



**Luka v Riinya & another (Environment and Land Appeal
E037 of 2022) [2026] KEELC 133 (KLR) (19 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 133 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E037 OF 2022
BM EBOSO, J
JANUARY 19, 2026**

BETWEEN

HELLEN NDUMBA LUKA APPELLANT

AND

FLORENCE RIINYA 1ST RESPONDENT

JANET K. GUANTAI 2ND RESPONDENT

*(An Appeal against the Judgment of the Senior Resident Magistrate Court at Nkubu
[Hon E M Ayuka - SRM] dated 23/6/2022 in Nkubu PMC E & L Case No. 35 of 2019)*

JUDGMENT

Introduction

1. This appeal challenges the judgment of the Senior Resident Magistrate Court at Nkubu [Hon E M Ayuka, SRM] rendered on 23/6/2022 in Nkubu PMC E & L Case No 35 of 2019. The respondents are daughters of the late Kireria Kirurui. The appellant is a widow of the respondents' late brother, Luka Murithi Guantai. The dispute in the suit revolved around land parcel number Nkuene/U-Nikumbune/1685, a subdivision out of Nkuene/U-Mikumbune/336. The dispute raised issues relating to the registration and holding of land parcel number Nkuene/U-Mikumbune/1685 [the suit land] in the joint names of the late Kireria Kirurui and his two daughters, Florence Riinya and Janet Guantai [the two respondents]. It also raised issues relating to the subsequent sale and transfer of the suit land to the late Kirurui's neighbour, Shadrack Mwititi Ithinji, by the said two respondents. Lastly, it raised the question as to whether the widow of the late Luka Murithi Guantai and their six children [the late Murithi's family] were trespassers in illegal occupation of the suit land.
2. Some of the specific key issues which fell for determination by the trial court were: (i) Whether the registration of the respondents and their late father as co-proprietors of the suit land was subject to an overriding interest in the nature of a customary trust; (ii) Whether upon the said registrations, the



appellant and her family became trespassers on the suit land; and (iii) Whether the subsequent sale and transfer of the suit land to Shadrack Mwititi Ithinji by the respondents was lawful and conveyed a valid title to him. This being a first appeal, these are some of the issues that, invariably, fall for determination. Before I analyse and dispose the key issues in the appeal, I will briefly outline a brief background to the appeal.

Background

3. The suit giving rise to this appeal was initiated by the respondents against the appellant vide a plaint dated 26/4/2019. The 2nd respondent sued in dual capacities; she sued on her own behalf and also sued on behalf of Shadrack Mwititi Ithinji pursuant to a power of attorney. The case of the respondents was that they were daughters of the late Kiruria Kirurui [hereinafter referred to as “the late Kirurui”]. The appellant was (and is) a widow of their late brother, Luka Murithi Guantai, who died in 2018 [hereinafter referred to as “the late Murithi”].
4. The respondents contended that in 2010, the late Kirurui subdivided his land, Nkuene/U-Mikumbune/336 into two halves, namely, Nkuene/U-Mikumbune/1684 and 1685. In 2011, he transferred land parcel number Nkuene/U-Mikumbune/1685 [hereinafter referred to as “the suit land”] from himself to the joint names of himself and the two respondents. The two respondents utilized the suit land but their late brother, the late Murithi, subsequently started harassing them and eventually chased them away. The late Murithi and their other brother, Jamlick Muthomi, instituted a case against them at the Meru Environment and Land Court. The case was transferred to Nkubu and registered as Nkubu Principal Magistrate Court E & L Case No 93 of 2014. They sought cancellation of their joint title. The late Murithi withdrew his claim while Jamlick’s claim was dismissed for non-attendance on 29/10/2018.
5. The respondents added that they subsequently sold the suit land to Shadrack Mwititi Ithinji but were unable to complete the sale because the appellant had continued to illegally and unlawfully occupy the land. They itemized various particulars of illegality.
6. The respondents prayed for: (i) an order decreeing eviction of the appellant from the suit land and delivery of vacant possession of the land to Mr Ithinji; (ii) an order decreeing exhumation of the remains of the late Murithi from the suit land; (iii) a permanent injunction restraining the appellant and her servants and representatives against interfering with Ithinji’s peaceful occupation of the suit land; (iv) an order directing the OCS, Nkubu Police Station, to enforce the above orders; and (v) an order awarding them costs of the suit.
7. In response to the suit, the appellant filed a statement of defence and counterclaim dated 24/6/2019. She contested the respondent’s claim and made a counterclaim. Her case was that the suit land was a subdivision of family land that had been given to her late father-in-law [the late Kirurui] by the clan, adding that the late Kirurui subdivided the land into two: (i) Nkuene/U-Mikumbune/1684; and (ii) Nkuene/U-Mikumbune/1685 [the suit land] and shared the two subdivisions to his two sons who settled on them and developed them. She stated that together with her late husband and their family of six children, they had resided on the suit land since their marriage in 1985. Her two parents in laws and her late husband were all interred on the suit land.
8. The appellant contended that the suit land was family and ancestral land that was held subject to customary trust, adding that the respondents illegally and unlawfully dealt with the suit land by transferring it to themselves clandestinely and by subsequently transferring it to a third party while aware that it was family land where family members were settled with their families. She itemized various particulars of illegality, fraud and breach of customary trust.



9. By way of counterclaim, she prayed for: (i) a declaration that the respondents' dealings with the suit land and their sale of the suit land, which was subject to customary trust, was illegal and unlawful; (ii) an order decreeing rectification of the land register to cancel the names of the respondents and that of Mr Ithinji and registration of the suit land in her name or, alternatively, in the names of the previous registered owner, Kireria Kirurui; (iii) an order of permanent injunction restraining the respondents and Mr Ithinji against interfering with or damaging her family houses or any of her properties within the suit land or evicting her and her children from the suit land; and (iv) an order providing for costs of the suit.
10. Upon conducting trial and receiving submissions, the trial court rendered the impugned judgment in which it made findings to the effect that: (i) the appellant had failed to prove her counterclaim; (ii) the respondents had proved their claim; and (iii) the respondents were entitled to the orders sought in the plaint. Consequently, the trial court granted the respondents the orders that were sought in the plaint.

Appeal

11. Aggrieved by the judgment and decree of the trial court, the appellant brought this appeal advancing the following grounds:-
 1. The Learned Trial Magistrate erred in law and fact in that he misconstrued the evidence before him and failed to analyze it properly and gave a judgment which was against the weight of evidence.
 2. The Learned Trial Magistrate erred in law and in fact in that he failed to be guided by reason and take judicial notice of the fact that the father of the parties was too old, senile, sickly and could therefore not independently handle his affairs or/and know when he was misled and tricked.
 3. The Learned Trial Magistrate erred in law and in fact in not finding that the subject matter was family land subject to customary trust and the plaintiffs could not fraudulently and illegally alienate the same without the involvement of the occupants and actual beneficiaries.
 4. The Learned Trial Magistrate erred in law and in fact in not finding the defendant has all along with her family been in possession, utilization and development of the subject matter where she has her home and settled.
 5. The Learned Trial Magistrate erred in law and fact in failing to note that the plaintiffs in collusion with the donor of the power of attorney acted fraudulently and illegally to dispose the family land and it was against the spirit of *the Constitution* and the law to deny the defendant the same.
 6. The Learned Trial Magistrate erred in law and fact in issuing the order of eviction against the defendant from the subject matter which is a family land where the defendant's deceased mother-in-law, father-in-law and her husband are buried and where she was left by her husband with children and thus rendered her landless and vagabond.
 7. The Learned Trial Magistrate erred in law and fact in failing to find that the subject matter was ancestral land and the respondents could not be entitled to all in exclusion of the appellant.



8. The Learned Trial Magistrate erred in law and fact by failing to find that the appellant was entitled to the subject matter under customary trust through the concept of law and the transfer to the donor of the power of attorney by the respondents was bad in law, illegal and unlawful.
9. The Learned Trial Magistrate erred in law and fact in that he did not analyze evidence and the history of the dispute before him in order to arrive at the correct finding.

Appellant's Submissions

12. The appeal was canvassed through written submissions dated 14/4/2025, filed by M/s Gikunda Anampiu and Company Advocates. Faulting the trial court for failing to properly analyse the evidence on record, counsel argued that the evidence which was tendered by both parties to the dispute was in support of the appellant's counterclaim. Counsel submitted that in their testimonies during cross-examination, both respondents admitted that the suit land was family land, adding that the 2nd respondent [PW1] testified that the suit land was transferred to them after the death of the parties' father.
13. Counsel added that the 2nd respondent testified that both respondents were married and did not reside on the suit land, and that the suit land was the home of the appellant. Counsel further submitted that the 1st respondent [PW2] admitted during cross-examination that the suit land was customary land on which the appellant's husband was born, lived and left his family. Counsel added that the appellant [DW1] and DW2 similarly testified that the suit land was family land. Counsel argued that the evidence of the appellant and the evidence of the respondents supported the appellant's case that the suit land was family land where the appellant and her deceased husband lived and upon the death of the appellant's husband, the appellant and her family remained in possession of the suit land.
14. Citing the evidence of DW2, counsel further faulted the trial court for failing to be guided by reason and to take judicial notice of the fact that the father to the parties was old, senile and sickly, hence he was misled and tricked into transferring the suit land. Counsel argued that there was no way the parties' deceased father would have consciously disinherited his own son and family.
15. Faulting the trial court for not finding that the suit land was held subject to customary trust, counsel cited Sections 27 and 28 of the repealed Registered *Land Act* and argued that a customary trust was a recognized overriding interest. Reciting the appellant's evidence, counsel submitted that the evidence on record supported a finding to the effect that the suit land was family land that was held in trust by the respondents.
16. Contending that the respondents fraudulently and illegally alienated the suit land without involving the beneficiaries of the land, counsel pointed out various components of the respondents' evidence and submitted that those components of evidence demonstrated that the suit land was alienated fraudulently and without the knowledge of the appellant.
17. On the trial court's failure to find that the respondents colluded with Mr Ithinji and fraudulently transferred the suit land to Mr Ithinji, counsel submitted that, as a neighbour, Mr Ithinji knew that the suit land was family land held in trust and that the suit land was occupied by the appellant and her family.
18. Pointing out various pieces of evidence from the respondents to the effect that the suit land was family land where the appellant's late husband had her homestead and lived with his family, counsel faulted the trial court for issuing an eviction order whose effect was to render the appellant and her children



“landless and vagabonds”. Lastly, counsel for the appellant pointed out evidence which he argued proved that the suit land was ancestral land and the respondents could not be entitled to it to the exclusion of the appellant. Counsel urged the court to allow the appeal.

Respondents’ Submissions

19. The respondents filed written submissions dated 26/9/2025 through M/S Muchomba Law Advocates. Counsel for the respondents submitted that the respondents’ father, the late Kireria Kirurui, made equal provision in the family land [parcel number 336] for “both the respondents and the appellant through the appellant’s husband”. Counsel argued that it was the respondents’ contention that in that provision, the late Kirurui safeguarded his daughters’ interests by subdividing parcel number 336 into two and registering parcel number 1685 in their joint names and leaving the other half [parcel number 1684] to be shared by his two sons under the relevant succession laws. Counsel added that the respondents also made it clear that they were not interested in parcel number 1684 and parcel number Nkuene/Kathera/541 which will be subjected to succession proceedings.
20. Counsel argued that given the above circumstances, it was clear that the appellant and the respondents’ brother [DW2] were being selfish and did not want their deceased father to gift the respondents part of the family land, a position they contended amounted to discrimination on the basis of gender. Counsel added that the proposition that the court should take judicial notice of the fact that the late Kirurui was not in the right state of mind was baseless because during the same period, the late Kirurui defended a suit by DW2 over the suit land.
21. On whether the appellant proved fraud, counsel cited the pronouncements in the case of Anastacia Wangui Nyamu [2019] eKLR and submitted that the appellant testified that she did not look at the transfer instruments through which the impugned registrations were effected, adding that no criminal complaint was made. Counsel added that the alleged collusion between the respondents and Mr Ithinji was a legitimate contract of sale that became necessary after the respondents’ two brothers became hostile and chased the respondents from the suit land.
22. On whether the respondents breached a customary trust, counsel submitted that the evidence on record showed that the respondents were gifted one half portion of land parcel number 336 [parcel number 1685], leaving the other half [parcel number 1684] for the appellant and Jamlick [DW2]. Counsel contended that parcel number 1684 was available for distribution. Counsel urged the court to reject and dismiss the appeal.

Analysis and Determination

23. The court has 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 in the appeal. The court has also considered the relevant legal frameworks and the prevailing jurisprudence on the issues that fall for determination in the appeal. The following are the key issues that fall for determination in the appeal: (i) Whether the registration of the respondents and their late father as co-proprietors of land parcel number Nkuene/U-Mikumbune/1685 was subject to an overriding interest in the nature of customary trust; (ii) Whether upon the said registration, the appellant and her family became trespassers on the suit land; (iii) Whether the subsequent sale and transfer of the suit land to Shadrack Mwiti Ithinji by the respondents was lawful and conveyed a valid title to him; (iv) Whether the reliefs sought in the plaint were available to the respondents; (v) Whether the reliefs sought in the counterclaim were available to the appellant; and (vi) What order should be made with regard to costs of the appeal and costs of the suit in the trial court. I will briefly analyse and dispose the issues in the



above order. Before I do that, I will outline the principle that guides this court when exercising appellate jurisdiction.

24. 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.”

25. 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.”

26. Was the registration of the suit land in the names of the respondents and their late father subject to a customary trust? A perusal of the certified copy of the land register which was tendered as evidence during trial in the lower court reveals that the suit land was a 0.78 hectare subdivision out of land parcel number Nkuene/U-Mikumbune/336. The relevant subdivision register was opened on 3/3/2010 in the name of the late Kirurui. A title deed was subsequently issued to him on 4/3/2010. On 29/7/2011, the suit land was registered in the joint names of the respondents and their father, the late Kireria Kirurui. The nature of tenancy/ownership was not disclosed. On 3/8/2011, a title was issued to the trio. On 9/5/2013, a new title was issued [presumably after the death of Kireria Kirurui]. On 24/1/2019, the two respondents transferred the suit land to Shadrack Mwiti Ithinji.

27. The appellant contended in the trial court and in this court that the suit land was ancestral/family land that was held by her late father-in-law [the late Kirurui] in trust for the family. She further contended that her late husband and their family of six children had lived on the suit land throughout their lives. The case of the respondents was that the suit land was gifted to them absolutely by their late father after he realized that their two brothers were greedy and decided to secure their share of the land through a joint registration to avoid the greed of the duo. They contested the allegation that the suit land was held subject to a customary trust. Did the appellant prove existence of a customary trust?

28. Section 28 of the *Land Registration Act* recognizes a customary trust as one of the overriding interests subject to which a registered title may be held without it being noted in the land register. Secondly, Sections 107 to 109 of the *Evidence Act* placed on the appellant the burden of proving existence of the alleged customary trust.

29. The guiding criteria on the nature of evidence that is required to establish existence of a customary trust under Section 28 of the *Land Registration Act* and in the repealed Registered *Land Act* was outlined by the Supreme Court of Kenya in *Isack M’Inanga Kiebia v Isaaya Theuri M’Lintari & another* (2018) eKLR as follows:

“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.

30. Did the appellant satisfy the above criteria? The respondent is the widow of the late Luka Murithi Guantai, a deceased brother to the two respondents. She testified as DW1. She led evidence by for (4) other witnesses. Her evidence was that her husband died in 2018 and left her and her six children living on the suit land. They had lived on the suit land from 1985 when they got married. Her late father-in-law, Kireria Kirurui, settled his two sons on the family land [parcel number 336] which he subdivided into two: (i) parcel number 1684 and (ii) parcel number 1685 [the suit land]. Her husband and his family was settled on parcel number 1685 while his brother [Jamlick] was settled on parcel number 1684. The late Kireria Kirurui continued to occupy a portion falling within the two subdivisions. Both the late Kirurui and his wife were buried on parcel number 1685. She added that Mr Ithinji was their neighbour and knew that the suit land was family land on which they lived. She added that they had developed the suit land by building a home and planting tea, bananas and nappier grass on the land. They reared cattle and grew seasonal crops on the suit land.
31. Mary Mukami is a biological sister to the respondents. She testified as DW4. She adopted her written witness statement. Her evidence was that the suit land was their “customary land” which their father divided into two portions and gave a portion to each of his two sons, Jamlick Muthomi and Luka Murithi. The two sons settled on their respective portions which they developed by establishing homes and planting tea. It was her evidence that none of the six daughters of the late Kirurui was “given any land”. She faulted the respondents for obtaining and selling their customary land to a third party.
32. Jamlick Muthomi testified as DW2. He is a biological brother to the respondents. His evidence was that the suit land was their “customary law land” and no one had a right to evict the other from it. He stated that he was a step brother to Luka. The late Kirurui had divided the family land [parcel number 336] into two. He gave each of his two sons a portion. The late Luka married the appellant in 1985 and they had lived on the suit land since then and raised their 6 children on the land without any interference from any quarter. He added that Nkubu CMCC No 93 of 2014 was dismissed due to their absence and without any hearing notice, notwithstanding that Luka who was also a plaintiff had just died.
33. Solomon Kirimi Kiruja testified as DW3. At the time of testifying, he was the Secretary of the Majeru Clan to which the late Kirurui and her children belonged. His testimony was that the suit land was a subdivision out of ancestral land which the late Kirurui had subdivided into two and allocated to his two sons. The late Kirurui retained his homestead in the middle of the two portions. DW3 stated that he attended a family meeting held on 5/6/2010 in which the clan unanimously resolved that parcel number 336 was ancestral land that was subject to customary trust and was to be subdivided into 3



equal portions to be apportioned to the late Kirurui and to his two sons in three equal portions. He produced minutes of the meeting.

34. Janet Guantai [the 2nd respondent] testified as PW1. In her testimony during cross-examination, she stated that parcel number 336 was allocated to their father by the clan during land adjudication. She got married in 1989 and was still married. She was living with her husband and children in their matrimonial home. She was not living on the suit land and she did not have any development on it. Her sister, Florence Riinya, too, was married and was living with her family in their matrimonial home. It was her evidence that the tea bushes and the developments on the suit land were put in place by their late parents. She confirmed that the late Murithi's homestead was on the suit land. She also admitted that the late Murithi was born on the suit land, got married on the suit land and raised his family on the suit land. She admitted that the late Murithi and his family did not have any other home. Lastly, she stated that they had sold the suit land but they had not been paid due to the case.
35. Florence Riinya testified as PW2. In her evidence during cross-examination, she stated that the suit land was "family land" on which the 8 children of the late Kirurui were raised. She described the land as "customary" and confirmed that the late Luka Murithi was born, raised and buried on the land and left his family living on the land. She stated that she got married in 1985 and was living with her husband in their matrimonial home. She did not have any development on the suit land.
36. From the above evidence that was placed before the trial court, it does clearly emerge that the suit land was part of the larger family/ancestral land [parcel number 336] which the Majeru Clan gave to the late Kirurui. The respondents and all their siblings were born and raised on the land. It does also emerge that by dint of being a scion of the late Kirurui, the appellant's husband, the late Murithi, was raised on the said land and established his homestead on the land. He got married on the land and raised all his six children on the land. He made developments on the land.
37. It also does emerge that while keen to secure the interests of his two daughters, the late Kirurui remained alive to the fact that the suit land was family land and retained himself as a co-registered proprietor of the sub-division. If it was his intention to give the suit land to his two daughters absolutely and to the exclusion of all his other children, the co-registration would not have been necessary.
38. Thirdly, even after the late Kirurui caused the suit land to be registered in the three names, he did not deem it necessary to ask his son [Murithi] to vacate the land. The only logical conclusion is that he recognized the suit land was family/ancestral land which was subject to a customary trust and that his son was entitled to live on a portion of it with his family.
39. The appellant contended that the suit land was given to the late Murithi absolutely as one of the two sons of the late Kirurui. The evidence on record does not support that view. The evidence on record suggests that the late Kirurui was apprehensive that the two sons would disinherit his daughters. For this reason, he went for a co-registration that secured the interests of his two daughters.
40. The appellant also contended that there was fraud in the impugned registrations. There was, however, no evidence tendered to prove the allegation of fraud. Our courts have umpteen times emphasized that any allegation of fraud must be specifically pleaded and distinctively proved. Courts are not at liberty to infer fraud [See (i) Vijay Morjario v Nansingh Madhusingh Darbar & another [2000] eKLR; (ii) Koinange [1986] KLR : and (iii) Kinyanjui Kamau v George Kamau [2015] eKLR].
41. The appellant also contended that the late Kirurui was too old to comprehend what was happening. There was, however, no evidence to support the allegation.
42. Consequently, having evaluated the evidence that was placed before the trial court, this court comes to the conclusion that the threshold outlined by the Supreme Court of Kenya in the case of Kiebia [supra]



was properly met. In the circumstances, it is the finding of the court that land parcel number Nkuene/U-Mikumbune/1685 is part of the larger family/ancestral land that was at all material times held in customary trust for the family of the late Kireria Kirurui, to which the late Luka Murithi, Florence Riinya and Janet Guantai belonged. All the impugned registrations were and are subject to the said customary trust.

43. Did the impugned registrations render the appellant and her family trespassers on the suit land? The appellant is a widow of the late Luka Murithi. Her six children are part of the immediate family of the late Murithi. The late Murithi was born and raised on the suit land. He got married while living on the suit land. He established his matrimonial home on the suit land. That is the only home the family has. That is the home which their six children know. Through the estate of the late Murithi, they are beneficiaries of the trust mentioned in the preceding paragraph and will be entitled to participate in the affairs of the trust, including its dissolution. Through the administrators of the estate of the late Murithi, they are entitled to participate in the distribution of the rest of the estate of the late Kirurui. As beneficiaries of the trust land, they cannot be said to have become trespassers by dint of the impugned registrations. It is therefore the finding of this court that the appellant and her children did not become trespassers on the suit land by dint of the impugned registrations.
44. Were the sale and transfer of the suit land to Shadrack Mwiti Ithinji lawful? Did the impugned transfer convey a valid title to Mr Ithinji? The court has made a finding to the effect that the suit land was at all material times trust property. Only a section of the beneficiaries of the trust property participated in the sale and transfer of the trust property. Shadrack Mwiti Ithinji elected not to personally step forward to give evidence independently. He was said to be a neighbour of the parties to this appeal. The appellant and some of her witnesses stated that he was aware that the suit land was trust property where the family of the late Murithi lived.
45. From the foregoing, it is clear that the suit land was not available for unilateral disposal by the two respondents because it was trust property. The sale and transfer were illegal. They did not convey a valid title to Mr Ithinji. Those are the findings of the court.,
46. In light of the above findings, it follows that the respondents did not prove their case in the trial court to the required standard of balance of probabilities. Consequently, the reliefs sought in the plaint were not available to them.
47. Were the reliefs sought in the counter claim available to the appellant. The first relief was a declaration relating to the legality of the respondents' dealings in the suit land. The court having made a finding on the issue, the relief was and is available.
48. Prayer (b) was a plea for rectification of the register. The appellant was unable to prove fraud in the registration of the late Kirurui and his two daughters as proprietors of the suit land. She was, however, able to prove that the suit land is trust property to which the estate of the late Murithi and other beneficiaries are entitled. Consequently, the relief available is one rectifying the land register only to the above extent. Apportionment of the parties' exact interests in the suit land will be done at a different forum or in a different cause where all the interested parties will be invited to participate.
49. Prayer (c) was a plea for a permanent injunction restraining the respondents against interfering with or damaging any of the appellant's family house or any of their properties on the suit land or evicting her and her children. The parties to this appeal are expected to move swiftly to dissolve the trust and vest in the beneficiaries their respective portions of the land. Pending the dissolution of the trust, an injunctive order will issue in the above terms.



50. On costs, the dispute in this suit arose because the late Kirurui did not take proper steps to dissolve the customary trust. Consequently, parties will bear their respective costs in the trial court and in this appeal.

Disposal Orders

51. In the end, this appeal succeeds in the following terms: -
- a. The judgment of the trial court in Nkubu PMC E & L Case No 35 of 2019, dated 23/6/2022, is set aside wholly and is replaced with the following orders:
 - (i) The primary suit is dismissed for lack of merit and the counterclaim is allowed in the terms set below.
 - (ii) Entry numbers 6 and 7 in the land register relating to land parcel number Nkuene/U-Mikumbune/1685 is hereby declared illegal and unlawful.
 - (iii) An order is hereby issued cancelling the two entries.
 - (iv) An injunction is hereby issued restraining Florence Riinya, Janet Guantai and Shadrack Mwititi Ithinji against interfering with or damaging the houses or properties of Hellen Ndumba Luka or evicting her from the suit land. The injunctive order shall last for two years during which period parties to this appeal are expected to undertake and finalize dissolution of the trust relating to land parcel number Nkuene/U-Mikumbune/1685.
 - (v) Parties shall bear their respective costs in Nkubu PMC E & L Case No 35 of 2019.
 - b. Parties shall bear their respective costs of this appeal.

DATED, SIGNED AND DELIVERED AT MERU THIS 19TH DAY OF JANUARY, 2026.

B M EBOSO [MR]

ELC JUDGE

