Gachogi v Japhet (Environment and Land Appeal E045 of 2024)
[2025] KEELC 7200 (KLR) (16 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7200 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND APPEAL E045 OF 2024

BM EBOSO, J

OCTOBER 16, 2025

BETWEEN

KIRIA GACHOGI ..... APPELLANT

AND

EVANGELINE KAROKI JAPHET ..... RESPONDENT

(An Appeal against the Judgment of the Senior Principal Magistrate Court at Nkubu [Hon. S. K. Ngetich- SPM] dated 12/6/2024 in Nkubu SPMC E & L Case No. 98 of 2019)

JUDGMENT

Introduction

1. This appeal challenges the Judgment of the Senior Principal Magistrate Court at Nkubu (Hon S K Ngetich – SPM) rendered on 12/6/2024 in Nkubu SPMC E & L Case No. 98 of 2019. The appellant was the defendant in the said suit. The respondent was the plaintiff. Two of the key questions that fell for determination in the suit were:

   (i) Whether the respondent proved that land parcel number Nkuene/Upper-Mikumbune/360 was family land that was held in trust for the family of the late Kajogi Mukura and the late M'Mwari Mukura in equal shares; and

   (ii) Whether the estate of the late M'Mwari Mukura was entitled to one half share of the said land.

   Those are some of the issues that fall for determination in this first appeal. Before I analyse and dispose the issues that fall for determination, I will briefly outline the background to the appeal; the grounds of appeal; and the parties' respective submissions in the appeal. For convenience the late M'Mwari Mukura will be referred to simply as "the late M'Mwari". The late Kajogi Mukura will be referred to as "the late Kajogi". Nkanata Kajogi will be referred to as "Nkanata".

Background

2. The suit giving rise to this appeal was filed in the trial court by the respondent against the appellant on 21/11/2019 vide a plaint dated 15/11/2019. The respondent sought the following reliefs against the appellant:

    (i) a declaration that land parcel number Nkuene/Upper-Mikumbune /360 [the suit land] was family and trust land that was held in trust for the families of the late Kajogi Mukura and the late M'Mwari Mukura;

    (ii) a declaration that the family of the late M'Mwari Mukura [Evangeline Karoki Japhet – the respondent, Grace Kajuju M'Ithinji and the Children of the late Sabella Karambu] were entitled to one half share of the suit land by virtue of being the survivors of the late M'Mwari Mukura;

    (iii) Costs of the suit.

3. The case of the respondent was that, she was a daughter of the late M'Mwari and the administrator of his estate under a limited grant of letters of administration issued to her on 21/8/2019. The appellant was a son of the late Kajogi. The late M'Mwari was a brother to the late Kajogi. The two brothers died in the 1950s. At the time of their deaths in the 1950s, the two brothers left behind their respective unadjudicated parcels of land. Their respective parcels measured 3½ acres each.

4. She averred that when the adjudication process commenced in Upper-Mikumbune in the 1960s, one Nkanata Kajogi [a son to the late Kajogi] caused the late M'Mwari's land (3½ acres) and the late Kajogi's land (3½ acres) to be registered as one parcel in the name of his late father, Kajogi Mukura, as parcel number Nkuene/U-Mikumbune/360. She added that the family of the late M'Mwari continued to occupy their 3½ acre portion until the three daughters of the late M'Mwari got married and left their mother on their portion of the suit land. Owing to hostility shown by the appellant and his brothers, their mother relocated from the suit land and went to live with relatives.

5. The respondent contended that the registration of the suit land in the name of the late Kajogi was in trust for his children and for the children of the late M'Mwari. She added that, in utter breach of the trust, the appellant denied her and her sisters their one half share of the suit land and proceeded to file succession proceedings relating to the estate of the late Kajogi, in which they sought distribution of the whole of the suit land as the absolute asset of the late Kajogi; adding that the appellant declined to recognize her and her sisters as beneficiaries of the estate of the late Kajogi.

6. The appellant opposed the claim through a statement of defence dated 6/2/2020 in which he contested the respondent's claim. He denied the allegation that the late M'Mwari was a brother to his late father, the late Kajogi, adding that his late grandfather, Mukuura, had only two sons, Kajogi Mukura and M'Murithi Mukuura. He stated that upon the death of their father in the 1950s, him and his siblings were put under the care of their uncle, M'Murithi Mukuura, adding that during land adjudication in the area, both him and his brother, Nkanata, Kajogi, were minors and could not participate in the adjudication process. He denied the allegation that a portion of the suit land was held in trust for the family of the late M'Mwari. He urged the trial court to reject the claim.

7. Upon conducting trial and upon receiving submissions, the trial court rendered the impugned judgment in which it found that the respondent had established the existence of a customary trust and that she had proved her case to the required standard. The trial court granted the respondent the reliefs sought in the suit.

Appeal

8. Aggrieved by the Judgment of the trial court, the appellant brought this appeal, advancing the following nine (9) verbatim grounds:

    1. That the Learned Trial Magistrate erred in law and facts by holding that the respondent's father was a son to Mukuura which fact was not proved by any evidence.

    2. That the Learned Trial Magistrate erred in law and facts by finding that the appellant's and respondents' families were related to each other.

    3. That the Learned Trial Magistrate erred in law and facts by holding that Kajogi Mukuura demarcated and registered to himself land belonging to the respondent's father yet the plaintiff's evidence and pleaded facts, pointed to a different persona and circumstances.

    4. That the Learned Trial Magistrate erred in law and facts by departing from the evidence on record and by following the provisions of Section 107 of the *Evidence Act* in analyzing the facts relevant to proof of trust.

    5. That the Learned Trial Magistrate erred in law by failing to consider the lapse of time from 1964 when the suit land L.R No. Nkuene/U- Mikumbune/360 was registered to 2019 when the suit for trust was filed in court.

    6. That the Learned Trial Magistrate erred in law by holding that the respondent's suit met the requirements of customary trust as set out in the Supreme Court case of Isack Kieba M'Inanga.

    7. That the Learned Trial Magistrate erred in law and facts by inferring trust over the suit land, yet there was no evidence to infer such trust.

    8. That the Learned Trial Magistrate erred in law and facts by failing to find that there was no evidence to support the assertion that M'Mwari owned any land capable of registration.

    9. That the judgment of the trial court was against the evidence and law placed before the trial court.

9. The appellant prayed that the appeal be allowed and the judgment of the trial court be set aside. He prayed for costs of the appeal.

Appellant's Submissions

10. The appellant filed written submissions dated 3/2/2025 through M/s Mwirigi Kaburu & Co Advocates. Counsel faulted the trial court for arriving at a finding that the parties' fathers were brothers and therefore the appellant's father held half of the suit land in trust for the respondent's father. Quoting an excerpt from the judgment of the trial court, counsel, submitted that the trial court had observed that none of the witnesses "was convincing enough to tell the court who were the children of Mukura". Counsel submitted that the finding of the court was not supported by evidence, adding that even the chief's letter did not mention M'Mwari Mukura. Counsel submitted that the respondent bore the burden of proof. Counsel argued that the respondent failed to satisfy the criteria outlined by the Supreme Court in the case of Isaack Kiebia M'Inanga v Isaya Theuri M'kintari & another.

11. Emphasizing that parties were bound by their pleadings, counsel made reference to paragraphs 5 and 7 of the plaint in which the respondent pleaded that M'Mwari Mukura and Kajogi Mukura died before the land adjudication process began and that during land adjudication, one Nkanata Kajogi had the late

M'Mwari Mukura's land and the late Kajogi Mukura's land registered as one parcel. Counsel argued that the respondent having failed to sue Nkanata Kajogi, the suit against the appellant was a non-starter.

12. Observing that the suit land was registered in the name of the appellant's late father in 1964 and that the claim anchored on trust was filed in 2019, counsel submitted that the final effect of any order issued would be disruptive to the developments made on the land by the parties in occupation. Counsel argued that the doctrine of laches applied to the claim.

13. Citing various judicial pronouncements, including the Court of Appeal pronouncement in Peter Ndungu Njenga v Sophia Watiri Ndungu [2000] eKLR, counsel submitted that trust is proved by evidence and is not to be implied. Counsel argued that the respondent failed to prove trust. Counsel added that all that the respondent tendered as evidence was hearsay, a fact which the court acknowledged in the impugned judgment. Counsel urged the court to allow the appeal.

Respondent's Submissions

14. The respondent opposed the appeal through written submissions dated 7/2/2025, filed by M/s Gichunge Muthuri & Co Advocates. Counsel submitted that this being a first appeal, the court is required to defer to the findings of the trial court on facts and only interfere with those findings and conclusions if it appears to it that the trial court failed to take into account any relevant facts or circumstances or based its conclusions on no evidence at all or misapprehended the evidence or acted on wrong principles in reaching the conclusions. Counsel placed reliance on the Supreme Court of Kenya decision in Sonko v County Assembly of Nairobi City & 11 others [Petition No. 11 (E008) of 2022].

15. Counsel submitted that the two issues that were discernible from the 9 grounds of appeal were:

    (i) Whether or not the respondent proved existence of a customary trust; and

    (ii) Who should pay costs of this appeal. Citing Section 28 of the *Land Registration Act*, counsel submitted that a customary trust is an overriding interest that need not be noted in the land register.

    Counsel observed that the registration of a person as proprietor of land does not override a customary trust.

16. Counsel submitted that the respondent demonstrated to the trial court that their late father and the appellant's late father were brothers who lived on the suit land prior to their deaths, adding that the respondent and her siblings were left in the hands of their late mother and continued to occupy half portion of the suit land until they got married, leaving their mother on the suit land. Counsel contended that the respondent's mother was subsequently chased away by the appellant and his siblings.

17. Citing the Supreme Court of Kenya pronouncements on customary trusts in Isack M'Inanga Kiebia v Isaya Theuri M'Lintari & another [2018] eKLR, counsel submitted that the respondent "contended that the land originally belonged to their deceased father and uncle who together gathered the same and each family utilized and occupied one half portion of the suit land." Counsel added that during cross-examination, the appellant admitted that the respondent's late father and his family lived on the suit land.

18. Counsel added that the respondent's late father and the appellant's late father were siblings, adding that at the time of land adjudication, "women could not be registered to own property", hence the suit land was registered in the appellant's father's name. Counsel contended that the respondent established all

the key elements of a customary trust as outlined by the Supreme Court of Kenya in the Isack Kiebia Case [Supra].

19. On costs, counsel submitted that costs follow the event, adding that the respondent had expended her resources in defending the appeal. Counsel urged the court to dismiss the appeal and award the respondent costs of the appeal.

Analysis and Determination

20. I have read and considered the original record of the trial court; the record filed in this appeal; the grounds of appeal; and the parties' respective submissions. I have also considered the relevant legal frameworks and the jurisprudence relevant to the key issues in the appeal. The following are the key issues that fall for determination in the appeal:

    (i) Whether the trial court erred in failing to consider the lapse of time from 1964 when land parcel number Nkuene/Upper-Mikumbune/360 was registered in the name of Kajogi Mukura to 2019 when the suit for the claim of trust was filed in court;

    (ii) Whether failure to sue Nkanata Kajogi rendered the respondent's claim untenable;

    (iii) Whether the respondent proved that the suit land was family land that was held in trust for the family of the late Kajogi Mukura and the family of the late M'Mwari Mukura in equal shares; and

    (iv) Whether the estate of the late M'Mwari Mukura was entitled to one half share of the suit land. I will analyse and dispose the four issues sequentially in the above order. Before I do that, I will briefly outline the principle that guides this court when exercising appellate jurisdiction.

21. The task of a first appellate court was summarized by the Court of Appeal in the case of Susan Munyi v Keshar Shiani (2013) eKLR as follows:

> " As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusions."

22. The principle was similarly outlined in Abok James Odera t/a A J Odera & Associates v John Patrick Machira t/a Machira & Co Advocates [2013] eKLR as follows:

> " This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reason either way."

23. Did the trial court err in failing to consider the lapse of time from 1964 when the suit land was registered in the name of Kajogi Mukura to 2019 when the plaintiff brought the claim? The appellant contended that the trial court erred in failing to take the above facts into account [Ground number 5]. The respondent did not comment on the above ground. The court has considered the ground, the arguments advanced, and the relevant legal framework. The respondent pleaded in paragraph 7 of her plaint that land adjudication in Upper-Mikumbune Section started in the 1960s. It was her further

pleading and her evidence that one Nkanata Kajogi was required to register their late father's portion of the suit land in their late father's name (M'Mwari Mukura]. She stated in cross-examination thus:

> " Nkanata was required to register the land in the names of his father and the other in the name of our father. I do not know why Nkanata did not register the land in his name. I got married in the year 1971. My mother is the one who informed us that our father had land. My mother is deceased."

24. The appellant further stated as follows in re-examination:

> " My mother did not remain there until her death as her home was demolished and she was chased away. She went to live with my her sister [sic]. She left the said parcel of land in 1974. My mother passed away in 1986. My mother did not go back to the said parcel of land."

25. The appellant further testified as follows in re-examination:

> " My mum only learnt that he had not registered the land in the name of our father when they chased her away."

26. It does clearly emerge from the evidence on record that the adjudication exercise in Upper-Mikumbune was finalized in 1964 and the suit land was registered in the name of Kajogi Mukura in the same year. If, as alleged by the appellant, the family of the late M'Mwari Mukura had a beneficial interest in the land that had been adjudicated and registered in the name of Kajogi Mukura, that interest was openly denied/disavowed/disclaimed/unacknowledged and/or breached in 1974 when the appellant's mother was allegedly chased away from the suit land and her house demolished. That is when the cause of action relating to the alleged trust accrued. That is when the estate of the late M'Mwari ought to have lodged the claim to recover the alleged land. Put differently, the estate of the late M'Mwari Mukura had 12 years from 1974 within which to pursue their alleged customary trust claim. They did not. They have never gone back to the suit land since 1974. From 1974 to 2019 was 45 years. During the 45 years, all the three daughters of M'Mwari Mukura lived in their matrimonial homes without bothering to ventilate the customary trust claim that had been openly denied/disavowed/disclaimed/unacknowledged in 1974. Clearly, the estate's claim was untenable under Sections 7, 17 and 20 of the *Limitation of Actions Act*. Had the trial court considered the above evidence and law, it would have come to the finding that the respondent's claim was untenable. For the above reasons, it is the finding of this court that the trial court erred in failing to consider the lapse of time from 1964 when the suit land was registered in the name of Kajogi Mukura as the absolute proprietor to 2019 when the suit was filed.

27. Was failure to sue Nkanata Kajogi as a defendant in the suit fatal to the respondent's claim? Through her pleadings and the evidence she tendered, it was the respondent's case that when the land adjudication exercise began, both the late M'Mwari Mukura and the late Kajogi Mukura were deceased, having died in 1950. It was her case that her late mother entrusted one Nkanata Kajogi to have the late M'Mwari Mukura's 3½ portion of the suit land adjudicated and registered in the name of the late M'Mwari Mukura. She contended that instead of Nkanata Kajogi doing that, he had M'Mwari Mukura's 3½ acre parcel and Kajogi Mukura's 3½ acre parcel adjudicated as one parcel and registered in the name of Kajogi Mukura.

28. For avoidance of doubt, she pleaded as follows in paragraph 7 of her plaint:

> " When the adjudication process for Upper-Mikumbune area commenced in 1960s, one NKANATA KAJOGI had the land belonging to M'MWARI MUKURA and his father's

land registered as one parcel of land in the name of his father KAJOGI MUKURA (Deceased) as land parcel LR NO NKUENE/U-MIKUMBUNE/360.".

29. In her evidence during cross-examination, she testified as follows:

> " Kajogi died in the year 1950. Kajogi and M'Mwari died in the same year following each other. What I have stated in my statement that Kajogi was left in the land when my father died is true. My mother was not registered as she requested the first son of Kajogi that during consolidation of land to have the land for Kajogi registered separately to that of my father. My mother trusted that first son of Kajogi and we continued cultivating the land believing that he had as they had agreed with our mother. During demarcation, land was not being registered in the names of women. Nkanata did not register the land belonging to our father in the name of our father. We are not agemates with Nkanata Kajogi. The land in Upper Mikumbune was adjudicated from 1953 but at that time I was a child. Nkanata was required to register the land in the names of his father and the other in the name of our father. I do not know why Nkanata did not register the land in his name."

30. Through the suit in the trial court, the respondent challenged the registration of the late Kajogi Mukura as the absolute proprietor of the suit land. She wanted the trial court to find that one half of the suit land was held in trust for the estate of the late M'Mwari Mukura. The impugned registration was a culmination of the elaborate and vigorous process of land adjudication and consolidation. The overarching objective of the land adjudication exercise was to ascertain interests in land. Land adjudication was and remains a solemn statutory exercise.

31. The appellant blamed one Nkanata Kajogi 100% for the adjudication and registration of the entire suit land in the name of the late Kajogi Mukura. Yet she elected to do nothing in terms of challenging the registration between 1974 when their mother was allegedly chased away from the suit land and 2019 when the suit was filed. Most significant, she elected to leave Nkanata Kajogi out of the suit. Given that both M'Mwari Mukura and Kajogi Mukura were deceased when the alleged trust was allegedly created, Nkanata Kajogi was a necessary defendant who would have responded to the alleged creation of a trust during land adjudication. His exclusion from the suit was fatal to the plaintiff's claim of trustship. That is my finding on the issue.

32. Did the respondent prove that the suit land was family land that was held in trust for both the family of the late Kajogi Mukura and that of M'Mwari Mukura in equal shares? The equitable concept of customary trust in the African Society has been the subject of discourse in a number of judicial pronouncements, starting with Obiero v. Opiyo [1972] EA 227 and immediately followed by Esiroyo v. Esiroyo [1973] EA 388. The jurisprudence that prevailed up to early 1980s was that:

    (i) the registration of land under the now repealed Registered *Land Act* (Cap 300) extinguished customary rights to that land for all purposes;

    (ii) rights under customary law or such rights as existed prior to registration were not overriding interests under Section 30 of the repealed Registered *Land Act*; and

    (iii) the trust envisaged under the provision of Section 28 of the repealed Registered *Land Act* was the one recognized under English common law and doctrines of equity; and

    (iv) African customary law was incapable of creating a trust to which a registered proprietor would be subject after registration of land.

33. In early 1980s, the Court of Appeal altered the then prevailing jurisprudential trajectory through its pronouncements in Kanyi v. Muthiora[1984] KLR 712. Chesoni JA made the following pronouncement:

> " The registration of the suit land in the name of Kanyi under the Registered *Land Act* did not extinguish Nyokabi's right under the Kikuyu customary law, Kanyi was not relieved from her duty or obligation to which she was as a trustee to Muthiora's land; see provision to Section 28 of the Act"

34. Nyarangi Ag. JA was more emphatic when he stated:

> " I doubt like Madam JA did in Kiama v. Mathuya... if rights under customary law are excluded by Section 30 of this Act. Had the Legislature intended that customary law rights were to be excluded, nothing would have been easier for it to say so. I would say any valid rights are included in Section 30 of the Act just as a trustee referred to in Section 28 of the Act could not fairly be interpreted and applied to exclude a trustee under customary law"

35. In early 2000s, the Court of Appeal affirmed the new interpretation in Mbui Mukangu v. Gerald Mutwiri Mbui [2004] eKLR.

36. The Supreme Court of Kenya made an in-depth analysis of the concept and interpreted the law with clarity in 2018 in Isack M'Inanga Kuba v. Isaaya Theuri MLithari & another [2018] eKLR as follows:

> " 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. 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.

We also declare that, rights of a person in possession or actual occupation under Section 30(g) of the Registered *Land Act*, are customary rights. This statement of legal principle, therefore reverses the age old pronouncements to the contrary in Obiero v. Opiyo and Esiroyo v. Esiroyo. Once it is concluded, that such rights subsist, a court need not fall back upon a customary trust to accord them legal sanctity, since they are already recognized by statute as overriding interests.

In the foregoing premises, it follows that we agree with the Court of Appeal's assertion that "to prove a trust in land; one need not be in actual physical possession and occupation of the land." A customary trust falls within the ambit of the proviso to Section 28 of the Registered *Land Act*, while the rights of a person in possession or actual occupation,, are overriding interests and fall within the ambit of Section 30(g) of the Registered *Land Act*.

37. The registration that is the subject of this appeal happened in 1964 under the Registered *Land Act*. It was a culmination of the land adjudication exercise. The respondent alleged that her late father, M'Mwari Mukura and the appellant's late father, Kajogi Mukura, were brothers, and that both of them died in 1950 before the land adjudication exercise begun in the area. She further contended that the two brothers owned adjacent parcels measuring 3 ½ acres each. It was her case that during land adjudication, her mother asked one Nkanata Kajogi to have the late M'Mwari Mukura's land adjudicated and registered separately but the said person did not do so and, instead, caused the two parcels to be adjudicated and registered as one parcel in the name of Kajogi Mukura. The appellant contested the alleged kinship and the alleged trust.

38. Did the appellant establish the key elements of customary trust as outlined by the Supreme Court of Kenya in the case of Isack M'Inanga Kiebia v Isaya Theuri M'Lintari & another [2018] eKLR? First, the evidence of the respondent and that of her sister was purely hearsay. They did not lead any iota of primary evidence towards establishing any of the key elements outlined in the Kiebia Case [Supra]. On ownership of the alleged 3½ acres by the late M'Mwari Mukura prior to his disappearance (death) in 1950, the respondent testified as follows in cross-examination:

> " My mother is the one who informed us that our father had land. My mother is deceased. We do not have photographs to show that we had settled on that land. I have no documentation to show that the land was to be registered in the name of my father and that of Kajogi. As at the time of adjudication I was young."

39. Despite being aware that kinship between the late M'Mwari and the late Kajogi was contested, the respondent did not lead evidence to prove kinship. She did not demonstrate that the suit land belonged to their common grandparent. PW3's evidence did not assist the respondent in her obligation to establish existence of a trust. His evidence demonstrated that there was no relationship between the parcels that were owned by the two alleged brothers. He stated thus:

> " I knew M'Mwari Mukura is the father of Evangeline M'Mwari Mukura had 3 children. He died in the 1950s. It is not true that M'Mwari was being accommodated by clan. He had bought land from M'Kobia. He bought 3½ acres. I don't recall which year did he buy the land. M'Kobia is different from Mukura. I don't know where M'Mwari was buried. I was about 8 years when M'Mwari Mukura died. I was not so young to understand what was happening. I go the history about the land from my grandfather."

40. Clearly, the evidence of PW3 erased any suggestion that the parcels allegedly owned by M'Mwawri was family land related to that of the late Kajogi. Despite knowing the heavy obligation she had under Sections 107, 108 and 109 of the *Evidence Act*, the appellant did not bother to lead primary evidence relating to land adjudication and registration. She relied on hearsay attributed to her late mother.

41. Having evaluated the evidence on record, I do not think there was sufficient evidence to warrant the uprooting of the late Kajogi Mukura's family members who have lived on the suit land for 61 years [1964 to 2025] since the registration of the suit land in the name of the late Kajogi Mukara. Consequently, it is the finding of this first appellate court that the respondent did not prove that the suit land was trust property.

42. In light of the above findings, it follows that the respondent was not entitled to any of the reliefs that she sought in the plaint.

43. On costs, the errors in the impugned judgement were made by the trial court. Consequently, there will be no award of costs in the appeal. However, the respondent will bear costs of the suit in the lower court because she brought a claim that was clearly statute-barred.

Disposal Orders

44. In light of the above findings, this appeal succeeds and is allowed in the following orders:

    a. The judgment of the trial court in Nkubu SPMC E & L Case No. 98 of 2019 dated 12/6/2024 is set aside wholly and is substituted with an order dismissing the respondent's suit with costs for lack of merit.

    b. Parties to this appeal shall bear their respective costs of the appeal.

DATED, SIGNED AND DELIVERED AT MERU THIS 16TH DAY OF OCTOBER, 2025.

B M EBOSO [MR]

ELC JUDGE