



Katilem (Suing as an Administrator of Tongolik Katilem) v County Government of West Pokot (Environment & Land Case 33 of 2019) [2023] KEELC 21817 (KLR) (29 November 2023) (Judgment)

Neutral citation: [2023] KEELC 21817 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 33 OF 2019
FO NYAGAKA, J
NOVEMBER 29, 2023**

BETWEEN

ALICE CHEMNING KATILEM (SUING AS AN ADMINISTRATOR OF TONGOLIK KATILEM) PLAINTIFF

AND

THE COUNTY GOVERNMENT OF WEST POKOT DEFENDANT

JUDGMENT

1. Alice Chemning Katilem, the Plaintiff herein, is the Administrator of the Estate of Tongolik Katilem (hereinafter ‘The Deceased’).
2. Through the Amended Complaint dated 04/06/2019, verified by her Affidavit deposed to on a similar date, the Plaintiff averred that at the time of his death, the deceased was the proprietor of that land measuring approximately 70 acres situated at Lomut Location Toghomo Sublocation Kupos Village, being part of Maron Farm (hereinafter ‘The Suit land’) within Central Pokot County.
3. It was her case that although the process of adjudication was yet to be done, the village and the local administration knew that parcel of land in issue belongs to the deceased since his family had been peaceful occupation and use for a period of over 72 years.
4. The Plaintiff claimed that on or about 10/11/2018, agents of The County Government of West Pokot County (the Respondent) unlawfully intruded the Suit Land. They purported to give the suit land to the Respondent without the consent of the deceased or that of his beneficiaries.
5. It was the Plaintiff’s case that on the said date, the Defendant through the said agents entered the suit land, marked a portion of it with the intention of using it without deceased’s consent and without following the due process as provided for in law including but not limited to compensating the owners.



6. The Plaintiff pleaded that the defendant never approached him with the intention to purchase the suit land and it never placed an advertisement in the media of its intention to purchase the suit land or acquire it through processes provided for in law. The plaintiff averred that the Deceased nor the Defendant never served him with a notice of compulsory acquisition of land and his efforts to stop the intended illegal acquisition were dismissed by the Defendant's agents.
7. The Plaintiff pleaded that the actions of the Defendant amounted to trespass and unlawful interference with the Plaintiff's quiet possession of his land and prayed for the following reliefs: -
 - a. A declaration that the Defendant has no proprietary rights over the land measuring approximately 70 acres situated at Lomut Location Toghomo Sublocation Kopesos village being occupied by the Plaintiff's family and being part of Maron Farm within Central Pokot Sub County, West Pokot County.
 - b. A permanent injunction restraining the Defendant, their agents, servants or any other person from encroaching on and or in a any manner interfering with the Plaintiff's interest over that land measuring approximately 70 acres situated at Lomut Location Toghomo Sublocation Kopesos village being occupied by the Plaintiff's family and being part of Maron Farm within Central Pokot Sub County, West Pokot County.
 - c. Costs and interest

The Plaintiff's Evidence

8. Alice Chemning Katilem testified as PW1. She adopted her statement dated 14/03/2019 and filed in Court on 11/04/2019 and her further statement dated 21/06/2022 and filed in Court on 05/07/2022.
9. It was her case in both the oral and written testimony that her father, The Deceased herein died on 08/07/1986. His remains were buried in The Suit land. She stated that the Suit Land did not have Title Deeds as at the time of the suit because adjudication of land in the area had not yet been completed.
10. She contacted the area Chief who wrote a letter to the effect that the deceased and family had been living on the suit land and they still did.
11. She testified that in the year 2018, the Respondent fenced off part of the suit land and started development of building a factory thereon despite never having served them with a notice on compulsory acquisition. She stated that despite going to the County Government and writing to them formally through the letter dated 18/09/2018 to complain, the Respondent never stopped. She stated further that even an injunction dated 30/03/2021 issued by this Court did not stop the Respondents.
12. She produced her copy of Identification Card, a copy of Grant of Letters of Administration Ad Litem of the Deceased's Estate, a copy of the death Certificate of the deceased, the Chief's Letter dated 05/06/2017, two letters dated 18/09/2019 and 20/11/2018 written by Advocates, all as PExh 1, 2, 3, 4, 5 and 6 respectively.
13. Further, she produced as PExh 7(a) – (f) and PExh 8 (a), (b) and (c) photographs of their homes. She denied that the Suit land was community land as there was no public participation conducted by the County Government. She referred to the Chief's letter dated 14/09/2018 which invited people to agree to give their land. It had a list which neither contained her name nor that of her family members.
14. She denied knowing the existence of Memorandum of Agreement giving up their land. She referred to one David Kamama, whom she alleged often grabs people's land, gives 'allotment' letters and they



sell. She referred the court to cases of such land grabbing and produced the court documents as PExh 9(a), (b) and (c).

15. During cross examination, she admitted that the Suit land was not registered just like all parcels of land in the area, and that the deceased inherited it from her grandparents. She referred to the photographs, marked DMFI7 to show the construction that the Respondent carried on in the land. She admitted that there was no Judgment in the cases where she had alluded to land grabbing.
16. Chemagoria Kamosong Rotich testified as PW2. He stated that he was a neighbour of the Plaintiff herein. He adopted his statement filed on 30/09/2019. It was his evidence that the deceased bought the land and his children resided on it to the time of his death and that that was where he was buried. He testified that the Respondent built on the land without conducting public participation.
17. During cross-examination it was his case that each person on the area does not have a Title Deed and that the Community members were not called by the Respondent to discuss acquisition of the land from Tongolik Family. He was emphatic that the land does not belong to the Respondent.
18. Kalimunyang Ngolingoria testified as PW3. He adopted his witness statement of 28/07/2019. Other than reiterating the position taken by PW1.
19. It was her evidence that she knew the land that the deceased used to reside on which the Respondent had come to build on. She stated that the children of the Deceased lived thereon.
20. It was her position that the Respondent did not acquire the suit land rightly.

The Defendant's Case

21. The County Government of West Pokot denied the claim through their Defence dated 17/05/2019. Save from admitting that the Defendant was the County Government of West Pokot, it denied every averment in the Plaint.

The Oral Evidence

22. David Kamama testified as DW1. He adopted his statement dated 9th February 2022. He stated that he plants mangoes, maize and grain. It was his evidence that the Respondent did not acquire the land unlawfully.
23. He testified that the residents of Togomo sub-location were the ones who gave the land to the Respondents. It was his further evidence that all their parcels of land stretch to Kuposos area and they, as the Mango Processing Committee, held meetings on 10/09/2018 and on 09/09/2018.
24. He produced the Chief's letter dated 10/09/2018, two lists of those who attended the meeting, the letter dated 10/09/2018 from Lomut Farmers' Cooperative Society, list of attendees of the meeting of 30/09/2019, the feasibility study of the Mango Processing Plant, and the meeting of 11/08/2020 as DExh 1-7 respectively. In the end it was his testimony that the Community was the one that gave the land and were the ones who will benefit from. He maintained that the land on which the project was on was community land.
25. On cross-examination, he stated that he knew the entity known as Togomo sublocation land committee self-help group. He stated that they registered it but denied that it issues allotment letters. He stated further that he was the Chairperson of The Mango Factory. He stated that the suit land was taken compulsorily by the Respondent.



26. He acknowledged that the Plaintiff and his family were not compensated. He further admitted that Togomo Location did not have land that has title deeds. He admitted that he was among the ones who gave out land to the Respondent and did not involve the family of the Plaintiff.
27. He referred to DExh 1, the letter dated 10/09/2018, to lend credence to the fact that the community agreed on the site. He, however, conceded that Alice and her family were not involved in the meeting and they are not in the list of the meetings and that the Plaintiff, Mr. Kamama gave further evidence that the family of the Plaintiff were not given audience and that he had no documents calling them for the meetings.
28. He further admitted that he had never been shown any notice from the County Government to the National Land Commission (NLC) of the intention to acquire land and that the NLC had never issued a notice to acquire that land compulsorily. He further testified that in order to claim the authenticity of the ownership of land, survey had to be done. He admitted that no survey had been conducted and there was no survey report on who the owners were.
29. In reference to the Memorandum of Understanding, the witness stated that they signed it with the County Government of West Pokot as the committee. He, however, admitted that in the Agreement there was no signature by the Respondent. He further conceded that there is nowhere in the document that showed it was a Memorandum of Understanding.
30. Chemusungwi Lunyangareng a 62-year-old woman testified as DW3. She adopted her statement dated 09/02/2022. She stated that the land on which the Factory was built was one which was given to the late father of Alice belonged to a clan of 10 clans and out the 10, 5 clans donated their pieces of land to the father of Alice, the deceased herein.
31. It was her evidence that when the clan sat to give land to the factory, there was a committee in which the Area Chief was involved. She testified that at the meeting for donating the land, it was confirmed that the deceased's land was far from the site.
32. Upon being cross-examined, it was her evidence that she attended public participation. She admitted that there was no member of Alice Katilem's family or Alice who attended the meeting. She admitted further that the people in the meeting did not involve Alice Katilen and family because there was land already allocated to them. She agreed that there were no houses on the land on which the factory was built. She reiterated that the land belonging to Alice Katilem was not on which the factory was being built hence there was no need for compensation. She, however, stated that she did not know the chief wrote the names of clans.

The Submissions

33. This Court has appreciated the full tenor of the Plaintiff's and Defendant's submissions dated 26th May 2023 and 17th July 2023 respectively. The contents shall be analysed in the succeeding paragraphs.

Issues for Determination

34. I have carefully appreciated the parties' respective cases as presented by the pleadings, supporting evidence and submissions. The issues that arise for resolution are:-
 - i. Whether the Plaintiff is the proprietor of land measuring approximately 70 acres situated at Kuposos Village of Toghomo Sublocation in Lomut Location, being part of Maron Farm
 - ii. Depending (i) above, whether the County Government of West Pokot lawfully acquired the Plaintiff's land.



35. I will henceforth deal with the issues sequentially.

I. Whether the Plaintiff is the proprietor of land measuring approximately 70 acres situated at Kupos Village of Toghomo Sublocation in Lomut Location, being part of Maron Farm

36. It would be easier to analyse this issue by using the issue, rule, application and conclusion method. Thus, the issue before the Court is that the Plaintiff claims to own the suit land as described above and that the Defendant unlawfully entered onto it, started building a mango factory thereon without acquiring the said land through the legally laid down procedure.

37. The law regarding ownership of land in Kenya is now settled. Starting with Chapter Five of *The Constitution* of Kenya, 2010 which is dedicated to Land and Environment and moving to Article 40 which is on protection of property, one can understand the foundation of the legal framework on land. To that end, Article 61 recognizes the various classifications of land in Kenya. It provides as follows;

61.

- (1) All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals.

38. It is abundantly clear from Article 61 that there are three categorizations of land ownership, namely, public, communal and private. Private owners then would be broken down to individuals who may be either natural or artificial persons.

39. Article 62 of *the Constitution* adds to Article 61 by identifying which would constitute 'Public Land' as a classification of land. It provides that,

62

- (1). Public Land
 - (a) land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date;
 - (b) land lawfully held, used or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease;
 - (c) land transferred to the State by way of sale, reversion or surrender;
 - (d) land in respect of which no individual or community ownership can be established by any legal process;
 - (e) land in respect of which no heir can be identified by any legal process;
 - (f) all minerals and mineral oils as defined by law;
 - (g) government forests other than forests to which Article 63(2)(d)(i) applies, government game reserves, water catchment areas, national parks, government animal sanctuaries, and specially protected areas;
 - (h) all roads and thoroughfares provided for by an Act of Parliament;
 - (i) all rivers, lakes and other water bodies as defined by an Act of Parliament;
 - (j) the territorial sea, the exclusive economic zone and the sea bed;
 - (k) the continental shelf;



- (l) all land between the high and low water marks;
 - (m) any land not classified as private or community land under this Constitution; and
 - (n) any other land declared to be public land by an Act of Parliament—
 - (i) in force at the effective date; or
 - (ii) enacted after the effective date.
- (2) Public land shall vest in and be held by a county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission, if it is classified under—
- (a) clause (1)(a), (c), (d) or (e); and (b) clause (1)(b), other than land held, used or occupied by a national State organ.
- (3) Public land classified under clause (1)(f) to (m) shall vest in and be held by the national government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission.
- (4) Public land shall not be disposed of or otherwise used except in terms of an Act of Parliament specifying the nature and terms of that disposal or use.

40. Then, Article 63 articulates further on community land ownership. It provides as follows;

63.

- (1) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interests
- (2) Community land consists of—
 - (a) land lawfully registered in the name of group representatives under the provisions of any law;
 - (b) land lawfully transferred to a specific community by any process of law;
 - (c) any other land declared to be community land by an Act of Parliament; and
 - (d) land that is—
 - (i) lawfully held, managed or used by specific communities as community forests, grazing areas or shrines;
 - (ii) ancestral lands and lands traditionally occupied by huntergatherer communities; or
 - (iii) lawfully held as trust land by the county governments, but not including any public land held in trust by the county government under Article 62(2).
- (3) Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held.



- (4) Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.
- (5) Parliament shall enact legislation to give effect to this Article.
41. Having laid out the various Constitutional classification of land in Kenya, the resolution of the issue whether the Plaintiff is or is not the proprietor of the suit land resides, in the first instance, in resolution of the question whether the suit land is community land.
42. I say so because there is no contest among the parties herein that the land in question is unsurveyed and unregistered. Both the Plaintiff and the Defendant acknowledged that fact in evidence.
43. Before delving further into the dispute, it is necessary to consider the legal regime governing Community land.
44. Pursuant to Article 63(5) of *the Constitution, Community Land Act*, 2016 was enacted to give effect to constitutional provisions on community land.
45. The Act defines ‘Community’ in Section 2 as follows;
- “community” means a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes-
- (a) common ancestry;
 - (b) similar culture or unique mode of livelihood;
 - (c) socio-economic or other similar common interest;
 - (d) geographical space;
 - (e) ecological space; or
 - (f) ethnicity.
46. In the same law, ‘community land’ is defined as follows;
- community land” means includes-
- (a) land declared as such under Article 63(2) of *the Constitution*;
 - (b) land converted into community land under any law;
47. Further to the foregoing, Section 4(1) and (3) of the Act recognizes ownership of community land and protects it in the following terms;
- 4.
- (1) Community land in Kenya shall vest in the Community.
 - (3) Community land shall vest in the community and may be held under any of the following tenure system
 - (a) customary;
 - (b) freehold;



- (c) leasehold
- (d) such other tenure system recognized under this Act or other written law

48. In addition to recognition and protection of community land, Section 12 of the Act classifies how community land may be held. It provides as follows;

12. Community land maybe held-

- (a) as communal land;
- (b) as family or clan land;
- (c) as reserve land; or
- (d) in any other category of land recognized under this Act or other written law

49. The *Community Land Act* anticipates that scenarios where a community may be set aside to public land. Section 26 provides as follows;

26.

- (1) A community may set aside part of the registered community land for public purposes.
- (2) Where land is set aside for public purposes under subsection (1), the Commission shall gazette such parcel of land as public land.

50. The foregoing comprehensive appreciation of the Constitutional and legislative framework governing land ownership lays proper foundation to analyse the evidence presented before this Court on whether the suit land is community land.

51. It came out in evidence that the general status of land in Lomut Location is that no title deeds have been issued since adjudication had not been done. It is common ground that Lomut Location where the suit land is, is in West Pokot County. From the uncontroverted evidence that the suit land was inherited by the deceased from his forefathers, it follows that Pokot ethnic community occupy and live in the area.

52. From the evidence led by the Plaintiff's witnesses as well as the Defendant's witnesses, the fact that the Deceased, the Plaintiff and all the witnesses share a common ancestry, similar culture, ethnicity and common geographical space, they fall within the meaning of Community as defined by The *Community Land Act*.

53. Having so found, the next pertinent question is whether the land in question is community land and whether claim by the Deceased that he is the owner of the suit land holds. Moving on straight to the point, Article 63(2)(d)(i) & (ii) of *The Constitution*, 2010, as appreciated alongside Section 4(1), (3) and 12 of the *Community Land Act* answers the foregoing question.

54. The prescription in Article 63(2)(d)(i) and (ii) of *the Constitution* is to the effect that, irrespective of the registration status of Community Land, such land remains to be Community Land. No specific individual can claim better rights over community land for and on his own behalf to the exclusion of the entire community. Section 27(3) of the *Community Land Act* provides that "An individual entitlement under subsection (1) shall not be superior to community title in any way."

55. To further fortify the preference accorded to the Community in terms of unregistered land, Article 63(3) and 63(4) are significant. The provisions are to the effect that any unregistered community land shall be held in trust by County Governments on behalf of the Communities for which it is held.



56. Article 63(4) protects the interests of the Community in respect of unregistered land by stipulating that Community Land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of each member of community individually and collectively.
57. Due to its importance in this matter, I will reproduce it verbatim. It provides;
- (4) Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.
58. It is apparent from Article 63(4) of *the Constitution* that each member of a community has a right in community land that must be ascertained and protected before any action is carried out thereon.
59. Having so established, the question that follows naturally is: by what means could the Deceased have the constitutionally recognized and protected ‘individual’ identifiable proprietary interest in the suit land?
60. Other than *the Constitution* vesting community land in the Community, the *Community Land Act* operationalizes the mode in which such land is to be held. Section 4 provides that community land shall be held in customary tenure, freehold tenure, leasehold tenure and any other tenure system recognized under the Act.
61. The fact that the land subject of this dispute was unregistered, Customary Tenure System of land vesting and holding would obtain in the suit land. The evidence that the Deceased inherited land from his father, had been in quiet possession for a period of over Seventy Years and was buried thereon was not contested by the Defendants.
62. In fact, the Respondent’s first witnesses, DW1 admitted that when they took over the land compulsorily, the Plaintiff was not compensated and the family was not involved. Such was an acknowledgement that they knew the land was not vacant community land.
63. I say so pursuant to the dictates of Section 12 of the *Community Land Act*. It provides that Community Land may be held as communal land, as family or clan land, as reserve land or in any other category of land recognized under this Act.
64. In the course of taking evidence, it emerged from the Defendants themselves, DW1 and DW3, that the land on which the factory was built belonged to 10 clans, but not specifically the Deceased. That the deceased was given land by 5 clans but in a different location.
65. During cross-examination, DW1 and DW3 admitted that the family of the Deceased was not involved in the process leading up to alienation of their land. What is important for purposes of this suit was the emergence of the fact that the members of the community demarcated their respective portion of land using stones, locally known as ‘sochot’.
66. The inference that can be drawn from the foregoing discussion, considered in light of Article 63(4) of *the Constitution* as read with section 4 and 12 of The *Community Land Act* is that, the Deceased and subsequently the Plaintiff, had identifiable individual interest in the suit land which ought to have been recognized and protected by the Respondent before commencing any developments thereon.
67. My finding is fortified by the definition of Community Tenure System in section 2 of the *Community Land Act* which, in relation to the instant case, DW1 explained on how the individuals, clans and families or designated community leaders among the Pokot people or community indicate, identify



and assert their proprietary interest on land: by putting on the ground “sochot”. This shall be discussed in paragraph 78 below. The provision is to the effect that,

“community tenure system” means unwritten land ownership practices in certain communities in which land is owned or controlled by a family, clan or a designated community leader;

68. The following findings pave way or consideration of the next issue.

ii. Whether the County Government of West Pokot lawfully acquired the Plaintiff’s land.

69. This issue has largely been resolved by the findings in the preceding issue.

70. There was a unanimous concession by all the Defence witnesses that The Suit Land was taken over by the Respondents without involving the Plaintiffs. Further, DExh 2, 5 and 6 attests to that fact.

71. That being the case, it follows that the Respondents failed the constitutional imperative of recognizing land as belonging to the people in the first instance, and protecting that right by identifying the extent of the right of the Plaintiff herein in the suit land.

72. My attention is drawn to the section 6 of the Community Land Act. It enumerates the role of the County Government insofar as Community land. It provides;

6.

(1) County governments shall hold in trust all unregistered community land on behalf of the communities for which it is held.

73. The Respondent herein was in a position of trust. It was incumbent upon it to follow the established procedure in its quest to acquire The Suit Land.

74. Article 40 of the Constitution entitles and protects every person’s right to property in the following manner;

40. Protection of right to property

(1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—

(a) of any description; and

(b) in any part of Kenya.

75. Further to the foregoing, arbitrary deprivation of the right to property is forbidden by Article 40(3) in the following terms;

(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—

(a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or

(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—

(i) requires prompt payment in full, of just compensation to the person; and



- (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.
76. The circumstances of this suit run contrary the dictates of Article 40(3). Despite the fact that the Plaintiff's deprivation of land was for public purpose, it fell short the safeguards provided for in Article 40(3)(1) which call for prompt and just compensation.
77. The Respondent's claim that the Plaintiff was unable to prove ownership was dislodged by the finding that even in community land, individual interest can be identified and are protected accordingly.
78. The inevitable conclusion emerging from Article 63(2)(i) and 63(4) of *the Constitution* as appreciated together with the definition of Community Land Tenure as given in the *Community Land Act* and reproduced in paragraph 67 above, is that Community land is owned both individually and collectively by the Community. Among the Pokots their community land is owned individually and collectively by families, clans or community leaders showing their members where 'ownership' rights are situate and extend to by putting on the ground a stone/ stones locally known as "sochot". These stones act as boundaries and beacons among the community and set to demarcate their parcels. And in the instant case, PW1 indicted that from the time she was born on the suit land she and her family knew the extent of their land and that is where the Defendant purported to establish the mango factory. To that end, any alienation by the County Government cannot be done without the recognition and protection of individual and collective ownership rights.
79. Further to the foregoing, even in instances where a person is unable to demonstrate ownership to land by way of title, *the Constitution* requires compensation of such persons. I am guided by Article 40(4) of *the Constitution* which provides as follows;
- (4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.
80. From the foregoing, an in view of the fact that there was no compensation of any kind, this Court finds and hereby holds that the Plaintiff was arbitrarily deprived of his land.
81. In the premises, The Plaint succeeds and the following final Orders hereby issue;
- i. A declaration hereby issues that West Pokot County Government, the Respondent herein, unlawfully deprived the Alice Chemning (suing as the Administrator of the Estate of Tongolik Katilem), The Plaintiff herein, the land measuring approximately 70 acres situate at Lomut Location Toghomo Sub-location Kuposos Village, being part of Maron Farm within Central Pokot County in violation of Article 40, 61(1) and 63(1), (2)(d)(i)&(ii) of *the Constitution*..
- ii. A permanent injunction hereby issues restraining the County Government of West Pokot, its agents, servants and or employees from encroaching or interfering with the portion of land, other than the one already developed by the Defendant, identified by the community by way of "sochot" in favour of the Tongolik Katilem, The Deceased herein, situated at Lomut Location Toghomo Sublocation Kuposos Village, being part of Maron Farm Central Pokot County belonging to Tongolik Katilem, the Deceased herein individually and collectively by the Community.
- iii. A declaration be and is hereby issued directing the Defendant to compensate justly the Plaintiff, within a period of six (6) months from the date of this judgment, to the extent of the portion of land already occupied and developed, being part of the larger portion of land belonging communally to the family of Tongolik Katilem, in strict adherence to Article 40(3) & (4), Article 63 of *the Constitution*, The *Land Act* and any other written law.



iv. In default of compliance with the order (iii) above, the Plaintiff shall be at liberty to appoint a valuer who shall give the market value of the portion and file the Report with the Deputy Registrar of this Court for adoption as the monetary value for the developed portion, excluding the Defendants' developments thereon, for execution.

v. Costs of the suit to be shouldered by the Respondent.

82. It is so Ordered.

**RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS 29TH
DAY OF NOVEMBER, 2023.**

HON. DR. *IUR* FRED NYAGAKA

JUDGE, ELC KITALE

