



Omweri & another v Keiyan Farmers Co-operative Society Limited (Environment and Land Appeal E005 of 2021) [2022] KEELC 14920 (KLR) (17 November 2022) (Judgment)

Neutral citation: [2022] KEELC 14920 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL E005 OF 2021
EM WASHE, J
NOVEMBER 17, 2022**

BETWEEN

ABUYA OMWERI 1ST APPELLANT

GIDEON ABUYA 2ND APPELLANT

AND

KEIYAN FARMERS CO-OPERATIVE SOCIETY LIMITED RESPONDENT

JUDGMENT

1. In this Appeal, the Appellants herein are dissatisfied with the Judgement of Hon RM Oanda (SPM) pronounced on the November 8, 2021 in the proceeding known as Kilgoris SPM ELC Case No 52 Of 2021.

Pleadings & Evidence

2. The Judgement appealed against arises from an Amended Plaintiff filed on August 30, 2021 by the Respondent seeking for the following Orders; -
 - A. Declaration that the Plaintiff is the registered and/or lawful owner of Land Reference No Transmara/keiyian/7.
 - B. Permanent injunction restraining the Defendants, their agents, servants and/or anyone under the instructions of the Defendants from inferring and/or burying the remains of Alice Kerubo Abuya(now deceased) on Land Reference No Transmara/keiyian/7 and/or any portion thereof.
 - C. The OCS Nyamaiya Police Station, Enosaen Police Station and/or the Sub-County Police Commander Transmara West Sub-County do enforce the Decree herein.



- D. An eviction Order be issued against the Defendants, their family members, agents and/or either servant from Land Reference Transmara/keiyian/7 formerly Land Reference No Transmara/keiyian/5.
- E. Costs and Interest.
3. The Defendants in response to the Amended Plaintiff filed a Statement of Defence & Counter-Claim on the September 10, 2021.
4. The Counter-Claim filed by the Defendants sought the following Orders against the Plaintiff; -
- A. Declaration that the portion of land measuring approximately 10 Acres of Land Reference Transmara/keiyian/5 belongs to the Plaintiff in the Counter-Claim
- B. That an Order be issued that the deceased body of Alice Kerubo Abuyain interred forthwith near her houses which can be seen clearly from the photograph.
- C. Costs and interest of the suit be granted.
5. Prior to the hearing of this suit, the Trial Court issued an injunction on the September 13, 2021 restraining the Defendants/Respondents either by themselves, agents, servants and/or anyone else whether claiming under the Defendants/Respondents or otherwise from burying the remains of one Alice Kerubo Abuya (deceased) who is the wife of the 1st Defendant/Respondent and mother to the 2nd Defendant /Respondent on any other date on Land Reference Transmara/keiyian/7 and/or any portion thereof whatsoever pending the hearing and determination of this suit as contained on Page 2 of the Record of Appeal.
6. From the proceedings contained in pages 19-34 of the Record of Appeal, the hearing of the suit commenced on September 23, 2021.
7. The 1st Witness to testify on behalf of the Respondent at the Trial Court was one Milton Kobado.
8. The Respondent's 1st witness at the Trial Court was the Deputy Sub-County Land Registrar, Transmara.
9. The Respondent's 1st witness at the Trial Court stated that the property known as Transmara/keiyian/7 (hereinafter referred to as 'the suit property') was registered in the name of Keiyian Group Ranch.
10. The Respondent's 1st witness further stated that the suit property was approximately 775.93 Hectares in total.
11. To confirm the ownership of the suit property, the Respondent's 1st witness at the Trial Court produced the Green Card relating to the suit property as Plaintiff's Exhibit 1.
12. According to the Green Card of the suit property, the Appellants names did not appear anywhere in the Green Card.
13. As to issue of the difference of the names appearing on the Green Card of the suit property and the Respondent's name in the pleadings, the Plaintiff's witness testified that Keiyian Group Ranch is the owner.
14. In cross-examination, the Respondent's 1st witness reiterated that the name which appears on the Green Card of the suit property was Keiyian Group Ranch and not Keiyian Farmers Co-operative Society Limited.



15. The Respondent's 1st witness denied knowledge of how many members were duly registered in Keiyian Group Ranch as he did not have the official list in Court on that particular date.
16. However, the Respondent's witness again indicated that the Appellants names were not on the Green Card of the suit property as owners.
17. In re-examination, the Respondent's 1st witness clarified to the Trial Court that the Green Card produced in Court as Plaintiff's Exhibit 1 was for the property known as Transmara/keiyian/7 as the former property known as Transmara/keiyian/5 had been sub-divided.
18. The Respondent's 1st witness at the Trial Court reiterated that he was not aware of the total number of members in Keiyian Group Ranch.
19. Nevertheless, the Respondent's 1st witness at the Trial Court confirmed that Keiyian Group Ranch was in the process of transferring the suit property to the name which appears in this pleadings Keiyian Farmers Co-operative Society Limited.
20. The Respondent's 2nd witness at the Trial Court was Henry Otieno Owuor.
21. The Respondent's 2nd witness introduced himself as the Sub-County Land Surveyor of Transmara East, West and South.
22. The Respondent's 2nd witness informed the Trial Court that indeed, there was a property known as Transmara/keiyian/5 which was sub-divided into two portions namely Transmara/keiyian/7 and Transmara/keiyian/8.
23. The Respondent's 2nd witness at the Trial Court then produced the Mutation of the Sub-division relating to Transmara/keiyian/5 into two portions namely Transmara/keiyian/7 and Transmara/keiyian/8 As Plaintiff's Exhibit 2.
24. The Respondent's 2nd witness at the Trial Court testified that the Appellants names did not appear on the Mutations as the owners of the suit property in this suit.
25. According to the Respondent's 2nd witness, the Mutations clearly demarcated the boundaries of the two sub-divisions known as Transmara/keiyian/7 And Transmara/keiyian/8.
26. In concluding his evidence in chief, the Respondent's 2nd witness informed the Court if anyone is in the suit property, then such a person was either trespasser and/or a squatter.
27. In cross-examination, the Respondent's 2nd witness testified that he visited the property owned Keiyian Group Ranch in the year 2016.
28. According to the Respondent's 2nd witness, the conversion of Keiyian Group Ranch To Keiyian Co-operative Society Limited was still ongoing.
29. In the year 2018, the Respondent's 2nd witness also visited the Keiyian Group Ranch for purposes of sub-division and creation of the suit property.
30. In re-examination, the Respondent's 2nd witness reiterated that the suit property does not belong to the Appellants.
31. Further, the Respondent's 2nd witness testified that he was aware that Keiyian Group Ranch was in the process of transferring the suit property into the Co-operative society.
32. The Respondent's 3rd witness at the Trial Court was one Philip Tompere Saiyual.



33. The Respondent's 3rd witness introduced himself as the Chairman of the Plaintiff entity.
34. The Respondent's 3rd witness confirmed that the Plaintiff entity was duly registered and produced the Certificate of Incorporation as Plaintiff's Exhibit 3.
35. In addition to the above, the Respondent's 3rd witness also produced an authority to appear and testify on behalf of Plaintiff as Plaintiff's Exhibit 4.
36. The Respondent's 3rd witness informed the Court that the Plaintiff which was formerly called Keiyian Group Ranch was the owner of the suit property and produced the Title Deed as Plaintiff Exhibit 5.
37. It was the Respondent's 3rd witness's testimony that the suit property was initially part of Transmara/keiyian/5.
38. The Respondent's 3rd witness further stated that the suit property has never been the property of the Appellants herein.
39. Consequently therefore, the body of Alice Kerubo Abuya (deceased) who is the wife of the 1st Appellant should not be buried on the suit property as the same does not belong to them.
40. The Respondent's 3rd witness then produced photographs of the Appellants preparing for the burial of Alice Kerubo Abuya (deceased) on the suit property as Plaintiff's Exhibit 6.
41. The Respondent's 3rd witness informed the Court that the Appellants herein were not members of the Group Ranch and/or the Plaintiff entity to bestow them with any proprietary rights within the suit property.
42. In essence therefore, it was wrong and illegal for the Appellants to bury Alice Kerubo Abuya (deceased) on the suit property which does not belong to them.
43. The Respondent's 3rd witness told the Trial Court that there has been no meeting which has taken place between the Appellants and the Respondent about the right to bury the late Alice Kerubo Abuya (deceased) on the suit property.
44. In concluding his evidence in chief, the Respondent's 3rd witness stated that the process of transferring the suit property from the former name Keiyian Group Ranch to the current name of the Plaintiff was on going.
45. In cross-examination, the Respondent's 3rd witness confirmed that the Plaintiff did not have a title Deed of the suit property in its own name.
46. The Respondent's 3rd witness confirmed that Plaintiff's Certificate of Registration as well as the Authority to represent the Plaintiff from the Management Committee had been produced in Court.
47. According to the Respondent's 3rd witness, the deceased Alice Kerubo Abuya had passed away about Three (3) weeks at the time of the trial.
48. Consequently therefore, the Photographs produced as Plaintiff's Exhibit 6 demonstrated the Appellants actions of preparing for the burial of the deceased Alice Kerubio Abuya on the suit property.
49. The Respondent's 3rd witness informed the Court that the house in the pictures produced as Plaintiff's Exhibit 6 belonged to the Appellants who had trespassed on the suit property.
50. Nevertheless, there was no person who had been buried on the suit property and the deceased Alice Kerubo Abuyawas to be the first one.



51. According to the Respondent's 3rd witness, the 1st Appellant and the Plaintiff have heard numerous cases appertaining the portion occupied by the 1st Appellant on the suit property.
52. The Respondent's 3rd Witness stated that the Plaintiff entity had about 44 families with more than 2000 members and the Appellants were not members of the said group ranch.
53. In re-examination, the Respondent's 3rd witness informed the Court that there are various processes of transferring the Title of the suit property from Keiyian Group Ranch To Keiyian Farmers Co-operative Limited which is ongoing.
54. The Respondent's 3rd witness further confirmed that the pictures produced as Plaintiff's Exhibit 6 were taken on the suit property.
55. Nevertheless, the Respondent's 3rd witness testified that the Appellants had no legal right to bury the deceased Alice Kerubo Abuya or occupy the suit property which belongs to the Plaintiff.
56. The Respondent's 3rd witness concluded his evidence by stating that the Plaintiff entity was not aware of any other burials which had happened before or earlier.
57. Upon completion of the Respondent's 3rd witness testimony, the Plaintiff closed their case.
58. The Defence began their hearing by calling Gedion Ateka Abuya.
59. The Defence 1st witness was also the 2nd Defendant in the suit at the Trial Court.
60. The Defence 1st witness informed the Trial Court that the 1st Defendant was the biological father and the deceased Alice Kerubo Abuya was the biological mother.
61. According to the Defence 1st witness, the area occupied by the Appellants was approximately 10 Acres within the property known as Transmara/keiyian/5.
62. The Defence 1st witness testified before the Trial Court that the family's occupation on the suit property began way back in 1939 when their grandfather occupied the same and upon his death, was buried on the suit property.
63. The Defence 1st witness further testified that the grandmother died sometime in 1994 and was again buried on the suit property.
64. The Defence 1st witness however admitted that they did not have any title deed for the portion they occupied on the suit property.
65. The Defence 1st witness stated that the portion which is occupied by the Appellants and their families comprises of about Ten (10) houses.
66. The Defence 1st witness informed the Court that the father was present in Court.
67. According to the Defence 1st witness, the burial of the mother Alice Kerubo Abuya should be allowed to proceed on the suit property.
68. The Defence 1st witness informed the Court that his dad, the 1st Appellant herein has never been chased away from the suit property by the Plaintiff entity and have even planted trees within the portion they occupy.
69. In cross-examination, the Defence 1st witness confirmed that the 1st Appellant had filed a case claiming ownership of the portion they occupied on the suit property but the same was dismissed.



70. Similarly, the Defence 1st witness further confirmed that they filed an Appeal after the dismissal of the first case but the Appeal was also dismissed.
71. The Defence 1st witness indicated that neither the 1st Appellant nor the 2nd Appellant had any legal documents conferring any ownership rights including a Title Deed thereof.
72. Nevertheless, the Defence 1st witness insisted that the deceased Alice Kerubo Abuya should be buried on the suit property because that is where they were born.
73. The Defence 1st witness lastly admitted that he had no ownership documents to confirm the trees planted in the portion they occupy on the suit property belonged to them.
74. In Re-examination, the Defence 1st witness reiterated that the trees shown in the pictures belonged to him.
75. The Defence 2nd witness to be called was one Zablon Ombasa Rachoni.
76. The Defence 2nd witness began his evidence in chief by acknowledging that he knew the 1st Appellant very well.
77. The Defence 2nd witness informed the Trial Court that he also knows Daniel Abuya who was a brother and neighbour on the suit property.
78. According to the Defence 2nd witness, the portion occupied by the Appellants belonged to them.
79. The Defence 2nd witness thereafter adopted his witness statement as his further evidence in chief.
80. In cross-examination, the Defence 2nd witness reiterated that the 1st Appellant was born on the portion they occupy on the suit property.
81. However, the Defence 2nd witness admitted that he did not know the parcel number of the suit property which the Appellants resided.
82. The Defence 2nd witness further admitted that he had never seen any title documents of the portion the Appellants occupied on the suit property.
83. Nevertheless, the Defence 2nd witness begged the Court to allow the deceased to be buried on the portion occupied by the Appellants.
84. The Defence 2nd witness confessed that he would not agree for anyone to be buried on his land if such a person was not a relative.
85. According to the Defence 2nd witness, the portion occupied by the Appellants was their lawful land and the deceased Alice Kerubo Abuya should be buried there.
86. In re-examination, the Defence 2nd witness reiterated that the Appellants have been staying on the portion occupied by them.
87. The Defence 2nd witness stated that he was very familiar with the land in dispute because he also stayed on the same portion.
88. In conclusion, the Defence 2nd witness confirmed that the Deceased Alice Kerubo Abuya was residing on the portion in dispute and should be buried there.
89. The Defence 3rd witness was one Chamicho Ondieki.



90. The Defence 3rd witness informed the Court that he was born in 1935 and confirmed that the 1st Appellant was born on the portion currently in dispute.
91. The Defence 3rd witness stated that the deceased is the wife of the 1st Appellant who was staying on the portion in dispute on the suit property.
92. The Defence 3rd witness indicated that the Appellants had built houses on the suit property.
93. Thereafter, the Defence 3rd witness adopted his witness statement as his further evidence in chief.
94. In cross-examination, the Defence 3rd witness reiterated that the Appellants stay on the portion in dispute on the suit property.
95. However, the Defence 3rd witness admitted that he had never seen any title deed in the name of any of the Appellants herein relating to the portion they occupied on the suit property.
96. The Defence 3rd witness stated that the main reason he came to testify is so that the Deceased Alice Kerubo Abuya could be buried on the disputed portion of the suit property.
97. However, the Defence 3rd witness also admitted that he cannot allow someone else who is not related to him to be buried on the land he owns.
98. In re-examination, the Defence 3rd witness reiterated that he would like the Court to allow the deceased Alice Kerubo Abuya to be buried on the portion occupied by the Appellants herein as this was her place of residence.
99. The Defence 4th witness was Machogu Abwoyo.
100. The Defence 4th witness informed the Court that he was born in 1957 and knows the 1st Appellant since then.
101. The Defence 4th witness confirmed that he was aware where the Appellants resided.
102. The Defence 4th witness further stated that the Appellants had built houses on the portion they occupied on the suit property.
103. Thereafter, the Defence 4th witness adopted his witness statement as his further evidence in chief.
104. On cross-examination, the Defence 4th witness testified that the portion occupied by the Appellants on the suit property belonged to the 1st Appellant.
105. However, the Defence 4th witness confessed that he had never seen the title documents of the Appellants therein.
106. The Defence 4th witness confirmed that he possesses a title deed for the land he occupies.
107. According to the Defence 4th witness, there is no one who is allowed to use and/or be buried on his piece of land without his consent and/or permission.
108. The Defence 4th witness admitted that the Appellants did not have any title deed for the portion they occupied on the suit property.
109. In re-examination, the Defence 4th witness reiterated that the Appellants occupied the portion in dispute on the suit property and had built houses thereon.
110. Consequently therefore, the deceased Alice Kerubo Abuya should be buried on the portion in dispute on the suit property.



111. After the testimony of the Defence 4th witness, the Appellants herein closed their case.
112. The Trial Court directed the parties herein to prepare, file and exchange submissions in support of their prayers.
113. The Respondents filed their submissions dated September 27, 2021 while the Appellants herein filed their submissions on the October 1, 2021.
114. The judgement of the Court was thereafter pronounced on the November 8, 2021.

Analysis & Determination.

115. The Court having gone through the pleadings filed at the Trial Court, the testimonies adduced at the hearing thereof, the documentary evidence tendered in the Trial Court and the submissions of the parties, the main issues for determination in this first Appeal are as follows; -

Issue No 1- Who Is The Owner Of The Suit Property Known As Transmara/keiyian/7?

Issue No 2- Are The Appellants Occupying Any Portion Of The Suit Propety Known As Transmara/keiyian/7?

Issue No 3- Is So, Do The Appellanst Have Any Legal Ownership And/or Right Over The Portion They Occupy On The Suit Property?

Issue No 4- Is The Respondent Entitled To The Prayers Sought In The Amended Complaint Filed On The October 5, 2021?

Issue No 5- Are The Appellants Entitled To The Prayers Sought In The Counter-claim Dated September 10, 2021?

Issue No. 6- Who Bears The Costs Of This Appeal?

116. The Court having outlined the issues crucial for the Determination in this Appeal hereinabove, it will now proceed to apply the evidence and law to make the appropriate determinations.

Issue No 1- Who Is The Owner Of The Suit Property Known As Transmara/keiyian/7?

117. According to the evidence of the Respondent's witnesses in the Trial Court, the suit property known as Transmara/keiyian/7 was a sub-division emanating from a property known as Transmara/keiyian/5.

118. The property known as Transmara/keiyian5 was the property of Keiyian Group Ranch which subsequently in compliance of the [Community Land Act](#), No 27 of 2016 converted its name to Keiyian Farmers Co-operative Society.

119. However, it was the testimonies of all the Respondent's witnesses at the Trial Court that the transfer of the suit property into the new name of Keiyian Farmers Co-operative Society Limited had not been concluded by the time this suit was being heard and determined.

120. According to the Respondent's 1st witness at the Trial Court who was the Deputy Sub-County Land Registrar, Transmara East, West and South and the Plaintiff's Exhibit No 1 which was the Green Card of the suit property, the bona fide and registered owner is the Respondent herein.

121. The Respondent's 2nd witness who was the Sub-County Land Surveyor further collaborated the evidence of the Respondent's 1st witness by producing evidence of the Mutation of the property known as Transmara/keiyian/5 which created the suit property as Plaintiff Exhibit 2.



122. According to the testimony of the Respondent's 2nd witness, the owner of the original property known as Transmara/keiyian/5 is the Plaintiff and the resultants portions which includes the suit property remained their Asset.
 123. The Respondent's 3rd witness further provided the Title Deed of the suit property in the name Keiyian Group Ranch which was their former name and the Plaintiff herein are successors in title as provided by the [Community Land Act](#), No 27 of 2016.
 124. On the Appellants side, neither the Appellants nor their witnesses produced any documentary evidence conferring any ownership rights over the portion they occupy on the suit property.
 125. The Appellants and their witnesses' testimonies at the Trial Court was to the effect that the Appellants have been in occupation of the portion measuring approximately 10 Acres on the suit property since the year 1936.
 126. The Appellants and their witnesses claimed that other family members had been buried on the portion in dispute within the suit property and therefore, the deceased Alice Kerubo Abuya should also be buried in the portion in dispute.
 127. The Appellants produced various photographs which were marked as Defence Exhibit 1 to prove their occupation on a portion of the suit property.
 128. It is critical to also point out that the Appellants as well as their witnesses have admitted that no title deed was issued in the Appellants names for the portion they occupy on the suit property.
 129. Looking at the oral testimony of the witnesses and the documentary evidence produced at the Trial Court, it is clear in the mind of the Court that the property known as Transmara/keiyian/5 belonging to Keiyian Group Ranch was lawfully sub-divided through the Mutation produced and marked as Plaintiff Exhibit 2.
 130. As a result of the above sub-division, the suit property known as Transmara/keiyian/7 was legally created and continues to be registered in the name of Keiyian Group Ranch which has now transformed itself to the Plaintiff entity in line with the provisions of the [Community Land Act](#), No 27 of 2016.
 131. The Green Card produced as Plaintiff Exhibit 1 reconfirms the ownership of the suit property in the name of the Keiyian Group Ranch which was the former registration name of the Plaintiff entity.
 132. Section 26 of the [Land Registration Act](#), No 3 of 2012 provides that a Certificate of Title issued by a Land Registrar is to be held as conclusive evidence of proprietorship of the said parcel of land.
 133. Consequently therefore, the Plaintiff herein having produced the appropriate Certificate of Title in relation of the suit property and the Respondent's 1st witness who is the Sub-County Land Registrar, Transmara East, West and South having confirmed that the Certificate of Title is a reflection of their records contained in the Green Card produced as Plaintiff Exhibit 1, this Court makes a finding that the suit property indeed belongs to the Plaintiff entity and is their rightful property for their use and occupation to the exclusion of any other person.
- Issue No 2- Are The Appellants Occupying Any Portion Of The Suit Propety Known As Transmara/keiyian/7?
134. According to the Appellants and their witnesses at the Trial Court, the reason why the deceased Alice Kerubo Abuya should be buried on the disputed portion of the suit property is because the same is her matrimonial home.



135. The Appellants as well as the witnesses therein testified that this portion of the suit property in dispute has been occupied by the Appellants and their relatives since the year 1939.
136. The evidence adduced in Court by the Appellants is that other family members have been buried on this disputed portion of the suit property from way back in the year 1968.
137. The Respondent on the other hand confirmed that indeed the Appellants are in occupation of a portion of land within the suit property.
138. The Respondent further admitted that indeed the Photographs produced as Defence Exhibit 1 were for houses, trees and a meeting that was taking place on the disputed portion of the suit property that was being occupied by the Appellants.
139. It is therefore clear and not contested that indeed, the Appellants are in occupation of a portion of land within the suit property owned by the Plaintiff herein.

Issue No 3- Is So, Do The Appellants Have Any Legal Ownership And/or Right Over The Portion They Occupy On The Suit Property?

140. This Court having established that the Appellants are in occupation of a portion of the suit property, the next question for determination is whether or not their occupation on the said portion of the suit property is legal and/or lawful.
141. Looking at the testimony adduced at the Trial Court and the Submissions filed by the Respondents Counsel, it seems that the dispute between the 1st Appellant and the Respondent was been a long outstanding one.
142. In the Cross-examination of the Appellants 1st Witness who is also the 2nd Appellant in this Appeal, there was an equivocal admission that prior to the proceedings giving raise to this Appeal, there had been other proceedings instituted by the 1st Appellant over the same portion of land within the suit property against the Respondent herein.
143. The outcome of these proceedings earlier instituted by the 1st Appellant against the Respondent over the same portion of land in the suit property was a dismissal at both the Trial Court and the Appeal stage.
144. The Respondent's testimony and evidence produced at the Trial Court was that the Appellants occupation on a portion of the suit property was illegal, unlawful and did not confer any proprietary rights.
145. Consequently, the Appellants intentions and/or actions of burying the deceased Alice Kerubo Abuya on the said disputed portion of the suit property was illegal and in contravention of their proprietors' rights over the entire suit property.
146. The Court has keenly perused the Respondent's submissions filed in the Trial Court dated September 27, 2021 and the Authorities contained therein.
147. Looking at the authorities referred to in Paragraph 13 of the Respondent's submissions dated September 27, 2021 filed in the Trial Court, the Court takes judicial notice that the 1st Appellant had instituted another suit at the Kisii High Court Described As Originating Summons No 77 Of 2010 Between Abuya Omweri-versus- Keiyian Group Ranch.



148. The 1st Appellant's claim in the Originating Summons was to be declared the legal and/or absolute owner of a portion measuring 10 acres within the property known as Transmara/keiyian/5 by virtue of his long occupation as provided in the doctrine of adverse possession.
149. This suit was heard on its merits and the determination pronounced on the September 15, 2015.
150. The outcome of the judgement pronounced on September 15, 2015 was a dismissal of the entire Originating Summons filed by the 1st Appellant.
151. Arising out of the dismissal judgement pronounced on the September 15, 2015 by the High Court in Kisii, the 1st Appellant proceeded to the Court of Appeal sitting in Kisumu.
152. The Appeal was registered as Kisumu Civil Appeal No 113 Of 2017 Between Abuya Omweri-versus-Keiyian Group Ranch.
153. The Court of Appeal upon evaluating the Record of Appeal filed by the 1st Appellant, made a Ruling on the April 30, 2019 striking out the Record of Appeal for having been filed out of time.
154. The net-effect of this determination by the Court of Appeal on the April 30, 2019 was the retention of the Dismissal Orders pronounced by the High Court at Kisii in Originating Summons No 77 Of 2010 Between Abuya Omweri-versus- Keiyian Group Ranch.
155. Clearly therefore, the dispute as to the legal ownership and/or proprietary rights claimed by the Appellants was already determined and this court finds the prayers sought in the counter-claim as *Res-judicata*.
- Issue No 4- Is The Respondent Entitled To The Prayers Sought In The Amended Plaintiff Filed On The October 5, 2021?
156. Based on the determinations made in Issues No 1, 2 and 3 hereinabove, the Court is of the considered view that all the prayers sought in the Amended Plaintiff dated September 27, 2021 are merited as held by the Trial Court.
- Issue No 5- Are The Appellants Entitled To The Prayers Sought In The Counter-claim Dated September 10, 2021?
157. On the other hand, the Court finds that the Appellants Counter-Claim dated September 10, 2021 is not merited and consequently dismissed with costs.

Conclusion

158. In conclusion, the following Orders are hereby made as appertains the Memorandum of Appeal dated November 29, 2021; -
- A. The Memorandum of Appeal filed on the November 29, 2021 be and is hereby dismissed.
- B. The Judgement of the Trial Court in SPM ELC Case No 52 Of 2021 Between Keiyian Farmers Co-operative Society Limited-versus- Abuya Omweri & Gideon Abuya pronounced on November 8, 2021 the subsequent Decree issued on the November 8, 2021 be and are hereby upheld.
- C. The Appellants herein shall bear the costs of this Appeal.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 17TH NOVEMBER 2022.



EMMANUEL.M.WASHE

JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT:

ADVOCATE FOR THE APPELLANT:

ADVOCATE FOR THE RESPONDENT:

