



REPUBLIC OF KENYA



**Angata Baragoi Farmers Co-operative Society Limited v Sinohydro Corporation Limited & another (Environment & Land Case 29 of 2021)
[2022] KEELC 12592 (KLR) (21 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 12592 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE 29 OF 2021
EM WASHE, J
SEPTEMBER 21, 2022
(FORMERLY NAROK ELC NUMBER 12 OF 2019)**

BETWEEN

**ANGATA BARAGOI FARMERS CO-OPERATIVE SOCIETY
LIMITED PLAINTIFF**

AND

**SINOHYDRO CORPORATION LIMITED 1ST DEFENDANT
KIPLANGAT ARAP BOR 2ND DEFENDANT**

JUDGMENT

1. The plaintiff herein approached this court by way of a plaint dated February 18, 2019 seeking for the following orders against the defendant; -
 - i. Declaration that the plaintiff is the lawful *bona fide* and registered proprietor of LR No Transmara/Moyoi/2 and hence entitled to exclusive use and/or possession thereof as against the defendant.
 - ii. An order of eviction against the defendant, her agents and/or servants from LR No Transmara/Moyoi/2.
 - iii. Permanent injunction restraining the defendant either by herself, agents, servants and/or anyone claiming under the defendant from entering, re-entering, trespassing onto, laying claim to, excavating murrum, building and/or constructing thereon, fencing, interfering with and/or in any other manner, whatsoever dealing with the suit property that is LR No Transmara/Moyoi/2 and/or any portion thereof, in any manner prejudicial and/or adverse to the rights and interests of the plaintiff.



- iv. General and aggravated damages for trespass/mesene profits.
- v. Costs of the suit be borne by the defendant.
2. The defendant upon service of the plaint herein and the summons to enter appearance filed a statement of defence and counter-claim dated March 27, 2019.
3. In the defence, the defendant denied unlawfully trespassing and/or entering into the plaintiff's property known as LR No Transmara/Moyoi/2 or excavating any murram thereof within a portion of 1 acres as pleaded in the plaint.
4. The 1st defendant further denied depriving and or interfering with the plaintiff's property known as LR No Transmara/Moyoi/2 to warrant any claim for damages either general or aggravated as claimed.
5. The 1st defendant pleaded that their activities of excavating murram was being undertaken on the property known as LR No Transmara/Angata Baragoi/588 which property belonged to one Kiplagat Arap Bor.
6. The 1st defendant further pleaded that it had a valid lease agreement dated January 4, 2019 between the registered owner Kiplagat Arap Bor for a portion of 3.7 acres within the property known as LR No Transmara/Angata Baragoi/588 for the purposes of operating a quarry to facilitate the construction of a road.
7. The 1st defendant indicated that it had confined its activities within the leased portion of 3.7 acres on the property known as LR No Transmara/Angata Baragoi/588 and not trespassed on any portion of the plaintiff's property known as LR Transmara/Moyoi/2.
8. In the counter-claim filed together with the defence, the defendant pleaded loss of materials upon stoppage of the excavation pursuant to the interim injunction issued by the court on the 19th of February 2019.
9. Before the hearing of this suit, one Kiplangat Arap Bor on behalf of the estate of the late Kisang Arap Korir (deceased) filed an application dated July 14, 2020 seeking to be joined in the proceedings as an interested party.
10. The grounds of the application were that he was the beneficial owner of the property known as LR No Transmara/Angata Baragoi/588 which had been leased to the 1st defendant as per the lease agreement executed on the January 4, 2019.
11. However, as a result of the claim of trespass instituted by the plaintiff herein, the 1st defendant had now threatened to sue the interested party for misrepresentation.
12. Consequently therefore, it was necessary for Kiplangat Arap Bor to be joined in this proceeding so that all the facts of the matter can be placed before the court for a proper determination.
13. A consent to allow the application for joinder dated July 14, 2020 was executed by all the relevant parties and adopted in court on the October 8, 2020.
14. However, on the 22nd of November 2021, the interested party changed its position and made a second application seeking to be struck out as an interested party and instead to be allowed to participate in the proceedings as a 2nd defendant.
15. Pursuant to a ruling of the court delivered on the 23rd of November 2021, the application dated November 22, 2021 was granted and the 2nd defendant given directions on filing and exchange of pleadings.



16. On the 1st of December 2021, the 2nd defendant filed a statement of defence as well as a counter-claim against the plaint.
17. In the statement of defence, the 2nd defendant reaffirmed that the property known as LR No Transmara/Angata Baragoi/588 belonged to their parents for decades and were in possession of the same.
18. The 2nd defendant further pleaded that the plaintiff's claim that the property LR No Transmara/Angata Barikoi/588 occupied the same area physically on the ground as property known as LR No Transmara/Moyoi/2 belonging to the plaintiff was a scheme to displace them driven by the malice.
19. The 2nd defendant reaffirmed that the activities of the 1st defendant on their property known as LR No Transmara/Angata Baragoi/588 were lawful and within the 2nd defendant's property hence any claim of trespass was misplaced and misguided.
20. In the counter-claim, the 2nd defendant pleaded that the property known as LR Transmara/Angata Baragoi/588 was within the Angata Baragoi Adjudication Section in Transmara Sub-county of Narok County.
21. Next to the Angata Baragoi Adjudication Section, there is Moyoi Adjudication Section which was declared sometime in the year 1976.
22. However, during delineation of the boundaries between Angata Baragoi Adjudication Section and Moyoi Adjudication Section, there was a spill over from the delineated Moyoi Adjudication Section which encroached onto the area occupied by the 2nd defendant's property known as LR Transmara/Angata Baragoi/588.
23. As a result of this encroachment, the plaintiff herein has claimed ownership rights over a portion of Angata Baragoi Adjudication Section and fraudulently processed titles including the property known as LR No Transmara/Moyoi/2.
24. The 2nd defendant specifically pleaded particulars of fraud in the counter-claim and sought for the following prayers from the court; -
 - a. A declaration that the 2nd defendant was the lawful owner of property known as LR No Transmara/Angata Baragoi/588.
 - b. A permanent order restraining the plaintiff whether by himself, his servants, employees, proxies and/or any other person whomsoever from entering, trespassing, and/or harassing, intimidating, threatening and/or in any other manner whatsoever from interfering with the interested party's quiet possession, ownership and lawful enjoyment of all the property known as LR Transmara/Angata Baragoi/588 measuring approximately 31.41 Hactares.
 - c. A declaration that Moyoi Adjudication Area should be confined to the 1976 boundaries to prevent a repeated overlap.
 - d. General damages for trespass and loss of use of the property.
 - e. Costs of the suit.
25. On the December 14, 2021, the plaintiff filed a reply to the 2nd defendant statement of defence and counter-claim dated February 18, 2019.
26. The plaintiff reiterated the contents of the plaint and indicated that the property known as LR No Transmara/Moyoi/2 lawfully belonged to plaintiff to the exclusion of any other person.



27. The reply to defence further indicated that the 2nd defendant's allegations that the property known as LR No Transmara/Moyoi/2 had been a subject of another litigation known as Narok ELC No 370 of 2017 was misleading and an attempt to deceive the court.
28. The plaintiff pleaded that the property known as LR No Transmara/Moyoi/2 has been in the possession and occupation of the plaintiff since its registration.
29. Consequently therefore, the illegal and unlawful presence of the 1st and 2nd defendant on the property known as LR No Transmara/Moyoi/2 amounted to trespass by the 1st and 2nd defendant and a violation of its rights provided by law.
30. The plaintiff further denied knowledge of any lease agreement between the 1st defendant and 2nd defendant over any portion of the property known as LR No Transmara/Moyoi/2.
31. In defence to the 2nd defendant's counter-claim, plaintiff indicated that the property known as LR No Transmara/Moyoi/2 had been in use by the plaintiff.
32. The plaintiff further admitted that the sub-division of Moyoi Adjudication Section began in the year 1976 and the property known as LR No Transmara/Moyoi/2 was a resultant parcel of Moyoi Adjudication Section.
33. On the other hand, the sub-division of Angata Baragoi Adjudication Section began in the year 1985.
34. However, the plaintiff alleged that some of the parcels created from the Angato Baragoi Adjudication Section were within Moyoi Adjudication Section which meant that Angata Baragoi Adjudication Section has surpassed the lawful boundary and occupied some portions of Moyoi Adjudication Section.
35. This resulted to the officials of the plaintiff to institute legal proceedings known as Narok ELC No 370 of 2017 whose outcome was a cancellation of some titles issued pursuant to the sub-division of Angata Baragoi Adjudication Section but were within Moyoi Adjudication Section.
36. In essence thereof, the plaintiff denied the particulars of fraud pleaded therein and for clarity indicated that it was not the author or maker of the titles irregularly issued within Angata Baragoi Adjudication Section.
37. The plaintiff therefore sought to have the counter-claim filed by the 2nd defendant dismissed with costs.
38. In support of the plaintiff's case, a bundle of documents dated 18th of February 2019 was initially filed then supplementary bundle of documents was filed on the October 26, 2021 and a further supplementary bundle of documents was filed on the 22nd of November 2021 and a further further supplementary bundle of documents filed on the November 23, 2021.
39. On the part of the 1st defendant, a list of documents was filed on the 17th of November 2021 and a supplementary bundle of documents on the December 9, 2021.
40. The 2nd defendant filed their list of documents of the 15th of November 2021.
41. On the 19th of November 2021, counsel for the 1st defendant filed a request for further and better particulars of the plaint.
42. The request for further and better particulars focussed on production of the registration certificate of the plaintiff, the last filed returns, details of the officials and the constitution of the plaintiff filed at the Registrar of Societies.



43. On the same day, the 2nd defendant filed a preliminary objection dated November 19, 2021 challenging the legality of the plaintiff as body corporate capable of suing or being sued under the law.
44. Further to that, the 1st defendant filed an application on the 22nd of November 2021 seeking to strike out the suit because the plaintiff was not a legal person with powers to sue or initiate legal proceedings.
45. For purposes of expediting the hearing of the suit, the court made a ruling on the 23rd of November 2021 that the issue of legality of the plaintiff be canvassed at the trial and a determination pronounced in the judgement.
46. Upon this ruling dated 23rd november 2021 being made, the substantive hearing of the witnesses began on the 16th of December 2021.
47. The plaintiff's first witness was one Francis Oletuiyan Sinoni.
48. The witness confirmed that he was the author of the statement dated October 26, 2021 which the court adopted as his testimony.
49. The witness produced a resolution passed by the plaintiff on the October 25, 2021 (plaintiff exhibit 1) authorising the witness to represent and or execute any legal documents appertaining the prosecution of this proceeding.
50. The witness testified that the plaintiff entity was a registered co-operative under the [Co-operative Society Act](#), cap 490 and possess a Certificate of Registration No 1683 issued on the 4th of May 1966. (Plaintiff exhibit 2)
51. The witness further testified that the plaintiff entity was the registered owner of a property known as LR No Transmara/Moyoi/2 within the Moyoi Adjudication Section and produced the certified copy of the title deed, certified copy of the official search dated February 14, 2019 and a certified copy of the green card from the Sub-county Land Registrar, Transmara. (Plaintiff's exhibit 3, 4 and 5 respectively.)
52. The witness testified to the court that on or about February 2019, the 1st defendant trespassed into the plaintiff's property known as Transmara/Moyoi/2 and began excavating murrum and sand from the property without the consent and/or authority of the plaintiff.
53. The unlawful excavation by the 1st defendant happened on a portion of about 1 acre on the property known as LR Transmara/Moyoi/2.
54. The witness produced a number of photos showing the excavation undertaken by the 1st defendant (plaintiff's exhibit 6 (a)-(e).)
55. The plaintiff noticing this unlawful entry and trespass by the 1st defendant, it made a complainant with the area administration office and thereafter instructed their lawyer to prepare and serve a demand letter upon the 1st defendant which was done on the 12th of February 2019. (Plaintiff's exhibit 7)
56. On the 25th of February 2020, the court issued an injunction against the 1st defendant from excavating any murrum on the property known as LR No Transmara/Moyoi/2 pending the hearing of the application but unfortunately, the said injunction was not complied with by the 1st defendant.
57. On seeking further information on how the 1st defendant entered the plaintiff's property known as LR No Transmara/Moyoi/2, the 1st defendant disclosed that it had a lease for a portion measuring 3.7 acres on a property known as LR Transmara/Angata Baragoi/588 owned by the 2nd defendant.



58. The witness testified that in the late 1970s, a process of liquidating the plaintiff entity was initiated but the same did not get finalised although a cancellation of registration had been published on the November 14, 1978.
59. The witness produced a letter from the District Co-operative Office Narok dated June 19, 1980 to confirm this fact. (Plaintiff's exhibit 8)
60. The witness further testified that the name Angata Barikoi and Angata Bargoi meant one and the same legal entity described as Angata BarikoI in the Certificate of Incorporation No CS 1683.
61. The witness informed the court that the previous chairman of the legal entity had prepared and sworn a statutory declaration and/or affidavit dated February 20, 2020 which was produced the same in court. (Plaintiff exhibit 9)
62. In addition to the statutory declaration and/or affidavit of February 20, 2020, the witness also produced a letter dated February 27, 2018 from the Commissioner of Co-operatives indicating that Angata Barikoi which existed pursuant to the Certificate No 1683 was still legal registered and therefore capable of undertaking its own activities. (Plaintiff's exhibit 10)
63. In the witness's understanding, the letter dated February 27, 2018 from the Commissioner of Co-operatives meant that the liquation which had been requested earlier had not been concluded and the plaintiff entity still had the power to hold property on behalf of its members.
64. The property known as LR No Transmara/Moyoi/2 measuring approximately 2,561 acres is therefore legally owned by the plaintiff.
65. In answer to the counter-claim filed by the 2nd defendant, the witness indicated that the legality of the plaintiff had been brought up earlier in another suit known as Narok ELC No 370 of 2017 between *Angata Bargoi Farmers Co-operative Society Limited and David Kiptunui Korir & 87 others*.
66. The witness produced a copy of the notice of motion application dated January 31, 2018 challenging the legality of the plaintiff's entity. (Plaintiff's exhibit 11)
67. The witness further produced the replying affidavit sworn on the April 6, 2018 in response to the notice of motion application dated January 31, 2018. (Plaintiff's exhibit 12)
68. Lastly, the witness produced the judgement dated on the 23rd of September 2020 deciding the plaintiff's legality. (Plaintiff exhibit 13)
69. The witness indicated that one of the findings made in the judgement of September 23, 2020 was that various parcels of land titled under the Angata Baragoi Adjudication Section had overlapped into Moyoi Adjudication Section.
70. The witness produced the decree dated September 28, 2021 to confirm the same. (Plaintiff's exhibit 15)
71. In an effort to reconfirm that the plaintiff herein is legally operating, the witness again produced a Kenya Gazette Notice No 2319 dated July 10, 2018 from the Commissioner of Co-operative revoked the cancellation order published on the 14th of November 1978 and reinstated the society to full registration. (Plaintiff exhibit 16)
72. Lastly, the witness relied and marked for production the expert report from both the Sub-county Land Registrar, Transmara East, West and South as well as the Sub-county Government Surveyor, Transmara East, West and South dated March 2, 2017.



73. The witness informed the court that Moyoi Adjudication Section was the first to be sub-divided and therefore it can not have encroached on Angata Baragoi Adjudication Section.
74. Consequently therefore, the witness denied that the property known as LR No Transmara/Moyoi/2 could have encroached into the Angata Baragoi Adjudication section.
75. The witness agreed with the expert report dated March 2, 2019 and prayed the court to grant the prayers in the plaint dated February 18, 2019.
76. On cross-examination by the 1st defendant, the witness indicated that he was the Vice Chair of the plaintiff entity.
77. The witness confirmed that the necessary annual returns are usually filed as required by law.
78. The witness confirmed that the name on the Certificate of Incorporation No CS/1683 (plaintiff exhibit 2) was Angata Barikoi Farmers Co-operative Society Limited.
79. In reference to plaintiff exhibit 3, the witness indicated that the name appearing on the title deed was Angata Bargoï Farmers Co-operative Society but the certificate of incorporation number was not captured therein.
80. The witness admitted that there has been no rectification of the name in the certificate of registration to be in line with the name appearing on the title deed.
81. The witness denied that the 2nd defendant occupied the property known as LR No Transmara/Moyoi/2.
82. As regards the 1st defendant, the witness confirmed that the trespass and excavation began in February 2019 affecting a portion of about 1 acre.
83. The excavation according to the witness had left a hole which is about 10 metres deep.
84. The second defendant also cross-examined the witness.
85. In the cross-examination by the second defendant, the witness testified that the plaintiff has been in use of the property known LR No Transmara/Moyoi/2 from 1960s.
86. However, since the year 2000, this property known as Transmara/Moyoi/2 had been leased for farming although he did not have any lease agreements to confirm the same.
87. The witness testified that he was not aware when the Moyoi Adjudication Section was finalised and forwarded to the Director of Adjudication & Settlement as well as the Director of Survey for issuance of titles.
88. Nevertheless, the witness confirmed that Moyoi Adjudication Section was bigger than Angata Baragoi Adjudication Section.
89. At the moment, the witness recognised that there is a conflict between properties known as LR No Transmara/Moyoi/2 and LR No Transmara/Angata Baragoi/588.
90. The witness indicated that in the earlier judgement delivered on the September 23, 2020 in Narok ELC Case No 370 of 2017 (later transferred to Kilgoris ELC and assigned Kilgoris ELC Case No 38 of 2021.) this particular property known as LR No Transmara/Anagata Baragoi/588 was not affected.



91. Referring to the expert report dated March 2, 2021 and marked for production as plaintiff's exhibit 17, the witness indicated that properties known as LR No Transmara/Moyoi/2 and LR No Transmara/Angata Baragoi/588 do not share any common boundary.
92. In actual sense, the witness indicated that the property known as LR No Transmara/Moyoi/2 was within Moyoi Adjudication Section while the property known as LR No Transmara/Angata Baragoi/588 should be Angata Baragoi Adjudication Section.
93. Consequently, Moyoi Adjudication Section and Angata Baragoi Adjudication Section being two different Adjudication Sections, the two parcels of land should not be in the same place.
94. The plaintiff's 2nd witness was one Mr Stephen Githinji.
95. The plaintiff's 2nd witness was the Sub-county Land Registrar Transmara West & East.
96. The plaintiff's 2nd witness testified that his core mandate as the Sub-county Land Registrar was to issue titles, register land documents, maintain the land records and determine land boundary disputes whenever one arises.
97. The plaintiff's 2nd witness indicated that he was served with an order dated October 8, 2020 directing him to visit two properties namely Transmara/Moyoi/2 and Transmara/Angata Baragoi/588 and establish the ground and/or physical positions of these two parcels of land.
98. Indeed, the plaintiff's 2nd witness confirmed visiting the ground on the 2nd of March 2021 to carry put the directions of the court in the presence of all the parties in this suit together with the Sub-county Land Surveyor.
99. Using the documents and maps found at the sub-county lands and surveyor offices, it was found that the property known as Transmara/Angata Baragoi/588 was inside the property known as Transmara/Moyoi/2.
100. Consequently therefore, the property known as Transmara/Angata Baragoi/588 had been superimposed entirely and wholly within the confines and boundaries of Transmara/Moyoi/2.
101. According to the plaintiff's 2nd witness, the first adjudication section declared on the August 11, 1976 was Moyoi Adjudication Section.
102. Angata Baragoi Adjudication Section was declared much later on the October 31, 1986.
103. The plaintiff's 2nd witness testified that the guiding boundary between Moyoi Adjudication Section and Angata Baragoi Adjudication Section was the boundary that was first published and, in this case, it's the Moyoi Adjudication Section Boundary.
104. Consequently, the plaintiff's 2nd witness testified that there was no overlap of boundaries between Moyoi Adjudication Section and Angata Baragoi Adjudication Section.
105. Lastly but not least, the plaintiff's 2nd witness indicated that the title deed of Transmara/Moyoi/2 was issued on 2/03/2001 and the title deed of the 2nd defendant Transmara/Angata Baragoi/588 was issued on the 1/11/2003.
106. At this juncture, the plaintiff's 2nd witness produced the Land Registrar's ground report dated 2/03/2021 in compliance of the court's orders dated 8/10/2020 and the same was marked as plaintiff's exhibit 17.



107. Nevertheless, the plaintiff's 2nd witness also referred to a survey report dated December 15, 2020 listed as item No 10 in the 2nd defendant's list of documents dated November 15, 2021.
108. The plaintiff's 2nd witness informed the court that the maker of the said ground report known as Chacha F Mariba was not a government surveyor in the lands and physical planning department and therefore not authorised to prepare, sign and/or submit such a report to the court using a letter head of the Ministry of Lands & Physical Planning department.
109. In cross-examination by the 1st defendant, the plaintiff's 2nd witness indicated that both parcels of land known as Transmara/Moyoi/2 and Transmara/Angata Bargoi/588 existed in the lands records.
110. However, the plaintiff's 2nd witness reiterated that the property known as Tranmara/Angata Bargoi/588 was superimposed on the area covered by the property known as Transmara/Moyoi/2.
111. The plaintiff's 2nd witness indicated that he was given the title of the property known as Transmara/Angata Bargoi/588 and on locating it on the ground, he found himself on the property known as Transmara/Moyoi/2.
112. Nevertheless, the plaintiff's 2nd witness indicated that it was not wrong for the 2nd defendant to use the title for Transmara/Angata Bargoi/588 because the same had not been cancelled in the land register.
113. The 2nd defendant similarly proceeded to cross-examine the plaintiff's 2nd witness.
114. The plaintiff's 2nd witness indicated that in the year 1971, there were various adjudication processes that were undertaken in the former Narok District.
115. One of those adjudication sections was the Moyoi Adjudication Section which was declared as such in the year 1976.
116. Another adjudication section was Angata Bargoi Adjudication Section which boarded the former Nyanza Province, Tanzania Boarder and the Maasai Mara Goave Reserve.
117. According to the plaintiff's 2nd witness, Moyoi Adjudication Section was demarcated and adjudicated between 1976 and 2001 when the first registration of titles was done.
118. However, the plaintiff's 2nd witness could not preciously give the dates when the Moyoi Adjudication Register was finalised and published by the Land Adjudication and Settlement officer.
119. On being referred to item No 8 on the 2nd defendant's list of documents dated November 15, 2021, the plaintiff's 2nd witness indicated that all those titles which were cancelled in the referred letters were expunged from the land records in his office.
120. In addition to the above titles cancelled in the referred letter, the plaintiff's 2nd defendant indicated that additional titles belonging to Angata Bargoi Adjudication Section were recalled by his predecessor through a Kenya Gazette Notice issued on the 7th of November 2003.
121. Nevertheless, the plaintiff's 2nd witness acknowledged that the register from the property known as Transmara/Angata Bargoi/588 was actually active.
122. It was further stated that there are other properties emanating from the Angata Bargoi Adjudication Section which were still active.
123. In reference to item No 9 in the 2nd defendant's list of documents which is a letter dated June 25, 1993, the plaintiff's 2nd witness indicated that he could not verify the contents that Moyoi Adjudication



- Section had overlapped Angata Bargo Adjudication Section as the diagrams referred in the said letter under reference were not attached therein.
124. However, in the plaintiff's 2nd witness's opinion, Moyoi Adjudication Section was the first one to be declared and should have been adjudicated first.
 125. According to the plaintiff's 2nd witness, the process of adjudication is usually complete by issuance of the letter of finality by the Director of Adjudication.
 126. In reference to the judgement emanating from Narok ELC Case No 370 of 2017, the plaintiff's 2nd witness confirmed that the property known as Transmara/Angata Bargo/588 was not among those cancelled in this judgement.
 127. The plaintiff's 2nd witness indicated that under the law, a land registrar had powers under section 79 of the Land Registration Act, No 3 of 2012 upon discovering an irregularity to recall and cancel a title and thereafter rectify the register.
 128. The plaintiff's 2nd witness commented that this particular property known as Transmara/Angata Bargo/588 was within an area which has had a dispute hence cancellation of the other properties by the judgement in Narok ELC Case No 370 of 2017.
 129. The dispute arose because the demarcation of Angata Bargo Adjudication Section exceeded its boundaries and encroached in the area adjudicated as Moyoi Adjudication Section.
 130. In conclusion therefore, the plaintiff's 2nd witness affirmed that the rightful owner of the area which had been excavated by the 1st defendant was the plaintiff as it was within the boundaries of the property known as Transmara/Moyoi/2.
 131. The plaintiff's 3rd witness was one Henry Otieno Owuor.
 132. The plaintiff's 3rd witness introduced himself as the Sub-county Government Land Surveyor in charge of Transmara West, South and East.
 133. The plaintiff's 3rd witness informed the court that some of his duties include solving boundary disputes and identifying the lawful boundaries and physical location of properties.
 134. The plaintiff's 3rd witness confirmed receiving a court order dated 8/10/2020 to visit and establish the physical locations of the properties known as Transmara/Moyoi/2 and Transmara/Angata Bargo/588.
 135. In compliance with the orders of 8/10/2020, the plaintiff's 3rd witness visited the ground on the November 25, 2020 and 9/12/2020 in the presence of all parties.
 136. Thereafter, a ground report dated 1/04/2021 was duly filed in this court.
 137. The plaintiff's 3rd witness testified that from the ground visitation, the property known as Transmara/Moyoi/2 and Transmara/Angata Bargo/588 do not share a common boundary.
 138. Instead, the entire property known as Transmara/Angata Bargo/588 is inside the boundaries of Transmara/moyoi/2.
 139. The plaintiff's 3rd witness indicated that he used the boundaries contained in the declaration of Moyoi Adjudication Section done in the year 1976 and the boundaries contained in the declaration of Angata Bargo Adjudication Section done in the year 1985.
 140. The plaintiff's 3rd witness further relied upon the Moyoi Adjudication Index Diagram and in particular sheet 16 and 17 which show the boundaries of the property known as Transmara/Moyoi/2.



141. Similarly, the plaintiff's 3rd witness used the Angata Bargoi Adjudication index diagram and in particular sheet 11 to locate the boundaries of the property known as Transmara/Angata Bargoi/588.
142. Based on the above findings from the ground visit, the plaintiff's 3rd witness produced the ground report dated 1/04/2021 and the supporting documents as plaintiff's exhibit no 18 (1)-(9).
143. As appertains the report filed by one Chacha F Mariba dated December 15, 2020, the plaintiff's 3rd witness confirmed that Chacha F Mariba was a private Surveyor instructed by the 2nd defendant and does not work for the Government of Kenya.
144. Consequently therefore, it was illegal and misleading for the said private surveyor to prepare and sign a report purportedly on a Government of Kenya letterhead.
145. In any event, the plaintiff's 3rd witness disputed the findings of the report dated December 15, 2020 by Chacha F Mariba.
146. The plaintiff's 3rd witness concluding remarks were that the property known as Transmara/Angata Bargoi/588 should not be where it is.
147. The 1st defendant proceeded to cross-examine the plaintiff's 3rd witness thereof.
148. In cross-examination, the plaintiff's 3rd witness confirmed that both properties known as Transmara/Moyoi/2 and Transmara/angata Bargoi/588 could be traced on the ground.
149. The plaintiff's 3rd witness reiterated that the physical location on the ground for the property known as Transmara/Angata Bargoi/588 is within the confines and boundaries of the property known as Transmara/Moyoi/2.
150. The plaintiff's 3rd witness further confirmed that the records appertaining the property known as Transmara/Angata Bargoi/588 were still valid at the land offices and there was no wrong in the owner carrying out activities on the said property.
151. The 2nd defendant also cross-examined the plaintiff's 3rd witness.
152. The plaintiff's 3rd witness confirmed that indeed one Chacha F Mariba was present during the ground visit thereof.
153. On inspecting the boundaries of the two properties in issue, all the surveyors went their own way to prepare their own individual reports.
154. The plaintiff's 3rd witness indicated that he used the latest maps from the Director of Survey which were the guiding documents in the ground visit as well as preparation of the report submitted to the court.
155. In the considered opinion of the plaintiff's 3rd witness, it is Angata Bargoi Adjudication Section that actually encroached into Moyoi Adjudication Section.
156. According to the records, Moyoi Adjudication Section was the first to be declared as an adjudication section and also the first to be titled.
157. Upon completion of the testimony of the plaintiff's 3rd witness, counsel for the plaintiff closed their case.
158. Immediately thereafter, the defence commenced immediately.
159. The 1st defendant's first witness was Wu Tiejun.



160. The witness introduced himself as the co-ordinator of the 1st defendant who had a contract to construct some roads.
161. The witness thereafter relied on the witness statement dated November 16, 2021 and requested the court to adopt it as his evidence in chief.
162. The witness informed the court that he knew the 2nd defendant who had leased to him a portion on land on the property known as Transmara/Angata Bargoi/588.
163. The witness produced a lease agreement dated 4/10/2018 executed between the 1st defendant and the 2nd defendant which was marked as 1st defence exhibit 1.
164. Prior to executing the lease agreement dated 4/10/2018, the 1st defendant had been supplied with a copy of the title deed of the property known as Transmara/Angata Bargoi/588 which was produced as 1st defence exhibit 2.
165. Upon securing a copy of the title deed to the property known as Transmara/Anagata Bargoi/588, the 1st defendant undertook an official search at the lands offices in Kilgoris on the 2/05/2018 and obtained the certificate of official search dated the same day which was produced as 1st defence exhibit 3.
166. When the plaintiff served the pleadings in this suit, a second official search was again undertaken by the 1st defendant on the March 12, 2020 to verify the ownership of the property known as Transmara/Angata Bargoi/588 which again confirmed that the property is owned by the 2nd defendant and this search was produced as 1st defence exhibit 4.
167. The witness indicated that it undertook a valuation of the property it had leased from the 2nd defendant which report is dated 7/12/2021 and was produced as 1st defence exhibit 5.
168. The witness informed the court that the valuation report indicated the value to be Kenya Shillings two hundred thousand (Kshs 200,000/-).
169. In concluding his evidence, the witness indicated that the 1st defendant had entered the property known as Transmara/Angata Bargoi/588 in February 2019 and vacated the property in February 2020.
170. In cross-examination by the plaintiff's counsel, the witness denied seeking for any money or damages from the delay in completing their projects due to the injunction issued by the court.
171. The witness stated that they only agreed to enter into a relationship with the 2nd defendant after they obtained a copy of the title deed and a valid official search of the property known as Transmara/Angata Bargoi/588 from the lands department in Kilgoris.
172. In other words, the witness only came to learn about the property known as Transmara/Angata Bargoi/588 being in the plaintiff's land known as Transmara/Moyoi/2 after the filing of this suit.
173. The 1st defendant's 2nd witness was one Joseph Langat.
174. The witness acknowledged his statement dated 4/11/2021 and adopted it as his evidence in chief.
175. The witness further indicated that he resides in Angata Bargoi since his birth in the year 1954.
176. The witness confirmed that he knows the 2nd defendant who is the owner of the property known as Transmara/Angata Bargoi/588.



177. According to the witness, the 2nd defendant inherited the property known as Transmara/Angata Bargoi/588 from his late father although he could not remember when the 2nd defendant's father passed away.
178. In cross-examination by the plaintiff's counsel, the witness indicated that all he knows is that the property known as Transmara/Angata Bargoi/588 belongs to the 2nd defendant.
179. The witness indicated that he is the owner of a property known as Transmara/Angata Bargoi/541 which has not been cancelled.
180. In concluding his evidence in chief, the witness indicated that the 2nd defendant's property known as Transmara/Angata Bargoi/588 was within Angata Bargoi Adjudication Section and not Moyoi Adjudication Section.
181. There was no cross-examination by the 2nd defendant and the 1st defendant closed its case thereafter.
182. The 2nd defendant called one witness known as Kiplangat Bor.
183. The witness began by acknowledging and adopting his witness statement dated 3/11/2021.
184. The witness testified that he was born in 1954 in an area known as Geturo within Angata Bargoi.
185. According to the witness, the property known as Transmara/Angata Bargoi/588 belonged to his late father who passed away in the year 2012.
186. However, since the acquisition of the property known as Transmara/Angata Baragoi/588, the family of the witness has never had any disputes with the plaintiff despite the numerous activities like farming and occupation thereof.
187. The witness indicated that the boundary of the property known as Transmara/Angata Bargoi/588 and that of Moyoi Adjudication Section were about 5 kilometres away.
188. In reference to the earlier suit Narok ELC Case No 370 of 2017, the witness indicated that he was a party in the said suit but the subject matter was not the property known as Transmara/Angata Bargoi/588.
189. The witness further indicated that there is a river known as Arap Bett which separates the property known as Transmara/Angata Bargoi/588 and the Moyoi Adjudication Section.
190. The witness indicated that the property known as Transmara/Angata Bargoi/588 had a title issued to his late father called Kipsand Arap Korir which he produced as 2nd defence exhibit 1.
191. In addition to the title, the witness produced an official search dated October 19, 2021 for the property known as Transmara/Angata Bargoi/588 and the same was marked a 2nd defence exhibit 2.
192. The witness further indicated that he had obtained a sketch map of the property known as Transmara/Angata Bargoi/588 from the lands offices in Kilgoris to ascertain the boundaries thereof before leasing it out to the 1st defendant.
193. At the time of leasing the property known as Transmara/Angata Bargoi/588 to the 1st defendant, the plaintiff was not in occupation.
194. According to the witness, the intention of the plaintiff instituting this suit was to benefit from the excavation that was being undertaken by the 1st defendant.



195. When the court gave an order for a ground visitation to be undertaken and the physical location of both properties known as Transmara/Moyoi/2 and Transmara/Angata Bargoi/588 to be established, the surveyor known as Chacha F Mariba filed a Report dated December 15, 2020 indicating that the property known as Transmara/Angata Bargoi/588 was within Angata Bargoi Adjudication Section.
196. The report done by Chacha F Mariba is dated 15/12/2020 was then marked it for production as 2nd defence exhibit 3.
197. The witness indicated that the government surveyor has never supplied him with a copy of his survey report until the day of the hearing.
198. In any event, the witness disagreed with the contents of the ground report submitted by the government surveyor.
199. On cross-examination by the counsel for the plaintiff, the witness admitted to being 89th defendant in the previous suit Narok ELC Case No 370 of 2017.
200. The witness further admitted to filing a counter-claim seeking a declaration that the property known as Transmara/Moyoi/2 had exceeded its boundary as set out in the declaration of 1976.
201. The witness also admitted that his counter-claim in Narok ELC No 370 of 2017 included a prayer the Moyoi Adjudication Section be confined to the boundaries provided in the declaration of 1976.
202. In reference to the counter-claim in this suit, the witness confirmed that it also contains similar prayers as those previous sought in Narok ELC No 370 of 2017.
203. For avoidance of doubt, the witness indicated that his entire counter-claim had been dismissed by the court in the previous suit known as Narok elc No 370 of 2017.
204. Although after the dismissal of the witness's counter-claim in Narok ELC No 370 OF 2017, a notice of appeal was filed, no action has so far been done.
205. In concluding his cross-examination, the witness indicated that he was born on the property known as Transmara/Angata Bargoi/588 and the same has never been within the property known as Transmara/Moyoi/2.
206. The witness indicated that he has not presented any pictures and/or evidence to show occupation of the property known as Transmara/Angata Bargoi/588.
207. In re-examination, the witness reiterated that he was born on the property known as Transmara/Angata Bargoi/588.
208. The 2nd defendants thereafter closed their case.
209. The court informed the 2nd defendant's counsel that the report by Chacha F Masiba had not been produced although it had been marked.
210. The counsel for the 2nd defendant consented to the said report dated December 15, 2021 be expunged from the court record and should not be relied upon by the court in determining this suit.
211. Parties were thereafter directed to file their written submissions which orders were complied by the plaintiff filing their submissions on the 28th of January 2022, the 1st defendant filing theirs on February 16, 2022, the 2nd defendant filing theirs on February 16, 2022 and the plaintiff filing supplementary written submissions on the February 16, 2022 albeit without leave of the court.



212. Having fully captured the pleadings, the list issues filed by the parties, oral evidence of the parties, the documentary evidence adduced and the written submissions of all the parties together with authorities therein, the court identified the following issues for determination in this suit.
1. Whether or not the plaintiff herein is a properly registered entity with proper legal capacity to institute these proceedings?
 2. Whether or not the plaintiff is the legal owner of the property known as Transmara/Moyoi/2?
 3. Whether or not the entry and/or excavation done by the 1st defendant on the property known as Transmara/Angata Bargoi/588 was lawful?
 4. Whether or not the title known as Transmara/Angata Bargoi/588 encroaches the plaintiff's property known as Transmara/Moyoi/2?
 5. Is the plaintiff entitled to the reliefs sought in the plaint dated February 18, 2019?
 6. Is the 2nd defendant entitled to the reliefs sought in the counter-claim dated November 30, 2021.
 7. Who bears the costs of the plaint & counter-claim.

Issue No 1 Whether or Not the Plaintiff Herein is a Properly Registered Entity with Proper Legal Capacity to Institute these Proceedings?

213. The first issue for determination in this suit is the registration and/or legal capacity of the plaintiff.
214. The registration and/or legal capacity of the plaintiff was first challenged by the 2nd defendant through a preliminary objection dated November 19, 2021 on the following grounds:-
- i. The plaintiff is a non-existent entity in law and therefore it can not be having powers to sue and/or to be sued.
 - ii. That the plaintiff is Angata Bargoi Farmers Co-operative Society Limited whereas the certificate on its bundles of documents has the name Angata Barkoi Farmers Co-operative Society Limited.
 - iii. The instant suit is instituted by an entity that is non-existent under the law in an attempt to have this court adjudicate the issue of ownership and trespass that is legally owned by the 2nd defendant.
 - iv. That the suit is bad in law, vexatious and an abuse of the court process.
 - v. The suit as drawn and filed is incompetent and fatally defective and therefore it should be struck out.
215. The 1st defendant similarly challenged the registration and/or legal capacity of the plaintiff through an application dated November 22, 2021 in which application sought for the following order:-
1. That this honourable court be pleased to strike out this suit as the plaintiff is a non-juristic person with no powers to sue.
216. The grounds in support of the 1st defendant's application are outlined as follows; -
- a. The plaintiff Angata Bargoi Farmers Co-operative Society Limited, is not a registered Co-operative Society as alleged in the description of paragraph 1 of the plaint.



- b. That being so, the law does not recognise it as a person capable of suing and being sued.
 - c. The certificate of registration annexed to the suit belongs to a different co-operative society, Ongata Barikoi Farmers Co-operative Society Limited registered in the year 1966, while the plaintiff was said to have been registered under the *Co-operative Society Act*, 1997.
 - d. Consequently, the plaintiff could not have been registered in 1966 yet its incorporation (if at all) was under a 1997 Act of Parliament.
 - e. A search at the Registrar of Co-operative discloses that Angata Bargoi Farmers Co-operative Society Limited has never been registered.
 - f. The suit herein is therefore fatally and incurable defective and this court has jurisdiction to strike it out in limine.
217. This application has been supported by the affidavit of Leonard Kibet Rono who is the counsel for the 1st defendant.
218. The affidavit has annexed three annexures which are (i) Request for further & better particulars of the plaint by the firm of Waweru Gatonye & Company, Advocates, (ii) A letter from the firm of Waweru Gatonye & Company, Advocates dated November 18, 2021 to the Commissioner for Co-operatives Development (ii) A letter from the Ministry of Agriculture, Livestock, Fisheries and Co-operatives (State Department for Co-operatives) dated November 22, 2021.
219. Due to the court's direction that this issue be canvassed at the hearing of the substantive suit, the plaintiff herein filed a further supplementary bundle of documents dated November 23, 2021 which contained (i) A copy of the notice of motion application dated January 31, 2018 in Narok ELC Case No 370 of 2017 (II) Copy of the replying affidavit sworn on the April 6, 2018 in Narok ELC Case No 370 of 2017 (iii) Copy of the ruling dated July 20, 2018 in Narok ELC Case No 370 of 2017 (iv) A copy of the Kenya Gazette Notice published on the July 20, 2017 (v) Copy of the judgement delivered in Narok ELC No 370 of 2017 (vi) Copy of the decree of the court issued on the September 28, 2020 in Narok ELC No 370 of 2017.
220. To appreciate the issue at hand, the court has perused the certificate of incorporation dated May 4, 1966.
221. The certificate of incorporation dated May 4, 1966 was issued in the name of Angata Barikoi Farmers Co-operative Society Limited under registration number CS/1683.
222. The 2nd defendant (Jonathan Bor) who has raised the preliminary objection dated November 19, 2021 is the same person who filed an application dated 31st of January 2018 against the plaintiff in the proceedings known as Narok ELC Case No 370 of 2017.
223. The learned judge presiding over the proceedings known as Narok ELC Case No 370 of 2017 actually identified it as an issue for determination in the judgement dated 23/9/2020.
224. The learned judge on page 9 of the judgement dated 23/9/2020 made the following findings
- “From the evidence of the witness from the office of the Commissioner of Co-operative Society, I have no doubt in mind that the status of the plaintiff as a legal entity has been established and authenticated.



Furthermore, the gazette notice by the Commissioner of Co-operatives to vacate the orders of deregistration is testament to the above fact and hence it is my finding that the plaintiff is a legal entity capable of suing.”

225. The 2nd defendant has not placed any evidence that this finding was ever reviewed, set-aside and/or overturned by an appellate court.
226. In the considered view of this court, the issue of the plaintiff’s registration and/or capacity to sue was settled in the judgement pronounced on 23/9/2020 in Narok ELC No 370 of 2017 and it is no use to waste judicial time to discuss the same.
227. The 1st defendant’s application dated November 22, 2021 is in the court’s view a misplaced application.
228. The application basically seeks the court to make a finding on the difference between the names Angata Bargoi Farmers Co-operative Society Limited and Angata Barikoi Farmers Co-operative Society Limited.
229. The 1st defendant seems to reply on the letter dated November 18, 2021 and the response dated November 22, 2021.
230. The particulars requested by the 1st defendant’s counsel is for Angata Bargoi Farmers Co-operative Society Limited and not Angata Barikoi Farmers Co-operative Society Limited as contained in the certificate of incorporation dated May 4, 1966.
231. A name search with the name Angata Bargoi Farmers Co-operative Society Limited would definitely lead you to results obtained by the 1st defendant’s counsel.
232. Statutory declaration and/or affidavit dated February 20, 2020 which was produced as (plaintiff exhibit 9) clearly explains the difference between Angata Bargoi Farmers Co-operative Society Limited contained in the certificate of registration dated May 4, 1966 and Angata Barikoi Farmers Co-operative Society Limited which appears in the title deed of the property known as Transmara/Moyoi/2.
233. In a nutshell, the court is of the view that both the preliminary objection dated November 19, 2021 as well as the application dated 22nd November are therefore not merited.

Issue No 2- Whether or not the Plaintiff is the Legal Owner of the Property Known as Transmara/Moyoi/2?

234. As regards this issue, the court appreciates the guidance of section 24, 25 and 26 of the [Land Registration Act](#), No 3 of 2012.
235. Section 26 of the [Land Registration Act](#), cap 3 of 2012 expressly provides that the certificate of title is to be held as conclusive evidence of proprietorship.
236. A perusal of the title deed of the property known as Transmara/Moyoi/2 issued on the May 28, 2001 indicates that the legal owner is the plaintiff.
237. The certificate of official search and the certified copy of the greed card issued by the Ministry of Lands on the 15/2/2019 (produced a plaintiff’s exhibits 4 & 5) confirms that the plaintiff is the duly registered owner of the property known as Transmara/Moyoi/2.
238. The court therefore finds that the plaintiff is the duly registered and beneficial owner of the property known as Transmara/Moyoi/2.



Issue No 3- Whether or not the Entry and/or Excavation Done by the 1st Defendant on the Property Known as Transmara/Angata Bargoi/588 Was Lawful?

239. The plaintiff in this suit has pleaded trespass in paragraph 11 of the plaint dated February 18, 2019 against the 1st defendant on their property known as Transmara/Moyoi/2.
240. In addition to the above, the plaintiff further pleaded various illegalities and/or violations of their right in paragraph 12 of the plaint dated February 18, 2019 through the actions of the 1st defendant on their property known as Transmara/Moyoi/2.
241. In response, the 1st defendant pleaded that it never trespassed and/or interfered with the plaintiff's property known as Transmara/Moyoi/2 but rather had a lease agreement with the 2nd defendant over a portion the property known as Transmara/Angata Bargoi/588.
242. Indeed, the 1st defendant produced a signed lease agreement dated January 4, 2018 with the 2nd defendant.
243. The 1st defendant further indicated that it was supplied with a copy of the title deed of Transmara/Angata Bargoi/588 which it conducted an official search and the same showed that indeed the 2nd defendant was the owner.
244. It is only on the basis of this due diligence that the 1st defendant proceeded to carry out its excavation on the property known as Transmara/Angata Bargoi/588.
245. From the evidence adduced by the plaintiff's two witnesses namely the Sub-county Land Registrar as well as the Sub-county Government Surveyor, there is an admission that the property known as Transmara/Angata Bargoi/588 existed in their records and had an active file open to the public.
246. The testimony of the Sub-county Government Surveyor actually confirmed that there was no illegality undertaken by the 1st defendant in excavating on a portion of the property known as Transmara/Angata Bargoi/588 because it had a valid title and sketch map emanating from the land's office.
247. Clearly therefore, this court is of the considered view that the 1st defendant undertook all the precautions a reasonable man could exercise before executing the lease agreement with the 2nd defendant and/or entering the property known as Transmara/Angata Bargoi/588.

Issue No 4- Whether or not the Title Known as Transmara/Angata Bargoi/588 Encroaches the Plaintiff's Property Known as Transmara/Moyoi/2?

248. During the hearing of this suit, an issue arose as to the physical location of the properties known as Transmara/Moyoi/2 and Transmara/Angata Bargoi/588.
249. Both the plaintiff and the 2nd defendant presented valid title deeds and copies of certificates of official searches.
250. The land officials namely the Sub-county Land Registrar and the Sub-county Land Surveyor confirmed that both properties known as Transmara/Moyoi/2 and Transmara/Angata Baragoi/588 had active registers and records.
251. However, when the court ordered for a physical ground report by the Sub-county Land Registrar and the Sub-county Land Surveyor, the report returned interesting facts on the ground.



252. According to the ground report dated March 2, 2021 by the Sub-county Land Registrar and the Sub-county Government Surveyor, the property known as Transmara/Angata Bargoi/588 was inside the property known as Transmara/Moyoi/2.
253. The Sub-County Land Registrar and the Sub-County Land Surveyor testified that the property known as Transmara/Angata Bargoi/588 was not at the correct place as its physical location is inside Moyoi Adjudication Section.
254. The Sub-county Land Registrar indicated that other properties titled in the name of Angata Bargoi Adjudication Section although were physically in Moyoi Adjudication Section were cancelled through the judgement in Narok ELC No 370 of 2017 as well as the Gazette Notice No 7809 dated 7/11/2003.
255. The 2nd defendant on the other hand indicated that the judgement pronounced in Narok ELC No 370 or 2017 as well as the Gazette Notice No 7809 dated 7/11/2003 did not affect his property known as Transmara/Angata Bargoi/588.
256. However, it is the evidence of the Sub-county Land Registrar and the Sub-county Land Surveyor that this property known as Transmara/Angata Bargoi/588 is within the area that has had a dispute.
257. The 2nd defendant has also claimed that Moyoi Adjudication Section overlapped over Angata Bargoi Adjudication Section.
258. Consequently, the 2nd defendant submits that the title issued under Moyoi Adjudication Section should be cancelled and those of Angata Bargoi Adjudication Section upheld.
259. Both the Sub-county Land Registrar as well as the Sub-county Land Surveyor indicated that this was not the correct position.
260. The submission by the government officials is that the Moyoi Adjudication Section was declared first in the year 1976 and titled in the year 2001.
261. Angata Bargoi Adjudication Section on the other hand was declared in the year 1986 and titled in 2003.
262. In essence therefore, there is no way Moyoi Adjudication Section would have overlapped with Angata Bargoi Adjudication Section which had not yet been declared.
263. Indeed, the issue before the court is a cardinal issue in the determination of this suit.
264. It is not lost to the court that the demarcation and registration of interests in land is the preserve of the government of land and in particular the Ministry of Land and Physical Planning.
265. The ground report from the Sub-county Land Registrar and the Sub-county Land Surveyor dated March 2, 2021 clearly explain the location of the property known as Transmara/Angata Bargoi/588 to be in the wrong place and inside the boundaries of the property known as Transmara/Moyoi/2.
266. For clarity, the title deed of the property known as Transmara/Moyoi/2 was issued in the year 2001 and that of Transmara/Angata Bargoi/588 issued in the year 2003.
267. This court looking at all the facts and evidence placed before it, it is of the considered opinion that the property known as Transmara/Angata Bargoi/588 has been superimposed over the physical area demarcated for the property known as Transmara/Moyoi/2 hence encroached on the same.

Issue No. 5- Is The Plaintiff Entitled to the Reliefs Sought in the Plaint Dated February 18, 2019?

268. The plaintiff has sought for various reliefs in the plaint dated February 18, 2019.



269. In prayer no 1, the court made its finding in issue no 1.
270. On prayer no 2 which is an eviction order against the 1st defendant, its agents and/or servants from the property known as Transmara/Moyoi/2, the is spent keeping in mind that the 1st defendant vacated the property known as Transmara/Moyoi/2.
271. Prayer no 3 is similarly spent due to the fact that 1st defendant vacated the suit property known as Transmara/Moyoi/2.
272. On prayer no 4- the court is of the considered view that the actions of the 1st defendant were undertaken on the basis of lawful documents and on information correctly obtained from the relevant government offices.
273. The 1st defendant conducted itself within the proper legal avenues and did not infringe on the terms of the lease agreement it had with the 2nd defendant who has a valid title deed on the property known as Transmara/Angata Bargoi/588.
274. In conclusion therefore, the court declines to grant any general and/or aggravated damages to the plaintiff emanating from the activities of the 1st defendant.
275. On the issue of costs to the plaint dated February 18, 2019, the court is the view that each party should bear its own costs.

Issue No 5- Is the 2nd defendant Entitled to the Reliefs Sought in the Counter-claim Dated November 30, 2021.

276. The 2nd defendant filed a counter-claim together with the counter-claim dated November 30, 2021.
277. The reliefs sought in the counter-claim were as follows; -
- I. A declaration that the interested party was the lawful owner of property known as LR No Transmara/Angata Baragoi/588.
 - II. A permanent order restraining the plaintiff whether by himself, his servants, employees, proxies and/or any other person whomsoever from entering, trespassing, and/or harassing, intimidating, threatening and/or in any other manner whatsoever from interfering with the interested party's quiet possession, ownership and lawful enjoyment of all the property known as LR Transmara/Anagata Baragoi/588 measuring approximately 31.41 Hactares.
 - III. A declaration that Moyoi Adjudication Area should be confined to the 1976 boundaries to prevent a repeated overlap.
 - IV. General damages for trespass and loss of use of the property.
 - V. Costs of the suit.
278. Prayer No i & ii of the counter-claim herein cannot be granted pursuant to the court's finding in issue No 4.
279. In fact, the court is of the view that the title held by the 2nd defendant known as Transmara/Angata Bargoi/588 was irregularly issued as there is no physical location and/or actual land delineated for it.
280. On prayer No iii, the court is of the view that this issue has already been addressed by the judgement pronounced in Narok ELC Case No 370 or 2017 and therefore is declined.



281. On prayer No iv, the 2nd defendant is not entitled to any general damages for trespass and loss of use as there is no physical parcel of land delineated to the title as Transmara/Angata Bargoi/588.
282. On the issue of costs, the 2nd defendant is ordered to bear the costs of this counter-claim against the plaintiff.
283. In conclusion therefore, the court do hereby make the following orders as appertains to the plaint dated November 18, 2019 and the counter-claim dated November 30, 2021.
- A. The plaintiff herein be and is hereby declared as the lawful, *bona-fide* and registered owner of the property known as Transmara/Moyoi/2.
 - B. The 2nd defendant's title known as Transmara/Angata Bargoi/588 be and is hereby declared irregularly issued by the Land Registrar Kilgoris.
 - C. The 2nd defendant be and is hereby directed to surrender back the original title of Transmara/Angata Bargoi/588 for cancellation to the Sub-county Land Registrar Transmara West, East and South within the next thirty (30) days from the date of this judgement.
 - D. In the event the 2nd defendant shall fail to comply with order No C hereinabove, the Sub-county Land Registrar is hereby directed to make a cancellation entry in the register of the title No Transmara/Angata Bargoi/588.
 - E. The 2nd defendant be and is hereby ordered to yield vacant possession within thirty (30) days of any portion of land in use or occupation within the plaintiff's property known as Transmara/Moyoi/2.
 - F. In the event prayer no E is not complied with, an eviction order shall issue upon the lapse of the thirty (30) days therein.
 - G. The 2nd defendant shall bear the costs of the counter-claim.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON DAY OF 21ST SEPT 2022.

EMMANUEL.M.WASHE

JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT: Elisha

ADVOCATES FOR THE APPLICANT: Mulisa for Plaintiff

ADVOCATES FOR THE RESPONDENT: Rono for 1st Defendant

Kiprotich for 2nd Defendant

