Kabunduiru v Kabwi (Environment and Land Appeal E018 of 2023)
[2025] KEELC 6823 (KLR) (9 October 2025) (Judgment)

Neutral citation: [2025] KEELC 6823 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND APPEAL E018 OF 2023

JO MBOYA, J

OCTOBER 9, 2025

BETWEEN

JOSPHAT KABUNDUIRU ..... APPELLANT

AND

JEREMIAH KABWI ..... RESPONDENT

(Being an appeal from the decision/judgment delivered in Tigania on 29th day of August 2023 by Hon. R. Ongira SRM in Tigania PM ELC No. 81 of 2022)

JUDGMENT

1. The Respondent herein [who was the Plaintiff in the subordinate court] filed the Plaint dated 24th April 2012; and wherein same sought various reliefs. The Plaint under reference was subsequently amended resting with the amended Plaint dated 19th May 2016.
2. The reliefs sought at the foot of the amended plaint are as hereunder;
    a. Declaration that the defendant holds title number Nyambene/Uringu III/1696, 1697, 1698, 1699 and 1700 in trust and the plaintiff is entitled to one acre share of the suit lands exactly where the plaintiff has put his homestead and developments.
    b. Costs of the suit.
    c. Interests at court rates.
3. The Appellant [who was the Defendant in the subordinate court] duly entered an appearance and filed a statement of defence and counterclaim dated 7th September 2016. The reliefs sought at the foot of the counterclaim are as hereunder;
    i. A declaration that land parcel number Nyambene/Uringi III/978 and all its subdivisions are the properties of the defendant.

ii. An order of eviction against the plaintiff from L.R No. Nyambene/Uringi III/978 and its subdivisions.

iii. Costs and interests.

iv. Any such other/further relief as this Hon. Court may deem appropriate to be made.

4. The suit before the subordinate court was heard and disposed of vide Judgment dated and delivered on 29th August 2023; and wherein the learned magistrate [Hon. R. Ongira – SRM] found and held that the respondent had proved his claim pertaining to trust in respect of L.R No. Nyambene/Uringi III/978. Furthermore, the learned trial magistrate ventured forward and decreed that the respondent is entitled to 1-acre portion out of the suit property.

5. On the contrary, the learned trial magistrate found and held that the appellant had failed to prove the counterclaim and thus the counterclaim by the appellant was dismissed. Nevertheless, the trial court ordered that each party do bear own costs of the suit and the counterclaim.

6. It is the said Judgment and the consequential decree which has aggrieved the appellant and thereby provoking the subject appeal. The appellant has approached this court vide memorandum of appeal dated 26th September 2023 and wherein the appellant has highlighted the following grounds;

i. The learned trial magistrate erred in law and fact in that she misunderstood the law before her and wrongly applied the same and also did a wrong interpretation and came to a wrong conclusion that the plaintiff proved his case to the required standards and dismissed the defendant's counterclaim.

ii. The learned trial magistrate erred in law and fact by entertaining a determination of a matter that she did not have jurisdiction as the claim is time-barred by law.

iii. The learned trial magistrate erred in law and fact by failing to appreciate the fact that the father of the parties herein had gifted all his sons with their respective land as part of their inheritance, including the respondent.

iv. The learned trial magistrate erred in law and fact by failing to raise issues not before the court, thus misdirecting herself and reaching wrong conclusions that trust had been established by mere reason that the respondent was a 1st son.

v. The learned magistrate erred in law by failing to appreciate that the appellant is the lastborn and could not hold land in trust on behalf of the appellant as the eldest son.

vi. The learned magistrate erred in law by failing to appreciate that the appellant could not hold land in trust on behalf of the respondent only and leave out the other siblings.

vii. The decision of the trial magistrate is against the weight of the evidence before the court.

viii. The learned magistrate erred in law and failed to take into consideration of the testimonies of the appellant's witnesses, pleadings and evidence.

ix. The learned trial judge's decision is against the law and case law.

7. The subject appeal came up for directions on 14th July 2025; whereupon the parties confirmed that the record of appeal had been filed. Furthermore, the parties sought directions as pertains to the hearing and disposal of the appeal. To this end, the court proceeded to and gave directions inter alia that the appeal be canvassed by way of written submissions. Moreover, the court also circumscribed the timelines for the filing and exchange of the submissions.

8. The appellant filed written submissions dated 1st August 2025; and wherein same has highlighted two [2] key issues for consideration by the court. The issues highlighted by the appellant are namely; the respondent failed to prove and or establish customary trust in respect of the suit property and the respondent failed to demonstrate fraud to the requisite standard.

9. Regarding the first issue, it was submitted by counsel for the appellant that the appellant and the respondent are brothers. Furthermore, it was contended that the respondent herein is an elder brother to the appellant. In addition, it was submitted that the appellant and the respondent were each given their own share of land by their father namely, M'Ibiri M'Kirunya [now deceased].

10. Moreover, it was submitted that in so far as the appellant and respondent were each given their own share of land, the respondent herein cannot now be heard to contend that the appellant, [who is a younger brother] is holding a portion of the suit property on trust. For good measure, it was submitted that the respondent herein failed to place before the court credible evidence to demonstrate the existence of a customary trust.

11. To buttress the submissions that the respondent did not prove and or establish customary trust, learned counsel for the appellant has cited and referenced the decision of the Supreme Court in the case of Isaac Kiebia M'Inanga vs Isaya Theuir M'Lintari & another (2018) eKLR & Dominic Otieno Ogonyo & 2 others vs Helinda Akoth Walori (2022) eKLR, respectively.

12. Regarding the question of fraud, learned counsel for the appellant has submitted that it is not enough for the respondent to plead and particularize fraud. Instructively, learned counsel for the appellant has submitted that it was incumbent upon the respondent to tender and adduce credible, concrete and compelling evidence to underpin his claim that the suit property was registered in the name of the appellant vide fraud. Nevertheless, it was submitted that no evidence was tendered by and on behalf of the respondent.

13. Finally, learned counsel for the appellant has submitted that the burden of proof laid on the respondent to prove his claim. However, it was submitted that the respondent failed to prove/establish his claim and thus the trial court committed a grave error in finding that the respondent was entitled to one acre portion of the suit property. In this regard, learned counsel for the appellant has invited the court to allow the appeal.

14. The respondent filed written submissions dated 29th August 2025 and wherein same has highlighted three [3] key issues, namely; whether the appellant held L.R No. Nyambene/Uringu III/978 or its resultant sub-divisions in trust for the respondent; whether the respondent proved his case to the requisite standards and who bears the costs of the appeal.

15. Regarding the first issue, learned counsel for the respondent has submitted that customary trust is a concept that is acknowledged and reiterated under the Kenyan Law. Moreover, it was submitted that customary trust is rooted in customary practices and generational inheritance even in the absence of formal documentation. In addition, it was submitted that courts of law are called upon to recognize the existence of customary trust in circumstances where land is passed down through family inheritance. It was the further submission by learned counsel for the respondents that what constitutes the suit property previously belonged to M'Ibiri M'Kirunya [now deceased] and who was the father of both parties. To this end, it was posited that the suit land was therefore family land.

16. Additionally, learned counsel for the respondent has submitted that the respondent tendered and adduced evidence to demonstrate that same has been in occupation and possession of a portion of the suit property for an extended duration of time. Moreover, it was submitted that the respondent

has undertaken extensive developments, including building his homestead on a portion of the suit property.

17. Learned counsel for the respondent has also submitted that the appellant herein was only allocated three acres of the original parcel of land. Furthermore, it has been submitted that the 3-acre portion of land which was allocated to the appellant excluded the portion being occupied by the respondent. Nevertheless, it has been posited that the appellant herein subsequently caused the portion including where the respondent is residing to be merged into his (appellant's) title.

18. Be that as it may, it has been contended that the respondent has remained in occupation of the one-acre portion of the suit property. To this end, the counsel has contended that the respondent has acquired beneficial rights/interests to the one-acre portion.

19. To buttress the submissions that the respondent has acquired a beneficial right on account of customary trust, learned counsel for the respondent has cited and referenced the decision of the Supreme Court in the case of Isaac Kiebia M'Inanga vs Isaaya Theuri M'Lintari (2018) eKLR.

20. Turning to the second issue, learned counsel for the respondent has submitted that the respondent tendered plausible, cogent, concrete and compelling evidence to demonstrate his entitlement to the one-acre portion. In particular, it was submitted that the respondent demonstrated uninterrupted possession; and occupation spanning a duration of over 30 years.

21. Based on the foregoing, it has been submitted that the respondent proved his claim and thus the judgment of the trial court is well-grounded. In this respect, learned counsel has invited the court to find that the appeal is bereft of merit[s]; and to dismiss the same with costs.

22. Having reviewed the record of appeal, the evidence tendered [both oral and documentary] and upon consideration of the written submissions filed on behalf of the respective parties, I come to the conclusion that the determination of the subject appeal turns on two key issues, namely; whether the respondent established his claim based on customary trust or otherwise; and whether the appellant herein established his entitlement to the suit property or otherwise.

23. Before venturing forward to analyse the issue[s] that have been highlighted, it is imperative to observe that the Appeal beforehand is a first appeal from the decision of the court of first instance, namely, the Subordinate Court. By virtue of being a first appeal, this honourable court is vested with the requisite jurisdiction to review, re-evaluate and re-analyse the findings of the court of first instance and thereafter to arrive at independent conclusions, taking into account the pleadings filed, evidence on record and the applicable laws. [See the provisions of Section 78 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya].

24. Nevertheless, it is imperative to underscore that even though this court is clothed with jurisdiction to review; re-evaluate; scrutinise; and re-analyse the findings and observations of the trial court, this court is, however, called upon to exercise necessary caution and circumspection. In addition, the court is called upon to defer to the findings of the trial court unless the findings of the trial court are informed by extraneous factors or, better still, are perverse to the evidence on record.

25. The scope and jurisdictional remit of this court whilst entertaining a first appeal has been elaborated upon and underscored in various decisions. In the case of Selle & Another vs. Associated Motor Boat Co. Ltd & Others [1968] EA 123, the Court of Appeal for Eastern Africa elaborated on the applicable principle and stated thus;

> " ...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts

in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect..."

26. Likewise, the extent and scope of the Jurisdictional remit of the first appellate court was also elaborated upon in the case of Abok James Odera T/A A.J Odera & Associates versus John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR, where the Court of Appeal held thus;

> We also wish to be guided by the reasoning of this court in the case of Mwana Sokoni versus Kenya Business Limited (1985) KLR 931 page 934,934 thus:-
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> "Although this court on appeal will not lightly differ from the Judge at first instance on a finding of fact, it is undeniable that we have the power to examine and re-evaluate the evidence on a first appeal if this should become necessary. As was said by the house of Lords in Sottos Shipping versus Sauviet Sohold, the Times, March 16,1983.
>
> "It is uncertain whether their Lordships should have reached the same conclusion on the evidence, but it is important that, sitting in the appellate court they should be over mindful of the advantages enjoyed of the trial Judge who saw and heard the witnesses and was in a comparably better position than the Court of Appeal to assess the significance of what was said, how it was said, and equally impotent what was not said"
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> Again, in Peters versus Sunday Post Limited (1958) EA424, a decision of the Court of Appeal for Eastern Africa, Sir Kenneth O' Conner, P said at page 429:
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> "It is a strong thing for an appellate court to differ from the finding on a question of fact of the Judge who tried the case and who has had the advantage of seeing and hearing and the witnesses"

27. Without endeavouring to exhaust the case law that elaborates on the scope and extent of jurisdiction of the first appellate court, it is apposite to take cognizance of the holding of the court of appeal in the case of Gitobu Imanyara & 2 others v Attorney General [2016] eKLR, where the court held as hereunder;

> As we discharge our mandate of evaluating the evidence placed before the High Court, we keep in mind what the predecessor of this Court said in Peters –vs- Sunday Post Ltd [1958] EA 424. In its own words: -
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> "Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial judge should stand, this jurisdiction is exercised with caution; if there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight or bearing of circumstances admitted or proved, or had plainly gone wrong, the appellate court will not hesitate so to decide ...".

28. Back to the issues for consideration. I beg to start with the first issue, namely; whether the respondent established and proved his claim of customary trust or otherwise. It is imperative to observe that the respondent herein contended that the appellant held a portion measuring one acre out of the suit property on trust for him. To this end, the respondent contended that the appellant had previously been given three acres out of the suit property, leaving out two acres. In addition, the respondent contended that same entered onto and built on a portion falling within the two acres which had not been given to the appellant.

29. Additionally, the respondent contended that the appellant subsequently caused the two acres which had not been given to him to be merged into the title of L.R No. Nyambene/Uringu III/978 [now subdivided]. Nevertheless, the respondent posited that despite the fact that the suit property is registered in the name of the appellant same is held in trust for him [respondent].

30. Furthermore, it was the respondent's position that same has been in occupation and possession of a portion measuring one acre out of the suit property for more than 30 years. Moreover, the respondent averred that same has established his homestead on the portion of the suit property and in this regard, same has acquired beneficial interests thereto.

31. On the basis of the foregoing averments, the respondent approached the court and sought to be declared as the owner of one acre portion of the suit property on account of customary trust.

32. It is important to recall and reiterate that the respondent bore the burden of establishing and proving the existence of customary trust. For good measure, the existence or otherwise of customary trust could only be proved on the basis of plausible; credible, cogent and compelling evidence to show that the existing circumstances envisaged trust. Moreover, it is common ground that a court of law ought not to proclaim; infer; or presume trust unless the evidence points towards such trust.

33. In the case of Kazungu Fondo Shutu vs Japhet Noti Charo (2021) eKLR, the Court of Appeal stated as hereunder;

> The concept of trust must however, be proved. This Court in the case of Mumo v Makau [2002] 1EA.170, held that "trust is a question of fact to be proved by evidence....." See also Kanyi Muthiora v Maritha Nyokabi Muthiora, Nairobi Court of Appeal No.19 of 1982.
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> 29. In Juletabi African Adventure Limited & another v Christopher Michael Lockley [2017] eKLR, this Court dealt with the issue of trust at length. The Court made reference to Twalib Hatayan Twalib Hatayan & Anor v Said Saggar Ahmed Al-Heidy & Others [2015] eKLR and re-stated the law on trusts as follows: -
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> "According to the Black's Law Dictionary, 9th Edition; a trust is defined as
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> "1. 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)."
>
> Under the *Trustee Act*, "... the expressions "trust" and "trustee" extend to implied and constructive trust, and cases where the trustee has a beneficial interest in the trust property..."
>
> In the absence of an express trust, we have trusts created by operation of the law. These fall within two categories; constructive and resulting trusts. Given that the two are closely interlinked, it is perhaps pertinent to look at each of them in relation to the matter at hand. A constructive trust is an equitable remedy imposed by the court against one who has acquired property by wrong doing. ... It arises where the intention of the parties cannot be ascertained. If the circumstances of the case are such as would demand that equity treats the legal owner as a trustee, the law will impose a trust. A constructive trust will thus automatically arise where a person who is already a trustee takes advantage of his position for his own benefit (see Halsbury's Laws of England supra at para 1453). As earlier stated, with constructive trusts, proof of parties' intention is immaterial; for the trust will nonetheless be imposed by the law for the benefit of the settlor. Imposition of a constructive trust is thus meant to guard against unjust enrichment. ...

> A resulting trust is a remedy imposed by equity where property is transferred under circumstances which suggest that the transferor did not intend to confer a beneficial interest upon the transferee ...
>
> This trust may arise either upon the unexpressed but presumed intention of the settlor or upon his informally expressed intention. (See Snell's Equity 29th Edn, Sweet & Maxwell p.175). Therefore, unlike constructive trusts where unknown intentions maybe left unexplored, with resulting trusts, courts will readily look at the circumstances of the case and presume or infer the transferor's intention. Most importantly, the general rule here is that a resulting trust will automatically arise in favour of the person who advances the purchase money. Whether or not the property is registered in his name or that of another, is immaterial (see Snell's Equity at p.177) (supra)."

34. Suffice it to underscore that the claimant is chargeable with the obligation to prove trust. It must be proved on the basis of evidence. Absent evidence, a court of law cannot infer trust, whether same be a customary trust or otherwise.

35. It is the respondent who had contended that the suit property was being held on trust. However, evidence abound that the father of the respondent, the appellant and also DW 2 distributed/ subdivided his land amongst his 3 sons. In particular, the respondent herein was given L.R No. Nyambene/Uringu I/442, whereas the appellant herein was given the suit land. In addition, evidence abound that DW 2 [who is also a brother of the parties was given L.R No. Nyambene/Uringi/531. For good measure, all the sons of M'Ibiri M'Kirunya were given land.

36. Other than the foregoing, there is also evidence on record that M'Ibiri M'Kirunya remained with a portion of land which was registered as L.R No. Nyambene/Uringu III/225. [See the minutes of the family meeting held on 14th August 2011 and were tendered in evidence by the respondent.

37. Furthermore, there is evidence that the respondent herein lodged a claim before the land committee and wherein same was claiming entitlement to a portion of the suit property. The evidence of DW 4 is instructive. Suffice it to highlight that the evidence of DW 4 was neither impeached nor controverted.

38. Additionally, it is not lost on me that during the family meetings that were held on the 14th August 2011, the respondent herein had proposed to give unto the appellant a portion measuring one acre from his [respondent's land], albeit in exchange for one acre portion being given to him. To my mind, if the respondent held the conviction that same was entitled to a portion of the suit property on the basis of trust, then the respondent could not be making any offer in the manner captured at the foot of the minutes.

39. Finally, I beg to state that the respondent herein would only prove his claim on the basis of customary trust by tendering evidence to show that at the time the suit property was being registered in the name of the appellant, same [suit property] could have been registered in his [respondent's] name, but for an intervening circumstance. For good measure, it behooved the respondent to prove [sic] the intervening circumstance [if any]. Nevertheless, there is no gainsaying that the respondent is an elder brother to the appellant and hence the appellant cannot be said to hold the suit property on behalf of the respondent, yet the respondent obtained and was duly registered as the owner of own land at the same time.

40. To my mind, the respondent herein did not establish and or prove the requisite ingredients/elements that underpin customary trust. The Supreme Court of Kenya highlighted the elements underpinning customary trust in the case of Isaac Kiebia M'Inanga vs Isaya Theuri M'Lintari & another (2018) eKLR.

41. For coherence, the apex court distilled the following ingredients;

> 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. 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.

42. Taking into account the elements highlighted in the decision [supra], and more particularly, element number four [4], which to my mind is essential, I come to the conclusion that the learned trial magistrate misapprehended the totality of the evidence on record and thus arrived at an erroneous conclusion. For good measure, the learned trial magistrate failed to appreciate that both the appellant and the respondent were given land by their late father. Furthermore, the learned trial magistrate failed to isolate, decipher and or discern the existence of any intervening circumstance which could underpin the suit land being registered in the name of the appellant to hold on trust for the respondent.

43. Turning to the second issue, namely; whether the appellant demonstrated that same is the lawful and legitimate owner of L.R Nyambene/Uringi III/978 [now subdivided], it is important to recall and reiterate that the suit property was registered in the name of the appellant. Furthermore, the appellant tendered and produced copies of the certificate of official search demonstrating ownership thereof.

44. It is important to underscore that the bearer of a certificate of title/lease is entitled to partake of and benefit from the statutory rights and privileges attendant to such ownership. The protection given to the title holder can only be taken away and or negated where it is proven that the certificate of title/lease was procured in contravention of the due process of the law. [See Sections 26 (1) (a) & (b) of the *Land Registration Act*. [See also the decision in the case of Embakasi Properties Ltd vs the Commissioner of Lands & another (2019) eKLR – Five Judge bench of the court of appeal.

45. Furthermore, it is common ground that where a party, in this case, the respondent, seeks to challenge the validity and or propriety of the certificate of lease and or title, it is incumbent upon the claimant to place before the court concrete evidence to impugn the validity of the title. It is only upon placement of credible evidence [discharge of the Evidential burden] that the bearer of the title is called upon to demonstrate that the issuance of the certificate of title [which is the subject of impeachment] was procured procedurally, legally and lawfully.

46. I am alive to the holding of the Court of Appeal in the case of Munyu Maina vs Hiram Gathiha Maina (2013) eKLR, but I wish to add that the ratio therein cannot be applied in such a manner as to indicate that all that is required is for someone to make an allegation/assertion concerning a certificate of title

and thereafter leave it at that; and call upon the title holder to prove the legality of his/her title. To my mind, the claimants must first discharge the evidential burden before the title holder can be called upon to offer rebuttal evidence and prove the root of his title.[See the provisions of Section 108; and 109 of the *Evidence Act*, Chapter 80, Laws of Kenya].

47. The foregoing position was highlighted and expounded by the Court of Appeal in the case of Frank Logistics Limited v Golden Lion Real Estate Company & 6 others (Civil Appeal E303 of 2024) [2025] KECA 1471 (KLR) (12 September 2025) (Judgment).

48. It is the respondent who had contended that the suit property, or better still, the portion measuring two acres, was merged into the suit property by fraud. Furthermore, it is the respondent who had indicated that their late father did not intend to transfer the two acres to and in favour of the appellant. However, there is no gainsaying that the respondent failed to tender any evidence to underpin his allegations. In this regard, the allegations by the respondent remained at the level of mere assertions.

49. I beg to state that it is the respondent who had raised the plea of fraud as against the appellant. To this end, the respondent was chargeable with adducing credible evidence to prove/demonstrate fraud. Sadly, no such evidence was tendered and I am afraid that the finding by the learned trial magistrate that the appellant went ahead and registered the suit property to his name exclusively and without the knowledge of the respondent is not anchored on any evidence. On the contrary, the said finding is based on a hypothesis and thus same cannot stand.

50. Other than the foregoing, I beg to state that the appellant herein demonstrated that same is the lawful proprietor and owner of the suit property [now subdivided]. To this end, there is no gainsaying that the appellant is entitled to exclusive possession, occupation and use. [See the holding in the case of Moya Drift Farm Ltd vs Theuri (1973) E.A; Mohanson (K) Ltd vs The Land Registrar Kajiado (2017) eKLR and Waas Enterprises Ltd vs Nairobi City Council (2014) eKLR].

51. In the premises, and for the foregoing reasons; I come to the conclusion that the appellant herein established the root of his title and hence the findings of the trial court to the contrary are perverse to the evidence on record; and hence same are not sustainable.

Final Disposition.

52. Flowing from the analysis contained in the body of the Judgment, it must have become apparent that the appeal beforehand is meritorious. Notably, the appellant has demonstrated that the finding[s] of the trial court based on customary trust was arrived at in vacuum. In addition, the appellant has also demonstrated that the respondents, DW 2 and himself [appellant] benefited from the family land during the lifetime of M'Ibiri M'Kirunya [deceased].

53. In the end, and taking into account the foregoing reasons; the final orders that commend themselves to the court are as hereunder;

    a. The Appeal be and is hereby allowed.

    b. The Judgment of the Senior Resident Magistrate dated 29th August 2023; and consequential decree arising therefrom be and are hereby set aside.

    c. In lieu thereof, the respondent suit vide amended Plaint dated 19th May 2016 be and is hereby dismissed.

    d. The Appellant's counterclaim dated 7th September 2016; be and is hereby allowed as hereunder;

i. A declaration be and is hereby issued that L.R No. Nyambene/Uringu III/978 [now subdivided] lawfully belongs to the appellant.

ii. The respondent herein be and is hereby ordered to vacate and hand over vacant possession of the suit property, or the portion thereof currently occupied by himself, within 180 days from the date hereof.

iii. In default by the respondent to vacate and hand over vacant possession within the stipulated timeline, the appellant shall be at liberty to levy eviction and in this regard, an eviction order shall issue.

iv. In the event of the respondent being evicted from the suit property or the portion occupied by himself, the costs/expenses arising therefrom shall be certified by the Deputy Registrar and be recovered from the respondent.

e. Costs of the Appeal be and are hereby awarded to the Appellant.

f. The Appellant shall also have the costs of the suit and the counterclaim in the subordinate court.

54. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 9TH DAY OF OCTOBER 2025

OGUTTU MBOYA, FCIArb; CPM [MTI-EA].

JUDGE

In the presence of:

Hussein -Court Assistance

Mr. Muthamia for the appellant

Ms. Murugi for the respondent