



REPUBLIC OF KENYA



**Arogo v Nyangeri & 2 others (Environment & Land Case 391 of 2013)  
[2023] KEELC 21093 (KLR) (26 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 21093 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 391 OF 2013**

**M SILA, J**

**OCTOBER 26, 2023**

**BETWEEN**

**THOMAS OMBOYA AROGO ..... PLAINTIFF**

**AND**

**EVANS NYAKAMBI NYANGERI ..... 1<sup>ST</sup> DEFENDANT**

**SOLOMON ABISI AROGO ..... 2<sup>ND</sup> DEFENDANT**

**KISII COUNTY LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

(Plaintiff filing suit on behalf of the estate of his deceased father and claiming that the land of the deceased was fraudulently subdivided into two and one portion fraudulently transferred to the 1<sup>st</sup> defendant; plaintiff claiming that it was not his father, but the 2<sup>nd</sup> defendant who is his step-brother, who illegally sold a portion of the land to the 1<sup>st</sup> defendant; the evidence being stark that it was the deceased himself who subdivided his land into two after applying and obtaining consent from the Land Control Board; evidence clear that the deceased voluntarily sold and transferred the land to the 1<sup>st</sup> defendant without involvement of 2<sup>nd</sup> defendant; the deceased having defended the sale to the 1<sup>st</sup> defendant in a previous suit; improper for the plaintiff, as administrator of the Estate of the deceased to articulate a position that is contrary to that earlier taken by the deceased; no fraud proved; in any event suit is time barred; plaintiff's suit dismissed with costs).

**A. Introduction And Pleadings**

1. This suit was commenced through a plaint which was filed on 20 September 2013 originally only against the 1<sup>st</sup> defendant. The plaint was subsequently amended on 31 March 2016 to include the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. In the amended plaint, the plaintiff avers to be the legal representative of the estate of the late Haron Arogo Hachira (Arogo) who was the registered owner of the land parcel West Kitutu/



Mwakibagendi/1000 (hereinafter simply referred to as parcel No 1000). The plaintiff has pleaded that the defendants, without the knowledge of the late Arogo, conspired and removed a caution dated 19 May 1997, registered by the late mother of the plaintiff, and caused subdivision of the parcel No 1000 into two portions registered as West Kitutu/Mwakibagendi/2045 and 2046 (hereinafter simply referred to as parcels No2045 and 2046). It is pleaded that the parcel No 2046 was transferred to the 1<sup>st</sup> defendant in disregard of the interest of the beneficiaries thus depriving them of ownership of the land. It is contended that the 1<sup>st</sup> defendant colluded with the step brother of the plaintiff (2<sup>nd</sup> defendant), and the Chief, and took advantage of the age and sickness of the late Arogo to defraud the beneficiaries of the first house. The plaintiff pleaded the following particulars of fraud : that the defendants took advantage of the old age and sickness of Mzee Arogo and caused subdivision and transfer of part of the land to the 1<sup>st</sup> defendant; that the defendants colluded with the District Officer, Marani, to obtain consent to subdivide the parcel No 1000 without the consent of the family members; that they failed to follow the right procedure to obtain consent to subdivide the parcel No 1000; that they transferred the parcel No 2046 without the consent to transfer from the late Arogo; that they conspired with the District Land Registrar, Kisii, to remove the caution placed by the wife of Arogo, one Truphosa Minayo.

2. In this suit, the plaintiff seeks the following orders :-
  - a. Declaration that the transfer of parcel No 2046 was unlawful, null and void and it is the property of the estate of the late Arogo.
  - b. An order that the 1<sup>st</sup> defendant's title to the land parcel West Kitutu/Mwakibagendi/2046 together with No 2045 be cancelled and be reverted to the original parcel No 1000 to be succeeded by the plaintiff.
  - c. In the alternative the 1<sup>st</sup> defendant be ordered to pay the plaintiff the value of the land parcel No 2046 calculated at the current market value.
  - d. Costs and interest.
  - e. Any other relief the court may deem fit to grant.
3. The 1<sup>st</sup> defendant filed defence denying the averments in the plaint. He pleaded that the subdivision of the parcel No 1000 was done voluntarily by the late Arogo, pursuant to a sale agreement dated 16 May 1997. He pleaded that the sale was voluntarily entered on a willing buyer-willing seller basis and that the late Arogo exercised his freedom to contract. He contended to be the rightful proprietor of the parcel No 2046 upon purchase for valuable consideration and refuted all particulars of fraud pleaded by the plaintiff.
4. The 2<sup>nd</sup> defendant also filed defence where he inter alia pleaded that he has never made any claim over the parcel No 1000. He pleaded that this land was owned by the late Arogo and he had every right to subdivide or dispose it. He pleaded that the late Arogo subdivided this land and sold it to the 1<sup>st</sup> defendant and that he was never involved in any way in the subdivision and sale of the land. He pointed out that there is no specific order in the amended plaint directed against him and asked that the plaintiff's suit be dismissed with costs.
5. The 3<sup>rd</sup> defendant entered appearance through the Attorney General but did not file defence.



## B. Evidence Of The Parties

### i. Plaintiff's Evidence

6. PW-1 was the plaintiff. He testified that the parcel No 1000 was registered in name of his late father (Arogo) and that he purchased the land from the proceeds of his sister's dowry. He elaborated that his father had three wives, respectively, Truphosa Minayo Arogo (Truphosa), Yuniva Supteka (Yuniva), and Mugure Arogo (Mugure). He is the son of Truphosa. He stated that Truphosa, the first wife (being his mother), was living in the parcel No 1000 and that this was her matrimonial home; that Yuniva, the 2<sup>nd</sup> wife, was living in Migori, and Mugure, the 3<sup>rd</sup> wife was living in Kapsabet. The 2<sup>nd</sup> defendant is son of the 2<sup>nd</sup> wife. He testified that his late father resided in Nairobi, where he worked, but upon retirement, in 1998, he came to live in Mwakibagendi (the disputed land). After about six months, he fell ill, and his step brother, Solomon Abisi (2<sup>nd</sup> defendant, hereinafter simply referred to as Abisi), took him to Migori for treatment. His father later died in 1999 while undergoing treatment. He testified that in 1991, the family had a meeting with the elders and it was agreed how his father's property would be divided. He stated that his mother was given the disputed land and three cows but his father sold the three cows before leaving for Migori. He testified that while his father was in Migori, his mother filed a case against him, to restrain him from selling the disputed land. This was the case Kisii HCCC No 417 of 1997. His father died before the case was determined. He testified that his mother placed a caution on the parcel No 1000 and that he later discovered that Abisi and the 1<sup>st</sup> defendant had removed the caution, and the land sold to the 1<sup>st</sup> defendant after it had been subdivided into two. He stated that his mother was not involved in the subdivision and transfer of the property and that by the time the land was being sold, his father was critically ill. He testified that he used to visit him in Migori and he was not in a position to carry out any transaction and that the land was sold without his father's knowledge. He claimed that apart from Abisi, no other family member was involved in the sale. Out of the two subdivisions of parcel No 1000, he was given the parcel No 2045. He intended to carry out succession on the entire parcel No 1000 but found it subdivided. He testified that he never went to any Land Control Board and neither did he sign any transfer document. Among his exhibits were the mutation form for the parcel No 1000, consent to subdivide dated 4 September 1997, a caution dated 15 May 1997, a letter dated 21 May 1997 from the Land Registrar Kisii, calling on Truphosa to attend to a hearing for removal of caution, the plaint and defence in Kisii HCCC No 417 of 1997, and a grant of letters of administration ad litem.
7. Cross-examined by the 1<sup>st</sup> defendant, he asserted that it was his mother who bought the land. He explained that he is from the Luhya community and that it is their custom that when a woman buys land it is written in the name of the husband. His mother moved into the land in 1962; before that, they were living in other land. His father sold land in Vihiga in order to buy this one in Kisii. Nobody stopped him from selling the land in Vihiga. He affirmed that the 1<sup>st</sup> defendant got him arrested for trespass in 1997. He acknowledged that the 1<sup>st</sup> defendant has a caretaker on the land and that when he visits he spends in the caretaker's house. He is not in occupation of the 1<sup>st</sup> defendant's land. He never sued his father when he was alive. He stated that it was for his mother to sue, which she did. He claimed that the case was marked as "stood over generally" after his mother died.
8. Cross-examined by counsel for the 2<sup>nd</sup> defendant, he affirmed that there was a family meeting held in 1991, that his mother placed a caution in 1997, and that his father died in 1999. His mother had placed a caution on the contention that his father wished to sell the land secretly. He acknowledged that the Land Registrar called for a hearing for removal of the caution, and he escorted his mother to the hearing, but claimed that no hearing took place as the Land Registrar told them to go home and the caution was removed without his mother's consent. He contended that there was no consent from



the Land Control Board (LCB) on the subdivision and that the Land Registrar did not sanction the subdivision despite a letter dated 3 October 1997 from the Land Registrar to the LCB being put to him. He also asserted that there was never an LCB consent to transfer, though a consent to transfer dated 6 October 1997 was put to him. He contended that the transfer to the 1<sup>st</sup> defendant was not proper because he was not present when the transfer was done. He acknowledged however, that the land was in name of his late father. Though he claimed not to have land, he affirmed that he lives in the parcel No 2045 which is in his name after succession was done. He acknowledged that the land had already been subdivided when his father filed defence in the case Kisii HCCC No 417 of 1997. He claimed that his mother sued his father because it was her daughter's dowry which was used to buy the land. He stated that only the first house could get title to the land. He claimed that his father was too sick to sign the transfer documents but he had no evidence to back this up. He was asked why he has sued the 2<sup>nd</sup> defendant and he claimed that it was him who sold the land to the 1<sup>st</sup> defendant but he did not have any evidence to this effect.

9. Cross-examined by counsel for the 3<sup>rd</sup> defendant, he testified that he was born in 1951. He claimed that it was his mother who bought the land in 1962 but he acknowledged that the land was registered in name of his father. The title got registered in 1975. His mother is also deceased, having passed on in 2006. The parcel No 1000 was subdivided in 1997 when his father was still alive. The subdivisions were registered in the name of his father and his mother was never registered as owner of the parcel No 2046. He alleged that the Land Registrar did the subdivision in his office without them knowing and that no LCB consent was ever issued. His mother however never sued the Land Registrar in her case of 1997. He claimed to have come to court on behalf of his mother though he affirmed not to have done succession for the estate of his late mother. He did file a succession cause on behalf of his late father's estate but he did not involve the rest of the family on the basis that this was his mother's land. He alleged that his mother put a caution since she was the owner of the land and that it was the 2<sup>nd</sup> defendant who removed the caution. He however had nothing to show how the caution was removed. On the hearing of the caution, he now stated that he and his mother attended the hearing at the Land Registrar's office. The 2<sup>nd</sup> defendant and his mother were also present. He alleged that the Land Registrar told them to go and agree which house was entitled to the land. He reiterated that it was the 2<sup>nd</sup> defendant who sold the land. He was questioned on how he got title to the parcel No 2045 and he elaborated that he got it after filing a succession cause for the estate of his late father though he later backtracked to say that he does not know how he got the title thereto. He acknowledged that the 1<sup>st</sup> defendant placed a caretaker on the land after he bought it in 1997. Neither his mother nor his father chased him away.
10. Re-examined, he claimed that he went to the LCB to check whether there were any minutes regarding the consents presented and he was told that there were none.
11. PW-2 was Hezron Amuhya Asumu. He lives in Kitale. He testified that he used to live in Kisii and that the late Arogo was his neighbor; they were from the same Maragoli tribe. He had come to Kisii earlier in 1947 with his father and the late Arogo came much later in the 1970s. He confirmed that he had three wives; the first wife lived on the disputed land, the second wife in Migori, and the third wife in Nandi Hills. He testified that Arogo left Kisii in the 1980s after he got sick and moved to Migori before his death. He testified that in the 1970s, Mzee Arogo called his fellow Maragoli elders and told them about his land and property. He also recalled a 1991 meeting that was called to discuss issues relating to his land and he claimed that it was agreed that the disputed land belonged to the first wife. He made reference to minutes of a meeting held on 23 March 1991. He stated that the land was sold while Mzee Arogo was on his deathbed; that he had visited him in Migori and found him very sick and incapacitated. He stated that his first wife and the plaintiff denied knowledge of the sale.



12. He was cross-examined on the meeting of 23 March 1991 and it turns out that what was in issue had nothing to do with distribution of Arogo's land but the meeting was called to try and settle differences between Arogo and his son (the plaintiff). Arogo had called elders to complain that his son and wife were disturbing him. It was more of a family dispute rather than a land dispute. He affirmed that Arogo bought the disputed land with his own money. He was not there when the land was subdivided and he never asked Arogo about it. He was only told by Truphosa that it was Abisi who had subdivided and sold the land. He stated that Truphosa was buried in Mwakibagendi when the 1<sup>st</sup> defendant was living on the land.
13. PW-3 was John Kisuta Keya. He also lives in Kitale having relocated from Kisii in 2016. His evidence was that Arogo wished to subdivide his land to his sons, the plaintiff and 2<sup>nd</sup> defendant but fell ill before he could do that. He testified that he went to Migori and found him to be ill and incapacitated and that he could not comprehend anything. This was allegedly in 1992. He testified that he attended a meeting of Maragoli elders to distribute dowry received from the daughters of Truphosa and they did so. The cows were given to the plaintiff. He claimed that the 2<sup>nd</sup> defendant sold the land and not the late Arogo. Cross-examined, he affirmed that he was not present when the land was sold to the 1<sup>st</sup> defendant. He never attended any meeting to distribute land though he attended the meeting to distribute dowry. He stated that this meeting was held in 1978.
14. With the above evidence, the plaintiff closed his case.

## **ii. Defence Evidence**

15. DW-1 was the 1<sup>st</sup> defendant. He is a businessman in Nairobi. He testified that around 1989 he went to visit his sister in Mwakibagendi and he was informed that Mzee Arogo was selling his land. He went and saw him in Migori and negotiated the purchase. He was informed that he had two sons and they had consensus that he could sell the land. They went to the Land Control Board at Marani but found that the land had a caution. The Land Registrar called for a hearing on the caution. Mzee Arogo's explanation was that he had two wives, each with a half share of the land, and he was selling the share of the 2<sup>nd</sup> wife. The land was subsequently sold to him. He produced the sale agreement dated 16 May 1997, transfer and LCB consent, and letter removing the caution. He testified that he did not buy land from the plaintiff but from his father and his wife was present. The parcel No 1000 was subdivided into two. What he bought was the parcel No 2046. He testified that the plaintiff resides in the parcel No 2045. He did not see any basis for the plaintiff to claim the land.
16. Cross-examined, he affirmed that he purchased the land in 1997. He testified that Truphosa had put the caution but the Land Registrar ruled against her maintaining the caution. He was aware that the land was occupied by Truphosa and the plaintiff but he did not have discussion with them since Arogo had told him that he was selling the share of the 2<sup>nd</sup> wife. He testified that there was a boundary demarcating the two portions and there was a house for the 2<sup>nd</sup> wife. He registered the transfer but he stated that he did not pay stamp duty. He testified that the Land Registrar wrote the letter dated 3 October 1997 to inform the LCB that the caution had no merit. In re-examination he stated that he does not know what stamp duty is.
17. The 2<sup>nd</sup> defendant did not testify and with the above evidence the defence closed their case.
18. I invited counsel to file written submissions, and I have seen the submissions of Mr. Onyancha, learned counsel for the plaintiff and Mr. Osiemo, learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants. I have taken these into account before arriving at my decision.



### C. Analysis and Disposition

19. Before I go too far, it is important that I put the dispute and pleadings into context. The plaintiff has filed this suit on behalf of the estate of the late Mzee Arogo. Indeed in his prayers, he seeks to have title to the land parcel No 2046 to be declared as being the property of the estate of the late Mzee Arogo. He wishes to have the titles No 2045 and 2046, which resulted from subdivision of the parcel No 1000, to be cancelled and for the land to revert to the original No 1000 to be succeeded by the plaintiff. There is the alternative prayer for compensation at the current value of the parcel No 2046. In essence, the plaintiff is suing on behalf of the estate of the deceased, and in fact, before filing this suit, he obtained a grant of letters of administration ad litem. The suit is for the benefit of the Estate of Mzee Arogo. What am I driving at ? When one sues on behalf of the estate of a deceased person, it means that he is articulating a claim which the deceased, if he were alive, would have pursued. One cannot take out a grant ad litem in order to pursue a matter which the deceased would not have pursued or proceed to take a position which is diametrically opposite to that taken by the deceased when he was alive. To do otherwise would be to abuse the ad litem procedure, and in fact, it would be acting contrary to the interests of the estate of the deceased which an administrator ought not to do.
20. In this case, the plaintiff alleges that Mzee Arogo was defrauded of land. He has pleaded particulars of fraud including the claim that the defendants took advantage of the illness and incapacity of Mzee Arogo to subdivide and transfer part of the land and that the defendants conspired with the Land Registrar to remove the caution to facilitate the transactions. Is this really true ? Far from it. The issue regarding sale of this land did not start after the death of Mzee Arogo. The dispute was there before he died and the position that Mzee Arogo took was that the sale was proper. The plaintiff cannot now proceed to take a position that is different from what Mzee Arogo took by dint of being administrator of his estate. An administrator must defend the estate, and being in the shoes of the deceased, must take the same position as was held by the deceased before his demise. In our case, Mzee Arogo fervently defended his right to sell the land. He never at one time claimed that he had been defrauded. He affirmed the sale and defended it. He wished to sell the land and faced the hurdle of a caution. His wife, Truphosa, had lodged a caution to the effect that Mzee Arogo wished to sell the whole of the land parcel No 1000 without her consent. Mzee Arogo proceeded to the Land Registrar and urged that the caution be removed. The Land Registrar called the parties through his letter dated 21 May 1997 to a caution hearing. He did not find merit in the caution being maintained. He proceeded to write a letter dated 3 October 1997 to the Chairman Marani Land Control Board, and explained that there should be no objection to transfer of the land parcel No 2046, as the person objecting has been given her portion of the land and the other is for the family of the younger wife. The Marani Board was persuaded to issue consent to Mzee Arogo to transfer the parcel No 2046 to the 1<sup>st</sup> defendant. The Board had earlier on issued consent to subdivide the land which consent the plaintiff exhibited and it shows that it was issued on 4 September 1997. There is absolutely nothing to suggest that Mzee Arogo was aggrieved by issue of this consent. To the contrary, he was happy with it, as he wished to sell one of the subdivisions, which he proceeded to do so and that is how the 1<sup>st</sup> defendant got title to the parcel No 2046 on 8 October 1997.
21. The documentary evidence is overwhelming that it was Mzee Arogo himself who was the engineer of the process of subdivision and sale. He never complained of his land being fraudulently subdivided or being sold. He in fact defended the sale when his wife sued him in the suit Kisii HCCC No 417 of 1997 filed on 25 September 1997. In that case, Truphosa alleged that Mzee Arogo was holding the land parcel No 1000 in trust for her since it was purchased with 13 cows paid as dowry for her daughter. She sought orders for a declaration that Mzee Arogo was holding the land in trust for her and her son (Thomas Ombuya, the plaintiff herein). Mzee Arogo filed defence where he denied that he was



holding the land in trust for Truphosa. He admitted subdividing the land and averred that he has in fact transferred a portion thereof to a third party. Clearly, Mzee Arogo never claimed that the subdivision was fraudulent or that the transfer of one of the subdivisions to the 1<sup>st</sup> defendant was fraudulent. Mzee Arogo supported the subdivision and the sale when he was alive. It is preposterous for the plaintiff to now assert otherwise. He cannot, as I have explained, take a position that is opposite that taken by the deceased when he was alive, for by doing so, he is not representing the position of the estate and in fact, is acting against the interests of the estate. Mzee Arogo never complained of fraud. It is misplaced for the plaintiff to pretend that he is acting for the estate of the deceased when he is not. This court cannot allow him to abuse his position as administrator to present a case that is for all intents and purposes not for the estate of the deceased, but against the estate of the deceased. The deceased supported the sale and was happy with it. The plaintiff cannot now, in the position of administrator ad litem, oppose the subdivision and sale alleging that it was fraudulent. It was not fraudulent. Even without the support of the position taken by Mzee Arogo when he was alive, there is nothing to suggest that the subdivision and sale to the 1<sup>st</sup> defendant defrauded the estate of the deceased. It is the deceased who sold the land willingly, and even defended it. How can this court now hold that the sale was a fraud? It cannot. In any event the plaintiff never brought evidence to suggest that Mzee Arogo was not in his faculties. No medical records were presented, and without that, we cannot assume that Mzee Arogo was incapacitated. The long and short of it is that no fraud has been demonstrated against the estate of the deceased and with that this suit must be dismissed.

22. It appears to me that the plaintiff is not pursuing any cause of action for the interest of the estate of the deceased but he is in fact pursuing his own action against the estate of the deceased. He is indeed articulating the very grounds that his mother articulated when she sued Mzee Arogo. But that case appears not to have been heard and has by now long abated. The plaintiff, if he wished to pursue that line, ought to have taken up that case on behalf of the estate of his late mother, but he did not. Alternatively, he could have sued on his own behalf but he has not. But even assuming that he is articulating this suit on his own behalf, he cannot succeed. First, the issue of the whole land being held in trust was doubted by both the Land Registrar and the Marani Land Control Board. The Land Registrar removed the caution after a caution hearing and his view was that the land was only partly held for Truphosa with the other half being for the 2<sup>nd</sup> wife. He saw no reason why there ought to be a caution. The fact that the Marani Land Control Board issued consent means that they were also persuaded that Mzee Arogo had a right to sell half the land. Importantly, this was not ancestral land but was land that was purchased. The plaintiff cannot therefore claim any ancestral rights over the land. And it is apparent that Mzee Arogo was very clear in his mind as to what he was doing. He was only selling half the land and not the whole of it. He clearly meant to sell only a portion that he felt belonged to his second wife and left out a half of the land to allow Truphosa and the plaintiff have something to settle on. I wonder why the plaintiff sued the 2<sup>nd</sup> defendant. He alleged that it was the second defendant who sold the land to the 1<sup>st</sup> defendant but brought absolutely no evidence to that effect. Other than his own allegation and the hearsay evidence of his witnesses, there is absolutely nothing to suggest that it was Abisi who sold the suit land to the 1<sup>st</sup> defendant. The evidence is stark that the land was sold by Mzee Arogo, and as I have earlier pointed out, he did affirm this in the defence filed against the suit by his wife.
23. Thus, even on merits, the plaintiff's suit cannot succeed.
24. The other important fact is that this suit is time barred whether or not brought by the estate of Mzee Arogo or by the plaintiff in his personal capacity. The subdivision of the land took place in September 1997. The 1<sup>st</sup> defendant obtained title on 8 October 1997. This suit was filed on 20 September 2013,



about 16 years after the 1<sup>st</sup> defendant obtained title. Section 7 of the *Limitation of Actions Act*, provides for a limitation period of 12 years for any suit claiming land. It is drawn as follows :-

7. Actions to recover land

An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

25. This suit has not been brought within the 12 years pointed out above and it is therefore time barred. Neither can the plaintiff benefit from the extension of time provided in Section 26 of the said Act which provides as follows :-

26. Extension of limitation period in case of fraud or mistake

Where, in the case of an action for which a period of limitation is prescribed, either—

- (a) the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or
- (b) the right of action is concealed by the fraud of any such person as aforesaid; or
- (c) the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it:

Provided that this section does not enable an action to be brought to recover, or enforce any mortgage upon, or set aside any transaction affecting, any property which—

- (i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or
- (ii) in the case of mistake, has been purchased for valuable consideration, after the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.

27. He cannot benefit from Section 26 above, because in 1997, he was very much aware that the 1<sup>st</sup> defendant had title. He was in fact arrested for trespassing into his land. He acknowledged that the 1<sup>st</sup> defendant has been in open possession of the land and had placed a caretaker therein. He himself does not live on this land but lives on the neighbouring land parcel No 2045. If he had any complaint, he need to bring a suit within 12 years of 1997. If ever there was a good case, and I am clear that there is none, such case is time barred.

28. There is no need of saying more. For the above reasons, there is no merit in this suit and it is hereby dismissed with costs to the defendants.

29. Judgment accordingly.

**DATED AND DELIVERED AT KISII THIS 26 DAY OF OCTOBER 2023**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

In the presence of:-



Mr. J.M Onyancha for the plaintiff

Mr. Osiemo for the 1<sup>st</sup> and 2<sup>nd</sup> defendants

Mr. Ndiritu, State Counsel, for the 3<sup>rd</sup> defendant

Court Assistant – Lawrence Chomba

