



REPUBLIC OF KENYA



**Korir v Keter & another (Environment & Land Case 13 of 2013)
[2022] KEELC 2838 (KLR) (21 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 2838 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 13 OF 2013**

MC OUNDO, J

JULY 21, 2022

BETWEEN

DANIEL KIPNGETICH KORIR PLAINTIFF

AND

MARY KETER 1ST DEFENDANT

PETER TANUI 2ND DEFENDANT

JUDGMENT

1. Vide a Complaint dated the February 21, 2013 and amended on the 9th March 2016, the Plaintiff herein sought for orders of eviction against that the Defendants by themselves, their agents, servants, employees or otherwise from land parcel No. Kericho/Kabianga/2498. The Plaintiff further sought for costs of the suit and any other relief that the court may deem fit to grant.
2. In response to the Plaintiff's Complaint, the Defendants herein filed their joint Defense and Counterclaim dated the 4th April 2013 which was amended on the April 18, 2016 and further amended on October 24, 2019 wherein they sought for the cancellation of titles No. Kericho/Kabianga/2496-2499 seeking that the same reverts to the original title No. LR Kericho/Kabianga/1548 registered in the name of Susan Tabelga Targesui Keter. They also sought for costs of the Counterclaim and any other relief that the court may deem just and expeditious to grant.
3. Having complied with the provisions of Order 11 of the *Civil Procedure Rules*, the matter proceeded for hearing on the February 12, 2018 wherein the Plaintiff, Daniel Kipngetich Korir, who testified as PW1, gave his evidence to the effect that he came from Kapsuser in Kericho County and was a businessman. That he had recorded his statement in respect of the matter on February 21, 2013 and wished the same to be adopted as his evidence in chief. That in the year 2012, he had entered into a written sale agreement with one Sarah Keter for the sale of 3 acres of land comprised in parcel No. Kericho/Kabianga/2498 for a consideration of Kshs. 3 million. He produced the original sale



agreement as Pf exh 1 and proceeded to testify that the agreement had been signed by M/s Steven Oboso Advocate based on a Power of Attorney donated by Sarah Keter who was resident in the United States of America. He also produced a copy of the Power of Attorney as Pf exh 2. He testified that he had paid the full purchase price of Kshs. 3 million wherein he had deposited Kshs. 2.8 million into Sarah' account at Standard Chartered Bank and given Kshs. 200,000/= to her agent. He produced a copy of the bank deposit slip as Pf exh 3(a & b)

4. The Plaintiff proceeded to testify that thereafter they had gone to the Lands office and after meeting all the conditions, he had been issued with a title deed which copy he had produced as Pf exh 4 (original shown to court). His testimony was that after he had obtained the title deed, he had received a letter from Advocate Steven Oboso authorizing him to take possession of the land. He produced the letter as Pf exh 5. That he was to meet the family members of Sarah Keter but they had postponed the meeting on two occasions.
5. That he had however taken possession of the parcel of land wherein he had started cultivating the land which had already been fenced. That it was in the course of cultivating the land using a tractor that one Peter Tanui had gone to the land while accompanied with police officers who had informed him that there was a dispute over the parcel of land. They had then ordered him to stop cultivating and present himself to their office with documents. He had obliged wherein the officers had promised to get back to him after 2 weeks but this did not happen. That was when he had decided to institute suit.
6. His evidence was that at the time he had entered into the agreement for sale of the suit land, he had not been aware of any dispute over it. That he had conducted a search and had confirmed that the land was registered in the name of Sarah Keter. He produced a copy of the certificate of official search dated June 19, 2013 as Pf exh 6 and the copy of the green card as Pf exh 7. He also produced the minutes of the Land Control Board indicating that they had consented to the transfer as Pf exh 8.
7. The Plaintiff's evidence was that since he had been stopped from cultivating the land, he had been unable to access the same but had noticed that there was a permanent house built therein as well as tea bushes planted therein.
8. That the Defendants had claimed to have been given the land, the 1st Defendant being Sarah's sister while the 2nd Defendant Peter was Sarah's nephew. That one Mary had been the one who had built the house on the suit land. He sought for the Defendants to be evicted from the suit properly and thereafter be restrained from using it.
9. On cross examination, the Plaintiff confirmed that he had bought the suit land from Sarah Keter. That the sale agreement had been drawn by Mr. Steven Oboso Advocate who was selling the land on behalf of Sarah. That he had had been informed by the CID officers that there was a dispute over the land. That he was not aware that Sarah was under investigation by the CID.
10. He also confirmed that according to the green card, Sarah had obtained the land from Susana Tabelga Keter who was the 1st Defendant's mother in law. That according to the green card, a caution had been lodged over the property on 7th December 2009 wherein he had bought the land in the year 2012.
11. He stated that he did not know whether or not Ruth Soi had the Power of Attorney donated to her by Tabelga and went on to state that he had never stayed on the suit property but at the time of the purchase the same had been vacant. That the 2nd Defendant lived on a separate portion of land and that he was not aware that Sarah was holding the title in trust for the Defendants who had their own parcels of land.



12. He confirmed that the 1st Defendant was currently staying on the suit property although he had no documentary evidence to show that there was a house and tea bushes on the suit property.
13. When re-examined, the Plaintiff reiterated that at the time he had conducted a search on the suit land, there had been no caution. That later he had been informed that the entry regarding the caution had been made by mistake. His evidence was that Peter (2nd Defendant) lived on a totally different parcel of land known as Kericho/Kabianga/2496 which did not border the suit land, whereas Mary's (1st Defendant) parcel of land was Kericho/Kabianga/2497.
14. The second witness, Stephen Kennedy Oboso Advocate, testified that he lived in Kericho Township and was an Advocate in private practice. That he had recorded his witness statement on September 12, 2013 which he wished to be adopted as his evidence in chief. That he had also sworn an affidavit on July 21, 2013 herein produced as Pf Exh 9. He also confirmed that he knew the Plaintiff and that he had been given a Power of Attorney by Sarah Keter to obtain consent of the Land Control Board, sell and transfer the parcel of land L.R NO. Kericho/Kabianga/2498. That indeed he had obtained the consent wherein he had sold and transferred the parcel of land to the purchaser.
15. Upon being cross-examined, the witness confirmed that at paragraph 5 of his affidavit, he had deponed that there had been an error in applying for the consent to the Land Control Board. That he had applied for consent in respect of Kericho/Kapsuser/2498 instead of Kericho/Kabianga/2498. He also stated that he could not remember whether the error had been corrected. That he had attached a copy of the title that was being transferred to the application. He also confirmed that at the time of the sale of the suit land, there had been nobody living on it as the owners resided in the United States of America. That he was transferring the entire title so there was no need for a survey and that he did not know if the land was fenced.
16. During his re- examination, Counsel reiterated that according to the sale agreement, the property that was being sold was L.R No. Kericho/Kabianga/2498 and that that had been the title that had been transferred wherein the Plaintiff had received a title to the said parcel of land. The Plaintiff thus closed its case.

Defense case

17. Mary Chepngeno Keter, the 1st Defendant herein testified to the effect that she hailed from Changoi road trading center, Kericho County and was a peasant farmer. That she had been sued by the Plaintiff on allegations that she had trespassed into his land parcel No. Kericho/Kabianga/2498, land which he had bought from Sarah Chepngeno Keter who was her sister in law. That she believed on land parcel No. Kericho/Kabianga/1548 which was registered in the name of her mother in law Susan Tabela Targesui. She confirmed that land parcel No. 1548 gave rise to land parcel No. 2498 after subdivision which also gave rise to land parcels Nos. 2496, 2497 and 2499.
18. That the subdivision was only on paper as it had not taken place on the ground. That she had lived on that land since 1982 when she got married there and that Sara Chepngeno had caused the subdivision which took place on March 26, 1993.
19. She also confirmed that she alongside others who were entitled to get a share of the land got nothing and that she did not know whether the owner of parcel No. 1548 knew it had been subdivided. She confirmed to having seen the Power of Attorney dated 5th April 2010 that was given to her sister in law - Ruth Soy Keter and which showed that the owner of parcel No. 1548, Susan Keter knew it had been sub-divided and wanted the land recovered. She marked the said power of attorney as in DMF1 1.



20. She proceeded to testify that there were green cards for the subsequent parcels of land which she produced as Df exh 1(a-d) That parcel of land No. 2496 had been registered in the name of Alfred Kiptanui Keter, parcel of land No. 2497 had been registered in the name of Tabelga Targesui, parcel of land No. 2498 had been registered in the name of Sarah C. Keter whereas and parcel of land No. 2499 was registered in the name of Tabelga Targesui. That none of the parcels of land had been registered in either her name or that of her husband. That there had been five member of the family who did not get anything.
21. She confirmed that she lived on the land where she had planted tea and that she had built her first house there in 1982 after she got married. That she had also built a semi-permanent house in the year 2010.
22. She confirmed further that Susan Tabelga Targesui was her mother in law and that the original land parcel No 1548 was registered to her name. She also testified that a caution had been placed on land parcel No. 2498 in the year 2009 by Ruth Soi, her sister in law who had also been given the Power of Attorney. That after the caution had been removed, the land had been sold to the Plaintiff in the year 2012. That it had been after she had received notice from Plaintiff to leave his land being parcel No. 2498, that she had written to the Land Registrar who had sought for documents from her. That she had complied and annexed the documents although she did not get the document for subdivision of land parcel No. 1548.
23. She confirmed that there had been an application for consent for parcel No. 2498 wherein the consent had been given. That there had been minutes and a transfer for parcel No. 2498. She produced the letter together with its attachment as Df exh 3 wherein she sought from the court to cancel all the subsequent titles so that the land could revert to registration No. 1548.
24. On cross examination, the witness testified that she had lived on the land parcel No. 1548 since 1982. That initially the owner of the land had left for United States of America in 1998 for a visit but when she reached there, she had decided to remain and reside there. She confirmed that the said owner of the original land was of sound mind and that she did not know when the land had been registered in her name.
25. She also confirmed that when the land was subdivided, the owner was still in Kenya and that she had not complained from 1993 when the land was subdivided up to 1998 when she went abroad.
26. She further confirmed that land parcel No. 2496 was registered to Alfred Kiptanui who was a brother to her husband and who also lived in United States of America (USA), that parcel of land No. 2498 was registered in the name of Sarah C. Keter who also lived in United States of America and who had sold it to the Plaintiff. That Sarah C. Keter had not been sued.
27. Her evidence in cross examination was that land parcel No. 1548 measured 14 acres while parcel No 2499 measured 3 acres. That she was claiming the said parcel of land in her own right and that the original owner had not complained. She confirmed that Df exh 3 (a –d) were documents in relation to the transfer for parcel No. 2498 and that the same described the land as Kericho/Kapsuser/2498. That Pf exh 9, was an affidavit pointing out the error to the effect that land parcel No. Kericho/Kabianga/2498 was captured as Kericho/Kapsuser/2498.
28. She also confirmed that the green cards depicted that Ruth Soi who could be availed in court lived in Sotik and that since she had been the one who had placed caution on land parcel No. 2498, that she was better placed to elaborate on the same. She also confirmed that the Land Registrar could also inform the court about the caution.



29. In re-examination, the witness stated that Susan never complained when she was still in Kenya that her land had been subdivided. That Alfred Kiptanui had also left for the USA in 1998 and that before he had went, he was living in Nakuru, and not on the suit land. She also confirmed that she had “brought” (sic) the suit on her own behalf. That her husband Richard Kipkurgat Keter also lived in the USA.
30. The 2nd Defendant Peter Kipkirui Tanui testified that he came from Seretut area and was a farmer. That he knew he was in court in respect to parcel No. Kericho/Kabianga/1548 which land was registered to his grandmother Susan Tabelga. That although the Plaintiff had informed them that the land had been sold, they had never seen any surveyor or subdivision on the land during the period they had been on the land. That it had been later that he had learnt that the land had been subdivided. His evidence was that the Plaintiff had filed suit around the year 2013, yet they had been living on the suit land from the year 1990. He confirmed that parcel of land No. 2496 measuring 2.0 hectares was registered to his father Alfred Kiptanui, whereas parcel No. 2497 measuring 1.60 hectares was registered to Tabelga Targesh his grandmother and parcel No. 2498 measuring 1.20 hectares was registered to his aunty Sarah C. Keter. That No. 2499 was still registered to his grandmother Tabelga and it measured 1.2 hectares.
31. His evidence was that after the subdivision, his siblings totaling 7 did not get land. That only two of his siblings Alfred and Sarah got land. That the 1st Defendant did not also get any land and that they still lived on the motherland No. 1548 as they had not been shown the boundary since on the ground, the land had not been subdivided. He testified that he had conducted a search in the year 2012 and also had a map showing that the land had not been subdivided. He marked the map as Df MFI 4.
32. He proceeded to testify that initially on November 5, 2018, there had another case filed in the lower court being case No. 292 of 2017 wherein there had been a burial dispute and the surveyor had been sent to the ground to confirm whether there were new boundaries consisting parcels No. 2494 and 2498 and 2499. That the boundaries were not existing on the ground apart from the old boundaries of parcel No.1548. He marked the surveyor’s report as DF MFI 5 and proceeded to testify that for the time they had lived on the land, there had been no survey done.
33. In cross examination, the witness confirmed that DMFI 5 had been conducted on October 23, 2018 although the report was dated 5th November 2018. That the case had been filed in the year 2013 after which the report was done. That the case in the lower court had involved a burial dispute where the complainant had wanted to ascertain whether there had been an encroachment on his land as he had claimed that the land upon which the burial was to be conducted was his. That parcel No. 1548 was subdivided into 4 portions back in 1993 wherein resultant parcels had been allocated to individuals as follows:
- i. Parcel No. 2496 was allocated to Alfred Kiptanui Keter
 - ii. Parcel No. 2497 remained in the name Susan Tabelga Targesui
 - iii. Parcel No. 2498 was allocated to Sarah Chepngeno Keter
 - iv. Parcel No. 2499 remained in the name of Tabelga Targesui
34. That there had been no complaint raised to the land allotted to Alfred Keter and neither had Alfred raised any complaint after the subdivision of the mother title. That stated he was not privy to the allocation and confirmed that at the time the subdivision was conducted, Tabelga Targesui his grandmother was still in Kenya. That she had left for the USA in 1998.



35. The witness stated that he was not aware whether or not the title was still in his grandmother's name. He also confirmed that Sarah Chepngeno Keter was his aunty her being a sister to his father. That she too lived in the USA. That a portion of land had been transferred to her name as she been entitled to the same since she was a sibling to his father.
36. He confirmed that he was not part of the subdivision and that he did not know the process which was undertaken until title was issued to Sarah Chepngeno. That he could not state with certainty that survey had been conducted and the title issued. He also confirmed that Sarah had not raised any complaint to the registration of the title to the Plaintiff and that if anything was wrong, as the registered owner of the land, she would have been the right person to raise a complaint. That his father was alive and lived on the original mother land and that he too was aware that the original land had been subdivided.
37. On being re-examined, the witness confirmed that his father who lived in the USA had become aware of the subdivision in 2012 when they were concluding the burial but had not been aware that he had been registered as proprietor of land parcel No. 2496. He confirmed that land parcel No. 2498 was registered to Sarah and that out of 7 family members, only two got shares to the original land. That he was not aware of the subdivision of land in 1993 and that although he had been at home after his high school, he did not see anybody on the land. He reiterated that Sarah had not raised any complaint to the registration of parcel No. 2498 to the Plaintiff and that the complaint had only come from her siblings.
38. The third defence witness, Johnathan Kibaibai Rogony who lived in Kipkelion and was a farmer and confirmed that he was a grandchild to Tabelga the registered proprietor of land parcel No. 1548.
39. That one time in the year 2012, after a girl known as Chemutai had died and he went for the burial, he had heard that the land was being sold wherein he had informed the purchasers that the said land was family land. That his grandmother had gone to the USA and he had not known that her land had been subdivided. That afterwards he had heard that some people had wanted to plough the land and when he had asked them to show him the sale agreement documents, they did not have the same.
40. His evidence was that he did not know who subdivided the land as his grandmother never called them as a family to subdivide the same. That after subdivision, he did not know who got the 4 titles, save for one title which was given to Daniel Korir. He was categorical that his grandmother did not subdivide the land but that the subdivision was caused by her daughter, because at the time his grandmother left, she had stated that the same should not be subdivided.
41. The witness was cross examined wherein he confirmed that he lived in Kipkelion, was born in Kipkelion in 1938 and he was now 83 years old. He also confirmed that his father had bought land near the suit land, and that in 1993 when the land was subdivided, he was in Kipkelion. That although he lay no claim to the land, yet it was family land that belonged to his grandmother Tabelga Targesui. That he could not tell whether she was the one who had subdivided the land although at the time when she had left, she had told them not to subdivide the same.
42. He further confirmed that he had not heard his grandmother, who was about 90 years old, complain about the subdivision of the land. That he was a clan member and that it had been Alfred Keter who lived in USA who had complained.
43. He also stated that his father used to advise the clan after he died, the clan leadership was handed down to him. That had Sarah been a resident at home, she would have be entitled to land but only if she used the proper channels to sub-divide the same. That his grandmother ought to have been asked to subdivide the land, then transfer it because he knew that Sarah had not followed the appropriate steps to subdivide the land. He was categorical that there had been no transfer.



44. The 4th witness, Richard Kipkurgat Keter testified that he was the 6th born son to Susan Tabelga Targesui and that he lived in Changoi road within Kabianga in Kericho. That he worked as an Environmental Service also known as housekeeping. That, Mary Keter the 1st Defendant was his wife while Peter Tanui the 2nd Defendant was his nephew. That land parcel No. Kericho/Kabianga/1548 which measured 15.85 acres belonged to his mother Susan Tabelga and that the same had been subdivided in 1993.
45. That in 1998 they had gone with his mother to the United states of America wherein in 2008 he had received a call from his wife inquiring whether they had sold land as there were people who wanted her to show them the land they had bought. That he had informed her that he would ask his mother who upon being asked screamed stating that she had not sold her land. That his mother had informed him that his sister Sarah who was a nurse at Kabarak High School had only informed her that the late President Daniel Moi had wanted to help her build a hospital on the land. That his mother had then given the title to Sarah, thinking that the late President would help her build the hospital.
46. That his mother had denied having subdivided the land wherein she had asked him to call his other sister Ruth Soi Keter who was a pastor so that she could talk to her. That thereafter, he had looked for his lawyer so that his mother could donate a Power of Attorney to stop the sale of the land. That indeed they had prepared the Power of Attorney herein marked as DMFI 1 which he had sent to Ruth together with the funds for the lawyer.
47. That upon the discovery of the events as they unfolded, Sarah had sent her child called Victor Nyakundi to go to his home and pick his mother and take her to Sarah's place. That when his mother refused to go, Victor had informed him that his mother had an appointment with her doctor wherein he had persuaded her to go to the doctor's appointment telling her that he would go to collect her later.
48. That his mother had accepted to go with Victor. That he did not know that they had planned to take away his mother. That after almost 1 month, he had received a letter from a family court in USA whilst in the company of his brother Alfred Kiptanui Keter and when they went to court, they had been informed that Sarah had now been given custody to take care of their mother. That order did not include administration of their mother's property. He marked the order dated 12th April 2011 issued by the family court in USA as DMFI 5. That they had further been informed that only Sarah could give them permission to see their mother whom they had not seen from the year 2008 to the time he was testifying. That Sarah also refused to receive their phone calls.
49. That subsequently, he had written a letter to the District Land Registrar Kericho dated 11th January 2012, herein produced as Df Exh. 6 seeking that the land should not be subdivided but that it be reversed back to parcel No. 1548. That they had also written another letter to the District County Commissioner Kericho dated 23rd January 2014 herein produced as Df Exh. 7, requesting that the subdivisions be cautioned. He sought for the court to find that the land, which had no beacons on the ground although the documents show a subdivision, was illegally sub divided as he, his wife and children his nephew Peter Tanui and his family were the ones who resided on the same. He confirmed that he did not have a land or share on the suit land.
50. In cross examination, he confirmed that Sarah Keter fraudulently caused the land to be subdivided in 1993. That his mother had informed him that the late president Daniel Moi had wanted to build a hospital on the land and that was why she had given Sarah the title with a hope that the hospital would be built. That he did not know what happened with the hospital plan. That his mother had been agreeable to the hospital being built and that had been the reason why she had given out the title. That after the subdivision, there were two (2) titles that were as a resultant of the subdivision



but now he could see a resultant four (4) titles. That his mother did not know anything about the resultant titles. That although he had known that the land had been subdivided in the year 2000, yet to date, nobody had been charged. That his brother Alfred had not filed any case in court. That as a complainant, his complaint was that he had not received any share of the land. That he just wanted the land to be returned to his mother's name.

51. That he had lived on the suit land since he was born, and out of the seven siblings, only two siblings had been given land. That Sarah was his sister. She was married and had a right just as he had to have a piece of their mother's land. That he did not file suit against Sarah and that although he had lived in the USA for 22 years from 1998 when he went, he had occasionally returned to Kenya where his family lived.
52. In re- examination, he confirmed that the 1st Defendant was his sister (sic) and that she (sic) had placed the caution on the land. That his complaint was not based on the fact that both his wife and Peter had refused to let the land be given to the buyers.
53. The 5th Defence witness Kibet Isaac, the County Surveyor Kericho County working with the Ministry of Lands & Physical Planning testified that he was in court pursuant to the orders of the court for him to present the report dated 5th November 2018 concerning land parcel Kericho/Kabianga/2498. He testified that there had been a site visit to the suit land wherein the scope of the report had been;
 - i. To ascertain its position on the ground.
 - ii. Ascertain the position of the grave site and homestead of one of the Defendants (Mary Keter)
54. That they had paid a visit on the October 23, 2018 wherein they had made the following findings;
 - i. The parcel in the RIM of Kabianga Sheet 17 was between parcels No. 2497 and No. 2499.
 - ii. That there was no distinct boundary between parcels No. 2496, 2497, 2498 and 2499.
55. That they had used a map to demarcate its position on the ground. That the grave site was 25 meters away from the boundaries demarcating parcel No. 2498 but fell onto parcel No. 2498. That the homestead belonging to Mary Keter was demarcated and found to be falling partly on parcel No. 2498 wherein the bigger share fell on parcel No. 2497. That they had drawn the sketch in figure 1 showing the representation. He produced his report as Df Exh. 8 and clarified that there were no distinct boundary on the ground.
56. In cross examination, the surveyor confirmed that the report was in relation to Civil Case No. 292/2017 in the lower court and that the information he had given was the one which the lower court had asked of him. That he had relied on RIM Kabianga Sheet 17 which map was kept by their office. That in the map, the 4 parcels of land were clearly demarcated.
57. He confirmed that a mutation had arisen out of the survey but that he would not be able to tell when the subdivisions were made because he did not have records at the moment. He went to further state that the survey work could not be determined as amendments could be done later. That after the survey work was done, and numbers given in the map would then be amended. That he had the final works from the order given.
58. DW6, John Maura, the Land Registrar, Kericho testified in respect to Kericho/Kabianga/1548 to the effect that they had only found subsequent numbers generating from land parcel No. 1548 that being 2496, 2497, 2498 and 2499. That in relation to the documents requested, they had only traced the certified copies of sub-sequent numbers, the transfer documents of 2498, the stamp duty valuation report of 2498, the consent to transfer of the same together with the requisite fee being the registration



and stamp duty fee. That he could not say with certainty that the records for parcel No. 1548 were not there, but that the records could not be traced.

59. That according to the certified copy of the green card to parcel No. 1548, it could be confirmed that the land had been sub-divided although he did not know the Registrar who had signed it. That they had been able to trace the mutation form and the survey record which had confirmed that Tabelga Targesui was the one who did the subdivision. The mutation had been signed by the Registrar in 1993 and the sub-division had been signed on March 26, 1993.
60. On cross examination the Land Registrar had confirmed that from the sub-division, new numbers arose being Nos. 2496-2499 and that they had been generated on March 26, 1993. That there had been a proper sub-division of the mother land according to the green card. That in relation to land parcel No. 2498, there had been two transfers thereafter. The 1st was to Sarah C. Keter in which the transfer had been effected on March 26, 1993. The 2nd transfer was done on October 24, 2012 to Daniel Kipngetch Korir. That the documents they had had been for the transfer from Sarah to Daniel which were the documents he had mentioned before. That the transfer, according to him was proper.
61. In re-examination, he had been referred to the mutation form of land parcel No. 1548 wherein he had confirmed that the same had been signed by Tabelga on March 26, 1993. That titles to all the subsequent parcels of land had been issued. Parcel No. 2496 issued on the August 10, 1993 to Alfred Kiptanui Keter, Title to parcel No. 2497 issued on 26th March 1993 to Tabelga, Title to parcel No 2498 issued to Sarah on 26th March 1993. That the subdivision and transfer was done on the same date and Title to parcel No. 2499 has not been issued. At the closure of the defence case, parties filed their written submissions to which I shall summarize as herein under:

Plaintiff's submissions.

62. The Plaintiff's submission was to the effect that their suit was premised on the fact that the Plaintiff being the registered proprietor of land parcel No LR No. Kericho/Kabianga/2498, the Defendants had without any legal justification, moved on the said parcel of land and chased away the Plaintiff, and his workers thus denying him the use and occupation of the land with the result that the Plaintiff had suffered loss and damage.
63. The Plaintiff further submitted that through his witnesses, he had established that Sarah Chepkoros had granted to M/s Steven Oboso Advocate a Power of Attorney that had been and registered on the May 17, 2010 as No. 1887. That it was through this Power of attorney, that he had purchased the suit land No LR No. Kericho/Kabianga/2498 which initially had been registered to the donor.
64. That pursuant to the execution of the sale agreement of the October 24, 2012, consent from the Land Control Board had been obtained wherein the transfer had been effected and the land was subsequently registered to the Plaintiff, as per the title deed herein produced in evidence. The Plaintiff had taken possession of the same.
65. That the suit land was one of the resultant parcels of land to the sub-division of parcel of land LR No. Kericho/Kabianga/1548 in the year 1993, and wherein parcel of land No. Kericho/Kabianga/2497 had remained in the name of the original owner one Tabelga Targesui, No. 2496 had been transferred to Alfred Keter, and 2498 to Sarah C Keter and that the said sub-division and transfer had been procedurally done as per the evidence of the Land Registrar DW6. That subsequently the transfer to the Plaintiff had also been procedural and legal.
66. The Plaintiff framed his issues for determination as follows:
 - i. Was the Plaintiff's title fraudulently obtained?



- ii. Have the Defendants made a case for cancellation of the Plaintiff's title?
- iii. What are the appropriate orders that the court should grant?
67. On the first issue for determination, the Plaintiff submitted that the mutation and subdivision of the mother title being LR No. Kericho/Kabianga/1548 was done and transferred to their respective owners in the year 1993 by its registered proprietor one Tabelga Targesui. Subsequently the suit land was transferred to the Plaintiff. This evidence was confirmed by the Land Registrar. That although the Defendants have alleged that the transfer was fraudulent, the burden of proof on such allegation lay on them as was held in the decided case in *Charles Karathe Kiarie & 2 Others vs Administration of the Estate of John Wallace Mathare (Deceased) & 5 Others* [2013] eKLR.
68. That the allegation of fraud needed not only to be pleaded but also to be particularized by laying out water tight evidence upon which a court would make a finding, as was held by the Court of Appeal in *Kuria Kiarie & 2 Others vs Sammy Magera* [2018] eKLR.
69. That the terms of proof in a case on fraud was greater than the typical balance of probabilities in civil proceedings although not beyond a reasonable doubt as is required in a criminal case. That it was not enough to simply infer fraud from the facts and circumstance where it was suspected. That the Defendants had failed to discharge this burden.
70. That from the evidence adduced, it is clear that it had been the owner of the mother title one Tabelga Targesui who had subdivided the same in the year 1993. That from the evidence of the Land Registrar that she had in her custody the Stamp duty payment receipt and Minutes from the Belgut Land Control Board in favour of the Plaintiff confirmed that no fraud had been committed in the transfer of the suit land to the Plaintiff.
71. On the second issue for determination, the Plaintiff submitted while relying on the provisions of Section 80 of the *Land Registration Act* that the court had unlimited jurisdiction to cancel a title and/or lease or make a rectification of the register where it was clear that acts of fraud had been used to obtain title. That based on the evidence before court, there was no foundation for the Plaintiff's title to be revoked.
72. The Plaintiff also relied on the provisions of Section 24 of the *Land Registration Act* to submit that a person registered as a landowner had the complete ownership of that parcel of land, including all rights and appurtenant thereto .
73. While still relying on the provisions of the law under Section 26 of the *Land Registration Act*, the Plaintiff's submission was that the certificate of title issued by the Registrar upon registration, shall be taken by all courts as prima facie evidence that the person named as proprietor of the land was the absolute and indefeasible owner. He sought for the said title to be upheld.
74. That the law on fraud and indefensibility of title had been settled and there wasn't a shred of proof to back up the outlandish charges of fraud that the Defendant had levelled against the Plaintiff and therefore the court ought to defend the sanctity of the Plaintiff's title.
75. That the Plaintiff had met all the requirements of a bonafide purchaser of land for value as was held in the case of *Zebak Limited vs Nadem Enterprises* [2016] eKLR and therefore his rights were protected both under the *Land Registration Act* and *the Constitution* and therefore he should not be deprived off the same. That no evidence had been adduced by the Defendants in support of their ill pursuit to have the Plaintiff's title canceled.



76. The Plaintiff submitted that the most appropriate orders for the court to issue would be that the Plaintiff be allowed to enjoy his proprietary interest, that there be eviction orders against the Defendants jointly and severally with a permanent injunction against them barring them from occupying, interfering with, erecting thereon structures or doing any other acts prejudicial to the Plaintiff's proprietary rights in the suit subject. That his suit be allowed with costs.

Defendants' Submissions.

77. The Defendants, in opposition of the Plaintiff's suit submitted that they were not trespassers to the Plaintiff's suit land, but rather they had been in occupation of the same since time immemorial, it being an ancestral land. That their ancestral land LR No. Kericho/Kabianga/1548 had been fraudulently, illegally and /or irregularly sub-divided into Nos LR No. Kericho/Kabianga/2498- 2499 wherein after, the suit land had been transferred to the Plaintiff.

78. That through the evidence of the 6 (six) witnesses called, they had established that the suit land was ancestral land having emanated from LR No. Kericho/Kabianga/1548 which was ancestral land. The subdivision was done without the Knowledge and consent of its registered proprietor and the entire family hence it was fraudulent and irregular.

79. That through the evidence of DW 5 the County surveyor, it had been established that although the Registry Index Map (RIM) had been amended, yet there had been no mutation forms for the subdivision of the original land parcel No. LR No. Kericho/Kabianga/1548, and there had been no distinct boundaries and demarcations on the ground based on the subdivisions emanating for the original title. That the Land Registrar DW 6 had also testified that there had been no documents to show the sub-division and transfer of LR No. Kericho/Kabianga/1548.

80. The Defendants framed their issues for determination as follows:

- i. Whether the titles to LR No. Kericho/Kabianga/2496-2499 should be cancelled and reverted to the original LR No. Kericho/Kabianga/1548.
- ii. Whether an order of eviction should issue against the Defendants by themselves, agents, servants, employees or otherwise to vacate forthwith from LR No. Kericho/Kabianga/2498.

81. On the first issue for determination, it was the Defendant's submission that the subdivision and transfer of LR No. Kericho/Kabianga/1548 had been fraudulent and irregular and the subsequent titles LR No. Kericho/Kabianga/2496-2499 should be canceled. That the subdivision was effected without the consent and knowledge of the registered proprietor Susan Tabelga Targeusi. That this fact was buttressed by the unavailability of the records for the said subdivision and transfer.

82. That the registered proprietor had left the country in the year 1998 wherein in the year 2010, upon the discovery of the fraud, she had issued a power of Attorney to her daughter Ruth Soy Ketter who had placed a Caution on the resultant parcels of land. That the said Caution had been removed after which the suit land had been transferred to the Plaintiff.

83. That the relevant Land Control Board had not been procured for the subdivision and transfer of LR No. Kericho/Kabianga/1548. The secrecy upon which there had been the subdivision and transfer signified fraud wherein the Plaintiff need not to have been party.

84. The Defendants relied on the provision of Section 26 of the *Land Registration Act* and the decision in the decided case of Elijah Makeri Nyangw'ra vs Stephen Mungai Njuguna & Another [2013] eKLR to submit that the resultant parcels of land to LR No. Kericho/Kabianga/1548 ought to be cancelled



as they had been irregularly and un-procedurally procured, the cancellation would also affect the Plaintiff's title.

85. On the issue of eviction, the Defendants submitted that although the Plaintiff had sought for their eviction from the suit land, yet that was their ancestral land where they had lived from time immemorial and therefore they were not trespassers. That in fact evidence was led that the 1st Defendant had established his home therein where she had built a permanent house. That parcel LR No. Kericho/Kabianga/1548, had no demarcations and subdivisions and the Plaintiff therefore sought to interfere with the Defendants' occupation on their ancestral home.
86. That since the Plaintiff's title was tainted and further that the consent relied upon by the Plaintiff to acquire consent from the Land Control Board belonged to a different parcel of land being LR No. Kericho/Kapsuser/2498, the Plaintiff did not hold a clean title and was not therefore deserving of the orders of eviction of the Defendants from the suit land as sought.
87. As to costs, the Defendants submitted that pursuant to the provisions of Section 27(1) of the *Civil Procedure Act*, the Court was clothed with discretion to determine who to bear the costs. That since they had proved that the Plaintiff's title was not clean, that the Plaintiff's suit be dismissed and he be ordered to bear the cost of the suit.

Determination.

88. I have considered the matter before me the, evidence as well as the submission, the authorities and the applicable law. Indeed this is a matter wherein the Plaintiffs claim against the Defendants is that of a purchaser of the suit land for value wherein the presence of the Defendants on the said property constitutes trespass and therefore they ought to be evicted for the suit land. The Defendants on the other hand in their Defence and Counterclaim have alleged that the original land LR No. Kericho/Kabianga/1548 being their ancestral land upon which they had resided since time immemorial, was fraudulently and irregularly subdivided into titles LR No. Kericho/Kabianga/2496-2499 wherein one of the resultant titles being LR No. Kericho/Kabianga/2498 was transferred to the Plaintiff. That the said resultant titles to the parcels of land including the Plaintiff's title should therefore be canceled and the same revert to the original title LR No. Kericho/Kabianga/1548.
89. Having laid down the background of the matter in question and having considered the evidence adduced in the matter, the issues that come out clearly as not being contested are as follows:
- i. No. LR Kericho/Kabianga/1548 was registered in the name of Susan Tabelga Targesui.
 - ii. That the said Susan Tabelga Targesui was a mother in law to the 1st Defendant and a grandmother to the 2nd Defendant.
 - iii. It is further not in contention the that said Susan Tabelga Targesui migrated to the United States of America in 1998 where she now resides with some of her children,
 - iv. It is also not in contention that No. LR Kericho/Kabianga/1548 was subsequently subdivided in 1993 when its proprietor was still in Kenya, giving rise to land parcel No. Kericho/Kabianga/2496-2499.
 - v. Further, it is not in contention that upon the subdivision of the said suit land, only two out of seven of Susan Tabelga Targesui's children, being Alfred Kiptanui and Sarah C. Keter got a share of the land.



- vi. That subsequently Susan Tabelga Targesui's daughter Sarah C. Keter who was a beneficiary of a resultant land parcel being No. 2498 sold her share to the Plaintiff on the 24th October 2012 for a consideration of Kshs. 3 million.
 - vii. That this turn of events was what brought about the suit Defence and counter claim.
90. The issues that were contested and which form my issues for determination are as follows.
- i. Whether the suit land herein being a sub division of title LR No. Kericho/Kabianga/1548 constituted ancestral land.
 - ii. Whether the sub division of title LR No. Kericho/Kabianga/1548 and subsequent transfers of the resultant parcels of land more so parcel No. Kericho/Kabianga/2498 to the Plaintiff was fraudulent and therefore should be cancelled.
 - iii. Does the Plaintiff have any cause of action against the Defendants herein?
 - iv. Who should pay the cost of the suit?
91. On the first issue for determination, the Defence through the evidence of the 1st Defendant, her husband Richard Kipkurgt Keter who testified as DW 4, DW2 and DW 3 was that the original parcel of land LR No. Kericho/Kabianga/1548 was registered to their Mother in law, mother and grandmother respectively and that it was family land. That had its proprietor Susan Tabelga Targesui therefore wished to sub-divide it and thereafter transfer portions of it as was done, then she could had informed the family and since this was not done, the subsequent sub-division and transfer more so to the Plaintiff was fraudulent.
92. By definition, ancestral land is more like community land that is passed down from generation to generation through inheritance and is owned by a community, clan or family. It is land upon which evidence would emerge that part of such land, was always reserved for family or clan use, such as burials, other traditional rites or even reserved depending on the specific group or family setting, for various future uses, such as construction of houses and other amenities by youths graduating into manhood. In the present case, none of the witnesses testified that land parcel LR No. Kericho/Kabianga/1548 was reserved for the above captioned use. Indeed no evidence was adduced that the original suit land being an ancestral land, passed on from generation to generation so as to qualify it as an intergenerational trust or ancestral land. The fact that LR No. Kericho/Kabianga/1548 was registered to Susan Tabelga Targesui as a first registration, under the Registered *Land Act* extinguished the customary land rights. There having been no evidence adduced to the effect that Susan Tabelga Targesui held LR No. Kericho/Kabianga/1548 in a fiduciary capacity, I find that statutorily, the sanctity of title to her land was assured and protected under Sections 24, 25 and 26 of the *Land Registration Act* 2012. The said Susan Tabelga Targesui could therefore deal with the said land as she pleased including dispossession of the same, during her lifetime.
93. This said and done, we come to the second issue as to whether the sub division of title LR No. Kericho/Kabianga/1548 and subsequent transfers of the resultant parcels of land more so parcel No. Kericho/Kabianga/2498 to the Plaintiff was fraudulent and therefore should be cancelled.
94. Indeed from the evidence adduced, it is clear that the subdivision of LR No. Kericho/Kabianga/1548 was done 1993 when the registered proprietor was still resident in Kenya and before she left for the United States of America in 1998. It also on record that during the period 1993- 1998 there had been no complaint from the registered proprietor. That pursuant to the sub-division of LR No. Kericho/Kabianga/1548, the resultant titles were transferred as follows:



- i. Parcel No. 2496 measuring 2.0 ha was transferred to Alfred Kiptanui Keter on 10th August 1993
 - ii. Parcel No. 2497 measuring 1.60 ha remained in the name of Tabelga Targesui as per title issued on 26th March 1993
 - iii. Parcel No. 2498 measuring 1.20 ha was transferred to Sarah Chepngeno Keter on 26th March 1993.
 - iv. Parcel No. 2499 measuring 1.60 ha also remained in the name of Tabelga Targesui as per title issued on 26th March 1993
95. From the Green cards herein produced as Df exh 1 (a-d), a caution had been placed on all the parcels of land by one Ruth Soi on the December 17, 2009 claiming beneficiary interest and based on a Power of Attorney allegedly donated to her by Tabelga Targesui wherein she had sought to recover the land. Interestingly the said Ruth Soi was not called as a witness and although the law on evidence is clear that a fact can be proved by a single witness, yet the court finds that this was a crucial witness for the Defence and her absence watered down the defence case. The Power of Attorney document herein marked as DMFI 1 also did not become an exhibit as it had simply been marked for identification and therefore it had no evidential weight in this case.
96. Court of Appeal in the case of *Kenneth Nyaga Mwige v Austin Kiguta & 2 others* (2015) eKLR held as follows:

“The fundamental issue for our determination is the evidential effect of a document marked for identification that is neither formally produced in evidence nor marked as an exhibit. Is a document marked for identification part of evidence? What weight should be placed on a document not marked as an exhibit?.....

The mere marking of a document for identification does not dispense with the formal proof thereof. How does a document become part of the evidence for the case? Any document filed and/or marked for identification by either party, passes through three stages before it is held proved or disproved. First, when the document is filed, the document though on file does not become part of the judicial record. Second, when the documents are tendered or produced in evidence as an exhibit by either party and the court admits the documents in evidence, it becomes part of the judicial record of the case and constitutes evidence; mere admission of a document in evidence does not amount to its proof; admission of a document in evidence as an exhibit should not be confused with proof of the document. Third, the document becomes proved, not or disproved when the court applies its judicial mind to determine the relevance and veracity of the contents- this is at the final hearing of the case. When the court is called upon to examine the admissibility of a document, it concentrates only on the document. When called upon to form a judicial opinion whether a document has been proved or disproved or not proved, the court would look not at the document alone but it would take into consideration all facts and evidence on record.

The marking of a document is only for purposes of identification and is not proof of the contents of the document. The reason for marking is that while reading the record, the parties and the court should be able to identify and know which was the document before the witness. The marking of the document for identification has no relation to its proof; a document is not proved merely because it has been marked for identification.



Once a document has been marked for identification, it must be proved. A witness must produce the document and tender it in evidence as an exhibit and lay foundation or its authenticity and relevance to the facts of the case. Once this foundation is laid, the witness must move the court to have the documents produced as an exhibit and be part of the court record. If the document is not marked as an exhibit, it is not part of the record. If admitted into evidence and not formally produced and proved, the document would be hearsay, untested and unauthenticated account.

In *Des Raj Sharma –vs- Reginam* (1953) 19 EACA 310, it was held that there is a distinction between exhibits and articles marked for identification; and that the term “exhibit” should be confined to articles which have been formally proved and admitted in evidence. In the Nigerian case of *Michael Hausa –vs- The state* (1994) 7-8 SCNJ 144, it was held that if a document is not admitted in evidence but is marked for identification only, then it is not part of the evidence that is properly before the trial judge and the judge cannot use the document as evidence.

Guided by the decision cited above, a document marked for identification only becomes part of the evidence on record when formally produced as an exhibit by a witness. In not objecting to the marking of a document for identification, a party cannot be said to be accepting admissibility and proof of the contents of the document. Admissibility and proof of a document are to be determined at the time of production of the document as an exhibit and not at the point of marking it for identification. Until a document marked for identification is formally produced, it is of very little, if any, evidential value.”

97. It was therefore a fatal error on the part of the Defendant not to call any witness to produce the document he had marked for identification
98. The Defendants in their defence and Counterclaim have alluded that the sub division of title LR No. Kericho/Kabianga/1548 and subsequent transfers of the resultant parcels of land was fraudulent and therefore should be cancelled. The onus was therefore on the Defendants to prove those allegations. Fraud is a serious matter which must be proved to the required standard. In *R.G Patel vs Lalji Makanji 1957 E.A 314*, the Court of Appeal stated as follows:
- “Allegations of fraud must be strictly proved although the standard of proof may not be as heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required”.
99. In so submitting, the Defendants more so DW4 testified that his sister Sarah Keter had fraudulently caused the land to be subdivided in 1993 after conning their mother into giving her the title on the pretext that the late president Daniel Arap Moi had wanted to build a hospital on the land. That subsequently after they had moved to the United States of America after the sub-division, the said Sarah Keter had kidnapped their mother and had kept her incommunicado since the year 2008 to the time he was testifying. Again, no evidence was adduced in support of the said allegations. Indeed the Defendants ought to have joined the said Sarah Keter to the suit.
100. In the case of *Arthi Highway Developers Ltd vs West End Buthery Ltd & Others* [2015] eKLR, the Court of Appeal cited the following passage from Bullen & Leake precedents pleadings 13th edition at Page 427:

“The statement of the claim must contain precise and full allegations of facts and circumstances leading to the reasonable inference that the fraud was the cause of the loss



complained of It is not allowable to leave fraud to be inferred from the facts pleaded and accordingly, fraudulent conduct must be distinctly alleged and as distinctly proved General allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any Court ought to take notice”.

101. Indeed DW6, the Land Registrar Kericho had testified that according to the certified copy of the Green Card to parcel No. 1548, it could be confirmed that the land was sub-divided although he did not know the Registrar who had signed it. That they had been able to trace the mutation form and the survey record which had confirmed that Tabelga Targesui was the one who had done the subdivision. The said mutation had been signed by the Registrar in 1993 whereas the sub-division had been signed on 26th March 1993. That there had therefore been proper sub-division of the mother land according to the Green Card. That in relation to land parcel No. 2498, there had been two transfers thereafter. The 1st was to Sarah C. Keter wherein the transfer had been effected on 26th March 1993. The 2nd transfer was done on 24th October 2012 to Daniel Kipnetich Korir. That the documents they had had been for the transfer from Sarah to Daniel which were the documents he had mentioned before. That the transfer according to him was proper.
102. It was held in the case of *Republic vs Senior Registrar of Titles Ex-parte Brookside Court Limited* (2012) eKLR, that the statutorily sanctity of title to land is assured and protected under Section 24, 25 and 26 of the *Land Registration Act* produced as herein under;
103. Section 24 stipulates as follows:
Subject to this *Act*—
 - (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
 - (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.
104. Section 25 of the act provides:
 - (1) The rights of a proprietor, whether acquired on 1st registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
 - (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
 - (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.
105. Section 26 is to the effect that:
Certificate of title to be held as conclusive evidence of proprietorship



- (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, un-procedurally or through a corrupt scheme.
106. Having found that the original suit land LR No. Kericho/Kabianga/1548 was not ancestry land, its sub division and the subsequent transfers of the resultant parcels of land were in my view not fraudulent. I have also therefore considered both the oral and documentary the evidence of the Plaintiff which included the sale agreement, the copy of the Power of Attorney donated by Sarah Keter to M/s Steven Oboso Advocate to sell the suit land LR No. Kericho/Kabianga/2498, the minutes of the Land Control Board indicating that they had consented to the transfer, a copy of the deposit slip of Kshs. 2 million as part payment of the purchase price, a copy of the title deed registered to Sarah C. Keter, copy of a title deed registered to the Plaintiff's name, a copy of the letter from Advocate Steven Oboso authorizing the Plaintiff to take possession of the land, and the copy of the Green Card to the suit land.
107. I have also considered the evidence submitted herein that at the time of the sale agreement, the suit land was vacant wherein the Defendants had taken possession after the Plaintiff had been stopped from cultivating thereon when the Criminal Investigation officers (CID) had visited the suit land. The report on the said investigation, which was also very crucial in this case especially since the aspect of fraud had been alluded to by the Defendants, was however not availed to the court. I have also taken into consideration the evidence submitted to the effect that at the time, the 2nd Defendant had lived on a parcel of land registered as LR No. Kericho/Kabianga/2496 whereas the 1st Defendant had been residing on parcel of land LR No. Kericho/Kabianga/2497 and I am inclined to believe the Plaintiff's evidence which was backed with genuine documents and supported by the Defence witness, the Land Registrar who was the person charged with the registration of documents of title to land under the written law under which the land was registered.
108. The Defendants did not attempt to prove how the Plaintiff was engaged in fraud in acquisition of his title deed. They blamed one Sarah C. Terer for having fraudulently subdivided the original parcel of land which she had then transferred a resultant portion, the suit land herein, to the Plaintiff. They made no attempt of calling the said Sarah Terer as a witness or joining her as a party to the suit. Further, there was no evidence from the Registrar of Lands confirming that indeed the Plaintiff and or Sarah Terer had acquired the Certificate of title held by the Plaintiff in a fraudulent manner. To the contrary, he had supported the Plaintiff's case when he had stated that the titles had been acquired properly. So apart from making general allegations of fraud, the same was not remotely proved.
109. In the end, I find in favour of the Plaintiff's suit and proceed to dismiss the Defendants' Counterclaim with the following orders;
 - i. The Defendants by themselves, their agents, servants, employees or otherwise shall vacate from land parcel No. Kericho/Kabianga/2498 within 90 days upon delivery of this judgment in default to which an order of eviction shall be issued against them.



- ii. There is issued a permanent injunction against the Defendants by themselves, their agents, servants, employees or otherwise barring them from occupying, interfering with, erecting thereon structures or doing any other acts prejudicial to the Plaintiff's proprietary rights in the suit subject.
- iii. Cost of the suit and counterclaim is awarded to the Plaintiff.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 21ST DAY OF JULY 2022

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

