



**Mutacho v Kirui & 14 others (Environment & Land Case
30 of 2013) [2024] KEELC 4608 (KLR) (11 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4608 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 30 OF 2013**

**FO NYAGAKA, J
JUNE 11, 2024**

BETWEEN

PETER MUTACHO PLAINTIFF

AND

**GEORGE KIRUI 1ST DEFENDANT
PATRICK WANJALA MISIKO 2ND DEFENDANT
FELIX SHIKUKU 3RD DEFENDANT
DAVID WABOMBA 4TH DEFENDANT
ELIUD BARASA 5TH DEFENDANT
FRED WEKESA 6TH DEFENDANT
ALICE WAFULA 7TH DEFENDANT
JUDITH SIMIYU 8TH DEFENDANT
DANIEL KIRUI 9TH DEFENDANT
EMMANUEL WAFULA 10TH DEFENDANT
BOI WAFULA 11TH DEFENDANT
SIKINGO WAFULA 12TH DEFENDANT
MARY KIRUI 13TH DEFENDANT
STANLEY KIRUI 14TH DEFENDANT
SILAS KIRUI 15TH DEFENDANT**



JUDGMENT

1. By plaint dated 14/03/2013 and amended on 10/09/2019, the plaintiff seeks the following reliefs:
 - a. A declaration that he is the sole legal proprietor owner of the plot No. 435 title number Trans Nzoia/Maridadi/435 measuring 5 acres or thereabouts at Maridadi settlement scheme and he cannot be forced to subdivided his land to the defendants;
 - b. An order of injunction restraining the defendants from subdividing the plaintiff's land as per the agreement dated 06/02/2013;
 - c. Costs;
 - d. An order of eviction of the defendants from the above quoted title;
 - e. Interest on (c) above;
 - f. Any other relief this Honorable court may deem fit to grant.
2. Come 30/04/2019, all except the 2nd defendant entered appearance. They filed their respective statements of defence dated 15/05/2018 denying the claim in toto. They prayed that the suit be dismissed with costs. The plaintiff filed a reply to defence dated 10/06/2019 on 11/06/2019.

The Plaintiff's Case

3. The plaintiff has sued the defendants who are his sons, grandsons or daughters-in-law. He testified through his guardian and son PW1 Titus Barasa Mutacho, that he is the owner of all that parcel of land namely plot No. 435 situated at Maridadi Settlement Scheme measuring approximately five (5) acres. That the said parcel of land was allocated to him by the Settlement Fund Trust. That the plaintiff is 103 years of age.
4. He produced a correspondence letter dated 14/02/2013 [P.Exhibit 2] evincing the Ministry of Lands demanding for loan repayment in the sum of Kshs. 82,000.00, the allocation letter dated 17/06/1983 marked P.Exhibit 3 and receipts in support of payment of the loan dated 12/07/2013, 14/02/2013, 05/12/2006, 23/11/1983 & 03/12/1987 totaling Kshs. 50,375.00, marked P.Exhibit 4(a)-(e) all addressed to him.
5. Subsequently, the property was registered in his name and acquired title number Trans Nzoia Maridadi/435 measuring 3.0 Hectares or thereabouts. The title deed, issued on 13/03/2017, was produced and marked P.Exhibit 1.
6. He recalled that vide a sale agreement dated 06/04/1962 [P.Exhibit 5], John Kitui bought land belonging to Thomas Wekesa, Boniface Misiko Mutacho, Moses Simiyu Mutacho and Bonaventure Wafula Mutacho, measuring approximately thirty (30) acres, for a sum of Kshs. 11,250.00 situated in Mukunyi area Chwele Sub-location Kimilili Location.
7. The plaintiff lamented that the defendants were intent on taking away his suit land by coercing him to subdivide his land and carve out one (1) acre each, to be given to each defendant, from this suit land. He was reported by Boniface, Patrick and George Kirui to the District Office Kwanza on 01/02/2013 for failing to comply. He was then summoned to appear before the D.O. on 06/02/2013 through his letter dated 01/02/2013 [P.Exhibit 7]. The plaintiff attended the meeting.



8. In the course of the meeting, the D.O ruled against the plaintiff. According to PW1, the plaintiff was pressured to execute an agreement dated 06/02/2013 [P.Exhibit 8] compelling him to subdivide the land in favor of the defendants. The salient features of the agreement were as follows:
 - a. That the property would be divided amongst his children and the estate of his deceased children;
 - b. That each was to get one (1) acre of land upon payment of the SFT loan outstanding at around Kshs. 60,000.00;
 - c. That each child was to pay Kshs. 15,000.00 after which they would obtain the one (1) acre;
 - d. That anyone who failed to pay missed out and anyone that paid late would incur interest.
9. It was the plaintiff's evidence that however, they have not helped him clear that loan balance. The agreement was executed by the plaintiff, the 1st and 2nd defendants, Boniface Misiko Mutacho, Nathaniel Masibo, Isaac Khisa, Dismas Mwisamba as well as PW1 who were all present. DMF-3 was survey fees and placed in the name of Boniface. The plaintiff opined that he could not be compelled to subdivide his parcel of land as he reserved the right to deal with it in a manner of his own choosing. That he could not make of the proceedings of that day as having advanced in age, he has a hearing problem. He added that dividing the land to each of the parties at one (1) acre each was untenable as the land was only five (5) acres. In that case, he would be left with nothing.
10. The plaintiff informed the court that the defendants threatened to implement the agreement on 15/03/2013. He decried that if the agreement is implemented, he stood to be dispossessed and become landless yet the property was rightfully acquired. Furthermore, the 5th, 6th and 7th defendants could not claim from the estates of the deceased persons as no letters of administration had been taken out on behalf of the estate of those deceased persons.
11. In addition, the plaintiff gave Moses and Bonaventure eight (8) acres (four (4) acres each) at Keiyo Farm where they are supposed to stay and had no right to claim over the suit land. Vide an agreement dated 20/03/1984, Joseph Arap Kipserem sold four (4) acres to the plaintiff's son namely Moses Simiyu Mutacho. According to the plaintiff, he gave his son Moses, the money to purchase the said parcel of land. They however later returned to the suit land together with Boniface to assault the plaintiff and take over the suit land as they had sold their respective properties. They tried to resolve the matter through a welfare forum but it was unsuccessful. It is for the above stated reasons that the plaintiff filed suit and sought the reliefs as prayed in his plaint.
12. On cross examination, PW1 testified as to several family dynamics. He added that Moses Simiyu Mutacho, as per his Death Certificate could only have been seventeen (17) years of age in 1962 and as such, since he was a minor, he could not have capacity to enter into an agreement as was demonstrated in P.Exhibit 5. Furthermore, Bonaventure was younger than Moses and equally could not acquire property as per the law. That during allocation, the plaintiff was not around and his brothers did not submit his name. That all defendants except the 2nd defendant, had set up structures on the suit land. That the plaintiff currently cultivates on 2.5 acres of the suit land. That in 1989, a suit was filed in reference to the suit land. That the land was resurveyed and established to be seven (7) acres. That the plaintiff did not complain that three (3) of his sons had failed to repay the A.F.C. loan. That a majority of the plaintiff's relatives, including PW1, live on the suit land with their families.



The Defendants' Case

13. DW1, the 1st defendant adopted his witness statement dated 02/12/2019. He is a grandson to the plaintiff. He also adopted the witness statements of the 3rd - 15th defendants, also all dated 02/12/2019, stating that he had authority to do so. His father, Moses Matayo Kirui, is deceased. He was the plaintiff's 2nd son from the 1st house of the plaintiff. His evidence was that upon his father's death, he was buried in the suit land.
14. He testified that since birth in 1976, he had lived on the suit land. His evidence was that the 1st house which had five (5) children (three (3) boys and two (2) girls, are all deceased except Mary Naliaka. In the 2nd house, the three (3) children are alive. They are PW1 and his two (2) sisters.
15. That the plaintiff executed the agreement dated 06/02/2013 marked P.Exhibit 8 mutually entered to by the parties therein on their own volition. It was agreed that all four (4) sons would pay for the balance. He argued that the plaintiff complained to the chief that they had refused to pay the loan. His evidence was that contrary to the plaintiff's allegations, they had paid the said sum of Kshs. 15,000.00 each. The matter was referred to the D.O.
16. Upon paying the total sum of Kshs. 45,000.00 by the siblings from the deceased sons that the plaintiff filed this suit seeking to annul the agreement of 06/02/2013. The receipt, in the name of the plaintiff, was produced and marked D.Exhibit 2. It was his further evidence that PW1 was to pay the balance of Kshs. 15,000.00.
17. After paying the said sums of money, they went to the survey office on that day, that is 11/03/2013. They paid a sum of Kshs. 9,000.00 which receipt was produced and marked D.Exhibit 3. When the surveyor came to survey the land on 13/03/2013, he was chased away by the plaintiff.
18. According to DW1, this agreement is binding and the plaintiff should not be allowed to renege on the strength of his hearing problem. He argued that since the plaintiff had four (4) sons namely Musa Mathew Kilui, the late Bonaventure Wafula, the later Boniface Misiko Mutacho (the 2nd defendant's father) and PW1, the plaintiff would not be rendered homeless relying on a photograph marked D.Exhibit 1, he pointed out his mother's house (the 8th defendant) and where his father was buried.
19. DW1 accused PW1 of influencing the plaintiff not to abide by the contractual terms yet the loan has been fully paid. In his view, PW1 wanted to evict children of the 1st house so that the 2nd house can inherit the property alone. That in fact, PW1 and the 1st house members do not get along. That even when the plaintiff has invited them to settle the matter, PW1 has been blocking their access to the home. He denied ever been given land at Keiyo stating that if evicted, he will be rendered destitute and desperate. He prayed that the suit be dismissed with costs.
20. When cross examined, he stated that there was a dispute before the D.O. and the chief; that the plaintiff does not understand English taking into account the fact that he executed P.Exhibit 8 written in the English language. While he could not ascertain its origins, he confirmed that indeed the plaintiff was the owner of the suit land. That the receipt for Kshs. 45,000.00 did not disclose who paid for the said sums of money. That no order was given for survey to be conducted and the name of the issuer was not disclosed in the receipt. He denied being charged with any criminal offence in Criminal Case No. 1215 of 2013 or any criminal charges whatsoever.
21. DW2, the 12th defendant, testified that he is the son of Bonaventure Mutacho, one of the plaintiff's sons who died on 30/09/2005. He relied on his witness statement dated 02/12/2019. It rehashed the witness statement of DW1.



22. Over and above what was restated, DW2 produced his father's death certificate marked D.Exhibit 4. According to DW2, his father was buried in the suit land. He clarified that contrary to his witness statement that stated that he was born in 1976, his year of birth is 1990 and has lived on the suit land since birth. He denied that his father sold his land in 1962 as he was only nine (9) years old then. Finally, that they had never lived in Keiyo farm since they did not know of that particular parcel of land. He urged this court to dismiss the suit with costs.
23. When cross examined, he stated that the suit land was not ancestral land but belonging to the plaintiff; that he did not hear of the assault claims of 2013 by his cousin DW1 as he was in Kachibora; that Boniface Misikho bought land through self-financing; finally, he did not demonstrate to the court that he had burial permits to establish that his two (2) uncles were buried on the suit land.
24. 34 year old DW3, the 3rd defendant relied on his witness statement dated 02/11/2019. Similarly, it rehashed the contents of DW1 and DW2's witness statements. He clarified that he was born in 1989 and not 1976. He testified that his father, the late Moses Kilui, was the plaintiff's son. He died in 2004. He produced his death certificate that was marked D.Exhibit 5. He maintained that he was buried on the suit land. In addition, his father paid his share of Kshs. 15,000.00 having been assisted by his children. He prayed that the suit be dismissed with costs.
25. When cross examined, he testified that he neither went to the chief's office nor the D.O.s office as he was too young. He however accompanied his other relatives to pay for the survey fees. That while the receipt bore no name of the payee, he wasn't sure if the plaintiff ought to be coerced into distributing the property. That the 1st defendant is his brother. That he has never differed or had any grudges with his plaintiff grandfather.
26. When DW1 was questioned about Criminal Case No. 1215 of 2013 by this court, it was noted that he was stating grave discrepancies and inconsistencies. For this reason, he was stood down to pave way for DW4 Gladys Wambani, a senior court assistant, Kitale Law Courts to produce the court file. Her evidence was that George Kilui and Boniface Misiko (sic), the accused persons, were charged with the offence of assault contrary to Section 251 of the Penal Code. Having been found guilty, they were sentenced to serve two (2) years' probation. The accused persons faced a 3rd count where they were fined Kshs. 20,000.00. each and in default to serve six (6) months imprisonment.
27. DW4 stated that she could only trace the court register as the original court file had been destroyed in line with court procedures. The register [D.Exhibit 5/P.Exhibit 9] gave no indication of the name of the complainant or the date of conviction. DW4 also produced the judgment therein that was marked D.Exhibit 6/P.Exhibit 10. It is to be noted that George Kilui's conviction was entered on his plea while Boniface Misiko's plea was entered after trial on 13/04/2016.
28. According to the judgment, the complainant on the assault charge was the plaintiff while the complainant in CII was PW1. On the 3rd Count of committing an act of intentional disrespect to judicial proceedings, the particulars of the offence were that the accused, on 11/08/2013 at Maridadi village committed an act of intentional disrespect to the injunctive orders issued in Kitale ELC No. 30 of 2013 by going to plot No. 435 at Maridadi Settlement Scheme assaulting the plaintiff and grievously harming PW1 after those injunctive orders were issued. DW4 concluded the evidence.
29. DW1 was then called back to the stand. He profusely apologized for lying to the court when he initially stated that he was not charged in a criminal court. He confirmed that he was the 1st accused person in Criminal Case No. 1215 of 2013 and had served his conviction. He defended that he was once injured in the head and the repercussions caused him to suffer amnesia. That he was diagnosed in



September, 2023. He confirmed that the proceedings and judgment were an accurate account of what had transpired. He stated that he had since forgiven his grandfather, the plaintiff.

Written Submissions

30. At the close of hearing, parties were directed to file and serve their respective written submissions. The plaintiff filed his written submissions dated 15/02/2024 on 20/02/2024 to state that he had proven his case on a balance of probabilities upon considering the evidence adduced. He thus urged this court to allow his claim as prayed. The defendants on their part filed joint written submissions dated 05/02/2024 on that day to submit that based on the totality of the evidence, the plaintiff's suit was lacking in merit and ought to be dismissed with costs. In their view, all the defendants not the plaintiff's children had acquired ownership by way of a constructive trust.

Analysis & Disposition

31. I have considered the pleadings, examined the evidence and analyzed the law. I have also considered the submissions filed by the parties. It is the plaintiff's claim that he is the registered and lawful proprietor of all that parcel of land namely Trans Nzoia/Maridadi/435 measuring approximately 5 acres. Indeed, a title deed was issued in the plaintiff's name on 13/03/2017. In fact, the defendants do not dispute this fact and do not further suggest that it was obtained by means of fraud, misrepresentation or a corrupt scheme. I therefore find that the plaintiff, as per the title deed marked P.Exhibit 1, is the absolute and indefeasible owner of the suit land having qualified the tenets of Section 26 of the [Land Registration Act](#).
32. Idiosyncratically however, the defendants' contention is that pursuant to an agreement dated 06/02/2013 [P.Exhibit 8] they are entitled to a share of the suit land. That since the plaintiff entered the agreement on his own volition, he cannot be heard to go back on his word and state that since he has a hearing problem, he didn't know what he was executing at that time of execution.
33. I say that the same is strange because this is a family dispute scrambling for ownership of the plaintiff's estate who is still alive. The plaintiff is a senile man highly advanced in age at 103 years old. Instead of however enjoying his sunset years, he is embroiled in a bitter legal tussle over the ownership of his properly acquired parcel of land with his grandchildren, children and in-laws.
34. According to the agreement dated 06/02/2013, the suit property was supposed to be divided amongst his children and the estate of his deceased children; each of his children was to get one (1) acre of land upon payment of the SFT loan outstanding at around Kshs. 60,000.00; each child was to pay Kshs. 15,000.00 after which they would obtain the one (1) acre and anyone who failed to pay missed out and anyone that paid late would incur interest. The agreement was executed by the plaintiff, the 1st and 2nd defendants, Boniface Misiko Mutacho, Nathanal Masibo, Isaac Khisa, Dismas Mwisamba as well as PW1 who were all present.
35. It is not disputed that the plaintiff sired eight (8) children. However, only five (5) of them are alive. It is also not gainsaid that the deceased children have been survived by their respective kinship. All these persons are living on the plaintiff's property measuring approximately five (5) acres. The question that therefore arises is whether the defendants had a lawful claim over the suit land and therefore entitled to live on it. In other words, is the plaintiff entitled to evict the defendants from the suit land?
36. According to the plaintiff, the defendants should be evicted because they have threatened to enforce the agreement dated 06/02/2013 which he vehemently disputed its contents on account of advance in age. The defendants on the other hand stated that the contract ought to be undisturbed and remain



enforced. It is instructive to note that while the defendants urged this court to not disturb the contract, they did not file any counterclaim as to seek for any reliefs insofar as the contract is concerned.

37. Looking at the substance of the contract, Section 38 of the *Land Act* provides as follows:
1. Other than as provided by this Act or by any other written law, no suit shall be brought upon a contract for the disposition of an interest in land-
 - a. the contract upon which the suit is founded-
 - i. is in writing;
 - ii. is signed by all the parties thereto; and
 - (b) the signature of each party signing has been attested to by a witness who was present when the contract was signed by such party.
 2. Subsection (1) shall not apply to-
 - a. a contract made in the course of a public action;
 - b. the creation or operation of a resulting, implied or a constructive trust; or
 - c. any agreement or contract made or entered into before the commencement of this Act, provided that-
 - I. the verbal contracts shall be reduced to writing within two years from the date of enactment of this Act; and
 - II. the Cabinet Secretary shall put a notice of the requirement to reduce the contracts in writing, in a newspaper of nationwide circulation.
38. The plaintiff on his part is apprehensive that the agreement dated 06/02/2013 will be enforced if this court does not intervene. It is for this reason that I quest to establish whether firstly the contract met the parameters set out in section 38 of the Act as to warrant its enforceability.
39. In my humble view, I find that the contract failed to meet the principle threshold set out in Section 38 (1) for the following reasons: firstly, it must be borne in mind that the agreement sought to favor all his children. From that agreement, it is not clear if all the children executed the said agreement or their representatives as set out by the law. As such, not all parties benefitting from the agreement testified. Secondly, it is not indicated whether there were any witnesses that have attested to each of the plaintiff's children's signatures. It therefore in my view falls short of enforcement.
40. In their submissions, the defendants submitted that all factors considered, the plaintiff should be found to hold the suit land in trust for them by way of a constructive trust. Notably, Section 38 (2) exempts the applicability of Section 38 (1) of the Act to constructive trusts.
41. The doctrine of constructive trusts and its applicability was ruminated by our apex court in the case of *Shah & 7 Others v Mombasa Bricks & Tiles Limited & 5 Others* [2023] KESC 106 (KLR) (28) that held as follows:

“A constructive trust is thus an equitable instrument which serves the purpose of preventing unjust enrichment. The Canadian Supreme Court in *Soulos v Korkontzilas*, [1997] 2 SCR 217, a case which involved a land dispute stated as follows, as to the purpose of constructive trust:



“The constructive trust is an ancient and eclectic institution imposed by law not only to remedy unjust enrichment, but to hold persons in different situations to high standards of trust and probity and prevent them from retaining property which in “good conscience” they should not be permitted to retain. While Canadian courts in recent decades have developed the constructive trust as a remedy for unjust enrichment, this should not be taken as expunging from Canadian law the constructive trust in other circumstances where its availability has long been recognized. Under the broad umbrella of good conscience, constructive trusts are recognized both for wrongful acts like fraud and breach of duty of loyalty, and to remedy unjust enrichment and corresponding deprivation. While cases often involve both a wrongful act and unjust enrichment, constructive trusts may be imposed on either ground.”

Similarly, although in a matrimonial property dispute, the Canadian Supreme Court in *Murdoch v Murdoch* [1975] 1 SCR 423 stated as follows:

“As is pointed out by Scott, *Law of Trusts*, 3rd ed., 1967, vol. 5, at p. 3215, “a constructive trust is imposed where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it ... The basis of the constructive trust is the unjust enrichment which would result if the person having the property were permitted to retain it. Ordinarily, a constructive trust arises without regard to the intention of the person who transferred the property”; and, again, at p. 3413, quoting Judge Cardozo “a constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee.”

The United States Supreme Court in *Harris Tr & Sav Bank v Salomon Smith Barney Inc*, 530 US 238, 250–51 [2000] citing *Moore v Crawford*, 130 US 122, 128 [1889] stated thus:

“Whenever the legal title to property is obtained through means or under circumstances ‘which render it unconscientious for the holder of legal title to retain and enjoy the beneficial interest, equity impresses a constructive trust on the property thus acquired in favor of the one who is truly and equitably entitled to the same.”

As has been established therefore, trusts are created either expressly, where the trust property, its purpose and the beneficiaries are clearly stated, or established by the operation of the law. Like in the instant case, where it is not expressly stated, the trust may be established by operation of the law.

From the definitions above, we establish that a constructive trust is a right traceable from the doctrines of equity. It arises in connection with the legal title to property when a party conducts himself in a manner to deny the other party beneficial interest in the property acquired. A constructive trust will thus automatically arise where a person who is already a trustee takes advantage of his position for his own benefit.” (underline mine)

42. In the present case, the plaintiff herein testified that he acquired the suit property from a previous owner. He was thereafter issued with a title deed. In my view, the purchase of the suit property by the plaintiff did not deny the defendants any beneficial interest in the property acquired. If anything, the defendants have been living on the suit property, with some testifying that they lived therein at birth. For those reasons, the plaintiff did not take advantage of his position for his own benefit but in actual sense for the benefit of his kinship.



43. It appears that the parties harmoniously co-existed for a long duration until 2013 when tussles begun over the suit parcel of land. On 01/02/2013, Boniface, the 1st and 2nd defendants reported the plaintiff to the District Office Kwanza over a land dispute. The parties would appear on 06/02/2013 to find a resolve culminating in the disputed agreement dated 06/02/2013.
44. Thereafter that the plaintiff filed the present suit. Contemporaneously, the plaintiff filed an application under certificate seeking injunctive relief. He was given an injunctive order on 15/03/2013 restraining the defendants from dealing with the suit land pending the determination of the main suit. That injunction was confirmed on 07/05/2013.
45. The 1st defendant and his cousin were charged with the offence of assault contrary to Section 251 of the Penal Code in Criminal Case No. 1215 of 2013. Having been found guilty, they were sentenced to serve two (2) years' probation. The accused persons faced a 3rd count where they were fined Kshs. 20,000.00 each and in default to serve six (6) months imprisonment. The charges arose from assault occasioned by the accused persons upon the plaintiff and PW1.
46. The accused persons were further charged with committing an act of intentional disrespect to judicial proceedings, the particulars of the offence were that the accused, on 11/08/2013 at Maridadi village committed an act of intentional disrespect to the injunctive orders issued in Kitale ELC No. 30 of 2013 by going to plot No. 435 at Maridadi Settlement Scheme assaulting the plaintiff and grievously harming PW1 after those injunctive orders were issued.
47. It is truly sad and this court empathizes with the unfortunate turn of events where it appears that family members cannot live together in peace and harmony. I am also appalled and disheartened by DW1 who after being caught red handed committing perjury in a court of law, excused that he suffered from forgetfulness to explain why he denied that he was ever charged in a criminal court and then later on state that he was but he 'forgot'.
48. It is also unfortunate that the defendants have become too entitled to acquire ownership of the suit land against their grandfather at all costs. For instance, DW2 and DW3, bore the same year of birth in their witness statements which they categorically stated that they were much younger in years and it was therefore a 'typographical error'. They even dared state that they did not know whether the 1st defendant had been charged. In my view, they were deliberately untruthful because they wanted to defeat the plaintiff's lawful and recognizable claim.
49. DW1 displayed violent actions against his own relative simply because he has donated himself an acquired right as a member of the family. In fact, he was seen to be chest thumping upon the realization that injunctive orders had been granted against his will. I would hope that over the years, DW1 has since reformed and will never resort to violence against his own family out of anger.
50. The plaintiff certainly had fears that were apparent, real and likely to occur following this turn of events. He certainly deserves the benefit and the protection of the law. I see the bigger picture and it is my intention that when I give my final orders, the parties herein shall resolve to live as a family unit and avoid enmity bearing in mind the dictates of Article 45 (1) of our Constitution which provide that the family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State.
51. In light of the above, I make the following orders:
 - a. A declaration be and is hereby made that the plaintiff is the sole, absolute and indefeasible legal proprietor of all that parcel of land namely Trans Nzoia/Maridadi/435 measuring approximately 5 acres at Maridadi Settlement Scheme.



- b. An order of injunction be and is hereby issued restraining the defendants from subdividing the plaintiff's parcel of land namely Trans Nzoia/Maridadi/435 measuring approximately 5 acres as per the agreement dated 06/02/2013.
- c. Within sixty (60) days from the date of this order, the plaintiff and the defendants are directed to enter into a written agreement as to how they will amicably live in unison over the parcel of land.
- d. In the event of failure by the parties to agree on modalities of harmonious living as set out in (c) above, the plaintiff shall be at liberty to evict the defendants from the suit parcel of land namely Trans Nzoia/Maridadi/435 measuring approximately 5 acres on the lapse of those sixty (60) days.
- e. Since this is a family dispute, each party shall bear its own costs of the suit.

52. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED VIA ELECTRONIC MAIL THIS 11TH DAY OF JUNE 2024.

HON. DR. IUR FRED NYAGAKA

JUDGE, ELC KITALE

