



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kamau & another v Kabogo & 3 others (Environment and Land Case Civil Suit E011 of 2021) [2022] KEELC 3236 (KLR) (31 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3236 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND CASE CIVIL SUIT E011 OF 2021**

**LN GACHERU, J**

**MAY 31, 2022**

**BETWEEN**

**TERESIA WANJIKU KAMAU ..... 1<sup>ST</sup> PLAINTIFF**

**A.C.K. WAHUNDURA TRUST ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JOHN NGUGI KABOGO ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR MURANG'A ..... 2<sup>ND</sup> DEFENDANT**

**DISTRICT LAND SURVEYOR ..... 3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs herein brought this suit against the Defendants and sought for the following orders against them jointly and severally; -
  - a. An order of declaration that the subdivision and transfer of land parcel Number LOC.5/Gitura/2317, to the 1<sup>st</sup> Defendant was fraudulent and that this is a road reserve serving the Plaintiffs and the District Land Registrar and District Land Surveyor respectively be ordered to revoke and cancel the title deed, all maps, mutations and registration issued to the 1<sup>st</sup> Defendant.
  - b. A permanent injunction restraining the Defendants jointly and severally either by themselves, agents, employees, proxies and or servants from entering, evicting, transferring, selling, dispossessing, wasting, alienating, allocating and or dealing in any way with the parcel of land number LOC.5/GITURA/2317.
  - c. That the O.C.S Murang'a Police Station to serve and supervise these orders accordingly.



- d. Costs of the suit and interest thereof.
  - e. Any other relief that this Court may deem expedient under the circumstances.
2. The Plaintiffs averred that they are the exclusive owners of land parcels No. Makuyu/Kimorori Block 3/4788, Makuyu/Kimorori Block 3/4789, Makuyu/Kimorori Block 3/4790 & Makuyu/Kimorori Block 3/4791, wherein the first three parcels of land are owned by the 1<sup>st</sup> Plaintiff and the fourth parcel of land is owned by the 2<sup>nd</sup> Plaintiff respectively. That the said parcels of land are all resultant subdivisions of Makuyu/Kimorori Block 3/257.
  3. They also averred that previously, the 1<sup>st</sup> Plaintiff was the sole registered owner of LR Makuyu/Kimorori Block III/257. However, in the year 2013, after attending the requisite Land Control Board, she acquired an approval to subdivide this parcel of land and the same was subdivided into four resultant parcels of land being Makuyu/Kimorori Block 3/4788-4791, and all the title deeds were issued by Murang'a District Land Registry.
  4. Further, that the Land Parcel No. Makuyu/Kimorori Block 3/257, bordered the Kenol - Murang'a Road, without any other parcel of land being in between as was evident from the Registry Index Map(RIM) Sheet No. 6, and as such all the resultant parcels of land border the Kenol-Murang'a Road, where in between the road and the parcels of land is a road reserve.
  5. It was also averred that in the year 2013, the 2<sup>nd</sup> Plaintiff purchased land parcel No. LR Makuyu/Kimorori Block 3/4791, from the 1<sup>st</sup> Plaintiff and the said land was for Church investment. A title deed was issued by Murang'a Lands Office on 13<sup>th</sup> September, 2013.
  6. That all that time, the Plaintiffs have enjoyed quite use of their parcels of land, but in the year 2020, the 1<sup>st</sup> Plaintiff was summoned by Makuyu Police Officers and was informed that she was in possession of the 1<sup>st</sup> Defendant's Land Parcel No. Loc.5/Gitura/2317. That the said parcel of land borders the Kenol-Murang'a Road and the Plaintiffs' four parcels of land.
  7. Thereafter, the 1<sup>st</sup> Plaintiff was charged at Kigumo Law Courts for an offence of the alleged possession.
  8. It was the Plaintiffs further allegations that Loc.5/Gitura/2317, whose beacons have already been marked out, completely blocks all the four (4) parcels of land belonging to the Plaintiffs, rendering their four parcels of land completely inaccessible.
  9. It was claimed that unless the 1<sup>st</sup> Defendant is restrained by the Court, the Plaintiffs would not be able to develop their parcels of land and the investment on some of these parcels of land would go down the drain as the Plaintiffs attempt to seek redress and protection from the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have been futile. That the 1<sup>st</sup> Defendant parcel of land located on the road reserve does not exist on the Registry Index Map (RIM) sheet No. 6, found in the Land Registry. The said Map shows that the Plaintiffs parcels of land border the Kenol-Murang'a Road.
  10. That despite Demand and Notice of Intention to sue having been given, the Defendants have failed, refused and/or neglected to make good the Plaintiffs claim and thus this suit.
  11. The suit is contested by all the Defendants.
  12. The 1<sup>st</sup> Defendant filed his Statement of Defence dated 25<sup>th</sup> June 2021, and denied all the allegations made in the Plaint. He averred that his parcels of Land LR No. Loc.5/Gitura/2317, which is a subdivision of LR No. Loc.5/Gitura/396, borders the Kenol – Murang'a Road and the Road Reserve thereto.



13. Further that the said parcel of land Loc.5/Gitura/2317, is properly and duly registered parcel of Land and the 1<sup>st</sup> Plaintiff has full knowledge of the same.
14. Further, that the said parcel of land has never been a public land whether as a Road reserve or otherwise, nor has there ever existed any access Road cutting across Loc.5/Gitura/2317. He also averred that the Plaintiffs parcels of land have never bordered Kenol – Murang’a road or the road reserve thereto, as they exist currently or when they existed as Makuyu/Kimorori/257. Therefore, the 1<sup>st</sup> Defendant denied blocking or denying the Plaintiffs access to their parcels of land.
15. It was his further contention that the suit is fatally and irretrievably defective and he urged the Court to dismiss the Plaintiffs suit with costs.
16. The 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Defendants also filed their statement of Defence dated 24<sup>th</sup> June 2021, and denied all the allegations contained in the Plaint. They further denied that the Plaintiffs were ever the exclusive owners of the suit properties and also denied that the 1<sup>st</sup> Plaintiff ever acquired the requisite Land Control Board approval to subdivide land parcel No. Makuyu/Kimorori Block III/257, and was issued with the resultant title deeds by the 2<sup>nd</sup> Defendant.
17. They also denied that they were ever parties to the case filed at Kigumo Law Courts, and they put the Plaintiffs to strict proof. Further, that if any title deeds were ever issued on the suit properties, then the same correlate with the Registry Index Map (RIMs) from the 3<sup>rd</sup> Defendant office. It was also averred that the suit was instituted without issuing the mandatory Notice of intention to sue as provided by Section 13A of the Government Proceedings Act, and thus the Plaintiffs are not entitled to costs of the suit against the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Defendants. They urged the Court to dismiss the Plaintiff’s suit with costs.
18. The matter proceeded for hearing wherein the Plaintiffs called three witnesses. The 1<sup>st</sup> Defendant gave evidence for himself and called one witness. The 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Defendants called two witness to support their case.

## PLAINTIFFS’ CASE

- 19 PW1: Teresa Wanjiku Kamau, adopted her witness statement as evidence in Court. She also produced her list of documents as Exhibit 1.
20. It was her evidence that she acquired the suit land from Kagaa Cooperative Society, as she was a member. That she acquired the title deed for Makuyu/Kimorori Block III/257, in 1988. She identified the said title deed in Court.
21. In cross examination by Counsel for 1<sup>st</sup> Defendant, she testified that she subdivided Makuyu/Kimorori Block 3/257, in the year 2013, into four parcels of land. That she sold one portion to the 2<sup>nd</sup> Plaintiff. She also stated that she did not know of the scheme known as Loc.5/Gitura. However, she admitted that Gitura was across the Road and she did not know who Esther Wairimu Kariuki was. However, the said Esther Wairimu Kariuki blocked the Road from the Kagaa side to the main road. That after Esther blocked the road, the matter was referred to the chief of Kagunduini and the Chief decreed that the PW1 should demolish the carwash which he stated was on Loc.5/Gitura scheme and the said Loc.5/ Gitura is on Land Parcel No. Makuyu/Kimorori Block 3/257, owned by herself.
22. She further admitted that Esther’s son sold a parcel of land to the 1<sup>st</sup> Defendant herein. That later she was arrested by the police on the instructions of DCIO, Makuyu Police Station, and she was charged at Kigumo Law Courts. That she refused to demolish the carwash. That though a surveyor visited the land, she was not given a copy of the said report.



23. Further, that she rejected the Map drawn and shown to her. To her, land parcel No. Loc. 5/ Gitura/2317, does not exist. She urged the Court to declare the said subdivision null and void and thus fraudulent.
24. On cross-examination by Counsel for 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Defendants, she admitted that the case in Kigumo Law Courts, is still ongoing. She also reiterated that she sold the land parcel No. Makuyu/Kimorori Block 3/4791, but she could not remember for how much.
25. In Re-examination, she confirmed that she was the first owner of land Parcel No. 257, and it faces the main Road i.e Kenol-Murang'a Road. Further that there is no building or another land between her land and the main Road.
26. PW 2: Naomi Muthoni Mathenge also adopted her witness statement dated 5<sup>th</sup> August 2021, as evidence in chief. She also produced her list of documents as P.Exhibit No. 2 and Supplementary list of documents as P.Exh 2a and 2<sup>nd</sup> Supplementary list of documents as P.Exh 2b.
27. In cross-examination by Counsel for the 1<sup>st</sup> Defendant, she stated that she is a Trustee of A.C.K.Church Wahundura. That the Trust Deed is registered under "The Perpetual Succession Act". She admitted that the Trust bought the parcel of Land in the year 2013, and she confirmed that there was an agreement to that effect. She reiterated that they were shown the access Road which is Kenol-Murang'a Road, and that the parcel of land that they bought was not landlocked. That they occupied the land for 8 years and interference come in the year 2020. She also stated that they have not developed the land. It was her evidence that she did not know how the 1<sup>st</sup> Defendant came to own Loc.5/Gitura /2317. That the said land was not in existence in 2013. She also did not know if the 1<sup>st</sup> Defendant had a title deed for his parcel of land. It was her contention that Makuyu/Kimorori Block 3/257, was subdivided into four portions and 2317 was not one of them. However, the 2<sup>nd</sup> Plaintiff bought Land Parcel No. 4791.
30. In cross-examination by Counsel for 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Defendants, she stated that the property No. 2317, is allegedly owned by the 1<sup>st</sup> Defendant, but she did not know him before they purchased their land parcel No. 4791, from the 1<sup>st</sup> Plaintiff.
31. PW 3: William Kamau Kabuthi, a peasant farmer adopted his witness statements too. He also stated that he is the husband to PW1 and he knew about the suit property herein.
32. In cross-examination by Counsel for 1<sup>st</sup> Defendant, he alleged that he is the one who caused PW1 to be registered as the owner of Makuyu/Kimorori Block 3/257. That the suit land was subdivided from land parcel No. Makuyu/Kimorori Block 3/10720, which was initially owned by Kagaa Cooperative Society. He confirmed that PW1 purchased land Parcel No. 257, and obtained a title deed. He also confirmed that 1<sup>st</sup> Defendant purchased his parcel of land from Esther Wairimu Kariuki, who owned the land on the Gitura side. He confirmed that the Road E1577 is the one next to PW1's parcel of land and it is the main Kenol-Murang'a Road. He also confirmed that there were two schemes that is Makuyu/Kimorori Scheme and Loc.5/Gitura.
33. In Cross-examination by counsel for 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Defendants, he confirmed that Muiruri Kariuki was the son of the Esther Wairimu Kariuki, who sold land to 1<sup>st</sup> Defendant herein, but the said Muiruri is not a party to this suit.

## **DEFENDANTS' CASE**

34. DW 1: John Ngugi Kabogo; the 1<sup>st</sup> Defendant adopted his witness statement dated 25<sup>th</sup> June, 2021, as his evidence in chief. He also produced a list of documents dated 25<sup>th</sup> June 2021, as D.Exhibits 1-9.



35. In cross-examination by the Plaintiffs Counsel, he stated that he bought his parcel of land Loc.5/Gitura/2317, and he had a Sale Agreement to that effect. That he bought the same from Esther Wairimu Kariuki, and it had been hived out of Loc.5/Gitura/396. He reiterated that when he purchased the said parcel of land, the Map showed the hived portion of land. i.e. Loc.5/Gitura/2317. He also confirmed that he did not obtain the initial Green Card of Loc.5/Gitura/396, and he could not tell the history of parcel No. 396.
36. He also confirmed that he could not tell when land parcel No. 2317, was hived from land parcel No.396, and he did not have Mutation Forms to that effect. He also stated that there was a brace in land parcels No. 396 and 2317. It was his evidence that he did attend the Land Control Board and the Application for consent is dated 15<sup>th</sup> March 2016. He contended that he did not see the title deed for Esther Wairimu Kariuki, and he was not informed that there was resurveying of the Land before he purchased it. He was also not aware of any dispute along the said parcel of land and also not aware of other portions of Land.
37. On Cross-examination by the State Counsel, he stated that he was not aware of any Registry Index Map (RIM), and he confirmed that he was the current occupant of Loc.5/Gitura/2317. He further stated that there is an illegal structure of a carwash constructed by the 1<sup>st</sup> Plaintiff on his parcel of land. This action led to her prosecution, though the said structures are still in existence.
38. He further reiterated that there is no official access road cutting across his land. However, he confirmed to have access to his home directly from the main road, which is not an official access road but private one. Further that his land is adjacent to an access road. He admitted that he was aware of the report by W.W. Kibiru, the District Surveyor, Murang'a, who averred that there was an access Road that traverses Loc.5/Gitura/2317.
39. DW 2: Felix Orina, the Regional Surveyor of KENHA Central Region, based at Nyeri presented a report dated 11<sup>th</sup> November, 2020. He confirmed that he was the author of the said report which report was signed by Eng.Francis Kimata.
40. In cross-examination by Counsel for the Plaintiffs, he stated that he was not aware of the resurveying of the area, but he had done the report in 2020. He testified that he used the latest map to prepare the report. He confirmed that the current road has a road reserve of about 37m from the first mark to the opposite mark on the other side of the road. He also stated that he was not aware of a Report from the Ministry of Roads that had marked the area as Road reserve.
41. In cross-examination by the State Counsel, he confirmed that he prepared the Report dated 11<sup>th</sup> November, 2020, in response to the DCIO Letter. The issue was a boundary cum access Road Dispute. That they did a joint survey with Murang'a County and they shared the findings, with the Ministry of Lands. That prior to the Compilation of the reports, he was not aware of the Roads, which were supposed to pass through Loc.5/Gitura/2317. It was his evidence that Loc.5/Gitura/2317, is not sitting on a Road Reserve.
42. DW 3: Leonard Korir, a surveyor based in Thika stated that he prepared the report that was produced by the 1<sup>st</sup> Defendant on Pages 31-32, of his bundle of documents. He relied on that report entirely.
43. On cross-examination by Counsel for the Plaintiffs, he confirmed that he participated in the establishment of boundaries of Loc.5/Gitura/2317, and he used Registry Index Map (R.I.M) which was Sheet No.5. He also confirmed that he could tell where the parcel of land came from as he used Loc.5/Gitura/2317, as the basis. That the entire parcel of land was Loc. 5/Gitura/396. That he got the Map from the Ministry of Land's Surveyor. He confirmed that Land Parcel No. Loc.5/Gitura/2317,



- was registered following an omission and he did not know when the Green card was registered. That he used Registry Index Map (R.I.M) Sheet No. 5. He identified the said Map in Court, which map showed the boundaries of Loc.5/Gitura/2317, and the other parcels of land. That after the omission was discovered, a new map was prepared with braces and it shows that the land crosses to the other side of the road. The neighbouring Land Parcels are on another block. It was his evidence that initially land parcel No. Loc.5/Gitura/396, had also crossed to the other side of the road and so did land parcel No. 2317, which was a subdivision of land parcel No.396. That could be shown by the brace or braces on the new Registry Index Map (R.I.M).
44. When cross-examined by the State Counsel, he confirmed that when the survey work was done, some portions of land crossed over to the other side of the main road and that was normal. Further that there was a KENHA Pillars and that is where Loc. 5/Gitura/2317, starts.
  45. He also stated that this parcel of Land borders a Road reserve and another block or scheme. He Confirmed that there was a carwash within the boundaries of Land Parcel No. 2317, and the main Road. It was his evidence that the next property could be the Plaintiffs Properties. He confirmed that Registry Index Map(R.I.M) had been amended and he relied on Registry Index Map Sheet No. 5, which was already amended at the time of the survey. That the amendment of Registry Index Map was done due to some omission. It was his further evidence that the access road fell within Loc. 5/ Gitura/2317. He also stated that the block known as Makuyu/Kimorori was not next to the Road reserve and that Land Parcel No 2317, lies between the Road reserve and Makuyu/Kimorori Block 3.
  46. The 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Defendants called two witnesses.
  47. DW 4: Alice Gisemba, the Land Registrar Murang'a adopted her witness statement dated 10<sup>th</sup> September, 2021. She also produced a list of documents as D.Exhibits 1-12. She further testified that the documents are in respect of Loc. 5/Gitura/2317, and the others were in respect of Makuyu/Kimorori Block 3/257, and Makuyu/Kimorori Block 3/4788 -4791.
  48. That the above parcels of land are pursuant to subdivision of Makuyu/Kimorori Block 3/257. It was her evidence that the said parcels of land are at Kagaa and title deeds were issued which is the mandate of the Land Registrar.
  49. In Cross-examination by counsel for the Plaintiffs, she confirmed that Land Parcels No. 257, belonged to Teresia Wanjiku Kamau, the 1<sup>st</sup> Plaintiff herein. That after subdivisions, she sold land parcel No. 4791 to A.C.K Wahundura Trust. The others parcels of land remained in her name. That the above subdivisions were done as per the law, though she did not have the Mutation Forms with her.
  50. Further, she testified that Loc.5/Gitura/2317, was in an amendment to the Registry Index Map, which was done due to an omission on Registry Index Map Sheet 5. To her, the omission meant that the parcel of Land had not been included. She further testified that the previous owner was Esther Wairimu Kariuki, although she did not have the green card for Loc.5/Gitura/2317. She also confirmed that there was a Mutation Form to that effect.
  51. On cross-examination by Counsel for the 1<sup>st</sup> Defendant, she confirmed that an amendment was done after the surveyor confirmed that an omission occurred on the map. That the said omission was rectified by the survey office. She also confirmed that the current owner of Loc.5/Gitura/2317, was John Ngugi Kabogo, the 1<sup>st</sup> Defendant. She was also not sure if the Land Registrar would know if a Public Road passes on a parcel of land.
  52. DW 5: Isaack Wainaina, a surveyor with County Survey Office, Murang'a stated that their office prepared the surveyor's Report dated 25<sup>th</sup> September, 2020. That DCIO Murang'a South had invited



- their office to prepare a report. That the office of DCIO was investigating a matter concerning a parcel of land known as Loc.5/Gitura/2317. Their office was tasked to ascertain and mark the boundaries of the two parcels of land according to the map on record. The said marking was done on 21<sup>st</sup> September, 2020, and a report was prepared on 25<sup>th</sup> September, 2020. That the Surveyor visited the ground in the presence of all the affected parties. That according to the Report, the Registry Index Map were overlaid That on one side, there was Makuyu/Kimorori /Block 3, and on the other side Loc 5/Gitura.
53. That the two schemes are separated by a Road and by a boundary line. That according to the document, there was no road traversing parcel No. Loc.5/Gitura/2317. That Land Parcel No. Loc.5/Gitura/2317, was opened subject to an amendment attributed to omission. That initially Loc.5/Gitura/2317, did not exist in the map as it had been omitted.
  54. Upon cross-examination by Counsel for the Plaintiffs, he admitted that there was a Register that was opened and there was an omission. That the omission was reported by Esther Wairimu Kariuki. That the procedure for amendment was followed.
  55. He also testified that Land Parcel No. Makuyu/Kimorori/Block 3/257, which was later subdivided in 2013, was next to the road. That land Parcel No. Loc.5/Gitura/396, was subdivided in 2014.
  56. That when the omission was realized, then land parcel No. 2317, was registered after preparation of the mutation to correct the omission. That when there is an omission, they go to the ground and inform all the parties. However, for this one, they did not go to the ground.
  57. On cross-examination by Counsel for the 1<sup>st</sup> Defendant, he testified that it was Mr. Kibiru, the District Surveyor who approved the Mutation. That the Road referred to in the report was Kenol-Murang'a Road. That according to the report, Makuyu/Kimorori Block 3 touches the Road.
  58. However, there were dots on Loc.5/Gitura/2317, which dots are marks from KENHA. That the Beacons are on the outer boundaries of land parcel No.2317. He also testified that land Parcel No. 2317, existed as a subdivision of Land Parcel No. 396. Further, that there was no exit for parcels of land No. 4788-4791, and they seem to be landlocked. It was his further evidence that Land Parcel No. 2317, was not a Road reserve, but has no official Road passing through it.
  59. After the close of Viva Voce evidence, parties through their respective advocates filed and exchanged Written Submissions.
  60. The Court has now carefully considered the pleadings herein, the available evidence and exhibits produced in Court and the rival written submissions plus the cited authorities and finds as follows; -
  61. There is no doubt that the 1<sup>st</sup> Plaintiff, Teresia Wanjiku Kamau was the initial proprietor of Land Parcel No. Makuyu/Kimorori Block 3/257.
  62. There is also no doubt that the said parcel of land was subdivided into four portions in the year 2013, and the resultant parcels of land were Makuyu/Kimorori Block 3/4788-4791. However, the Land Parcel No. Makuyu/Kimorori Block 3/4791, was later sold to the 2<sup>nd</sup> Plaintiff herein and thus the 2<sup>nd</sup> Plaintiff is the registered owner of Makuyu/Kimorori Block 3/4791.
  63. There is also no doubt that the 1<sup>st</sup> Defendant John Ngugi Kabogo is the registered owner of Loc.5/Gitura/2317. This parcel of land is allegedly a resultant subdivision of Loc.5/Gitura/396, which was initially owned by one Esther Wairimu Kariuki, who had inherited the same from her late husband.
  64. It is also not in doubt that in the year 2020, there arose a dispute over an access to the main Road being Kenol-Murang'a Road between Teresia Wanjiku Kamau, the 1<sup>st</sup> Plaintiff herein and the 1<sup>st</sup> Defendant



John Ngugi Kabogo. It was alleged that the 1<sup>st</sup> Plaintiff had constructed an illegal carwash on the 1<sup>st</sup> Defendant's parcel of Land Loc.5/Gitura/2317, that fronts the main road, Kenol-Murang'a Road.

65. This dispute was reported to DCIO Makuyu Police Station, and later the 1<sup>st</sup> Plaintiff was charged at Kigumo Law Courts, with a Criminal case relating to possession of this parcel of land. From the available evidence, it was not clear what is the outcome of the said Criminal Case, but PW1 told the Court that the case was still ongoing.
66. In the said Criminal Case, 1<sup>st</sup> Defendant, John Ngugi Kabogo is a witness for the state. The Plaintiffs have alleged that their parcels of Land border Kenol-Murang'a Road, without any other land in between as per the Registry Index Map Sheet 6. However, the Plaintiffs, later noted in the year 2020, that Loc.5/Gitura/2317, owned by the 1<sup>st</sup> Defendant completely blocked the four parcels of Land belonging to the Plaintiffs thus rendering the said parcels of land inaccessible. The Plaintiffs have urged the Court to find that the registration of Loc.5/Gitura/2317, was fraudulent and the same should be revoked.
67. The Plaintiffs are the ones who have alleged. It is trite that "he who alleges must prove" as provided by Sections 107 and 109 of the [Evidence Act](#).
68. Therefore, the Plaintiffs herein had the onus of calling sufficient evidence to discharge the burden of proof placed upon them.
69. The Plaintiffs have alleged that being the owners of Land Parcels No. Makuyu/Kimorori/Block 3/4788 – 4791, the said parcels of land bordered the Kenol-Murang'a Road; without any other parcel of land in between. The Plaintiffs relied on Registry Index Map 6.
70. They alleged that however, the 1<sup>st</sup> Defendant fraudulently obtained title No. Loc.5/Gitura/2317, and the said parcel of land blocked their four parcels of land, which are now landlocked. These allegations have been denied by the Defendants.
71. After considering the available evidence and the undisputed facts, the Court finds the issues for determination are whether;
  - i. The subdivision and transfer of land parcel No. Loc. 5/Gitura/2317, to the 1<sup>st</sup> Defendant was fraudulent.
  - ii. Whether the title deeds, Maps, Mutation and registration of land parcel No. Loc.5/Gitura/2317, should be revoked and/or cancelled.
  - iii. Whether the Plaintiffs are entitled to the orders sought in the plaint.
72. Before the Court deals with the above issues, there is a legal issue that was raised by the 1<sup>st</sup> Defendant in his written submissions. The 1<sup>st</sup> Defendant submitted that the 2<sup>nd</sup> Plaintiff has no requisite locus standi to bring this suit against the Defendants. It was his submissions that though the 2<sup>nd</sup> Plaintiff filed a Trust Deed document, it was not clear whether the same was registered under the Registration of Document Act, Cap 285 or under "The Trustee (Perpetual Succession) Act, CAP 164 Laws of Kenya.
73. Further it was submitted that if the Trust Deed was only registered under the [Registration of Documents Act](#), then this 2<sup>nd</sup> Plaintiff is unincorporated body and can only sue through the names of its members or some of the members in a representative capacity.
74. The Court has considered the 1<sup>st</sup> Defendant Defence and noted that in Paragraph 3 of the said Defence, he stated that he was a stranger to Para 2 of the Plaint. Para 2 of the Plaint is where the 2<sup>nd</sup> Plaintiff is described as a Church Development Trust registered under the Charitable Trust Deed, in Kenya.



75. PW 2: Naomi Muthoni Mathenge gave evidence on behalf of the 2<sup>nd</sup> Plaintiff and stated that she is one of the Trustees of the Anglican Church of Kenya Wahundara Trust. She further alleged that the said Trust is registered under “The *Trustees (Perpetual Succession) Act*” at the Lands registry. Though she told the Court that the Trust has the power to sue and be sued, she did not have any documents to prove that.
76. Indeed, the Court has perused the Trust Deed document and is not clear whether the same has been registered under “The *Trustees (Perpetual Succession) Act*” or not.
77. However, it is clear that the Trust Deed Document was registered at the Lands Registry. PW2...had further stated that without the document to show authority to sue, she was not sure if the Trust had power to sue or not sue on its own name.
78. Further, it is clear that land parcel No. Makuyu/Kimorori/Block 3/4791, is in the name of the 2<sup>nd</sup> Plaintiff. Therefore, the 2<sup>nd</sup> Plaintiff has capacity to own property under its own name.
79. Though the issue of the 2<sup>nd</sup> Plaintiff capacity has been brought out in the submissions and was also mentioned in a very subtle manner during cross-examination of PW 2, this is a significant point of law which needs to be settled before the disputed facts can be determined. The Court will borrow from the holding of the Court in the case of *Peter Taracha & Another vs International Pentecostal Holiness Church & Another* (2016)eKLR where the court held inter alia that;
- “.....it is important to appreciate that lack of capacity to sue or be sued is a weighty matter that goes to the root of the validity of the proceedings before the Court. It is not a mere procedural issue. The consequences of instituting a suit without legal capacity to sue are grave. Such a suit is incompetent and any proceedings flowing from it are a nullity in law”
80. Given that capacity to sue is a grave issue, then the Court will proceed to interrogate whether the 2<sup>nd</sup> Plaintiff herein has capacity to bring this suit or not.
81. As already noted above, the 2<sup>nd</sup> Plaintiff is the holder of Makuyu/Kimorori/Block 3/4791. The 2<sup>nd</sup> Plaintiff has attached a Trust Deed document for ACK Wahundara Church Development Trust dated 14<sup>th</sup> September 2010. The same was received at the Lands Registry on 7<sup>th</sup> October, 2010. The Plaintiff's described the 2<sup>nd</sup> Plaintiff as a Church Trust registered under the Charitable Trust Deed.
82. It is clear that in Kenya, Charitable Trust may be established by way of Trust Deed, such as the 2<sup>nd</sup> Plaintiff was established. The said Trust Deed is then stamped and registered at the Lands Registry under the Registration of Document Act Cap 285, Laws of Kenya. There is evidence of such stamping and registration on the face of the Trust Deed as produced by the 2<sup>nd</sup> Plaintiff. The effect of registration of the Trust Deed under Cap 285, is that the Trust that is established in unincorporated Trust which does not have any distinct legal personality of its own. Such unincorporated Trust can only own property, enter into contracts or do any other act which has legal implications in the name of its Trustees, but not in its own name, that is in the of the Trust. Thus unincorporated Trust does not have a separate legal capacity of its own separate from its Trustees. If the 2<sup>nd</sup> Plaintiff is an unincorporated Trust, then it has no capacity to sue.
83. The other way that a Charitable Trust can be registered is under “The *Trustees (Perpetual Succession) Act*”. The registration under this Act gives the Trust a separate legal status or capacity of its own separate from the Trustees. Then such Trust can own property in its own name, can enter into contact or can sue and be sued in its own name. The Trust under such registration has a distinct legal identity.



84. PW 2 alleged that the 2<sup>nd</sup> Plaintiff has been registered under “The *Trustees (Perpetual Succession) Act*”. However, no document was produced to show such registration or incorporation of 2<sup>nd</sup> Plaintiffs as a legal entity. If the 2<sup>nd</sup> Plaintiff is registered under “The *Trustees (Perpetual Succession) Act* Cap 164, Laws of Kenya, then it has capacity to sue.
85. The 1<sup>st</sup> Defendant is the one who has alleged that the 2<sup>nd</sup> Plaintiff has no capacity to bring this suit. Then the 1<sup>st</sup> Defendant has the onus of proving such averment. Though there is no certificate of incorporation of the 2<sup>nd</sup> Plaintiff and the Trust Deed does not indicate whether the same is registered under “The *Trustees (Perpetual Succession) Act*” or not, it is evident that Land Parcel No. Makuyu/Kimorori/Block 3/4791 is registered in the name of 2<sup>nd</sup> Plaintiff. It is a registration requirement that for a Trust to be registered as such a proprietor, documents of Incorporation much have been availed.
86. The Land Registrar who was DW 4 did not challenge the capacity of 2<sup>nd</sup> Plaintiff to own property. The Court then will have no reasons to doubt that 2<sup>nd</sup> Plaintiff has capacity to own property on its name and thus it is registered under “The *Trustees (Perpetual Succession) Act*” as per the evidence of PW 2 Naomi Muthoni. The Court finds that being a legal entity, with capacity to own property in its own name, then 2<sup>nd</sup> Plaintiff has capacity to sue and can be sued on its own name. Therefore, the 2<sup>nd</sup> Plaintiff herein has capacity to bring this suit against the Defendants.

**i. Whether the subdivision and transfer of land parcel No. Loc.5/Gitura/2317 to the 1<sup>st</sup> Defendant was fraudulent, illegal and/or unprocedural?**

87. There is no doubt that the 1<sup>st</sup> Defendant is the registered owner of the above suit property Loc.5/Gitura/2317, having been registered so on 23<sup>rd</sup> March 2016. It is evident that he purchased the said parcel of land from one Esther Wairimu Kariuki, who was registered so on 29<sup>th</sup> September, 2015. Further it is evident that the Plaintiffs had their suit properties registered in the year 2013. The Plaintiffs and the 1<sup>st</sup> Defendant have certificates of titles in their respective names.
88. Thus, as provided by Section 26(1) of the *Land Registration Act*, then as the registered owners, the Plaintiffs and the 1<sup>st</sup> Defendant are deemed to be the absolute and indefeasible owners of their respective parcels of land. However, such ownership can be challenged as provided by Section 26(1) (a) & (b) of the said Act. More specifically, such challenge can arise if the certificates of title were acquired through fraud, misrepresentation, or if they were acquired illegally, unprocedurally, irregularly, or through corrupt scheme.
89. The Plaintiffs have alleged that the 1<sup>st</sup> Defendants parcel of land was acquired either through fraud or illegally, and therefore the said parcel of land should be deregistered and the certificate of title impeached. The Plaintiffs relied on the case of *Elijah Makeri Nyag'wara Vs Stephen Mungai Njuguna & Another* (2013) eKLR, where the court held;
- “Nevertheless, the fact of the matter is that now the 1<sup>st</sup> defendant is the registered proprietor of the suit land. To enable me cancel his title as sought by the plaintiff, I have to be convinced that the provisions of Section 26 of the *Land Registration Act*, No.3 of 2012, have been met. Section 26 is drawn in the following terms.
90. Section 26. (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—



- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
  - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
91. As may be observed, the law is extremely protective of title and provides only two instances for the challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
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  93. The Defendants denied the Plaintiffs allegations and 1<sup>st</sup> Defendant submitted that he legally bought the suit property from one Esther Wairimu Kariuki, after carrying out due diligence and confirming the beacons of the said parcel of land.
  94. The Plaintiffs produced evidence to show that the initial parcel of land owned by the 1<sup>st</sup> Plaintiff was land parcel No. Makuyu/Kimorori Block 3/257, and that the said parcel of land bordered Kenol-Murang’a Road. This evidence was confirmed through production of Registry Index Map(R.I.M), Sheet No. 6 for Makuyu/Kimorori Block 3(Kagaa)
  95. There was also evidence that this block of land was initially owned by Kagaa Cooperative Society, and the block of the Land was Makuyu/Kimorori Block 3/10720.
  96. Further, the Plaintiffs produced Mutation Form that were approved for subdivision of Makuyu/Kimorori Block 3/257, dated 12<sup>th</sup> August 2013. The said Mutation Form shows that these subdivisions boarded Kenol-Murang’a Road. It is very clear that their subdivisions were carried out in the year 2013, and the Plaintiffs were issued with the title deeds after the said subdivisions were registered by Murang’a Land Registrar, 2<sup>nd</sup> Defendant herein. The Land Registrar Murang’a produced Green Cards for the said resultant titles after the subdivision of land parcel No. 257.
  97. It was also evident that in the year 2015, one Esther Wairimu Kariuki who owned land parcel No. Loc.5/Gitura/396, allegedly sold land parcel No. Loc.5/Gitura/2317, to 1<sup>st</sup> Defendant. The said land parcel No. 2317 was to be hived from Land Parcel No. 396. There is a sale agreement dated 5<sup>th</sup> November 2015, produced by the 1<sup>st</sup> Defendant to that effect. It is also evident that land parcel No. Loc.5/Gitura/2317, is reflected on Registry Index Map sheet No. 5. From the available evidence, the block of land that bears registration of Makuyu/Kimorori Block 3, is on one side of Kenol-Murang’a Road and Loc.5/Gitura block, is on the other side of the said Road. These are two separate blocks of land or subdivision schemes each with a separate Registry Index Map sheet.
  98. The Plaintiffs alleged that the 1<sup>st</sup> Plaintiff got registered as the owner of land parcel No. Makuyu/Kimorori /Block 3/257, in the year 1988. That all that time, the said land bordered Kenol-Murang’a Road, with provision of a Road reserve. That there was no any other land between her parcel of land and the Kenol-Murang’a Road. The Plaintiffs produced a letter dated 4<sup>th</sup> May 2009, from the Ministry of Lands, which was written by Chief Engineer Roads and the said letter indicated that; “There was no parcel of land between LR No. 10720 and C71”



99. The 1<sup>st</sup> Plaintiff parcel of land was hived from LR No. 10720 and C71 is the Kenol-Murang'a Road. DW 2 Felix Orina stated that even after KENHA replaced the Ministry of Roads, all the records kept by the Ministry of Roads remained the reference to the work carried by KENHA.
100. From the available evidence, it is not in doubt that land parcel No. 2317, after it was curved out and registered, it crossed to the other side of the Road and fell on the lower side of the four parcels of land owned by the Plaintiffs and which parcels were initially bordering Kenol-Murang'a Road. However, with the new development of creation of land parcel No. 2317, the four parcels of land became landlocked.
102. The Land Registrar Murang'a who was DW4, testified that land parcel No. 2317, was placed where it is now after the amendment to Registry Index Map Sheet No. 5. The Plaintiffs parcels of land are in Registry Index Map Sheet No.6.
103. Though the Defence case is that the Registry Index Map Sheet (R.I.M), No. 5, was amended, the Plaintiffs have alleged that the said amendments were done without their knowledge. They further alleged that though they were always in possession and occupation of their parcels of land which bordered the Kenol-Murang'a Road, the Plaintiffs were not informed of the said amendment, which amendment affected their parcels of land.
104. It is trite that when an action is taken, which action would affect another party, that affected party should be notified of the said action. This was the finding in the case of *Beatrice Wairimu Kiiru vs Director of Surveys & 2 others* (2011) eKLR, where the Court held;
- “No doubt the Director of Surveys is empowered under the Registered *Land Act* to do certain things in respect of the registered land. For instance, Section 18 of the Act vests in the Director of Surveys the power to prepare and thereafter maintain the registry map for every registration district. Similarly, he has the power to alter the registry map and to prepare new editions if required so to do by the Registrar and with the agreement of all parties concerned.
105. Section 19(1) specifically provides that:
- “19(1) Where the Registrar is maintaining the registry map he may, or in any case he may require the Director of Surveys to, correct the line or position of any boundary shown on the registry map with the agreement of every person shown by the register to be affected by the correction, but no such correction shall be effected except on the instructions of the Registrar in writing in the prescribed form, to be known as a mutation form and the mutation form shall be filed.”
- (Emphasis supplied)
106. The main issues in this matter are whether the Director of Surveys exceeded his powers or whether he was in contravention of the laws of the land and finally whether he failed to comply with the rules of natural justice when he made the decision to amend the index map. I reiterate that the Director of Surveys has powers to alter the registry map, subject to clearly stated conditions.
107. For him to make those adjustments, there must be instructions by the Registrar in the form of mutation forms. Secondly, the alterations envisaged must relate to correction of the line or position of any boundary shown on the registry map. Thirdly, any correction that is likely to affect any person's interest shown by the register can be affected only with the agreement of that person.”
108. Since the changes undertaken by the Land Registrar and Surveyor to amend the Registry Index Map(R.I.M), Sheet No. 5, affected the Plaintiffs and the position of their parcels of land in regard to



Kenol- Murang'a Road, then they ought to have been notified. See the case of [Stephen Onyango Oloo vs Nelson Makokha Kaburu & 4 Others](#) Civil Appeal No.83 of 2014, where the Court held;

“Given that any proposed changes in the boundaries inevitably affected the parties herein, the Land Registrar ought to have notified the respondents of the impending boundary alteration or adjustment, so as to provide them with an opportunity to defend or interrogate the proposed changes to the boundary positions. There is no evidence to show that the respondents were consulted as interested parties, owners or occupiers for the purposes of fixing or adjusting the boundaries of the concerned parcels. The respondents were not accorded any opportunity to be heard prior to adjustment of the boundaries affecting their parcels 62 and 63”

109. It is evident that the amendment to Registry Index Map Sheet (R.I.M), No. 5, affected the Plaintiffs and thus the concerned amending parties ought to have notified the Plaintiffs herein. However, there was no evidence that such notification was done. It was also the evidence of the Land Registrar Murang'a, that amendment to Registry Index Map is done after a complaint by the land owner on any omission done. The land owner herein is Esther Wairimu Kariuki, who initially owned this Land Parcel No. 2317, before selling it to 1<sup>st</sup> Defendant. The said Esther Wairimu Kariuki, was not called as a witness in this Court to explain how she noted the omission and later followed it with a complaint and how the survey work was done.
110. The said Esther Wairimu Kariuki, initially owned land parcel No. Loc. 5/Gitura/396, which was subdivided into various parcels of land being Land Parcels Nos. 2035-2040 & 2317. However, the Land Registrar did not confirm in her evidence that her office had authorized the subdivision of land parcel No. Loc. 5/Gitura/396, into the above parcels of land. No Mutation Form for the subdivisions of Land Parcel No. Loc.5/Gitura/396, was produced nor the Green Cards for the resultant subdivisions. However, the Land Registrar confirmed that Land Parcel No. Makuyu/Kimorori/Block 3/257, was subdivided into four parcels of land and that her office approved the said subdivisions. She also produced the Green Cards for the resultant title deeds for Makuyu/Kimorori/Block 3/4788-4791.
111. As the Court had observed earlier, when the subdivisions were done in 2013, the resultant subdivisions were bordering Kenol-Murang'a Road. Further the Plaintiffs parcels of land are in a different block or scheme from Land Parcel No. Loc.5/Gitura/2317. It was not clear how a parcel of land on one block found its way into another block of land, given that the Road Engineer had in the year 2009, stated that there was no other parcel of land between Land Parcel No. 10720 and C71, which is Kenol-Murang'a Road, Again the Green Card for Loc.5/Gitura/396, was not produced to show whether indeed after the subdivision of the said parcel of land, it gave rise to Loc.5/Gitura/2317.
112. The Mutation Form dated 29<sup>th</sup> September 2015, show subdivision of Loc. 5/Gitura/396, to only one parcel being 2317, and not the other parcels being land parcels No. 2035 – 2040. Further the Green Card produced by the Land Registrar for 2317, only shows that it was registered to Esther Wairimu Kariuki on 29<sup>th</sup> September 2015, after Registry Index Map(R.I.M), amendment subject to omission, but did not show that it was a subdivision of land parcel No. 396/Gitura.
113. Further ,even if the 1<sup>st</sup> Defendant has alleged that he bought the said parcel of land from Esther Wairimu Kariuki, as per the Sale Agreement dated the said 5<sup>th</sup> November 2015, the said Esther Wairimu Kariuki as earlier observed by the Court did not appear in Court as a witness to give evidence on how Land parcel No. 2317, was hived out of her Land Parcel No. 396, and how the said parcel of land was omitted from the Registry Index Map(R.I.M), and later how Registry Index Map(R.I.M), sheet No.5 was amended. Did she raise any complaint? How did this land parcel No. 2317, find itself in an area where there was no other land between block 10720 and C71?



114. Flowing from the above evidence, it is evident that though the 1<sup>st</sup> Defendant is the registered owner of the land parcel No. Loc.5/Gitura/2317, it is clear that the said parcel of land has blocked the Plaintiffs access to Kenol-Murang'a Road. This is so because the 1<sup>st</sup> Defendant said parcel of land has extended to an area that is supposed to be a Road Reserve separating the Plaintiffs land parcels and the Kenol-Murang'a Road. The Plaintiffs parcels of land had bordered this Kenol-Murang'a Road in 1988, and even in 2013, after the subdivision of Land Parcel No. Makuyu/Kimorori/Block 3/257.
115. Without any explanation of how the 1<sup>st</sup> Defendant parcel of land which was registered in 2015, after an amendment to RIM 5 found itself in a separate block of land being Makuyu/Kimorori Block 3, the Court finds that the 1<sup>st</sup> Defendant's registration of this parcel of land was therefore, irregular, illegal was done unprocedurally and/or through fraud or misrepresentation.
116. Therefore, it is not enough for the 1<sup>st</sup> Defendant to dangle the certification of title as confirmation of ownership of this parcel of land. See the case of Munyu Maina vs Hiram Gathuha Maina (2013) eKLR.

“We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register”.

117. Having found that the 1<sup>st</sup> Defendant certificate of title which was acquired in the year 2016, after the Plaintiffs had already acquired theirs in 2013, and having found that that it was acquired irregularly, illegally, unprocedurally or through misrepresentation, the Court finds that the same is a candidate for revocation and/or cancellation.
118. Guided by Section 80(1) of the *Land Registration Act*, which provides that the Court may order rectification of a register by directing that any registration be cancelled, this court proceeds to cancel and/or revoke the title deed held by the 1<sup>st</sup> Defendant herein.

**(ii) Whether the title deed, maps, mutation and registration of land parcel No. Loc. 5/Gitura/2317 should be cancelled and/or revoked?**

119. From the available evidence it is evident that land parcel No.Loc.5/Gitura/2317, was registered in the year 2015, as per the copy of Green Card produced by the Land Registrar, Murang'a. The said parcel of land was initially registered in the name of Esther Wairimu Kariuki. It was later transferred to the 1<sup>st</sup> Defendant, John Ngugi Kabogo on 23<sup>rd</sup> March 2016. The copy of the Green Card is clear that Registry Index Map sheet No. 5 was amended subject to omission. The Court find that the said amendment was done without Knowledge of the Plaintiffs herein. The certificate of title was issued to the 1<sup>st</sup> Defendant after Mutation Form had allegedly been prepared dated 29<sup>th</sup> September, 2015, in respect of subdivision of Loc.5/Gitura/396. The said Mutation Form was produced by the surveyor on their bundle of documents. In the said Mutation Form, Land Parcel No. Loc.5/Gitura/396 is shown to have given rise to land parcel No. 2317 only.
120. However, it is evident, from the evidence of the Land Registrar that Land Parcel No. 396, was subdivided and the resultant subdivisions were land Parcels No. 2035 – 2040 & 2317. Further, there was no Mutation Form produced in court to show the above subdivisions. The Mutation Form produced in Court is in respect of land parcel No. 2317 only, and is not reflecting the proper



subdivision of land parcel No. 396. The Court finds the said Mutation Form to be irregular and /or unprocedural.

121. There are also maps that have been produced to show that land parcel No. 2317, had been registered and was placed on the side of the Road that was bordering the Plaintiffs parcel's of land. As the Court noted earlier, this positioning of land parcel No. 2317, between the Kenol-Murang'a Road and the Plaintiffs parcels of land was not brought to the attentions of the Plaintiffs. No explanation was given as to why the Plaintiffs who were affected by the said positioning of Land Parcel No. 2317, to where it is now, were not notified the said amendment or brought to their attention since the Plaintiffs were affected by the said positioning. The Court finds that this action was done in a suspicious manner and thus illegal and/or irregular.
122. The above Mutation Forms and the maps led to the registration of certificate of title for land parcel No. Loc.5/Gitura/2317. The process that led to this registration has been found to be irregular, unprocedural and illegal. Therefore, the Court finds that the resultant certificate of title for Loc.5/Gitura/2317, is irregular, null and void. For the above reasons, the Court has gone ahead and cancelled and/or revoked the title held by the 1<sup>st</sup> Defendant, as determined in issue No.1.
123. Having found that the documents used to register land parcel No. 2317, are irregular, then the Court finds that the certificate of title resulting from the said documents cannot stand.
124. From the above reasons, the Court proceeds to cancel and revoke the title deeds, maps, mutation and registration of land parcel No. Loc./Gitura/2317.

### **iii. Whether the Plaintiffs are entitled to the orders sought in their claim dated 30<sup>th</sup> April, 2021?**

125. The Plaintiffs have sought two substantive prayers being prayer No.(a), (b) & (d).
126. Prayers No. (a) is on a declaration that the subdivision and transfer of Land Parcel No. Loc.5/Gitura/2317, to the 1<sup>st</sup> Defendant was fraudulent as the said area was a Road reserve. The 1<sup>st</sup> Defendant submitted that the Plaintiffs cannot be granted this prayer as it is an omnibus prayer which seeks varying and devastating prayers.
127. However, the issuance of certificate of title over the said parcel of land which was positioned or placed where it is now, after an amendment, has varying and devastating effects upon the Plaintiffs too.
128. The Plaintiffs had been in possession and use of their parcels of land from 1988 and later on 2013. Their parcels of land bordered the Road reserve to Kenol- Murang'a Road, and therefore their parcels of land had direct access to Kenol-Murang'a Road.
129. However, the registration of Loc.5/Gitura/2317, had the effect of causing their said parcels of land to be inaccessible and thus landlocked. The Court had observed earlier that the Chief Road Engineer had through a letter dated 4<sup>th</sup> May 2009, indicated that there was no any other land between C71 which is Kenol- Murang'a Road and Land Parcel No. 10720, where the Plaintiffs land parcels are located. With the amendment done to Registry Index Map Sheet No. 5, without involvement of the Plaintiffs, the above situation changed, and the Plaintiffs parcels of land became inaccessible.
130. Further it is evident that the 1<sup>st</sup> Plaintiff was arrested and charged in Kigumo Law Courts over possession of the above stated portion of land.
131. Having found that the 1<sup>st</sup> Defendant title cannot stand, then the Court finds and holds that the Plaintiffs are entitled to the prayers No (a) & (b) of their claim.



132. However; the Plaintiffs are not entitled to prayer No.(c) of directing Officer Commanding Station, Murang'a Police Station to serve and supervise the Orders. This order cannot be issued at this juncture as there is no evidence that the Defendants would fail to obey the Court orders.
133. Having now carefully considered the available evidence, the Court finds that the Plaintiffs herein have proved their case on the required standard of balance of probabilities.
134. Consequently, the Court enters judgment for the Plaintiffs against the Defendants herein jointly severally as prayed in the Plaint dated 30<sup>th</sup> April 2021, in terms of prayers No. (a), (b) & (d).
- Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 31<sup>ST</sup> DAY OF MAY, 2022.**

**L. GACHERU**

**JUDGE**

**Delivered virtually in the presence of; -**

Kuiyaki - Court Assistant

M/s Muthoni for the Plaintiffs

Mr Gichuki for the 1<sup>st</sup> Defendant

Mr Njagi H/B for Mr Mwambonu for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants

**L. GACHERU**

**JUDGE**

**31/5/2022**

