



REPUBLIC OF KENYA



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**Sabani v Simiyu (Environment & Land Case 146 of 2013 & Civil Case 3 of 2013
(Consolidated)) [2023] KEELC 16469 (KLR) (23 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16469 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE 146 OF 2013 & CIVIL CASE 3 OF 2013 (CONSOLIDATED)**

BN OLAO, J

MARCH 23, 2023

BETWEEN

ERASTUS SOGONI SABANI PLAINTIFF

AND

JACKSON WASIKE SIMIYU DEFENDANT

JUDGMENT

1. This judgment is in respect to two files being Bungoma ELC Case No 146 of 2013 and Bungoma High Court Case No 3 of 2013 (O.S) which were consolidated with the consent of the parties. The plaint in Bungoma ELC Case No 146 of 2013 became the plaint while the Originating Summons in Bungoma High Court Case No 3 of 2013 became the defence and counter claim.
2. By a plaint originally dated May 22, 2013 and later amended on October 4, 2018, Erastus Sogoni Sabani (the Plaintiff) sought judgment against Jackson Simiyu Wasike (the Defendant) in the following terms with respect to the land parcel No East Bukusu/North Kanduyi/1557 (the suit land):
 1. An order of permanent injunction restraining the defendant whether by himself, his servants, relatives, assignees and agents from encroaching, tilling or in any other way interfering with the Plaintiff's right of ownership of the land parcel No East Bukusu/North Kanduyi/1557 and removal of the caution.
 2. Costs of the suit.
 3. Interest at Court rates.
 4. Any other suitable or alternative relief this Honourable Court may deem fit and just to grant.The basis of the Plaintiff's claim is that he is the registered proprietor of the suit land having procured the title thereto on August 7, 2009. However, the defendant has without any colour



of right or authority from the Plaintiff encroached thereon purportedly asserting a purchaser's interest and lodged a caution on the title thus necessitating this suit.

3. The Plaintiff filed a replying affidavit dated January 10, 2022 in response to the Defendant's Originating Summons in Bungoma High Court Case No 3 of 2013 (O.S) as well as a statement dated July 15, 2021 in Bungoma Elc Case No 146 of 2013 both of which he adopted as his evidence during the trial.
4. In the replying affidavit, he deposed, inter alia, that he had purchased the suit land measuring 0.12 Hectares from one Beatrice Nduta who was the legal representative of the Estate of the late Peter Gatheru Macharia the then registered proprietor thereof. That at the time of the purchase, Beatrice Nduta informed him that no one had been in occupation of the suit land. He also inspected the land with the surveyor and confirmed that the beacons were in place and no-one was occupying it. It is not therefore true that the Defendant had been in occupation of the portion of the suit land measuring 50 x 100 feet since 1978. That the Defendant is not entitled to any portion of the suit land by way of adverse possession and neither can he claim any portion through specific performance since he did not obtain consent from the relevant Land Control Board. The Defendant's claim is therefore null and void as he is a trespasser on the suit land which is registered in the name of the plaintiff as per the copy of the title deed and certificate of official search. The Defendant's Originating Summons should therefore be dismissed with costs.
5. In his statement dated July 15, 2021 filed in Bungoma Elc Case No 146 of 2013, the Plaintiff stated that he is the registered proprietor of the suit land which he purchased in 2009 from one Beatrice Nduta the then legal representative of the Estate of Peter Gatheru Macharia who until his demise, was the registered proprietor of the said land. That Beatrice Nduta gave him vacant possession of the suit land which was subsequently transferred to him. That the suit land was a resultant sub-division of the original land parcel No East Bukusu/North Kanduyi/1467. That it is not true that the Defendant had purchased a portion measuring 40 x 100 feet from one Probus Wabuya Lukungu in the year 1993 since the said Probus Wabuya Lukungu had no proprietary interest in the suit land which he could transfer to the Defendant. That it is not true that the Defendant has occupied a portion measuring 40 x 100 feet comprised in the suit land since 1993 and it was not until December 2009 that the Plaintiff received a letter from Ateya & Company Advocates purporting that the Defendant had purchased a portion of land measuring 50 x 100 feet. He therefore wrote to the Land Registrar on June 4, 2012 complaining that someone had encroached onto his land.
6. The Plaintiff annexed to his replying affidavit the following documents:
 1. Copy of Register to the land parcel No East Bukusu/North Kanduyi/1557.
 2. Copy of Mutation Form for the land parcel No East Bukusu/North Kanduyi/1467.
 3. Copy of Grant of Letters of Administration issued to Beatrice Nduta & Another in respect of the Estate of Peter Macharia Gateru in Nairobi H.C. Succession Cause 944 of 2003.
 4. Copy of Certificate of Confirmation of Grant issued in NBI H.C. Succession Cause No 944 of 2003.
 5. Copy of title deed for the land parcel No East Bukusu/North Kanduyi/1557 in the name of the Plaintiff issued on August 7, 2009.
7. The Plaintiff also filed statements of his witnesses Alice Namalwa Simatwa (PW2) and Apiwa Nabarefu Wabuya (PW3) both dated July 15, 2021 in Bungoma Elc Case No 146 of 2013 as well as the same witness's other statement dated February 12, 2021 in Bungoma High Court Case No 3 of



2013. However, during the plenary hearing, Alice Namalwa Simatwa (PW2) admitted that she had been coached to record the statement dated February 12, 2021 while Apiwa Nabarefu Wabuya (PW3) denied having recorded any statement dated February 12, 2021.
8. In her statement dated July 15, 2021, Alice Namalwa Simatwa (PW2) stated that she is the only child of Apiwa Nabarefu Wabuya and Probus Wabuya Lukungu. She added that the Defendant has no claim on the suit land which belongs to the Plaintiff. That the Defendant is using fraudulent means to dispossess the Plaintiff of the suit land. That this Court should do justice and ensure that the Plaintiff gets his land.
 9. In her statement also dated July 15, 2021, Apiwa Nabarefu Wabuya (PW3) confirms that she is the widow of Probus Wabuya Lukungu who passed away on February 10, 1990 after selling the suit land to Peter Gatheru Macharia also deceased. That the suit land passed to his wife Beatrice Nduta Muthonjia through transmission who then sold it to the Plaintiff in 2009. That the suit land was among several sub-divisions of the land parcel No East Bukusu/North Kanduyi/1467 but the Defendant was not among the several people who purchased those result sub-divisions although he keeps claiming the same from the Plaintiff but has no sale agreement to back his claim. That the Defendant only wants to dispossess the Plaintiff of the suit land on which he even planted euphorbia and sisal plants in 2012 and 2013. That the Defendant is not in actual possession of the suit land and is using one Elizabeth Situma to disturb the plaintiff. That when she obtained the Grant of Letters of Administration in respect of her husband's Estate, she personally transferred to all those who had purchased land from her husband their plots and the Defendant was not one of them. Therefore, the Defendant's claim should be dismissed.
 10. The two also recorded statements dated February 12, 2021.
 11. In her statement Alice Namalwa Simatwa (PW2) confirm that she is the daughter of Probus Wabuya Lukungu who died in 1990 and Apiwa Naburefu Wabuya (PW3). She adds that her late father sold to the Defendant a parcel of land measuring 50 x 100 feet in 1978 at a consideration of Kshs.5,800 which was paid in full. That the portion was fenced and the Defendant is still in occupation and nobody has interfered with him. That it is in the interest of justice that the suit against the Defendant be dismissed.
 12. On her part, Apiwa Naburefu Wabuya also confirmed that her late husband Probus Wabuya Lukungu who was the registered proprietor of the land parcel No East Bukusu/North Kanduyi/1467 sold a portion measuring 50 x 100 feet to the Defendant at a consideration of Kshs.5,800 on October 8, 1978. That the portion was demarcated and the Defendant has a care-taker on it namely Elizabeth Anyango Situma. It is therefore in the interest of justice that the Defendant be given his land as sought in his Originating Summons.
 13. The Plaintiff also filed as his documentary evidence the following documents as per the list dated January 10, 2022:
 1. Letter addressed by him to the Land Registrar Bungoma and dated June 4, 2012.
 2. Letter by Hesbon Jumba Sabani dated December 17, 2009 and addressed to Ateya & Company Advocates.
 3. Copy of the Green Card to the land parcel No East Bukusu/North Kanduyi/1557.
 4. Demand letter by J. O. Makali Advocates dated September 10, 2012 and addressed to the Defendant.
 5. Grant of Letter of Administration issued to Beatrice Nduta & Another in respect to the Estate of Peter Macharia Gateru in NBI H.C. Succession Cause No 944 of 2003.



6. Certificate of Confirmation of Grant issued in NBI H.C. Succession Cause No 944 of 2003 Estate of Peter Macharia Gateru.

The Defendant resisted the Plaintiff's claim by filing a further amended defence dated December 2, 2021 in which he pleaded, inter alia, that in 1978 he purchased from Probus Wabuya Lukungu a portion of land measuring 50 x 100 feet out of the land parcel No East Bukusu/North Kanduyi/1557. That the Defendant proceeded to fence the said portion which he has occupied since 1978 which he has now acquired by way of adverse possession. That there is another suit pending being Bungoma Elc Case No 3 of 2013 (O.S).
14. In his amended Originating Summons dated December 2, 2021 and filed in Bungoma ELC Case No 3 of 2013 (O.S), the Defendant pleaded that in 1978, he occupied a portion of land measuring 50 x 100 feet being part of the land parcel No East Bukusu/North Kanduyi/1557. That his occupation has been uninterrupted to-date and this Court should order that he has acquired it by way of adverse possession and the Plaintiff's registration as the proprietor of that portion should be cancelled and the same registered in his names.
15. The Defendant filed his statement dated February 12, 2021 in which he stated, inter alia, that on October 8, 1978, he purchased from Probus Wabuya Lukungu a portion of land measuring 50 x 100 feet at a consideration of Kshs.5,800. That he took possession of the said land having paid the full purchase price in instalments and was surprised to learn that the Plaintiff is claiming ownership of the same. That he has used the said portion peacefully and it is clearly demarcated on the ground. He discovered a visit to the land office that the Plaintiff is registered as the proprietor of the suit land which he has occupied peacefully for over 31 years.
16. He also filed in Bungoma ELC the statement of his witness Elizabeth Anyango Situma (DW2) dated February 12, 2021 in which she states, inter alia, that she is aware that the Defendant purchased From Probus Wabuya Lukungu a portion of land measuring 50 x 100 feet. That the said land is clearly demarcated and she has been the care-taker of the same from 1980 to-date. That during that period, no-one has ever interfered with her or stopped her from working on it. That even if the Court visited the land it will observe the demarcation. According to her therefore, the said portion of land belongs to the Defendant.
17. The Defendant also filed statements of Alice Namalwa Simatwa and Apiwa Naburefu Wabuya both dated February 12, 2021 as his witnesses. I have already earlier in this judgment made reference to the two sets of statements signed by those witnesses dated February 12, 2021 and July 15, 2021.
18. The Defendant filed a list of documents dated January 10, 2019 to which were annexed the following documents:
 1. Copy of sale agreement between Wabuya Lukungu and Jackson Simiyu dated October 8, 1978 for a plot measuring 100 x 50 feet at a consideration of Kshs.5,800.
 2. Certificate of official search for the land parcel No East Bukusu/North Kanduyi/1557.
 3. Report dated May 31, 2012 by George Obondo Ongutu the District Land Registrar Bungoma on the land parcel No East Bukusu/North Kanduyi/1557.
19. The plenary hearing was held on July 21, 2022 when both parties testified, adopted their affidavit and statements and called their witnesses in support of their respective cases. The Plaintiff called as his witnesses Alice Namalwa Simatwa (PW2) and Apiwa Nabarefu Wabuya (PW3) both of who signed two sets of statements one dated February 12, 2021 and another dated July 15, 2021. However, during the hearing, both of them recanted their statements dated February 12, 2021 with Alice Namalwa



Simatwa (PW2) claiming that she had been coached to record it while Apiwa Nabarefu Wabuya (PW3) denying having signed it at all. Instead, they adopted as their evidence their statements dated July 15, 2021 the thrust of which is that the Defendant did not purchase any land from Probus Wabuya Lukungu. This contradicted what they stated in their earlier statements dated February 12, 2021. I shall revert to this shortly.

20. The Defendant also testified and called as his witness Elizabeth Anyango Situma (DW2). They both adopted as their evidence their affidavit/statements contents of which I have already summarized above.
21. Submissions were thereafter filed both by Mr Chepkwony instructed by the firm of Chepkwony & Company Advocates for the Plaintiff and by Mr Makokha instructed by the firm of Makokha, Wattanga & Luyali Associates Advocates for the Defendant.
22. I have considered the evidence by the parties as well as the submissions by counsel.
23. The starting point in the determination of this dispute must surely be whether the evidence of Alice Namalwa Simatwa (PW2) and Apiwa Naburefu Wabuya (PW3), and who testified in support of the Plaintiff's case, has probative value. During the plenary hearing, it became clear that both Alice Namalwa Simatwa (PW2) and Apiwa Naburefu Wabuya (PW3) recorded two statements each. In the first statements dated February 12, 2021 and recorded at the office of the Defendant's counsel at Bungoma, they both confirmed that the Defendant had indeed purchased a portion of land measuring 100 x 50 feet from Probus Wabuya Lukungu in 1978 at a consideration of Kshs.5,800 and was in occupation of the same as at the time the suit was filed. In their second statements dated July 15, 2021, and this time recorded at the office of the Plaintiff's counsel at Eldoret, they denied that the Defendant had purchased any land from Probus Wabuya Lukungu. When she was led in her evidence in chief by Mr Chepkwony, Alice Namalwa Simatwa (PW2) said she had been "coached" to record that statement. And upon being cross-examined by Mr Makokha, she said her "mother cheated me to lie that Jackson Simiyu Wasike bought the land." Her mother is of course Apiwa Nabarefu Wabuya (PW3) who, upon being cross-examined by Mr Makokha, first denied having recorded the statement dated February 12, 2021 only to admit later that indeed she had recorded the two statements.
24. The above contradictions, in the testimonies of those two witnesses for the Plaintiff prompted Mr Makokha to submit as follows at paragraph 10 of his submissions:

10. "That during the hearing of the case, it transpired that the two witnesses Apiwa Naburefu Wabuya and Alice Namalwa Simatwa despite the fact that they had executed witness statements dated February 12, 2021 supporting the Defendant's case herein, they also did statements dated July 15, 2021 supporting the Plaintiff's case herein. We submit that their evidence should be disregarded as of no probative value."

I could not agree more. When a witness makes one statement alleging a particular fact and then goes ahead to make another statement contradicting the earlier one, or even, as happened in this case, the witness admits to having been "coached" or made to "lie", the Court can only make one inevitable conclusion that such a witness is clearly untruthful and therefore un-reliable. Such testimony cannot be of any help either to the Court nor can it aid the party whose cause it is meant to support. If I may borrow from William Shakespear in Macbeth, such evidence can only be described as being full of sound and fury but signifying nothing. Or nearer home, what the Supreme Court would have referred to as "hot air".



25. In *Ndungu Kimanyi v R* C.a. Criminal Appeal No 22 of 1979 [1979 KLR 283] the Court of Appeal described the quality of such witnesses and the veracity of their evidence thus:

“The witness in a criminal case upon whose evidence it is proposed to rely should not create an impression in the mind of the Court that he is not a straightforward person, or raise a suspicion about his trustworthiness, or do (or say) something which indicates that he is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence.”

Those remarks were of course made in a criminal case. However, the yard stick by which the veracity of any evidence is tested is the same in criminal and civil cases. The long and short of all the above is that the testimony of both Alice Namalwa Simatwa (PW2) and Apiwa Naburefu Wabuya (PW3) served no useful purpose in these proceedings and can only be completely disregarded.

26. I consider the determination of the following two issues to be pertinent in resolving this dispute. These are:

1. Whether the Plaintiff, as the registered proprietor of the suit land is entitled to an order permanently injunctioning the Defendant from the whole land; and
2. Whether in fact the Defendant has acquired a portion of the said portion of land measuring 50 x 100 feet by way of adverse possession.

It is common ground that the suit land was first registered in the name of Probus Wambuya Lukungu as the first proprietor on December 19, 1988. On August 7, 2009, it was registered in the name of the Plaintiff but 4 months later on December 14, 2009, the Plaintiff lodged a caution on the title claiming a purchaser's interest. Therefore, as the registered proprietor of the suit land, the Plaintiff is entitled to all the privileges and rights of an absolute proprietor as provided under sections 25 and 26 of the *Land Registration Act*. However, as provided under section 25(1)(b) of the said *Act*, the Plaintiff's title is subject to the liabilities, rights and interests stipulated in section 28 of the said *Act*. And such rights and interest include under section 28(h) of the said *Act*:

28 (h) “rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription”.

Similar provisions were found in section 30(f) of the repealed *Registered Land Act* which was the applicable law when the Plaintiff acquired the title to the suit land in 2009. It provided that:

30. “Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register –

- (a) –
- (b) –
- (c) –
- (d) –
- (e) –
- (f) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription”.



As the registered proprietor of the suit land, the Plaintiff is within his right to seek orders injuncting the Defendant by himself, his servants, assignees agents or anyone else acting through him from encroaching onto the suit land. That is the remedy which he has beseeched this Court to grant him. The Defendant on the other hand claims to have been in occupation and possession of the portion measuring 50 x 100 feet since 1978 and is entitled to the order that he has acquired that portion by way of adverse possession.

27. Section 38(1) of the *Limitation of Actions Act* provides that:

“Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this *Act*, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

That is the remedy which the Defendant seeks in his Originating Summons and which is the counter-claim herein. It is now well established that the combined effect of the relevant provisions of Sections 6, 13 and 17 of the *Limitations of Action Act* is to extinguish the title of the registered proprietor of the land in dispute in favour of any adverse possessor of the same at the expiry of 12 years of the adverse possession – *Benjamin Kamau & Others v Gladys Njeri* C.a. Civil Appeal No 2136 of 1996.

28. In *Kasuve v Mwaani Investments Ltd & Others* 2004 1 KLR 184, the Court of Appeal set out what a person claiming land by way of adverse possession must prove. It said:

“And in order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner of his own volition – *Wanje v Saikwa* (NO 2) 1984 KRL 284. A title by adverse possession can be acquired under Limitation of Actions Act for a part of the land and the mere change of ownership of the land which is occupied by another under adverse possession does not interrupt such person’s adverse possession – (see *Githu v Ndette* 1984 KLR 776.”

A person claiming land by way of adverse possession must also show that his occupation and possession of the land in dispute is not by force, secrecy or persuasion (*nec vi nec clam nec precario*) – *Kimani Ruchine & Another v Swift Rutherford & Co Ltd* 1980 KLR 410. It must also be peaceful, uninterrupted and with the knowledge of the owner. A purchaser of land can acquire the same by way of adverse possession and whereas an absent registered owner always retains the legal Estate which entitles him to resume possession from anyone in possession, however, if the owner does not exercise his right to regain possession, he may not bring any action to recover the land from the person in possession after 12 years – *Public Trustee v Wanduru Ndegwa* C.a. Civil Appeal No 73 of 1982 [1984 KLR].

29. Adverse possession is a fact to be observed on the land – *Maweu v Liu Ranching & Farming Co-operative Society Ltd* 1985 KLR 430. The fact of the Defendant being in occupation and possession of the portion of the suit land measuring 50 x 100 feet and which he is claiming is not really in dispute. That is why in paragraph 4 of his amended plaint, the Plaintiff has pleaded that:

4. “The Defendant has without any colour of right and/or authority from the Plaintiff, on (sic) the suit land of the Plaintiff, fenced, lodged a caution on the



suit land and continues to encroach on the aforementioned title purportedly asserting a purchaser's interest.”

Indeed when he was cross-examined by Mr Makokha, the Plaintiff confirmed as much. He said:

“The Defendant has only invaded a portion of the suit land and not all of it. There is somebody farming on the land. It is one Elizabeth Situma who is using the land on behalf of the Defendant.”

That the Defendant purchased a portion of the suit land measuring 50 x 100 feet vide a sale agreement executed between him and Probus Wabuya Lukungu is confirmed through the said agreement. The Defendant testified that he took possession of the said portion in 1978. That the said portion is clearly marked using Euphorbia plants. This was confirmed by his witness Elizabeth Anyango Situma (DW2) who in her statement dated February 12, 2021 has stated in paragraphs 4, 5, 6, 7 and 8 as follows:

- 4: “I knew Jackson Simiyu Wasike aka Jack Simiyu Wasike in the year 1979 when I rented a house from on Probus Wabuya Lukungu.
- 5: “That later on, I came to learn that Jackson Wasike has purchased a portion of land measuring 50 x 100 feet from Probus Wabuya Lukungu.
- 6: That from 1980, I became the care taker of the said land upto now.
- 7: That the said land is clearly demarcated using live fence.
- 8: That since that time I became the caretaker nobody has ever stopped me nor interfered with my work”.

The Plaintiff conceded during cross-examination that indeed it is Elizabeth Situma (DW2) who utilizes the suit land on behalf of the Defendant. In a claim to land by way of adverse possession, the claimant need not be personally in occupation and possession of the land in dispute. It is sufficient if his family, agent or any other person authorised by him is in occupation and possession of the land. This is because, adverse possession is all about the dispossession of the owner of his land by the claimant who then remains thereon peacefully and un-interrupted for 12 years. Although the Plaintiff only acquired ownership of the suit land on August 7, 2009 as per the copy of title deed, the law is that prescription affects not only present holders of the title but their predecessors as well – *Kairu v Gacheru* 1986 – 1989 E.A. 215 [1988 eKLR]. The Defendant also need not live on the land. Cultivating and fencing it is sufficient. Therefore, by the time the Plaintiff was registered as the proprietor of the suit land in 2009, his title was always subject to the Defendant's prescriptive right which had long crystallized in relation to a portion measuring 50 x 100 feet and which the Defendant had been in occupation and possession since 1978. The Plaintiff's right to that portion was extinguished long before he obtained the title in 2009. And even if the period for purposes of adverse possession is computed from December 19, 1988 when the suit land was first registered, it is clear that the Plaintiff's title with respect to the portion which the Defendant claims, was extinguished by effluxion of time in the year 2000 some 13 years before the filing of the consolidated suits. A claim for land by way of adverse can be made for only a portion of land and the change of ownership does not interrupt time which has already started running – *Gitbu v Ndeete* (*supra*). The only way in which the Plaintiff could have stopped time from running would have been by asserting his right to the portion being claimed by the Defendant by taking legal action or making an effective entry. The action taken by the Plaintiff in filing Bungoma Elc Case No 146 of 2013 on May 23, 2013 came too late because by that time, the Defendant's occupation and possession of the portion of the suit land measuring 50 x 100 feet had long exceeded the 12 year limitation period. Clearly therefore, the Plaintiff is not deserving of any orders to injunct the Defendant



from utilizing the portion of the suit land measuring 50 x 100 feet. His right in that portion has been extinguished and his claim must be dismissed.

30. On the other hand, this Court is satisfied that the Defendant has been in occupation and possession of a portion of the suit land measuring 50 x 100 feet peacefully, un-interrupted, openly and without the permission of the Defendant for a period well in excess of 12 years. His claim to be registered as the proprietor of that portion by way of adverse possession is well merited and is for allowing.
31. Ultimately therefore, there shall be judgment for the Defendant against the Plaintiff in the following terms:
 1. The Plaintiff's claim is dismissed.
 2. The Defendant's counter-claim is allowed and the Court makes the following orders:
 - a. The Defendant has acquired by way of adverse possession a portion of the land parcel No East Bukusu/North Kanduyi/1557 measuring 50 x 100 feet by way of adverse possession.
 - b. The Plaintiff shall within 30 days from the date of this judgement deliver to the Land Registrar Bungoma the original title deed for the land parcel No East Bukusu/North Kanduyi/1557 for cancellation and for the County Surveyor Bungoma to demarcate the portion measuring 50 x 100 feet to enable the issuance of a title deed to the Defendant.
 - c. The Plaintiff shall also within 30 days execute any documents to facilitate the transfer of that portion in the name of the Defendant which shall be the portion which he currently occupies through his agent Elizabeth Situma.
 - d. In default of (c) above, the Deputy Registrar of this Court shall execute any such documents on behalf of the Plaintiff.
 - e. The Plaintiff shall meet the costs of this dismissed suit and the Defendant's counter-claim.

BOAZ N. OLAO

JUDGE

23RD MARCH 2023

JUDGMENT DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL AT BUSIA ON THIS 23RD DAY OF MARCH 2023 WITH NOTICE TO THE PARTIES. RIGHT OF APPEAL.

BOAZ N. OLAO

JUDGE

23RD MARCH 2023

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