



**Oriango v County Government of Nyamira & 4 others (Environment & Land
Case 95 of 2021) [2023] KEELC 16589 (KLR) (22 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16589 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA

ENVIRONMENT & LAND CASE 95 OF 2021

JM KAMAU, J

MARCH 22, 2023

FORMERLY AT ENVIRONMENT AND LAND COURT AT KISII CASE NO. 1225 OF 2016

BETWEEN

JAMES ONYANGO ORIANGO PLAINTIFF

AND

THE COUNTY GOVERNMENT OF NYAMIRA 1ST DEFENDANT

ZACHARIAH ODIDA KISIMA 2ND DEFENDANT

PATRICK MONARI 3RD DEFENDANT

HEDSON NYALI 4TH DEFENDANT

ATTORNEY GENERAL 5TH DEFENDANT

JUDGMENT

1. By a Plaint dated 23/10/96 lastly amended on 30/08/2015, the Plaintiff sued the County Government of Nyamira, the area Chief of North Mugirango Chache Location, as well as the Assistant Chief, Bunyengwe Sub-location, the District Officer Ekerenyo Division and the Attorney General for: -
 - a. A declaration that he is the owner of 9 Hectares out of land parcel North Mugirango/Magwagwa II/403 registered in the name of the 1st Defendant the same being ancestral land and/or acquired adversely.
 - b. An order enjoining the 1st Defendant to transfer the same to the Plaintiff or in lieu Deputy Registrar of this Honourable Court to do it.
 - c. A perpetual injunction to issue against the Defendant and/or their agents or servants, to desist from interrupting the Plaintiff's quiet enjoyment of the land in issue.



- d. Damages for unlawful eviction and destruction of the Plaintiff's property aforesaid.
 - e. Costs of this suit.
 - f. Interest at court rates.
 - g. Any further relief (s) deemed fit and just to grant.
2. In his averments, the Plaintiff claims that in 1964 his deceased father, Oriango Sambare allocated him approximately 10 Hectares out of the parcel of land that came to be registered as North Mugirango/Magwagwa II/403 and which was left in the custody of his uncle, Marao Sambare and his mother Loice Onduka. In 1981, the aforesaid uncle had part of the unregistered land, 1.08 Hectares registered in the name of one Thomas Mael Mogeni and the matter was successfully referred to Kisii High Court Civil Case No. 98 of 1982.
 3. The Plaintiff continued occupying the remaining 9 Hectares which he later discovered had been submerged into North Mugirango/Magwagwa II/403 and registered in the then Gusii County Council which has now been taken over by the 1st Defendant whose servants have severally harassed the Plaintiff, burned his houses, destroyed his properties and left the Plaintiff homeless. Efforts to have the Plaintiff prosecuted and convicted for trespass by the 1st Defendant in Kisii Senior Resident Magistrate Criminal Case No. 2992 of 1985 failed for lack of proof of ownership by the 1st Defendant. The Plaintiff therefore claims ownership of 10 Hectares out of North Mugirango/Magwagwa II/403. These averments were also elaborated in the Plaintiff's written statement dated 07/04/2014.
 4. The Attorney General denied all the above averments in toto vide his Amended Defence dated 17/07/2014.

On 29/07/2021, this court ordered that: -

1. The Land Registrar and County Surveyor, Nyamira shall visit parcel number North Mugirango/Magwagwa II/288, 403 and 469 and delineate the boundaries.
2. The Report together with the sketch map to be filed in court within 30 days.

On 28/02/2022 this court ordered that: -

“ This being a case of encroachment and not a boundary dispute as envisaged under Section 18 (2) of the [Land Registration Act](#), 2012 these Reports will form part of the evidence in this case which will proceed to full hearing. Any party is free to call the makers of the 2 Reports for Cross-Examination.”

5. The hearing of the case commenced on 17/03/2022 when the Plaintiff, James Onyango Oriago adopted his statement recorded on 07/04/2014 and filed in court on the same day. He said his father Oriango Sambare died in 1964 and left the suit land North Mugirango/Magwagwa II/403 in the hands of his mother Loice Onduka with strict instructions that the land belonged to the Plaintiff. However, when the Plaintiff went to work in Mombasa in 1969, his paternal uncle, one Marao Sambare illegally sold 1.08 Hectares of the suit land to one Thomas Mael Mogeni and the remaining 9 Hectares is now registered as Grazing Area.
6. Since 1985, the local administration has harassed the Plaintiff, destroyed his trees and houses on the suit land and burned down his and his family's houses. He produced the demand letter to the Attorney General dated 19/09/1996, an O.B. Reference No. CR/651/7/96 reporting arson contrary to Section 332 of the Penal Code and Malicious Damage Contrary to Section 339 (1) of the Penal Code, a letter



to D.O. Nyamusi from the chief dated 16/2/2011 showing the parcel of land to belong to Nyamira County Council, proceedings from Kisii SRMC Case No. 2992 of 1985 where the Plaintiff, the 4th accused was charged with trespass contrary to Section 3 of the *Trespass Act*, Cap 294 Laws of Kenya. The Plaintiff together with his co-accused were acquitted under Section 215 of the CPC with the following observations made by the court:-

“The accused appear to have been arrested in the assumption that the accused were trespassing upon county council land.....The accused were arrested in August 1985 except the 4th accused who was arrested in December 1985. The Deputy clerk to the council took the surveyor to the land much later after he had visited the land in December 1985. The accused were therefore arrested before it was ascertained that they had actually encroached upon council land.....There is no evidence to show that the council land had fixed boundaries marked by beacons and the accused do not seem to have been shown the beacons or the fixed boundary. Before the accused were arrested, they should have been satisfied that they had crossed the boundaries of their land or that they were encroaching on council land.....Evidence was not adduced by the prosecution to show how the council acquired the land. This was very necessary to show that the council had acquired legal possession of the land in question for value and nobody else had any interest in the land. Part of the land claimed by the council might have belonged to the accused before the council assumed possession of it.....If the council took part of the land of the accused and did not pay compensation for it the accused would still be having some interest in the land. They would therefore have reasonable excuse for stepping on the land. It was not therefore shown whether the accused had no claim of right over the land.....Accused 4 was arrested on 02/12/85 in Kisii town. He was not present on the land when accused 1, accused 2 and accused 3 were arrested. His mother told the court that the land in respect of which he was arrested belongs to her. Moti (DW5) told the court that the land in respect of which accused 3 was arrested is his land. Therefore, the county council appears not to have acquired absolute ownership of the land in question from the original owners.....The dispute between the county council and the accused is purely of land nature. It should have been processed through the land tribunal so that ownership of the land in question could be determined. Mere restriction of the land by the county council does not solve the question of ownership. The council may have acquired registration of the land without the knowledge of those who had interests in it. It was also necessary for the public to be shown the boundaries of the county council plot so that those neighbouring the plot cannot encroach upon it.....On the foregoing the court is doubtful whether the accused committed the alleged trespass. The case is therefore dismissed and the accused must be set free.”

7. This was on 19/11/1987. There is evidence of Notice of Intention to sue the Attorney General from the latter's letter received in J. Mainye Advocates' office on 23/10/1996 in response to the Plaintiff's Notice. There are photographs showing possession of the suit land by the Plaintiff. It is also the Plaintiff's evidence that the 2nd, 3rd and 4th Defendants told him he cannot own land in Gusiland since he belongs to the Luo community.
8. On cross examination by Mr. Nyachiro for the 1st Defendant, the Plaintiff said that he had not taken out letters of administration in respect to his father's Estate and that part of North Mugirango/Magwagwa II/403 has been used as a grazing land since 1973 and that his father's name does not appear in the Title Deed. The one that appears is that one of SIANYI GRAZING AREA – 41 Hectares. The file was opened on 07/08/1973. The survey was carried out in 1968 and that his late father, ORIANGO



SAMBARE had planted trees on the suit land and that it is the area residents who requested that the land be set aside as a grazing land. He also said that there is a prison on the suit land.

9. On cross examination by Mr. Ndiritu for the state, Mr. Onyango said that he initially did not know the acreage of the entire land and that the land was given the L.R. No. in 1973 but was initially L.R. No. North Mugirango/Magwagwa II/288 before it was sub-divided between North Mugirango/Magwagwa II/469 and another portion the Lands Office has refused to disclose.
10. PW2, Millicent Anyango Onyango, the Plaintiff's wife testified that on 07/07/1996 police officers under Assistant Chief Patrick Monari chased them away from the suit land and burned their houses that had been erected on the suit land and after reconstructing the burnt houses the same administration still came back to evict them on 10/07/1996 and even arrested and charged them in court. On cross examination by Mr. Nyachiro for the 1st Defendant, Ms. Onyango said she did not know the L.R. Number of the suit land nor whether the Plaintiff had obtained probate in respect of his father's Estate.
11. On further cross-examination by Mr. Ndiritu for the Attorney General she re-iterated that she didn't know the L.R. No. of the suit land but that she got married to the Plaintiff in 1969 and has resided on the land in question to date and that the land belonged to the Plaintiff's grandfather, who was already dead when she got married.
12. PW3 Peter Akumu Nyachoki, a neighbour testified that he has lived in the neighbourhood of the suit land since his childhood and that the Plaintiff and his parents and family have resided thereon all along until 1996 when the sub chief Patrick Monari came to harass them. On cross examination by Mr. Nyachoti, the witness said that North Mugirango/Magwagwa II/403 and North Mugirango/Magwagwa II/469, now separated by an access road, used to be one piece of land. And on cross examination by Mr. Ndiritu, he said that the Grazing land they know is far off the suit land and that the Plaintiff, his father and earlier on grandfather have lived on the suit land all along.
13. After closing the Plaintiff's case, the 1st Defendant called as its sole witness, the County Surveyor who took to the witness box and said that he had visited the suit land severally and demarcated the boundaries. He said the Plaintiff is the registered owner of North Mugirango / Magwagwa II/288 but that North Mugirango/Magwawa II/403 belongs to the 1st Defendant having inherited it from her precursor, Nyamira County Council. He produced an official search to that effect. He said that North Mugirango/Magwawa II/403 is surrounded by a road of access which is 10 metres wide. North Mugirango/Magwawa II/288 and 469 are on the upper side of the road while North Mugirango/Magwawa II/403 is on the lower side. North Mugirango/Magwawa II/403 is occupied by Prisons and that there are also houses put up by the Plaintiff. He further said that the Plaintiff's land L.R. No. North Mugirango/Magwawa II/288 has encroached onto North Mugirango/Magwawa II/403 by 10 Acres and that the road of access has also been encroached. He then produced his report which contains a sketch map. On cross-examination by Mr. Onyango, the Nyamira County Surveyor claimed that the Plaintiff has always taken him to a different parcel of land during the latter's visits.
14. After the close of the Defendant's case I invited the parties to file their written submissions which they all did and which I have duly considered.
15. This is not a boundary dispute as argued by the Defendants but a case of ownership. The law on ownership of land in Kenya is anchored on *the Constitution* of Kenya, 2010. Land owners' constitutional rights are protected under Article 40 of *the Constitution* of Kenya, 2010: -
 - (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—



- a) of any description; and
- b) in any part of Kenya.

Not even legislation can take away such rights. Sub-Article (2) (b) provides: -

- (2) Parliament shall not enact a law that permits the State or any person—
 - a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
 - b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4).
16. Since the Plaintiff's claim dates back to the pre-Titling period, I wish to first visit the Titling process in Kenya. Land Titles in Kenya were largely registered through a statutory process called the Torrens Title System. Under the Torrens system, land ownership can be readily ascertained without any need for repeated examinations of voluminous public records, and the resulting Titles are generally secure and marketable.
17. In Kenya, land ownership before the colonial period was completely different from now. The land was owned communally and reigned over by customary law. No specific person owned the land and anyone could do whatever they wanted as long as it was acceptable to his respective community. There were different ways in which land was communally owned but this differed from place to place and it largely depended on the tribe or the community. Land ownership was determined by the community with great regard to its mode of life. For example, there were communities that engaged in hunting-gathering, pastoralism, fishing or farming hence each lifestyle determined the mode of land ownership. A perfect example in the communities that participated in pastoralism were rights to grazing areas and pastures. Others included slat licks, shrines or religious grounds for performance of rituals. However, despite these different lifestyles, there are certain rights and obligations associated with land that were common from community to community. No individual person had Title over the land which the Community occupied and hence could not transfer the same.
18. Introduction of foreign laws disrupted existing communal land regimes and introduced a new registration regime. The co-existence of two land regimes resulted in duality of land laws and policies that perpetuated dual system of economic relationship consisting of an export enclave controlled by a small number of European settlers and subsistence periphery operated by a large number of African peasantries. This led to massive dispossession of the natives who were forced into Native's Reserves established by the colonial government to make way for the European settlement. The settlers were granted unlimited rights over fertile white highlands. Africans raised concerns which led to the enactment of Natives Trust Lands Ordinance in 1938 which governed all the areas that were previously referred to as 'Natives Reserves' which later became 'Natives Land' and were no longer regarded as Crown Land under the 1930 Ordinance and not governed by Crown Land Ordinance, 1915. Natives land boards were established for the administration of these lands and the subsequent introduction of English property regime in East Africa. The British and Arab settlers viewed private property as the solution to the challenges affecting communal ownership. As early as 1902, the basis of individualism of tenure had been laid through the enactment of the Registration of Documents Ordinance.
19. The policy of individualization was continued into post-colonial era. Registration of interests by a person conferred absolute right which could not be challenged. Participation to these boards by the Africans was minimal and colonial administration had more say in the management of the lands.



Colonial chiefs were used to administer land in the African areas. The chiefs acted as Trustees of the African communities.

20. Private land tenure traces its history to the introduction of colonial rule in Kenya and the subsequent introduction of English property regime in East Africa. The British and Arab settlers viewed private property as the solution to the challenges affecting communal ownership. As early as 1902, the basis of individualism of tenure had been laid through the enactment of the Registration of Documents Ordinance. The policy of individualization was continued into post-colonial era. Registration of interests by a person conferred absolute right which could not be challenged. In a paper titled Cousins B, 'more than socially embedded: the distinctive character of communal tenure'⁷ journal of agrarian change, 3 (2007), 299 Ben brothers describes the trends that had been adopted by the colonial government which resulted in the destruction of the original customary holding systems by stating that:

“The infiltration of the customary law by the colonial administration had an effect of transforming custom by overly emphasizing the group – based tenure of land rights and eroding mechanisms that constrained the power of traditional leaders and kept them responsive to the rights holders, these being replaced by requirement for ‘upward accountability’ to the state, creating opportunities for abuse of power and corruption.”

21. After attainment of independence, County councils had power to set apart an area of trust land for public purposes following certain procedure. Trust land could be set aside if it was for the use and occupation meeting the needs of the members of the Public in the locality. But for any land to be taken from an individual private owner or community, the same was subject to payment of adequate compensation.
22. The colonization and post-colonization period developed diverse land registration regimes in Kenya. This meant the end of the traditional land ownership method and gave birth to individual ownership of land.
23. The Plaintiff has given unshaken evidence to the effect that he has since birth lived on the suit land which had been owned by his father and his forefathers before him dating back to the pre-colonial days. What the Defendants have failed to show is how the suit land later got into the hands of the County Council of Kisii and subsequently, Nyamira County Council. The Plaintiff testified that his father Oriango Sambare died in 1964 and left the suit land North Mugirango/ Magwagwa II/403 in the hands of his mother Loice Onduka with strict instructions that the land belonged to the Plaintiff. However, when the Plaintiff went to work in Mombasa in 1969, his paternal uncle, One Marao Sambare sold 1.08 Hectares of the suit land to one Thomas Mael Mogeni. The Plaintiff filed a Civil Suit and the matter was decided upon by the High Court in Kisii HCCC No. 98 of 1982 in his favour. The fact that the 1st Defendant did not contest the Plaintiff's ownership of the 1.08 Hectares which was part of L.R. No. North Mugirango/ Magwagwa II/403 is clear evidence that the Plaintiff's claim is genuine and valid. The two parcels were inseparable. The Plaintiff's ancestors cannot have settled on the entire land for generations when only 1.08 Hectares belonged to the family and not the entire 10 Hectares.
24. The Plaintiff has shown that his ancestry was entitled to 10 Hectares out of L.R. No. North Mugirango/ Magwagwa II/403. The 5th Defendant did not help the Court by providing documents to show how the suit land became the property of the 1st Defendant. It must be holding those documents and unless they are damaging to the 1st Defendant's case and supporting the Plaintiff's case, there is no other reason as to why the Honourable Attorney General could not produce them in Court.



25. I am aware that the onus of proof is on the Plaintiff to prove ownership but once the Plaintiff established that ownership, as he has done, and testified that the documents of ownership are in the custody of the officers of the 5th Defendant who have refused to give copies to the Plaintiff, the onus must shift to the Defendants to show how the 1st Defendant acquired the land.

26. Section 68 of the Evidence Act (Cap 80 Laws of Kenya) on Proof of documents by secondary evidence provides that:

(1) Secondary evidence may be given of the existence, condition or contents of a document in the following cases—

a) when the original is shown or appears to be in the possession or power of—

(i) the person against whom the document is sought to be proved;

Under Section 66 of the Evidence Act 66.

Secondary evidence includes—

a. certified copies given under the provisions hereinafter contained;

b. copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;

c. copies made from or compared with the original;

d. counterparts of documents as against the parties who did not execute them;

e. oral accounts of the contents of a document given by some person who has himself seen it.

27. This list is not exhaustive and the Plaintiff's account of his ancestry having lived on the suit land and having earlier on been registered or supposed to be registered the proprietor(s) of North Mugirango/ Magwagwa II/403 would be strong evidence that there exists in the custody of the 5th Defendant a Green Card showing that the land belonged to his forefathers but the Defendants would not want to produce the said Card for fear that it would bring this fact out. No wonder the 5th Defendant in his written Submissions observed:

“.....No documentary Evidence was produced to show that the Plaintiff owned 9 Hectares he claims to be entitled to in North Mugirango/ Magwagwa II/403 which lies in contention in this very present discourse.....”

28. The Halsbury's Laws of England, 4th Edition, Volume 17, at paras 13 and 14: describes legal burden of proof as follows:

“.....In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case.....”

29. The Court of Appeal in the case *Mbuthia Macharia v Annah Mutua & Another* [2017] e KLR discussed the burden of proof and stated thus:

“The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the appellant,



the evidential burden may shift in the course of trial, depending on the evidence adduced. As the weight of evidence given by either side during the trial varies, so will the evidential burden shift to the party who would fail without further evidence? In this case, the incidence of both the legal and evidential burden was with the appellant.”

30. Further, Article 35 (1) and (2) of *the Constitution* of Kenya, 2010 gives an obligation to the 5th Defendant to provide copies of the documents that shows the history of the ownership of the Suit property to the Plaintiff:

35. Access to information

(1) Every citizen has the right of access to—

- a. information held by the State; and
- b. information held by another person and required for the exercise or protection of any right or fundamental freedom.

(2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person.

31. The Defendants cannot therefore sit back and insist that the onus of proof is on the Plaintiff yet they are the sole custodians holding the crucial documents with monopoly albeit as Trustees of the people of Kenya, including the Plaintiff while crying aloud:

.....Mr. Onyango, we dare you to prove your case”.

and at the same time whispering:

But remember that the documents you need to do so are exclusively in our custody. There is no way you can get access to them. Sisi ndiyo mambo yote.....”

32. When the 1st Defendant had the Plaintiff inter alia arraigned in Court in Kisii SRMC Criminal Case Number 2992 of 1985 the Plaintiff went through the motion and was eventually acquitted under Section 215 of the Criminal Procedure Code. While discharging him, the Court made the following observations:

The accused appear to have been arrested in the assumption that the accused were trespassing upon county council land. Evidence was not adduced by the prosecution to show how the council acquired the land. This was very necessary to show that the council had acquired legal possession of the land in question for value and nobody else had any interest in the land. Part of the land claimed by the council might have belonged to the accused before the council assumed possession of it.....If the council took part of the land of the accused and did not pay compensation for it, the accused would still be having some interest in the land. They would therefore have reasonable excuse for stepping on the land. It was not therefore shown whether the accused had no claim of right over the land.....The council may have acquired registration of the land without the knowledge of those who had interests in it.”

33. What the lower Court was telling the Defendants is that they ought not only to have produced documents in Court to prove ownership of the Suit land, North Mugirango/ Magwagwa II/403 but to also show how the 1st Defendant acquired it. Which they failed to do. They have repeated the same slipup here where the issue before the Court is simply ownership and that evidence is very



crucial. The trial Court even observed that the Defendants may have acquired registration of the suit land without the knowledge of those who had interests in it among them the Plaintiff and did not pay him compensation and that part of the land claimed by the council might have belonged to the accused before the council assumed possession of it. This Court associates itself with the lower Court's observations hereunder:

.....Evidence was not adduced by the prosecution to show how the council acquired the land. This was very necessary to show that the council had acquired legal possession of the land in question for value and nobody else had any interest in the land.....”

34. Despite the lower Court making the above observations, the Defendants are still not ready to release documents of ownership in respect to North Mugirango/ Magwagwa II/403, and more so its history by way of a Green Card. How did the 1st Defendant acquire the land? On the contrary, the Defendants were ready to go out of their way to prove ownership of North Mugirango/ Magwagwa II/288 belonging to one Marao Sambari which the Court is not interested in and without showing its connection with North Mugirango/ Magwagwa II/403. The County Surveyor's Report dated 17/11/2021 also shows sketches of Land parcels North Mugirango/ Magwagwa II/291, 469, 296, 281,288 and 403. The County Surveyor had access to the relevant documents when carrying out the exercise and was in fact tasked alongside the Land Registrar, Nyamira to carry out the work of establishing the parcels of land. The latter also prepared his Report of even date which makes Reference to the Surveyor's Report. The Land office, Nyamira is very opaque in the way it handled this matter.
35. The Defendants' witness Richard Bosire, the then County Surveyor also failed to produce the Green Card nor the Title Deed in respect to Nyamira North Mugirango/ Magwagwa II/403. In fact, on re-examination by Mr. Ndiritu, he admitted that his office had amended the Map he was relying on in respect to North Mugirango/ Magwagwa II/403 twice on 21/1/1977 and on 1/4/1991. What necessitated the amendments and on whose request? This is when the mischief must have been premeditated and perpetrated by the Defendants and this explains why they are not producing the doctored Title documents in Court, in order to suppress the truth. Luckily for the Plaintiff, the witness admits that the Plaintiff has always occupied part of Mugirango/ Magwagwa II/403, the part Mr. Onyango claims to be his. In the alternative, it is during the Land Adjudication process in this region, which involves determining and recording of rights and interests of individuals residing on registered community land for the purpose of facilitating the registration of Titles and which is the process of final and authoritative determination of the existing rights and claims of people to land, that Mr. Onyango was double-crossed. The process was invariably and exclusively in the hands of the 5th Defendant.
36. Albeit in a very difficult and hostile terrain, I find that the Plaintiff has proved his case of ownership on a balance of probabilities.
37. As to the Plaintiff not taking out letters of administration for the Estate of his late father, the Plaintiff is not after his father's Estate but ancestral land and all he needs to show is that he belongs to that particular lineage. In any case the Law of Succession Act came into existence long after his father died.

PARA38.

As for the General Damages for unlawful eviction and destruction of the Plaintiff's property, the Plaintiff through himself and his witnesses has proved what he has over the years gone through in terms of harassment and destruction of property including burning of his houses. The Defendants never rebutted this evidence. It is wrong for the 1st Defendant to use his vantage position to harass the Plaintiff in order to remove the overwhelming evidence of Adverse Possession which I believe the 1st Defendant was hell bent to do. For this the Court awards the Plaintiff Kshs. 750,000/= as General Damages for unlawful destruction of property and



a further Kshs. 500,000/= as General, Aggravated and Exemplary Damages for eviction and the nervous shock, emotional distress, psychological and mental anguish, cruel and inhuman treatment meted on and occasioned to the Plaintiff and his family by the 1st and 5th Defendants and their servants and agents among them the 2nd, 3rd and 4th Defendants when carrying out the unconstitutional and illegal eviction.

39. I therefore find that the Plaintiff is entitled to Judgment against the Defendants jointly and severally which I hereby grant him in the following terms:

- a. A declaration be and is hereby issued that the Plaintiff is the owner of 9 Hectares out of land parcel North Mugirango/Magwagwa II/403 to be registered in the name of the 1st Defendant the same being ancestral land.
- b. An order is hereby made that the 1st Defendant do forthwith transfer to the Plaintiff 9 Hectares out of land parcel No. North Mugirango/ Magwagwa II/403 in lieu of which the Deputy Registrar of this Honourable Court do execute transfer documents in place of the 1st Defendant.
- c. A permanent injunction do issue against the Defendants and/or their agents or servants, to desist from interrupting the Plaintiff's quiet enjoyment of the land in the designated 9 Hectares out of land parcel No. North Mugirango/ Magwagwa II/403.
- d. Kshs. 1,250,000/= General Damages, Exemplary Damages and Aggravated Damages for unlawful eviction, destruction of property and for the attendant nervous shock, emotional distress, psychological, mental anguish and the unconstitutional, cruel, degrading and inhuman treatment meted on and occasioned to the Plaintiff and his family when carrying out the unconstitutional and illegal eviction.

The Plaintiff is also awarded the costs of this Suit and Interest on the same and on (d) above at court rates the same to be calculated from the date of filing this Suit until payment in full.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 22ND DAY OF MARCH 2023.

MUGO KAMAU

JUDGE

In the Presence of: -

Sibota - Court Assistant

Plaintiff in person

Mr. Nyachiro for the 1st Defendant

Mr. Wabwire for the 5th Defendant

