceased a trespasser on his land and seeking eviction orders.
43. This is the evidence that the defendant adopted as evidence in chief. Looking at the said evidence by both sides the evidence of PW 3 remains unshaken. He confirmed that he was the son of Margaret Mwari Ciokunga and who directed the defendant to take his ID card bearing the name M'Anampiu M'Amuru. She is said to have been the one who caused the registration of the land under the name of the defendant's late father to hold it in trust for himself and the family since she had no ID card. No rival evidence was tendered by the defendant to counter this history that the land was family land before registration in 1970.



44. Given such a consistent history by the plaintiff and his witnesses, evidence, and documentary evidence there is no doubt in my mind that the circumstances surrounding the occupation, registration, and developments on the suit land by the plaintiff point to an intention to create or establish a trust.
45. There is no evidence that the defendant's deceased father sought and obtained any eviction orders before the subdivision in 2019 against the plaintiff if at all they were not his close relatives. The tea growers' permit was issued in 1975. The defendant has admitted that the permit was valid and that the plaintiff continues to obtain income from the tea plants. No evidence was tendered that the defendant attempted to let alone stopped the plaintiff, his late father, and other siblings from making any permanent buildings on the land.
46. Even at the time the subdivisions were made the evidence before the court is that the defendant knew that some people were on his land with accrued interests on it. He had attempted before this to seek eviction of the plaintiff from his land but failed. Therefore, the only inference to his offer to transfer 1 ¼ of an acre to the plaintiff was enough confirmation that the plaintiff had overriding interests in the land.
47. Additionally, the scene visit report made on 3.2.2021 confirmed that the plaintiff was on exclusive use of at least four portions of the suit land and that the only issue between the parties at the site visit was the owners of the tea bushes and the mature trees correct boundary and the registration status of the land under occupation by the plaintiff was a claim between half brothers with a common father. The land had been registered in the name of one of them at the age of 8 years. The court observed that the original intention of the initial owner was that all his sons from different wives were to hold the land in equal shares which intention there was evidence that it changed. The court held that arising out of the actual occupation without legal title the equitable rights were binding on the land and the defendant. Regarding adverse possession, the court held that if the plaintiffs were in possession with the consent of the defendant there would be no adverse possession.
48. As regards adverse possession, in the case of *George Opuko Omoriti vs John OMoriti* (2018) eKLR, the court in circumstances similar to this case held that though the possession and occupation of the land came about through permissible arrangement after the demise of the defendant's father, that permissive arrangement terminated. See also *Cosmas Cherono & 2 others vs Veronica Cherono* (2021) eKLR.
49. Applying the foregoing binding case law and the principles distilled from them, elements numbers (1), (2), (3), (4) & (5) of the *Isaya Kiebia vs M'Lintari* case supra, have been surmounted by the plaintiff as opposed to the ingredients of adverse possession. There are familiar or lineal ties pointing out to the late Margaret Ciokunga as the common grandmother or a close relative to the parties herein. The suit land was family land to which it is apparent that the parties herein and by extension their late fathers belong. The intention to find and create a customary trust is manifest and apparent given the nature, circumstances, and status of occupation of the land for the last fifty years or so. The intention of the deceased grandmother appears to have been observed by the way each of the prospective parties is living and developing the land. The defendant has given no good reasons or rebutted the presumption of the trust for this court to disregard, ignore, and discard such a consistent, reasonable social norm in the family. The defendant's late father never disturb the arrangement, except by subdividing the land into 12 portions and making it clear that he would transfer one and a half acres of the land to the plaintiff.
50. The upshot is that:
1. A declaration is hereby issued that the defendant holds LR No's Tigania/Thananga/1883, 1884, 1885, 1886, 1887, 1888, 1889, 1891, 1892, 1893 & 1894 in trust for the plaintiff as



tenants in common in equal shares and that the names of the plaintiff and his other brother occupying the land shall be entered in the register.

2. A declaration that all the persons (a) above are entitled to be registered as proprietors of their respective portions of the suit land in place of the defendant who shall execute a valid transfer or assignment in favor of the plaintiff and his relatives free of any encumbrances.
3. The defendant is to execute the transfers within 2 months from the date hereof in default the Deputy Registrar is to sign the documents.
4. No orders as to costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU
THIS 10TH DAY OF MAY 2023**

HON. C.K. NZILI

ELC JUDGE

In presence of

C.A John Paul

Atheru for plaintiff

Gatari Ringera for defendant

