



**Macharia v Gathungu (Environment & Land Case 159 of 2016)
[2023] KEELC 19968 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 19968 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 159 OF 2016
LA OMOLLO, J
SEPTEMBER 21, 2023**

BETWEEN

PETER KAMAU MACHARIA PLAINTIFF

AND

DAMARIS WACHEKE GATHUNGU DEFENDANT

JUDGMENT

Background

1. The Plaintiff commenced this suit vide the plaint dated 6th May, 2016.
2. The Plaintiff avers that he is the beneficial owner of a one-acre plot No. 25 excised from land parcel No. LR 8807/6.
3. The Plaintiff also avers that he bought the suit property from Julius Gikonyo Gachie vide an agreement dated 3rd April, 2013 and took possession immediately.
4. The Plaintiff further avers that on 28th April, 2016 the Defendant without any color of right entered the suit property and begun harvesting the crops planted thereon while claiming that she was the lawful owner.
5. It is his averment that he purchased the suit property without any encumbrances but was aware that the vendor and the Defendant herein had an ownership issue that was resolved in the vendor's favor.
6. It is also his averment that he has been in peaceful use, occupation and possession and that the Defendant herein has no proprietary right over the suit property.
7. The Plaintiff avers that the Defendant's unwarranted entry onto the suit property has caused him untold suffering as the Defendant destroyed the crops that he was waiting to harvest.



8. The Plaintiff prays for judgement against the Defendant for;
 - a. An order of permanent injunction restraining the Defendant by herself, agents, servant and/or proxies exercising authority from her from entering, cultivating, dealing, removing the crops therein and/or in any manner interfering with the Plaintiff herein 1-acre parcel of land marked as Plot No. 25 excised from land parcel No. LR 8807/6.
 - b. Costs of this suit.
 - c. Any other relief that this honorable court may deem fit.
9. The Defendant filed her Statement of Defence on 21st June, 2016.
10. The Defendant later filed a statement of Defence and Counterclaim on 9th December, 2019 and another one on 3rd September, 2021.
11. The Defendant states that between the years 2003 and 2006, she bought two acres of land to be hived from LR 8807/1 at a consideration of kshs. 270,000/= from Eustace Karo.
12. The Defendant also states that she took immediate possession of the two acres and that in the year 2007, the Plaintiff presented a dispute at the tribunal.
13. The Defendant denies the contents of the Plaint and states that as at the year 2013, she was in occupation of the suit property.
14. The Defendant states that the Plaintiff instituted a criminal case in Nyahururu against her i.e. CR 3036/14 which was dismissed for lack of evidence.
15. The Defendant also states that if the Plaintiff bought Plot No. 25 then he did not buy it free from encumbrances.
16. In her counterclaim, the Defendant reiterates the contents of her statement of Defence and avers that in March, 2020, the Plaintiff trespassed onto 1 acre of her 2-acre portion and destroyed crops planted thereon which caused her to report the matter at Subukia Police Station vide OB No. 13/18/3/2020.
17. The Defendant sets out the particulars of trespass and seeks that a permanent injunction be issued to restrain the Plaintiff from entering upon, trespassing, destroying crops and trees, occupying, constructing on leasing, charging, sub-dividing and in any way from interfering with the Defendant quiet occupation of the suit land.
18. The Defendant prays for judgement against the Plaintiff in the following terms:
 - a. That the Plaintiff's suit be dismissed with costs and judgement be entered for the Plaintiff in the counterclaim as prayed.
 - b. That this Honorable Court be pleased to issue an order declaring the Defendant to be the legal and beneficial owner of Plot 25 be hived from Plot No. 8807/1 East Lake Subukia.
 - c. That this Honorable Court be pleased to issue an order of permanent injunction restraining the Plaintiff by himself, his agents and or servants from entering upon, occupying, constructing on leasing, charging, sub dividing and from selling plot 25 be hived from Plot No. 8807/1 East Lake Subukia.



Plaintiff's Evidence.

19. The first witness to testify in support of the Plaintiff's case is one Peter Kamau Macharia, herein after referred to as PW1. His testimony is that he knows the Defendant because she trespassed on his parcel of land LR 8807/6/25.
20. It was his further testimony that he obtained the land upon purchasing it from Julius Gikonyo on 3rd April, 2013 through a sale agreement. The sale agreement was produced and marked as Exhibit P1.
21. It was also his evidence that Gikonyo bought the said parcel of land from Joshua Kirugumi Wamahiu. He had the sale agreement between Gikonyo and Kirugumi and the said sale agreement was marked for identification.
22. It was further his evidence that when the suit property was sold to him, he was informed that there was a dispute at the Tribunal between Julius Gikonyo and the Defendant which was registered as No. 40 of 2007 and added that the tribunal found in favour of Julius Gikonyo. PW1 had copies of the proceedings from the tribunal and they were marked for identification.
23. PW1 went on to state that he completed the process of buying the suit parcel and was given a certificate for plot No. 25. The certificate was produced and marked as Exhibit P4.
24. It was his testimony that the parcel that Gikonyo bought from Kirugumi is land parcel No. 8807/1/25 which was the same parcel that he bought from Gikonyo as evidenced by Exhibit P1.
25. He further testified that even though Exhibit P1 shows that he had purchased LR No. 8807/6/25, it was the same parcel of land except for the difference in numbers.
26. It was his evidence that the difference in numbers came about because the parcel was in was one big block which was the "stroke 1". He explained that when he was purchasing it, part of "stroke 1" had been sold. He further explained that when 8807/1/25 was subdivided and he it became 8807/6/25.
27. PW1 had in his possession a Chief's letter addressed to the Land Registrar. The said letter annexed a list of names of plot owners and their plot numbers. The letter was marked and produced as Exhibit P5(a), (b) and (c). He pointed out that his name appears at number 25.
28. PW1 went on to state that after the dispute at the tribunal was resolved, the award of the tribunal was brought to court for adoption as an order of the court. The decree was produced and marked as Exhibit P6.
29. He produced the order dated 4th March, 2013 as Exhibit P7 and explained that it was issued in Land Dispute Case No. 6 of 2008. He further explained that it was an eviction order against the Defendant adding that the defendant upon being served with the order vacated the suit property and he has been in occupation from that time.
30. He further testified that the Defendant, according to Exhibit P5(c) had other parcels of land which appear at No. 24 and 26 on the list. He went on to state that he also had in his possession a certificate that shows that the Defendant owned plot No's 24 and 26.
31. PW1 explained that the dispute between him and the defendant arose when he grew crops and the Defendant harvested them. He went on to state that he reported the matter to the police and the defendant was arrested and charged in Nyahururu Criminal Case No. 3036/14.



32. It was further his evidence that the said case was mentioned by the defendant in her Defence and Counterclaim. He went on to explain that the case was heard and determined and that during the hearing, the Defendant's testimony was that she was harvesting crops growing on her parcel of land.
33. PW1 testified that the Defendant in her counterclaim stated that Plot No. 25 belonged to her but this statement is incorrect because the said parcel belongs to him.
34. PW1 ended his testimony by praying that the court issues orders of permanent injunction restraining the Defendant from entering, cultivating and or dealing with his land.
35. The Plaintiff also prayed that his witness statement be adopted as part of his evidence, which prayer the court granted.
36. Upon cross examination by counsel for the Defendant, the Plaintiff confirmed that the title deeds are yet to be issued.
37. He also confirmed that the proceedings before the tribunal, show that there was a balance of Kshs. 65,000/= that was to be paid by Gikonyo but explained that Gikonyo told him that he did not have any debts.
38. PW1 further confirmed that the agreement between Gikonyo and Kirugumi shows that there was a balance of kshs. 65,000/= and added that Gikonyo paid it.
39. He also admitted that according to Exhibit P1, there was also a balance of Kshs. 60,000/= which he ought to have paid Gikonyo by May, 2013.
40. PW1 explained that he agreed with Gikonyo that he would pay the balance at a later date because he had a sick person that he was taking care of.
41. On the discrepancy in the parcel numbers, he stated that the larger parcel was No. 8807/1/25 and that it was over one hundred acres. He explained that "stroke 1" was subdivided into two portions, one of the portions being 8807/6.
42. He acknowledged that there is a letter dated 19th December, 2018 and that the said letter was titled as "proposed subdivision". He went on to explain that it was written when they were already occupying the parcels of land.
43. PW1 also confirmed that Exhibit 5(a) is a letter written in the year 2018 and explained that the subdivision was not effected in that year as the parcel is still in the name of Eustace Karo.
44. He also confirmed that the agreement entered into between Gikonyo and Kirugumi did not state that the parcel of land was registered in the name of Eustace Karo. He also confirmed that Eustace Karo did not sign the said agreement.
45. PW1 admitted that Exhibit P4 -the share certificate- shows that the owner is Alice W Peter. He explained that the said Alice W. Peter is his wife but when the title will be issued, it will be in his name.
46. He admitted that Exhibit 5C-the letter addressed to the Land Registrar and attaching a list of names and parcel numbers- is final and added that it was with the Chief and the Land Registrar.
47. He reiterated that the share certificate belonged to him and that he received it from John Mwangi Ndirangu who was an agent of Dr. Karo.
48. PW1 denied knowing Joshua Kirugumi Wamahiu and stated that he only read his name in agreements.



49. With regard to Nyahururu Criminal Case No. 3036/14, PW1 admitted that the Defendant was charged in court but was not convicted. He explained that the Investigating Officer failed to attend court.
50. Upon re-examination, PW1 stated that he has no claim against Gikonyo and that Gikonyo also has no claim against him and will be testifying in support of his claim.
51. He also stated that if he owed anything then he would not have been given the certificate and also stated that Eustace Karo is the original registered owner of the suit parcel, part of which he is claiming.
52. He further stated that 8807/1/25 was subdivided into LR No. 8807/5/25 and 8807/6/25 and that it no longer exists.
53. He reiterated that he was the owner of 8807/6/25 and that the plot number did not change and remained as 25.
54. Julius Gikonyo Gachie testified as PW2. It was his evidence that he knows both the Plaintiff and the Defendant and that he was also aware of the dispute between them over a parcel of land that he had sold to the Plaintiff.
55. He testified that he bought the suit property on 20th January, 2007 from Joshua Kirugumi Wamahiu and that they entered into an agreement for purchase of the suit property. The said agreement was marked and produced as Exhibit P2.
56. PW2 went on to testify that Joshua Kirugumi was the owner of LR 8807/6/25. He explained that Kirugumi did not have the title as the land was registered in the name of Eustace Karo. It was his testimony that the parcel from which the Plaintiff is claiming a portion was 152 acres and that the exact portion he bought was number 25.
57. He reiterated that the parcel of land sold to him was 8807/1/25 while the parcel of land sold to the Plaintiff was 8807/6/25. PW2 Explained that “stroke 1” was the big portion and that it was sub divided into “stroke 5” and “stroke 6”.
58. He testified that he purchased the land in the year 2007, took possession and planted passion fruits. He went on to narrate that he needed to irrigate the said portion which was one acre and that the Defendant gave him permission for the irrigation pipes to go through her parcel which was No. 24.
59. It was his further evidence that in the year 2007, he had a dispute with the Defendant. He narrated that the dispute arose when he received a call from his friend who told him that someone was uprooting his passion fruits.
60. He testified that he went to the plot and found that his passion fruits had been destroyed by the Defendant.
61. It was his testimony that he went to the Land Disputes Tribunal where he filed case No. 40 of 2007. He stated that the matter was heard and a ruling delivered adding that the ruling was in terms that Defendant was ordered to give him his land and to pay Kshs. 60,000/= in damages.
62. PW2 stated that parcel subject of the dispute before the tribunal was LR 8807/1/25. He went on to state that despite the order of the tribunal, the Defendant neither vacated the property nor compensated him. He produced the tribunal proceedings earlier marked for identification as Exhibit P3.



63. He testified that subsequently, he approached the court for eviction orders. He stated that the suit is Chief Magistrate's Court Case No. 60 of 2008. He went on to narrate that he got the said order and the Defendant was ordered to vacate adding that the police were to help in the enforcement.
64. PW2 testified that in September 2013, the Defendant was served with the court order and she vacated the suit land after which he (PW2) opted to sell the land to the Plaintiff.
65. It was his evidence that the Plaintiff did not enjoy quiet possession as the Defendant begun to interfere with his occupation.
66. When he was referred to the Register of Members listed on the Defendant's List of Documents, he testified that his name appeared on it at number 25. He explained that the said document shows that he was once the owner of the suit property.
67. It was his evidence that Exhibit P5 (b) is the same as the one on the Defendant's List of Documents. He explained that the name appearing at number 25 is Peter Kamau Macharia -the Plaintiff- who is the current owner of the suit property.
68. PW2 explained that the dispute between the Plaintiff and the Defendant is that the Plaintiff would plant and the Defendant would destroy what he had planted and then plough the land.
69. It was his further evidence that when he purchased the suit property, he was shown its ground position. He confirmed that it was same one that he sold to the Plaintiff.
70. PW2 prayed that his witness statement dated 17th February, 2020 be adopted as part of his evidence, which request the court acceded to.
71. It is PW 2's testimony that the Plaintiff paid him but had a balance of Kshs. 110,000 which he told him not to pay until the case was resolved.
72. He also testified that he owes Joshua Kirugumi Kshs. 65,000= . It is his testimony that he made attempts to finalize the said payment as ordered by the tribunal and that he went to the advocates who drafted the agreement, Mutonyi & Co. Advocates, who advised him to deposit the Kshs. 65,000/= at their office.
73. It was his evidence that Kirugumi was called to collect the said amount of money but declined to do so and he was subsequently advised to write a cheque of Kshs. 65,000/= in favour of Kirugumi who still refused to collect the cheque.
74. Upon cross-examination, PW2 confirmed that he bought the land in the year 2007 and that he also filed the case before the tribunal the same year.
75. PW2 also confirmed that he used the land to plant passion fruits. He confirmed that were two lists, one produced by the Plaintiff as Exhibit 5(b) and the one filed by the Defendant.
76. PW2 further confirmed that Exhibit 5b's heading is LR 8807 and had no stroke 6 and further confirmed that it was also dated 17th September, 2018.
77. He admitted that in the agreement he entered into with the Plaintiff, he sold LR 8807/6/25. He also admitted that in the agreement dated 20th January, 2007, the purchase price for the suit property was Kshs. 145,000/= . He explained that he paid kshs. 80,000/= and was to pay a balance of Kshs. 65,000/=.
78. He reiterated that he paid the balance after the tribunal ruling by depositing the money with Mutonyi Advocate which was in December, 2008.



79. He admitted that the balance of the purchase price was to be paid on 1st November, 2007 but he did not pay the balance within time because of the case that had come up. He also admitted that he initiated the case at the tribunal and yet he had not paid Kshs. 65,000/= by then.
80. When referred to the sale agreement between him and Kirugumi, he admitted the number is different. He explained that when he bought the suit property it was parcel of no. 8807/1 and measured 152 acres. He explained that he bought a portion of the 152 acres which was parcel No. 25. He went on to explain that when he was selling plot No. 25, LR 8807/1 had been subdivided into two and one portion remained as No. 5 while the other one where his plot was located became No. 6. He explained that the suit parcel therefore changed from 8807/1 to 8807/6/25 and the plot number No. 25 remained the same.
81. PW2 admitted that he did not know when the subdivision took place but it must have been after he had purchased the suit property between the years 2007 and 2013.
82. He stated that parcel 8807/1 which was 152 acres belonged to Eustace Karo. After subdivision to “stroke 5” and “stroke 6”, he remained the owner of plot No. 25 in “stroke 6” and that no one in block 6 has title deeds.
83. He further admitted that vendor was Joshua Kirugumi and even though the title is registered in the name of Eustace Karo, there are people who have beneficial interest in the land which interest has been acquired by purchasing plots.
84. He confirmed that from the agreement Kirugumi was the owner of one-acre plot No. 25 and that the agreement did not indicate that Eustace Karo was the owner of LR 8807/1.
85. He also confirmed that Kirugumi did not own the entire land and that at the time of purchase, they did not have any documents and were relying on the word of owner of the land Eustace Karo who PW2 confirmed, did not sign the agreement as a witness.
86. He further confirmed that in the agreement dated 3rd April, 2013, he sold the land for Kshs. 250,000/= and Kshs. 50,000/= was to be paid by 30th April, 2013 but he was not paid.
87. He also confirmed that second instalment was due on 3rd May 2013 but he was not paid because the Defendant started to interfere with the property and so he asked the Plaintiff to finish the case before paying him.
88. Upon re-examination, he stated that plot No. 25 has never changed and that its position on the ground remains the same and confirmed that ownership is according to the list of members.
89. He also stated that plot No. 25 was previously owned by him and that as from April 2013, it has been owned by the Plaintiff. He also stated that Exhibit P5(b) was approved by Dr. Karo because he signed and stamped the copy.
90. He further stated that 8807/1 was subdivided into 8807/5 and 8807/6 and so his parcel of land became 8807/6/25 which subdivision was done after he had purchased the land from Kirugumi.
91. He stated that no suit was ever instituted against him for trespass either by the Defendant or by Eustace Karo and also stated that they never asked him to vacate the property.
92. Pw2 also stated that Kirugumi has never demanded that he pays the Kshs. 65,000/= or demanded that he vacates the land. He added that Kirugumi has not instituted any suit in court against him.



93. PW2 stated that there is no dispute between the Plaintiff, himself and Eustace Karo adding that his evidence is meant to show how the suit parcel exchanged hands.
94. George Kerumba Mbiu testified as PW3. It was his evidence that he practices in the name and style of Mutonyi Mbiu & Co. Advocates and that he is one of the partners.
95. It was also his evidence that he drafted the agreement dated 20th January, 2007 between Joshua Kirugumi Wamahiu and Julius Gikonyo Gachue.
96. It was further his evidence that the two appeared before him and agreed on the terms of the said agreement and that they signed the agreement before he stamped the documents.
97. He testified that the agreement was in respect to LR 8807/1/25 situated in East of Lake Solai Subukia where Julius Gikonyo Gachue (PW2) was selling an acre excised from the said parcel.
98. He also testified that the purchase price was Kshs. 145,000/= where kshs. 80,000/= was paid on execution which the vendor acknowledged and it was agreed that the balance was to be paid before 1st November 2007.
99. He further testified that the agreement was that the purchaser was to take possession immediately and added that he could not verify whether the balance was paid.
100. When he was referred to Exhibit P3, he testified that he had that morning been shown the proceedings before the tribunal and he had just read them. When referred to paragraph 4(c) of the said proceedings- on whether the balance had been paid as directed- he stated that he could not tell because there are two partners at the law firm. He explained that hat the practice at their law firm was that any of the partners could deal with a client when he/she came in.
101. He confirmed that after the agreement was drawn, he verified its contents with the parties and that each of them kept photocopies of the documents. He confirmed that a period of fifteen years had lapsed since the Kirugumi and PW2 entered into the agreement. He also confirmed that they usually verify and retain copies of agreements drawn by them.
102. Upon cross-examination, PW3 admitted that the description of the land was one acre and it was as a result of the subdivision of LR No. 8807/1/25.
103. He also admitted that the owner of LR 8807/1/25 was Joshua Kirugumi and that he ascertained he was the owner or had an interest in the land.
104. He further admitted that he did not have the documents that he used for verification as he was not able to retrieve the original file.
105. He confirmed that he could not recall the name of the owner of the entire parcel of land and that he was not aware whether the balance of Kshs. 65,000/= was paid.
106. He also confirmed that he was not served with the order directing that kshs. 65,000/= was to be paid to them and further confirmed that the agreement as he had drafted it was that the money was to be paid by 11th November, 2007.
107. He admitted that in the course of their practice, if a party comes back to pay, they ordinarily endorse it on the copies retained by them and those brought by the client.
108. He also admitted that either his partner or himself would have made the said endorsement but since he did not have his office copy, he could not tell if it contained an endorsement.



109. He further admitted that the agreement he was reading from was given to him by the Plaintiff's counsel and added that he never met the parties to the agreement after he drew the agreement.
110. Upon re-examination, he stated that if one party came back to complete the agreement and the other party was absent, they would insist that the party present goes and brings the other party. With both parties present, they would then endorse the agreement.
111. He explained that a second scenario would be that a party can come with a receipt confirming payment to the absent party. In such a case, they would call the absent party and confirm that he had received the money and they would release the documents without any endorsement.
112. He further stated that for there to be an endorsement, all the parties have to be present because all the agreements must bear the same terms and signatures as they did not want a case of an agreement bearing an endorsement while the other copies of it did not.
113. The Plaintiff's case was then closed.
114. Damaris Waceke Gathungu testified as DW1. She testified that she knew the Plaintiff.
115. She testified that she bought a portion of land parcel No.8807/1 measuring two acres. She explained that LR No. 8807/1 belonged to Eustace Karo and she bought the said portions between the years 2003 to 2006.
116. She further testified that she bought it from the wife of Eustace Karo who was selling on behalf of her husband. She was given an account number by the said wife where she deposited the first payment.
117. It was her evidence that they agreed that the purchase price was kshs. 270,000/=. She went on to state that the first payment of Kshs. 30,000/= was made on 14th November, 2003 adding that she had a receipt in court. She went on to explain that the payment was for a two-acre plot (No. 18) excised from LR 8807/1.
118. It was also her evidence that the second payment was made on 27th December, 2003 and she paid Kshs. 21,000/=.
119. It was her further evidence that she made the third payment of Kshs. 10,000 on 4th March, 2004. She explained that the payment is described as being for two acres, Plot No.18, LR 8807/1.
120. She testified that the fourth payment was made on 31st March, 2004, it was for Kshs. 10,000/= and was described as being for two acres, Plot No.18, LR 8807/1.
121. DW1 also testified that the fifth payment was made on 24th March, 2004, it was for Kshs. 5000 and was described as being for two acres, Plot No.18, LR 8807/1.
122. She further testified that the sixth payment of Kshs. 24,000/= was made on 2nd December, 2004 was and was described as being for two acres, Plot No.18, LR 8807/1.
123. It was her evidence that another payment of Kshs. 40,000/= was made on 13th September, 2004 for one-acre No. 18A from LR 8807/1.
124. It was also her evidence that on 13th February, 2006 a payment of Kshs. 51,000 was made for one acre for a portion she was to be shown later but it was not indicated where the portion was to be excised from.
125. It was her further evidence that on the same date a receipt of kshs. 74,000/= was issued for the payments of Kshs. 40,000/= deposited on 17th August, 2005 and Kshs. 34,000/= deposited on 22nd September,



2005. The said payment was for one acre and it was a further deposit for a portion of land to be shown later.
126. Another payment was made on 22nd August, 2006 of Kshs. 45,000/= and it indicated that it was the balance of the plot that was to be refunded to Joshua Kirugumi 'Josh' Plot No. 18 Original number.
127. It was her evidence that this was the last payment and that the receipts were for plot 18, 18A and the case in court was for Plot No. 25.
128. It was also her evidence that initially the plots were subdivided into two acres each and subsequently, a list was drawn to show the owners of the different plots of one acre each.
129. It was further her evidence that she appeared on the list at No. 23 and 24 and that Plot No. 18 became No. 23 and 24.
130. She testified that plot No. 23 is one acre while plot No. 24 is equally one acre. She went on to state that subsequently, another list was drawn and she became number 24 on the said list with one acre and No. 26 as another acre.
131. It is her testimony that on the list, Julius Gikonyo Gachie's name was put in between her names while on the ground, she retained plot No's 24 and 25.
132. She further testified that she had the two lists with the list of members and not of the plot numbers.
133. It was her evidence that the first list had 54 members while the second one had 33 members. In the list of 54 members, she was listed as No. 23 and 24 and explained that this is because she had two acres and they were adjacent to each other just as their names appear.
134. It was also her evidence that from that list, there was no occupancy in the plot between her two one-acre plots.
135. It was further her evidence that on the list of 33 members, her name appears at No. 24 and 26 and Julius Gikonyo Gachie was on plot No. 25.
136. She testified that after the second list was made her problems begun as the Plaintiff begun to uproot her crops in the year 2013.
137. She also testified that they went to the court in Nyahururu in a criminal case after she was arrested and was issued with a cash bail receipt dated 28th March, 2014 which she produced as Exhibit D1.
138. The Defendant also produced the following documents;
1. Bundle of Receipts (original) as Exhibit D2 (a) – (i).
 2. Bank Deposit Slips (Original) as Exhibit D3 (a)-(I).
 3. List containing 54 members as Exhibit D4.
 4. List containing 33 members as Exhibit D5.
139. She testified that she never had a problem with the wife of Eustace Karo and that after completion of payment, she went to the District Officer to write to Agnes Karo (wife to Eustace Karo) to facilitate issuance of her title deed. The letter was dated 8th March, 2006 and was produced as Exhibit D6.
140. She also testified that she went to the tribunal with Joshua Kirugumi who never went back to the tribunal, she was not heard and did not also give evidence at the tribunal.



141. It is her testimony that she knew Justus Kirugumi and explained that he was an employee of Eustace Karo.
142. Upon cross examination, DW1 confirmed that between the years 2003 and 2006 she bought the suit property from Eustace Karo and that the parcel measured two acres.
143. The Defendant also confirmed that she bought parcel No. 18 which measured two acres.
144. The Defendant further confirmed that she did not get into a written agreement with Eustace Karo and admitted that she was given a receipt just as everyone else.
145. When referred to Exhibit D2 (a)-(j), she confirmed that receipt 2(a) showed that she was paying for plot No. 18 and all the other receipts indicated that she was paying for plot No. 18.
146. The Defendant confirmed that the case in court was about plot No. 25.
147. The Defendant confirmed that plot No. 18 was temporary and admitted that she did not have the map to show that plot No. 18 became No. 25. She further admitted that she had not shown the nexus between Plot No. 18 and No. 25.
148. When referred to Exhibit D4, the Defendant confirmed that she got the said list from Njoroge Mucheru a purchaser like herself who was deceased. She further admitted that the said list had no stamp or signature and was not it dated.
149. The Defendant further stated that the list of 54 members (Exhibit D4) came first and two years later she got Exhibit D5.
150. She stated that it was from the list that she knew her parcel number and that the list of 54 members (Exhibit D4) did not have parcel numbers but was only a list of members.
151. She also confirmed that as per Exhibit D4, Julius Gikonyo's name appeared at No. 25 while her name appears at No. 23 and No. 24 while the name in No. 26 was Joshua Kirugumi Wamahiu.
152. DW1 admitted that she knew Joshua Kirugumi Wamahiu and further admitted that he (Kirugumi) sold 4 acres that were in Dr. Karo's parcel to her.
153. She also admitted that according to Exhibit D5, Julius Gachie's name appeared at No. 25 while her name remained at No. 26.
154. She further admitted that the problem was that her names follow each other on the list with 54 members but on the second list, there was someone in between.
155. DW1 confirmed that her name was at No. 26 because of the parcel she had bought from Joshua Kirugumi.
156. She also confirmed that she bought two parcels from Joshua Kirugumi with each measuring one acre each.
157. She reiterated that the parcel number purchased by her was initially parcel No. 18 and that it subsequently became parcel No. 24 and 25 each measuring 1 acre each.
158. She admitted that after purchase she was given receipts to show that she had bought the parcel of land and admitted that she did not have a receipt for parcel No. 25 as she had completed payment of parcel No. 18. She further admitted that she did not have a receipt for No. 25, the map or the sale agreement.



159. She admitted that ordinarily a certificate of ownership is issued after purchase but stated that this was a practice that begun recently adding that when she purchased, there were no certificates of ownership.
160. When referred to Exhibit P4, DW1 admitted that the certificate was from Dr. Eustace Karo and was issued to the Plaintiff -Peter Kamau Macharia- for Plot No. 25.
161. She confirmed that on the certificate, Alice W Peter was listed as the owner but the certificate was issued to Peter. She stated that neither the plaintiff's name nor his wife's name appear on Exhibit D4 and D5.
162. She admitted that she did not have a certificate of ownership for parcel No. 25 and also admitted that she had had disagreements with Julius Gikonyo but had never instituted a suit against him.
163. She also admitted that she has appeared before the Nakuru District Land Disputes Tribunal twice, once with Julius Gikonyo and the second time with Joshua Kirugumi.
164. She stated that the tribunal asked her to produce her documents and informed her that they would call her but they never did.
165. She stated that the dispute did not relate to the suit parcel and added that the hearing at the tribunal was during the Covid-19 pandemic.
166. DWI confirmed that the Plaintiff is in occupation of the suit parcel and further confirmed that the suit property occupied by the Plaintiff was sold to him by Eustace Karo.
167. When referred to Exhibit P3 which were the tribunal proceedings, she confirmed that they indicated that the dispute was in relation to LR No. 25.
168. She stated that she did not know whether the tribunal made a decision that she and Kirugumi had trespassed upon the Plaintiff's land.
169. She also stated that she was not aware of the award of Kshs. 60,000/= to Julius Gikonyo and neither was she aware of Exhibit P7 which was an order of the Chief Magistrate enforcing the award of the tribunal.
170. She also confirmed that it was true that Exhibit P7 was the order that allowed Julius Gikonyo take occupation and further stated that she did not know that it was Gikonyo who sold the suit property to Peter Kamau Macharia the Plaintiff.
171. She admitted that she did not have the most recent list of Dr. Eustace Karo's land and when she was referred to Exhibit P5(b) she admitted that it was dated 17th September, 2018 and it bore the stamp of Eustace Karo and also admitted that the Plaintiff's name is listed at No. 25.
172. The Defendant further admitted that she had a Statement of Defence and Counterclaim where she sought an order that she is the legal owner of Plot No. 25 but she had nothing linking her to the said plot.
173. Upon re-examination, she stated that the receipts she produced were for parcel 18 measuring 2 acres and 18A measuring 1 acre and that the other receipts did not have any numbers.
174. She reiterated that the connection between 18 and 25 was that plot No. 18 was 2 acres and it was divided into plot No. 24 and 25 that was one acre each.
175. She stated that Joshua Kirugumi sold her Plot No's 26, 27, 28 and 29 that measured 4 acres.
176. She explained that she did not have a receipt for plot No. 25 because she had completed payment of two acres as Plot No. 18.



177. She further stated that she did not have a certificate of ownership as she was expecting a title after purchase. Exhibit P4 which was the certificate of ownership of the Plaintiff shows that the owner was Alice W. Peter.

178. The defence case was then closed.

Issues For Determination.

179. The Plaintiff filed his submissions on 15th February, 2023 while the Defendant filed her submissions on 1st March, 2023.

180. In his submissions, the Plaintiff gives a brief summary of this suit and identifies the following issues for determination;

- a. Whether the Plaintiff is the lawful owner of Plot No. 25 exercised from land
 - i. parcel No. LR 8807/6.
 - a. Whether the Defendant's claim over suit parcel of land known as LR 8809/6/25 is valid.
 - b. Whether the honorable court should grant the prayers sought.

181. On the first issue, the Plaintiff submits that he acquired the suit property from Julius Gikonyo Gachie and that he has produced among other documents, a land sale agreement dated 3rd April, 2013 between himself and Julius Gikonyo Gachie.

182. The Plaintiff also submits that he produced a certificate of ownership issued by Dr Eustace Karo which shows that he is the owner of sub-plot No. 25 of LR No. 8807/6/2.

183. The Plaintiff relies on Section 24(a) of the [Land Registration Act](#), the cases of Rachel Okaro versus Alice Muhonja Musonye [2018] eKLR, Arcadius Chege versus Geoffrey Muchiri [2018] eKLR and submits that in addition to the certificate of title, he produced a letter dated 17th September, 2018 wherein a list of owners and their corresponding plots is attached. He submits that this demonstrates that he is the owner of the suit property.

184. On the second issue, the Plaintiff submits that he is the beneficial owner of the suit property and was enjoying quiet possession until the Defendant trespassed onto the suit property on 28th April, 2016.

185. The Plaintiff also submits that the Defendant has not tendered sufficient evidence to back her claim that she purchased the suit property from Joshua Kirugumi Wamahi on 16th May, 2011. In support of this point, he relies on the judicial decision in Nguku vs Republic [1985] KLR 412.

186. The Plaintiff also relies on the case of Habib Bank Attorney General Zutich Vs Eugene Marlon Yakub [1982] LLR 4977 (CAK) in further support of his arguments.

187. The Plaintiff concludes his submissions by seeking that the orders sought in his Plaint be allowed as prayed.

188. The Defendant in her submissions sets out a summary of the evidence given during the trial and identifies the following issues for determination;

- a. Whether PW2 had legally acquired ownership of the disputed parcel of land and had a good title to sale(sic) and transfer the parcel of land to the Plaintiff.



- b. The Validity of the sale agreement dated 3/4/2013 and whether the Plaintiff had legally and procedurally acquired ownership of the disputed parcel of land, thus entitled to it.
 - c. Who is the rightful owner of the disputed parcel of land on a balance of probabilities.
189. On the first issue, the Defendant submits that PW2 Julius Gikonyo Gachie testified that he purchased plot No. 25 from Joshua Kirugumi Wamahiu on 20th January, 2007 but did not pay the balance of Kshs. 65,000/= as heard from the evidence of PW3 and so the agreement was not completed.
 190. The Defendant also submits that since PW2 was in breach of the agreement dated 20th January, 2007, he did not therefore have a good title to pass to the Plaintiff.
 191. The Defendant relies on the case of Fidelity Commercial Bank Limited Vs Kenya Grange Vehicle Industries Limited [2017] eKLR in support of her arguments.
 192. On the second issue, the Defendant submits that Eustace Karo the owner of LR 880/6 and LR 88007/1 from whom the Plaintiff bought the suit property, did not sign the sale agreement as a witness.
 193. The Defendant also submits that Julius Gikonyo did not have a title deed, a share certificate or any ownership document for the one acre and so he did not have the capacity to transfer the suit property to the Plaintiff.
 194. The Defendant further submits that the parcel of land the Plaintiff bought from Julius Gikonyo as per the agreement dated 3rd April, 2013 was one acre from 8807/6/25 while the said Julius had bought one acre from LR 8807/1/25.
 195. The Defendant submits that the explanation given was that there was a subdivision of LR 8807/1/25 but no mutation of the alleged subdivision was produced.
 196. The Defendant relied on Section 8(1) of the *Land Control Act* and submits that by the time the share certificate was being issued, the sale agreement was void for lack of the Land Control Board consent.
 197. With regard to the third and fourth issues, the Defendant submits that she bought the suit property from Eustace Karo and produced two lists which showed she owned the suit property.
 198. She also submits that Plot No. 25 was a temporary number and that the lists did not have plot numbers.
 199. The Defendant submits that as from the list produced by the Plaintiff, the Plaintiff owns LR 8807/25 however from his sale agreement, he purchased LR 8807/6/25 which shows a discrepancy.
 200. The Defendant concludes her submissions and states the Plaintiff has failed to prove that he is the legal beneficial owner of Plot No. 25 and sought that his suit be dismissed with costs.

ANALYSIS AND DETERMINATION.

201. After considering the pleadings, the evidence and the rival submissions filed in this suit, the following issues arise for determination;
 - a. Who is the owner and/or has beneficial interest in Plot No. 25 excised from land parcel No. LR. 8807/6.
 - b. Whether the Plaintiff is entitled to the orders sought in his Plaint.
 - c. Whether the Defendant is entitled to the orders sought in her Counterclaim.



d. Who should bear costs of this suit.

A. Who is the owner and/or has beneficial interest in of Plot No. 25 exercised from land parcel No. LR. 8807/6.

202. The Plaintiff's case is that he purchased LR No. 8807/6/25 from Julius Gikonyo vide the sale agreement dated 3rd April, 2013.
203. It is also the Plaintiff's case that Julius Gikonyo had purchased the property from Joshua Kirugumi Wamahi but at the time Julius Gikonyo was buying the property, it was referred to as LR No. 8807/1/25.
204. It is further his case that the difference in numbers of the suit parcel is because at the time he was buying the suit property, there had been a subdivision and so the suit property become known as LR No. 8807/6/25.
205. The Plaintiff acknowledged that at the time he was purchasing the property he was aware that there had been a dispute between Julius Gikonyo and the Defendant and that it was resolved by the Land Disputes Tribunal in Case No. 40 of 2007. He stated that the tribunal resolved that the Defendant vacates the suit property.
206. It is the Plaintiff's case that after he purchased the suit property, he enjoyed peaceful possession before the Defendant trespassed onto the property and harvested the crops that he had planted.
207. In support of his case, the Plaintiff produced a sale agreement dated 3rd April, 2013 (Exhibit P1) entered into between Julius Gikonyo Gachie and himself.
208. The terms of the sale agreement were as follows;
- a. The vendor was the owner of LR 8807/6/25 measuring one acre that was registered in the name of Eustace Karo.
 - b. The purchase price was kshs. 250,000/= with Kshs. 50,000/= to be paid before 30th April 2013.
 - c. At the signing of the agreement, the vendor acknowledged receipt of Kshs. 140,000/=
 - d. The Purchaser was to take immediate possession.
209. The Plaintiff also produced another sale agreement dated 20th January, 2007 (Exhibit P2) between Joshua Kirugumi Wamahi and Julius Gikonyo Gachie. The terms of the said agreement were as follows;
- a. The vendor was the owner of a portion measuring One acre being a sub division of LR 8807/1/25.
 - b. The purchase price was kshs. 145,000/=.
 - c. The purchaser was to pay Kshs. 80,000/= upon execution of the agreement.
 - d. The balance of the sum of Kshs. 65,000/= was to be paid before 1st November, 2007.
 - e. The Purchaser was to take immediate possession upon execution.
210. During the hearing, an issue arose as to which parcel of land the Plaintiff had bought. This is because the parcel of land Julius Gikonyo Gachie bought from Joshua Kirugumi Wamahi was LR 8807/1/25 and yet he sold LR 8807/6/25 to the Plaintiff.



211. The explanation offered by the Plaintiff is that at the time he was purchasing the suit property, LR 8807/1 had been subdivided resulting into LR 8807/5 and LR 8807/6. He then purchased LR 8807/6/25 which was initially registered as LR 8807/1/25 before the sub division.
212. The Plaintiff also produced the decision of the Nakuru District Lands Disputes Tribunal Claim No. 40 of 2007 between Julius Gikonyo Gachie vs Damaris Waceke Gathungu & Joshua Kirugumi Wamahiu (Exhibit P3).
213. The Tribunal's determination was as follows:
- a. The Plaintiff has proved his claim that both the objectors planned and trespassed on his land to the extent that they blocked him from working on his land. The Plaintiff should take possession of his one-acre land Reference No. 8807/1/25 situated at East of Lake Solai, Subukia immediately.
 - b. 1st Defendant should move out of the parcel of land immediately in any case not later than 31st January, 2009.
 - c. The Plaintiff to immediately deposit the balance of Kshs. 65,000/= (sixty-five thousand) with Ms. Mutonyi, Mbiyu Advocates of Nakuru, lawyer who drew the sale agreement, who will in turn hand it over to the 2nd objector to complete the sale of the land. This transaction should be completed not later than 31st January, 2009.
214. The Plaintiff also produced a Certificate of Ownership No. 025 issued by Dr. Eustace Karo to him for sub plot No. 25 of LR No. 8807/6/25 on 11th March, 2015 (Exhibit P4). The said certificate of ownership is signed by the director Dr. Agnes W. Karo (Mrs.) for Dr. Eustace Karo and the owner Alice W. Peter. The plaintiff explained that Alice W. Peter is his wife.
215. The Plaintiff also produced a letter written by the Chief Subukia East Location addressed to the Land Registrar. The said letter has two annexures. (Exhibit P5 (a), (b) and (c)).
216. The letter written by the Chief Subukia East Location (Exhibit P5(a)) is with regard to Dr Eustace Karo Farm for Subukia Kijabe LR No. 8807/6 and is dated 17th September 2018. The list annexed to the Chief's letter (Exhibit P5(b)) is titled Dr Eustace Karo Farm Subukia-Kijabe LR No. 8807 and the Plaintiff's name is at No. 25 for LR No. 8807/25 while the Defendant's name is at No. 24 and 26 for LR No. 8807/24 and LR No. 8807/26.
217. The Plaintiff also produced an order issued by the Chief Magistrate's Court (Exhibit P7) in Land Dispute Case No. 60 of 2008 on 4th March 2013 between Julius Gikonyo Gachie versus Damaris Waceke Gathungu and Joshua Kirungumi Wakahiu. The orders granted were as follows;
- a. That this honorable court be and is hereby pleased to issue an eviction order against the Respondents herein as per the decree dated 19th March, 2009.
 - b. That the OCS Subukia Police Station to supervise the aforesaid eviction.
 - c. That cost of this application be borne by the Respondents.
218. The Defendant's case on the other hand is that she purchased a portion of LR No. 8807/1 measuring two acres.
219. The Defendant's case is also that LR No. 8807/1 belonged to Eustace Karo and that she had purchased a portion of the said property from his wife and took immediate possession.



220. The Defendant's case was further that she made various payments for the said property and some receipts were issued for plot No. 18 which measure two acres.
221. The Defendant argues that plot No. 18 was later subdivided into plot No. 23 and 24 and later they became plot No. 24 and 26.
222. It was her case that sometime in the year 2013, the Plaintiff trespassed onto the suit property and uprooted her crops. The Plaintiff reported the matter to the police and she was arrested but the case was dismissed.
223. With regard to the case before the Land Disputes Tribunal, the Defendant alleges that she went to the tribunal with Joshua Kirugumi but she was never heard.
224. The Defendant further argues that the suit property rightfully belongs to her and did not belong to the Plaintiff because the property sold by Julius to the Plaintiff was not the same as parcel of land that Joshua had bought them from Joshua Kirugumi.
225. In support of her case, the Defendant produced a cash bail receipt dated 28th March, 2014(Exhibit D1).
226. A bundle of receipts issued by Dr Eustace Karo were produced as Exhibit D2. They are
- a. receipt dated 13th September, 2005 for Kshs. 35,000/= for one-acre No. 18A.
 - b. receipt dated 13th February, 2006 for a further deposit of Kshs. 51,000/= for one acre of the Subukia land which she was to be shown.
 - c. receipt dated 22nd August, 2006 for Kshs. 45,000/= which was a balance for the plot that was to be refunded to Joshua Kirugumi (Joshi) for plot No. 18 original number.
 - d. receipt dated 13th February, 2006 was for payment of Kshs. 74,000/= for one acre that was to be shown later.
 - e. The rest of the receipts dated 27th December ,2003, 14th November 2003, 4th March 2004, 31st March, 2004, 24th June, 2004 and 2nd December ,2004 were for various payments made in respect of two acres plot No. 18.y
227. The Defendant also produced bank deposit slips for the payments made. These payments are receipted and the receipts form part of the bundle of receipts referred to in the preceding paragraphs.
228. The defendant also produced a list of 54 people as (Exhibit D4) which has a title; 'Names of owners Dr Karo's farm Subukia- Kijabe'. The Defendant's name is at no. 23 and 24 for one acre each. At No. 25 is Julius Gikonyo Gachie. (The person from whom the plaintiff bought the suit parcel).
229. A list of 33 people was also produced (Exhibit D5) which was titled 'Names of Owners Dr Eustace Karo's Farm Subukia-Kijabe LR No. 8807/6'. The Defendant's name Is at No. 24 and 26 for one acre each while the name of Julius Gikonyo Gachie was at No. 25.
230. Both lists did not have the LR No. or particulars of the property in respect of which they are drawn.
231. The Defendant also produced the letter dated 8th March 2006 written by the District Officer Mbogoini Division to Mrs. Agnes Wambui Karo indicating that the Defendant had purchased plot No. 18 of LR No. 8807/1 and that there was a variation of the initial allocation thereby breaching the contract.
232. It is not disputed that both the Plaintiff and the Defendant purchased portions of LR 8807/1 belonging to Dr Eustace Karo.



233. The Plaintiff bought LR 8807/6/25 from Julius Gikonyo Gachie who had purchased LR 8807/1/25 from Joshua Kirugumi Wamahiu.
234. The Plaintiff has offered an explanation as to the apparent difference in the numbering. His explanation is that as at the time of purchase from Julius Gikonyo, there had been a subdivision of LR 8807/1 into LR 8807/5 and LR 8807/6. The portion that he bought fell on LR 8807/6 but the plot number remained the same, hence LR 8807/6/25.
235. The Plaintiff alleges that after he bought the property, the Defendant trespassed onto it. The Defendant denies trespassing onto the Plaintiff's portion of the land and argues that she purchased plot No. 18 of LR 8807/1. She also purchased plot No. 18 A and another acre of land that she was to be shown to her at a later date. This is supported by the bundle of receipts that she produced as Exhibit D2.
236. The Defendant further argues that Plot No. 18 measured 2 acres and it was later subdivided into two one-acre plots that were initially given plot number 23 and 24 and later plot No's 24 and 26. In support of this assertions, the Defendant produced two undated lists of owners of Dr Karo's farm Subukia Kijabe.
237. The said lists whose contents have been set out earlier in this judgement do not contain the parcel No. of the property in respect or pursuant to which they are drawn and are also not dated.
238. The Defendant alleges that plot No. 18 that she had purchased was later subdivided into two portions and one of the said portions was Plot No. 25 which the Plaintiff claims belongs to him. There is no document in support of this allegation.
239. The Plaintiff produced land sale agreements that showed how he came to own the suit property and he also produced a certificate of ownership for Plot No. 25 of LR No. 8807/6/25.
240. In further support of his claims, the Plaintiff produced a letter written by the Chief and addressed to the Land Registrar that attached a list of the names of the owners of various portions of LR No. 8807.
241. The said list contained the names of the owners, their ID numbers, LR number, the acreage and their phone number. The Plaintiff's name is at No. 25 as the owner of LR 8807/25 while the Defendant's names are at No. 24 and 26 as the owner of LR 8807/24 and LR 8807/26.
242. From the totality of the evidence adduced in this matter, there is no doubt that LR No. 8807/25 as described in Exhibit P5(b), LR No. 8807/1/25 as described in the agreement dated 20th January, 2009 and LR 8807/6/25 all refer to the same property that is being claimed by the Plaintiff.
243. It is also my view that the Defendant has demonstrated that she indeed purchased Plot No. 18 which was two acres in size that was later subdivided into two parcels of one acre each. From Exhibit P5(b), the Defendant owns LR 8807/24 and LR 8807/26 which were as a result of the subdivision of plot No. 18 into two portions.
244. This court is inclined to rely on the list produced as Exhibit P5(b) as it is dated and it contains the LR No's of the properties that both the Plaintiff and the Defendant owned unlike Exhibits D4 and D5 which were undated and which did not contain the LR No's.
245. Section 107(1)(2) of the *Evidence Act* provides as follows;

“(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.



(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

246. It is my view therefore that the Plaintiff has demonstrated that he is the owner of the suit property. This is supported by the sale agreements that he produced, the certificate of ownership and the list forwarded by the Chief to the Land Registrar that contains his name against the suit property.
247. The Defendant has not demonstrated she is the owner of LR 8807/25. There is evidence of purchase of plot No. 18 measuring two acres. There is also a list showing her name as being owner of LR No. 8807/24 and LR No. 8807/26. All the receipts produced by her make reference to a plot No. 18.
248. I must also mention that there is no privity of contract as between the defendant and Julius Gikonyo Gachie, Joshua Kirugumi and the Plaintiff. Therefore, she lacks capacity to comment on rights and obligations ensuing from the contract entered into by the two sets of parties for the sale of the suit property. Further, the said agreements were drafted in terms that the purchasers take occupation immediately upon their execution.

B. Whether the Plaintiff is entitled to the orders sought in his Plaint.

249. Taking into consideration my finding on issue (A), I find that the Plaintiff is not entitled to orders sought in the Plaint.

C. Whether the Defendant is entitled to the orders sought in her Counterclaim.

250. The Defendant in her Defence and Counterclaim prays for judgement in the following terms;
- a. That the Plaintiff’s suit be dismissed with costs and judgement be entered for the Plaintiff in the counterclaim as prayed.
 - b. That this Honorable Court be pleased to issue an order declaring the Defendant to be the legal and beneficial owner of Plot 25 be hived from Plot No. 8807/1 East Lake Subukia.
 - c. That this Honorable Court be pleased to issue an order of permanent injunction restraining the plaintiffs by himself, his agents and or servants from entering upon, occupying, constructing on leasing, charging, sub dividing and from selling plot 25 be hived from Plot No. 8807/1 East Lake Subukia.
251. Having found that the Plaintiff is owner and/or has a beneficial interest in the suit property, the Defendant’s Counterclaim dated 21st July, 2019 fails.

D. Who should bear costs of this suit?

252. The general rule is that costs shall follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise.

DISPOSITION.

253. In the result, I find that the Plaintiff’s suit against the Defendant succeeds. Consequently, judgment is hereby entered in favour of the Plaintiff in the following terms:
- a. An order of permanent injunction is hereby issued restraining the Defendant by herself, agents, servant and/or proxies exercising authority from her from entering, cultivating, dealing,



removing the crops therein and/or in any manner interfering with the one acre parcel of land marked as Plot No. 25 excised from land parcel No. LR 8807/6.

b. The Plaintiff shall have the costs of this suit from the date of judgment until payment in full.

254. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 21ST DAY OF SEPTEMBER, 2022.

L. A. OMOLLO

JUDGE.

**In the presence of: -

Miss Towet for the Plaintiff

Mr. Mongeri for the defendant

Court Assistant; Ms. Monica Wanjohi.

