

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC NO. E003 OF 2022(OS)

**IRENE CHEPCHUMBA MUTAI
LYDIA CHERUTO
GLADYS CHELAGAT &
JULIET CHECHIRCHIR MUTAI-----
APPLICANTS**

VERSUS

**WILSON BARMAO MUTAI &
JAMES KIGEN ROTICH
(Sued as the Legal representatives of the Estate of
LILIAN JEPKOSGEI MUTAI)-----
RESPONDENTS**

JUDGMENT

1. By an originating summons dated **26/4/2022**, and later amended on **11/10/2022**, the applicants sought to be declared entitled to Land Title Nos. **Kitale Municipality Block 15/Koitogos/1495** and **1728**, hereinafter the suit properties, measuring **2.24 Ha** and **0.81 Ha** respectively by virtue of adverse possession.
2. The originating summons is supported by an affidavit of Gladys Chelangat, sworn on **26/4/2022** and **11/10/2022**. The 3rd applicant deposes that the suit properties are registered in the name of the

respondent, who is their father and father to the initial proprietor of the land, their late sister Lilian Jepkosgei Mutai, as per the attached copy of the search and green card marked **GC-(A)** and **(B)**.

- 3.** The applicants depose that they were born in Kibomet Kitale and reside therein alongside their mother Peninah and that at all times they and their late sister were assisting their mother to cultivate the suit land, whose farm proceeds would be used to pay for their school fees after the mother was taken ill in **1998**.
- 4.** The applicants depose that on **17/2/2004**, a certificate of title was issued to their late sister as per the attached copy marked **GC-(C)**, while they were in occupation of the land, which the late sister and her husband were all aware of.
- 5.** The applicants depose that they have carried out various activities or developments on the land for **12 years**, including erecting a permanent house herein as per annexed photographs marked **GC-D (1)**, which occupation and development since **1993** have been open, uninterrupted, well-known, exclusive, peaceful, and continuous, without objection from the previous and the current title holder of the land.

6. The applicants depose that their father, with his knowledge after the death of their late sister, obtained a grant of letters of administration, transferred the titles to the land to himself, and has now threatened to evict them from the land parcel, yet their ownership rights have crystallised.
7. The application is opposed through a replying affidavit of Wilson Barmao Mutai dated **9/5/2022** and **21/10/2022**. He stated that he is the registered owner of the suit properties, which the spouse of this deceased daughter, by transmission, referred to him as per the certificate of confirmation of grant attached as **WBM-(1)**.
8. The respondent deposes that he is the biological father of both the applicants and the deceased, long married to the 2nd respondent. It was true that the applicants and their parents used to reside on the suit properties, though at some time, when the 3rd applicant was born, they were living in Burnt Forest.
9. The 1st respondent deposes that the applicants reside on land Title Nos. **Kitale Municipality Block 15/Koitogos/363/207** and **Kitale Municipality Block 15/Bidii/79**, the latter of which was previously

under their mother's name, as per copies of the registers marked as **WMB-(2)**.

- 10.** The 1st respondent deposes that the applicants have not tendered any evidence that they reside on the suit properties. Otherwise, until **2014**, it was the deceased and the 2nd respondent who were utilising the land before her death, and at the time succession proceedings for her estate were going on, none of the applicants was on the land.
- 11.** The 1st respondent deposes that the land came under the name of the deceased in **2003** with no protest on the registration by the applicants till her death, and they are only laying claim to the suit properties after the transmission of the same to his name. The 1st respondent deposes that the deceased children remain, and he is merely holding the land title in trust for them.
- 12.** Further, the 1st respondent denies that there is any form of occupation of the land by the applicants; otherwise, they were only allowed to use the property in **2019** by the deceased. The 1st respondent disputes the authenticity of the photographs attached to the alleged occupation by the 3rd applicant, on the land as of **1993**, when she

was still a minor, in school, and was under his care or the dependent.

- 13.** The 1st respondent deposes that the applicants were mere licensees to the suit land in **2019**, he lawfully obtained the title after successful succession proceedings, being ranked higher in consequence as the applicants had no right over the property.
- 14.** The 1st respondent deposes that the claim for adverse possession cannot stand, the applicant can only lay claim to the land after his death, the claim is an attempt to impeach the title and evict him from his own land, and is motivated by a motive of unjust enrichment out of greed by his wife.
- 15.** The amended originating summons was also opposed by James Kigen Rotich, the 2nd respondent, through a replying affidavit sworn on **12/1/2023**. He deposed that the suit property was initially under the name of his late wife and the daughter of the 1st respondent, where they used to live alone since the **1990s**, until **2014** when she passed on.
- 16.** The 2nd respondent deposes that he continued to live therein until **2015**, when he surrendered the same to his father-in-law. The 2nd respondent deposes that

after they applied for letters of administration, he voluntarily transferred the land to the 1st respondent. The 2nd respondent deposes that the applicants are not being honest by alleging having utilised the suit properties since **1993**, yet he and the deceased were exclusively residing thereon until her demise.

- 17.** Following directions on the mode of hearing, the parties filed a list of witnesses, witness statements, and documents that they relied on. The applicants relied on a list of witness statements and documents dated **13/6/2022** and **31/10/2022**, while the respondents relied on the list of witnesses, a list of witness statements and documents dated **13/6/2022**, and another one filed on **17/7/2022**.
- 18.** At the hearing, **Gladys Chelangat** testified as **PW1**. She relied on a witness statement dated **13/2/2022** as her evidence-in-chief.
- 19.** PW1 produced a list of documents in the list dated **13/6/2022**, namely, copies of the applicants' identification cards as **P. Exhibit Nos. (1), (2), (3), and (4)**, copy of title deed for **Kitale Municipality Block 15/Koitogos/1728 and 1495**, as **P. Exhibit Nos. (5) and (6)**, copies of green cards as **P. Exhibit No. (7) and (8)**, bill note for Trans Nzoia

Water Company as **P. Exhibit No. (9)**, delivery note from Kenya Seed Co. Ltd, **P. Exhibit No. (10)**, photographs as **P. Exhibit No. 10(a), (b), (c), and (d)**, and a certificate of electronic evidence as **P. Exhibit No. (11)**.

- 20.** Briefly, PW1 told the court that she was born on **18/8/1980**, schooled at Milimani Primary School, Makunga Primary School, and later proceeded to Molo GH School, all the time living with her siblings at her mother's land at Kibomet, Kitale. PW1 said that the land that their late sister used to till, the suit properties, later registered under her name in trust since they were all young.
- 21.** PW1 said that they also used to help in the cultivation of the land and grazing cattle. PW1 said that after high school in **1998**, she would go together with her late sister to the land to sustain the family after their mother became sickly, following the 1st respondent's absconding from family responsibilities, vacating the land to go and live in Burnt Forest, following the disposal of about **3.2 acres** of land.
- 22.** PW1 said that they never saw their father at home until the burial of their late sister, who was married to the 2nd respondent. PW1 said that the late sister

was living with the 2nd respondent at their Moronjo Farm, Cherangany Hills. PW1 said that after their sister passed on, they had a family meeting on the suit land, and resolved to take equal portions of the land to continue engagement in their daily farming activities, and that she has since established a permanent house therein since **2013**.

23. In cross-examination, PW1 told the court that there was no time her late sister treated her and her siblings as trespassers on this land. She denied that entry into the farm was either forceful, consensual, or out of a license. PW1 said that the land initially belonged to her parents, where they were born and brought up. PW1 said that she did not sue her sister during her lifetime over the land or need a consent from her to build her house therein in **2010**, later a permanent one in **2013**.

24. PW1 said that her late sister did not at any time object to their occupation or developments therein. PW1 said that all four applicants have a distinct portion under their use in the suit property, measuring around **2 acres**. PW2 said that the land initially was larger, part of which the 1st respondent

sold to third parties, before he vacated the same in **2003**.

- 25.** PW1 said that the land came into the name of her late sister in trust, since she was the only adult among them at the time.
- 26.** PW1 said that they only discovered the transfer of the land to their father when potential buyers began visiting the land. PW1 said that the original title to the land was in the custody of their mother, only for the 1st respondent to purport to say it was lost. PW1 said that after the 1st respondent secretly obtained the title to the suit properties, he attempted to evict them from the land since he remarried, hence the suit before the court.
- 27. PW2** was **Juliet Mutai**. She relied on a witness statement dated **13/2/2022** as her evidence-in-chief, associating herself with the evidence of PW1. PW2 confirmed that the 2nd respondent was all along aware of their occupation of the suit properties. PW2 also confirmed that the applicants are the ones who have been paying land rates. PW2 said that even after the transfer of the land to the name of the 1st respondent, it is the applicant who has been occupying the land.

- 28.** PW2 confirmed that her mother had filed an objection in the succession proceedings of the estate of their late sister. PW2 said that the suit was filed to protect their interests on the land, now threatened by the 1st respondent. PW2 insisted that their mother contributed to the acquisition of the land. PW2 confirmed that after marital differences arose, their parents have been separated. PW2 said that their late sister was born in **1974** and later became the registered owner of the land.
- 29. Peninah Mutai** testified as **PW3**. She relied on a witness statement, which was filed on **1/1/2022**, as her evidence-in-chief. PW3 told the court that the applicants are her daughters with the 1st respondent, whom she met and married in **1970**, while doing business in Burnt Forest, Uasin Gishu, before moving to Kitale. PW3 said that after buying the land, they decided to register it in the name of the late Lillian Jepkosgei in **1993**, as parcel No. **Kitale Municipality Block 15/Koitogos/215**.
- 30.** PW3 said that since she had an operation called a hysterectomy due to many cesarean section operations and could not have any more children, the 1st respondent said that he did not want girls alone,

and desired to have boy children. PW3 said that the 2nd respondent has never lived on the suit properties, while the 1st respondent has been living in Burnt Forest.

- 31.** Further, PW3 said that the applicants who have been living and settled on the suit properties, which the respondents secretly transacted with after obtaining letters of administration in the estate of her deceased daughter.
- 32.** PW3 said that the 1st respondent was now threatening to evict the applicants from the land, yet they acquired it as a family land. PW3 said that after her husband became unhappy with her for not being able to get boys.
- 33.** PW3 said that her father-in-law then resolved and advised that the suit land be under her custody and that of the applicants, following the disposal of **3.2 acres** out of the initial land by the 1st respondent.
- 34.** PW3 said that the 1st respondent, after vacating the matrimonial home, has only come back with an intention of resettling the rest to the detriment of the children. PW3 confirmed that she had filed an objection in the succession case to safeguard her interests on the land. PW3 said that after the 1st

respondent sold his share of **3.2 acres**, the remainder of the land belongs to the applicants, which she apportioned to them. PW3 said that the 1st respondent has been away for close to **30 years**, only to come back to interfere with the applicants' possession, use, and occupation of the land.

35. The 1st applicant did not testify. Instead, she told the court that she was withdrawing her claim pursuant to a notice of withdrawal dated **17/1/2026**, which the court allowed by an order dated **10/2/2026**.

36. Wilson Barmao Mutai testified as **DW1**. He relied on a witness statement dated **13/6/2022** as his evidence-in-chief. Similarly, he produced as exhibits: a copy of a grant of letters of administration issued on **9/2/2015** as **D. Exhibit No. (1)**, an amended certificate of confirmation of grant dated **3/4/2020** as **D. Exhibit No. (2)**.

37. DW1 also produced a green card for L.R. Nos. 207 and 363, D. Exhibit No 3(a) and (b), green card for Kitale Municipality Block 19/Bidii/79, D. Exhibit No. (4), photographs of the suit property as D. Exhibit No. 5(a)-(e), ruling in HC P&A Succession Cause No. 295 of 2014 as D. Exhibit No. (6), titles for L.R. No. Kitale Municipality

Block 15/Koitogos/1495 and 1728, as D. Exhibit No. 7(a) and (b), and a death certificate as D. Exhibit No. (8).

- 38.** DW1 briefly told the court that the applicants are his daughters with PW3, who live on **Kitale Municipality Block 15/Koitogos/2017, 363, and Kitale Municipality 19/Bidii/79**, and not in the suit properties, initially in the name of her daughter, the late Lillian Jepkosgei. DW1 said that the applicants have had no other homestead apart from the one mentioned above, not least of all in the suit land.
- 39.** DW1 said that it is the 2nd respondent and her late daughter who used to till the suit land until she died in **2014**, when he took over the land with the permission of the 2nd respondent and has been undertaking agricultural activities therein until **2021**, when he allowed Irene, a single mother and daughter, to use the land to sustain herself and her children.
- 40.** DW1 denied that the applicants had been on the land for **12 years** to be entitled to the reliefs sought, more so against him, which is a scheme by PW3, who lost in her objection at the succession cause.

- 41.** DW1 blamed the wife for greed, yet she has her own land as per the documents before the court. DW1 said that PW3 has now transferred part of their matrimonial home at Bidii to Gladys Chelangat, only for the applicants to say that they have no land in order to defeat his interests in it, out of greed, malice, and unjust enrichment.
- 42.** DW1 said that the applicants are mere licensees on the land. DW1 termed the suit a way of arm-twisting him to transfer the land to them, yet he remains the owner. DW1 said that the applicants should be evicted from the suit properties since they have their share in **L.R. Nos. 207, 363**, and the land at Bidii, going by **D. Exhibit No. 3(a) and (b)**, where they actually reside with his estranged wife.
- 43.** DW1 termed the entry and occupation of the suit properties by the applicants as forceful, and immediately after Lillian passed on. DW1 admitted that the dispute arose after Lillian passed on in **2014**. DW1 said that the entry took place in **2020**, and not **2014**. DW1 confirmed that he had never been the registered owner of the land or the rest of **D. Exhibit No. 3(a) and (b)**.

- 44.** DW1 admitted that during the lifetime of Lillian, he could not rule out that the applicants were, with permission, using or occupying the land.
- 45.** Further, DW1 admitted that he holds the suit properties in trust for his grandchildren. The court noted that the witness was being evasive and unwilling to answer questions. DW1 denied that he was in possession of titles to other parcels of land.
- 46.** After the close of the defence, parties were directed to file and exchange written submissions, which the court has considered.
- 47.** Two issues stand out for determination. The first issue is whether the applicants have tendered evidence to sustain a claim of adverse possession or one based on breach of trust. The second issue is whether the applicants deserve the relief sought.
- 48.** It is trite law that parties are bound by their pleadings and a court must determine issues flowing from the pleadings or those which parties have advanced their respective claims or defenses, tendered evidence, and left for the court to determine.
- 49.** Adverse possession is a situation which arises by default of the registered owner of land, omitting or

neglecting to take action against an intruder to his land who enters into his land, exclusively discontinues or dispossesses his occupation exclusively for a period of **12 years**. See **Mtana Lewa -vs- Kahindi Ngala Mwangandi [2016] KECA 544 (KLR)**.

50. In **Njuguna -vs- Njoroge Civil Appeal No. E061 of 2022 [2026] KECA 757 [KLR] (24th April 2026) (Judgment)**, the court cited **Mate Gitabi -vs- Jane Kabubu Muga alias Jane Kaburu Muga & 3 others [2017] eKLR** and **Kasuve -vs- Mwaani Investment Ltd & Others [2004] 1KLR**, that to succeed in adverse possession, a claimant must prove that she has been in exclusive possession of the land openly, as of right and without interruption, for **12 years**, that after dispossessing the owner or by discontinuance of possession by the owner on his own volition.

51. In **Joram -vs- Obadiah Civil Appeal No. E029 of 2021 [2026] KECA 667 [KLR] (25th March 2026) (Judgment)**, the court cited **Thaitumu -vs- Iguathu & Others KECA 1084 [KLR]**, citing with approval **Samuel Kihamba -vs- Mary Mbaisi [2015] eKLR**, that to succeed in adverse possession,

one has to prove and demonstrate that he has occupied the land openly, without force, without secrecy, and without licence or permission of the land owner, with the intention to have the land.

52. The court held that after seeing houses on his land, as well as coffee and tea bushes, which were not his developments, coupled with the burial of three of the respondents' deceased relatives on the land, it was clear proof of dispossession and lack of interest in the said property.

53. The court said that verbal warnings, a demand letter, and the suit for costs of damaged trees did not amount to interruption of the use of the land by the respondent.

54. The court further cited with approval **Joseph Gachimu Kiritu -vs- Lawrence Munyambu Kabura [1996] eKLR** that:

“Time which has begun to run under the Act is stopped either when the owner asserts his right or when his right is admitted by the adverse possessor. Assertion of right occurs when the owner takes legal proceedings or makes an effective entry into the land. The old rule was that mere formal entry was sufficient to vest possession in the true owner and to prevent time from running against him. He must therefore make a peaceful and effective entry, or sue for recovery of the land.”

55. In **Kabuii & Another -vs- Kabuii Civil Appeal No. E053 of 2024 [2026] KECA 656 [KLR] (25th March 2026) (Judgment)**, the issue was whether the suit parcels were held in trust. The court cited **Isack M'Inanga Kiebia -vs- Isaaya M'Lintari & Another [2018] KESC 22 [KLR]**, on the element to qualify a claimant as a trustee as:

- (1) *The land in question was, before registration, family, clan, or group land.*
- (2) *The claimant belongs to such a family, clan, or group.*
- (3) *The relationship of the claimant to such family, clan, or group is not so remote or tenor as to make his or 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.*

56. The court agreed with the trial court that the respondent had proved the ingredients of a customary trust and that the registration of the appellant was subject to trust. In **Githae -vs- Mwai & Others Civil Appeal No. 230 of 2018 [2025] KECA 1563 [KLR] (3rd October 2025)**

(Judgment), the suit had been brought seeking orders of adverse possession and, in the alternative, that the court declare that the land was held under an implied trust on behalf of the respondents jointly and severally. The matter had proceeded by way of *viva voce* evidence, O'rao J found that the respondents had proved trust.

- 57.** On appeal, the court cited *Black's Law Dictionary, 9th Edition*, that trust is a 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). The court cited **Gichuki -vs- Gichuki C.A. No. 21 of 1981** and **Mbothu & Others -vs- Waitimu & Others [1986] [KLR] 173**, that a party relying on the existence of a trust must prove through evidence the creation and existence of such trust, and that the intention of the parties to create a trust must be clearly determined before a trust is implied.
- 58.** The court found that the trial court had found that the suit property was subject to a customary trust guided by **Kihari -vs- Kihari [1994] eKLR**, that

under Kikuyu Customary Law, land was usually held by the eldest son in trust for the family. See also **Mburu -vs- Wainaina Civil Appeal No. 143 of 2019 [2025] KECA 181 [KLR] (5th February 2025) (Judgment).**

- 59.** In **Mbasa -vs- Mbasa & Another Civil Appeal No. E034 of 2021 [2025] KECA 1420 [KLR] (31st July 2025) (Judgment),** the case involved land transferred by a father, which land was said to have been ancestral. The court rejected the appellant's claim on adverse possession, determining it as premature because the **12 years** had not elapsed. On customary trust, the court held that to establish a customary trust under the customary law, the burden was on the appellant, which he failed to tender evidence through elders or documentation of ancestral land.
- 60.** As indicated above, this suit proceeded by way of *viva voce* evidence after directions were given that it proceeds as commenced by way of plaint. All the parties filed witness statements and a list of documents. Evidence was tendered by both the applicants and the respondents, showing the history

of the suit land, and how it was registered in the name of the late Lilian Jepkosgei, their elder sister.

- 61.** The brother-in-law to the applicants, who is the 2nd respondent in this suit, did not dispute the history of ownership of the suit land by his late wife, which was property she had acquired before they got married.
- 62.** All the respective parties have pleaded and led evidence showing that this is more of a claim for a declaration of trust than one based on adverse possession. The applicants have pleaded beneficial trust and also overriding interests which superseded the change of title from their late sister to the current holder of title, who is their father. The late sister and her husband never drove out the applicants from the land during her lifetime.
- 63.** There is no evidence that the respondents asserted a superior title to the land more than the applicants during the lifetime of the deceased. Evidence tendered, which the 1st respondent has not refuted, is that he has separated and has a separate life with his wife and the children of their marriage. There is evidence that this land was acquired by the two parents as family land and registered in the name of their firstborn in trust for the family. It is for this

reason only that the 1st respondent sought and was transmitted the same by his son-in-law, the 2nd respondent, to hold in trust for his 1st family.

- 64.** A trust is a matter of fact to be established through evidence. The applicants are alleging that their father is dealing with the family land otherwise than was intended by the deceased, and to their detriment in deriving subsistence use and livelihoods out of the land.
- 65.** In **Mohamed -vs- BOM & Pentrose Community School & Another Civil Appeal No. E126 of 2023 [2026] KECA 501 [KLR] (13th March 2026) (Judgment)**, the contestation on appeal was that the trial court, in a claim based on trespass, determined unpleaded, unfounded, and unjustified as to the validity of the title to the suit property. The court said that where there are competing claims to property, a party claiming ownership must not only demonstrate proprietary interest, but also show the root of its title. Failure to which, a court cannot, based on indefeasibility of title, ignore or disregard a title that was obtained illegally, irregularly, or unprocedurally, and therefore, in this appeal the burden had shifted to show the legality, regularity, and lawfulness of the

process leading to the issuance, before the court could determine the question of trespass, based on **Odd Jobs -vs- Mubia [1970] EA 476.**

66. In **Independent Electoral and Boundaries Commission -vs- Mutinda Mule [2014] eKLR,** the court held that parties are bound by their pleadings, which in turn limit the issues upon which a trial court may pronounce as raised by the parties.

67. In **Lamba -vs- National Social Security Fund & another [2023] KECA 124 (KLR),** the court said:

“It is trite law that courts can only grant orders that have been prayed for in the pleadings, or make appropriate orders as it deems fit, if need arises in the cause of a trial.”

68. From the evidence tendered, PW1, PW2, PW3, and PW4 are consistent on how the suit land was acquired and registered in the name of their late sister and daughter to hold the same on her behalf and that of the entire family. The 1st respondent in his evidence does dispute that version of facts. The 1st respondent does not claim exclusive ownership of the land. He admits that he holds the same in trust for his grandchildren.

69. Courts cannot enforce an illegal contract or be used as a basis to sanction an illegality or assist a party to

benefit from an illegality. The doctrine of indefeasibility of title cannot apply where the title is acquired by way of fraud or misrepresentation, in which the proprietor is proved to be party to a concealment of material facts to obtain registration of title, which may lead to cancellation of the title under **Section 80** of the Land Registration Act.

70. An administrator to an estate has duties under **Sections 79, 82, and 83** of the Law of Succession Act. The primary purpose of succession law is to ensure the orderly distribution of the estate among the beneficiaries. Matters of trust or overriding interest fall within the jurisdiction of this court. Claims on breach of trust cannot be time-barred.

71. The applicants urge the court to declare their overriding interests, which subsisted with the land, precede and which the transmission of the land to the names of their father was subject to, which he failed to disclose in the succession cause. In ***Kanyi - vs- Muthiora [1984] KLR 712***, the court held that the registration of the land in the name of the appellant did not extinguish the respondent's right under Kikuyu Customary Law, nor did it relieve the appellant of his trusteeship duties.

- 72.** In **Re Estate of Lernika Ole Ntutu [2008] eKLR**, the court said that **Section 82(4)** of the retired Constitution could not be used to deprive one of legal rights on account of sex or marital status. Disputes on land post-transmission fall within the jurisdiction of the Environment and Land Court under **Section 13** of the land post-transmission fall within the jurisdiction of the Environment and Land Court Act.
- 73.** In **Re Estate of Mbai Wainaina (deceased) [2015] eKLR**, the court said that the mandate of the probate court under the Law of Succession Act is limited and does not extend to determining issues of ownership of property and declaration of trustees. The court said that the disputes after the confirmation of the grant are determined outside the probate court.
- 74.** In **Re Estate of Alice Mumbua Mutua (deceased) [2017] eKLR**, the court said that the legal infrastructure in place for disputes between the estate and third parties and those post confirmation of the grant fall in the Environment and Land Court.
- 75.** The existence of fiduciary duties and their breach was discussed ed in **Arvind Shah & 7 Others -vs- Mombasa Bricks Petition No. 8(E020) of 2022.**

The court said that under **Section 28** of the Land Registration Act, a title may be subject to overriding interests such as a trust. Under **Sections 25, 26,** and **28** of the Land Registration Act, **Article 40** of the Constitution, ownership rights are limited under **Article 24** of the Constitution, for being subject to overriding interests. It was held that courts are an integral part of the Kenyan judicial system, viewed as valid for redressing wrongs, in accordance with the Constitution, its values, and principles. See **Nyantika -vs- Nyantika & Others [2025] KEELC 4579 [KLR].**

- 76.** I think I have said enough to show that the title held by the 1st respondent was and remains subject to the overriding interests of the applicants. The title was issued without the involvement of the applicants and their mother, whose interests and rights were evident during the lifetime of the initial owner and continue to subsist. The court declares the existence of the said interests and rights.
- 77.** The Land Registrar, Kitale Land Registry, is directed to call forth Title No. **Kitale Municipality Block 15/Koitogos/1495** and Title No. **Kitale Municipality Block 15/Koitogos/1728,** to be

cancelled and replaced with the names of the claimants, together with their mother, to be registered jointly.

78. In default of surrender of the same within **two weeks** from the date hereof, the Land Registrar shall dispense with the surrender of the original titles and issue the applicants with the same as joint owners in equal shares

79. There will be no order as to costs.

80. Orders accordingly.

Judgment dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **6th** day of **May 2026**.

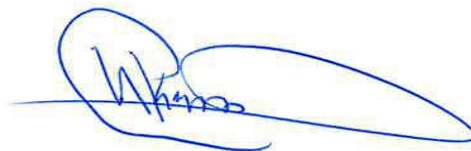
In the presence of:

Court Assistant - Dennis

Parties present

Miss Munyua for Oduor for the applicants present

Mr. Bett for the respondents present



HON. C.K. NZILI
JUDGE, ELC KITALE.