



**Muthaura (Suing as the Personal Representative of the Estate of Munene Mugo Ncacu - Deceased) v Mugo & another (Environment & Land Case 10 of 2020) [2024] KEELC 3384 (KLR) (25 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3384 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIRONMENT & LAND CASE 10 OF 2020**

**CK YANO, J**

**APRIL 25, 2024**

**BETWEEN**

**FRIDAH KANJA MUTHAURA (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF MUNENE MUGO NCACU - DECEASED) ..... PLAINTIFF**

**AND**

**ELIAS MICHENI MUGO ..... 1<sup>ST</sup> DEFENDANT**

**BERNARD MURIITHI MUGO ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Introduction**

1. In this case, I am required to write a judgment based on the evidence that was partly taken by Hon. P. M. Njoroge J, who was seized of the matter before he was transferred. The learned Judge took the evidence of PW1 partly and pursuant to the provisions of Order 18 Rule 8(1) of the Civil Procedure Rules, I proceeded with the matter and took the rest of the evidence of PW1, DW1, DW2 and DW3 and concluded the matter.
2. The plaintiff commenced the suit by a plaint dated 12<sup>th</sup> August, 2020 and filed on 20<sup>th</sup> August 2020 seeking for orders that:
  - a. A declaration Land Title Nos Karingani/Mugirirwa/1916 and Karingani/ Mugirirwa1921 belongs to the deceased as duly gifted intervivose by his later father and that the registration of title of the same in the joint names of the Defendants is unconstitutional, illegal, wrongful, unlawful, breach of trust, fraudulent.



- b. An order directing the Land District Registrar, Chuka to cancel title issued to the Defendants jointly in respect to Land Title Nos Karingani/Mugirirwa/1916 and Karingani/Mugirirwa 1921 and registration of the same in the name of the deceased Munene Mugo Ncacu.
  - c. Eviction from Land Title Nos Karingani/Mugirirwa/1916 and Karingani/ Mugirirwa 1921.
  - d. Mesne Profits at Kshs. 380,000/= P.a from 20th March 2009 until judgement in this suit.
  - e. Cost and interest of this suit at court rate.
  - f. Any other Relief that the honourable court deems fit to grant.
3. The defendants filed a joint statement of defence dated 2<sup>nd</sup> October 2020 and amended on 17<sup>th</sup> November, 2020.

### **Plaintiff's Case**

4. The plaintiff states that at all material times the Deceased whose estate is the subject of this suit was the beneficial owner while the Defendants were the deceased's brothers and current joint registered owners of Land Parcel numbers Karingani/Mugirirwa/1916 and Karingani/Mugirirwa 1921 (hereinafter called the suit properties) in trust for the Deceased's Estate.
5. The plaintiff avers that on 21<sup>st</sup> October 2004, the Deceased father, the late Alphaxard M'ithaka Nkari (Deceased) made an application to Nithi Land Control Board for a Consent to transfer the suit properties as gift inter vivos to the late Munene Mugo Ncacu (Deceased) herein and the consent to transfer was duly approved and issued on 28<sup>th</sup> October 2004 thereby clearing the way for transfer of the two parcels into the name of the deceased.
6. The plaintiff states that on 27<sup>th</sup> September 2007 the Deceased's late father signed the transfer in favour of the deceased in respect to the suit properties before IC Mugo Advocate and thereby effectively gifted the deceased awaiting registration of the same and issuance of title deeds in the name of the Deceased.
7. The plaintiff avers that the deceased died on 3<sup>rd</sup> November 2007 before the transfer of the suit properties as gift inter vivos in his favour was registered.
8. The plaintiff states that on 9<sup>th</sup> April 2008 the Defendant's with intent to disinherit the estate of the deceased and contrary to the wishes and intention of the deceased's late father who had already signed transfer inter vivos in favour of the deceased fraudulently and or with misrepresentation caused the suit land parcels to be transferred into themselves using the consent to transfer issued in the name of the Deceased and obtained titles.
9. The plaintiff avers that the registration and issuance of title deeds in respect of the suit properties in the names of the Defendant as the owners without consideration was illegal, fraudulent and in breach of trust.
10. The plaintiff itemized particulars of misrepresentation, fraud and breach of trust by the defendants as presenting to the Land Registrar transfer forms duly executed by the deceased's late father in favour of the Deceased as gift intervivos purporting them to be theirs and causing the same to be transferred in their favour, presenting land control board consents for transfer intervivos in favour of the deceased duly obtained by the Deceased's late father as consents in their favour and causing the transfer meant for the deceased to be registered in their favour, misrepresenting themselves to the Land Registrar as the deceased, securing title deeds for the parcels of land in their names with full knowledge that the same belonged to their late brother, the deceased having already been gifted to him intervivos by the signing



of the transfer by their late father and defrauding the deceased's estate of its inheritance and causing the registration of title to the said land parcels into their names without paying any consideration.

11. The plaintiff avers that on 21<sup>st</sup> April 2008 when the Land Registrar Chuka discovered the fraud and misrepresentation, he summoned the defendants and their late father to his office and demanded for the return of the Original Title Deeds issued for the purposes of rectification of the register in respect to the suit properties, and that the defendants attended but no action was taken as the defendants refused to surrender the title deeds.
12. The plaintiff avers that she was married to the deceased and moved to the home in December 2003 and at the time the deceased's father, the late Alphaxard M'ithara Nkari had already settled each of his children and their portions of his estate inter vivos with the deceased being gifted the suit properties and that the deceased had constructed his matrimonial home on Land Reference Number Karingani/Mugirirwa 1916 awaiting formal transfer and that is where she, the deceased and the children lived as a family during the deceased's life time.
13. The Plaintiff further avers that the deceased had also been gifted inter vivos by his late father and was in possession of LR No.s Karingani/Mugirirwa/1921 where he had planted tea bushes which were increased after her marriage and that the two parcels were the only assets the deceased inherited from his late father.
14. The plaintiff states that on 20<sup>th</sup> March 2009, the defendants unlawfully, illegally and wrongfully trespassed into the deceased homestead and forcefully evicted the plaintiff and all her children from their Matrimonial home Land Reference Number Karingani/Mugirirwa 1916 and Land reference Karingani/Mugirirwa 1921 in contempt of a court order granted on 15<sup>th</sup> July 2008 by the High Court in Meru High Court Succession Cause No. 60 of 2008 which was subsequently transferred to Chuka High Court as Chuka High Court Succession Cause No. 56 of 2016.
15. The plaintiff avers that since the illegal eviction, she has not been able to go back to her home and that the defendants have been in physical possession of the two parcels of land and plucking the deceased's tea bushes planted on Land reference number Karingani/Mugirirwa 1921 and selling to KTDA from which they have been receiving income amounting to Kshs.12,000/= per month and Kshs.100,000/= per annum as bonus on average.
16. The plaintiff avers that on account of the illegal eviction, she was forced and compelled to lease a two-bedroom premises within Chuka Township where she has been living with her children at a rent of Kshs. 10,000/= per month.
17. The plaintiff further avers that on account of the action of the defendants she and the estate of the deceased have suffered and continue suffering damage in terms of mesne profits.
18. The plaintiff has enumerated particulars of damages as:
  - a. Income from sale of tea at Kshs 12,000pm x 12 =Kshs.144,000 p.a
  - b. Income in terms of annual bonus from tea =Kshs. 100,000 p.a
  - c. Rent paid by the plaintiff for alternative accommodation at Kshs.10,000/=pm x 12=Kshs.120,000 p.a
19. It is the plaintiff's contention that the defendants action is illegal, wrongful, unlawful, breach of trust, fraudulent and amounts to intermeddling with the estate of the deceased.



20. During the hearing, the Plaintiff testified as PW1. She adopted her witness statement dated 12<sup>th</sup> August, 2020 and produced the documents in a list of documents of even date as P. Exhibits 1 to 18 respectively. The plaintiff further stated that she had sued Elias Micheni Mugo and Bernard Muriithi Mugo who are her brothers-in-law. She stated that her deceased husband was Munene Mugo Ncacu (deceased) and has brought the case on behalf of his estate. The plaintiff testified that her husband died on 3<sup>rd</sup> November, 2007 and referred to a copy of the death certificate produced as P. Exhibit 2.
21. The plaintiff testified that her late husband had been given the two suit properties by his late father, but died before he had obtained titles, although his father had executed transfers and obtained Land Control Board consents. The plaintiff made reference to the documents produced as P. Exhibits 4 to 10.
22. The plaintiff stated that the land parcels are now registered in the joint names of the defendants. The plaintiff further stated that she never saw the transfer forms signed by the late Alphaxard M'Ithara Nkari her father in law and father to the defendants.
23. The plaintiff testified that there were no Land Control Board consents and she did not know which method the defendants used to get the title deeds. The plaintiff further testified that she got married in December 2003 and that her husband had a house on suit parcel No. 1916.
24. The plaintiff stated that parcel 1921 had tea bushes and that the same was registered and owned by her late husband by KTDA. The plaintiff testified that the 2<sup>nd</sup> defendant harvests the tea leaves and stated that she did not know who removed her husband's name.
25. The plaintiff testified that they used to harvest the tea leaves and used to get a monthly income of between Kshs. 12,000 and Kshs. 13,000 and a bonus of about Kshs. 100,000/=.
26. The plaintiff stated that when her husband died she was left at the homestead but was expelled by the defendants. The plaintiff further stated that the defendants did not have any court order when they evicted her. The plaintiff testified that there was an order by Meru Court in 2008 which restrained them from chasing her away but they disobeyed it and chased her away in 2009.
27. The plaintiff denied that she left and got married to one Jembo Mbomu and stated that the defendants burned maize and poisoned her borehole. That was still not married but lives in a rented house in Chuka Town where she pays rent of Kshs.10,000/= per month.
28. The plaintiff stated that she had a Succession Cause and the suit parcels were in the case. She referred to P. Exhibit 18. The plaintiff testified that she wanted the court to give back her husband's land so that she can have a place for herself and her children. She also prayed for costs of the suit.
29. The plaintiff was cross-examined by leaned counsel for the defendants, Mr. Nyamu Nyaga wherein she stated that the defendants were in disobedience of court orders and referred to P. Exhibit Nos. 14, 15 and 16. The plaintiff stated that P. Exhibit 14 is a court order issued on 15<sup>th</sup> July 2008 and it was an order for maintenance of status quo. It was her evidence that the court order allowed her to live in the matrimonial home and the order for shares was to be served on the CEO Mwalimu Sacco.
30. The plaintiff testified that the defendants evicted her from her home in 2009. When questioned why she waited since 2009 before filing suit, the plaintiff stated that she was evicted around February 2009 and the court did not give her an order for the defendants to be punished for contempt. The plaintiff was however unable to answer why she only filed suit after more than 10 years, that is on 20<sup>th</sup> August, 2020.
31. The plaintiff stated that P. Exhibit 16 which was issued on 19<sup>th</sup> May, 2015 was restraining the 1<sup>st</sup> defendant from demolishing her deceased husband's house which was nonetheless demolished, but she



- did not have photographs but state that she reported the same at Chuka Police station. The plaintiff further stated that she did not have an OB number and further that she did not go to court for the objectors to be punished for contempt.
32. The plaintiff testified that P. Exhibit No. 17 was issued on 19<sup>th</sup> December 2012. When questioned over P. Exhibit 14 as to whether the same stated that the plaintiff should remain in the matrimonial home, the plaintiff stated that the same was directed to Mwalimu Sacco.
  33. When referred to P. Exhibit 16, the plaintiff confirmed that the same restrained the defendants from demolishing structures or developments and she confirmed that her house was not demolished. She stated that it was the workers house which was demolished. That she went to report to the police and was given an OB number though did not know where it was. She added that the police stated that the matter was in court and therefore they could not interfere.
  34. The plaintiff denied that she created the story of demolitions and being evicted. She further stated that she did not run away from her matrimonial home. When the plaintiff was questioned on whether she raised issues of demolitions and eviction in the succession cause, the plaintiff said she did, though she did not have the proceedings.
  35. The plaintiff further stated that she reported the matter to the police but she did not have an OB number. That she also reported to the chief and the elders but the chief feared the defendants and therefore she had no letter from the chief. When questioned on the allegation that the 2<sup>nd</sup> defendant started harvesting tea, the plaintiff stated that she did not know how he changed her husband's name. The plaintiff confirmed that she was married in 2003 and found the tea there, but stated that they added some. She maintained that her late husband had tea.
  36. The plaintiff testified that she had looked for an order citing the defendants for contempt but would not find it among her documents. The plaintiff stated that she was tortured and chased away.
  37. The plaintiff testified that she got a child after she had left and who was born on 1<sup>st</sup> February, 2013 and his father is one Charles Jebiu Mbuva. The plaintiff stated that she has not remarried, but only got a child, and she was not married to that person.
  38. The plaintiff was referred to P. Exhibit 13 which showed the growers' number as NE0090519 and the buying center as No. 9. The plaintiff further confirmed that the document was not dated. The plaintiff testified that P. Exhibit no. 15 did not indicate the name of Munene Mugo Ncacu and it did not indicate the factory either. The plaintiff further testified that the document indicates the buying centre as 016 and the Growers No. 49, 061 and 49 in handwritten. She stated that they used to take tea to buying centre No. 9 and later they changed to No. 061 and that is why it changed even the Grower's number. The plaintiff stated that she was told by KTDA that they could not give letter for the changes.
  39. When shown P. Exhibit No. 18 which is the judgment in Succession Cause No. 56 of 2016, the plaintiff stated that she was not aware that the court stated that her father-in-law had changed his mind over the two parcels of land and further she was not aware if the court stated that it had no jurisdiction over the said two parcels.
  40. The plaintiff maintained that her husband was given the two parcels Nos. 1916 and 1921 and stated that the defendants got registered as owners of the same in a manner that was not lawful.
  41. The plaintiff referred to P. Exhibit 4 which is an application for consent of the Land Control Board Nithi by Aliphaxard Nkari, and P. Exhibit 5 which is a letter of consent given pursuant to the said application to the Land Control Board, and she stated that the consent was not signed because it is a duplicate. She further stated that she had the original in her further list of documents filed on 1<sup>st</sup> March



- 2021 and which were withdrawn. The plaintiff further stated that she was not aware that the original letter of consent and the duplicate have to be signed.
42. The plaintiff further confirmed that P. Exhibit 6 which is a transfer for Land Parcel No. 1916 had no date for registration and the document was not registered. That the transfer was signed by I.C Mugo. The plaintiff further stated that the application for consent of the Land Control Board showed the nature of the transaction as a transfer while the transfer indicates the consideration as a Gift. The plaintiff stated that the transfer was signed by Aliphazard Nkari. She stated that she had no powers to prepare those documents.
  43. The plaintiff also referred to P. Exhibit No. 8 which is an Application for consent of Land Control Board Nithi for parcel No. 1921 and P. Exhibit 9 which is a letter for consent for transfer and was by the Chairman Meru South Land Control Board. That P. Exhibit No. 10 was a transfer of Land and the consideration is shown as a Gift. The plaintiff further avers that she could see the signatures of I.C Mugo Advocate and it was therefore not true that she manufactured and prepared those documents. The plaintiff testified that the signatures on P. Exhibit Nos. 4, 5, 6, 8, 9 and 10 were forgeries.
  44. The plaintiff testified that she had pleaded that her husband was gifted *inter vivos* and the transfer was done and went to the Land Control Board and consent was given, but the transfers were not registered. The plaintiff further stated that the deceased was gifting his children with no conditions and there was no condition that one had to pay Kshs. 150,000/= to Aliphazard to be gifted land.
  45. The plaintiff stated that she was married to that home in 2003 and that was before parcel No.128 had been subdivided since the subdivision was done in 2004. That the transfer was executed but was not registered and she did not know why it was not registered since Aliphazard had signed the transfers. The plaintiff testified that she had the original copies of the transfer forms.
  46. The plaintiff stated that in the High Court she stated that her in laws used the transfers to transfer the land to themselves but she had no proceedings from the High court and further stated that she did not report the matter to the police. The plaintiff testified that she raised a complaint to the Land Registrar Chuka on 21<sup>st</sup> April 2008 and by that time, the parcels of land had already been registered in the names of the defendants.
  47. The plaintiff stated that by 9<sup>th</sup> April,2008 the father of her husband, Aliphazard was still alive as he died on 30<sup>th</sup> November 2009.The plaintiff further stated that she went to the Land Registrar in person with the transfers and the Registrar noticed titles had been issued irregularly. The plaintiff testified that by that time, Alphaxard Nkara, the owner of the land was still alive. The plaintiff stated that the Land Registrar summoned the defendants but their late father did not attend that meeting because the defendants stated that he was very sick. The plaintiff stated that she however had no document to support that.
  48. The plaintiff stated that from 21<sup>st</sup> April, 2008 up to 20<sup>th</sup> August 2020 a period of over 12 years, she had not filed a Civil Case against the defendants. She stated that she filed the case after she was advised in the High Court. The plaintiff further stated that she did not make any complaint against the Land Registrar because she went with him to the CID offices, though she did not have the OB number with her.
  49. The plaintiff stated that in her pleadings she had stated that she had planted tea in plot no. 1921 and also found that her husband had planted tea and they added some more and that is why they had a number to deliver tea to a factory. The plaintiff stated that in paragraph 13 of the plaint she stated that they were receiving income amounting to Kshs 12,000 per month. The plaintiff further stated that there were documents which they used to fill per month which is P. Exhibit number 15. The plaintiff



- stated that the slip did not indicate the money, but kilos. The plaintiff further stated that she did not have a statement showing she was receiving Kshs 12,000 per month or annual bonus from tea of Kshs. 100,000/= per month.
50. The plaintiff stated that in paragraph 14 of the plaint, she pleaded that after she was evicted, she rented premises in Chuka where she pays rent of Kshs 10,000/= per month. That she did not have a lease agreement but had receipts which she could bring. The plaintiff further stated that in paragraph 15 of the plaint she had given particulars of damages as Kshs 380,000 per annum though she did not have documents to support the same, but if given time she could bring it.
  51. The plaintiff stated that her relationship with her father in law was good. The plaintiff further stated that she was not aware of the affidavit by Alphaxard M Nkari in the defendants' list. The plaintiff further stated that she was not aware that the High court referred to the said affidavit. The plaintiff stated that her father in Law did not change his mind to gift her husband the property.
  52. The plaintiff stated that she was charged in court for breach of peace and the case was heard and she was convicted and sentenced to probation and that she did not appeal against the judgement. The plaintiff further stated that she reported the 1<sup>st</sup> defendant who had threatened her but the 1st defendant was not charged, but was warned by the D.C.I.O.
  53. The plaintiff stated that she had not seen documents numbers 3 and 4 in the defendants' list.
  54. The plaintiff stated that she was not aware that there were consents that disappeared from Mr.Nkari's house. The plaintiff further stated that every child was given his consent to transfer and no documents disappeared. The plaintiff confirmed that the title deeds for plot No.s 1916 and 1921 were in the names of Elias Micheni Mugo and Bernard Muriithi Mugo and registered on 9<sup>th</sup> April 2008, but stated that there were no consent and transfers done by her father in law. She stated that those titles were issued without the consent of the Land Control board or transfer. The plaintiff stated that she even searched at the land control Board and there were none. The plaintiff stated that because there were no consents and transfers, she did not know how the title deeds were issued since she had the original consents and transfers. The plaintiff stated that her father-in-law did not sign the letter produced as P. Exhibit number 12. The letter is dated 2<sup>nd</sup> June 2009 from Alphaxard Nkari to the OCS Chuka Police Station.
  55. The plaintiff stated that in her plaint, she is also claiming breach of trust and that she was married in 2003. The plaintiff further stated that she could not know how Alphaxard had acquired the parcels of land. However, she stated that the land was family land though she did not know from whom Alphaxard bought it from. The plaintiff further stated that she was aware the land was subdivided in the year 2004 and denied that there was a meeting held in December 2003. She further denied that there was a requirement that each of the sons pay some money to her father in law. She stated that the same was a gift and denied that they refused to pay. The plaintiff reiterated that suit parcels of land were transferred to her late husband but that the defendants transferred it to themselves and obtained title deeds with no supporting documents. The plaintiff further stated that there were Succession proceedings going on and the defendants transferred the lands to themselves without the knowledge of her late father in law. The plaintiff stated that she could not complain to her father-in-law because she had no problem with him. The plaintiff stated that her father in law did not transfer the land to the defendants but had transferred it to her late husband. The plaintiff further stated that she did not complain against her father in law because he did not transfer land belonging to her late husband to the defendants.
  56. The plaintiff was re-examined by Mr. Mageto learned counsel for the plaintiff wherein she stated that by December 2003, she was already married to that family and that there was no meeting in which it



was agreed that each child pays Kshs.150,000/= for their inheritance. The plaintiff further stated that the defendants are sons of Alphaxard and all of them were given a share of their father's land including the daughters. The plaintiff stated that the defendants got their share from Land parcel No. Karingani/ Mugirirwa/1228. The plaintiff stated that she had not been shown any evidence that show that the 1<sup>st</sup> and 2<sup>nd</sup> defendants paid their father Kshs.150,000/= each to be given the land.

57. The plaintiff stated that by the time she got married to Munene Mugo, her late husband had already put up his homestead in plot No. Karingani/ Mugirirwa/1916 and they had planted tea crop in plot No.1921. The plaintiff stated that they stayed in that house and picked the tea which they used to take to a collection centre for a tea factory until 2009 when she was chased away.

### **1<sup>ST</sup> AND 2<sup>ND</sup> DEFENDANTS' CASE**

58. In their defence, the defendants denied the plaintiff's claim. They admitted that Alphaxard M'Ithara Nkari (deceased) had made an application and obtained consent from Nithi Land Control Board to transfer the suit parcels of land to the late Munene Mugo Ncacu, but on his own free will and without any undue influence decided not to transfer the said parcels of land to Munene Mugo Ncacu (deceased) and instead transferred the same to the defendants herein unconditionally.
59. The defendants denied that I. C. Mugo Advocate had signed the transfer forms in respect of suit properties.
60. The defendants contend that the late Alphaxard M'Ithaka Nkari (deceased) having not signed the transfer forms and instead transferred the suit properties to the 1<sup>st</sup> and 2<sup>nd</sup> defendants respectively, the alleged gift intervenes to Munene Mugo Ncacu did not materialize.
61. Without prejudice the defendants aver that if there exist any transfer documents allegedly signed by the late Alphaxard M'Ithara Nkari (deceased) in favour of late Munene Mugo Ncacu (deceased), the same was a forgery since the same had not been signed by either of them.
62. The defendants admitted that the deceased died on 3<sup>rd</sup> November 2007 but denied in total that he died before the transfer for the suit parcels of land. The defendants averred that the suit properties were transferred by their father, the late Alphaxard M'Ithara Nkari during his life time and it could therefore not be possible for him to defraud his own land.
63. The defendants state that on 27<sup>th</sup> June 2007 when the plaintiff alleges that Munene Mugo Ncacu (deceased) signed the transfer forms he could not do so because he was terminally ill and in critical condition and was incapable of signing any documents.
64. The defendants denied the particulars of fraud levelled against them.
65. The defendants admit that the Land Registrar had summoned them and their late father pursuant to accusations by the plaintiff that Land Parcel Nos. Karingani/Mugirirwa/1916 and 1921 had been fraudulently transferred to the defendants, but stated that their late father categorically stated and demonstrated to the Land Registrar that he had not signed any transfer documents for land parcels Nos. Karingani/Mugirirwa 1916 and 1921 in regard to the late Munene Mugo Ncacu and that he had willingly and without force or undue influence transferred land parcels to the defendants and the Land Registrar got satisfied.
66. The defendants' state that they are legally registered as the owners of the suit parcels of land. The defendants further state that the plaintiff's husband had constructed on land parcel No. Karingani/ Mugirirwa/128 long before the plaintiff was married and before Alphaxard M'Ithara Nkari (deceased)



- subdivided the said land. The defendants contend that the contempt proceedings commenced by the plaintiff against the defendants in Meru High Court Succession Cause No. 60 of 2008 were dismissed.
67. The defendants aver that the plaintiff abandoned and/or vacated her late husband's home in the month of January 2009 and got married to one Jebio Mbomu at Tukorweni where she has been living.
  68. The defendants contend that the plaintiff owns no tea in the suit land. The defendants further contend that the plaintiff's deceased husband did not and does not have an estate in respect of the suit properties. The defendants aver that the said properties are theirs which were legally transferred to them by their late father Alphaxard M'Ithara Nkari.
  69. The defendants further contend that the plaintiff's suit which is strongly disputed and/or denied, is statutory barred and it offends the mandatory provisions of Law. The defendants deny that the plaintiff is entitled to the prayers sought. It is their contention that the plaintiff's suit does not disclose any reasonable cause of action and prayed that the court dismisses it with costs to the defendants.
  70. At the hearing, the 2<sup>nd</sup> defendant BERNARD MURIITHI MUGO testified as DW1. He stated that he comes from Kirege village, Kirege Sub-Location, Mugwe Location, Tharaka Nithi County. The 2<sup>nd</sup> defendant testified that he is a retired teacher and that the 1<sup>st</sup> defendant is his elder brother. The 2<sup>nd</sup> defendant testified that he also knew the plaintiff who at one time was married to his late brother Munene Mugo Ncacu. The 2<sup>nd</sup> defendant adopted his witness statement dated 2<sup>nd</sup> October 2020 as his evidence-in-chief. The defendant also produced the documents marked D. Exhibit 1 to 15.
  71. The 2<sup>nd</sup> defendant testified that the plaintiff is now married somewhere else to one Jevioa Mbomu with whom they have a child. The 2<sup>nd</sup> defendant further testified that the plaintiff having been married no longer lives in his late brother's home.
  72. The 2<sup>nd</sup> defendant states that land parcel No. Karingani/Mugirirwa/1916 and 1921 do not belong to the deceased and that the two parcels of land are his together with the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant further states that the parcels of land were transferred to them by their late father Alphaxard M'Ithara Nkari on 9<sup>th</sup> April 2008, and referred to D. Exhibit Nos. 8 and 9.
  73. The 2<sup>nd</sup> defendant further testified that his father is now deceased and that he died on 30<sup>th</sup> November 2009. That from the time his late father transferred the land until his demise is about one year and seven months. The 2<sup>nd</sup> defendant testified further that the parcels of land were transferred to them legally after following due process such as obtaining Land Control Board consent.
  74. The 2<sup>nd</sup> defendant states that the plaintiff never raised any objection during the process. The 2<sup>nd</sup> defendant further states that after the transfer had been done, they were summoned by the Land Registrar through a letter dated 21<sup>st</sup> April 2008 which is marked D. Exhibit No.8. That the letter was summoning his late father, the 1<sup>st</sup> defendant and himself. He further stated that they attended the meeting with the plaintiff at the Land Registrar's office and the complaint was in relation to parcels Nos.1916 and 1921.The 2<sup>nd</sup> defendant testified that the plaintiff wanted to know if his father had transferred the parcels of land to them and that their father explained that he had transferred the two parcels to them willingly. He stated that the Land Registrar was satisfied with that explanation. He denied that his father did not attend that meeting. The 2<sup>nd</sup> defendant confirmed that his father attended the meeting.
  75. The 2<sup>nd</sup> defendant further stated that there was no demand by the Land Registrar that the titles be brought to him for cancellation. That in fact the summons did not indicate that when attending that meeting, they should carry their titles. The 2<sup>nd</sup> defendant testified that they did not see any proof of



- proceedings adduced by the plaintiff on what she alleged transpired. The 2<sup>nd</sup> defendant further testified that after that meeting, the Registrar has never raised any issue over the titles.
76. The 2<sup>nd</sup> defendant further states that he has never been summoned by either the C.I.D officers or the police after the meeting with the Land Registrar on account that the transfers were done fraudulently and added that there has never been a letter from the Lands office demanding that they surrender their titles. The 2<sup>nd</sup> defendant further states that when the parcels of land were transferred to them, there was no indication that they were to hold the same in trust of their late brother. He stated that they did not breach any trust. The 2<sup>nd</sup> defendant testified that it was not true that they presented the documents done by their late brother since it was not possible to use someone's else documents as that would amount to a criminal offence. The 2<sup>nd</sup> defendant further testified that it was not true that they used a land control consent in favour of the deceased to transfer the lands to themselves.
77. The 2<sup>nd</sup> defendant states that they did not misrepresent themselves to the Land Registrar as their deceased brother. The 2<sup>nd</sup> defendant further states that he never saw any report showing that the plaintiff made any reports to the police. The 2<sup>nd</sup> defendant argued that the plaintiff never presented any evidence to support her allegations and maintained that the two parcels of land had not been transferred and registered in the name of their late brother. The 2<sup>nd</sup> defendant further testified that at the time the parcels of land were transferred to them, they never belonged to their late brother.
78. The 2<sup>nd</sup> defendant states that there were no transfer documents signed by their late father in favour of his late brother. He denied that they defrauded their late brother. The 2<sup>nd</sup> defendant testified that they gave their late father a token of Kshs.100,000/= each for transferring the land to them. He further testified that his late father had subdivided his land parcel No.128 on or about the year 2003 and parcels No. 1916 and 1921 are the subdivisions of parcel No.128.
79. The 2<sup>nd</sup> defendant states that the purpose of the subdivision of parcel No.128 was for their father to give his sons and daughters land. He states that their father finished the subdivisions and everybody was to pay Kshs.150,000/= for every acre or any part thereof. The 2<sup>nd</sup> defendant testified that all those who paid were given their parcels of land and that his late brother was not given the land though he was to be given parcels No. s 1916 and 1921, but he was not given because he defaulted in paying the sum of Kshs.450,000/= required of him. The 2<sup>nd</sup> defendant further testified that the deceased was not keen to follow what their late father wanted.
80. The 2<sup>nd</sup> defendant testified that after the subdivisions, their late father went to the Land Control Board to obtain Consents to transfer for all the subdivisions and got the consent for everyone. The 2<sup>nd</sup> defendant further states that his father did not sign any transfer in favour of his late brother. The 2<sup>nd</sup> defendant testified that their father went to the Land Control Board around 21<sup>st</sup> October 2004 to get consent for everyone.
81. The 2<sup>nd</sup> defendant states that his late brother, Munene died on 3<sup>rd</sup> November 2007 and by the time he died he had not fulfilled the obligation that their father wanted. The 2<sup>nd</sup> defendant further states that their father wanted to give the land to his late brother but that did not materialize. The 2<sup>nd</sup> defendant testified that his late father swore an affidavit before a magistrate in Chuka on the 16<sup>th</sup> February 2009 outlining the reasons why he changed his mind. He stated that, that affidavit was factored in Chuka High Court Succession Cause No.50 of 2016.
82. The 2<sup>nd</sup> defendant pointed out that one of the reasons the plaintiff's husband was not given land was that Munene was to pay Kshs.450,000/= for the land to be transferred to him, but which he failed to pay. The 2<sup>nd</sup> defendant noted that the letter of consent produced by the plaintiff refers to Meru South and is not signed by the Chairman. He contended that the application was to Nithi Land Control



- Board and not Meru South. The 2<sup>nd</sup> defendant further noted that the transfer showed the consideration as a gift, but there was no registration and that the same was not signed and did not have page 2. The 2<sup>nd</sup> defendant also pointed out that the application for consent for parcel No. 1921 is not signed by the Chairman and that the transfer is also not signed and the second page is missing.
83. The 2<sup>nd</sup> defendant testified that the letter dated 15<sup>th</sup> December, 2006 was written by their late father after he had changed his mind. He noted that one of the consent documents had disappeared and written Nithi Land Control Board but later changed to Meru South. The 2<sup>nd</sup> defendant confirmed that the two parcels are now registered to them as owners.
  84. The 2<sup>nd</sup> defendant denied demolishing any house and referred to the document No. 11 showing the house that belonged to his late brother. He also denied poisoning the plaintiff's borehole.
  85. The 2<sup>nd</sup> defendant argued that from 9<sup>th</sup> April, 2008 up to 20<sup>th</sup> August 2020, the plaintiff never filed any suit against them and that she also never filed any suit against their late father. He further stated that the plaintiff never produced any leave to file the suit after 12 years.
  86. The 2<sup>nd</sup> defendant testified they complied with the consent order dated 15<sup>th</sup> July 2008. He pointed out that P. Exhibit 17 is a court order dated the 19<sup>th</sup> December, 2012 directed to Mwalimu Cooperative Savings and Credit Society and not directed to them. The 2<sup>nd</sup> defendant states that they have never been cited for contempt for disobeying any court orders.
  87. The 2<sup>nd</sup> defendant testified that by 2003 when the plaintiff was married, land parcel No.128 had not been subdivided and his father had planted tea on parcel No.1921 and his deceased brother used to harvest it but he never planted any tea. The 2<sup>nd</sup> defendant further testified that his late brother was harvesting tea within parcel No.128, but not No.1921.
  88. The 2<sup>nd</sup> defendant testified that his father gave them the suit parcels together with the tea plantation and argued that the two documents produced by the plaintiff in relation to tea are not matching and are not certified by the tea factory. He stated that the plaintiff never produced any OB report on alleged demolitions. That the plaintiff also went to court to challenge that she was chased away from her home. The 2<sup>nd</sup> defendant maintained that land parcels No.1916 and 1921 do not form part of the estate of his late father. He stated that the registration process of the land was done by the Land Registrar who was not sued. That nobody from the Lands Office was called to give evidence to support the plaintiff's case.
  89. When the 2<sup>nd</sup> defendant was cross-examined by Mr. Mageto, learned counsel for the plaintiff, he reiterated that plaintiff's husband is his deceased brother and the plaintiff was the wife to the deceased. The 2<sup>nd</sup> defendant stated that the plaintiff stopped being his brother's wife after getting married to somebody else, though he had no marriage certificate. The 2<sup>nd</sup> defendant stated that he is one of the registered owners of parcels Nos. 1916 and 1921. The 2<sup>nd</sup> defendant reiterated that the two parcels of land were given to them by their late father, Alphaxard M'ithara Nkari when he was alive.
  90. The 2<sup>nd</sup> defendant was also re-examined by Mr. Nyaga.
  91. DW2 was ELIAS MICHENI MUGO the 1<sup>st</sup> Defendant herein. He testified that he comes from Iramba village, Mugure Location, Tharaka Nithi County. The 1<sup>st</sup> defendant adopted his statement dated 2<sup>nd</sup> October, 2020 as his evidence in chief, and further relied on the defence filed and the list of documents filed on 2<sup>nd</sup> October, 2020 which were produced ad D. Exhibits 105. The 1<sup>st</sup> defendant further relied on the evidence given by his brother the 2<sup>nd</sup> defendant.
  92. When he was cross-examined by Mr. Mageto, DW1 stated that he is one of the title holders of parcels No.1921 and 1916 and that they went to the Land Control Board in 2004 and consent was given. The



- 1<sup>st</sup> defendant stated that subdivision was done and his papers were given to I.C Mugo Advocate. The 1<sup>st</sup> defendant testified that they went to the Board for a second time at a time he could not recall.
93. DW2 stated that he did not have a copy of his application that was made by his father and that when they went to the Board, the letter of consent was issued. The 1<sup>st</sup> defendant further stated that he did not have a copy of consent for transfer from his father to himself as a gift. The 1<sup>st</sup> defendant stated that the documents were left in the Lands office after they got titles.
94. The 1<sup>st</sup> defendant stated that after they obtained the titles, they were summoned by the Land Registrar. The 1<sup>st</sup> defendant testified that he did not know why the land Registrar called his father. The 1<sup>st</sup> defendant testified that he could not recall Succession Cause No.17 of 2008 at Chuka Magistrate's court and was not aware of the citation.
95. The 1<sup>st</sup> defendant stated that he was not a party to Succession Cause No.60 of 2008. The 1<sup>st</sup> defendant further stated that his brother produced documents including an affidavit sworn on 16<sup>th</sup> February 2009. He testified that his father was over 75 years and was not present when his father drew that affidavit or when it was commissioned. The 1<sup>st</sup> defendant stated that by 2009 his brother Munene was no longer alive as by April 2008 he was already deceased.
96. The 1<sup>st</sup> defendant testified that he did not know when the tea was planted on the land, but stated it was before 2004. The 1<sup>st</sup> defendant further stated that he did not inherit anything from his father and he was only given the land parcels as a gift. The 1<sup>st</sup> defendant avers that the parcel he was gifted had tea and it was parcel No.1930.
97. The 1<sup>st</sup> defendant stated that he did not have the application for consent to transfer made in 2004 by his father. The 1<sup>st</sup> defendant stated that the document produced as P. Exhibit 14 is an order and his name was there. He further stated that he was aware of the order. He stated that the plaintiff does not live there as she went away on her own and they are not the ones who evicted her. The 1<sup>st</sup> defendant testified that it was the plaintiff's own brother who came and carried her to town in a pick-up.
98. The 1<sup>st</sup> defendant stated that all the tea in their home was planted by his father, who gave a portion to his late brother. The 1<sup>st</sup> defendant further testified that he has never received any coin from that tea. The 1<sup>st</sup> defendant testified that all the tea is plucked by the 2<sup>nd</sup> defendant.
99. The 1<sup>st</sup> defendant stated that the plaintiff lives at Tukwereini and not a rental house at Chuka town. The 1<sup>st</sup> defendant further stated that he did not pay anything for parcel no.1930 which was a gift to him. That they paid Kshs.100,000/= for each of parcel No.1921 and 1916 though he did not have the evidence. The 1<sup>st</sup> defendant testified that his piece of land is not part of land parcel 128. The 1<sup>st</sup> defendant stated that his father asked for a token and they paid him.
100. The 1<sup>st</sup> defendant testified that the late Mr. Munene had over 2 acres and was to pay over Kshs 400,000/=. The 1<sup>st</sup> defendant stated that they did not author the letter stating that Munene failed to pay. The 1<sup>st</sup> defendant stated that the land he got was a gift and that Munene did not receive any gift from his father.
101. DW3 was IRERI CHARLES MUGO who states that he comes from Iramba village, Kirege Sub location, Mugune Location Meru South Sub-County in Tharaka Nithi County. DW3 testified that he is an advocate in private practice and his offices are at Chuka Town.
102. DW3 testified that he knew both the plaintiff and the defendants. DW3 adopted his witness statement dated 2<sup>nd</sup> October 2020 as his evidence in Chief. He testified that he knew about parcel No.128 which belonged to his late father. That the land was subdivided by his father while he was alive. DW3 testified that the subdivisions No.s 1916 and 1921 were given to his brothers, the defendants herein.



103. DW3 testified that his father initially wanted to transfer those parcels to him, but he declined and proposed to his father that the two parcels be transferred to his brothers, the two defendants. DW3 testified further that it was not true that the parcels were to be transferred to the plaintiff's husband.
104. DW3 stated that initially the two parcels Nos. 1916 and 1921 were gifts inter vivos and with conditions to all beneficiaries including himself. That one of the conditions was that every beneficiary was to pay Kshs.150,000/= for every acre or part thereof. The second condition was that each beneficiary was supposed to contribute the monies required to subdivide the land and each beneficiary was to pay about Kshs.11,000/=.
105. DW3 stated that his late brother did not meet those conditions and at that stage, his late father decided to re-apply to the Land Control Board to transfer the two parcels of Land to the defendants. DW3 stated that his late father applied for a fresh consent which were issued by the Land Control Board. He testified that all the procedures were followed and the two parcels of Land were transferred to the defendants during the lifetime of his late father. He stated that he was not aware of anyone objecting to the transfers, including the plaintiff and denied that the consent earlier issued were used to transfer the two parcels to the defendants. DW3 further stated that he was aware since he was informed that his father and the defendants were summoned to the Lands Office and his father was asked by the Land Registrar whether he was the one who transferred the two parcels of land to the two defendants and he affirmed the same and they were told to go home.
106. DW3 testified that he was not aware of any suit filed against his late father during his lifetime with regard to those transfers. DW3 further testified that he did not sign any transfer for parcels 1916 and 1921, but stated that he signed for all the others. That he did not sign because late Munene had not complied with the conditions of the gift by not paying around Kshs 450,000/=and secondly, he did not contribute the money towards subdivision of parcels No.128.
107. DW3 stated that he could have signed the documents if his father signed in his presence which he never did and that the other reason is that around 27<sup>th</sup> September 2007, his brother was terminally ill and his brothers were moving from hospital to hospital and they ended up in Kenyatta National Hospital where Munene died one month later. DW3 stated further that in those circumstances his late brother and his father could not appear before him to have the documents executed.
108. DW3 testified that the documents produced by the plaintiff were interpreted to him by the defendants' advocate and P. Exhibit 6 is a transfer for parcel no.1916 while P. Exhibit 10 was for parcel No.1921 and stated his signature is not in those documents and further that there is also no signature of the Chairman in the consents.
109. DW3 denied that the plaintiff was evicted from their home. DW3 testified that the plaintiff was evacuated by her own brother who worked with the GSU in broad day light. DW3 stated that no house was demolished as alleged by the plaintiff. DW3 further states that there was a court order preventing the defendants and anyone else from demolishing the plaintiff's house and that no one including the defendants were cited for contempt.
110. DW3 stated that after leaving, he did not know where the plaintiff went to, but later she re-married and moved to Tukorwene village where she got married to one Njeru Boom and has a child with him.
111. DW3 stated that the tea in parcel No.1921 was planted by his late father who had planted tea on the entire part of parcel No.128 and that the plaintiff never planted any tea. DW3 stated that his elder brother Elias Micheni Mugo and his father consented to his brother, the late Munene being given a grower's number at the tea factory to be able to harvest tea on that land.



112. DW3 testified that he was aware of an affidavit sworn on 16<sup>th</sup> February 2009 by his father denouncing the gift that he had given his late brother. DW3 testified that the relationship between his father and mother and the plaintiff was bad and that after the death of Munene, the plaintiff would organise goons to come and disturb their parents.
113. DW3 denied that the two parcels of land were given to the plaintiff's husband inter vivos. He stated that Munene was not disinherited because his father was dealing with his free properties and only 0.67 acres was family land and the rest were bought by his father.
114. DW3 testified that his father transferred parcel No. 1916 and 1921 to the defendants during his lifetime, so there was no fraud as one cannot defraud himself.
115. When he was cross-examined by Mr. Mageto, DW3 reiterated that it was true that his father had initially obtained consent to transfer parcels Nos.1916 and 1921 to the late Munene and that his father had also obtained consent to transfer the two parcels to the defendants after he changed his mind. DW3 further reiterated that his father demanded that each of them pay some money to get the gifts inter vivos and stated that he personally paid Kshs.600,000/= because he got almost 4 acres. DW3 testified that his father never gave him a receipt because it was a family affair. DW3 further stated that Mr. Munene did not get the parcels because he did not pay as required. DW3 testified that if he had paid, his father would have signed the documents which he never did.
116. DW3 stated that his statement was clear that they were to pay Kshs 11,000/= for subdivisions or surveyors fees. DW3 further stated that the plaintiff was evacuated by her own brother who was a GSU officer. DW3 testified that he was aware that there was a citation for contempt against the defendants but was dismissed by Mabeya J. DW3 further testified that the orders that the plaintiff alleged were disobeyed were orders of maintenance of status quo and stated that his brothers never defied the status quo orders and the court found so.
117. DW3 testified that his father planted the tea bushes on the lower part of parcel No.128 before it was subdivided. DW3 reiterated that his brother did not plant those tea bushes. He reiterated that his father and the 1<sup>st</sup> defendant facilitated Munene to get a grower's number.
118. DW3 was re-examined by Mr. Nyaga Nyamu, and he reiterated that there was no eviction of the plaintiff.
119. DW3 stated that the consent of the Land Control Board was never signed by the Chairman. DW3 further stated that his father never complained, but wrote a letter to the Chairman of the Land Control Board when he noted the documents were lost. DW3 testified that it was his father and the 1<sup>st</sup> defendant who facilitated a number at Weru Tea factory in the name of his late brother.
120. DW3 reiterated that he was aware that there were attempts to cite his brothers for contempt, but the application was dismissed. DW3 further reiterated that there were orders of status quo and there were no demolition and that the plaintiff was evacuated by her brother who was a GSU officer.
121. DW3 stated that at the time Succession cause No.60 of 2008 was being filed, the parcels were registered in the defendants' name and before the parcels were transferred to the defendants they were in the name of his father and they were never part of the estate of Munene and that it is the plaintiff who included them.
122. DW3 stated that one of the conditions was payment of survey fees, but he did not specify the amount. It was his evidence that his father was only to sign the transfer forms after being paid the amounts by each beneficiary then he would sign. DW3 reiterated that his father never asked him to sign any documents



relating to parcels 1916 and 1921 and further that there was no agreement or receipts issued since it was a family affair.

123. The court directed the parties to file their submissions wherein the plaintiff filed her submission on 1<sup>st</sup> November, 2023 through the firm of M’Njau & Mageto Advocates while the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed their submissions dated 11<sup>th</sup> December 2023 through the firm of Nyamu Nyaga & Co. Advocates.

### **Plaintiffs’ Submission**

124. The plaintiff gave a detailed background of the case and the evidence adduced. The plaintiff’s counsel identified eight issues for determination.
125. The first issue was whether the land reference numbers Karingani/Mugirirwa/1916/1921 were gifted *in vivo* to the deceased during the lifetime of the deceased and his late father. The plaintiff’s answer to this issue was in the affirmative. The plaintiff cited Section 31 of the *Law of Succession Act* and relied on the case of Kisii HCCC Succession Cause No. 234 of 2000 in the Matter of the Estate of Nyachico Osindi (Deceased) which referred to the case of the Estate of Phulis Muthomi M’Inoti (Deceased) Succession Cause No. 117 of 2015 (2018) eKLR. Learned counsel for the plaintiff also relied on Nakuru ELC No. 4 of 2021 (OS) Charles Gitahi Kamau –vs- District Land Registrar Nakuru & 3 Others.
126. It is submitted that in the instant case, the deceased’s father did apply and was issued with consents to transfer the subject parcels into the deceased’s name. That the deceased’s father further signed and delivered to the deceased transfers and put him in possession. It is submitted that the gift *in vivo* to the deceased was complete, and the suit parcels belonged to the deceased. The plaintiff’s counsel referred to Meru High Court Succession Cause No. 60 of 2008 and Chuka High Court Succession Cause No. 56 of 2016.
127. The second issue was whether there was any condition set by the Deceased’s father for transfer of gifts *in vivo* to his children. The plaintiff’s counsel submitted that there was no condition set by the deceased’s father for gifting his children *in vivo* and that no money exchanged hands in that respect that was proved to have been paid by any of the children.
128. The third issue was whether the transfer of land reference numbers Karingani/Mugirirwa/1916/1921 into the names of the defendants was procedurally lawful. The plaintiff submitted that the defendants acquired title without the mandatory transfers and land control board consents being registered at the lands office. It is the plaintiff’s submission that at the trial the defendants were unable to produce evidence in the form of Land Control Board Consent obtained by their father and duly executed and witnessed transfers in their favour. The plaintiff cited Section 26 of the *Land Registration Act* No. 3 of 2012, and submitted that under that section, the law gives no protection to land that has been acquired through fraud and or misrepresentation, illegally, procedurally and through a corrupt scheme.
129. The plaintiff relied on the case of Nyahururu ELC No. 244 of 2017 (formerly Nakuru ELC 35 OF 2016) Zachariah Wambugu Gathimu and Another –vs- John Ndungu Maina, Alice Chemutai Too – vs- Nickson Kipkurui Korir & 2 Others (2015) eKLR and Busia ELC Case No. 73 of 2016 Wilfrida Owayo Ochola –vs- Busia Villa Limited and Another.
130. The next issue was whether the plaintiff was evicted by the defendants from her matrimonial home. It was submitted that the evidence of the plaintiff voluntarily leaving her matrimonial home is not convincing. It is the Plaintiff’s submission that her eviction was done without any valid eviction order and was in contempt of a court order. The plaintiff relied on the case of Gusii Mwalimu Investment Company Ltd –vs- Mwalimu Hotel Kisii Limited CA Civil Appeal No. 160 of 1995 (unreported) and



submitted that she was unlawfully evicted from her matrimonial home by the defendants without due process, eviction order and in contempt of a court order.

131. It was further submitted that the registration of the suit properties into the defendants' name being illegal in law, the defendants hold title in trust for the estate of the deceased who was initially gifted the same intervivos.
132. It was also the plaintiff's submission that the acquisition, plucking and selling rights of tea from land parcel number Karingani/Mugirirwa /1921 by the 2<sup>nd</sup> Defendant was illegal and unlawful.
133. The Plaintiff submitted that she has not re-married and argued that the Defendants failed to present evidence to prove the alleged marriage.
134. It was submitted on behalf of the plaintiff that the issue of limitation being an issue of jurisdiction ought to have been raised at the earliest opportunity. The plaintiff relied on the case of Owners and Masters of the Motor Vessel "Joey" –vs- Owners and Masters of the Motor "Barbara" and "Steve B" (2008), EA 367. It is the plaintiff's submission that the suit was filed within the limitation period in view of the fact that the subject matter herein were being litigated in Chuka HCCC Succession Cause No. 56 of 2016 which was concluded in 2019, less than one year to filing of this suit.
135. It is the Plaintiff's submission that she has proved her case on a balance of probabilities and urged the court to enter judgment in her favour.

#### **1<sup>ST</sup> AND 2<sup>ND</sup> DEFENDANTS' SUBMISSIONS**

136. The defendants gave a synopsis of the case and also identified eight issues for determination. The first issue for determination was whether the plaintiff's suit is statutory time barred.
137. The defendants submitted that in their defence dated 17<sup>th</sup> November 2020 and filed in court on 18<sup>th</sup> November 2020 at paragraph 30 they pleaded that the plaintiff's suit was statutory time barred and offends the Mandatory provisions of law. The defendants submitted that during cross-examination of the plaintiff, the issue of whether her case was statutory time barred came up and similarly in their evidence, DW1 in his evidence stated that the plaintiff's suit was time barred and she did not seek leave of the court before filing her suit. It was the defendants' submission that time started to run from 30<sup>th</sup> April 2008 as the plaintiff was aware of the Land Registrar's determination though it was not reduced into writing. The defendants cited Section 7 of the Limitation Act Cap 22 Laws of Kenya and also order 2 rule 4 of the Civil Procedure Rules and submitted that the plaintiff's suit is statutorily time bared. The defendants relied on the case George Wanyoike t/a Wanyoike and General Contractors – vs- Attorney General Nairobi Milimani High Court Civil Case No. 574 of 2001.
138. On the issue whether the plaintiff's late husband Munene Ncacu was gifted inter vivos land parcels Nos.Karingani/Ndagani/1916 & 1921 by his late father Alphaxard M'Ithara Nkari-deceased, the defendants submitted that the plaintiff did not prove that fact. Additionally, it was submitted that the plaintiff did not plead nor prove the particulars of trust against the defendants. The defendants relied on the case of Cosmas Cherono & 2 Others –vs- Veronica Cherono [2021] eKLR. The defendants also relied on the case of Gedion Mauthi Nzioki (deceased) [2015] EKR and Re Estate of M'Raiji Kithiomo (deceased) [2015] eKLR. It is the defendants' submission that trust is a matter of fact and the same must specifically be pleaded and proved. The defendants submitted that the plaintiff did not particularize trust and she never proved the same by tendering evidence in court.
139. The defendants submitted that the plaintiff stated in her evidence in court that when she was married in 2003, she did not know the land of Alphaxard and how he acquired it. That additionally, she never led any evidence to prove that land parcel No.128 was a family land. On whether the plaintiff proved



misrepresentation, fraud and breach of trust as alluded against the defendants in paragraph 8(a) to (e), the defendants submitted that in order to establish a claim for misrepresentation as alleged in the case, the plaintiff ought to have proved that the defendants made a false statement regarding parcels Nos. 1916 & 1921, that the defendants knew or should have known the representation was false, that the defendants intended that the representation would induce the plaintiff to act on something not correct and that the plaintiff suffered damages in justifiable reliance on the representation. The defendants submitted that the plaintiff did not tender any evidence to prove that the defendants misrepresented themselves as far as transfer of land parcels No. 1916 & 1921 is concerned. The 1<sup>st</sup> and 2<sup>nd</sup> defendants submitted that the plaintiff evidence in court were mere allegations which were not supported by any material evidence.

140. The defendants submitted that the plaintiff's claim is based on fraud which is a serious allegation and a party relying in it as a basis of his or her claim must prove it in a standard higher than of balance of probabilities. The defendants relied on the case of *Mutsonga -vs- Nyati (1984)KLR*, *Kinyanjui Kamau vs George Kamau Njoroge (2015)eKLR* and *Kuria Kiarie & Others -vs- Sammy Magera (2018)eKLR*.
141. The defendants submitted that fraud cannot be imputed on their part and in this case the plaintiff was making mere allegation. The defendants further submitted that the plaintiff did not call any evidence from the lands office to at least prove that indeed, the defendants used fake consents and transfer documents to transfer land parcel Nos. 1916 & 1921 to themselves.
142. The defendants also submitted that the plaintiff did not tender any evidence in court to prove her claim for damages pleaded in paragraph 15 of the plaint. It is the defendants' submission that the plaintiff did not tender in court any evidence of tea earnings in form of bank statements or payment slips to prove entitlement of the said amount. The defendants also submitted that the plaintiff did not produce in court any receipts for payment of rent or evidence or lease agreement to prove she had rented a house in Chuka. The defendants further submitted that special damages must be specifically pleaded and proved and they relied on the case of *Capital Fish Kenya Limited vs Kenya Power Company Limited (2016)eKLR*. It is their submission that the amount of Kshs 380,000 prayed for by the plaintiff cannot be awarded for she did not produce any receipts to prove her claim.
143. Regarding the issue whether the defendants disobeyed court orders dated 15<sup>th</sup> July 2008 or any other orders issued by the court in Succession Cause No.60 of 2008 or No.56 of 2016, the defendants submitted that although the plaintiff stated severally in court that the defendants disobeyed the court orders, there was no evidence which she presented in court to prove her allegations. They also denied evicting the plaintiff from her late husband's home or demolishing her house. The defendants urged the court to dismiss the plaintiff's suit with costs.

## **ANALYSIS AND DETERMINATION**

144. The court has carefully read and considered the pleadings by the parties, the evidence adduced, submissions, authorities cited and the relevant provisions of law and finds that the issues for determination are-;
  - i. Whether the plaintiff suit was statutory time barred?
  - ii. Whether the plaintiff's late husband Munene Ncacu was gifted inter vivos land parcel Nos. Karingani/Ndagani 1916 & 1921 by his late father Alphaxard M'Ithara Nkari.
  - iii. Whether the plaintiff proved breach of trust.
  - iv. Whether the plaintiff proved misrepresentation and fraud as pleaded against the defendants.



- v. Whether the plaintiff is entitled to the orders sought.
- vi. Who should bear the cost of the suit.

### **Whether the plaintiff suit was statutory time barred?**

145. The defendants pleaded in their defence that the plaintiff suit was time barred. The issue arose in court during the plaintiff's cross examination by learned counsel Mr. Nyamu Nyaga. The plaintiff also stated that on 21<sup>st</sup> April 2008 when the Land Registrar Chuka discovered the fraud and misrepresentation, he summoned the defendants and their late father to his office and demanded for the return of the Original Title Deeds issued for the purposes of rectification of the register in respect to Land Title Nos. Karingani/Mugirirwa/1916 and Karingani/Mugirirwa1921
146. The plaintiff also testified that the defendants evicted her from her home in 2009. The defendant's counsel questioned why the plaintiff waited since 2009 for her to go to court and the plaintiff testified that the defendants evicted her around February 2009 and that the court did not give her an order for the defendants to be punished for contempt. This suit was filed in court on 20<sup>th</sup> August 2020.
147. Section 7 of the *Limitation of Actions Act* provides that any action to recover land may not be brought after the end of twelve years.
148. The plaintiff testified that she brought the matter to court on 20<sup>th</sup> August 2020.
149. Section 26 of the *Limitation of Actions Act* provides:
- “Where, in the case of an action for which a period of limitation is prescribed, either:
- (a) the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or
  - (b) the right of action is concealed by the fraud of any such person as aforesaid; or
  - (c) the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it.”
150. In *Gathoni vs. Kenya Co-Operative Creameries Ltd.* [1982] KLR 104, Potter, JA at page 107 expressed himself thus:
- “The law of limitation of actions is intended to protect defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”
151. In *Iga vs. Makerere University* [1972] EA it was held:
- “A plaint which is barred by limitation is a plaint barred by law. A reading of the provisions of Section 3 and 4 of the Limitations Act Cap 70 together with Order 7 Rule 6 of the Civil Procedure Rule of Uganda which has same provisions with Limitations Act of Kenya seems clear that unless the applicant in this case had put himself within the limitation period by showing grounds upon which he could claim exemption the court shall reject his claim. The Limitations Act does not extinguish a suit or action itself, but operates to bar the claim



or remedy sought for and when a suit is time barred the court cannot grant the remedy or relief.”

152. In regard to the issue of fraud and when it was discovered am persuaded that the plaintiff suit is time barred. The plaintiff was aware of the alleged fraudulent acts way back in the year 2009, and only filed suit in August 2020. In *Bosire Ongero vs Royal Media Services* [2015] eKLR the court held that the issue of limitation goes to the jurisdiction of the court to entertain claims and therefore if a matter is statute barred the court has no jurisdiction to entertain the same.

SUBDIVISION - Whether the plaintiff's late husband Munene Ncacu was gifted inter vivos land parcel Nos. Karingani/Ndagani 1916 & 1921 by his late father Alphaxard M'Ithara Nkari.

153. The plaintiff pleaded that on 21<sup>st</sup> October 2004, the Deceased father, the late Alphaxard M'ithaka Nkari (Deceased) made an application to Nithi Land Control Board for a Consent to transfer Land Titles Numbers Karingani/Mugirirwa/1916 and Karingani/Mugirirwa 1921 as gift inter vivos to the late Munene Mugo Ncacu (Deceased) and that the consent to transfer was duly approved and issued on 28<sup>th</sup> October 2004 thereby clearing the way for transfer of the two parcels into the name of the deceased. The plaintiff states that on 27<sup>th</sup> September 2007 the Deceased's late father signed the transfer in favour of her deceased husband in respect to the suit parcels of land, and thereby effectively gifted the deceased awaiting registration of the same and issuance of title deeds in the name of the Deceased.

154. The plaintiff testified that her husband was gifted inter vivos the suit parcels and that the said Alphaxard Nkari had duly attended the Land Control Board and transferred the said parcels of land to her late husband. The plaintiff contention is that land parcels now registered in the names of the 1<sup>st</sup> and 2<sup>nd</sup> defendants belong to her late husband. The plaintiff alleged in her evidence that the defendants used the transfers and consents issued in respect of land parcels Nos.1916 & 1921 to have them registered in their names. The 1<sup>st</sup> and 2<sup>nd</sup> defendants in their defence dated 17<sup>th</sup> November 2020 admit that Alphaxard M'Ithara Nkari(deceased) had made an application and obtained consent from Nithi Land Control Board to transfer Land parcel Nos. Karingani/Mugirirwa/1916 and 1921 to the late Munene Mugo Ncacu but on his own free will and without any undue influence decided not to transfer the said parcels of land to Munene Mugo Ncacu (deceased) and instead transferred the said parcels of land to the defendants herein unconditionally. This is because the plaintiff's late husband did not meet certain conditions.

155. The defendants testified that the gift was conditional subject to payment of Kshs.100,000 and further fees for subdivision and surveyors' fees of Kshs. 15,000. The defendants were categorical that the plaintiff's husband Munene failed to pay the amounts as stipulated in his father's condition and their patriarch Alphaxard M'ithara Nkari changed his mind and transferred the two parcels to the 1<sup>st</sup> and 2<sup>nd</sup> defendants. That evidence is also corroborated by DW3. The defendants further testified that their father wrote an affidavit in Chuka Court wherein he expressed himself that he had changed his mind in gifting the plaintiff's husband, the late Munene.

156. Gift inter vivos are provided under Section 42 of the [Law of Succession Act](#). It provides:

“Where-

- (a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or
- (b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35, that property shall be taken into account



in determining the share of the net intestate estate finally accruing to the child, grandchild or house.”

157. The characteristics of the gifts inter vivos are that they are made and settled during the lifetime of the deceased and have been identified, awarded and settled for the person to whom it has been given. It is a gift made to a beneficiary when the deceased was alive and is considered when distributing the net intestate estate so that person who received it may be considered as having received his share and may reduce or diminish any entitlement to the net intestate estate. The gift which is transferred and settled for the beneficiary during the life-time of the deceased, will not form part of his estate but it will be considered in determining the share of the net intestate estate finally accruing to that beneficiary.
158. The concept of gifts is divided into two categories. First gifts intervivos and gifts causa mortis. Gifts intervivos as contemplated in the Law of Succession are such that the owner of the property or asset donates it to another without expectation of death.
159. In any event the person who makes such a gift must have the capacity and competency to gift the property and the gift must be perfected. In the case of inter vivos the gift must go to the donee absolutely during the lifetime of the donor. It is also well established that where the gift has been made, delivery to the beneficiary is necessary to consummate the gifts.
160. Further, it is fundamental to understand the intention of the parties and their acts done sufficient to establish the passing of the gift to the donee.
161. The test on a gift causa mortis is defined as a gift made in expectation of death. The donor causes the property or goods in his possession to be delivered to another. The general distinction between a gift causa mortis and a gift intervivos is that its revocable by the donor and his capacity must meet the requirements under Section 11 of the Law of Succession in the making of a Will.
162. The requirement of the law for such gifts are that they may be settled by a deed or an instrument in writing by delivery, by way of a declaration of trust by the donor or by a resulting trust or transfer and registration. In other words, the gift must have passed from the deceased to the recipient for it to be valid. This means that the gift is no longer the property of the deceased but for the purpose of distribution of the estate to the dependants it will be traced and taken into account when distributing the estate with respect to the beneficiary who received the gift.
163. In Halsburys Laws of England 4<sup>th</sup> Edition Volume 20(1) at paragraph 67 it is stated as follows with respect to incomplete gifts:

“Where a gift rests merely in promise, whether written or oral, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him, to complete and perfect it, except in circumstances where the donor’s subsequent conduct gives the donee a right to enforce the promise. A promise made by deed is however, binding even though it is made without consideration. If a gift is to be valid the donor must have done everything which according to the nature of the property comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do.”



164. Adherence to the rule based-model on transfer of immovable property involves an inquiry on the Law of gifts inter vivos or causa mortis featuring in Odunga's Digest on Civil Case Law and Procedure Vol (III) Page 2417 at paragraph 5484 (d) e – 1 thus:

“Generally speaking the moment in time when the gift takes effect is dependent on the nature of the gift; the statutory provisions governing the steps taken by the donor to effectuate the gift. (See in Re Fry Deceased {1946} CH 312 Rose: and Trustee Company Ltd v Rose {1949} CL 78 Re: Rose v Inland Revenue Commissioners {1952} CH 499 Pennington v Walve {2002} 1WLR 2075 Maledo v Beatrice Stround {1922} AC 330 Equity will not come to the aid of volunteer and therefore, if a donee needs to get an order from a Court of equity in order to complete his title, he will not get it. If, on the other hand, the donee has under his control everything necessary to constitute his title completely without any further assistance from the donor, the donee need no assistance from equity and the gift is complete. It is on that principle that in equity it held that a gift is complete as soon as the donor has done everything that the donor has to do that is to say as soon as the donee has within his control all those things necessary to enable him, complete his title. Where the donor has done all in his power according to the nature of the property given to vest the legal interest in the property in the donee, the gift will not fail even if something remains to be done by the donee or some third person. Likewise, a gift of registered land becomes effective upon execution and delivery of the transfer and cannot be recalled thereafter even though the donee has not yet been registered as a proprietor. (See Shell's Equity 29ED Page 122 paragraph 3)”

165. It is evident that where there is an imperfect gift having regard to the requirements, of the necessity for the same must be by way of written memorandum, registered transfer and or declaration of trust in writing, the gift may nonetheless be perfected by the conduct of the parties.
166. What does the law require with respect to a gift inter vivos? In her decision in Re Estate of The Late Gedion Manthi Nzioka (Deceased) [2015]eKLR relied on by the petitioners, Nyamweya J (as she then was) stated as follows:

“In law, gifts are of two types. There are the gifts made between living persons (gifts inter vivos), and gifts made in contemplation of death (gifts mortis causa). Section 31 of the *Law of Succession Act* provides as follows with respect to gifts made in contemplation of death:

...For gifts inter vivos, the requirements of law are that the said gift may be granted by deed, an instrument in writing or by delivery, by way of a declaration of trust by the donor, or by way of resulting trusts or the presumption of Gifts of land must be by way of registered transfer, or if the land is not registered it must be in writing or by a declaration of trust in writing. Gifts inter vivos must be complete for the same to be valid.”

167. In the instant case it is clear that the gift to the plaintiff's late husband was not complete, therefore it was not valid. The gift was not perfected since it was not registered. The court has to be alive to the instances where the donor changes his mind as in the present case. In this case, the plaintiff's father-in-law changed his mind while he was still alive and transferred the properties to the defendants.



### **Whether the plaintiff proved breach of trust.**

168. It is trite Law that trust is a matter of fact and the same must be specifically be pleaded and proved. In this case, the plaintiff has not demonstrated that the two suit parcels were customary land. It was the defendants' evidence that the original suit parcel no. 128 was bought and could not be customary land as insinuated by the plaintiff.
169. Customary trust was well explained by the Supreme Court in the case of *Isack Kieba M'inanga v Isaaya Theuri M'Lintari & another* [2018] eKLR, where it held 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."
170. In this case, the plaintiff has pleaded customary trust in the suit land. Customary trust is an encumbrance on land. These are non -registrable rights which run with the land. They are overriding. They subsist on the land. In the case of *Kanyi vs Muthiora* (1984) KLR 712, the Court stated that; "The registration of the land in the name of the appellant under the Registered *Land Act* (Cap 300) did not extinguish the respondents rights under Kikuyu Customary Law and neither did it relieve the appellant of her duties or obligations under section 28 as trustee.....The trustees referred to in section 28 of the Act could not be fairly interpreted and applied to exclude a trustee under Customary law, if the Act had intended to exclude Customary law rights it would have been clearly so stated."
171. The legal burden to prove the existence of the trust rests with the one who is asserting a right under customary trust. To discharge this burden, the person must proof that: (a)the suit properties were ancestral clan land;(b) during adjudication and consolidation, one member of the family was designated to hold on behalf of the family;(c) the registered persons were the designated family members who were registered to hold the parcels of land on behalf of the family. In essence, one had to lay bare the root of the title to create the nexus or link of the trust to the title holder and the claimant.
172. From the material on record, I am not convinced that land parcels no. Karingani/Mugirirwa 1916 and Karingani/Mugirirwa 1921 are trust land. The plaintiff had the onus of proof which she has failed to prove.

### **Whether the plaintiff proved misrepresentation and fraud as pleaded against the defendants.**

173. The plaintiff has enumerated particulars of fraud as presenting to the Land Registrar transfer forms duly executed by the deceased's late father in favour of the Deceased as gift *inter vivos* purporting them



to be theirs and causing the same to be transferred in their favour, presenting land control board consents for transfer intervivos in favour of the deceased duly obtained by the Deceased's late father as consents in their favour and causing the transfer meant for the deceased to be registered in their favour, misrepresenting themselves to the Land Registrar as the deceased, securing title deeds for the parcels of land parcels in their names with full knowledge that the same belonged to their late brother, the deceased having already been gifted to him intervivos by the signing of the transfer by their late father and defrauding the deceased's estate of its inheritance and causing the registration of title to the said land parcels into their names without paying any consideration.

174. The plaintiff testified that the defendants used the consents issued by the Land Control Board to transfer land parcels Nos. 1916 & 1921 to her husband and the transfers signed by Alphaxard Nkari and her late husband Munene Ncacu to transfer the parcels to themselves. However, the plaintiff did not substantiate this allegation. It is clear from the evidence on record that the transfers in favour of the defendants were done while Alphaxard Nkari was still alive. Indeed, the defendants and their father were summoned by the Land Registrar and no further step was taken. Further, the plaintiff did not call evidence from the Lands Office to come and verify her allegations of fraud.
175. The plaintiff also failed to give evidence to prove any report to the police and even if she reported she never presented any OB to prove her claim. The plaintiff even admitted she had no evidence to support her claims as laid out in paragraph 8 (a) to e of her plaint dated 12<sup>th</sup> August 2020.
176. To succeed in claiming fraud, the Plaintiff not only needed to plead but also particularize it by laying out water tight evidence upon which the court would make such finding. It is therefore trite law that any allegations of fraud must be pleaded and strictly proved. I am guided by the Court of Appeal in case of Kuria Kiarie & 2 Others –vs- Sammy Magera [2018] eKLR where it was held:

“The next and only other issue is fraud. 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) states 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.”

177. The same procedure goes for allegations of misrepresentation and illegality. See Order 2 Rule 4 of the Civil Procedure Rules. As regards the standard of proof, in the case of Kinyanjui Kamau –vs George Kamau [2015] eKLR it was stated 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.”



178. In *Central Bank of Kenya v Trust Bank Limited & 4 Others* [1996] eKLR, proof of fraud was held as being beyond that of a balance of probabilities. In that case, the Court of Appeal rendered itself as follows:

“The Appellant has made vague and very general allegations of fraud against the Respondent. Fraud and conspiracy to defraud are very serious allegations. The onus of prima facie proof was much heavier on the Appellant in this case than in the ordinary Civil case.”

179. In addition, section 107 of the *Evidence Act* states as follows:

Burden of proof

“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 those facts.”

180. The law also states at section 108 of the *Evidence Act* (Cap 80 of the Laws of Kenya) that:-

Incidence of Burden

“The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

181. Lastly as a warning to a litigant, section 109 of the same Act states as follows:

“The burden of proof as to any fact lies on the person who wishes the court to believe it’s existence, unless it is provided by any law that the proof of that fact lies on any particular person.

#### **Whether the plaintiff is entitled to the orders sought.**

182. The plaintiff has pleaded income from the sale of tea at Kshs.12,000 per month per annum, annual bonus from tea. It has already been established that the two suit parcels are now registered to the 1<sup>st</sup> and 2<sup>nd</sup> defendants and therefore it will not be logical to allow the plaintiff to benefit in a land that does not belong to her. The plaintiff has also claimed for rent paid for alternative accommodation. That also fails. First, she did not bring any receipts to confirm the same but also, the evidence on record confirm that she vacated from the suit premises on her own accord as laid out by the defendants, and confirmed by the plaintiff herself.

183. Having considered and reviewed all the evidence and material placed before the court, I find and hold that the Plaintiff has not proved her case against the Defendants on a balance of probabilities. Accordingly, the Plaintiff’s suit is dismissed with costs to the Defendants.

184. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 25<sup>TH</sup> APRIL, 2024**

**C.K YANO,**

**JUDGE**

In the presence of:

Court Assistant – Martha

Murango Mwenda holding brief for Nyamu Nyaga for Defendants

No appearance for Mageto for Plaintiff

