



**Narok County Government & another v Ogembo (Environment and Land Appeal  
25 of 2021) [2023] KEELC 20167 (KLR) (27 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20167 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT AND LAND APPEAL 25 OF 2021  
EM WASHE, J  
SEPTEMBER 27, 2023  
FORMERLY NAROK ELC APPEAL NO. 20 OF 2020**

**BETWEEN**

**NAROK COUNTY GOVERNMENT ..... 1<sup>ST</sup> APPELLANT**

**EXECUTIVE COMMITTEE MEMBER OF LANDS ..... 2<sup>ND</sup> APPELLANT**

**AND**

**CALLEN KEMUNTO OGEMBO ..... RESPONDENT**

**JUDGMENT**

1. The 1<sup>st</sup> and 2<sup>nd</sup> Appellants are dissatisfied with the Judgement and Decree of Hon.R.M.Oanda (Principal Magistrate) dated 21<sup>st</sup> May 2020 in the proceedings known as Kilgoris PMC ELC Case No. 5 Of 2018.
2. The Appellants through their Memorandum of Appeal dated 19<sup>th</sup> June 2020 outlined 11 grounds of Appeal which are as follows:-
  - i. The Learned Magistrate erred in law and in fact by completely disregarding the Appellants pleadings, evidence and written submissions and thus failed to consider and determine the issues raised therein.
  - ii. The Learned Magistrate erred in law and in fact by finding that Respondent is the legal proprietor of all that land known as L.R.No.Transmara/Kilgoris Township/83 (suit property) on the basis of the Certificate of Lease she produced even where the Appellants produced overwhelming evidence that the said Certificate of Lease has been procured through fraud and accordingly had been issued by mistake.
  - iii. The Learned Magistrate erred in law and in fact in completely disregarding the fact that the Respondent had admitted during the trial that she had not made full disclosure and produced



material documents that must be processed before any allottee of land is issued with a title document.

- iv. The Learned Magistrate erred in law and in fact in failing to take into consideration the conflicting testimony offered by the Respondent in that whereas during her cross-examination she readily admitted to not having any proof of applying to be allocated the suit property, she later recanted and claimed that the land belonged to her father in law who encouraged her to apply for an allotment letter.
  - v. The Learned Magistrate erred in law and in fact in failing to consider the uncontroverted testimony of DW 2 that outlined the procedure for the allocation of public land as prescribed by the Physical Planning Act and thus failed to make a finding on whether the Respondent had adhered to the said procedure in acquiring her supposed interest in the suit property.
  - vi. The Learned Magistrate erred in law and in fact in failing to consider and make a determination on the effect of the difference in the acreage of the suit property as apparent from the illegitimate Letter of Allotment and Certificate of Lease which were both produced by the Respondent in support of her case.
  - vii. The Learned Magistrate erred in law and in fact in failing to appreciate and make a determination with respect to the unapproved PDP referenced as R 372/99/2 produced by the Respondent that was entirely different from the PDP referenced as R/237/98/1 as indicated in the illegitimate Letter of Allotment that the Respondent produced in support of her case.
  - viii. The Learned Magistrate erred in law and in fact in failing to appreciate that the Appellants provided uncontroverted evidence that the suit premises was part of the larger acreage belonging to the Ministry of Housing which had been earmarked for purposes of constructing houses for Kilgoris Sub-County Hospital Staff.
  - ix. The Learned Magistrate erred in law and in fact in failing to consider and determine the effect of the Restriction registered at the behest of the Ministry of Housing following its realisation that the Respondent had illegally obtained a Certificate of Lease with respect to the suit property.
  - x. The Learned Magistrate erred in law and in fact in failing to consider and determine the issue of whether the Respondent had obtained the requisite approvals to make any developments on the suit property.
  - xi. The Learned Magistrate erred in law and in fact in failing to consider and determine the effect of the Respondent's collusion with her husband in obtaining letters of no objections that purportedly approved her supposed plans to develop the suit property.
3. The Appellants in the Memorandum of Appeal are seeking for the following Orders upon determination of the same;-
- a. This Appeal is allowed.
  - b. Judgement and Decree of the Principal Magistrates Court at Kilgoris (Hon.R.M.Oanda) given at Kilgoris on the 21<sup>st</sup> May 2020 be set-aside.
  - c. Costs of Appeal be provided for.
4. The Record of Appeal was duly admitted and the parties directed to canvass the same through filing of written submissions.



5. The Appellants filed their submissions on the 21<sup>st</sup> of April 2023 while the Respondent filed her submissions on the 23<sup>th</sup> of May 2023.
6. In the case of *Selle & Another v Associated Motor Boat Co.ltd & Others* (1968) EA 123 where the Court observed as follows;-
 

“A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand.”
7. Indeed, this Honourable Court will proceed to re-examine and analysis the evidence before the Trial Court before arriving at its own conclusion.
8. The beginning point in the determination of this Appeal is to determine the Prayers sought for by the Respondent in the Plaint filed in the Trial Court.
9. According to the Record of Appeal, the Respondent instituted a suit by way of a Plaint dated 26<sup>th</sup> February 2018 seeking the following orders;-
  - i. Declaration that the Plaintiff is the lawful, bona-fide and registered owner of L.R.No.Transmara/Kilgoris Township/83
  - ii. Declaration the activities and/or acts of the Defendants herein of entry upon L.R.No.Transmara/Kilgoris Township/83 were/are unlawful, illegal and otherwise amounts to trespass.
  - iii. Permanent Injunction restraining the Defendants by either by themselves, agents, servants and/or anyone claiming under Defendants from entering into, re-entering, trespassing onto, interfering with and/or in any other manner dealing with the suit property, that is , L.R.No.Transmara/Kilgoris Township/83 and/or any portions thereof, save for purposes of conducting the statutory inspections in accordance with the provisions of the [Physical Planning Act](#).
  - iv. General Damages for Trespass and/or mense profits.
  - v. Interest on (iv) above at Court rates.
  - vi. Costs of this suit be borne by the Defendants.
  - vii. Such further and/or other reliefs as the Honourable Court may deem fit and expedient so to grant.
10. The Plaint was duly served on the Defendants who filed their Statement of Defence on the 16<sup>th</sup> July 2018.
11. The Appellants in their Statement of Defence dated 16<sup>th</sup> July 2018 challenged the validity of the title owned by the Respondent and sought the dismissal of the Plaint dated 28<sup>th</sup> of February 2018.
12. The hearing in the Trial Court began 30/05/2019 with the Testimony of the Respondent Caren Kemunto Ogembo who was identified as PW 1.
13. PW 1 introduced herself a teacher by profession who was stationed at St Paul Primary School in Nkararo but resides within Transmara West.



14. PW 1 confirmed that he is the registered owner of the property known as L.R.No.Transmara/Kilgoris Township/83 .
15. PW 1 informed the Trial Court that the property known as L.R.No.Transmara/Kilgoris Township/83 initially was occupied by her father in law.
16. PW 1 stated that before the demise of her father in law, it was agreed that she would apply to be allocated the said property for their use.
17. PW 1 indicated that she indeed applied for allocation before the Commissioner of Lands which application was approved through the issuance of a Letter of Allotment.
18. PW 1 then proceeded to make the relevant statutory payments and the necessary Physical Development Plans were prepared, registered and a valid certificate of lease dated 13/03/2018 issued.
19. Upon securing the Certificate of Lease dated 13/03/2018, the Respondent applied for building permits and/or approvals but the Respondents who were successors in title to the former County Council of Transmara declined to grant the said approvals and/or permits.
20. The main ground for the Respondents refusal to issue approvals and/or permits for the development of the property known as L.R.No.Transmara/Kilgoris Township/83 was that the said Certificate of Lease was processed fraudulently and through misrepresentation.
21. PW 1 informed the Trial Court that the property known as L.R.No.Transmara/Kilgoris Township/83 was created from a plot known as unsurveyed Plot.No. 1.
22. The unsurveyed Plot No. 1 was opposite Cereal Board and neighbours the Kilgoris Hospital.
23. After the registration and issuance of the Certificate of Lease dated 13/03/2018, the property known as L.R.No.Transmara/Kilgoris Township/83 was marked as a commercial plot and the Respondent is currently in occupation.
24. However, PW 1 indicated that the Hospital management has been claiming that the property known as L.R.No.Transmara/Kilgoris Township/83 belonged to them and consequently thereof, resisted the development of the same by the Respondents.
25. PW 1 informed the Trial Court that the boundaries of the property known as L.R.No.Transmara/Kilgoris Township/83 were fixed by a Government Surveyor and there is not portion of it that was hived off from the hospital compound.
26. The PW 1 further stated that she had written to the Departments of Lands office in Nairobi and it was confirmed that she was the legitimate owner of the said property known as L.R.No.Transmara/Kilgoris Township/83 .
27. PW 1 confirmed to the Trial Court that she has never disposed off the said property and was still the duly registered owner thereof.
28. PW 1 adopted in full her witness statement together with the List of documents as her evidence in chief.
29. On cross-examination, PW 1 informed the Trial Court that her husband was an Engineer working for the Public Works.
30. PW 1 stated that initially, the Plot in issue did not have a number and was un-surveyed.
31. However, PW 1 insisted that they applied for allocation although she did not have a copy of the said Application.



32. Thereafter, the un-surveyed Plot was demarcated and Physical Development Plan No. R237/980/1 was approved.
33. Thereafter, PW 1 proceeded with the process of acquiring the Certificate of Lease.
34. However, when PW 1 tried to develop the property known as L.R.No.Transmara/Kilgoris Township/83 , the Respondents herein declined to approve her development plans or grant her any permits and/or approvals.
35. PW 1 stated that she did not require the permission from the Hospital to develop her property that she had acquired through investment of her funds.
36. On re-examination, PW 1 confirmed that she had engaged a Government Surveyor to survey the property.
37. PW 1 confirmed that the Letter of Allotment dated 22<sup>nd</sup> June 1999 was issued by the Government.
38. According to PW 1, the Physical Development Plan was not prepared by her and was not aware how it was prepared.
39. PW 1 stated that the Physical Development Plans were prepared and processed by Government Surveyors and physical planners.
40. PW 1 informed the Trial Court that her intention was to develop the property known as L.R.No.Transmara/Kilgoris Township/83
41. However, due to the refusal to grant building permits and/or approvals, the intended projects by PW 1 had not taken off.
42. PW 1 complained that the issue was interference of the property known as L.R.No.Transmara/Kilgoris Township/83 by the Respondents herein and the Hospital officials.
43. PW 1 insisted that there was no influence by the Husband for the allocation of the property known as L.R.No.Transmara/Kilgoris Township/83
44. At the end of this re-examination, the Plaintiff closed her case.
45. The Defence hearing began with the testimony of Peter Silei who is identified as DW 1.
46. DW 1 introduced himself as the Administrator of Transmara Sub-County Hospital and aware of the suit.
47. DW 1 indicated the dispute involves an un-surveyed Plot.No. 1 within Kilgoris Township.
48. DW 1 then confirmed writing a witness statement dated 16/07/2018 and adopted the same as his evidence in chief.
49. DW 1 produced a Certificate of Search dated 13/03/2018 to support this testimony.
50. On cross-examination, DW 1 stated that he became the Hospital Administrator in the year 2014.
51. DW 1 indicated that the suit property known as L.R.No.Transmara/Kilgoris Township/83 according to the Certificate of Search belongs to Callen Kemunto Ogembo.
52. DW 1 confirmed that he was aware of where the property known as L.R.No.Transmara/Kilgoris Township/83 was located but could not state how far the same is from the hospital.



53. DW 1 stated that public land is managed by National Land Commission although in this particular case, the Appellants had not escalated the same to the National Land Commission.
54. DW 1 informed the Trial Court that he was in possession of a letter from the National Land Commission which confirmed that the property known as L.R.No.Transmara/Kilgoris Township/83 belongs the Respondent and consequently a private property.
55. In re-examination, DW 1 denied receipt of the letter from the National Land Commission and questioned the authenticity of the same.
56. The next Defence Witness was one Erastus Mutuku who was identified as DW 2.
57. DW 2 introduced himself a Physical Planner working with the 2<sup>nd</sup> Defendant.
58. DW 2 informed that the Trial Court that he had prepared a detailed Witness statement dated 16/07/2018 to which he adopted the same as his evidence in chief.
59. DW 2 also produced referred the Trial Court to look at the Defence Exhibit 1 which was the Search dated 13/03/2018.
60. Further to that DW 2 produced a second search and a Map .
61. On cross-examination, DW 2 reiterated that he works for the 2<sup>nd</sup> Defendant and not the National Government as a Planner.
62. DW 2 indicated to the Trial Court that Planning was one of the functions that was devolved to the County Governments.
63. DW 2 informed the Trial Court that there were no officers from the National Physical Planning Department at the County level.
64. DW 2 started that before devolution, there were officers that were managing the planning of Kilgoris and had created a development plan for Kilgoris Township.
65. DW 2 then referred to the Development Plan which was produced as Defence Exhibit 3.
66. In reference to the Defence Exhibit 3, DW 2 confirmed that the Development Plan was prepared in June 1998 by one J.S.Okoyana although he did not provide his designation.
67. DW 2 insisted that any Planner must indicate his designate on any Development Plan that he or she prepares.
68. Secondly, DW 2 submitted that the Development Plan must be approved.
69. Referring to the Defence Exhibit 3, DW 2 stated that this map was approved on the 13/12/2000 by one Joseph W.N. Nyaga but the said officer did not sign the same.
70. DW 2 further testified that the Defence Exhibit No. 3 was certified by one Benson.K.Mbwana on the 4/12/2000 but again did not sign the certification.
71. DW 2 indicated to the Trial Court that the property in issue had two numbers namely Plot No.1 – Kilgoris Township currently known as L.R.No.Transmara /Kilgoris/Township/1 and L.R.No.Transmara/Kilgoris Township/83
72. DW 2 stated that when he visited the ground, he found that the Respondent had not built any fences but was informed that a fence had been erected by one Peter Silei and demolished.



73. According to DW 2, Plot.No. 1 was located in the Central Business District (CBD) and L.R.No.Transmara/Kilgoris/83 was next to the Hospital.
74. However, during this exercise, DW 2 was not accompanied by any Government Surveyor or the District Land Surveyor.
75. Referring to Defence Exhibit 1- DW 2 confirmed that Plot.No. 1 was registered in the name of the Respondent.
76. DW 2 stated that there is a restriction that had been placed on the Register of the Respondent's property by the Ministry of Housing.
77. However, he was not familiar with the reasons and why the Ministry of Housing had placed the said caution.
78. Further to that, DW 2 informed the Trial Court that the 2<sup>nd</sup> Appellant had written a letter to the National Land Commission in respect to the Respondent's property but so far the same had not been replied to.
79. On being referred to the Plaintiff's Exhibit 3, DW 2 confirmed that it was a letter from the National Land Commission confirming that L.R.No.Transmara/Kilgoris Township/83 legally belonged to the Respondent herein.
80. Upon becoming aware of the position by the National Land Commission, the 2<sup>nd</sup> Respondent has never taken any steps to rectify the said registration through a court process.
81. DW 2 nevertheless insisted that the Certificate of Lease issued to the Respondent was done illegally.
82. In re-examination, DW 2 insisted that a Certificate of Lease cannot be issued with a partial Physical Development Plan.
83. DW 2 denied knowledge of the contents in the letter from the National Land Commission.
84. DW 2 indicated that he does not issue any Certificate of Leases but confirmed that partial Development Plans can be issued for specific parcels whose owners would want to process their Leases.
85. DW 2 indicated that there was only one development Plan for Kilgoris with different owners.
86. DW 2 stated that the lack of signatures on the Development Plan did not invalidate the same as the stencil used shows the documents to be genuine.
87. DW 2 concluded his evidence by stating that the Certificate of Lease to the Respondent was questionable.
88. The Defence third witness was Stephen Waithaka Githinji who was identified as DW 3 by the Trial Court.
89. DW 3 introduced himself as the District Land Registrar of Transmara West and East.
90. DW 3 stated that he had prepared a witness statement dated 16/07/2018 and adopted the same as his evidence in chief.
91. DW 3 also relied on the Defence Exhibits 1 and 2 thereof.
92. On cross-examination, DW 3 confirmed that his office was the custodian of all instruments of land within Transmara West.



93. DW 3 confirmed that the property known as L.R.No.Transmara/Kilgoris Township/83 was existing and was registered in the name of the Respondent.
94. DW3 informed the Trial Court that all the survey process was lawfully complied with.
95. DW 3 indicated that he had never been on the ground but if need be, then a surveyor would easily pick it out on the ground.
96. As regards Plot.No.1, DW 3 stated that this a separate and distinct parcel of land from L.R.No.Transmara/Kilgoris Township/83
97. DW 3 confirmed to the Trial Court that there was no dispute of encroachment between the two parcels of land.
98. DW 3 indicated that neither the 2<sup>nd</sup> Respondent not the Commissioner of Lands have ever lodged any complaint about the legitimacy of the property known as L.R.No.Transmara/Kilgoris Township/83
99. DW 3 indicated that there was a dispute between the Hospital and the Respondent but according to the records in the Ministry of Lands, the property known as L.R.No.Transmara/Kilgoris Township/83 was a private property.
100. DW 3 informed the Trial Court that legally speaking, the Respondent was at liberty to use the property known as L.R.No.Transmara/Kilgoris Township/83 in whichever manner she deems fit.
101. In re-examination, DW 3 stated that the letter dated 09/08/2018 was not addressed to his office as the same was addressed to the Administrator of the Hospital.
102. DW 3 stated that in the process of titling, its only the issuance of title that is usually done by the Land Registrar with approval of the National office.
103. DW 3 reiterated that he had never been to the property known as Plot.No.1.
104. At the end of testimony by DW 3, the Defence also closed their case.
105. The Respondents then filed their submissions on the 22<sup>nd</sup> of January 2020 while the Appellants filed their submissions on
106. This Honourable Court has indeed gone through the pleadings filed at the Trial Court, the evidence and exhibits produced therein as well as the submissions by the parties and hereby identifies the following issues for determination;-

Issue No. 1-is The Respondent The Lawful Registered Owner Of The Property Known As L.R.No.Transmara/Kilgoris Township/83?

Issue No.2- Was The Certificate Of Lease Issued In Favour Of The Respondent Lawful And In Compliance With The Law?

Issue.no. 3- Is The Respondent Entitled To The Prayers Sought In The Plaint Dated 26<sup>th</sup> February 2018?

Issue No.4- Who Bears The Costs Of Suit In The Trial Court As Well As The Present Appeal?

107. The Honourable Court upon identifying the above issues for determination, the same will now be discussed as below.



**Issue No. 1-is The Respondent The Lawful Registered Owner Of The Property Known As L.R.No.Transmara/kilgoris Township/83?**

108. The Respondent herein instituted the Trial Proceedings on the strength of being the registered owner of the property known as L.R.No.Transmara/Kilgoris Township/83
109. The Respondent produced a total of 15 documents contained in the Plaintiff's bundle of documents dated 26<sup>th</sup> of February 2018.
110. However, for purposes of answering this particular issue, this Honourable Court is drawn to the Certificate of Lease dated 16/03/2010 and the Certificate of Official Search dated 26<sup>th</sup> January 2018.
111. The Certificate of official Search dated 26<sup>th</sup> January 2018 expressly states that the Lease issued to the Respondent was for a period of 99 years from 1<sup>st</sup> July 1999.
112. Section 24,25 and 26 of the Land Registration Act, No. 3 of 2012 provides that once a parcel of land is registered by the relevant office, then the person whose name appears of the Certificate of Title or Lease shall be the prima facie owner of the said land unless otherwise determined.
113. In this present Appeal, this Honourable Court confirms that the Respondent is the registered holder of a Certificate of Lease dated 16/03/2010.
114. In addition to the name in the Certificate of Lease dated 16/03/2010,DW 3 reiterated that indeed according to the Register in the Ministry of Lands, the property known as L.R.No.Transmara/Kilgoris Township/83 was the property of the Respondent.
115. The Appellants herein in their documents and evidence produced before the Trial Court have not disputed that the property known as L.R.No.Transmara/Kilgoris Township/83 is registered in the name of the Respondent.
116. In essence therefore, this Honourable Court makes a finding that the property known as L.R.No.Transmara/Kilgoris Township/83 is indeed the property of the Respondent.

**Issue No.2 - Was The Certificate Of Lease Issued In Favour Of The Respondent Lawful And In Compliance With The Law?**

117. The second issue for determination is whether the Certificate of Lease dated 16/03/2010 in favour of the Respondent was created lawfully and in compliance of the Physical Planning Act.
118. The Appellants through their Statement of Defence dated 16<sup>th</sup> July 2018 question the validity of the Certificate of Lease issued to the Respondents on the following Grounds;-
  - a. The portion of land known as Plot.No. 1 -Kilgoris Township belongs to one Mary Maren Siparo who was allocated the property in 1974 and the same had never been reallocated to anyone else.
  - b. The Appellants under Clause 3( c) pleaded that the portion of land known as Plot.No.1 - Kilgoris Township was different and distinct from the property known as L.R.No.Transmara/ Kilgoris Township/83 with the former being in the town centre while the later is opposite Kilgoris Sub-County Hospital and opposite the National Cereals Board depot.
  - c. The Appellant further stated that the Respondent has never been the owner of the portion known as Plot.No.1 -Kilgoris Township to be able to create the property in the Certificate of Lease dated 10/03/2010.



- d. In essence therefore, the Respondent's allocation and subsequent the creation of the Certificate of Lease for the property known as L.R.No.Transmara/Kilgoris Township/83 was illegal and fraudulent.
119. In response to the allegations by the Appellants herein, the Respondent produced bundles of documents contained in the Plaintiff's List of Bundles dated 26<sup>th</sup> February 2018 as well as the Supplementary Bundle of Documents dated 28<sup>th</sup> November of 2018.
120. All the documents produced by the Respondent at the Trial Court were duly served on the Appellants for their knowledge and opportunity to challenge the same.
121. The documents produced by the Respondents speak to the step by step process that was undertaken by the Ministry of Land as well as the various government departments that approved the creation of the property known as L.R.No.Transmara/Kilgoris Township/83
122. The Letter of Allotment issued on the 22<sup>nd</sup> of June 1999 issued to the Respondent related to Unsurveyed Existing Commercial Plot.No.1- Kilgoris Township.
123. Upon issuance of the said Letter of Allotment dated 22<sup>nd</sup> of June 1999, the District Commissioner, Transmara wrote a No objection letter dated 14<sup>th</sup> September 1999 to the Commissioner of Lands for issuance of the Lease Certificate.
124. It is important to mention that in the body of the Letter dated 14<sup>th</sup> September 1999, the District Commissioner, Transmara was acting on a Letter done to him by the Clerk of the County Council of Transmara dated 2<sup>nd</sup> September 1999.
125. The Respondent has also produced other letters of no objections including the District Physical Planner dated 30<sup>th</sup> May 2000, District Water Officer dated 26<sup>th</sup> June 2000, District Works Officer dated 20<sup>th</sup> June 2000, District Land Surveyor dated 26<sup>th</sup> June 2000 and the Clerk. County Council of Transmara dated 22<sup>nd</sup> June 2000.
126. All these approvals and/or letters of no objections are public documents and none of them has been challenged by the Appellants.
127. In essence therefore, the same a lawful documents within Government offices and support the issuance of the Certificate of Lease over the property known as L.R.No.Transmara/Kilgoris Township/83 owned by the Respondent.
128. To supplement the different approvals from the government departments for issuance of the Certificate of Lease to the Respondent, the Respondent also submitted a letter dated 9<sup>th</sup> August 2018 from the National Land Commission to the Administrator of Kilgoris Sub-County Hospital confirming that property known as L.R.No.Transmara/Kilgoris Township/83 was a private property.
129. The evidence by the Land District Land Registrar again reiterated that the property known as L.R.No.Transmara/Kilgoris Township/83 was properly demarcated and issued with a Certificate of Lease.
130. Consequently, the Respondent who is the holder of the Certificate of Lease is the rightful owner of the property known as L.R.No.Transmara/Kilgoris Township/83
131. The question is whether the property known as L.R.No.Transmara/Kilgoris Township/83 belonging to the Respondent is the same as L.R.No.Transmara/ Kilgoris Township/1?



132. The answer to this question is again found in the Appellants' Statement of Defence dated 16<sup>th</sup> July 2018 and in particular paragraph 3 ( c).
133. The Appellants clearly plead that the Plot.No.1-Kilgoris Township is located within the Central Business District of Kilgoris Town.
134. On the other hand, the property known as L.R.No.Transmara/Kilgoris Township/83 is not in the Central Business District of Kilgoris Town but next to Kilgoris Sub-County Hospital and opposite National Cereal Board Depot.
135. The property known as Plot.No.1- Kilgoris Township and subsequently titled as L.R.No.Transmara/Kilgoris Township/1 belongs to Mary Maren Siparo.
136. In essence therefore, the Respondent's property known as L.R.No.Transmara/Kilgoris Township/83 was a creation from a portion of land known as Un-surveyed Existing Commercial Plot.No.1- Kilgoris Township.
137. The use of the words "Plot.No.1-Kilgoris Township" And "Un-surveyed Existing Commercial Plot.No.1-Kilgoris Township" describes two different parcels of land within Kilgoris Township.
138. The use of Plot.No.1- Kilgoris Township means that the said portion of land has been surveyed and assigned the number Plot.No.1 within the Central Business District.
139. On the other hand, the use of the words "un-surveyed Existing Commercial Plot.No.1-Kilgoris Township" on the Letter of Allotment dated 22<sup>nd</sup> June 1999 meant that the said property was not surveyed and did not fall within the surveyed part of Kilgoris township which Plot.No.1 existed.
140. Consequently therefore, the Un-surveyed Existing Commercial Plot No.1-Kilgoris Township which was allocated to the Respondent is distinct and separate from Plot.No.1-Kilgoris Township and there is no relation between the two as alleged by the Appellants.
141. In essence therefore, this Honourable Court is of the considered view that the Un-surveyed Existing Commercial Plot.No. 1- Kilgoris Township was indeed available for allocation by the Commissioner of Lands in compliance of the relevant Physical Planning regulations and rules.
142. As earlier stated, the required approvals and/or letters of objections produced by the Respondent speak to the process followed in the processing of the Certificate of Lease in favour of the Respondent and there is no doubt that the said procedure was undertaken in accordance to the law.
143. In conclusion therefore, this Honourable Court makes a finding that the property known as L.R.No.Transmara/Kilgoris Township/83 was lawfully created and is the property of the Respondent herein.

**Issue.no. 3- Is The Respondent Entitled To The Prayers Sought In The Complaint Dated 26<sup>th</sup> February 2018?**

144. The third issue for determination is whether or not the Respondent was entitled to the prayers sought in the Complaint dated 26<sup>th</sup> February 2018.
145. The answer to this issue based on the determination of Issues No. 1 and 2 is to the positive and the Respondent is entitled to the prayers sought in the Complaint dated 26<sup>th</sup> February 2018.



**Issue No.4- Who Bears The Costs Of Suit In The Trial Court As Well As The Present Appeal?**

146. On the issue of costs, its trite law that costs follow the outcome of the proceedings.

147. In this Appeal, the costs will be borne by the Appellants herein.

**Conclusion.**

148. In conclusion therefore, this Honourable Court hereby makes the following Orders as appertains the memorandum of Appeal dated 19<sup>th</sup> June 2020.

A. The Memorandum Of Appeal Dated 19<sup>th</sup> June 2020 Is Dismissed.

B. The Judgement And Decree Of The Hon.r.m.oanda, Principal Magistrate Pronounced On The 21<sup>st</sup> May 2020 In Kilgoris PMC ELC Case No. 5 Of 2018 Be And Is Hereby Upheld.

C. The Costs Of This Appeal Shall Be Borne By The Appellants Herein.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 27<sup>TH</sup> OF SEPTEMBER 2023.**

**EMMANUEL.M.WASHE**

**JUDGE**

In The Presence Of :

Court Assistant: Mr.Ngeno

Advocates For The Appellants: Mr.Ochwangi

Advocates For The 1<sup>st</sup> Respondent: Ms.lyona H/b For Mr.Ngaruiya

Page 20 of 20

