



REPUBLIC OF KENYA



Kamau & 8 others v Mohoyo & 4 others (Environment & Land Case 18 of 2021) [2024] KEELC 3920 (KLR) (15 May 2024) (Judgment)

Neutral citation: [2024] KEELC 3920 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 18 OF 2021**

**A OMBWAYO, J
MAY 15, 2024**

BETWEEN

**DAVID NGUGI KAMAU 1ST PLAINTIFF
ALBERT MACHARIA KAMAU 2ND PLAINTIFF
LEAH WANJIRU KAMAU 3RD PLAINTIFF
MARTHA NYAMBURA KAMAU 4TH PLAINTIFF
MILKA WANGARE KAMAU 5TH PLAINTIFF
JOSHUA NJUGUNA KAMAU 6TH PLAINTIFF
SIMON GICHERU KAMAU 7TH PLAINTIFF
RUTH MUMBI KAMAU 8TH PLAINTIFF
MARY NJERI KAMAU 9TH PLAINTIFF**

AND

**WAITHIRA MOHOYO 1ST DEFENDANT
RUFFUS MWANGI KAMAU 2ND DEFENDANT
PURITY NJERI MWANGI 3RD DEFENDANT
JOHN MBUGUA MUNDATI KAMAU 4TH DEFENDANT
EMENKEI TECHNO SERVICES LIMITED 5TH DEFENDANT**

JUDGMENT

1. David Ngugi Kamau, Albert Macharia Kamau, Leah Wanjiru Kamau, Martha Nyambura Kamau, Milka Wangare Kamau, Joshua Njuguna Kamau, Simon Gicheru Kamau, Ruth Mumbi Kamau and



Mary Njeri Kamau (**hereinafter referred to as the plaintiffs**) are blood brothers and sisters to Ruffus Mwangi Kamau, Purity Njeri Mwangi and John Mbugua Mundati Kamau (hereinafter referred to as defendants nos 2 to 4) They are the beloved children of the late Livingstone Kamau Ruffus who died on 19th January 2015 and Waithira Mohoyo (hereinafter referred to as the 1st defendant) The family of the late livingstone Kamau Ruffus did succession of his estate and received a certificate of confirmation of grant that was issued to Waithira Mohoyo and Ruffus Mwangi Kamau. The description of the real property of the deceased was Mau Narok/Siapei Block 3/413. The deceased also had shares in National Bank of Kenya Limited. The real property and shares were all distributed to Waithira Mahoyo.

2. The certificate of confirmation of grant was issue on 12th March 2016.
3. Ultimately, the property No.Mau Narok/Siapei Block3/413 was transmitted to Waithira Mohoyo on 13th November 2017. On 16th October 2019 Waithira Mohoyo applied for consent of LCB to subdivide the land and share it to her children who are 12 in number. The consent of the Land Control Board was granted on the 10th meeting held on 17th October 2019. The consent was given to subdivide the land into 10 plots.
4. The land was ultimately subdivided into 10 plots by Emenkei Techno services ltd (hereinafter referred to as the 5th defendant). The plaintiffs have now come to court claiming to be beneficial owners of the whole land that was transmitted to their mother and claim that that there is an implied trust that the property belongs to all the family members and that it is upon the 1st defendant their mother and trustee to subdivide the land equally amongst her children fairly.
5. The plaintiffs' complaint is that the land was not equitably distributed to the family members and that family members were not involved and that there was collusion to give out large parcels of land to the 2nd to 4th defendants.
6. The plaintiffs aver that the 1st to 4th defendant have transferred certain parcels of land to themselves to frustrate the intention to rectify the register. The plaintiffs contend that the transfer being done by the 1st, 2nd and 4th defendants will disadvantage the plaintiffs who will get smaller and non-cultivable parcels while the 2nd, 3rd 4th, defendants have allocated themselves the large parcels that are favorable for farming.
7. The plaintiffs pray for a permanent injunction restraining the 1st 2nd 3rd and 4th defendants from transferring, selling, subdividing, alienating and/or otherwise dealing whosoever with land parcels:

Mau Narok/Siapei Block 31 1483 (Mutukanio A)

Mau Narok/Siapei Block 3/ 1484 (Mutukanio A)

Mau Narok/Siapei Block 3/ 1485 (Mutukanio A)

Mau Narok/Siapei Block 3/ 1486 (Mutukanio A)

Mau Narok/Siapei Block 3/ 1487 (Mutukanio A)

Mau Narok/Siapei Block 3/ 1488 (Mutukanio A)

Mau Narok/Siapei Block 3/ 1489 (Mutukanio A)

Mau Narok/Siapei Block 3/ 1490 (Mutukanio A)

Mau Narok/Siapei Block 3/ 1491 (Mutukanio A) Mau Narok/siapei Block 31 1492 (Mutukanio A)



That the register for land parcels listed in prayer (a) above be canceled and the register for title number Mau Narok/ Siapei Block 3/ 413 (Mutukanio A) be reinstated to position prior to the sub-division by mutation dated 24th October 2019 and that upon reinstatement of land title number Mau Narok/ Siapei Block 3/ 413 (Mutukanio A), a fresh survey be done in the presence of all interested parties by a jointly appointed surveyor for sub-division of ten (10) as agreed by the parties on 30th November 2019 in terms of the "Proposed Sub-division of Parcel Number Mau Narok/ Siapei Block After Amalgamation" signed by all interested parties as follows.

- i. Rufus Mwang Kamau 1st Portion size 0.19 Acre
 - ii. Rufus Mwangi Kamau 2nd Portion Size 3.74 Acres
 - iii. Waithera Mohoyo
(Ruth Mumbi Kamau) size 1.90 acres (to be held in trust for
 - iv. Simon Gicheru Kamu size 3.74 acres
 - v. John Mbugua Mundati Kamau size 3.74 acres
 - vi. Mitka Wangari Kamau size 2,41 acres
 - vii. Martha Nyambura Kamau size 2.90 acres
 - viii. Albert Macharia Kamau size 3.74 acres
 - ix. David Ngugi Kamau size 3.74 acres
 - x. Joshua Njuguna Kamau size 3.74 acres
 - d) The defendants to meet cost of rectification of title register/amalgamation of the sub-division to re-surveying and processing of the new titles.
 - e) Costs of the suit and interest to the plaintiff
8. In their defence, the defendants deny any fraud and implied trust on the part of the 1st defendant is favour of the plaintiffs. The defendants aver that the plaintiffs have voluntarily taken possession and occupation of the parcel emanating from subdivision of parcel No.413 and are already making productive use of them by planting and harvesting crops since 2019. The 5th defendant avers that he carried out his work professionally and within the law.
9. When the matter came up for hearing the plaintiffs called Solomon Kariuki Wanjiru, (PW1) a surveyor in private practice. He states he was instructed by Albert Kamau to undertake a survey on the suit property and to confirm how the survey was done by the initial surveyor. He was able to identify the anomalies. He recommended that they amalgamate and re-subdivide the land.
10. On cross examination by M/s Elizabeth Omwenyo, learned counsel for the defendants, he states that his instructing client did not have the title and was not the registered proprietor as the registered proprietor was Waithira Mohoyo. He did not have the written authority of Waithira Mohoyo and that at the time of survey, the land had already been subdivided. Moreover, he did not have the consent of Land Control Board. He admitted that his report was a proposal but not a subdivision.
11. PW2, Albert Macharia Kamau testified that the 1st defendant is his mother, the rest are his siblings save the 5th defendant. He adopted his statement as evidence in chief. He states that the land initially



- belonged to their father but was transmitted to their mother the 1st defendant upon their father's death and upon undertaking succession therefore, their mother held it in trust for the family and was to be subdivided to the children. He states that the land was subdivided but he was not assigned a special portion. No title was assigned to him. He occupies the land and uses the same.
12. On cross examination, he states that the land was not ancestral land but was purchased by his father. His mother was consulted on the second subdivision and she said it was a good job. She agreed that the land be subdivided and that he paid KShs15,000 for subdivision. The first subdivision done by his mother was not proper because she did not subdivide fairly. He states that he is in possession of the parcel number that he does not know and that he is dissatisfied with what his mother gave him because of the size. He states that the land he was allocated has a problem with accessibility because it is steep.
 13. In the 1st survey, he was getting 3.8 acres in the 2nd survey he was getting 3.7 acres
 14. PW3, Peter Mwema Mburu is the chief of Mwisho wa Reli Mau Narok Division Njoro sub-County who participated in the family meetings that deliberated on how to subdivide the family land. They resolved that the subdivision to be done by a different surveyor as Ruffus Mwangi had referred the family to a surveyor without their consent. He met with the parties in the presence of elders and tried to inform them to do a re-survey and the family agreed.
 15. On cross examination by M/s Omwenyo, he states that he knew the parties through the assistant chief but does not know the family very well. He knows that the children of Muhoyo are ten and that out of the ten, two complained. He knows the stand of the eight other children. He called the children to a meeting on 31st October 2019 that was attended by the mother and Martha Ngugi and Ruffus and Joshua but others sent apologies. It was agreed that a second survey be done.
 16. PW4, David Ngugi Kamau, the 1st plaintiff testified that the suit property is family land. They have lived in the land since 1984 and that the family has no other land. Each member of the family has a share of the land. The land was subdivided without involving the plaintiffs. They were allocated smaller shares of the land. The family is comprised of 11 members and yet 10 plots were demarcated. According to the plaintiff the plots were shared in a manner that is not transparent.
 17. On cross examination he states that he signed the confirmation of grant and agreed that the land be transferred to their mother. The land was registered in their mothers name and later subdivided without their input. The proposed subdivision has a better distribution of the land because all parties will have a road of access. The earlier subdivision was done without their consent or knowledge.
 18. DW1, Waithira Mohoyo relied on her statement dated 14th June 2021 and added that the plaintiffs and the 2nd to 3rd defendants are her children save the 5th defendant. The suit properties were transmitted to her name through succession. She decided to give the land to her children before she dies. She gave each boy and girl land. She subdivided the land into 10 parcels of land. The parcels are all registered in her name and each parcel has registration number. The defendant and plaintiffs have taken possession. She has taken the children to school and they have degrees. Each child has been allocated land.
 19. On cross examination by Mr. Gichiro, learned counsel for the plaintiffs, she states that the land was transferred to her after confirmation of grant. She states that she will allocate the land to all including girls. Each son was to get 4 acres of the land and each girl was to get 2.5 acres each. The surveyor subdivided 10 acres of land. The titles were issued on 4th November 2019. She wants her children to live in peace. On re- examination, she state that Martha Nyambura has cultivated the land and has planted potatoes.



20. DW2, Ruffus Mwangi Kamau relied on his statement dated 14th June 2021. The plaintiffs are his brothers and sisters. The 1st defendant is his mother and the 3rd and 4th defendants are his siblings. He states that after his father death, the family did succession of the estate and the land was transmitted to the 1st defendant. That all siblings were given land by the 1st defendant save Leah Wanjiru Kamau, Mary Njeri and Ruth Mumbi who were left out. They will not get any land. On cross examination by Gachimo, he states that on confirmation of the grant all his siblings were in court. On subdivision, he states that all the siblings were consulted. He states that the survey work was not done M/s Chesoro but by the 5th defendant. Due process was undertaken in the survey of the land. The parcels of land were allocated to his siblings
21. DW3 Mungai Wa Njenga Kabuto a licensed surveyor testified on behalf of the 5th defendant. He states that he was instructed by the 1st defendant who was the land owner to conduct a subdivision of the land. He accepted the work and did the same according to Law. On cross examination he did not produce any written instructions he did not produce any document showing that he was paid fees.

Rival Submissions

22. The plaintiff submits that t the pleadings by the parties herein raise contentious factual issues. The facts raised in the Complaint have not been admitted by the 1st to 4th Defendants as correct and are not in dispute and a determination can only be made upon the parties adducing their evidence in support and in opposition to the suit.
23. On the point of the preliminary objection raised by the defendant that the court has no jurisdiction to entertain succession issues, the plaintiff submits that the suit herein does not concern succession issues, the subject matter is not an estate of a deceased person and the suit properties as currently registered are owned by several persons including the 1st Defendant, the 1st Defendant jointly with the 4th Defendant, the 2nd Defendant jointly with the 3rd Defendant and the 4th Defendant in his own.
24. The defendant in the Preliminary Objection has referred to paragraph 4 of the complaint, but the same is merely an introduction of the parties and a narration of history in regard to the dispute between the parties and should be read together not exclusively but together with other paragraphs of the complaint and the express averments in Paragraphs 5, 6 and 7 that land parcel Mau Narok/Saipei Block 3/413 (Mutukanio) was transferred to the 1st Defendant on 13th November 2016 and raise issues whether after the transfer of the said parcel to her, she holds the same in trust for herself and her children and/or whether since then she has represented to her children that she hold the land in trust for herself and her children and whether she is bound to subdivide and allocate to her children by transfer of the subdivisions in accordance with the agreement reached with her children.
25. The plaintiff submits that the trust implied in the complaint is not a "Continuing Trust" from the succession cause as alleged by the Defendants' counsel in her submissions but it is an "Implied Trust" arising from the conducts of the 1st Defendant with her children (plaintiffs and 2nd, 3rd and 4th defendants) and in her dealing with land parcel Mau Narok/Saipei Block 3/413 (Mutukanio) after it was lawfully transferred to her in succession cause number 76 of 2015. The issues raised in the complaint and the statement of defence are issue of facts to be proved by evidence and not pure points of law to be dived upon summarily.
26. The plaintiff further submits that the suit is not res judicata for the reasons that the main issue in the application dated 26th November 2019 in succession cause No. 76 of 2015 was revocation of a grant of letters of administration issued to the 1st and 2nd defendants herein who in that succession cause were the administrators of the estate of Livingston Kamau Ruffus hence an interim order was



sought to restrain the administrators from subdividing land parcel Mau Narok Saipei Block 3/413 (Mutukanio) pending the hearing and determination of the application. The issue in the current suit concern the mode of sub-division of land parcel Mau Narok/Saipei Block 3/413 (Mutukanio) post transmission to the 1st defendant (not as part of an estate but as a free property of the 1st Defendant) after she made special arrangements ad undertaking with her children including the plaintiffs, the 2nd, 3rd and 4th defendants and the fraudulent manner of the sub-division done under the supervision of the 2nd defendant by the 5th defendant with fraudulent collusion between the 2nd and the 5th defendant to deliberately falsify actual sizes of some sub-divisions to the detriment of the plaintiffs and for the benefit of the 2nd defendant,

27. The plaintiff submits that the parties to the application in the succession cause and in the present suit are substantially different in that the succession application has the 1st and 2nd defendants as the two respondents while the present suit has five defendants.
28. Further that the capacity (titles) of the 1st and 2nd defendant as the respondents in the application in the succession suit is different from the capacity in which they are sued in the present suit. In the former they are sued as joint administrators of an estate while in the later suit they are sued in their personal capacities and as registered proprietor of specific parcels already derived from subdivision of land parcel Mau Narok/Saipei Block 3/413 (Mutukanio) post transmission and alongside other parties.
29. The defendant submits that the genesis of the dispute between the parties hereto is Succession Cause No. 76 of 2015. The court is referred to paragraph 4 of the Plaint whereat the plaintiffs describe themselves beneficial owners of all that parcel of land known as Mau Narok/Saipei Block 3/413(Mutukanio) previously registered under the name of Livingstone Kamau Rufus in the capacities as the children and spouse of Livingstone Kamau Rufus who died on 19th January 2015. The implication in this description is that whatever rights the plaintiffs should be pursuing have been conferred upon them by the Provisions of the *Law of Succession Act*.
30. The defendant refers to paragraphs 7, 18(iii) and 19 of the plaint, where the plaintiffs have asked this court to determine that there were Continuing and Implied Trusts created in Succession Cause No. 76 of 2015.
31. The defendants counsel invites the court to peruse the consent recorded by all the Plaintiffs together with the 1st and 2nd defendants prior to Confirmation of the Grant in Succession Cause no. 76/2015. In it, all the parties in the Succession Cause consented that the two assets in the estate, that is, Mau Narok/Saipei Block 3/413 and shares in the National Bank of Kenya Ltd devolve to the 1st defendant, Waithera Mohoyo in whole share. There was no qualification to that consent. That the issue of implied trust cannot be determined by this court. If the plaintiffs had any reservations about the distribution of the assets in the estate, they ought to have filed an appeal in a family court. They cannot raise it in an Environment and Land Court. It is the defendants' firm belief that all the issues raised in this suit have already been dealt with by a court of competent jurisdiction.

Analysis and Determination

32. This court finds the following issues ripe for determination:-
 1. Whether this court has jurisdiction to entertain this dispute
 2. Whether the suit is res judicata
 3. Whether the equitable doctrine of implied trust can be invoked



Whether this Court Has Jurisdiction to Entertain the Suit

33. The property under dispute is registered in the names of the 1st defendant through transmission. It is not true that the genesis of the dispute is the succession cause because upto the time of transmission and registration of the property into the names of the first defendant there was no dispute. The dispute arises when the 1st defendant subdivided and registered the resultant portions of the land in her name and transferred certain portions to some of her children. After the issuance of the confirmation of the grant, the succession court became functus officio. The dispute before me now revolves on the title, use and occupation of the suit property thus MAU NAROK/ SIAPEI BLOCK 3/ 413 (MUTUKANIO A). I do agree with the plaintiffs counsels submission that suit herein does not concern succession issues, the subject matter is not an estate of a deceased person and the suit properties as currently registered are owned by several persons including the 1st Defendant, the 1st Defendant jointly with the 4th Defendant, the 2nd Defendant jointly with the 3rd Defendant and the 4th Defendant in his own as against the plaintiffs.
34. Article 162 of The Constitution as read with section 13 of the Environment and Land Court Act expounds on the jurisdiction of this Court as follows:“(1)The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.(2)In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—(a)relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;(b)relating to compulsory acquisition of land;(c)relating to land administration and management;(d)relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and(e)any other dispute relating to environment and land.”
35. The broad jurisdiction of the Environment and Land Court is donated by Article 162 (2) (b) which provides that Parliament shall establish a court with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land.
36. Parliament indeed enacted the Environment and Land Court Act, 2011. This court has jurisdiction to entertain this matter by virtue of provisions of section 13(a) and of the Environment and Land Court Act.
37. I do find that the plaintiff case is majorly based on title to land, use and occupation of the suit parcel of land by virtue of an implied trust and therefore this court has jurisdiction to entertain the dispute as it revolves on use and occupation of land allegedly entrusted to the 1st defendant on behalf of her children.

2. Whether the Suit is Res Judicata

38. The defendant submits that all issues raised by the plaintiff in this suit have already been dealt with by a court of competent jurisdiction. The defendants refered to the application dated 26th November 2019 where the plaintiffs had sought to restrain the defendants from subdividing the land in Nakuru High Court Succession Cause no 76 of 2015. I do find that the issue before me revolves on the tenure of the 1st defendant and thus whether it is absolute or there is an implied trust.
39. The court agrees with the plaintiff that the suit is not res judicata for the reasons that the main issue in the application dated 26th November 2019 in succession cause No. 76 of 2015 was revocation of



a grant of letters of administration intestate issued to the 1st and 2nd defendants herein who in that succession cause were the administrators of the estate of Livingstone Kamau Ruffus hence an interim order was sought to restrain the administrators from subdividing land parcel Mau Narok Saipei Block 3/413 (Mutukanio) pending the hearing and determination of the application.

Whether the Equitable Doctrine of Implied Trust Can Be Invoked

40. On the issue as to whether the equitable doctrine of implied trust can be invoked, the question is whether the action of parties show the intention to create an implied trust, The court of appeal has time and again outlined the circumstances under which a Court would be prepared to imply a trust. One such case is Peter Ndungu Njenga vs. Sophia Watiri Ndungu [2000] eKLR wherein the Court succinctly observed:

“The concept of trust is not new. In case of absolute necessity, but only in case of absolute necessity, the court may presume a trust. But such presumption is not to be arrived at easily. The courts will not imply a trust save in order to give effect to the intention of the parties. The intention of the parties to create a trust must be clearly determined before a trust is implied.” Emphasis added.

41. I have considered the pleadings, evidence on record and rival submissions and do find that the suit property was initially owned by Livingstone Kamau Ruffus who died on the 19th January 2015. The plaintiffs and the defendants no 1-4 caused succession cause No.76 of 2015 to be filed and Waithira Mohoyo and Ruffus Mwangi Kamau were appointed the administratrix and administrator respectively of the estate of Livingstone Kamau Ruffus. Ultimately, a grant of letters of administration intestate was issued and later a certificate of confirmation of grant was issued whereby the suit property was distributed to the 1st defendant by consent of all beneficiaries. They agreed that the property and the shares were to devolve to their mother. Their mother Waithira Muhoyo decided to share the property to the children and asked the beneficiaries to come up with a formula of sharing the land but the beneficiaries never gave a proposal. According to DW2, some siblings such as Leah Wanjiru were not to get a share because of the fact that she sold ¼ an acre where the deceased was to be buried but never gave him the money. Mary Njeri was also not to get the land because her husband had snatched the walking stick of Livingstone Kamau Ruffus (deceased) and pushed him causing him to fall. Ruth Mumbi had no issue hence a plot was reserved for her. He states that in April 2019 they conducted the survey but the surveyor died. His mother visited the 5th defendant who agreed to do the survey. Consent of LCB was obtained. The surveyor went on the ground on the 18th and 19th October 2019 and subdivided the land 3 portions of 2.5 acres. The rest was to be subdivided amongst 6 of her sons.

42. DW2, testified that he was given the home portion in 1992 and constructed his house. He was given this land because he had financed a court case with his neighbor and sustained their father from 1984 to 2003 and also paid school fees for his siblings.

43. The DW2 further stated that before subdivision of the land Waithira Mohoyo was registered as the proprietor of Mau Narok/Siapei Block3/413 through transmission. The land measured 11.12 hectares approximately 27.478 acres. Waithira Mohoyo subdivided the land into ten portions of land despite the fact that the beneficiaries of the suit parcels of land were thirteen including herself. The subdivision was carried out by a licensed surveyor Mungai Wa Njenge Kabitu. He followed the right procedure in the subdivision of the land into 10 parcels as instructed by Waithira Mohoyo.

44. It is worth noting that in the consent the confirmation of grant the beneficiaries are listed: -

1. Leah Wanjiru Waweru



2. Martha Nyambura Kangethe
 3. Mary Njeri Mwangi
 4. Milka Wangari Kamau
 5. Joshua Njuguna kamau
 6. David Ngugi Kamau
 7. John Mbugua Mundati Kamau
 8. Albert Macharia Kamau
 9. Simon Gicheru Kamau
 10. Ruth Mumbi Kamau
45. Ruffus Mwangi Kamau, Purity Njeri Mwang, Waithira Mohoyo, John Mbugua Mundati did not sign the consent.
46. The property of the deceased was transferred to the 1st defendant and later subdivided and allocated as follows: -
1. Mau Narok/ Siapei Block 3/1483- Ruffus Mwangi Kamau
 - a. Purity Njeri
 2. Mau Narok/ Siapei Block 3/1484- Waithira Mohoyo
 - i. John Mundati
 3. Mau Narok/ Siapei Block 3/1485- Waithira Muhoyo
 4. Mau Narok/ Siapei Block 3/1486- Waithira Muyoyo
 5. Mau Narok/ Siapei Block 3/1487- Waithira Mohoyo
 6. Mau Narok/ Siapei Block 3/1488- Waithira Mohoyo
 7. Mau Narok/Siapei Block 3/1489- John Mundati
 - i. Mbugua Kamau
 8. Mau Narok/Siapei Block 3/1490- Waithira Mohoyo
 9. Mau Narok/Siapei Block 3/1491- Waithira Mohoyo
 10. Mau Narok/Siapei Block 3/1493- Waithira Mohoyo
47. This court finds that 4 children of the late Livingstone Kamau Ruffus have been allocated land out of the 12 children leaving out 8 children. Amongst the children left out are Leah Wairimu Kamau and Mary Njeri Kamau. There is no evidence that their father intended them to be left out of his inheritance. It is this courts view that those who signed the consent to confirmation and all children of the late Livingstone Kamau Ruffus are beneficiaries of the estate of the deceased and entitled to a share of the suit property. By consenting to the confirmation of grant and devolving the whole parcel of land to their mother the children of the late Livingstone Kamau Ruffus were appointing their mother as trustee of the suit property to hold to same for their benefit and their mother was supposed to subdivide the land to the benefit of all beneficiaries in the succession cause including the girls.



48. The fact that there 1st defendant and 2nd defendant ruled out transferring portions of the land to girls of the family is breach of the implied trust bestowed upon the 1st defendant. The girls were entitled to their father's property just like the boys.
49. I do further find that the appointment of the surveyor was done without consulting the whole family members and the instruction to the surveyor to subdivide the property into 10 parcels was against the spirit of the confirmation of grant and the list of beneficiaries that are clearly 13 members of the family including the 1st defendant.
50. This is a case where this court ought to, and does invoke equity to enable all beneficiaries to get a share of their father's property. This court finds that there was an implied trust bestowed upon the 1st defendant to subdivide and allocate the land parcel no Mau Narok/siapei Block 3/ 413 413 amongst the sons and daughters of the deceased Livingstone Kamau Ruffus
51. I do find that the plaintiffs have proved their case on a balance of probabilities that the act of consenting to the confirmation of grant that the property devolves to the 1st defendant created an implied trust and do grant orders that an injunction restraining the 1st 2nd 3rd and 4th defendants from transferring, selling, subdividing, alienating and/or otherwise dealing whosoever with land parcels:

Mau Narok/ Siapei Block 31 1483 (Mutukanio A)

Mau Narok/ Siapei Block 3/ 1484 (Mutukanio A)

Mau Narok/ Siapei Block 3/ 1485 (Mutukanio A)

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Mau Narok/ Siape} Block 3/ 1487 (Mutukanio A)

Mau Narok/ Siapei Block 3/ 1488 (Mutukanio A)

Mau Narok/ Siapei Block 3/ 1489 (Mutukanio A)

Mau Narok/ Siapei Block 3/ 1490 (Mutukanio A)

Mau Narok/ Siapei Block 3/ 1491 (Mutukanio A) Mau Narok/ Siapei Block 31 1492
(Mutukanio A)

52. That the registers of land parcels listed in prayer (a) above be canceled and the register for title number MAu Narok/siapei Block 3/ 413 (mutukanio A) be reinstated to position prior to the sub-division by mutation dated 24th October 2019.

- c) That upon reinstatement of land title number Mau Narok/siapei Block 3/ 413 (Mutukanio A), a fresh survey be done in the presence of all interested parties by a jointly appointed surveyor for sub-division of the parcel of land and registration in the names of each of the beneficiaries to the estate of the deceased Livingstone Kamau Ruffus who died on the 19th January 2015.

No orders as to the costs this being a family dispute.

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 15TH DAY OF MAY 2024.

A. O. OMBWAYO

JUDGE

