



**Nganga & another v Njenga & another (Environment & Land Case
E015 of 2023) [2024] KEELC 13746 (KLR) (13 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13746 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E015 OF 2023**

JG KEMEI, J

DECEMBER 13, 2024

BETWEEN

ESTHER NJERI NGANGA 1ST PLAINTIFF

DAMARIS DOTTY WANJIRU NGANGA 2ND PLAINTIFF

AND

MARY WANJIRU NJENGA 1ST DEFENDANT

LILIAN WANJIKU AUGUSTUS 2ND DEFENDANT

JUDGMENT

The Pleadings

1. This dispute pits the mother and her daughter against their mother in law and Aunt respectively.
2. The Plaintiffs filed suit on 23/2/2023 against the Defendants seeking the following orders;
 - a. A declaration that the registration of the 1st Defendant's husband; Samuel Njenga Kaindo (Deceased), as the owner of KIAMBAA/WAGUTHU/1121 was encumbered by customary trust and the subsequent registration of the 1st Defendant as the absolute proprietor of the suit land did not in any way affect or dissolve the trust.
 - b. A declaration that the purported impugned title by the 2nd Defendant over the suit property is illegal, null and void ab initio.
 - c. A permanent injunction do hereby issue restraining the Defendants, their servants, agents, employees, family members or otherwise whosoever from evicting the Plaintiffs from the suit property, to wit; KIAMBAA/WAGUTHU 4823.



- d. A permanent injunction do hereby issue restraining the Defendants, their servants, agents, employees, family members or otherwise whosoever from interfering with the Plaintiff's possession of the suit property, to wit; Kiambaa/Waguthu 4823.
 - e. Cost of this suit; and
 - f. Any other or further relief that this Honourable Court may deem fit and just to grant.
3. The Plaintiffs aver that at all material times they have lived on the suit land for the past 26 years and that they are beneficiaries of a customary trust in the suit land which land was part of the mother title being parcel 1121 pursuant to an intervivos gift in their favour by Samuel Njenga Kaindo (Kaindo). Particulars of trust are enumerated under para 8 of the Plaint. That the 1st Defendant who holds the suit land in trust for the Plaintiffs caused the registration of the land in her name following the succession of the estate of Kaindo and later subdivided the land into two parcels 4822 and 4823 in breach of the customary trusts aforesaid. Particulars of breach of trust and loss are itemized under para 15 of the Plaint.
 4. The Defendants denied the Plaintiffs claim and specifically that the 1st Plaintiff lives on parcel 1121 as beneficiaries of customary trust or that the 1st Defendant is holding the suit land under customary trust for the benefit of the Plaintiffs. The 1st Defendant contended that the parcel 1121 was acquired in 1990 through her joint efforts with Kaindo, her late husband. The 1st Plaintiff being the wife of James Nganga Njenga is not a direct beneficiary of the estate of Kaindo to justify her claim of customary trust since her husband James Nganga is better positioned to agitate such claims. That the 1st Defendant got married to James Nganga in 1993 and were allowed by the 1st Defendant and her late husband to occupy as licensees a house they had constructed on a portion of the suit land. Upon the death of Kaindo, the 1st Defendant being the widow and with the consent of her children, James Nganga included applied for letters of grant of administration in the estate leading to the confirmation of grant being issued on the 1/3/2017. That the 1st Plaintiff sought to revoke the Grant dated the 12/7/2019 which cause is still pending in Court. That later the 1st Defendant with the blessings of her children subdivided the suit land into two portions namely parcel 4822 and 4823. That the 1st Defendant gifted parcel 4822 to James Nganga to hold in trust for his two daughters namely Maxine Wanjiru and the 2nd Plaintiff and parcel 4823 went to the 2nd Defendant. The Plaintiffs occupy parcel 4822 owned by James Nganga

The Evidence of the Parties

5. PW1 – Esther Njeri Nganga testified and relied on her witness statement dated the 23/2/23 as her evidence in chief and produced documents marked as PEX No 1-9 in support of her claim.
6. She stated that the 1st and 2nd Defendants are her mother in law and sister in law respectively. That she is claiming suit parcel No 1121 measuring $\frac{3}{4}$ of an acre which was registered in the name of her father in law, Kaindo in 1990s. That she was married to James Nganga in 1993, the son and brother of the 1st and 2nd Defendants respectively. She stated that despite her statement that the land was inherited, she does not know how Kaindo acquired the land. That she and her husband lived on the entire land. That they were gifted with the land by Kaindo as a wedding gift and took over an incomplete house and completed it with her husband. That she separated with her husband in 2000. That upon the death of Kaindo in 2013 she was excluded in the succession proceedings with respect to his estate and she was unaware that her husband James Nganga consented to the proceedings. That she has applied to revoke the Grant issued to the 1st Defendant in the estate of Kaindo on the grounds that she was excluded as a beneficiary of the estate. That the application is still pending. She stated that she is aware that her



husband was given land parcel 4822 to hold in trust for their two children. That her claim is on the parcel 1121 as a whole. She stated that there are ongoing divorce proceedings in Kiambu between her and James Nganga. She stated that she has no personal vendetta against her mother in law. That unlike her children she has no ancestral linkages to the family of the 1st Defendant. Her relationship is on account of her marriage to James Nganga. That her husband has since moved out of the matrimonial home on his own accord, hence the impending divorce.

7. PW2 - Damaris Dorty Wanjiru Nganga testified and relied on her witness statement dated the 23/2/23 in chief and reiterated the evidence adduced by PW1. She added that she is the daughter of the 1st Plaintiff and James Nganga and she was born and bred on the suit land which she calls home for the last 21 years and if she is evicted she will be rendered destitute. She admitted that parcel 4822 is registered in the name of her father whom she could not recall when they last spoke as he moved out of the family home hence the frosty relationship. She clarified that she and her mother are claiming the whole of parcel 1121 which was gifted to her parents as a wedding gift during their wedding in 1993.
8. DW1 - Mary Wanjiru Njenga testified and relied on her witness statement dated the 2/2/24 and produced documents marked as DEX No 1-7 in aid of her defence.
9. She stated that the 1st Plaintiff is her daughter in law being the wife of James Nganga. That they got married in 1993 after a period of cohabitation. She was present during the wedding and he and her late husband gave them ordinary gifts none of which was the suit land. That they allowed them to reside in their house rent free which they had constructed on the suit land. She clarified that at the time they entered the house it was completed save for the finishes which were done by James and his wife. They had purchased the land with her husband in 1990 from Nganga Koinange and caused to be registered in the name of Kaindo hence it was not acquired through inheritance. She stated that part of the suit land was given to James to hold in trust for his daughters. That her other six children were also given land elsewhere. That she is aware that James and the 1st Plaintiff separated in 2016 after frequent fights. She stated that the 2nd Plaintiff being her granddaughter is part of her family and she is entitled to inherit from her father, James Nganga. That the 2nd Defendant is her daughter who lives in overseas. She owns parcel 4823 which was being cultivated by the Plaintiffs hence the demand to the Plaintiffs to cease cultivating the land. That the Plaintiffs live on the part of the land namely 4822 registered in the name of James Nganga.
10. DW2 - Lilian Wanjiku Augustus testified online from the City of Rome in Italy. She relied on her witness statement dated the 2/2/2024 in chief and stated that the 1st Plaintiff is her former sister in law while the 2nd Plaintiff is her niece. That the mother title was owned by her father and upon his demise in 2013 it devolved to her mother as the successor of the estate of her father. She did not attend the wedding but she supposes that they must have been given pots, pans and sofas as gifts. She did not hear about gifting the land. That she is aware that the Plaintiffs lived in the house with the permission of her parents. That she wrote to the Plaintiffs to cease cultivation of the suit land given that their land is parcel 4822 where her house is situate.
11. With that was the close of the Defendants' case.
12. Parties filed written submissions which I have read and considered in the Judgement.
13. The Plaintiff drew four issues for determination as follows;
 - a. Whether the 1st Plaintiff's occupation of the suit property was as a result of a gift?
 - b. Whether the 1st Plaintiff's occupation of the suit property was by virtue of license?
 - c. Whether the suit property was encumbered by customary trust?



- d. Who should bear the costs of the suit?
14. On the issue of gifts, Counsel submitted that the Plaintiffs were gifted the suit land during their wedding and that explains why the couple moved to the property after their marriage wedding. Relying on the case of *Re Estate of the late Gedion Manthi Nzioka (Deceased)* [2015] eKLR, Counsel for the Plaintiff submitted that though the requirements of a gift were not met for it to be complete, the conduct of the parties nonetheless perfected the gift of the suit property. The couple entered the house in its unfinished state, completed it to habitable condition and continued paying utility bills. The completion of the house and payment of the bills it was argued completed the gift. See the case of *Evans Onguso & 2 Others Vs. Peter Mbuga & 4 Others* [2020]eKLR where the Court stated as follows;
- “From the above exposition of the law on gifts it is evident where there is an imperfect gift having regard to the requirements of the necessity for the same to be by way of written memorandum, registered transfer and or declaration of trust in writing, the gift may nonetheless be perfected by the conduct of the parties.”
15. Counsel added that though the Defendants have explained off the occupation of the Plaintiffs on the land as a licensee there was no evidence adduced to support the proposition. The occupation of the Plaintiff was permanent and is shown by the activities that they carried out on the suit land. The allegation by the 1st Defendant that the house was built for rentals is untenable given that it was a single dwelling house. That although the Plaintiffs averred that they lodged a caution on account of a licensee's interest, it had no correlation as she already occupied the suit land from the 1990's and the Court was urged to disregard the allegations of a licensee.
16. On customary trust the Plaintiffs submitted that their occupation and possession of the suit land amounted to a customary trust which ought to be protected in law. The Court was pointed to the decision in *Mbui Makanga Vs. Gerald Mutwiri Mbui* [2004]eKLR in support of the proposition that a claim in customary trust may stem from occupation and possession. Further in the case of *Isack Kieba M'inanga Vs. Isaaya Theuri M'Lintari & Anor.* [2018]eKLR the Supreme Court of Kenya gave various ways in which a claim in customary trust may arise. It was further added that the relations between the parties is proximate to allow a claim in customary trust. That customary trust does not discriminate among family members and in this case the Plaintiffs are family to the Defendants and the fact that the 1st Plaintiff is related by marriage to the son of the family is not a bar to a claim in customary trust. Granted that the 1st Plaintiff entered the suit land through marriage cannot be termed as an idle claim or too far-fetched. She is not a stranger to ward off her claim, it was submitted.
17. With respect to the subdivisions of the suit land into two portions, it was submitted that both parcels are encumbered with an overriding interest in the nature of an overriding trust and the mere registration did nothing to extinguish the trust which was already in existence.
18. Lastly it was submitted that the Plaintiffs have proven customary trust in their favour and the Court was urged to protect it and allow the claim.
19. Counsel for the Defendant drew one issue for determination which is whether the suit land parcel 1121 previously registered in the name of Kaindo deceased was ancestral land encumbered with customary trust as alleged by the Plaintiffs. That the issue of a gift as submitted by the Plaintiffs is a complete departure from their pleadings. That according to their pleadings their claim is anchored in customary trust and breach of trust and not intervivos gift. The Defendants pointed the Court to the case of *Elizabeth O Odhiambo Vs. South Nyanza Sugar Co Limited* [2019]eKLR where the Court held that



parties are bound by their pleadings and that unless amended the evidence adduced shall not deviate from the pleadings. The Court was urged to disregard the pleadings.

20. It was further submitted that even if the Court was to determine the issue of gift *inter vivos* the same would fail because the Plaintiffs failed to adduce evidence to suggest that the alleged gift was perfected by the deceased through a transfer prior to his demise or that the occupation of the house gave rise to ownership other than as a mere licensee.
21. The Defendants relied on a number of decided cases resting on the case of Charles Gitahi Kamau Vs. District Land Registrar Nakuru; Priscilla Wanjiku Thumbi & 2 Others (Interested Parties) [2021]eKLR to show that the determination whether or not there was an *inter vivos* gift made by the deceased to the Plaintiff would be for the succession Court to determine and this Court lacks the jurisdiction to determine it. That there was no evidence led to show that there was an *inter vivos* gift to the Plaintiffs let alone a complete and perfected gift.
22. On customary trust the Defendants submitted that the Plaintiffs failed to lead any substantiated evidence in support of a claim in customary trust. That the Plaintiffs failed to prove the existence of customary trust because trusts cannot be presumed or implied by the Court unless the intention to create is evident in the first place.

Analysis and determination

23. Having considered the claim of the Plaintiffs as comprised in the plaint, the defence of the Defendants the evidence adduced during the trial and the rival submissions, the Court finds the following issues commend themselves for determination;
 - a. Whether the Plaintiffs have proven customary trust
 - b. Whether the Plaintiffs were gifted the suit land by Samuel Nganga Kaindo
 - c. Who meets the cots of the suit
24. It is common knowledge that this is a dispute between close family members. The 1st Plaintiff is married to James Nganga the son and brother of the 1st and 2nd Defendant respectively. The 2nd Plaintiff is the daughter of the 1st Plaintiff and James Nganga.
25. It is not in dispute that the 1st Plaintiff and James Nganga got married in 1993 according to the marriage certificate adduced in evidence. They then moved to an incomplete house on the suit land. There is common ground that at the time they moved in the house was complete save for the furnishings which the couple provided to make the house liveable. The Plaintiffs aver that they live on this house todate.
26. It is also common ground that the suit land was registered in the name of Samuel Nganga Kaindo according to the official search dated the 29/11/2016 adduced in evidence by the Plaintiffs. The Plaintiffs failed to provide the green card to show the history of the land. I shall show the significance of this later.
27. It is not disputed that Kaindo died on 5/5/2013 according to the death certificate placed before the Court in evidence.
28. It is the case of the Plaintiffs that they are entitled to customary trust over the suit land after being gifted the suit land by their deceased father. They have particularized customary trust and averred that the suit land is ancestral land having passed from the deceased Kaindo to his son James upon his death; they have been living on the lands since 1996 and have developed the suit land paid bills without any interference from the Defendants and that in any event the Defendants did not purchase the land.



They have faulted the Defendants for among other things breaching the trust by threatening to evict them from the suit land, refusing to act in good faith towards the Plaintiffs who are beneficiaries of a customary trust for which they stand to suffer loss of property and their home.

29. The Defendants response is that the suit land was acquired through the joint efforts Kaindo and the 1st Defendant through purchase. That after their marriage in 1993 the 1st Plaintiff and James Nganga were permitted to live in the house that was constructed by their parents (Kaindo and the 1st Defendant) and upon the death of Kaindo the suit land devolved to the 1st Defendant absolutely as the sole heir according to the certificate of confirmation of grant issued on the 1/3/2017. She subdivided the land into two portions parcels 4822 and 4823 and caused them to be registered in the names of James Nganga and the 2nd Defendant respectively. That the portion being occupied by the Plaintiffs is now comprised of parcel 4822 is registered in the name of the 1st Plaintiff's husband.

30. It is trite that he who alleges must proof. Section 107 of the Evidence Act provides as follows;

“ 107. Burden of proof

- (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

31. Equally the provisions of Section 108 and 109 of the Evidence Act are applicable to this case. They provide as follows;

“ 108. Incidence of burden

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

109. Proof of particular fact

The burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

32. Customary trust is a concept through which land may be acquired in Kenya. It is anchored in statute. It is an overriding interest in land which need not be registered on the register. It subsists on and binds the land. Article 60 (1) (a) of the Constitution alludes to this concept when it refers to intergenerational and intra-generational equity. In the case of Mbui Vs. Mukangu vs Gerald Mutwiri Mbui C.A No. 281 of 2000 [2004]eKLR the Court of appeal stated that customary trust is a concept of intergenerational equity where the land is held by one generation for the benefit of succeeding generations. If land was passed down from the family member to another, the presumption of trust subject to evidence is high.

33. Section 28 (b) of the Land Registration Act provides as follows;

a. 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—

b. ...



- c. trusts including customary trusts;
34. Similarly in the case of Peter Gitonga Vs. Francis Maingi M’Ikiara Meru HC.CC NO. 146 OF 2000 - it was stated that:-
- “A “trust” can be created under customary law and the circumstances surrounding registration must be looked at to determine the purpose of the registration. This was what led Muli J. to say this; “Registration of titles are a creation of law and one must look into the considerations surrounding the registration of titles to determine whether a trust was envisaged”. (emphasis is mine).
35. Finally, the concept of customary trust has found firm approval in the Supreme Court of Kenya in the case of Issack Kieba (supra) where the Lord Justices of the Supreme Court held as follows;
- “Each case has to be determined on its own merits and quality of evidence. It is not every claim of a right to land that will qualify as a customary trust. In this regard, we agree with the High Court in Kiarie v. Kinuthia, that what is essential is the nature of the holding of the land and intention of the parties. If the said holding were for the benefit of other members of the family, then a customary trust would be presumed to have been created in favour of such other members, whether or not they are in possession or actual occupation of the land. Some of the elements that would qualify a claimant as a trustee are: the land in question was before registration, family, clan or group land; the claimant belongs to such family, clan, or group; the relationship of the claimant to such family, clan or group is not so remote or tenuous as to make his/her claim idle or adventurous; the claimant could have been entitled to be registered as an owner or other beneficiary of the land but for some intervening circumstances; the claim is directed against the registered proprietor who is a member of the family, clan or group.” (Emphasis mine).
36. Similarly the law as espoused in Section 110 of the *Evidence Act* provides that the burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence. The legal burden to prove the existence of the customary trust rests with the one who is asserting a right under customary trust. To discharge this burden, the person must prove that the suit properties were ancestral/ clan land; that during adjudication and consolidation, one member of the family was designated to hold on behalf of the family; that the registered persons were the designated family members who were registered to hold the parcels of land on behalf of the family. See the case of Issack Kieba above.
37. In this case the Plaintiffs led evidence that they have lived on the land since 1996, developed the land by completing the existing house and paid bills over the years. Without any evidentiary documents, PW1 stated that the land was passed down to Kaindo through inheritance and he too passed it to his son James Nganga thus creating a presumption of an interest in customary trust in their favour. In cross she admitted that she did not know how her father in law acquired the land. She did not adduce a green card to show the Court the root of the title. DW1 and DW2 led unchallenged evidence that she and Kaindo purchased the land from Nganga Koinange in 1990 and in the absence of evidence to the contrary the Court takes the account of the Defendants as the truth.
38. That the relationship between the Plaintiffs and the Defendants is proximate to warrant a presumption of customary trust and that holding otherwise would be discriminatory. PW1 however informed the Court that she was excluded as a beneficiary from the succession proceedings in the estate of her father in law. That she was not aware that her husband had given consent to the succession proceedings. That



she has filed an application to revoke the grant which application is pending determination before the probate Court.

39. PW1 accepted that she is aware that the suit land was subdivided into two portions and parcel 4822 is registered in the name of her husband and it is the portion in which she lives currently. It is not lost on the Court that James did not claim customary trust on the land and yet if any gift was given it would have been to the couple. James is the registered owner of a portion of the land for which the Plaintiff is claiming.
40. In the case of Kieba case (supra) the Court was emphatic that;
- “Each case has to be determined on its own merits and the quality of evidence. It is not every claim of a right to land that will qualify as a customary trust. what is essential is the nature of the holding of the land and the intention of the parties.”
41. There is no evidence to support that the deceased Kaindo intended to create a trust in favour of the 1st Plaintiff. DW1 led evidence that she gave land to 6 of her children, the 1st Plaintiff husband included. Notwithstanding that the parties are related the Plaintiffs have not demonstrated any circumstance that could have caused a trust to be created in favour of the 1st Plaintiff and her daughter to the exclusion of Kaindo’s other 5 children. I find that the 1st Defendant vide her own admission stated that she has given all her children land and therefore there was no need to create a trust in favour of the Plaintiffs. In any event the 1st Plaintiff is currently occupying land belonging to her husband James Nganga and the allegation of being rendered destitute cannot arise.
42. In the end I find that the Plaintiffs failed to lead evidence that shows that the root of the suit land is anchored in customary trust.
43. With respect to the question gift *inter vivos*, I rely on the case Charles Gitahi above which stated that the determination of whether or not there was an *inter vivos* gift made by the deceased to the Plaintiff would be for the succession Court to determine. The Court notes that this is a live matter in Succ. Cause No 2184 of 2013 and I will do best to avoid delving into a matter that is before another Court.
44. That said I concur with the decision in the case of *Re Estate of Chesimili Sindani (Deceased)* [2021]eKLR where the Court stated as follows;
- “..... the principle that emerges is that any gift *inter vivos* should be backed by some memorandum in writing, and the gift would be complete once title to the subject property is transferred to the name of the beneficiary of the gift. Difficulties arise where transfer is not effected to the beneficiaries before the death of the deceased, in which case such property would remain the free property of the deceased, available for distribution at confirmation, the argument being that such gift was founded on a mere promise which the deceased did not carry through prior to his death. Where some preliminary steps were taken towards effectuating his promise, so that all what remained after the death of the deceased was mere registration of the property in the name of the beneficiary, it would be presumed that that the deceased intended to make a gift *inter vivos*. That would be the case where the deceased has complied with the *Land Control Act*, Cap 302, Laws of Kenya, where the land is subject to that law, by applying for consent to transfer the property from the name of the deceased to that of the beneficiary, the consent had been granted, and he had signed a transfer form to facilitate registration of the property in the name of the beneficiary. That would mean practically everything had been done to perfect or complete the gift were it not for the demise of the deceased. The mere fact of being shown a piece of land and given permission



to occupy and use it, without more, is not adequate proof for a gift inter vivos. The deceased, as registered proprietor of the land in question, would have the right to licence a person to occupy the land and use it. A child who has been shown a piece of land to build on and to till, is not in the shoes of an owner, but a mere licensee. The death of the deceased would not upgrade the licence to ownership, if anything the death of the proprietor could mean that the licence comes to an end, and the licensee continues to occupy and work the land at the mercy of the administrator.”

45. In this case the Court has not been shown any evidence of memorandum in writing evidencing a gift of land; sale agreement, transfer, Land Control Board application and or consent or any other evidence to show that the deceased had done all that he needed to do to gift the land to the 1st Plaintiff and her husband James Nganga and that what was pending was the actual registration of the title in favour of the Plaintiffs. The 1st Plaintiff having been married in 1993 and the deceased having passed away in 2013, surely what could have been so difficult for the deceased to carry out the above actions to ensure the gift was perfected.
46. DW1 led evidence to show that the couple were permitted to occupy the house as licensees. PW1 agreed with the DW1 on this one when she lodged a caution claiming a licensees interest. If indeed she had been gifted the land she would have claimed as a gift and or an owner of the land. I find that she was indeed a licensee of the land. As early as 2011 Kaindo was still alive and the probable thing for the 1st Plaintiff if indeed she held a gift over the land was to ensure that the alleged gift was perfected by Kaindo. She did not but instead lodged a caution to show that her interest was other than a gift but a licensee.
47. PW1 has admitted that there is no documentary evidence in support of a gift but has urged the Court to find that the conduct of the parties was such that created a gift in their favour. If indeed a gift was given by Kaindo to the couple, surely James Nganga who is alive could have claimed the same and at the very least give evidence in her favour. The Plaintiff has failed to lead evidence on conduct of the parties that would lead the Court to imply or infer a gift in their favour from the conduct of Kaindo.
48. I have carefully evaluated the evidence and find that the land 1121 devolved to the 1st Defendant vide Confirmation of Grant issued on 1/3/2017. In the absence of evidence to support a trust, least of all a customary trust, I find that there is neither a customary trust in favour of Plaintiffs nor a breach of trust by the 1st Defendant.
49. In the end I find that on a balance of probabilities, there was no evidence adduced by the Plaintiff to support the existence of a gift of the suit land in their favour.

Who shall bear costs of the application?

50. Although costs of an action or proceeding are at the discretion of the Court, the general principle is that costs shall follow the event in accordance with the proviso to Section 27 of the [Civil Procedure Act](#) (Cap.21). As such, the successful litigant should ordinarily be awarded costs unless, for good reason, the Court directs otherwise. In this case the parties being related the Court is of the view that the appropriate order to make in the circumstances is that each party to bear their costs.
51. Final orders for disposal
 - a. The Plaintiffs’ case is not proven. It is dismissed.
 - b. Each party to bear their costs
52. Orders accordingly.



DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 13TH DAY OF DECEMBER, 2024 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Saka HB Omwanza for 1st and 2nd Plaintiffs

Njuguna for 1st and 2nd Defendants

Court Assistant – Phyllis

