



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELCA CASE NO. 7 OF 2018**

REUBEN MURIUKI KAARA.....1<sup>ST</sup> APPELLANT

LAWRENCE GITARI KAARA.....2<sup>ND</sup> APPELLANT

ANTHONY MUGWIMI MWANGI.....3<sup>RD</sup> APPELLANT

**VERSUS**

VIRGINIA MURINGO KIMOTHO.....1<sup>ST</sup> RESPONDENT

DANIEL CHOMBA KIMOTHO.....2<sup>ND</sup> RESPONDENT

JOSEPH WAWERU KIMOTHO.....3<sup>RD</sup> RESPONDENT

JOSHUA KARIUKI KIMOTHO.....4<sup>TH</sup> RESPONDENT

PETER MUTHIKE KIMOTHO.....5<sup>TH</sup> RESPONDENT

*(Being an Appeal from the Judgment of Hon. E.O. Wambo – S.R.M Delivered on 30<sup>th</sup> April 2018 in C.M.C.C No. 248 of 2017)*

**JUDGMENT**

**Background**

The Appellants, Reuben Muriuki Kaara, Lawrence Gitari Kaara, Anthony Mugwimi Mwangi and Mary Musa Mumai were Plaintiffs in the former suit before the trial Court being CMCC No. 248 of 2017 (Kerugoya) where in a Plaint dated 07:12:2017, they sought the following orders:-

(a) A declaration that the Plaintiffs are the absolute owners of land parcel Number KABARE/MIKARARA/1185 and KABARE/MIKARARA/1186.

(b) An order that the Defendant, his servants, agents, relatives and/or anybody else claiming through them together with their belongings do vacate land parcel numbers KABARE/MIKARARA/1185 and 1186 and in default they be forcefully evicted.

(c) A permanent injunction do issue, restraining the Defendants from interfering with the remains of Kimotho Gitari (deceased) on land parcel numbers KABARE/MIKARARA/1185 and KABARE/MIKARARA/1186 and from entering, cultivating or in any other way interfering with land parcel No. KABARE/MIKARARA/1185 and KABARE/MIKARARA/1186.

(d) Costs of this suit.

The Defendants filed defence on 21<sup>st</sup> December 2017 in which they denied the plaintiffs claim and by way of a counter-claim sought the following orders:-

(a) A determination that the Plaintiffs' title deed under L.R. KABARE/MIKARARA/1185 and 1186 has been extinguished by operation of the law and the suit land be registered in to names of the plaintiffs who have acquired the same by adverse possession.

**(b) A permanent injunction do issue restraining the Defendants by themselves, servants, agents or anyone claiming under them from entering, evicting the Plaintiffs, occupying, constructing or in any unlawful ways interfering with the plaintiffs quiet possession under L.R. KABARE/MIKARARA/54 now sub-divided into L.R. KABARE/MIKARARA/1185 and 1186.**

**(c) Costs of the suit.**

After hearing the parties and their witnesses, the trial Court rendered itself on 30<sup>th</sup> April 2018. The Plaintiffs/Appellants were aggrieved and filed the present Appeal on the following seven (7) grounds:-

- (1) *The learned trial magistrate erred in law and fact in giving an order for cancellation of titles for L.R. Nos. KABARE/MIKARARA/1185 and 1186 to revert to the original title number KABARE/MIKARARA/54 when there was no such prayers in the counter-claim.*
- (2) *The learned trial magistrate erred in law and fact in addressing issues which were not raised by either parties and making a determination on those issues which were not germane to the case.*
- (3) *The learned trial magistrate erred in law and fact in failing to make a finding that the 4<sup>th</sup> appellant's title has never been challenged since the time of registration of the 4<sup>th</sup> appellant as the owner of the sit land on grounds of fraud and that it's the 4<sup>th</sup> appellant who had transferred the suit land to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> appellants yet proceeded to order for cancellation of the titles.*
- (4) *The learned trial magistrate erred in law and fact in failing to direct who was to be the owner of the suit land after cancellation of the two resultant portions of sub-division.*
- (5) *The learned trial magistrate erred in law and fact in disregarding the evidence of the appellants during trial.*
- (6) *The learned trial magistrate erred in law and fact in failing to make a determination on Magistrate's Court's jurisdiction to determine a claim of adverse possession as prayed in the counter-claim.*
- (7) *The judgment was against the weight of the evidence adduced.*

#### **APPELLANTS' SUBMISSIONS**

The Appellants filed their submissions on 18<sup>th</sup> March 2021 as follows:-

#### **GROUND NO. 1 & 2**

The Appellants submitted that the trial magistrate made an order that the two titles, KABARE/MIKARARA/1185 and 1186 be cancelled and the same be reverted to the original title being KABARE/MIKARARA/54, despite the fact that there is evidence on record showing that the defendants in the counter-claim were the legitimate owners of the said parcels of land. They submitted further that the respondents herein who were plaintiffs in the counter-claim never sought for the said order therefore, the same ought not to have been granted. They cited the case of *WAIG LIMITED VS FRANCIS KARIUKI & 2 OTHERS (2020) e K.L.R.* They also referred to *Section 10 of the Evidence Act Cap. 80 Laws of Kenya*. The appellants further cited the following cases:-

- (1) *KENY PORTS AUTHORITY VS AUTOEXPRESS LIMITED & 2 OTHERS (2016) e KLR.*
- (2) *GALAXY PAINTS CO. LTD VS FALCON GUARDS LIMITED (2002) 2 E.A. 385.*

#### **GROUND NO. 3**

The Appellants submitted that the 4<sup>th</sup> appellant was registered as the owner of the suit land on 18<sup>th</sup> March 1996 and that the said registration has never been challenged to date. They argued that if at all the respondent's claim that the registration was done fraudulently was true, they did not adduce any evidence that they challenged the said registration, either by reporting the matter to the Police, filing a case in Court or to the Land Registrar to have the same cancelled. The 4<sup>th</sup> appellant therefore had the capacity, as the legitimate registered owner of KABARE/MIKARARA/54 to transfer the resultant parcels of land, KABARE/MIKARARA/1185 and 1186 to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> appellants.

#### **GROUNDS NO. 4 & 5**

On the 3<sup>rd</sup> and 4<sup>th</sup> grounds, the appellants submitted that the trial magistrate made an order that the two titles for land parcel No. KABARE/MIKARARA/1185 and 1186 be cancelled and revert back to KABARE/MIKARARA/54 but failed to make a determination as to who was the owner of the said parcel No. KABARE/MIKARARA/54.

The appellants also submitted that the issue of jurisdiction was not determined and that the trial Court lacked jurisdiction to hear and determine the claim of Adverse possession as sought in the counter-claim. They also referred to the cases of *SAMUEL KAMAU MACHARIA & ANOTHER VS KENYA COMMERCIAL BANK LIMITED & 2 OTHERS (2012) e K.L.R.*, *OWNERS OF MOTOR VESSEL LILLIAN'S' -VS- CALTEX OIL (KENYA) LIMITED (1989) K.L.R. 1* and *Section 38 of the Limitation of Actions Act*.

## RESPONDENTS' SUBMISSIONS

The Respondents submitted that in their plaint dated 7<sup>th</sup> December 2017, the appellants had sought an order for declaration that they were the absolute owners of land parcel No. KABARE/MIKARARA/1185 and 1186. Upon analyzing the evidence produced in Court, the trial magistrate was convinced that the respondents have been in occupation of the subject land since 1960's. they further submitted that the trial Court further observed that although the appellants held titles to the parcels of land in question, it was clear that they did not exercise due diligence at the point of purchase since they would have been aware of the respondents existence on the land. Further that had the transaction between the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> appellants and the 4<sup>th</sup> appellants been done openly and above board, the respondents would have been known to them. They further argued that the trial

Court emphasized that the process of the transfer of title to the appellants was questionable and granted an order for the cancellation of the titles being L.R. KABARE/MIKARARA/1185 and 1186 and ordered the same to be reverted back to the original title No. KABARE/MIKARARA/54 having found that the appellants had not proved their case to the required standard. In response to Ground No. 3, the respondents submitted that from the evidence, the 4<sup>th</sup> appellant's title was not challenged in the lower Court on grounds of fraud. They submitted that their claim was basically seeking a declaration that the titles held by the appellants had been extinguished by operation of the law through Adverse possession since none of them demonstrated that they had been in actual possession or occupation of the subject land at any one time.

They submitted that the issue of fraud was not given much consideration, the ultimate determination having been the issue of adverse possession and the establishment that they had been in open continuous and exclusive occupation for a period of over 12 years as by law required. They argued that even if the issue of fraud was to be addressed, the undeniable fact is that the 4<sup>th</sup> appellant did not at any time since 1966 when she apparently got registered as the owner of land parcel KABARE/MIKARARA/54 reside on the land.

On the 4<sup>th</sup> and 5<sup>th</sup> grounds, the respondents submitted that in their counter-claim before the lower Court, they enjoined the 4<sup>th</sup> appellant as a party for reasons of establishing that they had been in exclusive occupation of the suit land before the time the 4<sup>th</sup> appellant is alleged to have bought the land and even long after the 1st, 2nd and 3rd appellants are alleged to have bought it to-date.

The respondents further stated that the titles belonging to all the appellants were thereafter challenged by the respondents by way of Adverse possession, the ultimate prayer being a declaration that the appellants title deeds over L.R. KABARE/MIKARARA/54 now sub-divided into L.R. KABARE/MIKARARA/1183 and 1186 have been extinguished by operation of the law. The same having been established, then it follows the events that the land know legitimate owner is the only one who can be registered as the owner upon cancellation of all consequent and questionable titles. They submitted that the same is clear in the documents produced in Court. On the issue of jurisdiction, the respondents referred to *Section 9(a) of the Magistrate's Court Act of 2015* and the *Environment and Land Court Act 2011* which provides the matters in which the Magistrate Court is authorized to handle. They argued that *Section 38(1) of the Limitation of Actions Act* which came in to operation on 1<sup>st</sup> December 1967 cannot be read in isolation of the Constitution of Kenya 2010 and other enactments. They stated that all law in force immediately before the effective date continues in force and shall be construed with the alterations, adoptions, qualifications and exceptions necessary to bring into conformity with the Constitution. They submitted that no legal statute or authority directly or implied bars the Magistrate's Court from determining disputes relating to Adverse possession. They referred to the case of the *Law Society of Kenya, Nairobi Branch Vs Malindi Law Society & 6 Others, C.A. No. 287 of 2016 (Nairobi)*. On the merits of the claim before the trial Court, the respondents submitted that there is sufficient evidence on record as can be seen in their witness statements which was adopted in the trial Court to the effect that the 1<sup>st</sup> respondent got married in 1958 on the suit property parcel No. KABARE/MIKARARA/54 and that her father-in-law Joshua Gitare Kimotho (deceased) who was the first registered proprietor allegedly sold the land to the 4<sup>th</sup> appellant Mary Musa Mumai in 1966 and died in 1968 and was buried on the suit land. The respondents further submitted that from the evidence, it is clear that the 1<sup>st</sup> respondent testified that her co-respondents who are her children with her late husband, Kimotho Gitare were all born and brought up on the suit land and that there are several graves for departed senior members of the family all buried on the suit land including her father in-law Joshua Gitare Kimotho, her first born son Joshua Muruthi Kimoto, her mother in-law Hellena Wangure and later her husband. The respondents also contend that there are sufficient and corroborated evidence that all the respondents have settled on the suit land since 1960's and have extensively developed the land with very old homesteads built thereon, old assorted trees, very old 1,000 coffee stems and food crops and lived on the suit land to-date.

The respondents further submitted that the 4<sup>th</sup> appellant Mary Musa Mumai has never stepped or occupied the suit land L.R. KABARE/MIKARARA/54 now sub-divided into L.R. KABARE/MIKARARA/1185 and 1186 since 1966 when she allegedly got registered to-date and that despite being enjoined as a party in the proceedings before the trial Court vide a counter-claim and filed a Notice of Appointment of Advocates filed in Court on 24<sup>th</sup> January 2018, she never filed a statement of defence to the counter-claim nor witness statement. They also submitted that the 4<sup>th</sup> appellant did not testify in Court and therefore literally never opposed the respondents counter-claim to the effect that she did not have a clean title to pass to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> appellants same having been extinguished by operation of law. In view of the crucial missing evidence or 4<sup>th</sup> appellant, the respondents submitted that the evidence they adduced on Adverse possession remain unchallenged and hence the counter-claim was sufficiently proved and that the lower Court should not have hesitated to grant declaration orders as prayed.

It was further submitted that there is evidence that the 4<sup>th</sup> appellant's title to L.R. No. KABARE/MIKARARA/54 has been on issue of challenge and the 1<sup>st</sup> person to challenge it was husband to 1<sup>st</sup> respondent Kimotho Gitare who had filed H.C. Misc. Case No. 28 of 1978 claiming Adverse possession but was dismissed on technicality on 11/06/1981 for want of prosecution.

The respondents also argued that it is trite law that the fact that L.R. KABARE/MIKARARA/54 was sub-divided into L.R. KABARE/MIKARARA/1185 and 1186 on 05/06/2015 and changed hands into the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> appellants on 18/8/2015 does not interrupt the period of occupation because the appellants have never taken possession of the suit land from the respondents. They cited the case of

*Peter Thuo Kairu Vs Kuria Gacheru C.A. 42 of 1987 reported in (1988) 2 K.A.R. 111, Githu Vs Ndeete C.A. No. 24 of 1997 reported in 1984 K.L.R. 776, John Mwangi Ndegwa Vs Eliud Macharia Maina ELC No. 51 of 2012 (O.S) (Kerugoya) (U.R).*

In conclusion, the respondents submitted that this Court is supposed to analyze the evidence and arrive at its own conclusion SAVE on findings of fact by the trial magistrate unless they were based on no evidence, misapprehension of the evidence or that he acted on some wrong principles. They referred the case of *Sumaria & Another Vs Allied Industries Limited (2007) e K.L.R and Musera Vs Mwechellsi & Another (2007) 2 K.L.R 159.*

### **LEGAL ANALYSIS AND DECISION**

I have given due consideration to the rival submissions and the applicable provisions of the law cited by the parties. This being a first Appeal, the mandate of this Court as enunciated in the case of *Selle & Another Vs Associated Motor Boat Co. Ltd & Others (1968) E.A. 123* is to review the record and reconsider the evidence which was before the lower Court, evaluate the same and draw its conclusions giving due allowance for the fact that it neither saw or heard the witness(es). In the case of *Ogeto Vs Republic (2004) e K.L.R.*, the Court reshaped the duty of an Appellate Court in the following terms:-

*“1. On a first appeal, the Court has a duty to reconsider the evidence which was before the lower Court, evaluate the evidence and draw its conclusion giving due allowance for the fact that it has neither seen nor heard the witness.*

*2. A Court of Appeal will not normally interfere with a finding of fact by the trial Court unless it is based on no evidence or on a misapprehension of the evidence, or the trial Judge is shown demonstrably to have acted on wrong principles in reaching the decision.....”*

Having laid the principles guiding appeal, I now proceed to determine the seven (7) grounds of Appeal as follows:-

#### **GROUND NO. 1**

On the first ground, the appellants are challenging the order by the trial magistrate cancelling the titles for the two parcels of land L.R. No. KABARE/MIKARARA/1185 and 1186 and causing it to revert to the original title number KABARE/MIKARARA/54.

Looking at the pleadings particularly the counter-claim amended on 12<sup>th</sup> January 2018, the 1<sup>st</sup> respondent averred that the original registered owner of the suit property L.R. No. KABARE/MIKARARA/54 (now sub-divided) was one JOSHUA GITARE Alias GITARI KIMOTHO (deceased) on 02/01/1959 who was father to her late husband one KIMOTHO GITARI (deceased). The 1<sup>st</sup> respondent also averred that they lived on the suit land together with her father in-law, her mother in-law and her husband and upon demise, all were interred in the suit land. The 1<sup>st</sup> respondent further pleaded that in unclear circumstances and in a bizarre turn of events, the 4<sup>th</sup> appellant Mary Musa Mumai did illegally, unlawfully and fraudulently cause L.R. KABARE/MIKARARA/54 to be registered in her name from the name of the previous registered owner JOSHUA GITARE sometime in the year 1966. Despite illegally, unlawfully and fraudulently transferring the land to herself, the respondents contend that the said Mary Musa Mumai (4<sup>th</sup> appellant) has never entered or taken possession of the suit land parcel No. KABARE/MIKARARA/54 and/or done any developments therein.

The respondents further averred that sometimes on or about 05/06/2015, the 4<sup>th</sup> appellant secretly fraudulently and without Notice to the respondents/defendants purported to cause sub-division on L.R. No. KABARE/MIKARARA/54 into land parcels No. KABARE/MIKARARA/1185 1186 though no actual sub-division was done on the ground and that the suit land remains intact and fully in occupation by the respondents/defendants. The respondents/defendants also averred that the 4<sup>th</sup> appellant later purported to effect a transfer of L.R. No. KABARE/MIKARARA/1185 in the joint names of the 1<sup>st</sup> and 2<sup>nd</sup> appellants whereas L.R. No. KABARE/MIKARARA/1186 was transferred to the 3<sup>rd</sup> plaintiff/appellant. They averred that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs/appellants have also never stepped or claimed any occupation on the suit land to-date. The defendants/respondents at **paragraph 14 and 15** of their Amended counter-claim averred as follows:-

***“(14) That the plaintiffs have been in open, uninterrupted, continuous and peaceful occupation of the suit land L.R. KABARE/MIKARARA/54 since 1960’s and also after 1966 when the suit land was registered in the names of the 4<sup>th</sup> defendant Mary Musa Mumai to-date and have extensively developed the same as of rights for a period of over 40 years”.***

***“(15) The plaintiffs aver that the registration of the 4<sup>th</sup> defendant Mary Musa Mumai in 1966 over title deed for L.R.KABARE/MIKARARA/54 and later the registration of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants over L.R. KABARE/MIKARARA/1185 and 1186 has been extinguished by the operation of law and that defendants holds the title deed in trust of the plaintiffs who have acquired registerable interest by way of Adverse possession”.***

In their final prayers, the defendants/respondents sought orders *inter alia* for a declaration that the plaintiffs/appellants’ title deeds over L.R. KABARE/MIKARARA/54 now sub-divided into L.R. KABARE/MIKARARA/1185 and 1186 has been extinguished by operation of the law and the suit lands be registered in the names of the defendants/respondents by way of Adverse possession.

During the hearing before the trial Court, the 4<sup>th</sup> plaintiff Mary Musa Mumai did not testify. She did not even file defence to the defendants/respondents counter-claim. Virginia Muringo Kimotho who was the 1<sup>st</sup> defendant testified on oath ad DW2. She referred to her statement dated 12<sup>th</sup> January 2018 which she adopted in its entirety. At **paragraph 16** of her statement, the 1<sup>st</sup> respondent stated as

follows:-

**“16. That from the foregoing, I have the believe that, I and my family have been in open, continuous, vacant, un-interrupted and peaceful occupation over the suit land even prior to registration of the plaintiffs and Mary Musa Mumai over the suit land for a period of over 40 years and hence have acquired the suit land and resultant portions by way of Adverse possession”.**

The averments and testimony by Virginia Muringo Kimotho, the 1<sup>st</sup> respondent on oath was not challenged or controverted either by way of Defence and reply to counter-claim by the 4<sup>th</sup> appellant or in cross-examination by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> appellants. The 4<sup>th</sup> appellant only filed a Notice of Appointment of Advocates dated 24/01/2018. The plaintiffs/appellants called Lawrence Gitari Kaara who testified on their behalf on 01/02/2018 at 2.50 p.m.

From my evaluation of the evidence by the witnesses by plaintiffs/appellants and the defendants/respondents, it is clear that though the suit property L.R. KABARE/MIKARARA/54 now sub-divided into L.R. KABARE/MIKARARA/1185 and 1186 which was registered in the names of Mary Musa Mumai (4<sup>th</sup> appellant) and the sub-divisions in the names of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> appellants, none of them have ever occupied or taken possession of the same. It is also clear from the evidence adduced by the respondents in their counter-claim that they have lived in the suit property openly continuously, un-interrupted for more than 40 years, long before the 4<sup>th</sup> appellant acquired the same from the original registered owner in 1966. From the foregoing, it is clear beyond

peradventure that the respondents proved their counter-claim for Adverse possession but instead of making a finding on the evidence adduced, the trial magistrate declined without any lawful justification. At **page 21** of the judgment, the learned magistrate made the following observation:-

**“This Court also considered the counterclaim in which the defendants/claimants are claiming adverse possession. This Court is of humble view that if the claimant were to succeed in such claim, they would under Order 37 rule 7 of Civil Procedure which provides prosecution of an application under Section 3 of the Limitation of Actions Act shall be made by Originating Summons.**

**2. The summons shall be supported by an affidavit on which a certified extract of the title to the land in question has been annexed.**

**3. The Court shall direct in whom and in what manner the summons shall be served. This Court understanding of Order 37 is that an Originating Summons is returnable to the Judge. Hence the issue of adverse possession cannot in anyway be dealt with by this Honourable Court”.**

By declining to make a declaration on the titles which had been acquired by operation of the law, the trial magistrate declined for want of jurisdiction. The issue of jurisdiction is a serious matter which is given by the Constitution or statute

or both. Magistrates Courts dealing with Environment and Land related issues are created under **Article 169(2)** where Parliament is given the mandate to enact legislation conferring jurisdiction on the Magistrates Courts. Pursuant to those powers, Parliament enacted the **Environment and Land Court Act, 2011** and at **Section 26(3) and (4)**, the law provides as follows:

**“(3) The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.**

**(4) Subject to Article 169(2) of the Constitution of Kenya 2010, the magistrate appointed under Sub-section (3) shall have jurisdiction and power to handle:-**

**(a) Disputes relating to offences defined in any Act of Parliament dealing with Environment and Land and**

**(b) Matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrate’s Court Act”.**

**Again, Section 9(a) of the Magistrates Court Act of 2015 which came into operation on 2<sup>nd</sup> January 2016 provides that:-**

**(a) In the exercise of the jurisdiction conferred upon it by Section 26 of the Environment and Land Court Act 2011 (Cap. 12A) and subject to the pecuniary limits under Section 7(1), hear and determine claims relating to:-**

**(i) Environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources.**

**(ii) Compulsory acquisition of land**

**(iii) .....**

**(iv) .....**

**(v) Environment and Land Generally”.**

The issue of Adverse possession raised by the respondents in their counter-claim was an issue of ownership and title to land which the Court was fully seized with the requisite jurisdiction to handle.

**Section 38(1) of the Limitation of Actions Act Cap. 22 Laws of Kenya** specifically refers to the High Court and not the Environment and Land Court or the Magistrates Court. That piece of legislation came into operation on 1<sup>st</sup> December 1967 while the Environment and Land Court Act and the Magistrates Courts Act came into operation after the 2010 Constitution. The interpretation of the law must be guided by **Section 7(1) of the Sixth Schedule of the Constitution of Kenya 2010** on transitional and consequential provisions which provides thus:-

*“All law in force immediately before the effective date continues in force and shall be construed with the alterations, adoptions, qualifications and exceptions necessary to bring it into conformity with this Constitution”.*

It is my finding that by declining to determine the claim by the respondents of Adverse possession in their counter-claim for want of jurisdiction, the trial magistrate misdirected himself in law and thereby misapprehended the evidence which cannot therefore be countenanced by this Court.

The upshot of my finding is that **Order 1** of the judgment by the trial magistrate issued restraining the defendants/respondents herein from entering, evicting, occupying, constructing or in any unlawful way, interfering with the plaintiffs/appellants quiet possession over L.R. KABARE/MIKARARA/54 now sub-divided into L.R. KABARE/MIKARARA/1185 and 1186 which have never been cancelled and substituting with a declaration that the defendants title deed over L.R. KABARE/MIKARARA/54 now sub-divided into L.R. No. KABARE/MIKARARA/1185 and KABARE/MIKARARA/1186 has been extinguished by operation of the law and the suit lands be registered in the names of the defendants who have acquired the same by Adverse possession.

I also award the costs of the suit in the Magistrate’s Court and this Appeal to the defendants/respondents. It is so ordered.

**JUDGMENT READ, DELIVERED AND SIGNED IN THE OPEN COURT AT KERUGOYA THIS 20TH DAY OF JANUARY, 2022.**

.....  
**HON. E.C. CHERONO**

**ELC JUDGE**

*In the presence of:-*

1. Mr. Kahigah for the Respondents

2. 1<sup>st</sup> Appellant – present

3. 2<sup>nd</sup> Appellant – present

4. 3<sup>rd</sup> Appellant – present

5. Kabuta, Court Assistant – present.