

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ELC CASE NUMBER E002 OF 2025

BEATRICE GACHERI TIMOTHY [Suing as Administratrix of the Estate of Annah Karimi M'Ikirima [deceased]1ST PLAINTIFF

EMILY KANGAI TIMOTHY [Suing as Administratrix of the Estate of Annah Karimi M'Ikirima [deceased] 2ND PLAINTIFF

VERSUS

GIDEON KAIMENYI TIMOTHY.....DEFENDANT

JUDGMENT

1. The Plaintiffs herein *[who are the legal administratrix of the Estate of Annah Karimi M'Ikirima- deceased]* have approached the court *vide* *Plaint* dated the 02.10.2025. The Plaintiffs have sought various reliefs. The reliefs are:

- i. Declaration that the Defendant is holding land parcel number Ntima/Igoki/7087 [the suit property] in trust for the entire family of the late Annah Karimi Ikirima*
- ii. A declaration that the plaintiffs have a beneficial and equitable interest in the suit land known as Ntima/Igoki/7087.*
- iii. A declaration that the transfer of LR Ntima/Igoki/7087 to the defendant was illegal, irregular and fraudulent and the said title to be cancelled forthwith.*
- iv. An order directing the Land Registrar Meru County to cancel the title and entries in respect of LR Ntima/Igoki/7087 as currently entered or issued and substitute it with the names of the Plaintiffs*

or in the alternative be reverted to the late Annah Karimi M'Ikirima.

v. *A permanent injunction be issued restraining the defendant, members of his family and all those acting on his behest from interfering with, harassing, intimidating, alienating and/or threatening to evict the plaintiffs from the suit property, namely; LR Ntima/Igoki/7087.*

vi. *Costs of the suit.*

2. The suit is premised on various grounds. The grounds are: The suit property is a sub-division of LR Ntima/Igoki/3969 [the original parcel of land]; the original parcel of land belonged to and was registered in the name of Timothy M'Ikirima – deceased; Timothy M'Ikirima sought to subdivide the original parcel of land into various portions; the resultant subdivisions were to be distributed to the children of the deceased; the deceased died before he could conclude the process; the estate of the deceased was succeeded by Annah Karimi Ikirima; the grant of letters was indeed issued to Annah Karimi M'Ikirima; the said Annah Karimi M'Ikirima thereafter distributed the resultants subdivisions to various beneficiaries and the defendant was a beneficiary of two titles.

3. Additionally, it has been contended that the suit property was transmitted to and registered in the name of Annah Karimi M'Ikirima. Nevertheless, it has been posited that the defendant herein induced and secretly misled Annah Karimi and thereafter caused the suit property to be transferred and registered in joint names of Annah Karimi M'Ikiriama and himself [defendant].

4. Furthermore, it has been contended that the transfer and registration of the suit property in the names of Annah Karimi M'Ikirima and the defendant, only came to light in the year 2016. To this end, it has been posited that Annah Karimi M'Ikirima thereafter summoned/convened a family meeting touching on and concerning the title of the suit property.
5. The plaintiffs have also averred that arising from the family meeting, which was held on the 28.05.2016, it was agreed that the land, namely; the suit property was to be occupied by plaintiffs. In addition, it has been contended that Annah Karimi was to engage the Ministry of Lands to [sic] demarcate the suit land so as to avoid conflicts in future. However, it has been stated that Annah Karimi M'Ikirima passed on before the terms of the meeting could be implemented.
6. Be that as it may, the plaintiffs have averred that the suit property constitute the homestead wherein the children of Timothy M'Ikirima and Annah Karimi M'Ikirima [both deceased] were born and brought up. In addition, it has been contended that the suit property is wherein the main family house is located.
7. Arising from the foregoing, the plaintiffs have invited the court to find and hold that the transfer and registration of the suit property in the joint names of Annah Karimi M'Ikirima and the defendant was predicated on fraud; undue influence; and inducement. Moreover, it has also been contended that the court should find and hold that the suit property is being held by the defendant on trust for the plaintiffs and the other family members.

8. The defendant duly entered appearance and filed a statement of defence the 12.11.2025. The defendant denied the claims by/on behalf of the plaintiffs. Moreover, the defendant contended that the suit property belonged to and was registered in the name of Annah Karimi Ikirima now deceased. Thereafter, it is contended that Annah Karimi caused the suit property to be registered in the joint names of herself [Annah Karimi M'Ikirima] and the defendant.
9. In addition, the defendant has posited that the registration of the suit property in the joint names of Annah Karimi [now deceased] and himself was lawful, procedural and valid. Furthermore, the defendant has denied that the transfer in question was procured vide fraud; undue influence; or misrepresentation. In this regard, the defendant has invited the court to find and hold that the suit property now belongs to him, taking into account the doctrine survivorship [*jus accreseendi*].
10. The matter proceeded for hearing. The plaintiffs' case is premised on the evidence of four [4] witnesses. The witnesses are: Beatrice Gacheri Timothy; Harriet Kagweria; Samuel Mwenda Ikunywa; and Paul Mungania.
11. It was the testimony of PW1 [Beatrice Gacheri Timothy] that same is the 1st plaintiff in the matter. The witness further averred that she is a daughter of Timothy Ikirima and Annah Karimi Ikirima [both deceased]. In addition, the witness testified that same has authority to act for and on behalf of the 2nd plaintiff.

12. It was the further testimony of the witness that by virtue of being the 1st plaintiff, same is therefore conversant with the facts of the case. Moreover, the witness averred that she has since recorded and filed a witness statement dated the 14.01.2026. The witness thereafter sought to adopt and rely on the witness statement as her evidence in chief. The statement was duly adopted and constituted as the evidence in chief of the witness.

13. The witness further referenced the list and bundle of documents dated the 02.10.2025, containing ten documents. The witness thereafter sought to produce the documents as exhibits. There being no objection to the production of the documents, same were duly produced and admitted as exhibits P1 – P10, respectively.

14. Additionally, the witness adverted to a further list and bundle of documents dated the 23.01.2026. The witness thereafter sought to produce the documents as exhibits. Similarly, and in the absence of any objection, the documents were produced and marked as exhibit P11 – P16, respectively.

15. Other than the foregoing, the witness alluded to the Complaint dated the 02.10.2025; and the verifying affidavit attached thereto. The witness thereafter sought to rely on the said Complaint and the reliefs sought thereunder.

16. On cross examination by learned counsel for the defendant, the witness averred that the defendant is her brother. In addition, the witness testified that the defendant and herself are the children of Timothy M'Ikirima and Annah Karimi Ikirima [both deceased]. Moreover, the witness averred that they are eight siblings, comprising of three brothers and five daughters.
17. It was the further testimony of the witness that Timothy M'Ikirima [now deceased] had three parcels of lands. The witness averred that two parcels of land are located within Ntima Igoki area, while the other is situated at Ruiru Rwarera.
18. While still under cross examination, the witness testified that their father [Timothy M'Ikirima] died in the year 2008. However, the witness added that by the time their father died, he [deceased] had shown the defendant where he [Defendant] was to build/erect rental houses. In any event, the witness confirmed that the defendant has rental houses on the land. Nevertheless, the witness posited that she does not know when the rental houses were constructed by the defendant.
19. It was the further testimony of the witness that in the year 2006, same was living/residing at Nakuru. The witness stated that she came back to Meru in the year 2016. Moreover, the witness clarified that by the time she came back to Meru, her father had long died.
20. The witness further testified that her father proceeded to and subdivided his three parcels of land. The witness averred that the deceased subdivided his parcels of land long before his death. In particular, the witness testified that the parcels of land at Ntima/Igoki were sub-divided

in favor of three sons; one daughter; and two grandchildren. Furthermore, the witness posited that one of the grandchildren who benefited from the subdivision by the deceased was Moses Kathurima.

21. It was the further testimony of the witness that the portion of land which was given to Moses Kathurima was registered jointly in his name and the name of his father, namely; Samuel Kathurima.

22. Additionally, the witness testified that one Harriet Kagwiria [PW2] was given a portion of the land at Ntima/Igoki. The witness averred that the reason why Harriet was given a portion of land was because she was taking care of the parents.

23. On further cross examination, the witness testified that her late father [Timothy M'Ikirima] was deliberate and intentional in the manner in which he distributed the resultant subdivisions to his children and grandchildren. Regarding, the mutation [exhibit P2], the witness testified that the same shows the scheme of distribution that was adopted and deployed by the deceased.

24. It was the further testimony of the witness that the defendant herein was a beneficiary of a portion of the land at Ntima/Igoki. The witness clarified that the portion that was given to the defendant measured 0.08 HA. Moreover, the witness testified that the portion that was given to the defendant borders the suit property.

25. While still under cross examination, the witness testified that all the children agreed with the scheme of distribution that was adopted when their mother [Annah Karimi M'Ikirima] petitioned for the grant of letters of administration. In addition, the witness confirmed that their late mother complied with and adhered with the scheme of distribution which their father had left behind.

26. It was the further testimony of the witness that same has seen the grant of letters that has been tendered by the defendant. The witness stated that the grant of letters of administration shows/reflects the manner in which all the parcels of land belonging to Timothy M'Kirima were distributed. The witness clarified that all the daughters were allocated land at Ruiru/Rwarera.

27. Additionally, the witness testified that the grant of letters of administration which was issued in the name of Annah Karimi M'Ikirima was fully implemented. Furthermore, the witness testified that the suit property was registered in the name of Annah Karimi M'Ikirima and the defendant in the year 2015. However, the witness clarified that by the year, 2015 their mother was already suffering from dementia. Nevertheless, the witness stated that she does not have any medical report to confirm that their mother was suffering from dementia.

28. On further cross examination, the witness testified that on 28.05.2016, their mother convened a family meeting and during the family meeting their mother spoke about the title of the suit property. In particular, the witness averred that during the meeting, it was known that the suit

property was registered in the joint names of the defendant and Annah Karimi M'Ikirima.

29. In addition, the witness testified that the meeting that was held on the 28.05.2016 birthed minutes. The witness thereafter referenced the minutes that were produced before the court. Regarding whether their mother ever lodged any complaint with the police or the Land Registrar, the witness posited that no complaint was ever lodged by their mother.

30. Upon being referred to exhibits P11, the witness testified that the document and the minutes of the meeting that was held on the 02.03.2023. The witness clarified that the agenda of the said meeting included her moving back and staying in the main house. The witness clarified that the main house is located within the suit property. Moreover, the witness conceded that the suit property is now registered in the name of the defendant.

31. The second witness who testified on the behalf of the plaintiff was Harriet Kagwiria. The witness testified as PW2. It was the testimony of the witness that same is familiar with the plaintiffs and well as the defendant. The witness clarified that the said parties are her siblings. In particular, the witness averred that the defendant is their last born brother.

32. It was the further evidence of the witness that same had filed a witness statement dated 18.01.2026. Thereafter the witness sought to adopt and rely on the contents of the statement as her evidence in chief. Suffice it

to state that the statement was duly adopted and constituted as her evidence in chief.

33. On cross examination by learned counsel for the defendant the witness testified that her late father indeed subdivided his three parcels of land. The witness added that the plaintiffs namely: Beatrice and Emily were both allocated land at Ruiru Rwarera. In addition, the witness testified that she was allocated a portion of land at Ntima/Igoki. The witness added that she was allocated land Ntima/Igoki because she was helping the parents.

34. While still under cross examination, the witness testified that her late father had settled most of his children except two of her sisters, who had not been given land at Ntima/Igoki. Nevertheless, the witness testified that the suit property includes a portion of land where the main family house is located. Moreover, the witness testified that the Defendant built/erected rental houses on a portion of the suit property.

35. In addition, the witness testified that the portion of land which was distributed and allocated to the defendant shares a common boundary with the suit property. The witness further testified that their late mother [Now Deceased] took out succession in respect of the estate of their father. Besides, the witness testified that none of the beneficiaries objected to the succession proceedings and the distribution scheme.

36. Regarding, the allegations of fraud, the witness testified that fraud was discovered in 2016. Furthermore, the witness testified that though the fraud was discovered in 2016 no action was taken against the defendant. Besides, the witness confirms that their mother died in the year 2022. For

good measure, the witness clarified that their mother died after more than six [6] years from the date when the fraud was discovered.

37.Regarding the minutes of the meeting held on 28.05.2016, the witness testified that she is the one who recorded the minutes. In addition, the witness posited that the minutes contained resolutions and recommendations that were agreed on. Nevertheless, the witness stated that the defendant herein did not sign the said minutes.

38.The third witness who testified on behalf of the plaintiffs was Samuel Mwenda Ikunywa. The witness testified as PW3.

39. It was the testimony of the witness that same is familiar or conversant with the parties in this case. The witness added that same has also recorded and filed a witness statement. The witness thereafter referenced the statement dated 23.01.2026; and which witness statement the witness sought to adopt as his evidence in chief. Suffice it to state that the witness statement was duly adopted and constituted as the evidence in chief of the witness.

40.On cross examination by learned counsel for the defendant, the witness testified that there was a meeting which was called by the clan. The witness referenced the minutes dated the 02.03.2023; and indicated that he is the one who recorded the minutes. Furthermore, the witness testified that the minutes have captured the names of all the persons who attended.

41.The witness further testified that their agenda shown on the face of the minutes was to discuss the moving back of Beatrice Gacheri to move back to the main house located in the suit land. Besides, the witness testified that he does not when Beatrice Gacheri left staying [moved out] of the main house.

42.While still under cross examination, the witness testified that the defendant herein was present during the meeting held on 02.03.2023. The witness averred the sentiments of the defendant were duly captured in the body of the minutes. In particular, the witness added that the defendant was emphatic that Beatrice Gacheri should go to and reside at Ruiru Rwarera.

43.Additionally, the witness referenced the 2nd meeting that was called by the clan. The witness posited that the meeting was convened and held on the 19.04.2023. Besides, the witness testified that the defendant was present during the said meeting and that the defendant was emphatic that suit property lawfully belongs to him.

44.The fourth witness who testified on behalf to the plaintiff was Paul Mungania. The witness testified as PW4.

45.It was the testimony of the witness that same was conversant with the parties herein. The witness averred that he is a neighbour of the parties. In particular, the witness testified that his parcel of land borders/shares a common boundary with the land belonging to the father of the parties [now deceased].

46. It was the further testimony of the witness that he has since recorded a witness statement dated the 23.01.2026 and which witness statement the witness sought to adopt as his evidence in chief. Thereafter, the witness statement was duly adopted and constituted as the evidence in chief of the witness.

47. On cross examination by learned counsel for the defendant, the witness testified that he has attended court and testified as a clan elder. Moreover, the witness testified that according to his clan, the registered owner of the land is at liberty to sub-divide and distribute his land freely, and according to own volition.

48. It was the further testimony of the witness that he was conversant with the mother of the parties. In particular, the witness testified that he got to know the mother of the parties in the year 2015. However, the witness clarified that he did not know whether the suit property was registered in the joint names of the defendant and his late mother [Annah Kirimi M'Ikirima].

49. While still under cross examination, the witness testified that the mother of the parties did not lodge or mount any complaint with the clan between the year 2015 upto her death. In addition, the witness averred that the mother of the parties did not complain against any fraud or theft of her land.

50. Regarding the meeting that was held on the 28.05.2016, the witness testified that he was present during the said meeting. However, on further cross examination the witness beat a retreat and stated that he was not in attendance during the said meeting.

51. Upon being referred to the minutes arising out of the meeting held on the 28.05.2016, the witness testified that the minutes were taken to the clan by Harriet Kagwiria. It was the further testimony of the witness that the clan meeting which was held on the 02.03.2023, was held long after the death of Annah Karimi M'Kirima.

52. Regarding the Agenda of the meeting held on the 2nd of March, 2023; the witness testified that same concerned the returning of Beatrice Gacheri back to occupy the main house. However, the witness posited that he does not recall when Beatrice Gacheri returned to the main house.

53. With the foregoing testimony, the plaintiffs' case was closed.

54. The Defendant's case is premised on the evidence of three [3] witnesses. The witnesses are Gideon Kaimenyi Timothy, Alice Matheu; and Moses Mutembei Kathurima. The witnesses testified as DW1, DW2 and DW3, respectively.

55. It was the testimony of Gideon Kaimenyi Timothy [DW1] that same is the defendant in this case. In addition, the witness testified that he is familiar with the facts of this matter. Moreover, the witness averred that same has since recorded a witness statement dated the 12.11.2025 and which witness statement, the witness sought to adopt and rely on as his evidence in chief. Thereafter, the statement was adopted and constituted as the evidence in chief of the witness.

56. The witness also referenced the list and bundle of documents, containing five [5] documents and which documents the witness sought to produce

before the court. There being no objection to the production of the document, same were duly tendered and admitted as exhibits D1 – D5.

57. Other than the foregoing, the witness referenced the statement of defence dated the 12.11.2025 and sought to adopt the contents. In particular, the witness invited the court to dismiss the suit with costs.

58. On cross examination by learned counsel for the plaintiff, the witness testified that his mother, namely; Annah Karimi Ikirima [now deceased] is the one who succeeded the estate of their father. In addition, the witness testified that he was a beneficiary of a portion of the estate. The witness testified that he was allocated plot number 4344.

59. It was the further testimony of the Witness that plot number 7087 was also given to him. Nevertheless, the Witness averred that plot number 7087 was registered in joint names of the mother [Annah Karimi Ikirima] and himself in the year 2015. Furthermore, the witness confirmed that the property was lawfully registered in their joint names.

60. While still under cross examination, the witness averred that there was a family meeting which was held in 2016. However, the witness posited that the family meeting was intended to address the question of unity in the family. The witness however, retracted the statement and intimated that the said meeting was in respect of inheritance within the family.

61. Regarding the contents of paragraph 14 of the witness statement, the witness confirmed that the joint registration of the suit property was undertaken with the knowledge of their mother; and that the registration was voluntary. Moreover, the witness testified that the entire family was aware of the joint registration of the suit property. In addition, the

witness averred that following the death of his mother the suit property now belongs to him.

62. Upon being referred to paragraph 17 of his witness statement, the witness stated that the contents of the said paragraph are correct. In particular, the witness averred that Beatrice Gacheri had sought to occupy the main house by force after the death of their mother.

63. The second witness who testified on behalf of the defendant was Alice Matheu. The witness testified as DW2.

64. It was the testimony of the witness that same is sister of the parties. Moreover, the witness averred that she is the eldest in the family. In addition, the Witness posited that she is conversant with the facts of the case. Furthermore, the witness intimated to the court that same has since recorded and filed a witness statement dated the 12.11.2025. Thereafter, the witness sought to adopt the contents of the statement as her evidence in chief. Instructively, the witness statement was adopted and constituted as the evidence in chief.

65. On cross examination by learned counsel for the plaintiff, the witness testified that she was informed when the suit property was going to be registered in the joint names of their mother [Annah Karimi Ikirima] and the defendant. The witness reiterated that the family was informed.

66. It was the further testimony of the witness that she is aware that her mother called the family meeting in 2016. The witness added that she was present during the family meeting. However, the witness clarified that there was no agreement that the house on the suit property was to be bequeathed to Beatrice Gacheri. The witness added that what was agreed

upon was that a fence was to be erected to separate the main house from the tenants.

67. While still under cross examination, the witness testified that there were minutes which came out of the meeting. The witness added that the minutes were signed by all the persons who were in attendance.

68. The last witness who testified on behalf of the defendant was Moses Mutembei Kathurima. The witness testified as DW3.

69. It was the testimony of the witness that same is familiar with the parties in respect of the subject matter. The witness clarified that the plaintiffs are his aunties, while the defendant is his uncle. In addition, the witness averred that same has since recorded a witness statement dated the 12/11/2025 and which witness statement, the witness sought to adopt and rely on as his evidence in chief. Thereafter the witness statement was adopted and constituted as the evidence in chief.

70. On cross examination by learned counsel for the plaintiff, the witness averred that his grandfather [Timothy M'Ikirima- deceased] had indicated that the suit property was to go to and be registered in the name of the defendant according to the Ameru Customs.

71. With the foregoing testimony, the defendant's case was closed.

72. Following the conclusion of the hearing, the advocates for the parties sought time to file and exchange written submissions. The court thereafter issued directions pertaining to the filing and exchange of the submissions. The directions were: The plaintiff was to file and serve written submissions within 14 days from the date of the directions; the

defendant was to file and serve written submissions within 14 days from the date of service; and the plaintiff was to be at liberty to file and serve rejoinder submissions, if any, within 7 days of service.

73. The plaintiffs filed written submissions dated the 10.03.2026 and wherein the plaintiffs have highlighted four [4] key issues. The issues are: The suit property was/is family land; the suit property is subject to customary trust; the suit property is/was fraudulently registered in the name of the defendant; and that the plaintiffs have proven their case on a balance of probabilities.

74. The Learned counsel for the plaintiff has thereafter cited and referenced various decisions. The decisions include: **Kavoo and another versus Marera [suing on behalf of the Marera family] [2023] KEELC; M'Ikiungu M'Mwirichia and another versus Esther Ntruiru M'Ikiungu and 2 others [civil appeal 95 of 2009]; Mbui Mukango versus Gerald Mutwiri Mbui [2004] eKLR; and Isaac Kiebia M'Inanga versus Isiah Theuri M'Rintari and others [2018] eKLR**

75. Premised on the foregoing, learned counsel for the plaintiffs submitted that the plaintiffs have proven that the suit property, which houses the main family house, is held by the defendant on trust. In particular, it has been submitted that the suit property is subject to inter and intra generational equity. In this regard, it has been contended that the suit property cannot be sold and or alienated.

76. In view of the foregoing, the court has been invited to find and hold that the plaintiffs have proved their claim on a balance of probabilities. The court has been implored to allow the claim and grant the reliefs sought.

77.The defendant filed written submissions dated the 09.03.2026 and wherein the defendant has canvassed three [3] key issues. The issues are: The plaintiffs have neither proved not establish the plea of fraud; the plaintiffs claim based on trust is incompetent of want of the requisite particulars; and the plaintiffs have not proved trust or at all.

78.Learned counsel for the defendant has thereafter cited and referenced various decisions including **Ndolo versus Ndolo [2008] KLR; and Mwangi Mbothu and nine others Gachira Waitimu and 9 others [1986] eKLR**, respectively.

79.Flowing from the foregoing, learned counsel for the defendant has submitted that the plaintiffs have merely pleaded and particularized fraud, but same failed to tender any credible evidence to prove fraud. Moreover, it has been submitted that proof of fraud requires credible evidence. In addition, it has been posited that fraud must be proven to the requisite standard.

80.Regarding the claim of trust, it has been submitted that the plaintiffs did not supply the particulars of trust. Absent particulars of trust, it has been submitted that the plea of trust is therefore premature, misconceived and legally untenable. Moreover, it has also been submitted that no evidence was tendered to demonstrate that the suit property is subject to customary trust.

81.Having reviewed the pleadings filed by/on behalf of the parties; the evidence tendered [both oral and documentary] and upon consideration of the written submissions on record, three issues crystalize for consideration and determination.

82. The issues are: Whether the plea of trust by the and/on behalf of the plaintiffs accords with the requirements of the law or otherwise; whether the plaintiffs have proved the claim of trust [if at all] ; and whether the plea of fraud has been duly established/proved or otherwise.

83.Regarding the first issue, it is imperative to recall and reiterate that the Plaintiffs herein have approached the court contending the suit property is being held for the family of Annah Karimi Ikirima [now deceased]. The plaintiffs claim is underpinned by the plaint dated the 02.10.2025. Nevertheless, even though the plaintiffs have alluded to trust in the body of the plaint, it is not lost on me that the plaintiffs have neither clarified whether the trust being propagated is constructive trust; resulting trust; implied trust; or customary trust, the latter which constitute[s] an overriding interest, subject to proof.

84.To the extent that the Plaintiffs had sought to propagate or canvass the plea/ claim of trust, it was incumbent upon the Plaintiffs to not only plead trust, but to supply the particulars [sic] of the trust. The Plaintiffs were enjoined to demonstrate *vide* the particulars, how and in what manner, the trust arose.

85.Additionally, the Plaintiffs were also required to plead and particularize breach of trust. The law as pertains to pleading of trust is captured/ provided for in terms of **Order 2 Rule 10 of the Civil Procedure Rules**. The said rules are couched in mandatory terms.

86.The provisions of **Order 2 Rule 10 of the Civil Procedure Rules, 2010** state thus:

(1) Subject to subrule (2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing—

(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and

(b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

87. The necessity to plead and particularize *inter alia* trust/ breach of trust was underscored in the case of *John Gitiba Buruna & another v Jackson Rioba Buruna [2007] KECA 431 (KLR)*.

88. The Court of Appeal stated thus:

*Mr. Makoolo is also correct that the resulting trust on which the learned Judge relied was not pleaded by the respondent. Under Rule 8 (1) (a) of Order VI Civil Procedure Rules, a *plaint should contain the specified particulars including particulars of trust on which a party relies. The Respondent did not however, rely on a breach of a trust.* The finding that there was a resulting trust was merely an inference arising from the facts as accepted by the learned Judge. The learned Judge however, with respect, erroneously categorized the trust arising from the circumstances of the case as a resulting trust rather than a constructive trust which arises by operation of law. [emphasis supplied]*

89. In the absence of the requisite particulars of trust, the plaintiffs herein cannot be heard to tender evidence in an endeavor to prove [sic] trust. The starting point is to the effect that there must be proper pleadings before the court prior to and before a party can lead evidence. The evidence to be led, if any, must be evidence that is propagating the pleading before the court. Where the evidence is at variance with the pleadings, then the evidence led becomes redundant and unhelpful.

90. Furthermore, it is important to highlight the provisions of **Order 2 Rule 6 of the Civil Procedure Rules, 2010**. The said provisions underpin the doctrine of departure. Simply put, parties are bound by their pleadings; and no evidence can be tendered which is at variance with the pleadings.

91. The provisions of **Order 2 Rule 6 of the Civil Procedure Rules** stipulate thus:

6. Departure [Order 2, rule 6]

(1) No party may in any pleading make an allegation of fact, or raise any new ground of claim, inconsistent with a previous pleading of his in the same suit.

(2) Subrule (1) shall not prejudice the right of a party to amend, or apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

92. Before concluding on this issue, I wish to reference the decision in the case of *Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] KECA 445 (KLR.)*. The Five Judge bench of the Court of Appeal were emphatic about the role and significance of pleadings.

93. The court stated thus:-

41. We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point.

*42.....
..... What Jessel, M.R said in 1876 in the case of Thorp v Holdsworth (1876) 3 Ch. D. 637 at 639 holds true today: The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”*

94. From the foregoing analysis, it is my finding that the plaint dated 2nd of October, 2025; and which underpinned the plaintiffs’ claim was fatally

deficient and thus incapable of sustaining the plea/claim of trust. Moreover, it is not lost on me that the plaint in question was devoid of particularity, as pertains to the nature of trust which was being propagated.

95. The next issue that falls for consideration relates to whether [if at all] the Plaintiffs tendered and adduced evidence to show that the suit property was held on trust. I am alive to the fact that I have found and held that the plea/claim based on trust, has not been properly pleaded. In addition, I am also aware that the want of particulars of trust required under the law, vitiate the claim.

96. Nevertheless, I am still obligated and for the sake of completeness, to venture forward and interrogate the totality of the evidence that was tendered by/on behalf of the plaintiffs; and to discern whether trust [by whatever name] has been proven. To start with, the plaintiffs contend that the suit property is a subdivision of LR Ntima/Igoki/3969, which was family land. In addition, it was contended that the said family land was subdivided by Timothy M'Ikirima [deceased].

97. It was further contended that the subdivision of the family land by Timothy M'Ikirima [now deceased] was to enable same to be distributed to the children and grandchildren of the deceased. However, it was posited that Timothy M'Ikirima died before same could fully distribute the subdivision.

98. Be that as it may, evidence was tendered that after the death of Timothy M'Ikirima [now deceased], his estate was succeeded by Annah Karimi Ikirima. For good measure, the grant of letters of administration which

was issued in favour of Annah Karimi Ikirima was duly produced in court as exhibit P7. According to the grant of letters of administration, the suit property was distributed and in favor of Annah Karimi M'Ikirima as the absolute owner.

99. My understanding of the distribution of the suit property to Annah Karimi Ikirimab [now deceased] as the absolute owner of the suit property, is to the effect that same was bestowed and conferred with the rights to deal with the suit property as she wished. Suffice it to state that Annah Karimi Ikirimia proceeded to and caused the suit property to be registered in her name and that of the defendant.

100. The registration of the suit property in the joint names of Annah Karimi Ikirima and that of the defendant, fell within the mandate and power of Annah Karimi Ikirima. It was contended that the transfer and registration of the suit property in the joint names was fraudulent. However, I shall deal with the question of fraud shortly.

101. Back to the claim of trust. The suit property had been transmitted to and registered in the name of Annah Karimi Ikirima. The suit property therefore became hers. She was at liberty to deal with same. In any event, it is not lost on me that when the suit property was being registered in favour of Annah Karimi Ikirima, the rest of the family members, including the plaintiffs herein were given their share of family land. It cannot now be said that the suit property was being held on trust as family land, yet everyone was given a share of the Family; and same were registered in their names.

102. Notwithstanding the foregoing, it was the obligation of the plaintiffs to demonstrate by way of evidence how the suit property

remains to be held on trust, yet every family member, including the plaintiffs were allocated land. Notably, both the plaintiffs were allocated one acre each out of the family land at Ruiru Rwarera.

103. To my mind, the plaintiffs did not tender or adduce evidence to prove the plea of trust. I hasten to state that a court of law is not obliged to presume trust for the sake of it or for the mere asking by a party. It is settled that the person propagating the plea of trust must lead/tender credible evidence to underpin the claim. Absent evidence, the plea of trust dissipates into thin air.

104. In the case of **Kazungu Fondo Shutu & another v Japhet Noti Charo & another** [2021] KECA 592 (KLR), the Court of Appeal underscored the obligation/onus of the claimant to prove trust. The court reiterated the necessity to tender plausible evidence.

105. The Court stated as hereunder:

28. 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.

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 Saggah Ahmed Al-Heidy & Others [2015] eKLR and re-stated the law on trusts as follows: -

“According to the Black’s Law Dictionary, 9th Edition; a trust is defined as

“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).”

31. As earlier stated, the existence of a trust is a question of evidence. In the Juletabi case (supra), the court held that the

onus lies on the party relying on the existence of a trust to prove it through evidence. That is because:

“The law never implies, the Court never presumes a trust, but [only] in case of absolute necessity. The Courts will not imply a trust save in order to give effect to the intentions of the parties. The intention of the parties to create a trust must be clearly determined before a trust will be implied.”

32. The onus to prove existence of a trust lay squarely on the appellants. Section 107 of the Evidence Act further provides that:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

106. Turning to the last issue, namely; whether the claim based on fraud was proven or otherwise. I wish to deal with the claim of fraud, in a two-pronged manner. Firstly, I wish to consider whether the claim based on fraud was/is statute barred or otherwise. Thereafter, I shall address the quality of evidence that was tendered and to discern whether the standard of proof was achieved.

107. Regarding the question whether the plea of fraud is time barred, it is important to recall that PW2 testified and stated that the fraud relating to the registration of the suit property in the joint names of their mother [Annah Karimi Ikirima] and the defendant, was discovered in 2016. Nevertheless, PW2 Harriet Kagwiria averred that despite the discovery of fraud in 2016, no action was taken [if at all] to remedy the fraud.

108. This is what PW2 stated while under cross examination by learned counsel for the Defendant:

“referred to paragraph 7 of the witness statement and the witness states that the contents thereof are true. In 2016, we discovered fraud. I also do confirm that fraud is a criminal offence. I do state that my mother died in 2022. She died after six years from the date of the meeting in 2016. My mother did not make or lodge or complaint as pertains to fraud.”

109. Other than PW2, there is also the evidence of PW1. PW1 confirmed that the suit property was registered in the joint names of their mother [now deceased] and the defendant in the year 2015.

110. This is what PW1 stated while under cross examination by the defendant:

“ In the year 2015, the land was registered in the joint names of our mother and the defendant. I do confirm that my mother was alive in 2015.”

111. In an endeavor to discern when the cause of action for fraud arose, it is also important to take cognizance of *paragraph* 13 and 14 of the *Plaint*. Instructively, the plaintiffs have also adverted to the year 2016, as being the year when the fraud is said to have been discovered.

112. The question that falls for determination is whether the suit which was filed on the 02/10/2025, was filed within the prescribed timelines. Pertinently, a suit propagating fraud ought to be filed within three years from the date of cause of action or from the date of discovery of [sic] the fraud.

113. **Section 4[2] of the Limitation of Actions Act, Chapter 22 Laws of Kenya**, stipulates thus:

1)The following actions may not be brought after the end of six years from the date on which the cause of action accrued—

(a)actions founded on contract

;(b) actions to enforce a recognizance;

(c)actions to enforce an award;

(d)actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;

(e)actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.

(2)An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued:

Provided that an action for libel or slander may not be brought after the end of twelve months from such date.

114. To my mind, the cause of action based on fraud [if at all], is said to have arisen in 2016. In this regard, the plaintiffs or their predecessors ought to have filed the suit [if any], within three years. This means that the suit beforehand ought to have been filed by the year 2019 and not otherwise.

115. Put differently, it is my finding and holding that by the time the suit was being filed, the cause of action [plea of fraud] was time barred. The plaintiffs were therefore *non-suited*. The suit beforehand is therefore still borne.

116. The next aspect for consideration relates to whether the evidence tendered met the threshold for proving fraud. The plaintiffs contended that the defendant applied undue influence and inducement on their mother [Annah Karimi Ikirima] and thereafter caused the suit property to be registered in their joint names.

117. Despite making the foregoing assertions, no evidence was tendered by the plaintiff to demonstrate such undue influence or inducement. It is important to underscore, that whoever makes the assertion, is obligated to prove same. In any event, assertions can only be proven on the basis of the evidence in line with the provisions of **Section 3 [2] of the Evidence Act, Chapter 80, Laws of Kenya.**

118. It is also important to recall the evidence of PW4. The witness herein stated that he is an elder and belongs to the same clan as the parties herein. The witness further averred that he was familiar with the mother of the parties. Nevertheless, the witness clarified that the mother of the parties did not lodge or mount any complaint of fraud or theft of her land with the Clan.

119. This is what the witness stated when under cross examination by learned counsel for the defendant:

“Tthe mother of the parties did not come to the clan between 2015 upto her death to report/complain about any fraud or theft of her land.”

120. If PW4 was called to help prove the claim based on fraud, then his evidence has not helped the plaintiffs. On the contrary, the tenor of the evidence by PW4 negates the plea of fraud. Essentially, the person against whom the fraud is said to have been [sic] perpetrated did not raise any complaint.

121. The other bit of evidence that was tendered was to the effect that the defendant took advantage of the age of Annah Karimi Ikirima. In addition, it was said that by the time the property was being registered in the joint names, Annah Karimi Kirima was suffering from dementia.

122. However, it is not lost on me that PW1 who was propagating the said position did not tender any medical report to that effect.

123. Additionally, there is evidence that Annah Karimi Ikirima [now deceased] called a family meeting in 2016. So, the question that does arise, is how the person who is said to have been suffering dementia in 2015, could call and convene a meeting in 2016. Surely, the evidence of PW1; and more particularly, the invocation of dementia, is implausible.

124. It is also worthy to recall that DW2 [Alice Matheu] testified that the registration of the suit property in joint names of their mother [Annah Karimi Ikirima- deceased] was known to the family. In fact the witness clarified that the family was duly informed. This is what DW2 stated when under cross examination by learned counsel for the plaintiff:

“ I was informed when the suit property was going to be registered in the joint names of my mother and my brother. I do confirm that we were informed”

125. I wish to state that the evidence by DW2 was never controverted. The said evidence remains standing. The net effect of the evidence by DW2 is to confirm that the registration of the suit property in the joint names of Annah Karimi Ikirima [now deceased] and the defendant was voluntary at the instance of their mother; and that same was known to the family.

126. In my humble view, the plaintiffs herein did not tender any plausible or cogent evidence to prove fraud. Moreover, it is common ground that the standard applicable to the proof of fraud is higher than the balance of probabilities. Fraud cannot be assumed. Fraud cannot be speculated upon. In addition, the plea of fraud cannot merely be thrown on the face of the court, in the manner that it has been done by the plaintiffs.

127. In the case of **Kiarie & 2 others v Magera [2018] KECA 467 (KLR)**, the Court of Appeal underscored the standard of proof applicable to matters fraud. The court also addressed the quality of evidence to be tendered in an endeavor to prove fraud.

128. The court stated thus:

..... The law is clear and we take it from the case of Vijay Morjaria vs Nansingh Madhusingh Darbar & Another [2000] eKLR, where Tunoi, JA. (as he then was) stated as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable

to leave fraud to be inferred from the facts.” [Emphasis added].The same procedure goes for allegations of misrepresentation and illegality. See Order 2 Rule 4 of the Civil Procedure Rules.

26. As regards the standard of proof, this Court in the case of Kinyanjui Kamau vs George Kamau [2015] eKLR expressed itself as follows;

-“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs Ndolo (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts. ”

129. Without belaboring the point, it is my finding and holding that the plaintiffs have not proved or established fraud. To this end, the plea of fraud fails; and collapses onto the ground.

CONCLUSION

130. It is the plaintiffs who had approached the court propagating the plea of fraud and trust. Having approached the court with the foregoing contentions, it behooved the plaintiffs to tender evidence and to prove the assertions. However, in respect of the instant matter, the assertions were never proven. The assertions remained at the level of allegations.

131. In the premises, it is my finding and holding that the plaintiffs did not discharge the burden of proof cast upon same. Having failed to

discharge the burden of proof, the plaintiffs claim becomes a candidate for dismissal.

FINAL ORDERS.

132. Flowing from the foregoing, the final orders that commend themselves to the court are:

- i. The Plaintiffs' suit be and is hereby dismissed.*
- ii. Each party shall bear own costs of the proceedings.*

133. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 23RD DAY OF MARCH, 2026.

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA]

JUDGE

In the presence of-:

Naserian: Court Assistant

Ms Wahome for the Plaintiffs.

Mr. Nganga Mbugua holding brief for Mr. Kariuki for the Defendant.