



**Mathooko & 2 others (Suing as the legal representatives of Joel Mathooko Nthenge) v Chege & 46 others (Environment & Land Case 10 of 2021) [2023] KEELC 22111 (KLR) (4 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22111 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 10 OF 2021  
CA OCHIENG, J  
DECEMBER 4, 2023**

**BETWEEN**

**RONALD MUSYOKI MATHOOKO ..... 1<sup>ST</sup> PLAINTIFF  
JOSEPH KIOKO MATHOOKO ..... 2<sup>ND</sup> PLAINTIFF  
PAUL MAKAU MATHOOKO ..... 3<sup>RD</sup> PLAINTIFF  
SUING AS THE LEGAL REPRESENTATIVES OF JOEL MATHOOKO  
NTHENGE**

**AND**

**ELIUD CHEGE ..... 1<sup>ST</sup> DEFENDANT  
WILLIS OKOTH ..... 2<sup>ND</sup> DEFENDANT  
BERNARD ATONI ..... 3<sup>RD</sup> DEFENDANT  
MBUKONI HOLDINGS LIMITED ..... 4<sup>TH</sup> DEFENDANT  
CHARLES NJOROGE & 42 OTHERS ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. By a Complaint dated the 19<sup>th</sup> August, 2018 and amended on 30<sup>th</sup> August, 2018 the Plaintiffs' sought for Judgement against the Defendants for:
  1. A Permanent Injunction restraining the Defendants whether by themselves, their servants and/or Agents from entering, trespassing, encroaching or any other manner of interference with the land known as Mavoko Town Block 3/ 2209.
  2. An eviction order.



3. Cost of the suit.
  4. Any other relief that this Honourable Court deems fit to grant.
2. The 1<sup>st</sup> to 3<sup>rd</sup> Defendants filed their statement of Defence wherein they denied the averments in the Plaintiff except the descriptive. They confirmed that the deceased Joel Mathooko Nthenge sold land parcel number Mavoko Town Block 3/2209 hereinafter referred to as the 'suit land' to Mbukoni Holdings Limited but died before he transferred the said land to it. They explained that they bought the respective portions of land which they occupy from Mbukoni Holdings Limited on the 10<sup>th</sup> February, 2004 and 3<sup>rd</sup> November, 2007 respectively. They deny being trespassers on the suit land and insist they entered the said land during the deceased lifetime. They sought for the following orders against the Plaintiffs:
- a. That the administrators be compelled to issue titles to the purchasers/ Defendants.
  - b. That the administrators be restrained from interfering with the quiet enjoyment of the said parcels of land by the Defendants.
  - c. Costs of this suit be borne by the Plaintiffs.
3. The 4<sup>th</sup> Defendant in its Statement of Defence denied the averments in the Plaintiff and contended that the deceased Joel Mathooko Nthenge and his brother Jonah Mathooko Nthenge sold part of their estate Mavoko Town Block 3/2209, to it but died before the transfer could be effected to it. It confirmed that one Anderson Kivuu used to collect purchase monies from it. It averred that before the deceased demise, the rest of the Defendants who purchased portions of the aforementioned parcel of land had settled thereon. Further, that during the deceased lifetime, one of its director's attended a meeting where the deceased informed the Plaintiffs including other family members that he had intentions to sell the suit land. It insisted that the suit is statute barred. It sought for judgement against the Plaintiffs' in the following terms:
1. That the administrators be compelled to issue titles to the purchasers/defendants.
  2. That the administrators be restrained from interfering with the quiet enjoyment of the said parcels of land by the Defendants.
  3. That the suit has been barred by lapse of time under Law of Limitation of Actions.
  4. Costs of the Suit be borne by the Plaintiffs.
4. The 5<sup>th</sup> to 40<sup>th</sup> Defendants filed their Defence including Counterclaim where they denied the averments in the Plaintiff except the descriptive. They explained that they purchased their respective portions of the suit land from the 4<sup>th</sup> Defendant on various dates and took possession. They sought for the following Orders:
- i. The Court be pleased to dismiss the Plaintiffs' suit with costs.
  - ii. The Administrators be compelled to issue titles to the Purchasers/Defendants
  - iii. That the Administrators be restrained from interfering with the quiet enjoyment of the said parcels of land by the Defendants.

### **Counterclaim**

1. The Court be pleased to dismiss the Plaintiffs' suit as it is time barred because the Defendants have been staying in the property for more than 12 years.



2. That the administrators be compelled to issue titles to the purchasers/ Defendants.
3. That the administrators be restrained from interfering with the quiet enjoyment of the said parcels of land by the Defendants.

In the alternative, the Court makes a finding that the 4<sup>th</sup> Defendant acquired the land fraudulently before disposing it to us the 1<sup>st</sup>, 3<sup>rd</sup> to 47<sup>th</sup> Defendants, pray for judgement against the 4<sup>th</sup> Defendant as follows:

4. The 4<sup>th</sup> Defendant be ordered to compensate each Defendants herein a 50 by 100 plot or a value of the same in the same area.
5. Damages arising from the investments on each plot.
6. Costs of the suit.
5. The Plaintiffs filed a reply to Defence and Defence to Counterclaim denying the averments therein and insisting that the Defendants were not entitled to the orders as sought.
6. The matter proceeded for hearing where the each of the parties called witnesses as well as produced various documents as exhibits.

#### **Evidence of the Plaintiffs**

7. The Plaintiffs are administrators of the estate of Joel Mathooko Nthenge (deceased), who was the proprietor of the suit land. The Plaintiffs' claim the Defendants have illegally encroached/ trespassed on the suit land and caused wanton destruction thereon by constructing permanent structures. They contend that the 4<sup>th</sup> Defendant fraudulently misrepresented to the rest of the Defendants that it owned the suit land and had capacity to sell and or transfer portions therefrom. They denied that the deceased sold the suit land to the 4<sup>th</sup> Defendant nor that the deceased received any form of consideration from it. The Plaintiffs produced the following documents as exhibits:

Demand Letter dated the 24<sup>th</sup> April, 2018, Certificate of Title for land parcel number Mavoko Town Block 3/2209, Certificate of Official Search, Certificate of Death and Grant of Letters of Administration Intestate.

#### **Evidence of the Defendants**

8. The 4<sup>th</sup> Defendant stated that it bought the suit land from the deceased on 26<sup>th</sup> September, 2003 at a cost of Kshs. 3,200,000/=. It contended that the deceased together with his brother Jonah K. Nthenge sold part of their estate before the deceased's demise. It confirmed that it sold portions of the suit land to the rest of the Defendants and issued them with Certificates in its name for each parcel. It insisted that before the deceased demise, the purchasers settled on the suit land. It stated that the Plaintiffs were aware that their father had sold the land to it and granted it possession. It explained that one Anderson Kivuu used to collect purchase money on behalf of the deceased and his brother who would later acknowledge receipt.
9. The Defendants produced the following documents as exhibits:

Copies of Letters of Allotment dated 15<sup>th</sup> June, 1991 and 28<sup>th</sup> September, 1998; Sale Agreement dated 26<sup>th</sup> September, 2003; Acknowledgment of receipt of the purchase price as follows: (Kshs. 100,000/= on 12<sup>th</sup> November, 2003; Kshs. 100,000/= of 13<sup>th</sup> November, 2003; Kshs. 100,000/= on 17<sup>th</sup> March, 2004; Kshs. 100,000/= on 19<sup>th</sup> March, 2004; Kshs.



100,000/= on 25<sup>th</sup> June, 2004; Cash of Kshs. 100,000/= and a Cheque Number 900891 of Kshs 40,000/= on 15<sup>th</sup> February, on 2004; Kshs. 200,000 on 15<sup>th</sup> October, 2004; A Cheque of Kshs. 400,000 and Cash of Kshs. 100,000/= on 9<sup>th</sup> August, 2004); Letter dated 13<sup>th</sup> January, 2004 written by Joel M. Nthenge to Mr. Anderson M. Kivuu; Letter dated 17<sup>th</sup> May, 2004 addressed to Thomas Wambua authored by the deceased and another person; Letter dated 23<sup>rd</sup> November, 2004 addressed to Mbukoni Holdings Limited by Jonah K. Nthenge and Joel M. Nthenge; Letters dated 3<sup>rd</sup> January, 2005 and 7<sup>th</sup> January, 2005 respectively; Payment Vouchers dated as follows ( 26<sup>th</sup> September, 2003, 27<sup>th</sup> September, 2003, 11<sup>th</sup> November, 2003, 10<sup>th</sup> December, 2003, 6<sup>th</sup> August, 2004, 28<sup>th</sup> May, 2004, 13<sup>th</sup> October, 2004, 30<sup>th</sup> January, 2004, 10<sup>th</sup> March, 2004, 19<sup>th</sup> March, 2004, 22<sup>nd</sup> June, 2004 and 6<sup>th</sup> July, 2004); Cash receipt of Kshs. 16, 000/= dated 8<sup>th</sup> August, 2003 to Mr. Mulinge Surveyor; Cheque of Kshs. 250,000/= dated 4<sup>th</sup> April, 2007 in favour of the deceased; Cheque of Kshs. 200,000/= dated 31<sup>st</sup> August, 2007 in favour of the deceased; Payment schedule on PP 0076 and PP 0078; Statements of Account; copies of Share (Ownership) Certificates;

## **Submissions**

### **Plaintiffs' Submissions**

10. The Plaintiffs in their submissions reiterated their evidence as presented and relied on exhibits produced. They denied that the deceased Joel Mathooko Nthenge entered into an agreement and/or sold the suit land to the 4<sup>th</sup> Defendant. They denied that purchase price was ever paid to the deceased. They challenged the evidence of the Defendants' and insisted that the copy of the Sale Agreement produced by the 4<sup>th</sup> Defendant did not meet the threshold and /or qualify as an agreement since the names of the representatives of the purchaser were not indicated thereon while the signatures were not witnessed by an independent witness. Further, that there was no spousal consent as required by law, hence the sale was null and void. They argued that there was no proof that the company had passed a resolution to purchase the suit land. They further submitted that Anderson Kivuu was not a proper and legal agent of Joel Mathooko Nthenge for purposes of sale and purchase of the suit land as no agency relationship ever existed since no letter of authority was exhibited. They reiterated that there was no adequate proof of payment of the purchase price over the suit land and challenged the acknowledgement of payments presented by 4<sup>th</sup> Defendant including the statement of accounts. They reiterated that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> to 40<sup>th</sup> Defendants could not be deemed as innocent purchasers for value as there was no sale agreement and no proof that they paid valuable consideration for the land. To buttress their averments, they relied on the following decisions: Samuel Titi Kimani V Michael Ndirangu Ngugi & Another (2022) eKLR; PA v Stima Sacco Society Limited & 2 others (Civil Case 199 of 2018) (2022) KEHC 294 (KLR ) (Commercial and Tax ) (28 April 2022) (Judgement); Duncan Kabui v Samuel Bede Igembo & Another (2014) eKLR; Samuel Kamere V Lands Registrar, Kajiado (2015) eKLR and Koyumkei Multipurpose Cooperative Society Limited & 17 Others V Rale Chepngetich Koech (2019) eKLR.

### **Defendants' Submissions**

11. The 1<sup>st</sup> to 3<sup>rd</sup>, 5<sup>th</sup> to 40<sup>th</sup> Defendants in their submissions reiterated the evidence presented, relied on the exhibits produced and contended that the 4<sup>th</sup> Defendant had a good title to pass to them. They made reference to the Sale Agreement between the 4<sup>th</sup> Defendant and the deceased and insisted that the same was valid. Further, that at paragraph 6 of the said Agreement, the deceased's intention was clear and hence the 4<sup>th</sup> Defendant had a good beneficial interest in the deceased's title. They claimed



that there was no evidence of fraud on their part. They explained that the 4<sup>th</sup> Defendant subdivided the suit land into small portions which it sold to them. Further, that the 4<sup>th</sup> Defendant purchased the suit land from the Plaintiffs' father and it produced a letter written to the Plaintiffs' father consenting to the deceased to sign all documents required for subdivision of the said suit land to the buyers and subsequent transfer documents that the 4<sup>th</sup> Defendant's office would provide. They further submitted that the 1<sup>st</sup> to 3<sup>rd</sup> Defendants including a Director of the 4<sup>th</sup> Defendant visited the Plaintiffs' father to ascertain the sale of the suit land. Further, they paid the full consideration for their plots and were issued with Share Certificates. They aver that they have invested heavily on the suit land. They also submitted that in the event the court finds that the 4<sup>th</sup> Defendant misrepresented itself to them, it should be ordered to compensate them as indicated in the counterclaim. To support their arguments, they relied on the following decisions: Charles Karathe Kiarie & 2 Others vs Administrators of Estate of John Wallace Mathare (Deceased) & 5 others (2013) eKLR and Lawrence Mukiri V Attorney General & 4 others (2013) eKLR.

### **Analysis and Determination**

12. Upon consideration of the Amended Plaint, Statements of Defence including Counterclaim, testimonies of the witnesses, exhibits and rivaling submissions, the following are the issues for determination: Whether the deceased Joel Mathooko Nthenge sold the suit land to the 4<sup>th</sup> Defendant and if the Sale Agreement dated the 26<sup>th</sup> September, 2003 is valid. Whether the Defendants have trespassed on the suit land and should be evicted therefrom. Whether the Plaintiffs are entitled to orders sought in the Plaint. Whether the Defendants are entitled to orders sought in the Counterclaim. Who should bear the costs of this suit.
13. As to whether the deceased Joel Mathooko Nthenge sold the suit land to the 4<sup>th</sup> Defendant and if the Sale Agreement dated the 26<sup>th</sup> September, 2003 is valid.
14. It is not in dispute that the deceased Joel Mathooko Nthenge was the registered proprietor of the suit land. PW1 and PW2 in their testimonies insisted that the deceased did not sell the suit land to the 4<sup>th</sup> Defendant and disputed the Sale Agreement dated the 26<sup>th</sup> September, 2003 which the deceased and the 4<sup>th</sup> Defendant had executed. The Plaintiffs in their submissions contended that the said Agreement cannot be valid as the names of the directors of the purchasers (4<sup>th</sup> Defendant) are not indicated therein and neither is there a company resolution allowing the purchase of the suit land. Further, that the signatures in the said Agreement are not witnessed by an independent witness. DW1 contended that they entered into the Sale Agreement with the deceased and it was a mistake that the deceased's name was indicated as Muthooko instead of Mathooko.
15. From the averments of the witnesses herein, the fulcrum of the dispute revolves around the validity of the Sale Agreement dated the 26<sup>th</sup> September, 2003, between the deceased and the 4<sup>th</sup> Defendant. I wish to reproduce an excerpt therefrom:
  1. The property to be sold is all that piece of land commonly: - known as Land Reference Plot No. 428 Lukenya Ranching and Farming Cooperative Society Ltd situated in Lukenya Ranching and Farming. At Athi River in the Machakos District in the Republic of Kenya measuring 40 acres. ....
  - a. The total purchase price for the land aforesaid is Kenya Shillings Three Million Two Hundred Thousand Only (Kshs. 3,200,000/=)



- b. On execution of this Sale Agreement the Purchaser will pay to the Vendor the sum of Kenya Shillings Two Hundred Thousand (Kshs. 200,000/=) receipt of which the Vendor HEREBY DOETH acknowledge as 10%.
    - c. The balance of the Purchaser Price namely Kenya Shillings Three Million (Kshs. 3,000,000/= ) will be paid within ninety (90) days.....
  - 4. The Vendor undertakes to obtain all the necessary consents from the respective authorities to transfer the said land to the purchaser thereof.
  - 5. The Vendor undertakes to give full possession of the said land to the purchaser to start planning and surveying into small portions or as the purchaser may decide.
  - 6. The purchaser buys the land on understanding that, the Vendor's family has no objections to this contract and that, there can or will not arise any misunderstanding between the Vendor's family and the purchaser.'
16. From a cursory glance of the excerpt herein, it is clear there was intention by the vendor to sell the suit land. Further, the vendor received a deposit of the purchase price at the point of executing the said Sale Agreement, undertook to obtain the necessary consents so as to transfer the suit land to the purchaser and allowed the said purchaser to take possession and commence subdivision. On further, perusal of the Sale Agreement it indicates the vendor's ID Number is 2979631 which is similar to the ID number indicated in the Letter of Allotment by Lukenya Ranching for LR No. 428 which was the property being sold, as well as the number in the Certificate of Title for the suit land. I further note that the deceased signature on the sale agreement and that on the Letter of Allotment look similar. The Plaintiffs' argue that the Sale Agreement produced by the 4<sup>th</sup> Defendant is invalid since it was only signed by the purchasers' director and secretary but the names of the said directors were not indicated thereon. Further, that there was no company resolution produced confirming agreement to purchase the land.
17. In *G. Percy Trentham Ltd v Archital Luxfer Ltd* [1993] 1 Lloyds Rep 25 Lord Steyn observed that:
- “..... The fact that the transaction was performed on both sides will often make it unrealistic to argue that there was no intention to enter into legal relations. It will often make it difficult to submit that the contract is void for vagueness or uncertainty. Specifically, the fact that the transaction is executed makes it easier to imply a term resolving any uncertainty, or, alternatively, it may make it possible to treat a matter not finalised in negotiations as inessential. In this case fully executed transactions are under consideration. Clearly, similar considerations may sometimes be relevant in partly executed transactions. Fourthly, if a contract only comes into existence during and as a result of performance of the transaction it will frequently be possible to hold that the contract impliedly and retrospectively covers pre-contractual performance. See *Trollope & Colls Ltd. v. Atomic Power Constructions Ltd.* [1963] 1 WLR 333.”
18. In applying the principles established in this case to the circumstances at hand, I beg to disagree with the Plaintiffs on the points raised on invalidity of the Sale Agreement, because from the excerpt I have highlighted above, there was indeed a clear intention of the parties to enter into a sale of the suit land and the vendor at paragraph 6 was even clear in terms of the position of his family on disposal of the



said land. Further, even though the names of the directors who signed it, were not indicated, I note the jurat was stamped by an Advocate to witness the signatures. I am of the view that it is indeed the deceased who entered into a Sale Agreement with the 4<sup>th</sup> Defendant and the name Muthooko instead of Mathooko was simply a mistake. Further, I find that lack of a company resolution on the part of the purchaser does not invalidate a Sale Agreement. In the circumstances, I find that the Sale agreement between the deceased and the 4<sup>th</sup> Defendant is valid.

19. The Plaintiffs have claimed their father never sold the suit land nor received the purchase price. PW1 intimated that the father who was literate always involved them in his transactions. PW2 in his testimony during cross examination however admitted finding a cheque issued in the father's name from Mbukoni Holdings Ltd which was cancelled as it indicated signature is different. From the copies of cheques which were produced by the 4<sup>th</sup> Defendant addressed to the deceased, it is clear there was indeed a transaction between the deceased, his brother and the 4<sup>th</sup> Defendant, which the Plaintiffs have failed to provide an explanation over. Further, from the bank statements produced by the 4<sup>th</sup> Defendant, I note some of the cheques issued to the deceased including his brother Jonah were cleared, and this in essence means that the deceased and his brother Jonah were receiving certain monies from the 4<sup>th</sup> Defendant. DW1 explained that the deceased and his brother had authorized one Anderson Kivuu to at times collect purchase monies on their behalf. From the various acknowledgement of receipts which were produced by the 4<sup>th</sup> Defendant, I note the deceased and his brother acknowledged receiving the monies. The Plaintiffs have cast aspersions on Anderson Kivuu claiming he was not their father's agent as there was no agency agreement exhibited, but I note the deceased acknowledged receipts of monies paid through him. One example is an acknowledgement note dated the 13<sup>th</sup> November, 2003, where they stated thus:

“We, Jonah Kisese Nthenge and Joel Mathooko Nthenge have received Kshs. 100,000/ -.....  
from Mbukoni Holdings Ltd/ Anderson Mulungye Kivuu. ‘

20. This note is signed by both the deceased and his brother and it is evident that several cheques which were collected by the said Anderson Kivuu on behalf of the two vendors were even cleared as indicated in the bank statements. The 4<sup>th</sup> Defendant's witness DW1 also identified one of the deceased son's Ronald in court and confirmed that he was present together with the deceased at one point during the transaction and he gave him Kshs. 10,000/= . From the evidence tendered, to my mind, I find that the deceased children were well aware that he sold the suit land and perhaps that is the reason one of them registered a caution against it, claiming beneficial interest.
21. As to whether the Defendants have trespassed on the suit land.
22. The 4<sup>th</sup> Defendant admitted that it subdivided the suit land and sold to third parties including the rest of the Defendants herein, who took possession of their plots. I note as per the sale agreement, it was the vendor to process all documents of transfer and at the point of executing the sale agreement, it indicate plot 428 Lukenya Ranching. From the Certificate of Title which was produced by the Plaintiffs, I note it was issued on 31<sup>st</sup> March, 2005. From the evidence of the Defendants, it emerged that most of them took possession of the suit land when the vendor was still alive and it is only in 2018, five years after the deceased demise that the Plaintiffs' instituted this suit. Even from the demand letter dated the 24<sup>th</sup> April, 2018 addressed to Eliud Chege, Willis Okoth Bernard Atoni, they were referred to as being representatives of MBUKONI 428, the Advocate indicates that his clients are administrators of the estate of Joel Mathooko Nthenge who owned land parcel number Mavoko Town Block 3/2209 where the said persons had erected illegal structures. Further, DW2 in his testimony stated that the Plaintiffs after the deceased demise wanted them to increase the purchase price which they declined. PW1 and PW2 confirmed that they had been in brief contact with the Defendants over the suit land.



23. The Court of Appeal in the case of Peter Mbiri Michuki Vs Samuel Mugo Michuki [2014] eKLR, stated thus:

“ 34. In *Mwangi & Another vs Mwangi*, (1986) KLR 328, it was held that the rights of a person in possession or occupation of land are equitable rights which are binding on the land and the land is subject to those rights..... 35. The dicta in *Mwangi & Another Vs Mwangi*, (1986) KLR 328, establishes the principle that the rights of a person in possession or occupation of land are equitable rights which are binding on the land.... In the instant case, the plaintiff was in occupation of the suit property and his possessory rights are not only equitable rights but an overriding interest binding on the land. Section 18 of the *Limitation of Actions Act* provides that subject to Section 20(1), the Act applies to equitable interests in land ... and accordingly a right to action to recover the land ... accrues to a person entitled in possession to such an equitable interest in the like manner and circumstances and on the same date as it would accrue if his interest were a legal estate in the land.

36. It is our considered view that when the appellant entered into a sale agreement with the plaintiff in 1964 and received the purchase price for the suit property, the appellant became a trustee holding the suit property in favour of the plaintiff. The plaintiff having paid the purchase price and taken possession acquired an equitable beneficial interest in the suit property.”

24. See also the case of *Caltex Oil Kenya Limited V Rono Limited* (2016) eKLR and *Robert Kiptanui Kitur v Jackson Kiprotich Kitur* [2022] eKLR.

25. Based on the facts as presented while associating myself with the decisions quoted, I opine that the Plaintiffs could not escape the fact that their father had entered into an agreement, received the purchase price and had not transferred the land to the purchaser at the time of his demise. The Plaintiffs did not indicate if the deceased ever sent communication to the 4<sup>th</sup> Defendant rescinding the said Sale Agreement and notifying it to vacate the suit land. It is my considered view that the 4<sup>th</sup> Defendant including the purchasers who were its assigns, were indeed creditors to the deceased estate as the transaction had been undertaken during the deceased’s lifetime. Insofar as the Plaintiffs disputed their father’s signature on various documents produced as exhibits, the burden of proof was upon them to bring an expert witness to confirm their allegations but they failed to do so. DW1 in his testimony confirmed that the 4<sup>th</sup> Defendant after purchasing the suit land from the deceased, took possession, engaged a surveyor, subdivided the said land into plots and sold to more than 200 people which included the rest of the Defendants herein and issued them with ownership Certificates. Further, that the Defendants have constructed permanent structures thereon which fact was confirmed by the Plaintiffs. From this evidence alone, noting that DW2 in his testimony produced various Ownership Certificates issued by the 4<sup>th</sup> Defendant in respect to the plots they bought; since the 4<sup>th</sup> Defendant bought the suit land, paid the purchase price and took possession, I find that by the time it was selling the same to third parties, an element of constructive trust had already been created and even if it sold the subdivided plots to the third parties, the said third parties who are also Defendants herein are its agents/assigns and cannot be deemed as trespassers on the said land. In the foregoing, I find that the Defendants have not trespassed on the suit land and cannot be evicted therefrom.

26. Based on the facts before me including my findings, I find that the Plaintiffs have not proved their case on a balance of probability, are not entitled to the orders sought and will dismiss their suit.



27. I further find that the Defendants have proved their case as per the Counterclaim and will proceed to enter judgement in their favour as follows;

1. That the Plaintiffs/administrators to the estate of Joel Mathooko Nthengebe and are hereby compelled to effect transfer of land parcel number Mavoko Town Block3/ 2209 to the 4<sup>th</sup> Defendant for onward transfer to the other Defendants, within ninety (90) days from the date hereof.
2. That the Plaintiffs/ administrators be and are hereby restrained from interfering with the Defendants' quiet enjoyment of the said parcels of land.
3. That the Costs of the Suit and the Counterclaim to be borne by the Plaintiffs.

**DATED SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 4<sup>TH</sup> DAY OF DECEMBER, 2023.**

**CHRISTINE OCHIENG**

**JUDGE**

