



REPUBLIC OF KENYA



KENYA LAW
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**Mbevi v Mbevi & another (Civil Case E004 of 2020)
[2025] KEHC 9437 (KLR) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 9437 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL CASE E004 OF 2020
TM MATHEKA, J
MAY 23, 2025**

BETWEEN

JONAH KYALO MBEVI PLAINTIFF

AND

WILLIAM NGENDA MBEVI 1ST DEFENDANT

JAMES MUEMA MBEVI 2ND DEFENDANT

JUDGMENT

1. Vide a plaint dated 26/11/2020, the Plaintiff seeks the following:
 - a. Special damages of Kshs. 34,160,000 for loss of productive and yielding fruit trees.
 - b. General damages for loss of mature timber trees.
 - c. General damages for psychological torture, anguish and mental suffering.
 - d. Special damages for loss of household and farm items at Kshs. 1,664,000.
 - e. Interest on (a) and (d) from the date of filling this suit.
 - f. Interest on c and cost of this suit.
2. The particulars of special damages are set out as follows
 - a. Huge economical loss as the fruit trees were more than 20 years old and had been assessed at Kshs. 34,160,000.
 - b. Loss of mature timber trees.
 - c. Loss of farm and home items value Kshs. 1,664,000.
 - d. Loss of arable farm forcefully ploughed



3. According to the Plaintiff the cause of action arose at Ukia/Utaati 1624 - a parcel of land belonging to the family of the late John Mbevi Mulinge.
4. He avers that in 1991 when he got married his mother bequeathed to him and his family allowed him to use part of the said parcel of land – and he proceeded to erect a house and to plant mango, orange and avocado trees for commercial farming - this is set out in the plaint thus;
 - a. Planted commercial mango trees.
 - b. Planted commercial orange trees.
 - c. Planted timber trees.
 - d. Constructing a residential house.
 - e. Fencing the area using a barbed wire and planting key apple live fence and constructing a modern gate so as to protect his crops and other investments.
5. That between 2019 and February, 2020, the defendants who are his elder brothers began to dismantle what he had set up – his house was closed and his farming efforts were destroyed- maliciously
He sets out the Particulars of Malice;
 - a. Cutting down mature orange trees which have been bearing fruits for the last 20 years
 - b. Cutting down mature mango trees which have been bearing fruits for the last 20 years
 - c. Cutting down and copping into pieces mature grevillea trees
 - d. Failure to report any dispute if at all to the authorities.
 - e. Failure to warn the plaintiff of the impending cutting down of his mature fruit trees
 - f. Destruction of the plaintiff's farm house which he has lived in for the last over 25 years.
6. The plaintiff further avers that defendant further destroyed the fence, the farm house and broke the gate and chased away the farm hand who had been employed by the plaintiff.
7. The defendants filed a joint statement of defence dated 8/1/2021.
8. They concede that the plaintiff is their brother, that he was shown a portion of land to till upon his marriage – but he has never had the exclusive possession of Ukia/Utaati/624.
9. That it was not true that their mother bequeathed that parcel of land to him because she could not have done so as it was not her land.
10. That the plaintiff has not provided any proof that the defendants committed the alleged acts, and put him to strict proof thereof.
11. In addition, that the report availed by the plaintiff regarding the number of fruit trees allegedly destroyed could not practically fit in Ukia/Utaati/624 as it measures Approx.1.2 Ha and put plaintiff to strict proof thereof.
12. The plaintiff is put to strict proof of the all other allegations.
13. The plaintiff filed a response to the defence dated 12/3/2021 contending that he was indeed granted the “suit land” in 1991 during his wedding ceremony by his mother in the presence of all his siblings.



14. He avers that it is the agents of the defendant who broke into his farm and he reported to police vide OB No. 5/24/3/2020. 14/17/7/2020 in vain.
15. The plaintiff contends that he will demonstrate the culpability of the defendants in court.
16. The matter was wholly heard by Hon Dulu J – it came to me at a time when the plaintiff sought the re-opening his case to enable him cross-exam the Agricultural Officer who had recanted his report.
17. The Plaintiff's Case
The plaintiff adopted his statement dated 26/11/2020. He reiterated what he had stated in his plaint that land was bequeathed to him by his mother in 1991, that he developed that land.
18. He testified that he learnt from his brother Zakayo around March, 2020 that his brothers the defendants were in the shamba cutting down his trees.
19. He testified that he went to the farm – and found that the trees had been cut, there was a tractor that had come to remove the logs- and that he had photos of burning logs (which he said was destruction of evidence).
20. That he made a report to the police and produced an abstract, and also to Ministry of Agriculture for estimates on the damage. He stated that the defendants had not denied that he had used the land for 27 years, that he was using the house that belonged to his mother. He denied that the same land was bequeathed to 2nd defendant during his wedding in 1969.
21. He said the land was approximately 4.2 Acres, that it was family land, that he had used only a portion of it.
22. He said that he had witnesses who saw the defendants supervise the destruction, and denied that the photos he produced were taken from elsewhere.
23. On cross-examination he conceded that the land was in the name of his deceased father, and had not been transferred to his mother.
24. He did not have any documents to prove that the land had been bequeathed to him.
25. He stated that he planted the fruit trees but he could not tell how much of the land his trees had occupied.
26. He stated that he did not see either of the defendants cutting his trees and that he was told by Zakayo about it. That the 1st report to police was made by Zakayo and Daniel, his other brothers. He confirmed that the police abstract he was relying on did not bear the names of the defendants as the suspects.
27. He confirmed that there was a succession cause that is ongoing where Zakayo had filed a mode of distribution for the said property. He confirmed that he did not have any documents or receipts to prove the alleged proceeds from the said land.
28. On re-examination, he told the court that the farm produce sales were random and he did not keep any receipts, that the agricultural expert had made an assessment, that he had intended to construct a permanent structure on the land but due to the chronic illness he suffered he had been unable to complete the same.
29. He confirmed that there was a succession cause – but he had not laid claim of the alleged gift because the cause 14/2019 was not for his father's estate.



30. He said he was not at home when his property was destroyed.
31. PW2 Zakayo Nyamai Mbevi also adopted his written statement of 26/11/2021. He told the court that this was a dispute among three brothers. He stated that James and William conspired to cut down Mango and citrus trees for their own motives. He testified that the land had been bequeathed to the Plaintiff during his wedding.
32. That he was phoned by a younger brother David who told him about the destruction.
33. On cross-exam he said that his home was 2km away from the scene. That one David told him about the destruction and he reported to the police. He said he went to the site – he found trees already cut, he did not see who did the cutting but the casual employee told him that the trees were cut by people who had been sent by his brothers. He testified further that he was one of the administrators of the estate of their father that even though he was aware his mother had bequeathed the land to plaintiff – in his mode of distribution he had proposed that the land goes to Serah Wambua and Dorothy Mbithi. That he had not included the plaintiff in this distribution.
34. On re-examination, he stated that his evidence was that the defendants had agreed to destroy the trees, that he had not included plaintiff in the distribution because plaintiff had only been allowed to use the land. He said that the casual employee who told him what he saw was called Sila.
35. PW3 No. 71506 CPL Mutuku Musau from Mukuyuni Police Station testified that on 24/3/2020 there was report – OB No. 5 by Kyalo Mbevi that his property was damaged; that a police abstract was issued - that what was damaged were blue gum trees, wild trees, mango and orange trees.
36. On cross-exam he said he was not the investigating officer but had only come to produce the abstract.
37. PW4 Joel Matheka was the Agricultural Officer who testified that he visited the scene and drew an expert report valuing the plaintiff's loss.
38. He said he went there on 30/4/2020 after receiving a report from the police on 24/3/2020. He said he visited the farm of Jonah Kyalo Mbevi. He found 2 crops – Mango and Citrus. Citrus trees had been cut down and others uprooted some, mango trees had been cut by power saw. He said that a physical count revealed 152 mature citrus plants, 96 damaged mango trees. He said he counted stumps and uprooted trees. That a citrus tree is valued at Kshs. 6,500 each. He gave each a life span of 20 years and came to Kshs. 19,760,000. That mango tree is valued at Kshs. 7,500 each, life span of 20 years – total Kshs. 14,400,000 total value, all adding up to Kshs. 34,160,000.
39. On cross-examination he told the court that he had not annexed the alleged letter form the police inviting him to carry out the assessment. He said the contents of the said letter could not be verified, he said that he served the police with his report.
40. He said he was not given any registration documents for the land to confirm that the farm belonged to Jonah. He said the owner showed him the land but did not show him any documents. He said the land was approximately 2.5 to 3 Acres, and that approximately 1.75 Acres was planted with mature trees. He could not tell how many had been uprooted and for those sawed down, he said that the possibility of regrowth was nil. He stated the number 96 and 125 mango trees was an error. He said he used the 2008 guidelines in arriving at the report.
41. On re-examination he said the assessment guidelines were gazetted by the Minister for Agriculture. That his assignment was not about number of trees uprooted, or cut – but total damage. That it was not his mandate to know the registration of the land



42. PW5 Joachim Maundu Kivite a friend of the Plaintiff, who schooled in neighbouring Primary Schools with Plaintiff. He testified that he attended Plaintiff's wedding on 24/8/91 - where plaintiff's mother gave the newlyweds a cow, and the farm to use. That he was aware that plaintiff and his wife developed the farm, put up a house for workers, dug a borehole for irrigation and was selling the produce using his pickup in Nairobi. That the farm was very productive. That it began to deteriorate in 2019. That he heard from neighbours that plaintiffs two brothers had destroyed the trees.
43. On cross-examination he said he was told about the destruction.
44. PW6 Daniel Sila Sikia said he began working for plaintiff in 1992. He said they planted mango and citrus seedlings, that the plaintiff used to harvest farm produce. He said he left work in 2020 March
45. He said in 2020, while at his house – he saw James and Mbithi come with workers and cut trees using power saw. He said those who led workers to destroy the trees were James and William. He said he saw them with his 2 eyes, that his farm is one metre away from plaintiff's farm. That the following day James brought motor vehicle to ferry away the cut trees.
46. On cross-examination he said he was employed by the plaintiff in 1992 - that one Salome Mbeu had also given him a job, that one James Mbevi had also farmed the land but that plaintiff was the 1st one.
47. He stated that in his statement he recorded that one Wambua Kimoli told him that he was sent by William and James, that he came with wife of James. That James and William were not present, that he even assisted them to clear, that one Mbithi assisted in cutting the trees – that the last time they harvested oranges on the farm was a long time ago. That plaintiff had stopped cultivating the farm sometime back. He said in re-examination that he was asked by the wife of James to plough with cows. That he could not recall the last time the plaintiff had harvested from that farm.
48. The plaintiff closed his case.
49. The Defendant Case
The defence called 2 witnesses.
50. DW1 was James Muema Mbevi. He confirmed that plaintiff was his brother. That the LR Ukia/Utaati/624 was registered in the name of their father. He testified that in 1969 at his wedding his father gifted him part of the land to cultivate – he said he had done so to date. That he and the plaintiff were the two brothers who were using the said portion of land.
51. He testified that the land had some citrus trees and mango trees, some planted by their own parents, some planted by him. He said plaintiff had not planted any trees - that he had not cut down/uprooted any trees – but what they did was to clear bushes and trim trees to pave way for planting maize and beans.
52. He told the court that on the material date this was done – there was permission from the chief and a letter was annexed. He said that the need to clear the bushes because it had become a hiding den for criminals. He invited the court to visit the site and see for itself.
53. On cross-examination he told the court that he denied cutting/supervising the cutting of trees. He was shown photos of land with tree stumps which had been ploughed. He said the photos were of William's portion not the plaintiff's.
54. On re-examination, he said the photos were of different farms, of different dates – he pointed out in one of them that there were no banana plants in their farm.



55. DW2 Lay Canon William Mbevi – brother to plaintiff – he denied cutting trees belonging to plaintiff. He said he was issued with a permit by the chief to cut trees – he cut indigenous trees, trimmed the fruit trees. He said that this is what Sila saw was the trimming of trees on his portion of land. He said the land was allocated to James by their father in 1969, and their mother allocated James a portion too. That he produced a letter from the chief – who said if summoned by court he would come to court.

56. The defence closed its case.

57. Parties filed submissions.

58. Plaintiff's Submissions

The plaintiff set out three issues for determination: -

- i. Whether the plaintiff planted and cared for fruit trees which were destroyed.
 - ii. Whether the defendant destroyed subject fruit trees.
 - iii. Whether the plaintiff suffered loss and deserves the prayers sought in the suit.
 - iv. Costs.
59. The argument by the plaintiff is that he has placed evidence before court to show how, when, and by who- he developed the farm by planting the fruit and timber trees. It is argued that if you place the evidence of the plaintiff and that of the defendants side by side – you will find that the plaintiff has established his case because:-
- i. The defendants have not given any evidence to show that their parents planted the mango and citrus trees – It is argued that the evidence of Zakayo Nyamai Mbevi, PW5, PW6 supported his case – that the plaintiff has complied with section 107 and 109 of the evidence Act – something the defendants have failed to do.
 - ii. Further that going by the holding in *Munyu Maina V Hiram Gathiha Maina* [2013] eKLR. It is the defendant who alleged the planting of trees by their parents – it was up to them to prove that.
60. On the 2nd issue it is argued that the defendants were well known by neighbours and the neighbours are the ones who reported – and that the defendants did not produce evidence to show that they were not in the vicinity at the material time. The plaintiff relied on *Margaret Njeri Mbugua vs Kirk Mweya Nyaga* [2016] KECA 288 (KLR) where this court stated:-

“When a party in any pleading denied an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum, or any part thereof, or else set out how much he received. And so, when a matter of fact is alleged with diverse circumstances, it shall not be sufficient to deny it as alleged along those circumstances, but fair and substantial answer must be given...

“First of all a mere denial is not a sufficient defence in this type of case there must be some reason why the defendant does not owe the money. Either there was no contract or it was not carried out and failed. It could also be that payment had been made and could be proved. It is not sufficient therefore simply to deny liability without some reason given.”



61. It was argued that the defendant's merely denied the allegations and offered no defence. That they had failed to rebut the evidence by plaintiff.
62. On the third issue – it is submitted - that having established the planting of trees, and the destruction of the same by the defendants, he suffered loss. He relied on *Kenya Wildlife Service v Abraham M'ngai M'itumitu* [2021] KEHC 7105 (KLR) that “Equity will not suffer a wrong to be without a remedy (ubi jus ibi remedium).”
63. Further that the defendants had no authority to deny the plaintiff his right to his property. He relied on *Christopher Ndarathi Murungaru Vs Kenya Anti-corruption & Hon. Attorney General* [2006] where it was held that: -
- “*The Constitution* of the Republic is a reflection of the supreme public interest and its provision must be upheld by the courts, sometimes even to the annoyance of the of public.”
64. He also relied on *Mike Maina Kamau vs Attorney General* [2017] eKLR where the court quoted with approval the holding in *Livingstone vs Rawyards Coal Co.* (1880) 5 App Cases 25, where the court defined the measure of damages as;
- “That sum of money which will put the injured party in the same position as he would have been if he had not sustained the wrong for which he is now getting his compensation or reparation.”
65. On the 4th issue the plaintiff relies on section 27 of the Criminal Procedure Act- that costs follow the event and interest on costs may be up to 14%.
66. The Defendant's Submissions.
- The defendants set out 4 issues for determination: -
- a. Whether this honorable court has the jurisdiction to handle this case.
 - b. Whether the plaintiff owns land parcel no. Ukia/Utaati/624.
 - c. Whether the 2nd defendant is an administrator of the estate of the late John Mbevi Mulinge.
 - d. Whether the agricultural report dated 30/3/2020 is credible.
67. On the 1st issue it is argued that this court does not have jurisdiction to handle this matter – that it ought to be dealt with by the ELC Court. The defendants cited section 13 of the ELC Act – as set out by Article 162(2) (b) of *the Constitution*. It is submitted that this matter is about land, and this court is expressly prohibited from handling any land matter by *the Constitution* – Article 165(5)
68. On the 2nd issue it is submitted that the plaintiff produced a green card showing that the owner of the land was John Mbevi Mulinge(deceased) it is submitted that the *Land Registration Act* Section 24(a) speaks to issues of ownership of land. It states;
- “Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”
69. It is submitted that the land belongs to a deceased person awaiting succession. That the alleged issue of the land having been gifted to the plaintiff can only arise as provided for by Section 31 of the Laws of Succession Act which states;



70. Characteristics A gift made in contemplation of death shall be valid, notwithstanding that there has been no complete transfer of legal title, if
- a. the person making the gift is at the time contemplating the possibility of death, whether or not expecting death, as the result of a present illness or present or imminent danger; and
 - b. a person gives movable property (which includes any debt secured upon movable or immovable property) which he could otherwise dispose of by will; and
 - c. there is delivery to the intended beneficiary of possession or the means of possession of the property or of the documents or other evidence of title thereto; and
 - d. a person makes a gift in such circumstances as to show that he intended it to revert to him should he survive that illness or danger; and
 - e. the person making that gift dies from any cause without having survived that illness or danger; and
 - f. the intended beneficiary survives the person who made the gift to him. Provided that
 - i. no gift made in contemplation of death shall be valid if the death is caused by suicide
 - ii. the person making the gift may, at any time before his death, lawfully request its return
71. The defendants also relied on *Re Estate of the late Gedion Manthi Nzioka (deceased)* [2015] eKLR & Halsbury's Laws of England 4th Edition Vol 20(1) paragraph 67- Both on issue of gifts, and incomplete gifts – arguing that the gift alleged by the plaintiff was incomplete. see also in *re Estate of Godana Songor Guyo (deceased)* [2020] eKLR. Further *Daniel Kipkurui Mainywa Vs Rebecca Chepkugat Maina* [2019] eKLR to the effect that the mother of the plaintiff did not have the capacity to gift the plaintiff.
72. It is submitted on the 3rd issue that the 2nd defendant is an administrator of the estate of late John Mbevi and has responsibilities and duties over the estate as set out under Sections 79,82, and 83 of the Laws of Succession Act Cap 150 Laws of Kenya.
73. On the issue of the credibility of the Agricultural report – it is submitted that the officer who drew the report recanted the same, further that the report does not bear the parcel no, does not indicate who was present – that even if the parties could not attend, at least the area chief or the village elder could have attended other than the Agricultural Officer - there was no independent witness to the alleged assessment and finally that the acreage of the land and the purported no of trees did not add up. The defendant's cited *Musau Mue vs Mbithi Syokau* [2021] KEHC 6679 (KLR) "...Again, it is noted that the visit was conducted in the presence of only the appellant and his relatives. No reason was given as to why the respondent or his relatives who were the immediate neighbours to the appellant were not invited. Even the village elder who could have acted as an independent witness was not called to participate. Clearly, the burden of proof lay squarely upon the appellant to discharge under the provisions of section 107 and 109 of the *Evidence Act*. Certain glaring facts emerged from the testimonies and which left no doubt that the appellant's case had not been proved on balance of probabilities such as lack of description of the land in question..."
74. I have carefully considered the submissions and the record of evidence.
75. The record will show that I took over this matter when Hon Justice Dulu had already heard all the witnesses and both parties had closed their cases.



76. What only came before me, was the application by plaintiff to re-open his case to cross-exam the Agricultural Officer who had recanted his report. I allowed the application. This Officer testified that he had been requested by the police, Mukuyuni to prepare the report. Later after doing the report, he realized that he had not been given the particulars of the land – specifically “the ownership of the land, the legal status of the land” – and that they were not told that there was an active cause in court. He however confirmed that the absence of title documents did not affect the assessment of the value of the trees. He confirmed that there were no trees available for assessment because they had been chopped into small pieces of firewood.
77. From the foregoing the issues arising for determination are:
1. Whether this court has jurisdiction
 2. Whether the plaintiff established the claim against the defendant
 3. What orders ought to issue.
78. On the issue of jurisdiction, the plaintiff’s case is that he was the beneficial owner of Ukia/Utaati/624 – the same having been bequeathed to him by his mother in 1991 and that thereafter, he planted trees, constructed a house and used the land – to farm cash crops, from which he made an income, which he depended upon to fend for himself, and to pay college fees for his children.
79. It is noteworthy that the plaintiff’s brother 1st defendant claims that he too was allocated part of the same land to use in 1969. That both of them were allocated the land for use.
80. Definitely this raises the issue of land use and ownership. Their brother Zakayo did confirm that these two brothers were disputing over this parcel of land. Ownership and land use dispute is not for this court. In addition, there is the issue of the right to the proceeds from the land and the compensation for loss of Agricultural produce. Evidently the basis of this claim is land, its use, its produce and clearly this court would not have jurisdiction to deal with the issue.
81. Should I be wrong - did the plaintiff prove the case against the defendants?
82. The plaintiff alleged that he planted the trees and harvested fruits from the same for commercial purposes - however the only witness to state that he was employed to plant the trees, gave testimony that did not support the plaintiff’s claim. His testimony was vague on specifics. In addition, he is the one who told the court that he saw the defendants with his own eyes destroy the trees. In the same breath he stated that the it was not the two defendants who cut down the trees but other people. He also told the court that the plaintiff had long before stopped cultivating the land. He also added that the he could not recall when they had last harvested any fruits from the trees in the shamba. He also stated that he was aware that the 1st defendant was also cultivating part of the land.
83. This is a witness whose credibility fell apart the moment he told the court in the same breath that he had not seen the defendants committing the cutting of the trees, and at the same time that he had also been told by another about the destruction.
84. The plaintiff – did not produce any evidence to support the claim that he had planted over 152 citrus trees and 96 mango trees.
85. The police officer who testified told the court that
86. For such a venture one would have expected evidence supporting the planting, the alleged commercial harvests. From the record the plaintiff did not place before the court anything to support the alleged



- planting for commercial purposes over 250 trees - if he sold these fruits as is alleged in Nairobi or elsewhere there ought to have been evidence.
87. If there was the consistent income sufficient to take his children through the private universities, there would have been some evidence of the same.
 88. The defendants did not just deny the plaintiff's claims, they demonstrated what happened on that day. First that they were not present, that they had permission of the chief to cut down some trees and they did so and trimmed the others. They testified how some of the trees were planted by their parents – that the plaintiff never planted any trees other than the ones that their parents – planted. It became a matter of his words against theirs.
 89. The plaintiff produced photographic evidence. It is noteworthy that this evidence was not helpful. The photos were not dated. There was no certificate by whoever took them.
 90. In addition, the photographic evidence there were two photos of each with a single tree stump, one depicting some ash among burnt leaves, and some firewood.
 91. According to the report from the Agricultural officer he counted 96 plus 152 =248 stumps of trees. The court ought to have been shown photos of rows and rows of tree stumps. There were just two stumps. His testimony, that of the plaintiff, and that of Sila the casual worker does not add up. This only goes to agree with the testimony of the defendant that they did not cut down any fruit trees, they cut down some indigenous trees. There were photos of some intact trees but there is no narrative as to where they were taken and by whom, and the story behind them.
 92. There was a photos of pieces of timber, looking like firewood – one cannot tell where they were from.
 93. The report from the Agricultural officer speak of mature trees counted – but no evidence is attached to prove that indeed there were 152 citrus trees and 96 mango plants. He would have included photographic evidence or any other acceptable evidence to show that indeed there were that number of trees cut down. There is no corroboration of the alleged physical farm visit no evidence that the plaintiff/his representative, defendants/ their representatives, villagers/ area chief/local administrators were present. All these would have made a difference.
 94. The lack of corroborative evidence could be the reason why he recanted his statement. He spoke about a gazettelement by the Minister of the guidelines for valuation of crops but produced none, even when he appeared to explain the reason for recanting his report, while asserting that the lack of registration documents did not affect his valuation of the trees. It gives the impression that here was no farm visit. If there had been, all these people who allegedly witnessed the destruction would have been aware, would have been present at the scene, would have seen. In any event he ought to have called the plaintiff and his witnesses.
 95. Clearly without the presence of any of the parties/from representatives/ the local administrators it would be difficult to accept the report on its face as a representation of the facts on the ground.
 96. There are photos of ploughed land and an abandoned house and gate – All these are not supporting of the alleged existing plantation and alleged destruction.
 97. The plaintiff just threw figures at the court with regard to the alleged destruction to the house, and household goods. The plaintiff provided no evidence at all on these and hence the court was not provided any evidence to support the alleged destruction of the plaintiff's house and household goods.
 98. This also speaks to the alleged psychological and other torture. No evidence was led to support this. Pleading is not enough, it must be followed by evidence.



99. The amounts set out herein are colossal and the casual calculations set out there in require corroboration, that indeed the trees existed, that indeed they were productive as alleged.
100. In the circumstance – I would find that even without the defendant saying anything, the plaintiff failed to establish that he had planted trees of such nature to warrant the prayers sought.
101. On the issue of value of the house no evidence was placed before the court to support the alleged construction, destruction and loss, or even how the value was arrived at. The plaintiff simply threw a figure at the face of the court without any supporting evidence. Having specifically set out that a certain value of the property was deserved, he needed to specifically prove the same.
102. No proof that there were 152 trees, no proof that there were 96 trees, no proof that there was a house and house hold goods of the value over Kshs. 1.6 m
103. In conclusion: I find that the following about the claims:
 - i. Special damages of Kshs. 34,160,000 for loss of productive and yielding fruit trees. This was not established
 - ii. General damages for loss of mature timber trees. No evidence of the existence of such trees by the plaintiff or even the recanted agricultural report.
 - iii. General damages for psychological torture, anguish and mental suffering. No evidence was led to support this. No submissions related to this claim.
 - iv. Special damages for loss of household and farm items at Kshs. 1,664,000. No evidence of the existence of this items or how this value was arrived at.
104. On the alleged loss of arable farm forcefully ploughed: the evidence by the casual worker was that the plaintiff had long before the alleged cutting down of trees, stopped utilizing the said parcel of land. That he and his brother were utilising the said parcel of land. This court would not be the place to determine that particular issue.
105. On jurisdiction, there were parts of the claim that could have been filed else where and other parts that fitted the jurisdiction of this court. The plaintiff ought to have identified the ownership dispute of the land for another court as that is not a dispute for this court.
106. The upshot is that I find that the plaintiff's claim was not proved and hence – the claim must fail.
107. The suit is dismissed with costs to be borne by the plaintiff.
108. Right of Appeal 30 days.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23RD MAY 2025

MUMBUA T MATHEKA

JUDGE

Chrispol CA

Ms. Oigara holding brief for Mr. Wangira for the plaintiff Mr. Chidi for Mr. Simiyu for the defendants

SIGNED BY: LADY JUSTICE MATHEKA, TERESIA MUMBUA

