



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Mugabe (suing on behalf of the estate of the late John Juma Mugabe) &  
2 others v Sigari & 9 others (Environment & Land Case 204 of 2014)  
[2022] KEELC 15102 (KLR) (17 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 15102 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT & LAND CASE 204 OF 2014  
AA OMOLLO, J  
NOVEMBER 17, 2022**

**BETWEEN**

**VINCENT MUGABE (SUING ON BEHALF OF THE ESTATE OF THE LATE  
JOHN JUMA MUGABE) ..... 1<sup>ST</sup> PLAINTIFF  
CHARLES OBWATO MUGABE ..... 2<sup>ND</sup> PLAINTIFF  
MATHIAS MUGABE ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**CORNEL SIGARI ..... 1<sup>ST</sup> DEFENDANT  
WILLIAM JOGINDER ..... 2<sup>ND</sup> DEFENDANT  
CHARLES DEDE ..... 3<sup>RD</sup> DEFENDANT  
RAEL OBARE ..... 4<sup>TH</sup> DEFENDANT  
THOMAS ODINDA ..... 5<sup>TH</sup> DEFENDANT  
GODFREY OKOTH ODONGE ..... 6<sup>TH</sup> DEFENDANT  
MILLIANA AUMA WERE (DECEASED) ..... 7<sup>TH</sup> DEFENDANT  
BWIRE OKOTH ..... 8<sup>TH</sup> DEFENDANT  
VINCENT MARWAMABA ..... 9<sup>TH</sup> DEFENDANT  
CYRIL KWOGO MARWAMABA ..... 10<sup>TH</sup> DEFENDANT**



## JUDGMENT

1. The plaintiffs in a plaint dated June 22, 2007 brought this claim against the defendants jointly and severally seeking judgment as follows;
  - a. A declaration that Bunyala/bulemia/261 measuring 14.5 hectares is the freehold property of the plaintiffs absolutely.
  - b. A declaration that the entry upon and occupation of Bunyala/bulemia/261 by the defendants is trespass and illegal.
  - c. An order of eviction against the defendants, their servant and/or agents or any persons claiming through them, from Bunyala/bulemia/261 and an order that the court bailiff do restore possession of the converted portion of Bunyala/bulemia/261 back to the plaintiffs.
  - d. An order to the District Commissioner of Busia District working through the District Officer of Budalang'i Division and the Administration Police to assist the court bailiff in the eviction of the defendants, their servants and/or agents or any persons claiming through them from Bunyala /bulemia/261.
  - e. An order of permanent injunction against the defendants, their agents and or servants or any persons claiming through them from re-entering, settling, cultivating and or committing any act that is inconsistent with the rights of the plaintiffs as the absolute proprietors of the interest in Bunyala/bulemia/261.
  - f. Order for mesne profits.
  - g. Costs of the suit.
2. The plaintiffs pleaded that they are the registered joint proprietors of the freehold interest in all that property referred to as Bunyala/bulemia/261 and which the defendants forcefully and without any colour of right entered upon to dwell on it and to work it.
3. The defendants entered appearance and filed a joint defence and counterclaim dated July 24, 2007 denying each and every allegation of law and or fact contained in the plaint. The defendants stated that they have been in occupation of the suit land since 1950 and that their occupation has been open, peaceful, continuous and adverse to the interests of the plaintiff. That the plaintiff's claim is time barred and the suit is incompetent, bad in law and or abuse of the due process of court.
4. In their counterclaim, the defendants averred that during land adjudication exercise in Bulemia adjudication section the plaintiffs without any colour of right, consent and/or authority of the defendants caused the whole of LR Bunyala/bulemia/261 to be registered in their names to the exclusion of the defendants with full knowledge that they are entitled only to half of the suit land. They outlined the particulars of fraud as follows;
  - a. Making false presentation to the adjudication officials that they were entitled to be registered as proprietors of the whole of the suit land.
  - b. Taking advantage of the absence of the 10<sup>th</sup> defendant's father at the time of adjudication.
  - c. Failure to disclose to the adjudication officials that the defendants were entitled to half share of the suit land.



5. The defendants further pleaded that the plaintiffs are holding half share in the suit title in trust for their benefit. They pleaded that the 10<sup>th</sup> defendant had appealed to the Minister against the registration of the plaintiffs to their exclusion vide Land Appeal case number 135 of 1981. That after hearing the appeal, the Minister ordered that the suit land be subdivided in such a manner that the defendants should get half (½) share in the land with the plaintiffs retaining the other half (½) share.
6. The plaintiffs filed a response to the defence and counterclaim dated November 19, 2007 and denied the averments raised in the defence and put the defendants to strict proof. In their defence to the counterclaim, the plaintiffs stated that the defendants' counterclaim as drawn and filed does not disclose a reasonable cause of action. They denied the contents of paragraph 14 and the particulars of fraud set out thereunder and put each and every of the defendants to strict proof.
7. The hearing commenced on November 16, 2021 with Vincent Mugabe Jumatestifying as PW1. He first adopted the evidence of John Juma-deceased contained in the supporting affidavit filed on June 17, 2008 by dint of section 34(1)(a) of the *Evidence Act*. He testified that Mathias Mugabe, Charles Obwato and the late Mugabe Olwembo were registered in 1985 as the absolute proprietors of all that piece of land referenced as Bunyala/bulemia/261. That after the registration, one Olayo Odinga-deceased appealed to the Minister of Lands against the registration of the plaintiffs over the suit property and caused a restriction to be entered by the Chief Land Registrar on the register prohibiting dealings on the land until the appeal before the Minister for Lands was determined.
8. PW1 said the Minister of Lands through the agency of the special District Commissioner purported to divide the suit property into halves amongst the plaintiffs on one part and the other half to the said Olayo Odinga-deceased. The witness argued that the Minister had no jurisdiction to subdivide the suit property under the *Land Adjudication Act* or any other law. It is his evidence that the restriction placed on the land register is removable since the appeal to the Minister for Lands was complete but the findings therefrom void and that the entry and stay by the defendants upon the suit property could not and did not facilitate for running of time for purposes of acquisition of interest in the suit property by the defendants given that the entry and stay was upon knowledge and belief that the Minister for Lands order was legal and enforceable in law.
9. PW1 avers that the defendants occupied the suit property as tenants at will, which understanding continued until about the year 1997 when it was apparent to the plaintiffs that the defendants were setting themselves up against the title of the plaintiffs by hindering the plaintiffs from farming and grazing on part of the suit property and by the defendants generally being hostile to the plaintiffs. He said that any entitlement of the tenth defendant as principle trespasser and consequently of the 1<sup>st</sup> to 9<sup>th</sup> defendants to occupy the suit premises under customary tenure or in equity or howsoever and any right to occupy, work or set up boundaries over the suit property were investigated and adjudicated by the Busia District Land Disputes Tribunal but were found not to exist at all and the decision of the Land Disputes Tribunal was adopted as the decision of the court in Busia Principal Magistrate's Court Land Dispute no 101 of 2006. The plaintiff said he was not aware of any appeal lodged against the award which stated that Bunyala/bulemia/261 belonged to the plaintiffs. He produced the green card for LR Bunyala/bulemia/261 as PEX1, copy of the proceedings for Budalang'i Land Dispute Tribunal as PEX 2(a), copy of order and decree in Busia PMCC No 101 of 2006 as PEX 2(b & c).
10. During cross examination by Mr Otanga learned counsel for the defendants, PW1 could not tell when the defendants entered the land stating he was told that they came before he was born. PW admits the defendants have built on the land and are using it for purposes of cultivation. He reiterated that the plaintiffs were registered as proprietors of the suit land on October 2, 1985 and by then the 10<sup>th</sup> defendant was already on the land. PW1 was alive to an appeal to the minister against the registration



- of the 4 proprietors lodged by the late Olayo. He stated that the letter dated August 19, 1987 from the LAD and Settlement department referenced the suit land and recommended the land be divided into 2 equal parts between Olayo-deceased and the other portion to remain to the four plaintiffs.
11. PW1 said that there is no boundary between the part the defendants are occupying and the portion occupied by John Mugabe's family. That the registered owners' family are using LR 261 but not the whole of it because the defendants are occupying and cultivating some portion. He told the court that the 10<sup>th</sup> defendant was not buried on the suit land and to his knowledge, the 7<sup>th</sup> defendant passed on in November 1994. On re-examination, Pw1 said that the green card was opened in 1985 but the decision of the Minister came after the registration of the plaintiffs. He stated that in the determination of the Land Disputes Tribunal, they considered the letter from the Minister and that the Land Disputes Tribunal award was adopted in December 2006 while this case was filed in 2007.
  12. Adilia Jumatestified as PW2 and adopted her witness statements dated March 15, 2013 and February 11, 2021 as her evidence in chief. She testified that she is the wife to the late John Juma Mugabe and she is aware that the suit property has been in occupation by and utility of the 1<sup>st</sup> plaintiff since she married the plaintiff. She stated that they have been in occupation as early as the 1960s and the plaintiffs became registered as the proprietors of the suit property in the year 1985. The defendants have trespassed on the property having occupied it with no title and they have issued them notices to vacate but the defendants have ignored and continued to settle on part of the suit premises.
  13. PW2 was aware of the proceedings taken in the Budalang'i Land Dispute Tribunal in 2006 by John Juma Mugabe against the 1<sup>st</sup> defendant at whose instance the 2<sup>nd</sup> to 10 defendants have trespassed on the land. The Land Disputes Tribunal conducted its proceedings wherein both the plaintiff, 1<sup>st</sup> defendant and other witnesses testified, and the elders visited the land in issue, considered the boundaries and investigating who had the right, even customary right to work the land, to be on the land and to stay within the boundaries in issue. That the Tribunal found for the plaintiff and the award was adopted as an order of court on December 7, 2006 in Busia PMCC Land Dispute No 101 of 2006. She stated that the defendants have no colour of right to occupy the plaintiff's said property.
  14. On cross examination by Mr Otanga advocate, Pw2 said that she did not remember the year the defendants entered the land and they have taken the lower part of the land leaving her a small portion.
  15. The defence case started on February 22, 2022 with the evidence of the 1<sup>st</sup> defendant, Cornel Sigali Maloba as DW1. He adopted his witness statement dated February 11, 2022 as his evidence in chief and stated that the 7<sup>th</sup> and 10<sup>th</sup> defendants have since passed on while the 8<sup>th</sup> defendant is not known to him. DW1 stated that he is the son of Thomas Maloba who was a resident of Bukhumachi in Bunyala South. In 1962, his father migrated from Bunyala South due to persistent floods and was welcomed by one Marwamba Yala and assigned a portion of what came to be registered as LR Bunyala/bulemia/261. That his late father took a portion of the land assigned to him by the said Marwamba Yala and developed the same and began using it to the exclusion of everyone else.
  16. Dw1 continued that on or about 1972, one John Juma Mugabe-deceased also migrated from Bukoma due to congestion and was assigned a portion by Marwamba Yalato use a portion of land which was distinct from the one occupied by Thomas Maloba and the one retained by Marwamba Yala. He stated that during adjudication, the whole portion of land which Marwamba Yalawas occupying and which he had allowed Thomas Maloba and John Juma Mugabeto use portions thereof was registered as LR Bunyala/bulemia/261 in the name of John Juma Mugabe, Mathias Mugabe and Charles Mugabe.
  17. The witness further stated that Marwamba Yala died soon after the registration and one Olayo Odinga appealed on behalf of Marwamba Yala to the Minister vide Land Appeal case number 135/82.



The special district commissioner in the company of the district surveyor visited LR No Bunyala/bulemia/261 and planted the boundary in terms of the minister's decision and the boundaries remain to date. DW1 avers that the district surveyor was to prepare a new adjudication record for transmission to the director of survey for registration and issuance of separate title deeds. He told the court that the plaintiffs have never been in occupation of the portion that was assigned to Olayo Odinga by the minister and which portion was being occupied by the family of Marwamba Yala, Dorila Akumu Maloba, Mariana Auma Were and Emmanuel Mukhuwa Orembo and the plaintiffs were staying at Bukoma where John Juma Mugabe migrated from.

18. The 1<sup>st</sup> defendant contend that LR No 261 was registered in the names of the plaintiffs to hold the same on their behalf and on behalf of families which are in physical occupation of the said parcel of land and that the families sought to be evicted have been in occupation of their respective portions openly, peacefully and continuously from 1950s to date. He prayed that the plaintiff's suit be dismissed and that a declaration be made that the plaintiffs hold title in respect of one half of LR No. 261 in trust for the defendants. He said where they originally came from now forms part of the lake and where he currently lives, he has been there for 60 years. He produced the letter dated 19/8/1985 as DEX 1, copy of letter dated March 6, 2006 referring to implementation of the order in the appeal as DEX 2.
19. Under cross examination by Mr Bwire learned counsel for the plaintiff, DW1 stated that his father Marwamba is the one who asked for the land and should the court find that Marwamba is the owner then he also becomes the owner and vice versa. He stated that the appeal was lodged by Marwamba's brother on his behalf because he was dead and he did not know the date of 1<sup>st</sup> registration of LR No 261. He said that the decision in the appeal was rendered on August 19, 1987 which was after the registration of LR No 261. He informed the court that the 10<sup>th</sup> defendant was the 1<sup>st</sup> born son of Marwamba. The witness was aware of the case before Budalangi Land Disputes Tribunal decided in the year 2006. He did not know if the Land Disputes Tribunal considered the decision prior to the Appeal of the Minister or the outcome reached by the said tribunal because he was not a party to these proceedings. He said they entered the land legally and about the arrangement of 1962 regarding the suit land, he was informed by his mother. He said he was giving evidence on behalf of himself, 2<sup>nd</sup>-6<sup>th</sup> and 9<sup>th</sup> defendants. That John Mugabe was present during the hearing of the appeal.
20. On re-examination, the witness stated that the green card shows that LR No 261 was opened on October 2, 1985 and the letter of appeal says the appeal was determined in 1986. He stated that he was not sued in the case before the Budalangi Land Disputes Tribunal.
21. Godfrey Oongo Marwambatestified as DW2 and adopted his witness statement dated February 11, 2022 as his evidence in chief. He stated that he is the son of the late Marwamba Yala who was the original owner of what came to be registered as LR No Bunyala/bulemia/261. That his late father welcomed Thomas Malobato use a portion of LR No 261 since the original home of the said Thomas was experiencing perennial floods and it has since been submerged by Lake Victoria. He testified that his father later on welcomed John Juma Mugabefrom Bukoma and allowed him to use another portion of what came to be registered as LR 261 since Bukoma too was congested.
22. DW1 stated further that during land adjudication, the land belonging to his father Marwamba Yala and which was occupied by the said Marwamba Yala, the family of Thomas Malobaand the family of John Juma Mugabewas registered as LR No 261 in the name of Juma Mugabe, Olwembo Mugabe, Charles Mugabe and Mathias Mugabe. He informed the court that his father died soon thereafter and his uncle Olayo Odinga-deceased appealed to the minister against the registration of LR No 261 in the names of the plaintiffs. The appeal was heard and the following orders were made; i) That LR Bunyala/bulemia/261 should be subdivided between four parties in such a manner that the appellant gets on half of the land and the plaintiffs get the other half. ii) That since Marwamba Yala on whose



behalf Olayo Odinga and appealed had other people on the land, his portion of the land should have the following people; Getrude Okoch Marwamba Yala, Dorila Akumu Maloba, Maliana Auma Were and Emmanuel Mukhuwa Orembo.

23. DW2 asserted that the special district commissioner in the company of the District surveyor visited the suit parcel and planted the boundary in terms of the minister's decision and the boundaries planted remain in place to date. He said that the plaintiffs have never been in occupation of the portion that was assigned to Olayo Odinga-deceased by the Minister and which portion was being occupied by the family of Marwamba Yala, Dorila Akumu Maloba, Mariana Auma Were and Emmanuel Mukhuwa Orembo. He added that the families of LR No 261 do not have any other place to go and the suit land is the place they have all along known as their home.
24. On cross examination by Mr Bwire counsel appearing for the plaintiffs, DW2 stated that he was giving evidence on behalf of the 10<sup>th</sup> defendant who is deceased. He was aware Juma Mugabe sued the 10<sup>th</sup> defendant before the Budalangi Land Disputes Tribunal in 2006 but was not aware of the decision of the Land Disputes Tribunal or that the decision was adopted as an order of the court. DW2 said that the 10<sup>th</sup> defendant did not agree with Land Disputes Tribunal decision but he did not know if the 10<sup>th</sup> defendant appealed. He did not have information that Juma Mugabe and his father had 3 cases between them and Juma Mugabe won. He reiterated that they entered the suit land legally and most of the information in his statement was told to him by 10<sup>th</sup> defendant and his father.
25. On re-examination, DW2 admitted that the 10<sup>th</sup> defendant is deceased and Michael Sida is the one appointed to represent the deceased. He said he was in court as a witness.
26. The parties agreed to exchange written submissions. The plaintiffs filed their submissions on March 31, 2022 submitting that the implication in law of the judgment /decision in Busia Resident Magistrate's Court Land Dispute Cause no 101 of 2006, this court is bound by the said judicial determination by dint of provisions of section 23(3) of the *Interpretation of General Provisions Act*. They submitted that the letter dated August 19, 1987 has no legal significance and could not confer any right to the defendants as claimed or at all for the foregoing fundamental reasons and additionally, to the extent that the said letter purports to revisit the question of proprietorship of the suit property.
27. They submitted further that the impugned letter of the Special District Commissioner can only find effect if the judgment and decree of the court had been set aside, which has not been done. On whether adverse possession is demonstrable in the circumstance of this case, they submitted that the defendants do not satisfy the primary mandatory threshold for adverse possession as they have testified on oath that their entry was not by way of trespass but that they were lawful proprietors. They stated that filing the present suit was necessary for purposes of restoring the full rights of a proprietor under section 24 and 25 of the *Land Registration Act* and article 40 of the *Constitution of Kenya*.
28. The defendants filed their submissions on April 26, 2022 and submitted that the issue for determination is whether the plaintiffs are holding title to ½ share of LR Bunyala/bulemia/261 in trust for the defendants or whether they were trespassers liable for eviction. They placed reliance on section 7 of the *Limitation of Actions Act* and stated the occupation by the defendants and their respective families on a portion of LR No 261 from 1950 to date having been open, peaceful and continuous has elevated the status of the defendants from that of a trespasser to that of a beneficial owner. They stated that Busia Resident Magistrate's Court Land Dispute Cause no 101 of 2006 was between John Juma Mugabe and Cyril Kwogo Marwamba who has since passed on. They submitted that it is abundantly clear that the plaintiffs were registered as owners of LR No 261 when the defendants were already in occupation of distinct portions. They urged the court to find and hold that the plaintiffs hold title in respect of one half of LR No Bunyala/bulemia/261 in trust for the defendants.



29. I have carefully considered the pleadings, the evidence on record and the submissions filed by the parties. At this juncture the court is called upon to determine the following issues;
- a. Whether the plaintiffs are holding the suit parcel LR No Bunyala/bulemia/261 in trust for the defendants; or
  - b. Whether the defendants should be evicted and a permanent injunction issued against them, their agents, their servants and or any person claiming through them;
  - c. Who bears the costs of this suit?
30. On the first issue of trust, the defendants have in their defence and counterclaim at paragraph 15 and 16 pleaded that the plaintiffs hold the suit property in trust for them. DW1 told the court that the suit land initially belonged to one Marwamba Yala who gave them a portion after their father migrated from Bunyala South due to persistent floods. When adjudication was being done, LR No Bunyala/bulemia/261 was registered in the name of John Mugabe, Mathias Mugabe and Charles Mugabe. They said that this was fraudulent on the part of the plaintiff and listed out the particulars of fraud. There is evidence of an appeal lodged against the registration of the plaintiffs by Olayo Odinga-deceased. The appeal number is given as Land Appeal case no 135 of 1981 which implies that the appeal was lodged before the registration was completed.
31. In the green card produced as Pex 1, the registration of the three plaintiffs, the same was restricted on the day the register was opened. The registration was therefore not absolute but was subject to the outcome of the Appeal lodged to the Minister. Section 28 of the [Land Adjudication Act](#) cap 284 provided thus;
- "Upon receiving the adjudication register under section 27 of this Act, the Chief Land Registrar shall cause registrations to be effected in accordance with the adjudication register:
- Provided that, where the land is affected by an appeal under section 29 of this Act, a restriction shall be made and registered in respect of that land expressed to endure until the determination of the appeal, and on such determination the register shall if necessary be altered in accordance with the determination." (underline mine for emphasis).
32. Section 29 of the [Land Adjudication Act](#) provided thus;
- "1. Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by—
    - a. delivering to the Minister an appeal in writing specifying the grounds of appeal; and
    - b. sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.
    - c. The Minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar.
    - d. When the appeals have been determined, the Director of Land Adjudication shall—



- a. alter the duplicate adjudication register to conform with the determinations; and
    - b. certify on the duplicate adjudication register that it has become final in all respects, and send details of the alterations and a copy of the certificate to the Chief Land Registrar, who shall alter the adjudication register accordingly.
    - e. Notwithstanding the provisions of section 38(2) of the Interpretation and General Provisions Act (cap.
  2. or any other written law, the Minister may delegate, by notice in the Gazette, his powers to hear appeals and his duties and functions under this section to any public office by name, or to the person for the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that of the Minister.'
33. The appeal by Mr Olayo was heard and determined in his favour as shown in a letter dated August 19, 1987 was addressed to the District Surveyor Busia to confirm that the appeal was heard and determined by the Special District Commissioner on May 6, 1986 and it was allowed. The letter stated as follows;
- “... It was ordered that land parcel number 261 in Bulemia should be sub-divided between the four parties in such a manner that the appellant gets one half of the land and the 3 respondents get the other half. It was further ordered that since the late Marwamba Yala on whose behalf Olayo Odinga had appealed had other people on the land his portion of the land should have the following people registered; Getruda Akochi Marwamba Yala, Dorila Akumu Maloba, Maliana Auma Were and Emmanuel Mukhuwa Orembo.
- While the other half of the land belonging to the respondent should be registered in the names of the following; Juma Mugabe, Olwembo Mugabe, Charles Mugabe and Mathias Mugabe.”
34. The submission by the plaintiffs that the Minister had no powers to hear the appeal and make the orders they made is misleading as the *Land Adjudication Act* provided for appeals. The complainants lodged an appeal before the adjudication process was finalised hence the finding of the Special District Commissioner ought to have been implemented. The plaintiffs have said that they let the defendants stay on the suit land on the strength of the letter of the Minister of Land but they now believe the said Minister of Lands did not have jurisdiction to make said decision. They did not challenge the jurisdiction of the Minister of Lands in court but instead went before the Budalangi Land Dispute Tribunal which made a decision that the suit land belonged to the plaintiff as there was no evidence that the Special District Commissioner had visited the land and subdivided it as claimed.
35. The *Land Adjudication Act* gives insight as to how objections to the land adjudication register are handled in section 26 and 28. The first objection is heard and determined by the land adjudication officer and if a party is dissatisfied with, they can appeal to the Minister and the orders made shall be final. From the letter dated May 6, 1986 does not indicate that the appeal was decided by the Minister as has been claimed by the plaintiffs. Therefore, if the plaintiffs were dissatisfied with the decision of the land adjudication officer on the objection, they still had an avenue of appeal to the High Court. The filing of the case before the Land Disputes Tribunal to challenge the decision of the Minister by



John Mugabe long after the decision of the Minister (from 1987 to 2006) was an exercise in futility. The Tribunal lacked jurisdiction to nullify the findings in the appeal as they attempted to do.

36. JM Mutungi, J in *Kipkobel Arap Misoi v Proscila Chepkorir*(2016) eKLR, had this to say about the appeal process as laid out in the *Land Adjudication Act*;

“The Land Adjudication Act, Cap 284 of the Laws of Kenya as I have illustrated and demonstrated in the foregoing analysis sets out an elaborate process that is all inclusive. The process does not permit any omission of any procedural step. The adjudication process under the Act is completed when appeals before the Minister have been determined and the Director of Land Adjudication certifies the duplicate adjudication register that it has become final and sends the certified copy incorporating any alternations in conformity with the Minister’s decision to the Chief land Registrar, who then alters the adjudication register accordingly. Where this process is not adhered to, the adjudication process is flawed and any registration of title on the basis of the flawed process in my view would be liable to be annulled. The plaintiff’s title to the suit property was a product of a flawed process as he clearly got registered when the defendant’s appeal was pending before the Minister. The land registrar under the Adjudication Act can only register the adjudication register and issue titles after the process of adjudication is finalized in regard to any affected parcels. The process of objection and any resultant appeal must be allowed to take its full course and determinations made. Otherwise the process which is so meticulously set out in the Adjudication Act would be rendered superfluous. The procedure must be honoured.”

37. The plaintiffs further pleaded and submitted that since the defendants were in occupation under the guise that the land belonged to them, the right to adverse possession cannot accrue. However, the defendants claim is hinged on trusts. They expressed their opposition to the registration of the plaintiffs as soon as they realised that the plaintiffs had caused themselves to be registered as owners of the suit land. The defendants have explained how they got on the land with some of the defendants (claiming through Marwamba) that they were the original owners of the suit land before adjudication. There is evidence that during the process of adjudication, the defendants were in possession and occupation of the suit portions the plaintiffs now want them evicted from.
38. By virtue of the plaintiffs acquiring title while aware of the presence of the defendants on the land, it can only be inferred that they were registering themselves for their benefit and for the benefit of the defendants. Thus they are holding the title to LR No Bunyala/bulemia/261 in trust for the defendants.
39. On whether the plaintiffs are entitled to the prayers sought in the plaint, the answer is in the negative. Having found above that the adjudication procedure was not completed as was intended by the Adjudication Act, the plaintiffs cannot claim to be entitled to be entitled to exclusive use of the suit land as was envisaged in section 24 and 25 of the *Land Registration Act*. Section 26 provides that title to a registered proprietor cannot be impeached unless it has been shown that the title was acquired through fraud, corruption or unprocedurally. In the present case, I believe that the plaintiffs title to LR Bunyala/buemia/261 was acquired unprocedurally as the adjudication procedure has not been completed as was broken down in the letter dated May 6, 1986.
40. The upshot of the foregoing is that the plaintiffs suit is unmerited and the defendants counterclaim succeeds as follows;
- a. A declaration be and is hereby made that the plaintiffs are holding ½ share in title Bunyala/ Bulemia/261 in favour of the defendants.



- b. The register for Bunyala/Bulemia/261 shall be rectified to include the half share ( $\frac{1}{2}$ ) of the defendants.
- c. Costs of the suit awarded to the defendants.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 17TH DAY OF NOVEMBER 2022.**

**A. OMOLLO**

**JUDGE**

**Sent to advocates on record via email at BUSIA this 17th Day of November, 2022**

**DEPUTY REGISTRAR, ELC**

**BUSIA**

