



**Rongo & 11 others v Ministry of Interior and Coordination of National
Government & 3 others (Environment & Land Case E80 of 2021)
[2023] KEELC 22411 (KLR) (14 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22411 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E80 OF 2021
LA OMOLLO, J
DECEMBER 14, 2023**

BETWEEN

**CHARLES A RONGO 1ST PLAINTIFF
GREGORY KIMANI MUHUHU 2ND PLAINTIFF
JOHN KIMANI NGA'NG'A 3RD PLAINTIFF
GEORGE CHUTHI KARANJA 4TH PLAINTIFF
STEPHEN GITHINJI MUIMBA 5TH PLAINTIFF
WAITHANJI MWAURA 6TH PLAINTIFF
KIMANI MUNGAI 7TH PLAINTIFF
JAMES NDEGWA MUIGAI 8TH PLAINTIFF
MARY WANGECI NJUGUNA 9TH PLAINTIFF
JOHANA WAWERU WANJOHI 10TH PLAINTIFF
CHRISTOPHER WANG'OMBE MUYA 11TH PLAINTIFF
KINYANJUI KAMAU KINYANJUI 12TH PLAINTIFF**

AND

**MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL
GOVERNMENT 1ST DEFENDANT
KENYA FOREST SERVICE 2ND DEFENDANT
KENYA WATER TOWERS AGENCY 3RD DEFENDANT
HON ATTORNEY GENERAL 4TH DEFENDANT**



JUDGMENT

1. The Plaintiffs commenced this suit vide the Complaint dated 26th October, 2021.
2. The Plaintiffs aver that they are the registered owners of the following parcels of land;
 - a. Kihingo/Likia Block 1/781 (Lusiru)
 - b. Kihingo/Likia Block 1/953 (Lusiru)
 - c. Kihingo/Likia Block 1/343 (Lusiru)
 - d. Kihingo/Likia Block 1/359 (Lusiru)
 - e. Kihingo/Likia Block 1/363 (Lusiru)
 - f. Kihingo/Likia Block 1/372 (Lusiru)
 - g. Kihingo/Likia Block 1/371 (Lusiru)
 - h. Kihingo/Likia Block 1/1460 (Lusiru)
 - i. Kihingo/Likia Block 1/699 (Lusiru)
 - j. Kihingo/Likia Block 1/747 (Lusiru)
 - k. Kihingo/Likia Block 1/753 (Lusiru)
 - l. Kihingo/Likia Block 1/817 (Lusiru)
 - m. Kihingo/Likia Block 1/818 (Lusiru)
 - n. Kihingo/Likia Block 1/934 (Lusiru)
 - o. Kihingo/Likia Block 1/948(Lusiru)
3. The Plaintiffs also aver that they were members of Ndeffo Company Limited the original owner of LR No. 9955.
4. The Plaintiffs further aver that Ndeffo Company Limited subdivided LR No. 9955 and some of the subdivisions are the afore said parcels of land that were allocated to them and title deeds issued.
5. The Plaintiffs aver that between 30th October, 2020 and 4th November, 2020 the Defendants moved into the suit properties and stated that they were in forest land.
6. The Plaintiffs set out the particulars of illegality on the part of the Defendants and aver that the actions of the Defendants amount to trespass.
7. The Plaintiffs pray for judgement against the Defendants for;
 - a. A declaration that the entry and erection of beacons by the Defendants and/or their agents in the below listed Plaintiffs' parcels was illegal, fraudulent and amount to trespass.
 - i. Kihingo/Likia Block 1/781 (Lusiru)
 - ii. Kihingo/Likia Block 1/953 (Lusiru)
 - iii. Kihingo/Likia Block 1/343 (Lusiru)



- iv. Kihingo/Likia Block 1/359 (Lusiru)
 - v. Kihingo/Likia Block 1/363 (Lusiru)
 - vi. Kihingo/Likia Block 1/372 (Lusiru)
 - vii. Kihingo/Likia Block 1/371 (Lusiru)
 - viii. Kihingo/Likia Block 1/1460 (Lusiru)
 - ix. Kihingo/Likia Block 1/699 (Lusiru)
 - x. Kihingo/Likia Block 1/747 (Lusiru)
 - xi. Kihingo/Likia Block 1/753 (Lusiru)
 - xii. Kihingo/Likia Block 1/817 (Lusiru)
 - xiii. Kihingo/Likia Block 1/818 (Lusiru)
 - xiv. Kihingo/Likia Block 1/934 (Lusiru)
 - xv. Kihingo/Likia Block 1/948(Lusiru)
- b. A declaration that the Plaintiffs fundamental rights and freedoms as enshrined under Article 40(1) & (2) of *the Constitution* been contravened and infringed upon by the Defendants.
- c. An order of perpetual injunction restraining the Defendants by themselves, their agents, servants, proxies and/or persons excising authority from entering, erecting beacons, subdividing, alienating, disposing and/or in any other manner interfering with the Plaintiff's parcels of land parcels No.
- a. Kihingo/Likia Block 1/781 (Lusiru)
 - b. Kihingo/Likia Block 1/953 (Lusiru)
 - c. Kihingo/Likia Block 1/343 (Lusiru)
 - d. Kihingo/Likia Block 1/359 (Lusiru)
 - e. Kihingo/Likia Block 1/363 (Lusiru)
 - f. Kihingo/Likia Block 1/372 (Lusiru)
 - g. Kihingo/Likia Block 1/371 (Lusiru)
 - h. Kihingo/LikiaBlock1/1460 (Lusiru)
 - i. Kihingo/Likia Block 1/699 (Lusiru)
 - j. Kihingo/Likia Block 1/747 (Lusiru)
 - k. Kihingo/Likia Block 1/753 (Lusiru)
 - l. Kihingo/Likia Block 1/817 (Lusiru)
 - m. Kihingo/Likia Block 1/818 (Lusiru)
 - n. Kihingo/Likia Block 1/934 (Lusiru)
 - o. Kihingo/Likia Block 1/948(Lusiru)



- d. An order of mandatory injunction do issue directing the Defendants by themselves, their agents, servants, proxies and/or persons exercising authority from them to forthwith remove the beacons erected on the Plaintiff's respective parcels of land failing which the Plaintiff be allowed to remove the same.
 - e. Any other relief that this honorable may deem fit.
 - f. Costs of this suit.
8. The 1st, 2nd and 4th Defendants filed their Statement of Defence dated 6th January, 2022 on the same date.
 9. They deny the averments in the Plaint and state that the suit properties are within Likia Forest Station which is one of the stations within the gazetted Eastern Mau Forest Reserve.
 10. The 1st, 2nd and 4th Defendants also state that the suit properties which the Plaintiffs are alleging ownership have never been degazetted and therefore the obtained title deeds are null and void.
 11. The 1st, 2nd and 4th Defendants therefore seek that the Plaintiff's suit against them be dismissed for failure to establish a reasonable cause of action.
 12. This court notes that there is another Statement of Defence filed by the Defendants on 18th March, 2022 where they deny the averments in the Plaint
 13. The Defendants state that the suit properties were illegally hived from Eastern Mau Forest and so the titles should be cancelled.
 14. The Defendants also state that the Eastern Mau Forest was legally proclaimed in 1932 and its boundaries fixed.
 15. The Defendants further state that the suit properties have encroached into the forest land by 387.94 Ha which encroachment was discovered during a visit to the forest by a 'multi-agency' dully commissioned by the government.
 16. The Defendants therefore seek that the suit against them be dismissed with costs.

Plaintiffs evidence.

17. Charles Rongo testified as PW1. He introduced himself as a farmer and a director of Ndeffo Company Limited. He also stated that he had filed the present suit on his own behalf and on behalf of eleven other Plaintiffs.
18. It was his evidence that he had the consent to institute the present suit and explained that the said consent is attached to his verifying affidavit.
19. He testified that he sued the Defendants because they had trespassed onto their parcels of land and subdivided them. He went on to testify that the said parcels were listed at paragraph 6 of the Plaint and are as follows;
 - a. Kihingo/Likia Block 1/781 (Lusiru)
 - b. Kihingo/Likia Block 1/953 (Lusiru)
 - c. Kihingo/Likia Block 1/343 (Lusiru)
 - d. Kihingo/Likia Block 1/359 (Lusiru)



- e. Kihingo/Likia Block 1/363 (Lusiru)
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 - m. Kihingo/Likia Block 1/818 (Lusiru)
 - n. Kihingo/Likia Block 1/934 (Lusiru)
 - o. Kihingo/Likia Block 1/948(Lusiru)
20. His testimony is that in the year 1965 they formed a company known as Ndeffo Company Limited for the purposes of buying land and subdividing it among its members.
21. He further testified that in the year 1967 they acquired land parcel No. LR No. 9955 that belonged to Mr. Saunders which the government had taken back after the white settlers left the country.
22. It was his evidence that the organization that took over the land was the Agricultural Settlement Trust.
23. It was also his evidence that the government leased the land to Ndeffo Company Limited in the year 1968 and they occupied it under the terms of the lease until the year 1976.
24. It was further his evidence that in 1976, Ndeffo Company Limited bought the said parcel of land for Kshs. 405,000/=.
25. He testified that after they purchased the property, they surrendered the title back to the government on 13th December, 1990 for the purposes of subdivision.
26. He also testified that after surrender, they needed the approval of the government to subdivide the land. He further testified that they used a proforma to show how the subdivision was to be done.
27. He went on to narrate that all the members of the company got their portions of the land measuring 0.65 Ha in the year 1990 and they took occupation and are in occupation to date. He added that the subdivision was done by a government surveyor attached to the Land Adjudication Department.
28. It was also his evidence that in October 2020, a surveyor, forest askaris and the District Commissioner Runyejes showed up on the suit parcels and started putting up beacons.
29. It was further his evidence that no one was allowed to ask any questions and they did not receive any explanations.
30. He testified that he was called to go to Ndeffo Center where the parcels of land are because he is a director of Ndeffo Company Limited and that when he got there he found that beacons had been put up.



31. He further testified that he went to the Chief, the District Officer and the District Commissioner who denied having any knowledge of the said beacons and they advised him to talk to the District Commissioner Rongai.
32. It was his evidence that he went to see the District Commissioner Rongai one Mr. Muwawi, who informed him that the government had asked him to do a resurvey because the Plaintiffs had encroached into East Mau Forest but he did not show him any letter authorizing the subdivision.
33. It was also his evidence that Mr. Muwawi the District Commissioner Rongai requested that they have a meeting at a hotel in Nakuru to which he agreed. Each party was to bring a surveyor to confirm the issue of encroachment.
34. It was further his evidence that they went to the said meeting with a Registry Index Map and their surveyor but the District Commissioner did not attend the meeting with a surveyor.
35. He testified that the District Commissioner asked them to bring the title deed for LR 9955 and they informed him that they could only avail a copy since the original had been surrendered to the government.
36. He also testified that at the end of the meeting they did not reach any resolution and so they decided to approach the governor who then convened a team to look into the matter. He added that at the meeting, they were represented by their surveyor one Mr. Oti.
37. It was his evidence that the team convened by the governor found that their parcels of land were near the forest but not in the forest. He went on to state that the team prepared a report dated 18th March, 2021.
38. It was further his evidence that he did not know why the government sent people to their land and so he sought for the grant of the prayers as set out in the Plaint.
39. He produced the following documents as exhibits;
 - i. Copies of title deeds as Exhibit P1 (a) – (p).
 - ii. Registry Index Map as Exhibit P2
 - iii. A copy of profoma as Exhibit P3.
 - iv. Report by Adhoc Committee by the County Government of Nakuru and letter dated 22nd September, 2020 as Exhibit P4(a) & (b).
40. He concluded his evidence by stating that it was not true that their parcels of land were in the East Mau Forest and that they were not gazetted as a forest.
41. Upon cross examination PW1 confirmed that he is a director of Ndeffo Company and admitted that he did not produce anything to show that he was a director.
42. He also confirmed that Ndeffo Company Limited first went to purchase the property from Mr. Saunders but they were turned away and so they went to the government.
43. When referred to Exhibit 1(a), he admitted that entry No. 7 shows that they were given a lease for fifteen years that commenced from 16th August, 1968.
44. He also admitted that the yearly rent was Kshs. 18,200/= which rent they paid but he had nothing in court as evidence of payment.



45. He further admitted that the lease was not renewed and alleged that before the lapse of the fifteen years, the president got involved and the property was subdivided by order of the president. He confirmed that he did not have any document of the presidential order.
46. PW1 stated that the subdivision to the suit parcel was done by a government surveyor but he did not have any document to show approval for subdivision.
47. He further confirmed that entry No. 9 indicated that the title had been surrendered for approval and that he did not have any document with the endorsement "Approved".
48. He admitted that they have a register of members but he did not produce it as evidence in court. He also confirmed that they were still in occupation of the suit parcels.
49. He also admitted that they did not make any enquires as to the forested area because the government was involved and that the government's survey department that did the survey.
50. He further admitted that they had a deed plan but they did not have anything to show that it was the government surveyor who showed them the forest boundary except for the Registry Index Map.
51. When he was referred to Exhibit P4 which is the county report, he read out the remarks and conclusion part of the report which are as follows;

"The survey team will proceed to the ground and determine the positions of the beacons along the common boundaries of the farms and the forest once prerequisite authority are confirmed"
52. He admitted that the Ndeffo Company Limited gave to the member's portions of the property after purchase from the government.
53. He confirmed that all the procedures as required by the government were followed and the Kshs. 405,000/= was paid to the government. He also confirmed that he did not have any receipt to show payment of the said amounts.
54. He further confirmed that he knew that the Mau Forest served as a water catchment area and was home for various species. He stated that their parcels of land were not in the water catchment area which was in the forest.
55. PW1 admitted that he had been a director of Ndeffo Company for a period of twenty years and stated that he did not know that their parcels of land were part of the gazetted forest areas and if it was they would have been notified.
56. When referred to Exhibit 4(b), he confirmed that they did not attend the meeting and further confirmed that the minutes were not signed.
57. Upon further cross examination he admitted that the title deeds that had been produced as Exhibit P1, his title deed was issued on 8th July, 2002 while the title deeds for the other Plaintiffs were issued in the 1990s and 2000.
58. He stated that if two people have title deeds to the same property then the other person had the right to prove ownership.
59. He also confirmed that even though he did not have the transfer documents, he had shown the process of acquisition.



60. He further confirmed that they had bought the property from the Agricultural Settlement Trust and that the Agricultural Finance Co-operation but the Agricultural Settlement Trust did not transfer the property to them.
61. He admitted that Exhibit P1(a) showed the transfer to Ndeffo Company Limited and added that they got title deeds from the Lands Office.
62. He admitted that he bought his parcel of land from another member of Ndeffo who transferred it to him.
63. He further admitted that he did not have the transfer from the government to Ndeffo Company Limited and confirmed that he was not aware of any proclamation on forest land that was made in 1941.
64. He confirmed that he was aware that in 1964 there was gazettement of forest land and that the survey plan was in the custody of Kenya Forest.
65. He also confirmed that Kenya Forest Service was not involved because the parcel of land belonged to Ndeffo Company Limited.
66. He further confirmed that the said parcel shares a boundary with Eastern Mau Forest and that Kenya Forest service would know the boundary.
67. When referred to Exhibit 4(a), he admitted that the Kenya Forest Service was not part of the meetings that were held by the county.
68. He stated that their titles were legal and that he did not know about Likia Farm and added that even if their parcels of land were on gazetted forest land, he would still insist that his title was valid because it was the government that issued it to him.
69. He further stated that he was not a surveyor but had produced the Registry Index Map and the Deed Plan. He admitted that neither the deed plan nor the title deed was certified.
70. Upon re-examination, he stated that land parcel No. 9955 existed before 1964 and that he had not seen any gazette notice gazettement it as a forest.
71. He also stated that the government had not complained that they did not pay the purchase price and added that it is Ndeffo Company Limited that purchased the suit property and that he bought his parcel of land from the company.
72. He stated that Kenya Forest had never complained of their occupation and further that no government department had sought orders for cancellation of their titles.
73. PW1 also stated that before the year 2020, no one ever gone to the suit properties and made any complaints. He explained that he did not have the original Exhibit 1(a) because they had surrendered it to the government.
74. He ended by reiterating that they do not live in the Mau Forest.
75. Nicholas Otieno Okoth testified as PW2. He introduced himself as a private surveyor attached to Prime Line Surveys and stated that he is in charge of Nakuru region.
76. He stated that he has a Diploma in Land Survey and that he worked under Joel Odhiambo Akonio license No. 186. He also stated that he is a member of the Institute of Surveyors of Kenya and is number 1830.



77. He testified that sometime in March, 2021 a group of people who referred to themselves as Ndeffo Company Limited went to his office in Njoro and informed him that that there was a team looking at the boundary of the Eastern Mau Forest.
78. He went on to testify that they instructed him to get the records of their land and to ensure that the group of people looking at the boundary did not move it.
79. He further testified that later he was incorporated into the technical team of the governor and the technical team was to find out if indeed there was an encroachment.
80. It was his evidence that the land in question is LR No. 9955 and he was able to obtain the following documents;
 - i. The initial survey plan FR No. 84/75 related to LR No. 9955
 - ii. Deed plan No. 71046
 - iii. Copy of title with grant number IR 16818.
81. It was his further his evidence that the grant was issued in 1955 and the first holders were the European Agricultural Settlement Board.
82. It was further his evidence that entry No. 2 of the grant shows that in 1959 the property was leased to Gerald Alfred Wesley Sanders.
83. Another transaction on the grant was at entry No. 5 which is a transfer from the Agricultural Settlement Board to Gerald Alfred Wesley Sanders upon purchase and payment of Kshs. 612,340/=.
84. He testified that Ndeffo Company Limited came into the picture later and it is shown at entry No. 7 and 8 where it had leased the property for fifteen years commencing from the year 1968.
85. He also testified that entry No. 8 shows that Ndeffo Company Limited bought the property at Kshs. 405,000/= in the year 1976.
86. He further testified that upon transfer they got absolute rights to use the land. He went on to state that entry No. 9 shows that there was an application for subdivision made on 13th December, 1990 and the original title had to be surrendered.
87. It was his evidence that there was an acknowledgement that that the title had been surrendered and it was dated 10th December, 1990 and drawn by the Registrar of Titles.
88. It was his further evidence that there was a deed plan attached to the title which was prepared after a survey plan had been approved by the Director of Surveys.
89. He went on to state that the survey plan is No. 84/75 while the deed plan was No. 71046 and that it captured the acreage and location of the land.
90. He testified that the first page of the grant shows that the land was situated in Nakuru and that surrender was done to pave way for new titles and added that the property was a leasehold title for a period of 999 years.
91. He also testified that a commission was done and a Registry Index Map was prepared.
92. When referred to Exhibit P2 (the Registry Index Map), PW2 stated that it had a title- Kihingu (Leka Block 1 (Lusiri Ndeffo) and was prepared by the Survey of Kenya in 1990. He went on to state that the Registry Index Map had undergone several amendments occasioned by several subdivisions and added



- that this meant that there was no caveat and further that there was no record showing any change in boundary.
93. He further testified that the parcels of land listed in the Plaint all fall within the Registry Index Map and that if there were any alterations to the Registry Index Map such alterations would not be proper.
 94. It was his evidence that any plan that had been approved by the Director of Surveys cannot be changed by anyone else apart from the Director.
 95. It was further his evidence that the Kenya Forest Service claimed that there had been an amendment to the plan and that if it be the case, the plan must be availed and scrutinized.
 96. He testified that when he went on the ground with the governor's committee, he found beacons placed all over the farms. He stated that the members of Ndeffo Company Limited should have been informed that there had been a change of boundary.
 97. He further testified that the findings of the report (Exhibit P4(a) were that they found pin on concrete (the beacons) and could not understand the methods used to place them.
 98. It was his evidence that the original beacons were also on the suit parcel and that no caveat had been placed on the suit parcel prior to visiting the ground.
 99. It was also his evidence that the title deeds that were produced as Exhibit P1 (b) to (p) emanated from the Registry Index Map.
 100. On the allegation by the defendant that Gazette Notice Proclamation No. 44 of 1932 that was amended by the proclamation No. 122 of 1934 which resulted in the amended the boundary, PW2 stated that the survey for LR 9955 was registered by the Director of Survey on 8th January, 1959.
 101. He testified that the suit parcel was non-existent in the years 1932 and 1934 and therefore a prior gazette notice cannot be used to amend that which exists.
 102. PW2 also testified that the proper channel was followed in creating LR No. 9955 Likia Block 1 Lisuru Ndeffo and that there was no contention until recently. He ended his examination-in-chief by surrendering the original Registry Index Map to the Court.
 103. Upon cross examination, PW2 confirmed that he was not a licensed surveyor and was working under someone.
 104. He also confirmed that the proclamations were done by the colonial government in 1932 and 1934 and that the said proclamations are equivalent to gazette notices of today.
 105. He further confirmed that he had seen the proclamations and was aware that government land had to be degazetted before it was available for private use.
 106. He admitted that in paragraph 5 of his witness statement dated 15th July, 2022 he stated that the proclamations were gimmicks because the survey plan had not been withdrawn.
 107. He also admitted that the colonial government was legitimate and that the survey that was done in 1959 was done by the colonial government.
 108. He further admitted that something that was illegal from the start cannot be made legal. He denied that he is a theorist and stated that he used records to make his findings. He further stated that he could only talk about land records which were not a theory.



109. He also confirmed that he did not bring anything to court to show that he was a surveyor but he was an assistant and was member No. 1830 at the Institute of Survey of Kenya.
110. He further confirmed that he was engaged by Ndeffo Company Limited prior to the issuance of the Adhoc Committee Report that was produced as Exhibit 4(a).
111. He admitted that the present dispute was about the boundary of forest land. He also admitted that he visited the suit land but was not able to locate each property as they did not have sufficient time.
112. He further admitted that he had not seen the documents from the forest to know how the boundaries run but he formed a conclusion regarding the boundaries between the forest land and Ndeffo.
113. He confirmed that his report was not conclusive which was because he did not have data from the multi-agency team which team, he was part of.
114. He also confirmed that the title was issued in 1955 in the name of the European Agricultural Settlement Board and that he has not shown and neither can he tell if there was degazettement.
115. He further confirmed that if there was no degazettement, then the title held cannot be legal.
116. Upon re-examination, he stated that the title was surrendered to the government which was acknowledged at entry No. 9.
117. He also stated that there was no objection to the surrender as the registrar of titles acknowledged the surrender.
118. He further stated that the proclamation was not specific as to the parcels of land that had been declared as forest land and that the title was issued in 1955 by the colonial government.
119. He stated that if the proclamation affected LR 9955, then there was supposed to be a withdrawal of the survey plan.
120. He also stated that the records of the Registry Index Map are still there and the people are subdividing and processing title.
121. He further stated that according to him degazettement happens when the government has an interest in a particular area. He further stated that there has never been a degazettement of LR 9955. In reference to the conclusion on Exhibit 4(a), he stated that he found new beacons on the ground and they were spread all over the parcels within Kihingu Block 1.
122. He also stated that he had not heard anything from the multi-agency team.
123. Upon the court seeking clarification, he stated that the multi-agency team did not give them a date and so he was not able to conclusively state who between the Plaintiffs and the Defendants had encroached onto whose land.
124. Counsel for the Plaintiff prayed that the Plaintiffs Statement be adopted as part of the testimony and the same was adopted as prayed.
125. This marked the close of the Plaintiff's case.

Defendant's evidence.

126. Evans Kegode testified as DW1. He introduced himself as the head of Survey and Mapping at the Kenya Forest Service and stated that he had a witness statement was filed on 18th May, 2022 that he wished to have adopted as part of his evidence- in-chief.



127. His evidence is that the land in question was a gazetted forest that was proclaimed in 1932 via the proclamation No. 44 of 1932.
128. He testified that in the year 1964, it was declared a central forest via Legal Notice No. 174 of 20th May, 1964. He stated that he had a copy of the legal notice.
129. He went on to state that he had proclamation No. 57 in court. He stated number 2 on the first schedule speaks of proclamation No. 44 of 1932 which was amended by proclamation No. 122 of 1934.
130. He further testified that item No. 2 of the second schedule described the Eastern Mau Forest Reserve which runs from pages 188 to 190.
131. It was his evidence that page 351 of Legal Notice No. 174 also describes the Eastern Mau Forest. He stated that he is the custodian of the documents that relate to forests and he had not seen any document degazetting the Mau forest.
132. He then produced Legal Notice No. 174 as Exhibit D1 and testified that in their defence, the Plaintiffs had encroached onto forest land by 387.44 Ha.
133. He also produced a map EM001 (D) which he testified showed the extent of encroachment as Exhibit D2.
134. It was his evidence that the original mother title was LR No. 9955 and the suit parcels of land fall within a gazetted forest area known as Eastern Mau Forest Reserve.
135. DW1 testified that he has proclamation No. 44 that was done in 1932 which was confirmed in 1941 via proclamation No. 57.
136. It was further his evidence that in 1964, Legal Notice No. 174 of 20th May, 1964 was issued that affirmed the previous proclamations on forest land. He went on to state that the said legal notice is on the list of documents dated 11th May, 2022 filed by the Defendants.
137. He also testified that Eastern Mau is referred to on page 351 as the third forest and therefore his evidence was that the land was gazetted forest land.
138. He further testified that there was no notice degazetting the forest and if there was any, he would be aware as he was the custodian of gazetted forests.
139. It was his evidence that there were maps that showed the boundaries of gazetted forests. The proclamations of 1932 and 1941 refer to a boundary plan No. 175/2 which showed the boundary of the Eastern Mau Forest Reserve. It was also his evidence that at the point of gazette, there must be a boundary plan. He produced boundary plan No. 175/2 as Exhibit D3.
140. It was further his evidence that he had map No. EM001 (D) which was titled “Status of LR No. 9955 in relation to Eastern Mau Forest”. The said map was prepared to answer the question of whether LR No. 9955 was encroaching onto Eastern Mau Forest or not.
141. He testified that as was shown on the map, LR 9955 had encroached onto Eastern Mau by an area of 387.94 Ha and the suit parcels were in the encroached area.
142. He also testified that it was therefore not true that Kenya Forest was trespassing on the suit properties on 30th October, 2020 and 4th November, 2020 as stated in paragraph 9 of the Plaint. He explained that during that period, they were re-establishing the boundaries of the Eastern Mau Forest as previously gazette and added that it was a routine exercise being conducted for purposes of management of resources.



143. It was also his evidence that the titles in the Plaintiffs possession were an irregularity as the titles that emanated from LR No. 9955 were not valid.
144. Upon cross-examination he admitted that Kenya Forest Service was a corporation that had the capacity to sue and be sued.
145. He also admitted that they had not gone to court to seek cancellation of the said titles and added that the last re-establishment of boundaries was done in the year 2020.
146. He further admitted that since the proclamation of 1932 there has never been a re-establishment of boundaries.
147. He confirmed that the Ministry of Lands and the Director of Survey were the custodians of various maps in the country.
148. He stated that he did not know if the deed plan for LR No. 9955 existed at the Director of Survey and confirmed that in case of any alteration of boundaries or amendment, the process begins with a survey being carried out. He explained that after the survey is done, the documents are presented to the Director of Survey for approvals. After approvals, amendments to the parcels are done before the Deed Plan or the Registry Index Map is produced.
149. He admitted that it was possible for the Director of Surveys to make errors and amend maps which errors are corrected when they are noted.
150. When referred to Exhibit P2 which was the Registry Index Map for Kihingo/Likia Block 1 (Lusiru Ndefo) he admitted that it had the approval from the Director of Survey.
151. He stated that the suit properties fall within the gazetted forest area of Eastern Mau. He further stated that there were numerous parcels that had encroached the forest and they included plot No. 846.
152. DW1 confirmed that Kenya Forest had not complained to the Director of Surveys for interference or encroachment. When he was referred to Exhibit D2, he also confirmed that there were other parcels falling within the co-ordinates of encroachment.
153. He also confirmed that the co-ordinates for Exhibits D2 were F, Sa41, Sa50, Sa60, Sa61, Sa69 and there was a river at Sa138, Sa168, G and F (clockwise).
154. He further confirmed that the suit parcels, according to Exhibit P2, fall within the boundary as shown by the co-ordinates and added that it was not possible to effect amendments to boundaries without the approval of the Director of Survey.
155. He admitted that the boundary as exhibited in Exhibit D2 and read to court has not been amended. He also admitted that LR 9955 exists on the ground and so to re-establish the boundary they use the boundary plan.
156. He also admitted that Exhibit D2 was prepared by Kenya Forest Service in January 2022 and was not subjected to the Director of Survey.
157. When he was referred to Exhibit D1, he admitted that East Mau Forest was established by Proclamation No. 44 of 1932 and affirmed via proclamation No. 57 of 1941. He also admitted that at page 351 did not mention proclamation No. 44 of 1932.



158. He further admitted that paragraph 2 of the first schedule of proclamation No. 57 stated as follows;
- “The Eastern Mau Forest Reserve as declared by proclamation No. 44 of 1932, amended by proclamation No. 122 of 1934”
159. He confirmed that Exhibit D1 does not talk about the proclamation No. 44 of 1932 but makes reference to proclamation No. 57 of 1941 and that subsequently there was a proclamation of 1950 and 1955.
160. He also confirmed that that LR 9955 was a grant of 999 years from 1st August, 1955.
161. When he was referred to Exhibit D1 at page 349 he confirmed that it states that Bahati Forest was 25,022 acres and it made reference to proclamation no. 44 of 1932 and proclamation No. 122 of 1934.
162. He admitted that the first survey according to Exhibit P2 was done in 1990 and there were subsequent amendments that have been approved by the director. If the Director of Survey knew of the error, he would not have approved the amendment.
163. Upon re-examination he stated that the amendment of maps for public land and private land had different procedures. The amendment to the boundaries of forest land would have required that the forest land be degazetted.
164. He also stated that once degazettement is done, it would have made it available for any amendments. He emphasized that degazettement comes first.
165. When referred to page 351 of Exhibit D1 which was proclamation No. 36 of 1950 & proclamation No. 36 of 1955, he stated that he was not certain what was being amended as there was no evidence of any amendments.
166. When he was referred to page 187 which was the proclamation No. 57 of 1941 he stated that paragraph 2 of the schedule to the proclamation did not say what the amendment was about.
167. He stated that the maps from the Director of Surveys cannot be valid especially if they were arrived at without following the correct procedures.
168. He also stated that the titles arising from this action of the Director of Survey were intended to acquire public land without following due procedure and therefore cannot be valid.
169. He further stated that Exhibit D2 showed that there was encroachment and it was prepared by the Kenya Forest Service Surveying and Mapping department. He stated that it was prepared using boundary plan No. 175/2 by persons who had sufficient expertise.
170. He also stated that the conclusion was that LR No. 9955 encroached onto the boundary as was gazetted in 1932 and reflected on boundary plan No. 175/2.
171. The Defendants case was then closed.

Issues for determination.

172. The Plaintiffs filed their submissions on 24th May, 2023 while the Defendants filed their submissions dated 9th June, 2023 on 12th June, 2023.
173. The Plaintiffs reiterate the evidence given during the trial and identify the following issues for determination;



- i. Whether the Plaintiffs are the proprietor of the suit parcels of land. (Sic)
 - ii. Whether the Defendants have illegally encroached on the suit parcels of land.
 - iii. Whether the Plaintiffs have proved their case to be granted orders sought.
174. On the first issue, the Plaintiffs submit that they produced the requisite documents that showed their ownership of the suit properties.
 175. They rely on Section 24(a) and 26(1) of the *Land Registration Act* and submit that the law protects the sanctity of titles which can only be interfered with on the grounds of fraud, misrepresentation and illegality.
 176. The Plaintiffs also submit that even though the Defendants contested the titles they hold, they never pleaded fraud and neither did they present any evidence in support of the said claims.
 177. On the second issue, the Plaintiffs submit that the Defendants did not file a counterclaim to seek for cancellation and revocation of the Registry Index Map with respect to the suit parcel of land.
 178. The Plaintiffs rely on Gladys Wanjiru Ngacha v Teresa Chapsaat and 4 others [2008] eKLR, Rahlal G. Patel v Lalji Makanji[1957] EA 314 and reiterate that the Defendants merely alleged that their occupation of the suit properties was illegal but did not produce any evidence in support of their allegations.
 179. The Plaintiffs also rely on Section 116 of the *Evidence Act*, the judicial decisions of Kiprotich Arap Chepwoy v Simon Langat & 3 Others [2017] eKLR and Parkview Shopping Arcade v Charles Kang'ethe & 2 others [2004] eKLR in support of their arguments.
 180. With regard to the third issue, the Plaintiffs submit that they have proved their case to the required standard and they are therefore entitled to the orders sought.
 181. The Plaintiffs rely on the judicial decisions of Sarah Thara v Jamelick Kinyua Njoka [2018]eKLR and In Moya Drift Farm Ltd v Theuri [1973] EA in support of their arguments.
 182. The Defendants in their submissions identify the following issues for determination;
 - a. Whether the disputed lands were degazetted such as to make them available for private ownership.
 - b. Whether the entry by the Defendants into the suit parcels amounted to a trespass
 - c. Whether the Plaintiffs are entitled to compensation.
 183. On the first issue, the Defendants rely on Section 26 of the *Land Registration Act* and submits that the land in dispute LR No. 9955 was gazetted as part of Eastern Mau Forest Reserve via Proclamation No. 44 of 1932 which was confirmed by proclamation No. 57 of 1941.
 184. The Defendants also submit that that in 1964, legal notice No. 174 of 20th May, 1964 declared all the forests proclaimed prior to independence as central forests.
 185. The Defendants further submit that after the proclamation, the property became public land and was not available for alienation unless it was degazetted.
 186. It is the Defendants submissions that Section 27 of the Forests Act 2005 (now repealed) provided for the procedure of degazettement which section was reintroduced under Section 34 of the Forests Conservation and Management Act 2016.



187. It is also the Defendants submissions that the Plaintiffs have not demonstrated that they followed the said procedure to either alter the boundaries of the Eastern Mau Forest or deregister the same as a public forest.
188. It is further the Defendants submissions that since the requisite procedure was not followed, the plaintiffs illegally and unlawfully acquired the titles to the suit property and cannot therefore afford the protection of this court.
189. The Defendants rely on the judicial decision of Timothy Ingosi & 87 Others v Kenya Forest Services & 2 Others [2016] eKLR as was cited in Mapelu & 13 others v Cabinet Secretary, Ministry of Lands & Physical Planning & 164 others; Nyayo Tea Zones Development Corporation & 2 Others (interested parties) (Environment & Land Petition 12 & 13 of 2018 (consolidated)) [2022] KEELC 13468 (KLR) (13 October 2022) and submit that the area in question is a water catchment area and reiterate that it was never degazetted for allocation.
190. On the second issue, the Defendants reiterate that they have produced evidence to show that the suit property is government land and therefore the government officers who went to the property were performing a routine performance of their functions of management and were therefore not trespassing.
191. The Defendants rely on the judicial decision of Okorie & Others v Udom & Others (1960) 5 FSC 16 as was cited in Michael Gaiko Ngure & another v Peter Njoroge Kinyanjui [2022] eKLR in support of their arguments.
192. On the third issue, the Defendants rely on Article 40(4) of *the Constitution* and submit that the Plaintiffs are not entitled to compensation over the suit property which is government land.
193. The Defendants conclude that the Plaintiffs titles should be declared void as they had been acquired unprocedurally.

Analysis and Determination.

194. After considering the pleadings, submissions and the evidence of both the Plaintiffs and the Defendants, it is my view that the following issues arise for determination;
 - a. Whether the parcels of land listed under paragraph 6 of the Plaintiff form part of the Eastern Mau Forest.
 - b. Whether the Plaintiffs are entitled to the orders sought in the Plaintiff.
 - c. Who should bear costs of the suit.

A. Whether the parcels of land listed under paragraph 6 of the Plaintiff form part of the Eastern Mau Forest.

195. It is the Plaintiffs case that they are the owners of the following parcels of land as listed under paragraph 6 of the plaintiff;
 - a. Kihingo/Likia Block 1/781 (Lusiru)
 - b. Kihingo/Likia Block 1/953 (Lusiru)
 - c. Kihingo/Likia Block 1/343 (Lusiru)
 - d. Kihingo/Likia Block 1/359 (Lusiru)



- e. Kihingo/Likia Block 1/363 (Lusiru)
 - f. Kihingo/Likia Block 1/372 (Lusiru)
 - g. Kihingo/Likia Block 1/371 (Lusiru)
 - h. Kihingo/Likia Block 1/1460 (Lusiru)
 - i. Kihingo/Likia Block 1/699 (Lusiru)
 - j. Kihingo/Likia Block 1/747 (Lusiru)
 - k. Kihingo/Likia Block 1/753 (Lusiru)
 - l. Kihingo/Likia Block 1/817 (Lusiru)
 - m. Kihingo/Likia Block 1/818 (Lusiru)
 - n. Kihingo/Likia Block 1/934 (Lusiru)
 - o. Kihingo/Likia Block 1/948(Lusiru)
196. It is also the Plaintiffs case that they were initially members of Ndeffo Company Limited whose mandate was to buy land and divide it amongst its members.
197. It is further the Plaintiffs case that Ndeffo Company Limited purchased LR No. 9955 in the year 1976 upon payment of the purchase price of Kshs. 405,000/=.
198. It is the Plaintiffs case that Ndeffo Company Limited surrendered the title for LR No. 9955 to the government on 13th December, 1990 as a prerequisite for subdivision.
199. LR No. 9955 was then subdivided and the members of Ndeffo Company Limited were issued with title deeds. They state have been in peaceful occupation of the suit properties until sometime in October, 2020 when the agents of the Defendants trespassed onto the properties and set new beacons claiming that their land fell within the Eastern Mau Forest.
200. In support of their case the Plaintiffs produced copies of the title deeds of the suit properties (Exhibit P1) as follows;
- a. Grant No. I.R 16816 for LR 9955 whose entries were elaborately set out by PW2 Nicholas Otieno Okoth.
 - b. Kihingo/Likia Block 1/781 (Lusiru) registered in the name of Charles Underson Rongo on 13th March, 1995.
 - c. Kihingo/Likia Block 1/953 (Lusiru) registered in the name of Charles anderson Rongo on 8th July, 2002.
 - d. Kihingo/Likia Block 1/343 (Lusiru) registered in the name of Gregory Kimani on 7th July, 1993.
 - e. Kihingo/Likia Block 1/359 (Lusiru) registered in the name of John Kimani Nganga on 25th July, 1994.
 - f. Kihingo/Likia Block 1/363 (Lusiru) registered in the name of George Chuthi Karanja on 26th May, 2005.



- g. Kihingo/Likia Block 1/372 (Lusiru) registered in the name of George Chuthi Karanja on 26th May, 2005.
 - h. Kihingo/Likia Block 1/371 (Lusiru) registered in the name of Stephen Githinji Muimba on 26th November, 1992.
 - i. Kihingo/Likia Block 1/1460 (Lusiru) registered in the name of Stephen Githinji Muimba on 10th February, 2015.
 - j. Kihingo/Likia Block 1/747 (Lusiru) registered in the name of Kimani Mungai on 6th October, 2015.
 - k. Kihingo/Likia Block 1/753 (Lusiru) registered in the name of James Ndegwa Muigai on 11th June, 2013.
 - l. Kihingo/Likia Block 1/817 (Lusiru) registered in the name of Mary Wangeci Njuguna on 22nd May, 1995.
 - m. Kihingo/Likia Block 1/934 (Lusiru) registered in the name of Christopher Wangombe Muya on 6th September 1997.
 - n. Kihingo/Likia Block 1/948 (Lusiru) registered in the name of Kinyanjui Kamau Kinyanjui and Samuel Wahaba Gitonga on 26th June 2013.
201. Two copies of title deeds produced by PW1 are not legible.
 202. The Plaintiffs also produced the Registry Index Map of the area (Exhibit P2). Sheet No. 2 is titled “Kihingo/ Likia Block 1 (Lusiru Ndeffo)” and has the stamp of the Provincial Survey Records Office dated January 2023.
 203. It is indicated at the bottom of the said Registry Index Map that it was compiled from the Survey of Kenya Field Sheets of LR No. 9955.
 204. The Plaintiffs also produced a copy of the profoma of Ndeffo Company Limited dated 1984 (Exhibit P3) on the subdivision of the Lusiru farm.
 205. The Plaintiffs further produced a report by the Adhoc Committee by the County Government of Nakuru (Exhibit P4(a) and the letter dated 22nd September, 2020(Exhibit P4(b).
 206. Exhibit P4(a) is titled “Independent Report on Boundaries Delimitation for Eastern Mau Matrix by the Multi-Agency Team Affecting Ndeffo and Likia Farms in Njoro Sub County, Nakuru by Adhoc Committee.”
 207. The introductory parts of the report reiterate the evidence of PW1. The remarks and conclusion part is as follows;

“The topo maps for the entire Likia forest clearly correspond with the survey plan as well Registry Index maps obtained from survey of Kenya.(Sic) The maps show a distinct boundary neighboring the two farms of Lusiru and Likia, with no encroachment detected.

The survey team will proceed to the ground and determine the positions of the beacons along the common boundaries of the farms and the forest once the prerequisite authority is confirmed”



208. Exhibit P4(b) is a letter dated 18th March, 2021 written by Nicholas O. Okoth the surveyor in charge Nakuru County, Prime Line Surveys and addressed to Ndeffo Company Limited.

209. He makes the following observations in his letter;

“The officials of Ndeffo company had prepared residents of the affected farms to introduce both teams to areas where beacons had been erected by the multi-agency team, re-establishing the Likia Forest cutline. The teams witnessed beacons erected inside farms which appeared designed as sub-divisions of the already occupied land.

The beacons had no visible patterns and can only be verified after data used by those in charge are obtained for scrutiny. The class of beacons used were iron pin in concrete (IPC) which are normally used for internal land subdivisions.”

210. He then makes the following conclusion;

“It is important to state that from the above observation, the multi-agency team should make available the data used on this particular survey, which should form the basis of our analysis in order to approval or reject the work done.”

211. The Defendants case on the other hand is that the suit properties are within the Likia Forest Station which is one of the stations within the gazetted Eastern Mau Forest Reserve.

212. It is also the Defendants case that the original title was LR No. 9955 was gazetted as a forest reserve in the proclamations of 1932 and 1941.

213. It is further the Defendants case that in 1964, LR 9955 was declared a central forest via legal notice No. 174 of 20th May, 1964.

214. The Defendants argue that the said forests have never been degazetted and so they were not available for alienation for private use.

215. The Defendants produced Legal Notice No. 174 of 20th May, 1964 (Exhibit D1) where at page 351 it provides as follows;

“Eastern Mau Forest

That piece of land of approximately 160,639 acres situated approximately 20 miles south west of Nakuru Municipality which was declared to be a forest area by proclamation No. 57 of 1941 and as amended by-

Proclamation No. 36 of 1950

Proclamation No. 44 of 1955”

216. It is important to note that the above legal notice does not make reference to any land reference number but only states that a piece of land measuring 160, 639 acres 20 miles south-west of Nakuru Municipality was declared to be a forest area.

217. The Defendants also rely on a Map EM 001(D) (Exhibit D2) which allegedly pointed out the location of the suit properties within the Eastern Mau Forest. This map was prepared by the Kenya Forest Service in December 2021 and states that its data sources included the Likia Registry Index Maps and the Eastern Mau Forest BP.



218. During cross-examination, the Defendants witness confirmed that the said map was prepared by Kenya Forest Service and was not approved by the Director of Survey.
219. The Defendants further rely on boundary plan 175/2 (Exhibit D3) which has the stamp of the survey records office of August 1956 and was the plan for LR No. 9955.
220. It is not disputed that the mother title of the suit properties was LR No. 9955. It is also not disputed that the suit properties are subdivisions of LR No. 9955. It is further not disputed that sometime in October, 2020, a multi-agency team of the Defendants went to the suit properties, alleged that the suit parcels were part of the Eastern Mau Forest Reserve and put beacons within the suit parcels.
221. What is disputed is whether portions of the suit properties form part of the Eastern Mau Forest Reserve as alleged by the Defendants.
222. As aforementioned, the Plaintiffs rely on the Registry Index Map of the area in support of their contention that the setting up of the beacons by the Defendants was not justified. They argue that the Registry Index Map shows that the suit properties do not form part of the Eastern Mau Forest Reserve.
223. The Defendants on the other hand rely on Map EM 001(D) which was prepared by the Kenya Forest Service. They admit that the said map was made without the approval of the Director of Surveys. Essentially, the Kenya Forest Service has a map drawn by them and the said map is meant to support their contention that the suit properties form part of the Eastern Mau Forest. The efficacy of this map, in my view, is questionable.
224. Therefore, on one hand, the Plaintiffs are relying on the Registry Index Map to show the positions of the suit properties on the ground while on the other hand, the Defendants are relying on a map drawn by the Kenya Forest Service without the approval of the Director of Survey to allegedly show that the suit properties form part of the Eastern Mau forest reserve.
225. In the judicial decision of *Azzuri Limited v Pink Properties Limited* [2017] eKLR the court held as follows on the import of the Registry Index Map;

“80. In his paper, “The Role of the Registry Index Map (RIM) in Land Management in Kenya”, Peter K. Wanyoike has stated that the Registered Index Map is a very useful document in registration and management of land in Kenya within the context of “General Boundaries” or “approximate boundaries.”

81. The paper defines “General Boundaries” as follows:

“A boundary of which the precise line is undetermined in relation to the physical features which demarcate it ... However, it is clear on the ground where the parcel is situated and where the boundaries are, for they are clearly visible and unmistakable physical features, though they do not indicate the exact location of the line within the breadth which such physical features necessary process.”

82. In the case of *Ali Mohamed Salim v Faisal Hassan Ali* (2014) eKLR, this court held as follows:

“The type of survey that generated the Registry Index Map is what was known as “general boundaries” which has been defined in Section 18(1) of the *Land Registration Act*, 2012 to mean “the



approximate boundaries and the approximate situation only of the parcel.” Indeed, most of the titles under the repealed Registered Land Act were issued on the basis of the general boundaries, meaning that such parcel of land had no fixed beacons. On the other hand, land registered under the Registration of Titles Act required a cadastral survey to be prepared, which is based on a fixed boundary principle. Such a survey has an accurate linear and angular measurements to aid the registration of a title of a plot. The boundaries of land registered under the Registration of Titles Act can easily be identified by any surveyor because of the fixed nature of its beacons.” (Emphasis mine)

83. In the case of Samuel Wangau v. AG & 2 others (2009) eKLR, it was held as follows:

“However, it is common ground that such maps (R.I.M) are not authorities on boundaries. Both the District Land Registrar and the District land surveyor said as much....It means therefore that when and where there is a dispute as to the position and location of a boundary as in this case, unless the same is a fixed boundary, one has to go beyond the R.I.M in solving the dispute.” (Emphasis is mine)

226. As was held in Azuri Limited (Supra) decision, land registered under the Registration of Titles Act required a cadastral survey to be prepared, which is based on a fixed boundary principle. Such a survey has an accurate linear and angular measurements to aid the registration of a title of a plot. The boundaries of land registered under the Registration of Titles Act can easily be identified by any surveyor because of the fixed nature of its beacons. The mother title of the suit parcels was issued under the Registration of Title Ordinance (Chapter 160) in the year 1955. Subsequently, the legal regime governing the administration and management such parcels of land was the Registration of titles Act (CAP 281). The boundaries in respect of the mother title, in line with decision in Azuri Limited (Supra), were therefore fixed and easy to identify.
227. There is a deed plan No. 71046 attached to the mother title. It captures the acreage and location of the mother title. The mother title was surrendered to pave way for issuance of titles after sub-division. A RIM prepared after subdivision of the mother title has also been tendered in evidence. It is for 1990.
228. The Plaintiff in his evidence stated that he received a call and went to the suit parcels and found a surveyor, forest officers and the Assistant County commissioner Rongai putting up beacons on the suit parcels. The Plaintiffs state that these actions of the Defendants amount to trespass.
229. The Defendants justify their entry into the suit properties by stating that they were doing it for purposes of re-establishing boundaries of the Eastern Mau Forest and further stated that they found that portions of the suit properties form part of the Eastern Mau Forest as per the Kenya Forest Service map.
230. The Defendants have failed to address this court on the acreage of the mother title, compare it with the subdivisions arising therefrom and further compare them with acreage of or area covering the Eastern Mau forest.
231. The Defendants state that the allocation of mother title was irregular for the reason that the forest had not been degazetted. The Defendants are questioning acts of the pre-colonial government dating back to 1955 which acts had the effect of issuing a grant in respect of the mother title to European



- Agricultural Settlement Board. Subsequently, as can be seen on the entries made on the mother title, these acts were endorsed by the independence government in 1968 by leasing the mother parcel to Ndeffo Company Limited for fifteen years; commencing from the year 1968 and further allowing Ndeffo Company Limited to purchase the mother parcel at Kshs. 405,000/= in the year 1976.
232. Section 23 and 24 of the Registration of Title Acts CAP 281 (Repealed) is in pari materia with section 26 of the *Land Registration Act* 2012 which provides that a certificate of title shall be held as conclusive evidence of proprietorship and that such title shall not be subject to challenge except on the grounds that it has been acquired through fraud, misrepresentation, illegally unprocedurally or through a corrupt scheme.
 233. The Defendants have not tabled evidence that the Plaintiffs acquired the suit parcels through fraud, by misrepresentation, illegally unprocedurally or through a corrupt scheme. They make allegations that the suit parcels form part of forest land but do not comment on the acreage of the mother title as compared to the subdivisions arising therefrom and the area covered by the forest so as to enable the court draw a conclusion that there is indeed encroachment on forest land. In any event, no counterclaim has been filed.
 234. The Plaintiffs have in their possession documents that tell the story of their acquisition and occupation. These documents emanate from government departments and their authenticity have not been challenged.
 235. I am obligated to use the analogy of a company, its documents and its management vis-a-vis their legal effect on members of the public in a bid to understand the Defendant's contention. The defence put out by the Defendants sounds like a case of a company requiring members of the public to have knowledge of its internal procedures and processes.
 236. The doctrine of constructive notice imputes knowledge of the objects for which a company is formed (as contained in its memorandum of association) on members of the public dealing with a company. The public is expected to know the objects for which a company is formed and any dealings with a company outside of these objects is deemed ultra vires. The reason is that the memorandum of association is filed with the registrar of companies, making it a public document. Persons dealing with the company are expected to visit the office of the Registrar of Companies, which is a public office to peruse documents held by them i.e. public documents and inform themselves of the matters contained therein so as to avoid engaging in ultra vires acts which are unenforceable.
 237. However, Members of the public dealing with a company are not expected to know matters pertaining to the day to day management of the company. This is because matters pertaining to day to day management of companies are contained in a company's Articles of Association held at the registered office of the company. In the same way, members of the public are not, in my view, expected to have knowledge of policies and manuals that guide the operations of government departments. Policies and manuals are ordinarily not in the public domain. This is in contradistinction to statutes. It is for this reason that ignorance of the law is no defence. Ignorance of a policy or manual is in my opinion a very good defence.
 238. The Defendants makes reference to proclamations of 1932 and 1934. They also state that the titles arising from the sub-division of the mother title as sanctioned by the Director of Survey were intended to acquire public land without following due procedure and therefore cannot be valid. This is an admission by the Defendants that the government, the director of survey and the lands registry were intricately involved in the process leading to issuance of the grant, lease to and purchase of the mother parcel by Ndeffo Company limited and its subsequent subdivision to members of Ndeffo Company limited.



239. When the Defendants state that the mother title was not available for alienation for the reason that it was gazetted forest land, they are simply telling the Plaintiffs that Ndeffo Company Limited ought not to have purchased the mother parcel. The question is, how was Ndeffo Company Limited supposed to have known that the parcel of land that they leased and subsequently purchased from the government formed part of a forest or that it was not degazetted prior to lease or sale?
240. Government departments must work together for the benefit of the public. My view is that this is a case of infighting between government department who have refused to synchronise their operations and are hopeful that the court will turn a blind eye to their infighting and mismanagement to the detriment of the public. This court declines to be used as a vessel for sanitising failure and/or lapses of government departments to the detriment of the public.
241. The mother title, giving rise to the suit parcels upon sub-division shows that it is a grant of 1st August, 1955 and is for a term of 999 years. In my view, the Defendants ought to, internally, among themselves resolve the legal challenges that this grant presents if it is indeed true that it had the effect of alienating forest land without first degazetting it. This burden of failure to observe internal processes and procedures as between government departments cannot and should not be borne by the public.
242. The sanctity of title to property cannot be overstated and must be protected. Given the circumstances and evidence tendered in this case, it is clear that the Plaintiffs hold title to the suit parcels, the Defendants who allege that the parcels encroach on forest land bore the burden to prove this allegation and that their entry to re-survey and put up beacons was within their mandate and authority and therefore justified. They have failed to do so.
243. In *Ahmed Mohammed Noor v Abdi Aziz Osman* [2019] eKLR, the court in relying on the supreme court decision of *Raila Amolo Odinga & Another v. IEBC & 2 Others* (2017) eKLR held as follows;
- “ 22. The foregone analysis therefore settles the issue of burden of proof. For clarity, the legal burden of proof in a case is always static and rests on the Claimant throughout the trial. It is only the evidential burden of proof which may shift to the Defendant depending on the nature and effect of evidence adduced by the Claimant.
23. On the standard of proof, the Black’s Law Dictionary, (9th Edition, 2009) at page 1535 defines ‘the standard of proof’ as ‘[t]he degree or level of proof demanded in a specific case in order for a party to succeed.’”
244. Map EM 001(D) that is relied on by the Defendants to allegedly show that the suit properties form part of the Eastern Mau Forest was made by the Kenya Forest Service without the approval of the Director of Surveys.
245. The Plaintiffs have title to the land occupied by them, they have satisfactorily explained the root of their title and cannot be said to be in occupation of a public forest.
246. The documents relied on by the Defendants is an internal document, a map, drawn by the Kenya Forest Service which does not form part of the records held by the Director of Surveys. Legal Notice No. 174 of 20th May, 1964 which the Defendants allege gazetted LR No. 9955 as a forest reserve, did not specifically mention the mother title.
247. I find that the Defendants have failed to justify their entry onto the suit properties as no satisfactory evidence has been adduced to show that indeed the suit properties form part of the Eastern Mau Forest.



B. Whether the Plaintiffs are entitled to the orders sought in the Plaintiff.

248. Taking into consideration my finding on issue (a), I find that the Plaintiffs have demonstrated that the Defendants trespassed onto the suit properties and are therefore entitled to orders sought in the Plaintiff.

C. Who should bear costs of the suit

249. 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.

250. In the result, I find that the suit succeeds. Consequently, I enter judgment for the Plaintiffs in the following terms:

- a. A declaration is hereby issued that the entry and erection of beacons by the Defendants and/or their agents in the Plaintiffs' parcels listed below was illegal and amount to trespass.
 - i. Kihingo/Likia Block 1/781 (Lusiru)
 - ii. Kihingo/Likia Block 1/953 (Lusiru)
 - iii. Kihingo/Likia Block 1/343 (Lusiru)
 - iv. Kihingo/Likia Block 1/359 (Lusiru)
 - v. Kihingo/Likia Block 1/363 (Lusiru)
 - vi. Kihingo/Likia Block 1/372 (Lusiru)
 - vii. Kihingo/Likia Block 1/371 (Lusiru)
 - viii. Kihingo/Likia Block 1/1460 (Lusiru)
 - ix. Kihingo/Likia Block 1/699 (Lusiru)
 - x. Kihingo/Likia Block 1/747 (Lusiru)
 - xi. Kihingo/Likia Block 1/753 (Lusiru)
 - xii. Kihingo/Likia Block 1/817 (Lusiru)
 - xiii. Kihingo/Likia Block 1/818 (Lusiru)
 - xiv. Kihingo/Likia Block 1/934 (Lusiru)
 - xv. Kihingo/Likia Block 1/948(Lusiru)
- b. An order of perpetual injunction is hereby issued restraining the Defendants by themselves, their agents, servants, proxies and/or persons exercising authority from them from entering, erecting beacons, subdividing, alienating, disposing and/or in any other manner interfering with the Plaintiffs' parcels of land parcels No.
 - i. Kihingo/Likia Block 1/781 (Lusiru)
 - ii. Kihingo/Likia Block 1/953 (Lusiru)
 - iii. Kihingo/Likia Block 1/343 (Lusiru)



- iv. Kihingo/Likia Block 1/359 (Lusiru)
 - v. Kihingo/Likia Block 1/363 (Lusiru)
 - vi. Kihingo/Likia Block 1/372 (Lusiru)
 - vii. Kihingo/Likia Block 1/371 (Lusiru)
 - viii. Kihingo/Likia Block 1/1460 (Lusiru)
 - ix. Kihingo/Likia Block 1/699 (Lusiru)
 - x. Kihingo/Likia Block 1/747 (Lusiru)
 - xi. Kihingo/Likia Block 1/753 (Lusiru)
 - xii. Kihingo/Likia Block 1/817 (Lusiru)
 - xiii. Kihingo/Likia Block 1/818 (Lusiru)
 - xiv. Kihingo/Likia Block 1/934 (Lusiru)
 - xv. Kihingo/Likia Block 1/948(Lusiru)
- c. An order of mandatory injunction is hereby issued directing the Defendants by themselves, their agents, servants, proxies and/or persons exercising authority from them to forthwith remove the beacons erected on the Plaintiffs' respective parcels of land failing which the Plaintiff is hereby allowed to remove the same.
- d. The Plaintiffs shall have costs of this suit.

251. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 14TH DAY OF DECEMBER, 2023.

**L. A. OMOLLO
JUDGE.**

