



**Hopf v Director of Survey & 2 others; Sakaja & 2 others (Interested Parties)
(Suing on their own behalf and on behalf of 50 Others) (Environment & Land
Case 4 of 2021) [2023] KEELC 22012 (KLR) (5 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22012 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 4 OF 2021
FO NYAGAKA, J
DECEMBER 5, 2023**

BETWEEN

GEORGE HOPF PLAINTIFF

AND

DIRECTOR OF SURVEY 1ST DEFENDANT

**THE CABINET SECRETARY MINISTRY OF LANDS & URBAN
DEVELOPMENT 2ND DEFENDANT**

THE HON ATTORNEY GENERAL 3RD DEFENDANT

AND

JOHN SAKAJA INTERESTED PARTY

PASTOR GEORGE ODERA INTERESTED PARTY

GODFREY OJILO INTERESTED PARTY

SUING ON THEIR OWN BEHALF AND ON BEHALF OF 50 OTHERS

JUDGMENT

1. George Hopf, the Plaintiff herein, instituted the Plaint dated 19/01/2021. It is verified by his Affidavit deposed to on a similar date.
2. It is the Plaintiff's case that he is one of the registered joint owners of family property known as L.R No. [particulars withheld], measuring 31.7 acres (hereinafter 'The Suit Land'). The Plaintiff claimed that the suit land formed part of the original parcel known as L.R No. [particulars withheld] which was alienated on 16/09/1922 and registered to Benjamin Stowell, the original owner under Inland Registration No. [particulars withheld] for a term of 999 years.



3. He pleaded that the original owner caused the Inland Registration No.[particulars withheld] to be divided into LR. No. [particulars withheld] measuring 31.7 acres and LR. No. [particulars withheld] measuring 28 acres. The Plaintiff pleaded that the suit land was his ancestral property that was willed to him and family by their late father and vested in them through an assent dated 10/03/2000.
4. The Plaintiff claimed that their right over the suit land was being violated and/or is under threat of violation by the Defendants herein who want to excise part of it with a view to expanding the road that is currently 6 feet wide to 40 feet wide. It was the Plaintiff's position, contrary to the Defendants claim, that the portion of land in contest is road reserve, it is private registered property within the meaning of Article 64 (b) of [*the Constitution*](#).
5. The Plaintiff averred that at the time of subdivision, the original owner, Benjamin Stowell Swan, provided a 6-metre road which is still in use to date and is in line with the current Registered Survey Map. The Plaintiff averred that the alleged road reserve was just a proposal and it had no actual reservation because it is marked by a dotted line unlike the reserve roads marked by straight line.
6. He pleaded further that in the foregoing basis that his father and later his family was registered as the legal owners of the entire 31.7 acres. He referred to the report of Emmanuel Mutange dated 16/03/2016 indicating that there was just a road reserve and it could not be established whether there was access road within the suit land parcel.
7. He pleaded that there had been a longstanding dispute between their neighbours over the purported access road and involving owners land parcel No. LR. No. [particulars withheld] (A, B, ,C, D, E, F, G, H and I)(Not the actual name).
8. To lend credence to the foregoing, the Plaintiff referred to the 1st Defendant's letter dated 08/05/2013 recommending 40 feet of the suit land to excise for purposes of the access road and the Plaintiff to surrender deed plan to be registered. Further, he pleaded that following the 1st Defendant's recommendation, the County Surveyor on 06/04/2016 sent a letter to him containing instructions from the 1st Defendant to excise the 40 feet from land parcels No. L.R No. [particulars withheld] and made it clear that the suit land was not in the list of parcels marked for excision.
9. The Plaintiff averred that despite the foregoing, the Surveyor had, vide letter dated 23/05/2019, summoned him, and the family to meetings for purposes of excision in blatant right of violation to property. He pleaded that despite writing a letter of protest to the County Surveyor on 11/06/2019 demanding an explanation, no response was ever received.
10. He pleaded that the intended excision was done on an opaque manner and was driven by personal interests as the County Surveyor had no authority or mandate to excise or expand the road. That since the Plaintiff and relatives have legal title to the land, the attempt to reduce of their land will amount to compulsory acquisition and as such the process of compulsory acquisition ought under Article 40 of [*the Constitution*](#) and Part VII of the [*Land Act*](#) ought to be strictly followed.
11. In setting out the particulars of the Defendants' unlawful actions, the Plaintiff averred that no intention to excise the land was published in either the County or Kenya Gazette, no gazette notices were served, no public participation was carried out, no inspection of land conducted by The National Land Commission, and that no property valuation and compensation was attended to.
12. His case was that it was illegal for the defendants to intend to hive off his land without his consent and without following due process, to purport to hide behind outdated survey plan records not implemented in 1947 in a bid to interfere with the land. He claimed that if there was an error occasioned



- by a missed survey, then such error should have been corrected within 12 months from the date a Survey is submitted to the Director of Survey as required under Section 31 of the [Survey Act](#).
13. The Plaintiff asserted that at no time had the Defendants engaged him and his family members on any issue of error of survey or terms of indemnity if at all there were errors. He averred that the window for such errors, if any, was closed as the survey plans were submitted long ago resulting into mutation of two parcels of lands the suit land included which were registered on 26/07/1957.
14. On the foregoing factual and legal backdrop, the Plaintiff prayed for the following reliefs;
- a) A declaration that the Plaintiff and the other registered owners are the legally registered owners of the parcel L.R No. [particulars withheld].
 - b) A declaration that the intended excision for purposes of expansion of the road is unconstitutional and in breach of the Plaintiff's right to own and use his property.
 - c) A declaration that the Defendant's action in seeking to curtail, undermine and/or deprive the Plaintiff of their rights to the suit land without just cause and compensation is illegal, unlawful and unfair and unconstitutional.
 - d) An Order of permanent injunction restraining the Respondents or their agents for threatening or illegally excising any part of the Petitioner's 31.7 acres on parcel LR No. [particulars withheld].
 - e) In the alternative to prayer (c) above, the Defendants ordered to adequately compensate the Plaintiff before compulsorily acquiring their parcels.
 - f) Costs of this suit and interests thereon at courts rates.
15. The Plaintiff did not call any witness.

The Defendants' and the Interested Parties' Case

16. The Defendants and the Interested Parties did not file Pleadings in this case. They filed a Notice of Appointment and Memorandum of Appearance respectively. They adopted the survey reports on record as their pleadings.
17. They, however, filed written submissions dated 07/06/2023 and 29/06/2023 respectively. The arguments advanced thereon shall be assessed on the analysis section of this Judgment.

The Oral Evidence

18. Protus Wanyonyi, The County Surveyor testified as DW1. He stated that upon visiting and surveying the suit property, he prepared the Survey Report which he produced as D.Exh 1 in relation to a road of access between L.R No. [particulars withheld] and L.R No. [particulars withheld].
19. His evidence was that on the ground there is an access road linking parcels No. [particulars withheld], [particulars withheld], [particulars withheld], and [particulars withheld]. Its measurement is approximately 6 metres wide which size is in dispute. He testified that position of the Department of Survey is that the road is supposed to be 40 feet wide and that was provided for in the 1st subdivision in 1952 as a (pecked line) dotted line meaning that no physical survey was done on the plan but not done on the ground.
20. It was his case that the Survey of 1954 did not take into account the foregoing plan. He stated that it was the survey of L.R No. [particulars withheld] which then gave rise to [particulars withheld] and



- [particulars withheld] and did not indicate existence of the road, an oversight of the Surveyor. Further, that each subsequent survey of 1983 for L.R No. [particulars withheld] which gave rise to [particulars withheld] and [particulars withheld] including the suit land herein picked up the error. It did not take into account the Survey of 1952 omitting the road.
21. He stated that the acreage of the two parcels was inclusive of the road. He testified that on 26/10/2007, there was another Survey on Parcel No. [particulars withheld] to be subdivided into eleven plots namely, [particulars withheld]-[particulars withheld] which provided for the pecked line of 40 feet.
 22. He stated that as a result of the inconsistency, the Director of Survey directed his office to implement the survey of 40 feet road through the letter dated 14/01/2014. His further evidence was that the Director cited a Memo of 08/03/2013 from the Chief Final Checker Land Division of Surveys that indicated there was encroachment of road of access. His advice was that the recommendation was that the subdivision of L.R No.[particulars withheld] and [particulars withheld] did not extinguish the right of way for L.R No. [particulars withheld]-[particulars withheld].
 23. His evidence that the 40 feet road should be excised from L.R No. [particulars withheld] and [particulars withheld] and a surrender deed plan be registered. He stated that there are many people likely to be affected by the directive.
 24. On cross-examination, he stated that the land in issue was a big chunk of private land in the 1952 survey there was a pecked line on the Survey Map but a physical survey was not done. That the survey that will be done will 'eat' into (that is to say, take away some land from) registered land No. [particulars withheld] and the new acreage will be 28.7 acres meaning a loss of three acres.
 25. He stated that the process of acquiring private land does not apply in this case since the road was provided for before, it is not an acquisition. It was his evidence that it was an error and correction must be done.
 26. He testified that after the Memo of 2013, there was a meeting held to implement it. Further that as of 16/03/2016, it could not be established authoritatively the extent of the road. His evidence was that when the road of 40 metres was created, it became a public road thus when the 40 feet road was created the parcels No. 23 and 24 were not in existence.
 27. In reference to the Memo dated 08/05/2013, it was his evidence that paragraph 2 reads 'the access road should thus have been created...' meaning it should have been removed from the parcels No. 23 and 24 as road reserve or easement.
 28. He testified that there was nothing like compulsory acquisition process to be effected since this was a different situation. He stated that there was no Part Development Plan (PDP) which is usually given when one is alienating government land a position which does not apply to private land.
 29. In reference to the Report dated 16/03/2016, it was his case that there was a reservation of 4 acres for the roads on the land and that was to cater for the 40 feet or the access road.
 30. He stated that the way forward was to get all relevant maps of the area so as to establish the extent of the surveyed road of access to the plots. It was his case that since there is a reservation of the 4 acres the road of 40 feet is to be implemented on the ground to conform with the net acreage.
 31. Emmanuel Mutange, a Surveyor in the County Government of Trans-Nzoia testified as DW2. He produced his report done jointly with Mr. Muindi. It was dated 09/03/2022 as PW1.
 32. His evidence was that on 16/03/2016, he visited the land area in the company of the Land Registrar for purposes of opening a road of access to Plot No. L.R No. [particulars withheld] and [particulars withheld]



- withheld]. On the ground, was an access road of 6 meters wide although in some points it had been encroached upon. It was further his case that as at 16/03/2016, they could not authoritatively establish the extent of the road.
33. He produced the Report dated 16/03/2016 as D.Exh 2. It was his evidence that the report of 20/09/2022, adopted as D.Exh 3 which he prepared conformed that on the ground there existed a 6-metre road used by all the parties and in addition there was a Survey map Folio Reference (F.R). 488/174 providing for 6 metre road.
 34. He said that the effort to implement the directive by the Director of Survey faced resistance on the ground from proprietors of parcel No. [particulars withheld] and [particulars withheld]. He stated that, however, the Plaintiff and the Interested Parties in this case were not the only ones likely to be affected by the outcome of the case.
 35. On cross-examination he stated that the suit land is privately owned and that all the parcels of land likely to be affected by excision are four (4) acres on a straight line. He admitted that if the acreage is to be changed by the excision, the procedure is that the matter will be taken to the Chief Land Registrar and Director of Surveyors who will deliberate and give a way forward.
 36. His position was that he did not have the minutes of the said deliberations. He stated that the mandate of the Surveyor ends at Registration of the map. He testified that before a survey is taken, if it is a sub division, then the physical planner should first give a sub division scheme or if combining, he will give an amalgamation scheme.
 37. The witness conceded that he did not have a sub division scheme and was not aware if a sub-division scheme was in existence.
 38. His evidence was that a dotted line in a Survey map means it is a proposed road but a complete line means the survey has been done. In reference to the Report dated 20/09/2022, it was his case that it indicates the 6-metre road is surveyed and completed.
 39. During cross-examination, it was his testimony that there was a reservation of 4 acres in 1952 in parcel L.R No. [particulars withheld] and 3 acres in [particulars withheld]. L.R No [particulars withheld] gave rise to [particulars withheld] and [particulars withheld]. He stated further that by the time the title deed of subdivision was being done, a reservation of the roads was already in place meaning that the title registered after registration should have had less acreage.
 40. He testified that there was an error made and to rectify it did not mean the land was being acquired compulsorily. It was his position that in such instances, the Director of Survey would notify the Chief Land Registrar who will in turn notify the proprietor and if need be the title will be recalled for amendment.
 41. On re-examination, he reiterated the position that the pecked line on the map signifies a proposed boundary and they also show the existence of a feature although not yet surveyed. He stated that all features surveyed appear on Folio Reference. It was his case that F.R. 347/77 shows the 40 feet road.
 42. He stated that the road was reserved in 1952 and it should have been respected in subsequent works. It was his case that failure to obey the road reserve leads to errors on survey work. He stated that it ought to be corrected, a process commenced by the Director of Surveys by writing to the County/Assistant District offices of that area to effect the correction and prepare a report.



Issues for Determination

43. The issues that emerge for determination from the pleadings, evidence and submissions advanced by the parties are as follows;
- i) An appreciation of the legal regime governing the Survey and demarcation of access roads and or easements in Kenya.
 - ii) Whether the intended expansion of access road affecting parcel LR No. [particulars withheld], the suit land herein, is procedural and within the legal bounds.
 - iii) Depending on (ii) above, the Orders this Court should make.
 - iv) Costs
44. I will analyse the issues sequentially.

Analysis and Determination

i) An appreciation of the legal regime governing the Survey and demarcation of access roads and or easements in Kenya.

45. The recognition of right of way is founded in law. Whereas *Public Roads and Roads of Access Act* does not define an 'Access Road' it defines Public road as follows;
- a) any road which the public had a right to use immediately before the commencement of this Act;
 - b) all proclaimed or reserved roads and thoroughfares being or existing on any land sold or leased or otherwise held under the East Africa Land Regulations, 1897, the Crown Lands Act, 1902, or the Government Lands Act (Cap. 280), at any time before the commencement of this Act;
 - c) all roads and thoroughfares hereafter reserved for public use.
46. Further to the foregoing, Section 28 of the *Land Registration Act* No. 3 of 2012 provides as follows;
28. Overriding interests.
- Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register-
- a) deleted by Act No. 28 of 2016, s. 11a.
 - b) trusts including customary trusts ;
 - c) rights of way, rights of water and profits subsisting at the time of first registration under this Act;
 - d) natural rights of light, air, water and support;
 - e) rights of compulsory acquisition, resumption, entry, search and user conferred by any other written law;
 - f) deleted by Act No. 28 of 2016, s. 11b.



- g) charges for unpaid rates and other funds which, without reference to registration under this Act, are expressly declared by any written law to be a charge upon land;
- h) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;
- i) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any written law; and
- j) any other rights provided under any written law.

Provided that the Registrar may direct the registration of any of the liabilities, rights and interests hereinbefore defined in such manner as the Registrar deems necessary

47. It can be discerned from the foregoing that even in instances where The Register does not explicitly indicate a right, an overriding interest listed in Section 28 of the Act subsists.

48. I am further alive to the provision of Section 32 of the *Limitation of Actions Act*. It provides as follows;

32. Means by which easements may be acquired

(1) Where-

- a) the access and use of light or air to and for any building have been enjoyed with the building as an easement; or
- b) any way or watercourse, or the use of any water, has been enjoyed as an easement; or
- c) any other easement has been enjoyed, peaceably and openly as of right, and without interruption, for twenty years, the right to such access and use of light or air, or to such way or watercourse or use of water, or to such other easement, is absolute and indefeasible.

(2) The said period of twenty years is a period (whether commencing before or after the commencement of this Act) ending within the two years immediately preceding the institution of the action in which the claim to which the period relates is contested.

49. It is not in contest that the right of way, in respect to the suit land herein has been in existence for a period of over twenty years. What is in dispute is its size.

50. The substance of the dispute, therefore, revolves around the evidence adduced and how it pits against the provisions of *Survey Act* (hereinafter '*Survey Act*').

51. For purposes of this suit, Section 2 of the Act defines some significant words as follows.

“plan” includes a map, diagram or aerial photograph approved by the Director as suitable for survey purposes;

“survey mark” means any trigonometrical station, fundamental benchmark, bench mark, boundary beacon, peg, picket mark or pole, whether above or below the surface of the ground, which is fixed, placed or set up by, or under the direction of a surveyor for the purpose of any survey under this Act.”



52. The obligation to have boundary marks on plan (includes a map, diagram or aerial photograph approved by the Director as suitable for survey purposes) is set out in Section 24 in the following manner;

24. Boundary marks to be shown on plan

Every trigonometrical station, fundamental benchmark and boundary beacon erected or placed for the purpose of defining the boundaries of any holding or land shall be shown on the plan (if any) attached to, or referred to in, any document or instrument purporting to confer, declare, transfer, limit, extinguish or otherwise deal with or affect any right, title or interest, whether vested or contingent to, in or over such holding or land, being a document or instrument which is required to be registered, or is ineffectual until registered, under any written law for the time being in force relating to the registration of transactions in or of title to land.

53. The mandate to amend or alter the Plan deposited in the Survey Office is donated to the Director of Survey in Section 30(1) of the Act in the following manner:

(2) No plan deposited in the Survey Office in accordance with subsection (1) shall be altered or amended in any way without the permission of the Director.

54. Before I draw to a close the discussion on the law governing demarcation of land to a close, the provision Section 19 of the [land Registration Act](#) are of significance. It provides as follows;

19. Fixed boundaries

(1) If the Registrar considers it desirable to indicate on a filed plan approved by the office or authority responsible for the survey of land, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if an interested person has made an application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.

(2) The Registrar shall, after giving all persons appearing in the register an opportunity of being heard, cause to be defined by survey, the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and the plan shall be deemed to accurately define the boundaries of the parcel.

(3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this section.

55. I will hence look at the next issue.

ii) Whether the intended expansion of access road affecting parcel LR No. [particulars withheld], the suit land herein, is procedural and within the legal bounds

56. From the outset, this Court takes note of the fact that the most crucial piece of evidence namely, the map of 1952 indicating sub division that gave rise to the suit land herein and had a provision of 40 feet (12.19 metres) road reserve marked as a pecked line was not produced as evidence in this case.



57. The one on record, though not relied on, is a survey map of 09/03/1955. Therefore, the veracity of the contention of the error of surveyors having reserved 6 metres instead of 12.9 metres of road and that that error has been carried over and replicated in subsequent surveys cannot be ascertained.
58. Both the Plaintiff and Defendants did not avail the said Map for assessment by this Court. This Court will therefore solely rely on the oral evidence and reports adduced by the Defendants.
59. DW1 and DW2's evidence was that the size of the road was provided for in the first subdivision scheme plan of 1952 and was approved by the Director of Physical Planning but the plan was never implemented on the ground.
60. It was PW2's evidence that when the reservation of road measuring 12.9 metres was made, the suit land herein was non-existent but in 1954, survey of L.R [particulars withheld] gave rise to the suit land herein and therein, the error of failing implement the 1952 plan was mirrored thereon and replicated in subsequent surveys.
61. According to the foregoing, neither the Plaintiff nor the Defendants brought any piece of evidence to discharge their legal burden of proof on the claim that the road reserve ought to be 6 metres as opposed to 12.9 metres or vice versa.
62. Section 107(1) of the *Evidence Act* provides as follows:
107. (1)Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
63. Closely related to legal burden of proof is the evidential burden of proof. It is provided for in Section 109 and 112 of the *Evidence Act* respectively as follows.
109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.
112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving the fact is upon him.
64. The legal and evidential burden of proof was expounded by the Court of Appeal in *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334 when it observed as follows;
- “ As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”
65. It is clear that generally, the Plaintiff in the first instance carries the burden of proof. As the case progresses, depending on the circumstances, it shifts to the Defendant.
66. The Plaintiff in this case refers to documents some of which are not on record. Some on record are the very documents adduced by the Defendant to prove their case. The documents include; copies of notices from the Surveyor, Reports by The County Surveyor and letters to and from the County Surveyor.



67. As opposed to advancing the Plaintiff's case, the documents do no more than demonstrate that there has been a persistent push by the Interested Parties through the 1st and 2nd Defendants' Offices to have the access road in the suit land expanded from 6 metres to 40 feet.
68. Through the Joint Surveyors report dated 09/11/2022 produced as PW2 indicates that the subdivision of LR. [particulars withheld] that resulted in the suit land herein did not provide for the road access for parcel No. LR. [particulars withheld].
69. The reason advanced for the omission was as follows;
- “... This is because, once the 1952 Survey Plan is quoted on the second Survey Plan the information about the access road is deemed to have been carried forward on the same...”
- In the same vain(sic) these applied to the third subdivision done on 5th May 1983 on L.R No. [particulars withheld] resulting in LRs [particulars withheld] and [particulars withheld] where the road of access is not indicated.
70. The letter dated 20/09/2022, produced as P.Exh 3 authored by E. Mutange, the County Surveyor Trans-Nzoia County explains to the Office of the Attorney General and Department justice encroachment of an access road to parcel No. [particulars withheld] and [particulars withheld].
71. The letter of March, 2016 which the Plaintiff seeks to rely on the basis that it fails to authoritatively establish the extent of the road, does not aid his case.
72. The letter in its last paragraph titled ‘Way Forward’ makes the following findings;
- All the relevant maps of the area to be gotten so that we can establish the extents of the surveyed road of access to the plots.
- Since there is a reservation of the four acres, the 40 feet road if to be implemented on the ground to conform with the net acreage of 103 acres depicted on the map.
73. There is an acknowledgment in the letter that the road reserve is 40 feet and there was need to get the maps to ascertain surveyed road of access.
74. The circumstances of this suit appear to have been aptly captured in the case of Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & Another [2014] eKLR. In the case the learned Court of Appeal Judges observed as follows;
- “It is a firmly settled procedure that even where a defendant has not denied the claim by filing a defence or an affidavit or even where the defendant did not appear, formal proof proceedings are conducted. The claimant lays on the table evidence of facts contended against the defendant. And the trial court has a duty to examine that evidence to satisfy itself that indeed the claim has been proved. If the evidence falls short of the required standard of proof, the claim is and must be dismissed. The standard of proof in a civil case, on a balance of probabilities, does not change even in the absence of rebuttal by the other side.”
75. The foregoing demonstrates how far the Plaintiff's evidence and position falls short the dictates of Section 109 and 112 of the *Evidence Act*. Essentially this Court is stripped of the capacity to preside over the issues herein.
76. Therefore, the totality of the circumstances of the suit (the evidence adduced and the law on easements, access roads and on Survey) this Court is unable to definitively make a finding on the Plaintiff's claim.



77. In the premises, I find and hereby hold, on a balance of probability, that the Plaintiff's claim of alleged violation of their right to property as a result of the intended excision of his property for purposes of expansion of access road from the current 6 metres to 12.9 metres is not proved. The case before me is unmerited.
78. The suit is hereby dismissed. Looking at the totality of all circumstances, I order each party to bear their own costs.
79. It is so ordered.

**JUDGMENT DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS
5TH DECEMBER, 2023.**

HON. DR. IUR FRED NYAGAKA

JUDGE

ELC KITALE

