



Ndeti and Ndeti (Suing as the Administrators of the Estate of the Late Harrison Mulili Ndeti) & 4 others v Ndeti (Administrator of the Estate of the Late Peter Nzuki Ndeti - Deceased) & another (Environment & Land Case 1116 of 2015) [2025] KEELC 1129 (KLR) (17 February 2025) (Judgment)

Neutral citation: [2025] KEELC 1129 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1116 OF 2015**

**EK WABWOTO, J
FEBRUARY 17, 2025**

BETWEEN

MATEI MULILI JULIUS NDETI AND NZIOKI MULILI NDETI (SUING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE HARRISON MULILI NDETI) 1ST PLAINTIFF

SYOKWIA KIILUNDETI AND VINCENT SOMBA NDETI (ADMINISTRATORS OF THE ESTATE OF THE LATE JULIUS KIILU NDETI - DECEASED) 2ND PLAINTIFF

GREGORY MUTHEKE NDETI (ADMINISTRATOR OF THE ESTATE OF THE LATE MUTHEKE MUTUA NDETI - DECEASED) 3RD PLAINTIFF

URBANUS KIOKO NDETI AND BONIFACE NTHIWA NDETI (ADMINISTRATORS OF THE ESTATE OF THE LATE ALPHONSE NTHIWA NDETI - DECEASED) 4TH PLAINTIFF

ALEX KIILU NDETI AND ESTHER WAQO (ADMINISTRATORS OF THE ESTATE OF THE LATE PATRICK MUTHEKE NDETI - DECEASED) 5TH PLAINTIFF

AND

RAPHAEL MUSYOKA NDETI (ADMINISTRATOR OF THE ESTATE OF THE LATE PETER NZUKI NDETI - DECEASED) 1ST DEFENDANT

CECILIA SITUMAI NDETI AND MICHAEL KYENDE NDETI (ADMINISTRATORS OF THE ESTATE OF THE LATE PROFESSOR KIVUTO NDETI - DECEASED) 2ND DEFENDANT



JUDGMENT

1. When this suit was initially instituted, parties were referred to the Court Annexed Mediation pursuant to MLM Mediation Case No. 291 of 2022 which was unsuccessful as the parties being family members were unable to reach a settlement and hence necessitating the matter to proceed to its logical conclusion before this Court.
2. It is presumably so that John Ndeti Mwanja (deceased) the patriarch of the 'Ndeti family' never knew that his sons would acquire immense wealth through their sheer hard work and effort that it would trickle down to their children and grandchildren. It can also be said that he equally never anticipated or even imagine that there would be disputes over the said properties that would find its way in court.
3. According to the Plaintiffs the suit herein relates to six brothers of the Ndeti family and their nephew. The said brothers are listed as Mutheke Mutua Ndeti, Julius Kiilu Ndeti, Peter Nzuki Ndeti, Alphonse Nthiwa Ndeti, Harrison Mulili Ndeti, Professor Kivuto Ndeti and Patrick Mutheke Ndeti the son of the late Mutheke Mutua Ndeti.
4. Vide an amended plaint dated 15th February 2020, the Plaintiffs have sought for several reliefs against the Defendants as enumerated in the said plaint.
5. The suit was contested by the Defendants. The 1st Defendant filed a statement of defence dated 10th June 2021 denying the alleged joint proprietary interest in the said properties on the grounds that the business carried on under the partnership did not entitle them as business partners and or the Plaintiffs herein to any other interests than those provided for under the law.
6. The 2nd Defendant filed a Statement of Defence dated 26th February 2016 and amended on 1st March 2021 denying the averments made in the amended plaint and seeking for dismissal of the Plaintiff's suit.

The Plaintiffs case

7. According to the Plaintiffs the dispute leading to the filing of this suit commenced in the year 2015 after the death of Peter Nzuki Ndeti on 14th March 2015 whereupon the only remaining partner in P. N. Ndeti & Bros, Harrison Malili Ndeti as he then was, called for a family meeting so that the Ndeti family could discuss on the way forward for the family partnership and properties. It was averred that the families of Peter Nzuki Ndeti and Professor Kivuto Ndeti refused to attend the said meeting claiming that the family of Professor Kivuto Ndeti had already been given 17 properties out of the family properties by the High Court in Succession Cause No. 1587 of 2017 Estate of Kivuto Ndeti without the knowledge of all the other family members. The grant issued to the administrators of the estate of Professor Kivuto Ndeti was challenged upto the Court of Appeal in Civil Appeal No. 64 of 2019 on the grounds that it was fraudulently obtained without disclosing to the court that the Plaintiffs herein owned the said 17 properties jointly and equally with the late Professor Kivuto Ndeti though the titles were in his name and the said grant was revoked by the Court of Appeal on 18th February 2022.
8. It was averred that the five Plaintiffs and the two Defendants represent the 7 parties who formed a family partnership known as P. N. Ndeti & Bros. The said partnership was initially comprised of five brothers namely; Mutheke Mutua Ndeti, Julius Kiilu Ndeti, Peter Nzuki Ndeti, Alphonse Nthiwa Ndeti and Harrison Muli Ndeti.
9. The five brothers joined hands in business prior to 1939 and when the 2nd World War broke in 1939, they jointly made a decision for three brothers to go to the war and be sending home money to boost the



family business and two brothers to remain home and take care of the family and the business. Those who went to the war with British troops were Julius Kiilu Ndeti, Peter Nzuki Ndeti and Harrison Mulili Ndeti and Harrison Mulili Ndeti. Those who remained behind to take care of the family and business were Mutheke Mutua Ndeti and Alphonse Nthiw'a Ndeti.

10. After the 1st World war in 1945 those who had gone to the war came back and the brothers diversified their joint business owing to skills they had learned during the war and their business expanded to include farming, a restaurant at Kaloleni market, posho mill and agricultural produce in Kaloleni and Mitaboni areas of Ukambani.
11. It was averred that at that time, Peter Nzuki Ndeti was the most learned and the leader of the business while the eldest brother Mutheke Mutua Ndeti was the head of the family. The partnership between the brothers was based purely on blood, brotherhood, Kamba Customary Laws and norms and overall, trust between the five brothers for they had no partnership deed.
12. It was also averred that most importantly, they worked jointly with their wives and their children and the family unit was so intertwined that they all lived with their wives together with their children in a way to the extent that no child knew who was their biological parent.
13. In 1955, the five (5) brothers registered a partnership known as P. N. Ndeti & Bros and the partners were Peter Nzuki Ndeti, Harrison Mulili Ndeti, Mutheke Mutua Ndeti, Julius Kiilu Ndeti and Alphonse Nthiw'a Ndeti.
14. In 1967, Professor Kivuto Ndeti who was the last born among the brothers came back to Kenya from the U.S.A where he had gone for further studies and together with Patrick Mutheke Ndeti (first born son of the Mutheke Mutua Ndeti) they were both included in the family business because their successful education was viewed as an asset to the family to enable the family business grow to modern trends then. The new entrants worked together with the other partners jointly and on 1st September 1972 the two were officially registered as partners in P. N. Ndeti & Bros.
15. In 1975, the partnership ran into problems after the death of Mutheke Mutua Ndeti who was one of the partners and in order to solve the said problems of the partnership a company by the name P. N. Ndeti & Bros Ltd on was registered on 3rd December 1972.
16. It was further averred that on 13th March 1979, the directors of the company including all the brothers and P. N. Ndeti & Bros Ltd held a meeting at Plot No. 3 at Athi River town and the family jointly identified and agreed on what constituted as family/partnership assets and a list thereof was written down clearly indicating that all though some of the properties were under names of the family individual members, they formed part and parcel of the family or partnership assets and they jointly and equally owned regardless of the name appearing on the title.
17. It was further averred that the Defendants herein Peter Nzuki Ndeti and Kivuto Ndeti were present in the meeting and they SIGNED the minutes as the true position of the listed assets being 24 properties then.
18. The next family company meeting was held on the 7th April 1979 and minutes were taken and Kivuto Ndeti confirmed that property No. 25 had been left out in the previous meeting, that was the Athi River Quarry Plot at the Mombasa road/Kinanie road junction and it was included in the family assets and the minutes were signed.
19. According to the Plaintiffs, the list of the agreed initial 25 assets were as follows:-
 1. Utange Plot No. 247 Section 1 Mombasa



2. Mua Hills Springs farm Plot No. 10190/1
 3. Plot No. 3 Athi River trading center
 4. Plot No. 337/171 Athi – River trading ceter
 5. All T.O.L Plots within Makadara market and market extension.
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 7. Muthurwa Plot No. 7149/9.
 8. Kitusuru property in Nairobi
 9. Kileleshwa property in Nairobi
 10. Athi River Plot No. 337/23
 11. Athi River Plot No. 337/26
 12. Shares in Mitaboni Katani Co. Ltd
 13. Shares in Lukenya Ranching & Farming Co-operative Society Ltd
 14. Shares in Masaku Beer & Wines Distributors Ltd
 15. Shares in Kenya Gypsum Ltd
 16. Shares in Syokimau Farming Co. Ltd
 17. Shares in B.A.T (Kenya) Ltd
 18. Shares in Kenya Breweries Ltd
 19. Shares in Auto Spring Manufacturers Ltd
 20. Ngu Nyumu Farm under the name of Mulili Ndeti
 21. All plots and assets traditionally inherited
 22. All plots in Metuma market
 23. Miwani plot in Machakos Township
 24. Mutito Andei plot
 25. Athi-River Quarry plot
20. It was contended that that the above 25 properties and family assets are the ones that lead to the acquisition of the current family assets including shares at land buying companies such as Lukenya Ranching & Co-operative Society and Katani – Mitaboni Co-operative Society, Syokimau Co-operative Society that have now been converted into plots and have land reference numbers and equally all the temporary occupation licences (T.O.L's) at Makadara market and its extension and Sofia area all of Mavoko Municipal Council then have become plots with titles.
21. It was further contended that that the shares in Kenya Gypsum Ltd, B.A.T Kenya Ltd, Kenya Breweries Ltd and Auto Spring Spares Ltd have all through since the 1960's generated income to the family and the monies were used to acquire more assets upto date.



22. The Plaintiffs also listed other several properties in their amended plaint which according to them were 'born' from the original properties.
23. During trial, six witnesses testified on behalf of the Plaintiffs. Gregory Mutheke Ndeti the son of Mutheke Mutua Ndeti testified as PW1. He relied on his witness statements dated 15th March 2021 and 13th March 2023 together with Plaintiffs' bundle of documents dated 16th November 2022 and 15th February 2021 in his evidence in chief. It was his testimony that when the Ndeti brothers started their business, the same was initially not registered but was later registered as partnership then later moved to a limited liability company.
24. It was also his testimony that when his father died, there were challenges with funds and that is why there was a proposal to form a limited liability company. The Directors of the company were all family members. A meeting was held to agree on the transition from partnership to a Limited Liability Company. It was stated that in the said meeting, it was agreed that all assets be moved to the company.
25. According to the witness no objection was raised by any attendee in respect to that decision and the minutes of that meeting were confirmed as a true deliberation by the family members who attended.
26. He also stated that it is was not true that the properties belonged to the Defendants since he used to collect rent on some of the properties which would be remitted to a common pool.
27. According to the witness, things changed when Peter Nzuki Ndeti died. The family had several meetings to resolve the issue but none was successful.
28. On cross-examination by Counsel for the 1st Defendant, he stated that he started working at the company in 1973. He attended all the family meetings and the minutes confirms his attendance. He also stated that the partnership was registered in 1955 as P. N. Ndeti & Bros. He also stated that there was a Notice of Change from the registrar showing that Mulili Ndeti and Nthiwa Ndeti retired from the partnership. He stated that his father Mutheka Mutua Ndeti died in 1974 when he was still a partner. He was not present when the registration of the said partnership was made. He was involved in acquiring some of the properties by contributing some funds for their acquisition. His late father and the other partners who were brothers were all working in trust. The partnership was never formally dissolved. The Mua homestead is registered in the names of all the parties. He did not have receipts to shops the rental income of the properties listed at page 138 of the Plaintiffs bundle of documents. No valuation was also done for the same.
29. On further cross-examination by Counsel for the 1st Defendant, he stated that the properties listed at page 138 of the Plaintiffs bundle of documents are not managed by him. Some properties are developed but not registered in his name. He also stated that even those registered in his name belong to the entire family. The company was registered in 1979, Patrick Ndeti and others were registered as directors. He has no shares in the company. He attended the meeting held in the year 1979 as a family member. The properties were never shared amongst themselves. The company is no longer in existence since it was deregistered in 1997 but no properties were shared out.
30. He also stated that Peter Ndeti was the head of the family and its business leader. The land in Katani was sold by the family and he was involved in its sale and transfer.
31. Upon cross-examination by Counsel for the 2nd Defendant, he stated that the letters of administration were issued to Kivuto Ndeti as the administrator when this case had already been filed.
32. When asked as to whether the partnership is still in existence, he sated that according to him the partnership is still in existence even though he was never a partner. He also stated that he had seen a



- signed document showing that the partnership was dissolved. He also stated that he was aware that this court cannot determine matters dealing with company shares.
33. On further cross-examination, he stated that the properties were never shared out by the family members. Some properties in the Plaintiffs' list had already been sold and thus they are only seeking for the computation of the sale and get what is due to the family.
 34. He also stated on cross-examination that the properties were acquired jointly by the brothers. The company was dissolved in 1997 and was never revived. He also stated that there was evidence that the Ndeti brothers contributed money and bought the properties.
 35. When re-examined he stated that the purpose of the family meetings which he attended was to identify the properties and to confirm that the said properties belong to them and not solely by one person. No objection was raised by Peter Nzuki Ndeti and Professor Kivuto Ndeti who had also attended the said meeting. He also stated that the brothers acted in trust and none of them left a will. The grant for the Estate of Kivuto Ndeti was revoked by the Court of Appeal.
 36. Matei Mulili Julius Ndeti testified as PW2. He relied and adopted the witness statement filed by PW1 in his evidence in chief.
 37. On cross-examination by Counsel for the 1st Defendant, he stated that his father never resigned from the partnership nor retired from despite the Notice of Change of Partnership that was on record.
 38. On further cross-examination, he stated that Mulili Ndeti could have retired from the partnership. He also stated that the properties that were acquired in 1999 and 1994 are still family properties. All the other properties were acquired after Mulili Ndeti had retired from the partnership.
 39. He further stated that he did not attend the meeting held on 18th March 1979 but the same was attended by Gregory Mutheke Ndeti. He also stated that he was equally not present during the meeting held on 7th April 1979 but Harrison Mulili Ndeti his father was present.
 40. He also stated that all the properties were being acquired and held by the partnership and that the evidence of their contribution can be derived from the proceeds of partnership being used to acquire the said properties.
 41. When asked about the proceedings before the Land Tribunal, he stated that the effect of the Tribunal Ruling was that whoever wants a share of Mua Hills must pay part of Kshs. 970 Million and his father did not pay the same because he had no claim upon its sale. He also stated that the Tribunal had ordered that titles listed therein be transferred to Peter Ndeti and he had no evidence if his father paid up for his shares.
 42. On cross-examination by Counsel for the 2nd Defendant he stated the following; his late father Harrison Ndeti did not have any properties listed in his name. He had no evidence to show that the properties were acquired by partnership. The brothers were working in trust and that none of the properties have been distributed. He also stated that they are claiming all the properties as belonging to the family.
 43. When re-examined, he stated that his father retired from the partnership and he was never paid any part of his shares. He also stated the initial 25 properties are listed in the minutes of 1979 and the other 130 properties were acquired from the proceeds of the initial 25 properties.
 44. Vincent Somba Ndeti testified as PW3. He relied and adopted his witness statement dated 15th February 2021 in his evidence in chief. He also stated that he is the son of Julius Kiilu Ndeti who was one of the original founders of the Ndeti family business. He stated that his father passed away in 1981 when he was still in business with his brothers and after his death the family business was never wound



- up and neither were his shares distributed. He also stated that the late Prof. Kivuto Ndeti was present in the family meetings when the property issues were discussed and he never claimed being the sole owner of the properties.
45. On cross-examination by Counsel for the 1st Defendant he stated the following: the partnership has never been dissolved, the letters of administration of Julius Kiilu Ndeti does not list any properties and it has no schedule of assets. P. N. Ndeti and Bros. Holding Company was formed in 2015 but the properties were not transferred to the said company.
 46. On further cross-examination, he stated that P. N. Ndeti & Bros. Limited was dissolved in 1977. There is no registered legal entity known as the Ndeti family. The partnership was never formally dissolved.
 47. When cross-examinated further by Counsel for the 2nd Defendant, he stated the that; he could not confirm whether they listed any properties during the succession proceedings of his father. That he would still want to have the properties that have been sold declared as part of family property and their proceeds accounted for and distributed equally. He also stated that his stepmother sold some property for Kshs. 50,000,000/= together with his mother. The proceeds were shared with their children and the Defendants were not informed of the sale.
 48. On further cross-examination, he stated that the partners worked in trust. He never participated in High Court Case 430 of 1981 neither was his father a litigant in that matter. He also stated that he had not seen the decree signed by Justice Okongo adopting the decision of the elders.
 49. When re-examined, he stated that the brothers started off as a family business which was registered as a partnership in 1955. Professor Kivuto Ndeti their last born joined them in 1972 and Patrick Ndeti the first son of Mutheki Ndeti was also incorporated after the death of Mutua Mutheki.
 50. He also stated that the family of Professor Kivuto Ndeti declined to join the holding company. The partnership was never formally dissolved. There was no distribution of its assets and liabilities. The family cemetery is housed at the Mua Springs Farm. Professor Kivuto Ndeti was buried there. The elders had resolved that the said property did not belong to Professor Kivuto Ndeti but the entire Ndeti family.
 51. Esther Ngondu Ndeti testified as PW4. She adopted her witness statement dated 15th February 2021 in her evidence in chief. She stated that all the Ndeti brothers had a partnership. There was no individual ownership of any property. After the death of his mother they got a confirmed grant through her mother to protect the properties in Athi River which had been invaded by squatters. He also stated that property 7149/9 belongs to the Ndeti family. None of the properties has been distributed.
 52. When cross-examined by Counsel for the 1st Defendant she stated that the issue of squatters invading their properties had not been stated in her statement. She also stated that none of the properties belong to any individual; the same belong to the family. She further stated that even the properties listed under the individual names belong to the family.
 53. On further cross-examination, she also stated that the partnership was never dissolved. It is still in existence. She could not be able to show any property acquired by his father. She could not be able to see any property listed in the names of the company save for some properties.
 54. She also stated in cross-examination that there were some properties which were acquired after the partnership had ceased to exist. The jurisdiction of this court does not extend outside the territorial jurisdiction of Kenya. Patrick Ndeti is the one who drew the Memorandum and Articles of Association of the company. On 27th September 1997 he wrote a letter objecting to the deregistration of P. N. Ndeti Bros Ltd. She could not tell if the loan taken by Patrick Ndeti was ever re-paid.



55. When cross-examined by Counsel for the 2nd Defendant she stated that she was testifying as an administrator of the estate of Patrick Ndeti even though she did not have any authority before court to do so. The properties have never been re-distributed. She does not know all the properties. She did not know if her late father played any role in the sale of some assets. The partnership was never dissolved. The Court of Appeal stayed the implementation obtained by the Estate of the 2nd Defendant. The properties were acquired jointly as partners. Some properties were listed to individual names but not owned by them. She could not remember the exact date that her father joined the partnership. The properties that were sold are not in dispute. The third parties who purchased the properties have not been sued in this case.
56. In re-examination, she stated that his father was the first born to the Ndeti family. The properties acquired by the partners over time have never been shared. The grant was revoked by the Court of Appeal. Nobody was ever forced to sign any document. The Tribunal decision did not indicate which house was sold.
57. Sylvester Ndeti testified as PW5. He relied on his witness statement dated 15th March 2021 and a further statement dated 15th March 2023. He also adopted the witness statement and bundle of documents produced by PW1 in his evidence in chief. It was his testimony that the Ndeti Brothers were working in trust. The properties have never been distributed. It was never owned individually. The properties were all bought by the six brothers. The family of the 2nd Defendant cannot claim to be owning any property individually.
58. On cross-examination by Counsel for the 1st Defendant, he stated that he did not have any grant in court neither did he have any power of attorney. He also stated that he attended the proceedings before the Tribunal and that his father told him that he had been misled by his brother Professor Kivuto Ndeti.
59. On cross-examination by Counsel for the 2nd Defendant he stated that the power of attorney that was issued had a clause authorising him to collect rent. He also stated that he is not an administrator of the estate of Peter Nzuki Ndeti.
60. When re-examined, he stated that the Tribunal proceeds were nullified by the court. He also stated that the Plaintiffs are seeking a declaration that the property be distributed and shared equally to the family and what has been sold be accounted for. In respect to the power of attorney he stated that the same had been revoked because some of his brothers conspired to have it revoked. He also stated that his father denied ever revoking it. He also stated that the brothers worked in trust.
61. Urbanus Kioko Ndeti PW6 was the last witness to testify on behalf of the Plaintiffs. He relied on his witness statement dated 15th February 2021 and a further statement that was on record in his evidence in chief. It was his testimony that the partnership was never dissolved and he urged the court to grant the prayers sought.
62. On cross-examination by the 1st Defendant's Counsel he stated that his father was removed from the partnership. He also stated that some properties were acquired when his father had retired from the partnership. His father was also one of the objectors at the Tribunal.
63. When cross-examined by Counsel for the 2nd Defendant, he stated that there is a property that he sold for the family for Kshs. 120 Million after the family had agreed to have it sold. After the sale, the family of Professor Kivuto Ndeti was given its share even though he did not have the said evidence in court. He also stated that his father never disputed the contents of the affidavit sworn by Peter Nzuki Ndeti on 10th March 1981. He had no evidence to show how the rent was being distributed.



64. On re-examination, he stated that the rent from the properties would be collected then used to buy more properties. He also stated that his father went to stay at Yatta for about 3 – 4 years. He attended the meeting in 1979. The property that was sold was only sold after the approval of the family. The 2nd Defendant's family was involved.

The case of the 1st Defendant

65. The 1st Defendant's case is contained in the Statement of Defence dated 10th June 2021, witness statement of Raphael Musyoki Ndeti and the 1st Defendant's bundle of documents on record.
66. It was the 1st Defendant's case that the business carried under the name P. N. Ndeti & Bros entitled the business parties thereof or the Plaintiffs to any other interest in the said business other than those provided for in law. The 1st Defendant denied the alleged property interest of the business partners wives as had been pleaded in the amended plaint.
67. It was the 1st Defendant's case that all the property registered in the names of Peter Nzuki Ndeti was not acquired through the partnership/business known as P. N. Ndeti & Bros and that such property is the sole preserve of the estate of the said Peter Nzuki Ndeti.
68. It was averred that in the matter filed by Peter Nzuki Ndeti before the Athi River Division Disputes Tribunal being Civil Case No. 49 of 2003, the 1st Plaintiff admitted that he has no claim whatsoever against the said Peter Nzuki Ndeti and further that his objection to Peter Nzuki Ndeti ownership of the subject land was motivated by malice. It was further averred that in another matter filed by the late Peter Nzuki Ndeti before the Athi River Division Dispute Tribunal being Civil Case No. 23B of 2006 in respect to L. R No. 10190 it was found inter alia that the 1st Plaintiff by his own admission had stated that he has no claim whatsoever over the land in Mua Hills and Ketani provided that the late Peter Nzuki Ndeti and Julius Kiilu Ndeti do not touch his land in Yatta as it belongs to the said 1st Plaintiff and Alphonse Nthiwa Ndeti only.
69. It was also averred that the mere registration of P. N. Ndeti & Bros did not entitle the business partners and Plaintiffs to any interest in the said business and further the said land was never held in trust for members of the defunct P. N. Ndeti & Bros.
70. The 1st Defendant denied collecting rent from the said properties on behalf of the family.
71. During trial, Raphael Musyoki Ndeti DWI testified on behalf of the 1st Defendant. He adopted and relied on his witness statement and bundle of documents dated 2nd February 2022 and 21st April 2022 respectively in his evidence in chief.
72. On cross-examination by Counsel for the 2nd Defendant, he stated that the property of Peter Nzuki Ndeti only belongs to his family and they are not claiming anything against the Plaintiffs. He also stated that the partnership and the company were dissolved.
73. He also stated that there is no property in the name of P. N. Ndeti & Bros and also in the name of the company.
74. When cross-examined by Counsel for the Plaintiffs, he stated that when he was young he found his father and brothers working together. He did not know when the partnership was registered. He did not know if any property was shared upon the death of Mutheka Mutua Ndeti. He did not attend the meeting of 7th April 1979. His father did not sign the said minutes.
75. On further cross-examination, he also stated that his father attended the proceedings of the Land Tribunal and was given the land. The title of Mua Farm is registered in the names of 6 people and



according to the ruling of the Tribunal, the land belongs to Julius Kiilu Ndeti and Peter Nzuki Ndeti. He is not aware if the said decision of the Tribunal was set aside. There is a portion of some acres set aside at Mua Farm for burial of the family members of Ndeti family.

76. He also stated that the Lukenya Ranching property belongs to his father. Nobody has ever been charged for interfering with the property. He is not aware of any partnership deed.
77. When re-examined, he stated that there was an agreement between Peter Ndeti and Prof. Kivuto Ndeti and that was the reason why the Machakos ELC Case No. 44 of 2017 is in respect to the two families. He also stated that his father did not sign the minutes of 7th April 1979. The partners never sued any person in respect to the properties when they were alive.

The case of the 2nd Defendant

78. The 2nd Defendant's case is contained in the Amended Statement of Defence dated 1st March 2021, witness statements of Mrs. Cecilia Situmai Ndeti and Michael Ndeti together with the 2nd Defendant's bundle of documents dated 5th December 2022 and supplementary bundle dated 13th April 2023.
79. It was the 2nd Defendant's case that the properties that the Estate of Professor Kivuto Ndeti is laying claim to were solely acquired by the deceased using his own resources to the exclusion of his brothers. The deceased acquired the assets from the income he received while working at the University of Nairobi as a Lecturer, Country Director of International Planned Parenthood Federation (IPPF) and his consultancy from Development and Research Services Limited (DRI) which provided consultancy services to the Government of Kenya and reputable international agencies like World Bank, USAID, WHO, UNESCO, UNDP amongst others.
80. It was averred that Professor Kivuto Ndeti was a partner in P. N. Ndeti & Bros from 1972 to 1979 when the partnership was dissolved and no assets were jointly acquired during that period that he was a partner in the said partnership.
81. It was further averred that the 13 properties the 2nd Defendant lay claim to were acquired after dissolution of partnership in 1979.
82. During trial, Cecilia Situmai Ndeti and Michael Kyende Ndeti testified as DW2 and DW3 respectively on behalf of the 2nd Defendant.
83. DW2 relied and adopted her witness statement dated 10th December 2022 and the 2nd Defendant's bundle of documents dated 5th December 2022 and the supplementary bundle of documents dated 13th April 2023 in her evidence in chief.
84. It was her testimony that she is the administrator of the estate of Prof. Kivuto Ndeti and that through their documentary evidence, they had demonstrated how all the properties were acquired by the deceased. She also stated that the dispute was started by Harrison Mulili after other brothers had passed away.
85. On cross-examination by Counsel for the 1st Defendant, she stated that her husband was of good character and could not have taken away anyone's property. She also stated that she could not recall any property that was acquired and registered jointly in their names.
86. When cross-examined by Counsel for the Plaintiffs she stated that her late husband was warmly welcomed back by the family when he came back from the USA in 1967 and he found his brothers had done a sterling job in acquiring prime properties. She also stated that she did not see any partnership deed. She also stated that PW1 was involved in managing and running of the family business.



87. On further cross-examination, she stated that they never declared nor informed anyone on how they acquired their personal properties. She attended the second meeting of 7th April 1979 and her husband was also present in the said meeting.
88. When re-examined, she stated that her statement had demonstrated how they acquired the properties. The Court of Appeal had revoked the grant pending the hearing of this case.
89. Michael Kyende Ndeti testified as DW3. He relied on his witness statements dated 20th May 2021 and 10th December 2022 in his evidence in chief. He added that the Plaintiffs are not parties to the Machakos case. He also stated that they are only claiming 17 properties of which they have demonstrated how they were acquired by his father. He also stated that they were able to provide evidence of how 12 of those properties were acquired. He also stated that the Court of Appeal rejected their grant. The court did not cancel their titles. Only 25 properties are in actual existence. He also stated that the minutes produced by the Plaintiffs only refer to to the company assets and not family or partnership assets.
90. When cross-examined by Counsel for the 1st Defendant, he stated that the Plaintiffs have not availed any evidence to confirm how the properties were acquired. It was not possible to establish on which partnership the properties were acquired. A company owns properties in its own name.
91. He also stated that Mutheke Ndeti passed away on 3rd August 1974, he could not have signed any minutes thereafter. He also stated that there are about 85 properties which do not have a title or search certificate.
92. When cross-examined by Counsel for the Plaintiffs he stated that the company was dissolved in 1997. He had no knowledge of how the company worked. The partnership was dissolved in 1974 upon the death of Mutheki Ndeti. He was not present when the meetings were held. The grant was revoked by the Court of Appeal. He was not involved in the purchasing of the properties. During the period his father was in the partnership, no property was acquired by the partners.
93. When re-examined, he stated that the brothers started doing business in 1939 when his father was 1 year old. His father was not a partner before 1959. He also stated that he the title of the Mua Hills property was in his custody. He did not attend any meeting. The company was deregistered in 1997. PW1 had not tendered any evidence that the company had any properties.

The Plaintiffs written submissions

94. The Plaintiffs filed written submissions dated 27th February 2024 through Mutunga & Muindi & Company Advocates. In their submissions, Counsel outlined and summarized the background of the dispute and facts of the Plaintiffs and Defendants case.
95. It was submitted that on 13.3.1979 the Ndeti family holding company including all the brothers and P. N. Ndeti & Bros Ltd held a meeting at Plot No. 3 at Athi River Town and the family jointly identified and agreed on what constituted family/partnership assets and a list thereof was written down clearly indicating that all though some of the properties were under names of the family individual members, they formed part and parcel of the family or partnership assets and they owned them jointly and equally whatever the name in the title. The Defendants through Peter Nzuki Ndeti and Kivuto Ndeti were present in that meeting and they signed the minutes as the true position of the listed assets being 24 properties then. The next family company meeting was held on the 7.4.1979 and minutes were taken and Dr. Kivuto Ndeti confirmed a property No. 25 had been left out in the previous meeting, this being Athi River Quarry Plot at the Mombasa road/Kinanie road junction and it was included in the family assets and the minutes were signed.



96. It was also submitted that the list of the agreed 25 family assets were as follows:-
1. Utange Plot No. 247 Section 1 Mombasa
 2. Mua Hills Springs farm Plot No. 1019/1
 3. Plot No. 3 Athi River trading center
 4. Plot No. 337/171 Athi – River trading center
 5. All T.O.L Plots within Makadara Market and market extension.
 6. All T.O.L Plots within Makadara market and market extension.
 7. Muthurwa Plot No. 7149/9
 8. Kitusuru property in Nairobi
 9. Kileleshwa property in Nairobi
 10. Athi – River Plot No. 337/23
 11. Athi – River Plot No. 337/26
 12. Shares in Mitaboni Katani Co. Ltd
 13. Shares in Lukenya Ranching & Farming Co-operative Society Ltd
 14. Shares in Masaku Beer & Wines Distributors Ltd
 15. Shares in Kenya Gypsum Ltd
 16. Shares in Syokimau Farming Co. Ltd
 17. Shares in B.A.T (Kenya) Ltd
 18. Shares in Kenya Breweries Ltd
 19. Shares in Auto Spring Manufacturers Ltd
 20. Ngu-Nyumu Farm under the name of Mulili Ndeti
 21. All plots and assets traditionally inherited
 22. All plots in Machakos Township
 23. Miwani plot in Machakos Township
 24. Mutito Andei plot
 25. Athi – River Quarry plot
97. It was further submitted that the Defendants have some documents in respect to the family properties and they keep claiming that the same do not exist. It was also submitted that from 1939 to 1997 when the family company was deregistered, the cumulative assets acquired over the years by the parties were never shared between the parties at whatever stage of their lives It was submitted that the said assets have been accumulating rent collected amounting to Kshs. 4,941,000/= per month.
98. In respect to the issue of partnership and their properties, it was submitted that there is no legal requirement that partnership should be in writing in Kenya and hence therefore on whether or not



there is a partnership is a question of fact as was held on the cases of Hellen Wanyai Wangechi =Versus= Caremera Mutua Gathuta HCC No.15 of 2010 and Joseph Chesire Sima =Versus= Erick Kipkengit Kipruno (2005) eKLR.

99. It was further submitted that the common vision of all the parties was that their business would grow and they would benefit from such growth. It was also submitted that out of the 7 parties, the Plaintiffs being the majority have kept to the word of the original partners and the spirit thereof as per the 1979 agreement and have come to court to ask that the partners properties that have accrued from the proceeds of their joint effort be shared equally.
100. It was also submitted that Cecilia Situmai Ndeti who had testified as DW2 had admitted in the cross-examination that her late husband Prof. Kivuto Ndeti was educated by his brothers in the U.S.A and he came back to Kenya in 1967 and was immediately co-opted to the family business. She had also stated that her husband was present in the two meetings of all the parties in 1979 and had signed the minutes. She had also admitted that the Lukenya Ranching was bought in 1965, when Kivuto Ndeti was in the U.S.A and her husband's name was merely used by the family for him to hold the shares in trust for them. She had also admitted that her family has the original title for Mua Farm which is the property of the family.
101. Counsel for the Plaintiffs concluded his submissions by urging the court to transfer all these properties into a family company P. N. Ndeti Holding which should have a representative from each family as a Director and those who refuse to sign the same and order can be issued to the effect that they be signed by the Deputy Registrar of the Court or alternatively the Courts should direct that the properties be sold under to the supervision of the court and the proceeds be shared equally.

The 1st Defendants' written submissions

102. The 1st Defendant filed written submissions dated 23rd May 2024 and Counsel submitted on the following issues:-
 - i. Whether the properties registered under Peter Nzuki Ndeti (Deceased) were held in trust for the Plaintiffs or P. N. Ndeti & Bros.
 - ii. Whether this Court has jurisdiction to grant the prayers sought.
103. It was submitted that the late Peter Nzuki Ndeti did not hold any properties in trust on behalf of the family. It was submitted that the 1st Plaintiff had in respect to Land Disputes Tribunal Civil Case No. 23B of 2006 admitted that he has no claim whatsoever over the L.R. No. 10190 in Mua Hills and Katani provided that Peter Nzuki Ndeti and Julius Kiilu Ndeti do not touch his land in Yatta. It was also submitted that the Plaintiffs had not provided any evidence to show that the properties registered in the names of the 1st Defendant were indeed held in trust on behalf of the entire family. The cases of Peter Ndunyu Njenga =Versus= Sophia Watiri Ndunyu (2000) KLR and T Walib Hatayan & Another =Versus= Said Saggah Ahmed Al-Heidy & Others (2015) eKLR were cited in support.
104. As to whether this court has jurisdiction to grant the reliefs sought, it was submitted that a declaration of partnership as being dissolved or otherwise, is only a relief that can be granted by the High Court Commercial Division.
105. In respect to the injunctive/prohibitory orders sought, it was submitted that the Plaintiffs have not met the threshold for grant of the said order, the Plaintiffs have not demonstrated how the 1st Defendant engaged in any acts of fraud or misrepresentation and neither have they established a prima facie case. It was also submitted that out of the over 130 properties, the Plaintiffs have since sold 5 properties listed



at paragraphs 14 of the amended plaint to third parties being properties No. 13, 29, 39, 56 and 57. It was submitted that 75 properties being Nos. 24, 25, 26, 27, 28, 30, 31, 33, 36, 38, 40, 41, 42, 44, 46, 48, 50, 51, 58, 60, 62, 63, 72, 80, 81, 82, 83, 85 to 130 could not be authenticated and the said order cannot be granted without hearing the third parties and granting them an opportunity to be heard. It was further submitted that properties No. 4, 17, 19, 32 and 49 did not have any records confirming their existence.

106. As to whether the Plaintiffs are entitled to the order for a declaration that the properties belong to P. N. Ndeti or Ndeti family, it was argued that there is no legal entity called the Ndeti family and the said properties cannot be held in trust of the family.
107. In relation to the prayer that all the properties listed in the suit and income collected or derived from the said properties be accounted for, it was submitted that the 1st Defendant has not received any rent from the properties duly registered in the names of the alleged partnership to the exclusion of the families and other partners.
108. As to whether the said properties be sold and shared equally. It was submitted that this court lacks jurisdiction to grant the same as the same is the purview of the Probate Court as stipulated under the applicable provisions of the Law of Succession Act.
109. The 1st Defendant's Counsel concluded their submissions by urging the court to dismiss the suit with costs to the Defendants.

The written submissions of the 2nd Defendants

110. The 2nd Defendant filed written submissions dated 3rd April 2024 through the firm of Kele Maina & Bundotich LLP Advocates. Counsel submitted on the following issues:-
 - a. Whether the entity described as Ndeti family is a legal entity capable of creating or resulting into a legally binding relationship of owning property.
 - b. Whether P. N. Ndeti & Bros partnership acquired 17 suit properties claimed by 2nd Defendant's thereby creating a resulting trust.
 - c. Whether the properties listed in the Amended plaint registered in the Plaintiff's names or the names of the other family members are held in trust for the Estate of Professor Kivuto Ndeti.
 - d. Whether the minutes of a meeting of the Directors and shareholders of P. N. Ndeti and Bros. Limited held on 18th March 1979 affirm the Plaintiff's averments that the family in the said meeting identified and agreed on family partnership properties.
 - e. Whether there is judgment on record in HCCC No. 430 of 1981, Patrick Mutheke Ndeti =Versus= Kivuto Ndeti that granted L.R No. 7149/9 to the partnership and or the Ndeti family.
 - f. Whether the Court of Appeal in COA No. 56 of 2013 upheld the judgment and decree of the High Court in HCCC No. 430 of 1981.
 - g. Whether the court has jurisdiction to grant the reliefs sought by the Plaintiffs.
111. It was submitted that the Ndeti family is not a legal entity which has been registered and is capable of owning any property.



112. It was argued that the 2nd Defendants have tendered controverted evidence demonstrating how they acquired the 17 properties registered in their name and equally the Plaintiffs had not tendered any evidence indicating their claims of the existence of the resulting trust.
113. As to whether the properties registered in the names of the Plaintiffs are held in trust for the Estate of Professor Kivuto Ndeti it was submitted that the 2nd Defendants had demonstrated during trial that 85 properties which are listed by the Plaintiffs are unverifiable and or are in the hands of third parties not before court. The Plaintiffs admitted to selling a number of the properties to the third parties to the exclusion of the Defendants and as such they have not discharged the burden that they are holding in trust for the estate of Professor Kivuto Ndeti.
114. As to whether minutes of the meeting held on 18th March 1979 affirm the Plaintiffs averments that the family in the said meeting identified and agreed on family partnership properties, it was submitted that minutes inaccurately identified the properties and further that both the Plaintiffs and Defendants averred that the company may acquire any of the disputed properties.
115. As to whether there is a judgment on record in HCCC No. 430 of 1981 Patrick Mutheke Ndeti =Versus= Kivuto Ndeti that granted L.R. No. 7149/9 to the partnership and or Ndeti family, it was submitted that the said case was transferred to the Environment and Land Court and became ELC 055 of 2015, the Plaintiffs knowingly tendered the decree that had been set aside as evidence and that the decree dated 20th September 2017 extracted from the judgment of Justice Okong'o was the final decision of the court in ELC 055 of 2015 that resolved the dispute and determined the rights and obligations of the parties and no appeal has been preferred against the judgment or decree of the said matter.
116. On whether the Court of Appeal upheld the judgment in HCCC No. 430 of 1981, it was argued that the appeal was against the ruling made by Lady Justice Ang'awa on 12th March 2008 dismissing an application dated 11th October 2006 by Prof. Kivuto Ndeti. No appeal was lodged against the judgment of Justice Okong'o and hence the Court of Appeal never upheld any decree in respect to HCCC No. 430 of 1981.
117. In respect to the prayers sought by the Plaintiffs. It was submitted that the same cannot be granted in view of the fact that the Plaintiffs had admitted on their own volition that some of the listed properties were sold to third parties who are not before court and the court has no jurisdiction to grant the said reliefs.
118. The court was urged to dismiss the suit with costs.

Analysis and Determination

119. The court has considered the pleadings, the evidence adduced during trial and the written submissions filed by the parties. Each party framed their own issues for determination. However the issues arising for determination of this suit are as follows:-
 - i. Whether the properties listed by the Plaintiffs in their amended plaint dated 15th February 2020 were held in trust for the family.
 - ii. Whether the Plaintiffs are entitled to the reliefs sought.
 - iii. What orders should issue to costs of the suit.
120. The court shall now proceed to address itself sequentially and make pronouncement on the said issues.



Issue No. (i) Whether the properties listed in the Amended Plaint dated 15th February 2020 were held in trust for the family

121. It is evident that trusts including customary trusts are recognized as overriding rights within the provisions of Section 28 of the Land Registration Act and these trusts being overriding rights are ordinarily not noted in the register and therefore a proprietor's title is defeasible on grounds of trust. Within the provisions of Section 25 of the Land Registration Act, certain trusts can still be noted in the register. Once so noted, such trusts, not being overriding interests, bind the registered proprietor on the terms noted in the register.
122. It is settled law that to prove a trust in land; one need not be in actual physical possession and occupation of the land. This was the position upheld by the Supreme Court of Kenya in the case of *Isack M'inanga Kiebia v Isaaya Theuri M'lintari & another* [2018] eKLR. The question that then arises is whether the plaintiff discharged the burden that the appellant held a portion of the suit property in trust for the him.
123. Section 24 of the Land Registration Act 2012 provides as follows;
- “Subject to this Act(a)The registration of a person as proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”
124. Section 25 of the Land Registration Act recognizes overriding interests in registered land including trusts. It provides;
- “ 1. The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of Court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
- a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
2. Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.”
125. Whereas Section 28 of the same Act provides;
- “ 28. Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register—
- (a) deleted by Act No. 28 of 2016, s. 11(a);
- (b) trusts including customary trusts;
- (c)



- (d)
- (e)
- (f)
- (g)
- (h) ...
- (i) and
- (j) any other rights provided under any written law.”

126. The Plaintiff herein pleads the existence of a trust. According to the Black’s Law Dictionary, 9th Edition; a trust is defined as:

“The right, enforceable solely in equity, to the beneficial enjoyment of property to which another holds legal title; a property interest held by one person (trustee) at the request of another (settlor) for the benefit of a third party (beneficiary).”

127. Under the Trustee Act,

“...the expressions “trust” and “trustee” extend to implied and constructive trust, and cases where the trustee has a beneficial interest in the trust property...”

128. Six witnesses testified on behalf of the Plaintiffs and during trial it was their position that the properties listed in the amended plaint were family properties held in trust for the family. This position was contested by the Defendants.

129. In addressing itself on this issue the court has taken the liberty to examine how these properties were acquired and under what purpose to establish what was the intention of the parties.

130. From the evidence that was tendered and which the court has considered, it is evident that the five brothers Mutheke Mutua Ndeti, Julius Kiilu Ndeti, Peter Nzuki Ndeti, Alphonse Nthiwa Ndeti and Harrison Mulili Ndeti teamed up to establish their business and agreed to acquire the said properties. They expanded their family business and in 1955 they registered a partnership known as P. N. Ndeti & Bros. The said partnership was family based and not based on shares. They owned everything equally and jointly together with their wives. Later in 1968, Professor Kivuto Ndeti and Patrick Mutheke Ndeti were included in the family partnership. Later after the death of Mutheke Ndeti the partnership had some challenges and they registered a company in the name of P. N. Ndeti & Brothers Limited on 3rd December 1976. The said company consisted of four directors being Patrick Mutheke Ndeti, Julius Kiilu Ndeti, Peter Nzuki Ndeti and Kivuto Ndeti.

131. From a further analysis of the evidence that was tendered, it was evident that the company which comprised of the brothers as directors held its first and second meetings on 18th March 1979 and 7th April 1979 at the family business headquarters Plot No. 3 Athi River and the attendees identified, agreed and listed the properties clearly indicating that they formed part and parcel of the family/ partnership. It was also evident that from the said original 25 properties they were able to acquire more properties which were listed at paragraph 14 of the amended plaint.



132. From the evidence adduced in court there was no objection from any of the parties who attended the meeting held on 18th March 1979 and 7th April 1979 which meeting agreed on the properties being family property whether or not they had been registered otherwise.
133. While the Defendants maintained that the said properties were not held in trust for the family. The evidence adduced in court was to the effect that the late Professor Kivuto Ndeti was educated by his brothers who were already partners in their business and when he came back to Kenya from the USA in 1967 he was co-opted in the family business. He even acquired some properties before the partnership and the company were dissolved.
134. 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.
135. According to Section 3(1) of the Judicature Act, cap 8 Laws of Kenya, the doctrines of equity are applicable in Kenya and form part of our laws. It states that common law, doctrines of equity and statutes of general application shall apply in so far as the circumstances of Kenya and its inhabitants permit and subject to such qualifications as those circumstances may render necessary.
136. By virtue of Article 40 of the Constitution, every person either individually or in association with others, has the right to acquire and own property of any description, and in any part of Kenya. This right to property is however not absolute. Under Article 40(3) the State may deprive a person of property through a process of acquisition of land for a public purpose or in public interest in accordance with the Constitution. Further, under Article 40(6) the rights under this Article do not extend to any property that has been found to have been unlawfully acquired.
137. While Article 40 has an internal limitation on the right to property, the general limitation of rights provision at article 24 of the Constitution provides that any limitation on a right shall be by law, and only to the extent that the limitation is reasonable and justifiable, in an open and democratic society based on human dignity, equality and freedom. Other relevant factors to be considered include the nature of the right, the importance and purpose of the limitation, and relation between the limitation and the purpose of such limitation. It further, provides that the person seeking to justify a particular limitation has the obligation to justify the limitation.
138. The Land Registration Act, No. 3 of 2012, is the law that governs registration of titles. Section 25 of the Land Registration Act provides that the rights of a proprietor shall not be liable to be defeated except as provided under the Act, subject to encumbrances and conditions in the register; and to such liabilities, rights and interests declared by section 28 not to require noting on the register, unless the contrary is expressed in the register. Additionally, as is stipulated under section 25(2) nothing in this provision shall be taken to relieve a proprietor from any duty or obligation to which the person is subject as a trustee.
139. Under Section 26 of the Land Registration Act, No 3 of 2012, a Certificate of Title issued by the Registrar upon registration or to a purchaser of land upon transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner. However, this is subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate. Further, the title of the proprietor shall not be subject to challenge except on the ground of fraud or misrepresentation and where the certificate of title was acquired illegally, un- procedurally or through a corrupt scheme.



140. Section 28 provides that unless the contrary is expressed in the register, all registered land shall be subject to overriding interests as may for the time being subsist and affect the same, without being noted in the register. These overriding interests include, trusts.
141. While Sections 25, 26 and 28 of the Land Registration Act recognize that the rights of a registered proprietor of land are absolute and indefeasible, these are only subject to rights and encumbrances noted in the register and overriding interests. The overriding interests include trusts. In our view, and in the absence of any limitation as to the trusts, this includes constructive trusts. Applying the provisions of Article 24 therefore, the limitation of the right to property is provided under law, and includes a constructive trust.
142. From the observation of this court the family operated jointly and acquired the properties for their common good. The evidence on record is overwhelming to the effect that it was the intention of the founding partners who were all brothers that their properties would be acquired jointly and for the interest of all family members and as such it is the finding of this court that the said properties as listed in the Amended Plaintiff whether currently registered in individual names or otherwise were to be held in trust for the benefit of the family.

Issue No. (ii) Whether the Plaintiffs are entitled to the reliefs sought in their amended plaintiff.

143. The Plaintiffs have sought for several reliefs in their amended plaintiff. The court has to consider whether or not the said reliefs are tenable.
144. The Plaintiffs have sought for a declaration that the partnership known as P. N. Ndeti & Bros be dissolved or deemed dissolved. In respect to this relief it is clear that the court has no jurisdiction to grant the same. Partnership in Kenya are governed by the Partnership Act No. 16 of 2012 which grants powers to the High Court pursuant to Section 27, 44 and 45 of the said Act. In view of the foregoing the said relief is not properly before this court and in the circumstances this court cannot pronounce itself on the same.
145. In respect to the injunctive and prohibitory orders sought in respect to all the properties listed in the Amended Plaintiff. It is worth noting that In respect to the prayer of permanent Injunction that was sought, it is worth noting that a permanent injunction fully determines the right of the parties before the court and is normally meant to perpetually restrain the commission of an act by the Defendants in order for the rights of the Plaintiff to be protected.
146. The Plaintiffs have listed over 130 properties which also include shares in various companies. In considering whether this court should grant the said relief, it emerged during trial that a number of those properties were sold by either the Plaintiffs and the Defendants and are in possession of other third parties. It also emerged during the cross-examination of DW3 Michael Kyende Ndeti that there were discrepancies between the registered owners of five properties listed in paragraph 14 of the amended plaintiff namely properties numbers 13, 29, 39, 56 and 57 and the registered owners appearing in the supporting certificates of official search the Plaintiffs tendered in evidence. It also emerged that 75 properties that were listed could not be authenticated as no certificates of official search or copies had been tendered as evidence. These are properties listed as numbers 24, 25, 26, 27, 28,30, 31, 33, 36, 37, 38, 40, 41, 42, 44, 46, 47, 50, 51, 58, 60, 62, 63, 72, 80, 81, 82, 83, 85, 86, 87, 88, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 126, 127, 128, 129, 130. It also emerged further that the records of the other properties were non- existent.



147. Granting a prohibitory/injunctive order to apply to all those properties would have serious consequences considering the fact that the third parties who have subsequently acquired the said properties were never joined to these proceedings as parties and further considering the uncertainty as to the correct position and or status of the said properties. Such an order has the effect of condemning other parties without having granted them an opportunity to be heard and in view of the foregoing the said relief is equally declined.
148. In respect to prayer (c) to (g) as was sought by the Plaintiffs in the amended plaint, as earlier stated the current status and authenticity of the said properties was in doubt, the same are not verifiable, some belong to different third parties and others were not properly identified and as such this court is equally unable to grant the reliefs sought. It is worth noting that court orders cannot be issued in vain and the court ought to be satisfied that the orders issued are capable of being executed and one which cannot be ambiguous. Having stated as much this court is unable to grant the said reliefs to the Plaintiffs.

Issue No. (iii) What orders should issue as to costs

149. In respect to costs the general rule is that costs shall follow the event in accordance with the provisions of Section 27 of the Civil Procedure Act (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. This was the holding in *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd* [1967] EA 287. However in the instant case the plaintiffs and the defendants are all family members and in view of the very special circumstances of this case, each party shall bear their own costs of the suit.

Conclusion

150. In conclusion, while this court made a finding that the properties acquired by the ‘Ndeti brothers’ who were the sons of John Ndeti Mwanja and Elizabeth Mwelu, these brothers being Mutheke Mutua, Julius Kiilu Ndeti, Peter Nzuki Ndeti, Alphonse Nthiwa Ndeti, Harrison Mulili Ndeti and Professor Kivuto Ndeti was to be held in trust and for the benefit of the entire family, the court was unable to grant the reliefs sought by the Plaintiffs considering the circumstances stated in its judgment and the impracticability of execution of the said reliefs if at all they were to be granted.
151. Regrettable so and while sympathising with the predicament of the Plaintiffs, this court being unable to grant the reliefs sought in their amended plaint dated 15th February 2020, it follows therefore that the Plaintiffs suit fails.
152. Consequently, the Plaintiffs suit is hereby dismissed with an order that each party bears own costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 17TH DAY OF FEBRUARY 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Muindi for the Plaintiffs.

Mr. Bundotich for the 2nd Defendant.

No appearance for 1st Defendant.

Court Assistant: Mary Ngoira.

