

**IN THE COURT OF
APPEAL AT NYERI**

(CORAM: KARANJA, LESIIT & ALI-ARONI,

JJ.A.) CIVIL APPEAL NO. 230 OF 2018

BETWEEN

ISAAC RURIGA GITHAE.....APPELLANT

AND

WANJOHI MWAI1ST RESPONDENT

**TERESIAH WARUGURU GITHAE2ND
RESPONDENT**

**WAMBUI GITHAE.....3RD
RESPONDENT**

*(Being an appeal from the Judgment of the Kerugoya Environment
and Land Court (B. Olao, J.) dated on 7th May, 2018 and delivered
by Mukunya, J. on 27th June, 2018*

in

E.L.C. Case No. 78 of 2014.)

JUDGMENT OF THE COURT

1. This appeal arises from the judgment of the Environment and Land Court at Kerugoya by **Olao, J.**, dated 7th May, 2018, in ELC Case No. 78 of 2014 and delivered on 27th June, 2018 by **Mukunya, J.**
2. The parties are related; the appellant, the 1st and 3rd respondents are siblings and the 2nd respondent is their mother. A brief background of the matter is that the respondents filed a suit by way of Originating Summons dated 13th March, 2014, with various amendments the last

dated 11th April, 2016 and sought orders; that they be registered as

owners of 0.80 HA each out of **Land Parcel No. Mutithi/Strip/691, 690 and 688** ('the suit land') by way of adverse possession; and in the alternative that the court declares that the appellant held 2.40 HA under an implied trust on behalf of the respondents jointly and severally; the deputy registrar of the court executes all the relevant documents to facilitate the transfer of the said land to them; and, costs.

3. The 1st respondent swore an affidavit in support of the Originating Summons, on his behalf and behalf of the 2nd and 3rd respondents. He averred that they lived on the suit land peacefully and uninterrupted since 1979, and they developed them in total exclusion of the appellant for the last 35 years. The suit land were subdivisions from Land Parcel No. **Mutithi/Strip/60** (the mother title) which they claimed belonged to all the members of the family. To their utter surprise they discovered that the suit land were mysteriously registered in the name of the appellant. He averred that in the year 1990, the appellant started threatening to evict them; he went further and subdivided the suit land without their consent and sold two (2) acres to a stranger. The respondents contended that they were entitled to ownership of the suit land by way of adverse possession. That alternatively and without prejudice, since the suit land was family and/or ancestral land given in 1961 by their Wambui clan, to their family through their father, Githae (now deceased), they too were entitled to

the suit land under an implied trust and that the Court should hold that the appellant held 2.40 HA out of the land in trust for them jointly and severally.

4. The appellant filed a replying affidavit sworn on 15th April 2014, and a further affidavit, sworn on 27th June, 2016. His case was that he was the registered owner of Land Parcel No. **Muthithi/Strip/60** measuring approximately 10 acres, having been registered on 12th February, 1973 and was issued with a Title Deed on 24th November, 1992. That the land was given to him by the predecessor of the Kerugoya County Council [hereinafter Council], and the same was done through a secret ballot. In 1999, he subdivided the said land into four (4) portions, Land Parcel No. **Mutithi/Strip/688, 689, 690, and 691** all under his name. In the year 1998, he sold one (1) acre to one Justus Karuga Mwaniki.
5. The appellant averred that in 1998, his mother, the 2nd respondent, left the ancestral home at Kiburu village, where she had been living with the 1st and 3rd respondents' father, and came to live with him. That he built a house for her, and later, she was joined by the 1st and 3rd respondents and they all started living there. He averred that the 1st and 3rd respondents, without his consent entered and occupied a portion of the suit land. He averred that the respondents were not entitled to any share of his land. In addition, he denied; holding the suit land in trust for any of the respondents; that the suit land was ancestral land; and, that

his father was ever

registered as the owner or involved when the land was being allocated to him.

6. The matter proceeded by way of *viva voce* evidence. The 1st respondent testified that Land Parcel No. **Mutithi/Strip/60** was given to their family by their Wambui clan, and it was specifically given to the appellant by virtue of being their eldest brother, since their father had already passed on, and he, the 1st respondent, was very young. He stated that his family was living on another land when he was born, but that later in 1979 his mother, the 3rd respondent and he moved to the suit land. That in 1996 the family requested the appellant to subdivide the land and give 2 acres each to his siblings; the 1st and 3rd respondents, and one James Mwangi (James), while the appellant was to be left with 4 acres. That even though the appellant subdivided the land into four portions, namely Land Parcel No. **Mutithi/Strip 688, 689, 690** and **691**, he did not give them title. He testified that the effect of the subdivision was that where he had lived became Land Parcel No. **Mutithi/Strip/691**, where their mother and the 3rd respondent lived became Land Parcel No. **Mutithi/Strip/688** and where James lived became Land Parcel No. **Mutithi/Strip/690**.
7. The 3rd respondent in her evidence confirmed that the appellant was given the suit land by the Wambui clan and was registered as the proprietor in trust for the family because in addition of their mother having no identification

card, at the

time, women could not be registered as land owners. She said that she was married and left home, but that after her husband died, she moved back home in 1980 and lived there since then for 25 years.

8. One Jackson Njuki Mwai, the Chairman of the Wambui Clan testified that the father of the appellant, the 1st and 3rd respondents and his grandfather were step brothers and that therefore he knew the parties very well. He testified to the history of the suit land and stated that Land Parcel No. **Mutithi/Strip/60** was clan land and was initially given to Githae (deceased), who had two (2) wives, Kabuta and the 2nd respondent. He said that the suit land was registered in the name of the appellant as the eldest son of his mother, to hold the same in trust for the rest of the family, since the 2nd respondent did not possess an identification card. Lastly, he testified that the appellant and his siblings the 1st and 3rd respondents and their mother the 2nd respondent were all living on the portion of land meant for the children of the 1st wife, Kabuta but that they all moved to the suit land after it was registered in the appellant's name in 1973.
9. Joseph Maina Githae, step brother to the appellant and the 1st and 3rd respondent, gave evidence similar to that of the 1st and 3rd respondents and the chairman of the clan. He said that he was present at the clan meeting when the appellant was given land to hold in trust on behalf of the house of the 2nd respondent.

10. The appellant gave his testimony and called two witnesses, Ndambiri Nyaga and Justus Karuga Mwaniki. In his testimony, he reiterated the averment in his replying affidavit. He testified that he and the 1st and 3rd respondents shared the same mother but not the same father. He stated that Land Parcel No. **Mutithi/Strip/60** belonged to him and denied that he held in trust for anyone. He testified that the 2nd respondent was the first to enter the land on his invitation but that the 1st and 3rd respondents followed her there without his permission or consent.
11. Ndambiri Nyaga testified that what he knew was that the appellant was given the land measuring 10 acres by the Kirinyaga County Council after a balloting process. He said he was aware that the appellant had subdivided the land and sold out part of it to third parties.
12. Justus Karuga Mwaniki testified that the appellant sold him a portion of land in 1998, and at the time, he saw the 1st and 3rd respondents living on a portion of the suit land.
13. At the end of the hearing, the parties filed their respective written submissions. In the judgment of the trial court dated 7th May, 2018, Olao, J. found that the respondents had proved their case as required in law, finding that the appellant held the Land Parcel No. **Mutithi/Strip/688, 690** and **691** in trust both for himself and the respondents and therefore entered judgment in favor of the respondents in the following terms:

- 1. “A declaration that the appellant holds 2.40HA out of the Land Parcel Nos. Mutithi/Strip/688, 690 and 691 in trust for the respondents.**
 - 2. The deputy registrar does execute all relevant documents to facilitate the transfer of 2.40HA out of Land Parcel Nos. Mutithi/Strip/680, 690 and 691 to the respondents.**
 - 3. As the parties are family, each to meet their own costs.”**
14. Aggrieved and dissatisfied with the said judgment the appellant preferred an appeal to this Court. In the memorandum of appeal dated 6th December, 2018, the appellant faults the learned Judge on the following grounds:
- 1. “That the learned judge erred in law and fact in making judgment against the weight of evidence.**
 - 2. That the learned judge erred in law and fact in failing to find that the respondents did not prove that they were in adverse possession of the suit land for a period of 12 years.**
 - 3. That the learned judge erred in law and fact in failing to find that the respondents did not prove to the required standard, that the appellant held the suit land in trust for them.**
 - 4. That the learned judge erred in law and fact in unfairly disregarding and failing to consider material evidence tendered by and for the appellant.**
 - 5. That the learned judge erred in law and fact in disregarding material contradictions and inconsistencies in the evidence adduced by and on behalf of the respondents.**
 - 6. That the learned judge erred in law and fact in failing to fairly evaluate and analyse the**

evidence adduced before him.

7. That the learned judge erred in law and fact in making orders that were not prayed for by the respondents.”

15. At the virtual hearing on 4th February, 2025, learned counsel **Mrs. Njeri Magee** was present for the appellant, while learned counsel **Mr. Muriithi** was present for the 1st and 3rd respondents. It was noted that the 2nd respondent was deceased and had not been substituted. It was thus agreed by Mrs. Magee and Mr. Muriithi that the appeal against the 2nd respondent be marked as abated. Both counsel relied on their respective client’s written submissions, those of the appellant dated 23rd January, 2025 and those of the 1st and 3rd respondents’ dated 9th December, 2024.
16. In his written submissions the appellant argues that the trial court erred in finding a customary trust and adverse possession was proved by the respondents despite inconsistent and uncorroborated evidence. He asserts that the Land Parcel No. **Mutithi/Strip/60** was allocated to him personally by Kerugoya County Council in 1971 and thus was not ancestral land, that it was subdivided in 1999 into Land Parcel Nos. **Mutithi/Strip/688, 689, 690 and 691**. He submits that he allowed his mother, 2nd respondent, and later the 1st and 3rd respondents to live on the Land No. **Mutithi/Strip/691** out of goodwill and did not attempt to evict them until 2013.
- 17.** To dispute the claim of adverse possession, the appellant relies on this Court’s decision in **Mtana Lewa vs. Kahindi**

Ngala

***Mwagandi* [2015] eKLR**, where it was held that for adverse possession to be established, occupation must be continuous, open, and without permission for at least 12 years. Since the respondents admitted in testimony that the appellant allowed them to live on the land and they filed suit just a year after the alleged withdrawal of consent, the appellant argues their claim fails this legal test.

18. Regarding customary trust, the appellant refers to the Supreme Court decision in **Isack M'inanga Kiebia vs. Isaaya Theuri M'lintari & Another [2018] eKLR**, which outlines essential elements for proving a customary trust: the land must have been family or clan land before registration; the claimant must be closely related to the family or clan; and the claim must be against a registered proprietor from that same family. The appellant argues that the respondents failed to prove that the land was ancestral or that they were children of Githae, noting conflicting testimony and the absence of any documentary evidence such as birth certificates.
19. In summary, the appellant maintains that the respondents did not discharge the burden of proof for either claim, and the judgment was based on speculative and inconsistent evidence. The appellant thus prays that the appeal be allowed and the trial court's decision be set aside.
20. On their part, the 1st and 3rd respondents argue that the trial court rightly found they had acquired the suit land

through

adverse possession and that the appellant held the land in trust under Kikuyu customary law. On adverse possession, they assert that they, along with the now-deceased 2nd respondent, had been in uninterrupted, exclusive, and peaceful possession of Land Parcel Nos. **Mutithi/Strip/688** and **691** for over 12 years from as early as 1979 and 1980, respectively, without any formal permission from the appellant. They cite testimony from the record, including the 1st respondent's statement that they built homes on the land and lived there with their families long before the appellant attempted eviction in 2013, indicating the occupation was *nec vi, nec clem, nec Precario* (without force, without secrecy, without permission).

21. On the legal foundation for adverse possession, the 1st and 3rd respondents rely on judicial interpretation of the doctrine, asserting that the learned trial Judge correctly applied the principle by finding that continuous occupation for over 12 years extinguished the appellant's title.
22. Concerning customary trust, the 1st and 3rd respondents argue that the land initially belonged to the family under Kikuyu customary law and was registered in the appellant's name in 1971, not for his exclusive benefit but in trust for the entire family. They submit that the appellant, being the eldest son of the 2nd respondent, inherited the land from the clan on behalf of the family. This was supported by unchallenged testimony from clan elders, who confirmed

the appellant was registered

as trustee for the family of Waruguru Githae. They refer to ***Mbui vs. Mukangu & Gerald Mutwiri [2004] KECA 155 (KLR)***, where this Court held that a customary trust is an equitable concept in which land is held by one generation for the benefit of succeeding ones. They also refer to ***Kanyi Muthiora vs. Maritha Nyokabi Muthiora [1984] KECA 23 (KLR)***, where this Court recognized that registered land may still be subject to equitable doctrines such as implied, resulting, and constructive trusts arising from customary arrangements.

23. In conclusion, the respondents contend that the trial court's findings were well-founded both in fact and law. They argue that the appellant's evidence was inconsistent and lacked probative value, especially given his admission that the respondents lived on the land for decades and his failure to provide proof of any formal license or lease. They urge the Court to dismiss the appeal with costs.
24. We have summarized the case and the witness statements which were adopted at the High Court because it is our duty as the first appellate court to re-consider the evidence and analyze it ourselves and reach our conclusions on facts and the law - see ***Nairobi Bottlers Limited vs. Imbuga (Civil Appeal E661 of 2022) [2024] KECA 434 (KLR)*** where this Court held:

“Our mandate in a first appeal as donated by rule 31 of the Court of Appeal Rules, 2022 is to re-

appraise the evidence and to draw inferences of fact; to retry the case. That mandate has been the subject of various judicial pronouncements in such cases as Nicholas Njeru vs. Attorney General & Others [2013] eKLR where it was stated: '[In] a first appeal, we are required to re-evaluate the evidence and arrive at our own independent findings and conclusions of the matter.'

25. We have carefully considered the record of appeal in its entirety, the respective submissions of the parties, both written and oral and the relevant law. We observe that the appellant raises two issues which is the basis of this appeal which are:

- 1. Whether the learned Judge erred to find that the respondents had acquired the suit lands through adverse possession;**
- 2. Whether the learned trial Judge erred to find that the appellant held the suit lands in trust for the respondent.**

26. On the issue of adverse possession, the appellant argued that the respondents had not established that they were in occupation of the suit lands continuously, openly, and without permission for at least 12 years. He argued that the respondents admitted in testimony that the appellant allowed them to live on the land and that they filed suit just a year after the alleged withdrawal of consent; a matter the respondents denied, urging that the trial Judge correctly found in their favour.

27. A claim for adverse possession is brought on the strength of section 38 of the Limitation of Actions Act. **Section 38(1)** provides;

“38. Registration of title to land or easement acquired under Act.

(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

29. There are a plethora of cases that detail what constitutes adverse possession, including the case invoked by the appellant of ***Mtana Lewa vs. Kahindi Ngala Mwangandi*** [2015] eKLR. In the Court of Appeal case of ***Wambugu vs. Njuguna*** [1983] KLR the Court set down the applicable principles and delivered itself thus:

“1. In order to acquire by statute of limitations title to land which has a known owner, the owner must have lost his right to the land either by being dispossessed of it or by having continued his possession of it. Dispossession of the proprietor that defeats his title are acts which are inconsistent with his enjoyment of the soil for the purpose for which he intended to use it. The respondent could and did not prove that the appellant had either been dispossessed of the suit land for a continuous period of twelve years as to entitle him, the

respondent to title to the land by adverse possession.

2. The limitation of Actions Act, on adverse possession contemplates two concepts: dispossession and discontinuance of possession. The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not the claimant has proved that he has been in possession for the requisite number of years.”

30. The Court was also guided by the case of **Francis Gicharu Kariri vs. Peter Njoroge Mairu**, Civil Appeal No. 293 of 2002 (Nairobi) where this Court approved the decision of the High Court in the case of **Kimani Ruchire vs. Swift Rutherfords & Co. Ltd** [1980] KLR 10 where Kneller, J., held that:

“The plaintiffs have to prove that they have used this land which they claim as of right: nec vi, nec clam, nec precario (no force, no secrecy, no persuasion).”

31. The learned trial Judge considered what constitutes adverse possession, citing this Court’s decision of **Kasuve vs. Mwaani Investment Limited & 4 Others** [2004] 1 K.L.R 184, where the Court re-stated what a party has to establish to prove a claim for land by adverse possession thus:

“In order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of land openly and as of right without interruption for a period of 12 years after dispossessing the

owner or by

discontinuation of possession by the owner on his own volition.

32. The learned Judge examined and analysed the evidence adduced before him as well as the pleadings and had the following to say in regard to adverse possession:

“The occupation and possession of part of the suit land by the plaintiffs (read respondents) is conceded by the defendant (read appellant). In paragraphs 11 and 15 of his replying affidavit dated 15th April 2014, he has deposed as follows:

11. That the 2nd plaintiff who is my mother came and started living with me around the year 1998. She was by then living at the ancestral home to the father of the 1st plaintiff and the 3rd plaintiff in Kiburu Village.

15. The land parcel No. MUTITHI/STRIP/691 measures approximately 2 acres and the 1st and 3rd plaintiffs only occupy portion of the same which has always been against my wish.”

33. The learned Judge noted the inconsistency in the evidence of the appellant changing the dates that the respondents went to the suit land as follows:

“Earlier on, the defendant stated as follows when cross-examined by Mr. L. MAINA:

The 2nd plaintiff started living on that land in 1984. The 1st plaintiff started living on the land in 1981. The 3rd plaintiff started living there in 1982.”

34. The learned Judge summarized the evidence of the 1st and 3rd respondents, which was that they started living on the suit land in 1979 and that it was not until 1990 that the defendant began threatening them with eviction. He

considered when the

time started running and when it stopped for purposes of adverse possession and observed:

“Whether the 1st and 3rd plaintiffs (respondents) started living on the suit land between 1981 and 1984 (as stated by the respondent (appellant)) or in 1979 (as stated by the 1st and 3rd respondents), the twelve (12) years statutory period that enables one in occupation of land to claim it through adverse possession had expired by the time this suit was filed through the first Originating Summons dated 13th March 2014 and filed on 18th March 2014....

In my view the 1st and 3rd plaintiffs claim to a portion of the suit land by way of adverse possession is well founded and I would allow it. I would however dismiss the 2nd plaintiff’s claim because her entry on the suit land was with the consent of the defendant.”

35. We find that from the pleadings and the evidence before the trial court it is clear that the 1st and 3rd respondents lived on the suit land for over 12 years, openly, continuously and without the permission of the appellant. The appellant admitted to the same in his pleadings, even though he tried to qualify that admission by stating that it was his mother who invited the 1st and 3rd respondents to his land. Even if they were invited by another, that invitation would not constitute permission on his part. In order to defeat a claim for adverse possession, permission to enter and utilize the land must have been given by the registered owner of the land and not by another or by proxy. The essential prerequisites are that the

possession of the adverse possessor is neither by force or stealth nor under the license of the owner.

36. Even though the Judge went into great length to deal with the claim under adverse possession, in the end he observed:

‘In my view the 1st and 3rd plaintiffs claim to a portion of the suit land by way of adverse possession is well founded and I would allow it.’

37. He however did not enter any judgment for the 1st and 3rd respondents on the basis of adverse possession, as is evident in the final declaration and order made in his judgment.

38. As to the claim under trust the issue is whether there was evidence of the existence of a trust over the suit land.

Black’s Law Dictionary, 9th Edition; defines a trust as:

“The right, enforceable solely in equity, to the beneficial enjoyment of property to which another holds legal title; a property interest held by one person (trustee) at the request of another (settlor) for the benefit of a third party (beneficiary).”

39. The Supreme Court of Kenya in **Kiebia vs. M’lintari & Another (Civil Case 10 of 2015) [2018] KESC 22 (KLR)** the Court stated:

“Some of the elements that would qualify a claimant as a trustee are:

- 1. The land in question was before registration, family, clan or group land;**
- 2. The claimant belongs to such family, clan,**

or group;

3. **The relationship of the claimant to such family, clan or group is not so remote or tenuous as to make his/her claim idle or adventurous;**
4. **The claimant could have been entitled to be registered as an owner or other beneficiary of the land but for some intervening circumstances;**
5. **The claim is directed against the registered proprietor who is a member of the family, clan or group.”**

40. In the said **Kiebia Case** (supra), the Court went on to say:

“Flowing from this analysis, we now declare that a customary trust, as long as the same can be proved to subsist, upon a first registration, is one of the trusts to which a registered proprietor, is subject under the proviso to Section 28 of the Registered Land Act. Under this legal regime, (now repealed), the content of such a trust can take several forms. For example, it may emerge through evidence, that part of the land, now registered, was always reserved for family or clan uses, such as burials, and other traditional rites. It could also be that other parts of the land, depending on the specific group or family setting, were reserved for various future uses, such as construction of houses and other amenities by youths graduating into manhood. The categories of a customary trust are therefore not closed. It is for the court to make a determination, on the basis of evidence, as to which category of such a trust subsists as to bind the registered proprietor. Each case has to be determined on its own merits and quality of evidence. It is not every claim of a right to land that will qualify as a customary trust. In this regard, we agree with the High Court in *Kiarie v. Kinuthia*, that what is essential is the nature of the holding of the land and intention

of the parties. If the said holding is for the benefit of other members

of the family, then a customary trust would be presumed to have been created in favour of such other members, whether or not they are in possession or actual occupation of the land.”

41. The learned Judge considered **Gichuki vs. Gichuki C.A Civil Appeal No. 21 of 1981** and **Mbothu & Others vs. Waitimu & Others 1986 K.L.R 173**, where this Court held that a party relying on the existence of a trust must prove through evidence the creation and existence of such trust; and that the intention of the parties to create a trust must be clearly determined before a trust is implied.
42. The appellant’s case was that he was allocated the suit land Parcel No. **Mutithi/Strip/60**, which was 10 acres. His witness, **Ndambiri Nyaga (DW2)**, corroborated his evidence that the appellant was allocated the suit land by Kirinyaga County Council.
43. The respondents’ case was that the appellant was given the land by the Wambui Clan in 1961, and that it was registered in his name in trust for himself and the 1st and 3rd respondents, who are his siblings, and the 2nd respondent who was their mother. Their evidence was that their father had two wives, Kabuta and Waruguru, the 2nd respondent. They contended that their father died early and thus the land was allocated to the 2nd respondent and her children, and registered in the appellant’s name in trust for them.
44. That evidence was corroborated by the Chairman of the Wambui Clan, PW3, Jackson Mwai, who testified that the

clan

allocated the suit land to the appellant, being the eldest son to the 2nd respondent's family, in trust for him and the respondents. Joseph Maina Githae, testified in support of the respondents' case. He said that he was a step -brother to the appellant, the 1st and 3rd respondents. He said that the suit land was allocated by the Wambui Clan for the household of the 2nd respondent, in trust for the appellant and the respondents. He testified that it was registered in the appellant's name, being the oldest son of the 2nd respondent's household, as was the custom.

45. The learned Judge found as follows: In regard to the law applicable on the issue of trust:

“It is now well established that under Kikuyu Customary Law, to which the parties herein are subject, land is usually held by the eldest son in trust for the family - see KIHARI VS KIHARI C.A CIVIL APPEAL No 170 of 1993 (1994 e K.L.R.)”

46. Regarding whether the suit land was private property or subject to trust, he found:

“Evidence has been led in this case to show that the defendant is the eldest in the house of his mother the 2nd plaintiff and that is why the original land parcel No. MUTITHI/STRIP/60 was registered in his names to hold in trust for the plaintiffs. This evidence, taken together with the fact that the original land parcel No. MUTITHI/SRIP/60 was originally clan land and not private property.”

47. As to whether the 1st and 3rd respondents were entitled to the

declaration sought:

“Parcel No. MUTITHI/SRIP/60 was originally clan land and not private property on which the plaintiffs have lived for close to thirty (30) years, is evidence upon which this Court can conclude, which I hereby do, that the defendant [appellant] holds the suit land in trust for both himself and the plaintiffs [respondents]. I must therefore determine the trust in the terms sought by the plaintiffs...

1. A declaration that the appellant holds 2.40HA out of the Land Parcel Nos. Mutithi/Strip/688, 690 and 691 in trust for the respondents.”

48. We have considered the evidence adduced in support of the claim of the suit land on the basis of trust. We are persuaded that the respondents proved that there existed a trust over the suit land that affected the appellant’s title. It is our determination, based on evidence, that there was an intention to create a customary trust over the suit land, by the Wambui Clan that allocated the land to the family of the father of the appellant and respondents, with the intention that he held it in trust for the parties as afore stated. We agree with the learned trial Judge that the customary trust was binding on the appellant, the registered proprietor of the land. The appellant was allocated the suit land, the mother title **Mutithi/Strip/60**, to hold in trust for himself and the respondents, as the eldest son of his mother’s household, in accordance to their customs. The learned trial Judge went to great length to analyse the evidence before him and came to the correct conclusion that even though the claim could have succeeded on the basis of adverse possession in respect of

the 1st and 3rd respondents, the claim under trust in favour of all

the respondents carried the day and should succeed. He proceeded to enter judgment on the basis of trust. We find that the learned Judge came to the correct conclusion in this matter and that he cannot therefore be faulted.

49. The result of this appeal is that it lacks merit and is dismissed.

Dated and delivered in Nyeri this 3rd day of October, 2025.

W. KARANJA

.....
JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL

ALI-ARONI

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JUDGE OF APPEAL

*I certify that this is
a true copy of the
original*

Signed
DEPUTY REGISTRAR