



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA**

**ELC CASE NO. 12 OF 2012**

**CHILIKONA WELEMUSAYA.....PLAINTIFF**

**VERSUS**

**REUBEN RICHARD WEKESA LEVI.....1<sup>ST</sup> DEFENDANT**

**SUSANA KHAOMA WAKHUNGU.....2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR BUNGOMA.....3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL.....4<sup>TH</sup> DEFENDANT**

**J U D G M E N T**

***“Mummy, please forgive me for all the anguish and expenses that I have put you through in this case.”***

I hope that after he reads this Judgment, **CHILIKONA WELEMUSAYA** (the plaintiff herein) will muster the humility and courage to approach his mother **SUSAN KHAOMA WAKHUNGU** (the 2<sup>nd</sup> defendant herein) and tender the above apology.

As will soon be clear, the plaintiff should have expended his energy and time in the pursuit of a more useful and legitimate cause. Unfortunately, all he has done is try to wrestle the suit land from his own mother. Even the Bible frowns against that. It is written in **PROVERBS 28:24** that: -

***“Whoever robs their father or mother and says, ‘it is not wrong’ is partner to one who destroys.”***

Nonetheless, a person has the right to pursue his claim in Court no matter how weak.

The plaintiff is a nephew to **REUBEN RICHARD WEKESA LEVI** (the 1<sup>st</sup> defendant) and son to **SUSAN KHAOMA WAKHUNGU** (the 2<sup>nd</sup> defendant). He moved to this Court vide his plaint dated 29<sup>th</sup> January 2012 and filed on 15<sup>th</sup> February 2012 seeking against his uncle and mother as well as the **LAND REGISTRAR BUNGOMA** and the **ATTORNEY GENERAL** (the 3<sup>rd</sup> and 4<sup>th</sup> defendants respectively) Judgment against them jointly and severally in the following terms with regard to the land parcel **NO BUNGOMA/NDALU/162** (the suit land): -

- (a) A declaration that plaintiff is the sole and/or beneficial proprietor of the land known as BUNGOMA/NDALU/162.**
- (b) That the 3<sup>rd</sup> defendant be ordered to rectify the Register by cancelling the names of the 1<sup>st</sup> and 2<sup>nd</sup> defendants as the registered owners of the land known as BUNGOMA/NDALU/162 and inserting the names of the plaintiff.**
- (c) A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> defendants conduct of obtaining title of BUNGOMA/NDALU/162 is fraudulent and/or was obtained by misrepresentation hence null and void.**
- (d) Any other relief that this Honourable Court may deem fit to grant.**
- (e) Costs.**

The plaintiff's claim is premised on the pleadings that he is the sole proprietor of the suit land yet the 1<sup>st</sup> defendant filed **KAKAMEGA HIGH COURT SUCCESSION CAUSE No 36 of 1988** alleging that one **CHILIKONA WELEMUSAYA LEVI** had passed on and listed

the suit land as part of the Estate of the deceased. A consent was recorded in the succession cause whereby the 1<sup>st</sup> and 2<sup>nd</sup> defendants without the knowledge of the plaintiff, agreed to share the suit land in the ratio of 1.2 hectares and 41.3 Hectares respectively. The plaintiff claims that the consent recorded in the succession cause was however later withdrawn after it was discovered that it was obtained through fraud. The particulars of fraud against the 1<sup>st</sup> and 2<sup>nd</sup> defendants are pleaded in paragraph 12 of the Plaint as follows: -

- (a) **Misrepresenting that CHILIKONA WELEMUSAYA LEVI was deceased.**
- (b) **Jointly and fraudulently misrepresenting that the land known as BUNGOMA/NDALU/162 belonged to the deceased.**
- (c) **Jointly and with the aid of the 3<sup>rd</sup> defendant registering themselves as owners of the land known as BUNGOMA/NDALU/162.**
- (d) **Stealthily withdrawing Succession Cause No 36 of 1988 upon obtaining fraudulent orders.**
- (e) **Jointly acting on a grant that was obtained fraudulently.**

The plaintiff added that following the above fraudulent activities, the 1<sup>st</sup> defendant was charged in **KAKAMEGA CHIEF MAGISTRATE CRIMINAL CASE No 3291 of 2006** and was convicted with the offence of perjury although he had already sub – divided the suit land to create parcels **NO BUNGOMA/NDALU/ 566, 568 and 569.**

The plaintiff also filed his statement dated 29<sup>th</sup> January 2012 and his list of documents.

In his statement, the plaintiff alleges that he purchased the suit land in 1963 and is the registered proprietor. However, the 1<sup>st</sup> defendant filed **KAKAMEGA HIGH COURT SUCCESSION CAUSE No 36 of 1988** claiming that one **CHILIGONA WELEMUSAYA LEVI** was deceased and included the suit land as part of the Estate. The plaintiff's elder brother **TADAYO WAKHUNGU** filed an objection and a consent was made and the succession cause was withdrawn. The 1<sup>st</sup> defendant was later charged and convicted for the offence of perjury at **KAKAMEGA CHIEF MAGISTRATE'S COURT in CRIMINAL CASE No 3291 of 2006** but acting on the consent order in the succession cause, the 1<sup>st</sup> and 2<sup>nd</sup> defendants were jointly and fraudulently registered as proprietors of the suit land which belonged to the plaintiff and not to **CHILIGONA WELEMUSAYA LEVI.**

The plaintiff filed the list of the following documents in support of his case:-

1. **Demand Notice.**
2. **Orders in KAKAMEGA HIGH COURT SUCCESSION CAUSE No 36 of 1998.**
3. **Notice to the Attorney General.**
4. **Letter from the Ministry of Lands dated 6<sup>th</sup> April 2011.**
5. **Ruling dated 12<sup>th</sup> November 2009 in KAKAMEGA SUCCESSION CAUSE No 36 of 1988.**
6. **Proceedings in KAKAMEGA CRIMINAL CASE No 3291 of 2006.**
7. **Certificate of Search for the land parcel NO BUNGOMA/NDALU/162.**
8. **Records from the Commission of Lands dated 16<sup>th</sup> November 1965.**

I must however clarify that the proceedings in **KAKAMEGA CRIMINAL CASE No 3291 of 2006** were not produced although they appear on the list.

The 1<sup>st</sup> defendant did not file any defence.

The 2<sup>nd</sup> defendant filed her defence on 20<sup>th</sup> March 2012 denying that the plaintiff is the sole proprietor of the suit land and adding that as at the time this suit was being filed, the said land no longer existed. She added that the suit land was originally obtained by herself from the Settlement Fund Trustees in 1965 albeit in the name of the plaintiff who was a minor then. That the 2<sup>nd</sup> defendant paid the loan due to Settlement Fund Trustees and obtained the discharge of charge in 1994. That the suit land was the subject of **KAKAMEGA HIGH COURT CIVIL CASE No 57 of 1980** between the plaintiff and the 1<sup>st</sup> defendant and the Court ruled against the plaintiff and his appeal was dismissed in **KISUMU COURT OF APPEAL CIVIL APPEAL No 7 of 1986** thus extinguishing the issue of his ownership of the suit land. That while the dispute was still going on at the High Court in Kakamega, the plaintiff sold parts of the suit land to **JACKSON SIUNDU SITATI, CLEOPHAS WANYONYI, WANGENGELE** and **WILLIAM MAKUNJUI** and the 2<sup>nd</sup> defendant had to refund the purchase price in order to secure the land for the family. The dispute over the suit land was also heard by the clan which ordered that it be transferred to the 2<sup>nd</sup> defendant. That with respect to the objections in **KAKAMEGA HIGH COURT SUCCESSION CAUSE No 36 of 1988**, the 2<sup>nd</sup> defendant pleaded that, the consent and withdrawal thereof was brokered by the larger **LEVI NATEMBEYA** family as well as the **BAKEMBE CLAN** in order to put an end to the dispute regarding the suit land which had lasted for over 30 years. And with regard to

the Criminal Case No 3291 of **KAKAMEGA CHIEF MAGISTRATE COURT**, she pleaded that the perjury was committed by the 1<sup>st</sup> defendant only and she was the complainant. The 2<sup>nd</sup> defendant confirmed that upon withdrawal of **KAKAMEGA HIGH COURT SUCCESSION CAUSE No 36 of 1988**, the title to the suit land was restored and it was subsequently transferred in the joint names of the 1<sup>st</sup> defendant and herself as pleaded in the plaint. She described the suit as scandalous, frivolous, devoid of merit and an abuse of the due process of the Court and sought its dismissal with costs.

The 2<sup>nd</sup> defendant filed her statement dated 7<sup>th</sup> January 2015 and a list of documents dated 6<sup>th</sup> March 2015.

In her statement she confirmed that she is the mother to the plaintiff and the 1<sup>st</sup> defendant is her brother – in – law. That in 1965, she applied for land and was allocated the suit land by the Settlement Fund Trustees. And since her husband was working with a Government Agency, the suit land was registered in the names of the plaintiff who was then only 9 years old and she paid the loan due to the Fund. Since they did not have grown – up children, they allowed her father – in – law to live on the suit land and when he died, the 1<sup>st</sup> defendant filed a succession cause and tried to acquire the suit land. There were a series of cases between the plaintiff and the 1<sup>st</sup> defendant ending up in the **Court of Appeal Case No 7 of 1986** which was determined in favour of the 1<sup>st</sup> defendant and thereby extinguishing the plaintiff's claim to the suit land. In the intervening period, the plaintiff who had become of age decided to sell the suit land without the knowledge of his father and the 2<sup>nd</sup> defendant. This forced the 2<sup>nd</sup> defendant to refund the purchasers their money so as to retain the suit land. After a series of Court cases and family interventions, the suit land was registered in her name and that of the 1<sup>st</sup> defendant and has since been sub – divided and utilized in the manner that the 2<sup>nd</sup> defendant had intended. Therefore, the plaintiff has no right to sue her and his case should be dismissed.

Although the 2<sup>nd</sup> defendant filed a witness statement of her husband **TADAYO WAKHUNGU NATEMBEYA**, he did not testify as the Court was told he had passed away before the trial commenced.

The 2<sup>nd</sup> defendant also filed the following as her list of documentary evidence: -

1. **Judgment in KAKAMEGA HIGH COURT CIVIL CASE No 57 of 1980.**
2. **Judgment in KISUMU COURT OF APPEAL CASE No 7 of 1986.**
3. **Cancelled transfer dated 4<sup>th</sup> May 1982.**
4. **Cancelled application for consent of the Land Control Board.**
5. **Transfer of Land Form dated 20<sup>th</sup> April 1993.**
6. **Sale agreement dated 20<sup>th</sup> April 1993.**
7. **Order issued on 12<sup>th</sup> November 2010 in KAKMEGA SUCCESSION CAUSE No 36 of 1988.**
8. **Proceedings of the TONGAREN LAND DISPUTES TRBUNAL.**
9. **Letter dated 27<sup>th</sup> March 2009.**
10. **Application for consent of the Land Control Board (this is actually a repeat of 4 above).**

The plaintiff filed a reply to the 2<sup>nd</sup> defendant's defence in which he reiterated that he is the sole proprietor of the suit land and denied that it was acquired by the 2<sup>nd</sup> defendant for her benefit and those of her children. He denied that his ownership of the suit land was extinguished by the Judgments in **KAKAMEGA HIGH COURT CIVIL CASE No 57 of 1980** and the subsequent appeal in **KISUMU CIVIL APPEAL No 7 of 1986**. He reiterated that averment in his plaint and that the suit is meritorious and legitimate.

The 3<sup>rd</sup> and 4<sup>th</sup> defendants filed a joint defence dated 1<sup>st</sup> July 2014 in which they denied knowledge of the existence of **KAKAMEGA HIGH COURT SUCCESSION CAUSE No 36 OF 1988**. They also denied the allegations of fraud and put the plaintiff to strict proof thereof. They further averred that all the entries which the 3<sup>rd</sup> defendant made on the title **NO BUNGOMA/NDALU/162** were made in good faith and within it's statutory mandate. They added that the plaintiff has recourse in **KAKAMEGA HIGH COURT SUCCESSION CAUSE No 36 of 1988** and the plaintiff's suit is not only time barred but is also untenable, misplaced, frivolous, scandalous, vexatious and does not disclose any cause of action against them.

They filed their list of the following documents: -

1. **Order dated 12<sup>th</sup> November 2010 issued in KAKAMEGA HIGH COURT SUCCESSION CAUSE No 36 of 1988.**
2. **Certificate of Confirmation of Grant issued in KAKAMEGA HIGH COURT SUCCESSION CAUSE No 36 of 1988 on 4<sup>th</sup> April 2000.**
3. **Death Certificate dated 19<sup>th</sup> September 1978 in respect of CHILIKONA WELAMUSAYA LEVI OSWAKO.**

4. **Transfer documents for the land parcel NO BUNGOMA/NDALU/162.**

5. **Register for land parcel NO BUNGOMA/NDALU/162.**

6. **Register for land parcels NO BUNGOMA/NDALU/801 - 802.**

7. **Report from the BUNGOMA COUNTY LAND SETTLEMENT OFFICER.**

I must however state that although appearing on the list of 3<sup>rd</sup> and 4<sup>th</sup> defendants' documents, the items listed Nos 6 and 7 were not annexed. Similarly, although the 3<sup>rd</sup> and 4<sup>th</sup> defendants filed their list of witnesses, they did not call any of them to testify during the trial.

The hearing commenced and ended on 21<sup>st</sup> July 2021. The plaintiff and the 2<sup>nd</sup> defendants were the only witnesses who testified. They both adopted as their evidence their respective statements contents of which I have already summarized above and also produced as their documentary evidence their respective list of documents which I have also already referred to. They were then cross – examined by Counsel.

At the end of the plenary hearing, I gave Counsel 14 days each to file and serve their submissions with **MR OLONYI** Counsel for the plaintiff going first. However, when the matter was mentioned on 18<sup>th</sup> August 2021 to confirm compliance, only **MR KHAKULA** for the 2<sup>nd</sup> defendant had filed his submissions.

I have considered the evidence by both parties and the submissions by **MR J. S. KHAKULA** Counsel for the 2<sup>nd</sup> defendant.

The only issue that calls for my determination is whether the suit land is the sole property of the plaintiff and if the 1<sup>st</sup> and 2<sup>nd</sup> defendants obtained registration as owners thereof through a fraudulent process.

Before I do so however, there is a legal issue of limitation which, though not raised by the 2<sup>nd</sup> defendant in her defence, was pleaded by the 3<sup>rd</sup> and 4<sup>th</sup> defendants in paragraph 6 of their defence. They pleaded thus: -

***6 “In the alternative and without prejudice to the foregoing, the 3<sup>rd</sup> and 4<sup>th</sup> defendants aver that the plaintiff’s suit is time – barred, untenable, misplaced, frivolous, scandalous, vexatious and does not disclose any reasonable cause of action against the 3<sup>rd</sup> and 4<sup>th</sup> defendants.”***

Although the 3<sup>rd</sup> and 4<sup>th</sup> defendants did not lead any evidence during the plenary hearing and whereas the 2<sup>nd</sup> defendant did not plead limitation, that is a jurisdictional issue which can be raised by the Court suo motto. Indeed, it is such a fundamental issue that it can even be raised on appeal – see **FLORICULTURE INTERNATIONAL LTD .V. CENTRAL BANK & OTHERS 1995 eKLR** and also **KENINDIA ASSURANCE CO LTD .V. OTIENDE 1989 2 KAR 162**.

In **NASRA IBRAHIM IBREN .V. IEBC & OTHERS SUPREME COURT PETITION No 19 of 2018** the Supreme Court expressed itself thus: -

***“A jurisdictional issue is fundamental and can even be raised by the Court suo motto as was persuasively and aptly stated by ODUNGA J in POLITICAL PARTIES DISPUTE TRIBUNAL & ANOTHER .V. MUSALIA MUDAVADI & 6 OTHERS ex – parte PETRONILA WERE [2014] eKLR.”***

A reading of the plaintiff's plaint particularly paragraphs 7, 8 and 9 alleges that the 1<sup>st</sup> and 2<sup>nd</sup> defendants fraudulently obtained the registration of the suit land by filing and obtaining orders in **KAKAMEGA HIGH COURT SUCCESSION CAUSE No 36 of 1988**. He has pleaded thus: -

***7 “It is the plaintiff’s case that the 1<sup>st</sup> defendant fraudulently filed KAKAMEGA SUCCESSION CAUSE No 36 of 1988 claiming that one CHILIKONA WELEMUSAYA LEVI has passed on.”***

***8 “That the 1<sup>st</sup> defendant included the plaintiff’s land (the suit land) BUNGOMA/NDALU/162 as part of the Estate of the deceased.”***

***9 “That the 2<sup>nd</sup> defendant made an objection thereto and a consent was recorded to have the suit land divided between them.”***

The plaintiff therefore knew as far back as 1988 that a fraud was being perpetrated through the filing of **KAKAMEGA HIGH COURT SUCCESSION CAUSE No 36 of 1988**. Indeed, the order issued in the matter on 11<sup>th</sup> November 2010 and which is part of the plaintiff's own documents shows that he was an Interested Party in those proceedings. Clearly therefore, the plaintiff discovered the fraud in 1988. Under **Section 7 of the Limitation of Actions Act**, an action to recover land may not be brought after the end of twelve years from the date on which the cause of action accrued. This case was filed on 15<sup>th</sup> February 2012 some 24 years after the cause of action accrued.

The plaintiff has pleaded in paragraph 13 of his plaint that arising out of the fraudulent activities by the 1<sup>st</sup> defendant, he was charged and convicted of perjury in **KAKAMEGA COURT CRIMINAL CASE No 3291 of 2006**. This is how he has pleaded: -

***“It is the plaintiff case that out of the above fraudulent activities, the 1<sup>st</sup> defendant was charged vide KAKAMEGA CM CR No 3291 of 2006 with perjury and was convicted accordingly.”***

And although those proceedings were not availed as I have already stated elsewhere in this Judgment, I have no doubt in my mind that the averment is correct since the 1<sup>st</sup> defendant did not rebut it. Besides, the 2<sup>nd</sup> defendant has corroborated that in paragraph 11 of her defence and added that infact she was the complainant in that criminal case. It is not clear when the 1<sup>st</sup> defendant was convicted and sentenced. Nonetheless, the plaintiff did not have to wait for that conviction before mounting these proceedings because the fraud was a matter well within his knowledge and did not need to be supported by any conviction.

Clearly, this suit is time barred and is for striking out.

I will however proceed to consider the plaintiff’s claim on it’s merit should I be wrong on the issue of limitation.

It is the plaintiff’s case that the suit land is his sole property. In paragraph 6 of his plaint, he has pleaded as follows: -

***6: “The plaintiff is the sole and/or legitimate owner of land known as plot No 162 Ndalù Settlement Scheme now known as BUNGOMA/NDALU/162.”***

In paragraph 2 of his statement dated 29<sup>th</sup> January 2012 and which he adopted as his evidence during the trial, he said: -

***“That I purchased land originally known as plot No 162 Ndalù Scheme way back in 1963. Original records show that I am the registered owner. All has been well.”***

There can be no better title to land or indeed any other property, than that of the person who purchased it. However, the 2<sup>nd</sup> defendant rebutted the plaintiff’s claim and stated that it was herself and her husband who were allocated the suit land by the Settlement Fund Trustees in 1965 when the plaintiff was only 9 years old. They decided to register the land in the name of the plaintiff because her husband was working with a Government Agency. She has stated as follows in paragraphs 4, 5, and 6 of her statement dated 7<sup>th</sup> January 2015: -

***4: “In 1965 when land was being given out by the Settlement Fund Trustees, I applied for Settlement Scheme plot for myself and my family and was given plot NO 162 in Ndalù Scheme.”***

***5: “Because my husband was working with a Government Agency, we decided to register the plot in the name of our second child, the plaintiff in this case.”***

***6: “At that time, the plaintiff was only 9 years old. My husband signed the application forms and I made all the necessary payments to the Settlement Fund Trustees.”***

In the course of the trial, the plaintiff confirmed that he was born in 1956. That confirms the 2<sup>nd</sup> defendant’s testimony that the plaintiff was only 9 years old when the suit land was allocated to his parents who paid for it and opted to register it in his name for the family. Surely at 9 years old, the most that the plaintiff could have been able to purchase was a packet of sweets from the local kiosk. And even then, he could only do so if his parents gave him pocket money, perhaps for good behavior. From his demeanor and conduct in this matter, I doubt if that would be often, if at all. The truth of the matter however is that at 9 years of age, he was not in a position to purchase 42.5 Hectares (104.9 acres) of land which is what the suit land measures. When he was cross – examined on this issue by **MR KHAKULA**, he changed tune and said: -

***“I was born in 1956. My father gave it to me in 1965 when I was 9 years old. I never bought the land in dispute. It was my father who bought it. He died 3 years ago.”***

By the plaintiff’s own admission therefore, and which corroborates his mother’s testimony, the suit land was allocated to his parents who registered it in his name to hold it in trust for the family. He was basically a trustee who is defined in **BLACK’S LAW DICTIONARY 10<sup>TH</sup> EDITION** as: -

***“Someone who stands in a fiduciary or confidential relation to another; esp. one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.”***

The 2<sup>nd</sup> defendant made it clear in her testimony that her intention was to subsequently distribute the suit land among her twelve children. This was essentially a family trust created to benefit her family. The suit land was never personal property belonging to the plaintiff. At the time it was acquired, the 2<sup>nd</sup> defendant was working with the **MAENDELEO YA WANAWAKE ORGANIZATION**. She could therefore afford to re – pay the loan owed to the Settlement Fund Trustees. Obviously at 9 years old, the plaintiff had no known source of income and I didn’t hear him say that a generous sponsor gave him money to purchase the suit land.

It is of course true that the 1<sup>st</sup> defendant had also tried to fraudulently acquire the suit land for himself. That attempt was however thwarted and he was convicted but being family, he was lucky to be given 1.2 Hectares through the 2<sup>nd</sup> defendant’s magnanimity. That explains why he did not show his face in these proceedings. The embarrassment would have been too much to bear. The fact however is that the 2<sup>nd</sup> defendant was not complicit in that fraud and as she has said, she was infact the complainant in that criminal case. It cannot therefore be correct for the plaintiff to claim, as he has done, that the 2<sup>nd</sup> defendant jointly committed fraud with the 1<sup>st</sup> defendant with respect to the suit

land. If anything, there is un – rebutted evidence that the plaintiff had even sold portions of the suit land to **JACKSON SIUNDU** and **WILLIAM MAKUNJUI** which the 2<sup>nd</sup> defendant worked tirelessly to reclaim by refunding the purchasers their money. That cannot be the conduct of a fraudster. That is the conduct of a person who was determined to protect the family heritage which the plaintiff was trying to decapitate through greed. The question as to who, between the plaintiff and the 2<sup>nd</sup> defendant is a fraudster is not difficult to answer.

It is also instructive to note that although the plaintiff claims that his late father **TADAYO WAKHUNGU NATEMBEYA** gave him the suit land, the most obvious expectation would have been that his late father would be a key witness in support of the plaintiff's case. Unfortunately, however, **TADAYO WAKHUNGU NATEMBEYA** did not testify because he was already deceased by the time this trial commenced although he had recorded a witness statement. Since his father **TADAYO WAKHUNGU NATEMBEYA** did not testify, this Court cannot refer to his evidence. But it is instructive to note that the said **TADAYO WAKHUNGU NATEMBEYA** was listed as a witness for the 2<sup>nd</sup> defendant and not for the plaintiff.

Allegations of fraud must be proved to the required standard which is higher than that required in ordinary civil cases – **KINYANJUI KAMAU .V. GEORGE KAMAU 2015 eKLR**. In the circumstances of this case, there is cogent evidence, admitted by the plaintiff himself, that the suit land was infact allocated to his parents who paid for it and was only registered in his names for the benefit of the family. It is therefore an act of dishonesty for the plaintiff to claim that he *“purchased”* the suit land and that he should be declared as the sole proprietor thereof.

And with regard to the consent recorded in **KAKAMEGA HIGH COURT SUCCESSION CAUSE No 36 of 1988** through which the 1<sup>st</sup> defendant acquired a portion of the suit land, that was a matter between the 1<sup>st</sup> defendant and **TADAYO WAKHUNGU NATEMBEYA** in a case in which he (plaintiff) was an Interested party. That consent can only be questioned in those proceedings and not by filing another suit.

It is clear from the above that the plaintiff has failed to establish his claim. This suit must therefore be for dismissal.

On costs, the main protagonists in this case are a mother and the son. Other than filing their defences, the 3<sup>rd</sup> and 4<sup>th</sup> defendants planted no other role in this trial. I agree with **MR KHAKULA**'s submissions that: -

*“This is a contest between son and a mother. It is a typical example of the proverbial washing of dirty linen in public.”*

I would not want to aggravate an already toxic atmosphere by penalizing the plaintiff with costs in a matter that is essentially a family dispute.

This Court therefore makes the following disposal orders: -

1. **The plaintiff's suit is dismissed.**
2. **Each party to meet their own costs.**

Let me end where I started. My parting shot to the plaintiff is this: -

Your mother **SUSANA KHAOMA WAKHUNGU** is still alive. If you still have any conscience, please quickly reach out to her and offer your profound apologies for what you have taken her through with respect to the suit land. I believe that if you address her in **KIBUKUSU**, you will say something like this: -

*“MAYI, MBELE KHU MAKOSA KOSI NAKHUKHOLELA KHU MUKUNDA KWE EFAMILI.”*

As for your father **TADAYO WAKHUNGU NATEMBEYA**, he left you before he could testify. Nonetheless, pray for his soul so that you can also receive forgiveness from heaven.

And of course if you are aggrieved by this Judgment, you have thirty (30) days within which to appeal.

**BOAZ N. OLAO.**

**J U D G E**

**7TH OCTOBER 2021.**

Judgment dated, signed and delivered this 7<sup>th</sup> day of October 2021 at **BUNGOMA** by way of electronic mail in keeping with the **COVID – 19** guidelines.

Right of Appeal explained.

**BOAZ N. OLAO.**

**J U D G E**

**7TH OCTOBER 2021.**