



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

ELCC No. 338 OF 2014

PAUL NDIRANGU MBUGUA & 85 OTHERS.....PLAINTIFFS

VERSUS

THE MINISTRY OF LANDS & 59 OTHERS.....DEFENDANTS

CONSOLIDATED WITH

ELCC No. 334 OF 2014

FRANCIS NGUGE GITHUA & 63 OTHERS.....PLAINTIFFS

VERSUS

JOHN MBUGUA GIKONYO & 15 OTHERS.....DEFENDANTS

JUDGMENT

1. This judgment is in respect of two consolidated causes: ELCC No. 338 of 2014 and ELCC No. 334 of 2014. The former is the lead suit.
2. By plaint dated 8th December 2014, the plaintiffs in ELCC No. 338 of 2014 averred that they were internally displaced persons in 1994 owing to tribal clashes in Enosupukia area and that as a result, in December 1994, the government allocated to each of them 2.5 acres of land in the area known as Moi-Ndabi Settlement Scheme, which land they duly took possession of. That due to the *El Nino* rains in 1997, their plots were flooded leading to major losses, but they retained possession of the parcels. That it was a policy of the government to allocate each internally displaced person 5 acres of land and that the government discriminated against them by allocating to each them only 2.5 acres while internally displaced persons from the Kalenjin and Maasai communities were allocated 5 acres each.
3. The plaintiffs in ELCC No. 338 of 2014 further stated that they raised the issue of discrimination and as a result, on 17th May 2006, the 1st defendant in the said case allocated to each of them new parcels of land located on higher ground and measuring 2.5 acres each, with a view to achieving affirmative action. They added that notwithstanding that there was no requirement that they surrender their flooded plots and further notwithstanding that their allotment letters of 1994 were not cancelled, the 1st defendant allocated their said old plots to the 4th to 60th defendants and went ahead to issue title documents to the said defendants. They therefore sought judgment against the defendants for:

1. A declaration that the plaintiffs are entitled to exclusive and unimpeded right of possession and occupation of all that pieces of land known Plot No.s 142, 55, 93, 155, 14, 60, 136, 138, 20, 144, 42, 94, 104, 15, 139, 9, 3, 168, 69, 7, 126, 171, 141, 41, 13, 101, 186, 90, 195, 82, 30, 16, 50, 79, 152, 49, 122, 146, 169, 24, 194, 10, 66, 91, 476, 200, 39, 74, 148, 140, 156, 173, 98, 77, 64, 185, 72, 151, 33, 83, 12, 2, 63, 1, 32, 99, 86, 36, 197, 120, 166, 58, 178, 35, 127, 115, 61, 40, 88, 188, 78, 112, 76, 70, 28 ("the suit property")

2. A declaration that the 4th – 60th defendants whether by themselves or their servants or agents and/or otherwise howsoever are wrongfully in occupation of the suit property and are accordingly, trespassers on the same.

3. A declaration that the 4th – 60th defendants whether by themselves or their servants or agents and/or otherwise howsoever are not entitled to remain on the suit property

4. An injunction restraining the defendants whether by themselves or their servants or agents and/or otherwise howsoever from remaining on or continuing in occupation of the suit property or otherwise interfering with the plaintiffs quiet possession of the

property.

5. Vacant possession of the suit property.

6. An order of cancellation of Title Deeds No.s Naivasha/Moi Ndambi/17, 42, 60, 62, 93, 142 and all other title deeds issued in respect of the suit property.

7. Costs of this suit.

8. Any such other or further relief as this Honourable Court may deem appropriate.

4. Although the Attorney General participated in the proceedings on behalf of the 1st to 3rd defendants in ELCC No. 338 of 2014 and despite being given ample opportunity to do so, the said defendants did not file any statement of defence or any witness statement. They did not also comply with Order 11 of the Civil Procedure Rules. For those reasons and in view of the ruling delivered by this court on 22nd May 2018, they did not offer any evidence.

5. Equally, by plaint dated 4th December 2014, the plaintiffs in ELCC No. 334 of 2014 averred that they are the owners of all the plots in Phase 1 – Moi Ndabi Settlement Scheme with title documents for their individual plots and that the defendants in the said case have encroached on and occupied their plots. They added that they obtained orders in Nakuru High Court Petition No. 46 of 2013 directing the Settlement Fund Trustees, Commissioner of Lands and the Attorney General to secure Phase 1 – Moi Ndabi Settlement Scheme to ensure they peacefully occupy their land but the said officers failed to execute the order. Consequently, they sought judgment against the defendants in the said case for:

a) A permanent injunction restraining the defendants from sub-dividing and/or further developing all that land comprised in Phase I - Moi Ndabi Settlement Scheme.

b) Eviction of the defendants from all those plots in Phase I - Moi Ndabi Settlement Scheme.

c) Costs of this suit.

6. At the hearing, Paul Ndirangu, the 1st plaintiff in ELCC No. 338 of 2014, testified in support of the plaintiffs' case. He adopted his witness statement dated 17th October 2017 as part of his evidence in chief. Owing to the nature of his evidence in which he made reference to many plot numbers and many names in a tabulated manner, I find it necessary to reproduce the statement below:

PAUL NDIRANGU MBUGUA

I am the above named male of sound mind, and a resident of Moi Ndabi Settlement Scheme, in Naivasha. I have the authority of my co-plaintiffs to testify on their behalf in this matter.

Our claim here is for all those Plot Numbers 142, 55, 93, 155, 14, 60, 136, 138, 20, 144, 42, 94, 104, 15, 139, 9, 3, 168, 69, 7, 126, 171, 141, 41, 13, 101, 186, 90, 195, 82, 30, 16, 50, 79, 152, 49, 122, 146, 169, 24, 194, 10, 66, 91, 476, 200, 39, 74, 148, 140, 156, 173, 98, 77, 64, 185, 72, 151, 33, 83, 12, 2, 63, 1, 32, 99, 86, 36, 197, 120, 166, 58, 178, 35, 127,115, 61, 40, 88, 188, 78, 112, 76, 70, 28 within MOI NDABI SETTLEMENT SCHEME, PHASE 1.

All of the Plaintiffs herein and their families were victims of tribal clashes that occurred in 1992 in Enospukia area. We were all chased away from our homes and lived in various camps internally displaced persons, including in schools and churches. The affected communities were predominantly Kikuyu, Maasai and Kalenjin.

In 1994, the then President Moi directed that the 1st Defendant herein do find a parcel of land to settle us. Through the then Rift Valley Provincial Commissioner, Mr. Chelanga we were offered parcels of land, through offer letters dated 22nd December 1994 in Naivasha in what came to be known as MOI NDABI SETTLEMENT SCHEME.

On diverse dates in the month of December 1994, all the Plaintiffs herein were issued with letters of allocation of land. The respective plots were pointed out to us by the officials of the 1st Defendant. The allocations were as follows;

NAMES PLOT NO. 4.

1. PAUL NDIRANGU MBUGUA 142

2. JOHN MBUGUA GIKONYO 55

3. JOSEPH KARIUKI KAMAU 93

4. MARGARET WANJA NGENGA 155

5. PERIS MUTHONI NG'ANG'A 14

6. *AUGUSTINE KAIRU MUNA* 60
7. *MALA ELIMU* 136
8. *NJOGU KIMANI KIBIRO* 138
9. *PETER CHEGE NDIRANGU* 20
10. *KIGONDU MUTHOKA* 144
11. *JACKSON NGECHU GITAU* 42
12. *RUTH NYAMBURA KAMAU* 94
13. *KIARANJA NJUGUNA NDUATI* 104
14. *MARGARET WANJIKU GACII* 5
15. *HANNAH WANJA NJOROGE* 139
16. *WANJIKU NJUGUNA* 09
17. *JOHN MECHIRIA KILEMBI* 03
18. *SALOME WAHU MIRING'U* 168
19. *ALICE NGAI MUREITHI* 69
20. *KIBUI KANGARI NJANJA* 07
21. *MUTURA MUCHIGA WANYAMA* 126
22. *GEDION NGIGE LETUYA* 171
23. *MARY WAMBUI NJUGUNA* 141
24. *JOEL NJENGA WAWERU* 41
25. *WANGARI M. RUARA* 13
26. *JOHN NGUU MUNGAI* 101
27. *GEORGE MACHARIA MWANGI* 186
28. *CHRISTOPHER GICHUHI NDUNG'U* 90
29. *STANLEY MAINA KURIA* 195
30. *SULEIMAN MURAGE KABANGA* 82
31. *CHRISTOPHER NJOROGE* 30
32. *PENINAH WANGUI NDUNG'U* 16
33. *WAWERU MUKURIA* 27
34. *JANET KAHAKI NG'ANG'A* 50
35. *JAMES GITAU KINIARU* 79
36. *MARY WANJIKU MWAURA* 152
37. *HANNAH WANJIKU MWAURA* 49

38. WANJIKU MUYA 122
39. PATRICIA WANGARI WAIHARO 146
40. JOSEPH KARIUKI KINYANJUI 169
41. GEOFFREY WAWERU KAHINYA 24
42. GIDEON GITE KIRIARI 194
43. JOEL KAMURU KARANJA 10
44. TERESIA NYOKABI WAITITU 66
45. LUCY WAITHERA KANING'U 91
46. HANNAH WANGUI NJOROGE 47
47. JOHN NGECHU NG'ANG'A 200
48. MWAURA WANG'ENDO 39
49. KAMAU KINYANJUI MBUGUA 74
50. NGUGI KIRUMBA 148
51. NAHASHON NGUGI RUKUNGU 140
52. WANJIKU NDUGUGA CHEGE 156
53. MARY WAITHERA NJOROGE 173
54. GEOFFREY MWNGI KIRUA 98
55. WAIHAKA KAMAU MUITA 77
56. WANYOIKE TUNAI 64
57. WAIRIMU WAINAINA 185
58. KINYANJUI MUIGAI MWANIKI 72
59. MARY WANJIRU BRIBIRIS 151
60. PHILLIS NDUTA MUCHERU 33
61. KARANJA MATHERI 83
62. SOLOMON MBURU KAMAU 12
63. WANJIKU GIATHI 02
64. KILISPO MUCHAI NJUGUNA 63
65. GLADYS WANJIKU KAMAU 01
66. MUTHONI GITHAE GACAGE 32
67. JOSEPH MUGI KARERA 99
68. NJOKI KARANJA 86
69. ISAAC GITAU NGE'THE 36

70. HANNAH WANJIRU NJUGUNA	197
71. EUNICE WACHUKA THUO	120
72. MUCHAI KIOI	166
73. HILARY WAWERU KARANJA	58
74. FLORENCE MUTHONI KARIUKI	178
75. PETER KURIA CHEGE	35
76. GRACE NDUTA NJOROGI	127
77. JULIUS KAMAU WANJAM	115
78. LUCY WANGARE	61
79. WILSON KANUHA KANG'ETHE	40
80. LUCY NJAMBI KIARIE	88
81. MBURU MUINAMI	188
82. MUCHANJU GITURI WAHUI	78
83. MWANGI TERA	112
84. RUTH WAMUCHA NDUNG'U	76
85. PETER KINYANJUI CHEGE	70
86. HELLEN WAMBUI KINYANJUI	28

However, we were surprised to note that our parcels of land measured 2.5 acres each, whereas the members of the other communities, namely the Maasai and Kalenjins were being allocated 5 acres each. The policy of the government then was to allocate 5 acres to each family, and this was well noted even in the Ndung'u Land Report. But at that particular time we were desparate, and we therefore had no choice but accept what had been offered. We however complained to the government through the provincial administration of the discriminatory manner in which this land was distributed.

In 1997, our normal lives were disrupted by the infamous Elnino rains. Our homes, property, livestock and crops were destroyed. But we still continued with our occupation on our respective parcels of land.

We continued with our normal lives on our respective parcels of land, and at the same time complaining to the successive administrators, officials of the 1st Defendant, through the directorate of Land Adjudication and Settlement, that we ought to be added 2.5 acres so that we could be at par with members of the other communities who had been allocated 5 acres per family.

It was not until the year 2004, when the government heeded our calls. The then Minister for Lands and Settlement, Hon. Amos Kimunya, the then area M.P Ms. Kihara and Director of Land Adjudication and Settlement visited us. We explained our predicament, and in particular the discriminatory manner in which the land was allocated. The Minister therefore directed the Director of Land Adjudication and Settlement to get us additional 2.5 acres each.

The land was identified within the same area. We balloted for the parcels of land in 2006 measuring 2.5 acres each. We were further issued with Letters of Offer dated 20th November 2007 and we sought and secured financing in order to pay for these new plots. It is clear from the said letters of offer that the previous allocations in 1994 were not cancelled, but we were given an additional 2.5 acres only for purposes of equaling members of other communities who had been given 5 acres each. The new plots were as follows;

<u>NAMES</u>	<u>PLOT NO.</u>
1. PAUL NDIRANGU MBUGUA	1469
2. JOHN MBUGUA GIKONYO	1643
3. JOSEPH KARIUKI KAMAU	1637

4. MARGARET WANJA NGENGA 1433
5. PERIS MUTHONI NG'ANG'A 1505
6. AUGUSTINE KAIRU MUNA 1514
7. MALA ELIMU 1545
8. NJOGU KIMANI KIBIRO 1533
9. PETER CHEGE NDIRANGU 1644
10. KIGONDU MUTHOKA 1554
11. JACKSON NGECHU GITAU 1597
12. RUTH NYAMBURA KAMAU 1646
13. KARANJA NJUGUNA NDUATI 1457
14. MARGARET WANJIKU GACII 1668
15. HANNAH WANJA NJOROGE 1645
16. WANJIKU NJUGUNA 1468
17. JOHN MACHIRIA KILEMBI 1547
18. SALOME WAHU MIRING'U 1570
19. ALICE NGAI MUREITHI 1512
20. KIBUI KANGARI NJANJA 07
21. MUTURA MUCHIGA WANYAMA 126
22. GEDION NGIGE LETUYA 1525
23. MARY WAMBUI NJUGUNA 1449
24. JOEL NJENGA WAWERU 1465
25. WANGARI M. RUARA 1550
26. JOHN NGUU MUNGAI 1447
27. GEORGE MACHARIA MWANGI 1426
28. CHRISTOPHER GICHUHI NDUNG'U 1648
29. STANLEY MAINA KURIA 1478
30. SULEIMAN MURAGE KABANGA 1567
31. CHRISTOPHER NJOROGE 1519
32. PENINAH WANGUI NDUNG'U 1536
33. WAWERU MUKURIA 1520
34. JANET KAHAKI NG'ANG'A 1487
35. JAMES GITAU KINIARU 1411

36. MARY WANJIKU MWAURA 1471
37. HANNAH WANJIKU MWAURA 1552
38. WANJIKU MUYA 1548
39. PATRICIA WANGARI WAIHARO 1462
40. JOSEPH KARIUKI KINYANJUI 1560
41. GEOFFREY WAWERU KAHINYA 1496
42. GIDEON GITE KIRIARI 1429
43. JOEL KAMURU KARANJA 1473
44. TERESIA NYOKABI WAITITU 1559
45. LUCY WAITHERA KANING'U
46. HANNAH WANGUI NJOROGE 1645
47. JOHN NGECHU NG'ANG'A 1532
48. MWAURA WANG'ENDO 1431
49. KAMAU KINYANJUI MBUGUA 1432
50. NGUGI KIRUMBA 1558
51. NAHASHON NGUGI RUKUNGU 1558
52. WANJIKU NDUGUGA CHEGE 1524
53. MARY WAITHERA NJOROGE 1491
54. GEOFFREY MWNGI KIRUA 98
55. WAITHIRA KAMAU MUITA 1543
56. WANYOIKE TUNAI 1588
57. WAIRIMU WAINAINA 1436
58. KINYANJUI MUIGAI MWANIKI 1523
59. MARY WANJIRU RIBIRIS 1471
60. PHILLIS NDUTA MUCHERU 1455
61. KARANJA MATHERI 1416
62. SOLOMON MBURU KAMAU 1667
63. WANJIKU GIATHI 1890
64. KILISPO MUCHAI NJUGUNA 1538
65. GLADYS WANJIKU KAMAU 1489
66. MUTHONI GITHAE GACAGE 1430
67. JOSEPH MUGI KARERA 1555

68. NJOKI KARANJA 1636
69. ISAAC GITAU NGE'THE 1561
70. HANNAH WANJIRU NJUGUNA 1415
71. EUNICE WACHUKA THUO 1446
72. MUCHAI KIOI 1451
73. HILARY WAWERU KARANJA 1635
74. FLORENCE MUTHONI KARIUKI 1511
75. PETER KURIA CHEGE 1599
76. GRACE NDUTA NJOROGE 1632
77. JULIUS KAMAU WANJAM 1492
78. LUCY WANGARE 1497
79. WILSON KANUHA KANG' ETHE 40
80. LUCY NJAMBI KIARIE 1533
81. MBURU MUIINAMI 1563
82. MUCHANJU GITURI WAHUI 1574
83. MWANGI GITERA 1488
84. RUTH WAMUCHA NDUNG'U 1405
85. PETER KINYANJUI CHEGE 70
86. HELLEN WAMBUI KINYANJUI 1527

We were therefore surprised that from 2010, the 4th - 60 Defendants started invading our parcels of land, claiming that they have been allocated our parcels of land which were allocated to us in 1994, by the 1st Defendant. When we raised the issue with the local provincial administration as well as the 1st Defendant, we were surprised by their allegations that our allocations of 1994 had been cancelled and replaced with the new plots which we were allocated in 2006 - 2007.

This was however, a blatant lie and a scheme by the officials of the 1st Defendant to grab our parcels of land with the aid of provincial administration. There is no single time that we were informed that our previous allocations in 1994 were cancelled. Even the letters of allocation dated 20th November 2007 did not mention the 1994 allocations having been cancelled, and or the new allocations replacing the earlier ones in 1994.

Upon further enquiry, the officials of the 1st Defendant said that we had requested to be moved due to EI Nino rains. The officials of the 1st Defendant claimed that our plots were to be transferred to Kenya Forest Service for rehabilitation (sic) and conservation. However, this has not been the case as all the plots have been allocated to the 4th to 60th Defendants follows;

PLOT NO.

1. FRANCIS NGUGI GITHUA
2. NG'ANG'A KAMAU 142
3. RAHAB WAITHERA NJOROGE 55
4. M.NUENGA 93
5. FRANCIS KIMANI KAMANGA 155

6. JAMES MAINA KIMURE 14
7. AG. MOHAMED MUKOBWA 60
8. EUNICE MUTHONI KINUTHIA 136
9. FRANCIS KARANJA KAHORO 138
10. JAMES GITAU MUCHAI 20
11. BETH WAMBUI KAMAU 42
12. GATUNDU KARITU 94
13. JANE MURAA 15
14. GEROGE O. NYANGWESO 139
15. PATRICK GIKONYO KIMITI 09
16. PETER MBURU KAMAU 168
17. FRANCIS KAMANI KANGAU 126
18. MARGARET NJERI KARANJA 91
19. JORAM BARAGU NDIRITU 47
20. JOHN CHEGE KARUMBA 173
21. VERONICA WAMBUI KIARIE 98
22. JOSEPH GITHEI 137
23. JAMES KAMANDE MWANGI 23
24. PETER WAWERU KARANJA 18
25. SAMUEL MWANGI NGOTHO 88
26. JAMES MUNGAI NGOTHO 172
27. MARGARET MWIHAKI NGAHU 180
28. JOSEPH TOURTHI 43
29. HANNAH WAHU NGUGI 48
30. JACKSON MUTUA JOSHUA 19
31. BONIFACE WAMBUA KIOKO 169
32. STEPHEN WAITHAKA MBUGUA 10
33. PAULINE MUKONYO KARANJA 171
34. TERESIA WANJIKU KIBUCHI 13
35. JOSEPH NG'ANG'A KIMANI 90
36. CATHERINE WANYAGA NDWIGA 49
37. JACKSON MUTUA JOSHUA 16

38. GRACE WAIRIMU MUGO	169
39. SAMSON ONGERI MANYIMBO	24
40. GITAU MWAURA MWEGA	141
41. ELIZABETH NJOKI KARIUKI	
42. SIMON MACHARIA.KABANJA	83
43. NAOMI WANJIRU KARIUKI	22
44. PETER NDIRANGU KAMAU	58
45. JANE MUKAMI GITAU	53
46. PETER NJUGUNA MWANGI	62
47. DORCAS WAITHERA K.	86
48. WANJIKU MARY NDUNG'U	92
49. MICHAEL KARIUKI MACHARIA	170
50. EUNICE WANJIKU CUGU	51
51. PETER KAGUTA KARIUKI	59
52. MACHARIA KIMANI KAMIRITA	17
53. GICHURU NJUGUNA	11
54. DAVID NJOROGE KIMANI	52
55. SIMON WAMWEA NG'ANG'A	97
56. KAROKO GICHIMU	46
57. JANE MUKAMI GITAU	124
	62

The 1st Defendant has frustrated our efforts to obtain the title deeds for our allocation in 1994, but have gone ahead and processed titles for some of the Defendants herein.

The actions of the 1st Defendant are therefore illegal and unlawful. The reasons for dispossessing us our parcels of land on the guise of conservation only for them to turn around and give the same parcels of land to 4th – 60th Defendants manifests the injustice being perpetrated against us.

Some of the Defendants herein are officers of the 1st Defendant. Others were previously members of provincial administration and their relatives. It is therefore clear that the only reason we are being dispossessed of our rightful parcels of land in influenced by corruption and extraneous factors.

This injustice being occasioned to the plaintiffs as a result of the actions of the 1st Defendant has led to the arrest and prosecution of some of the Plaintiffs in the following criminal matters;

- 1. Naivasha Criminal Case No. 565 of 2011: R -vs- Teresia Nyambura Mugo;*
- 2. Naivasha Criminal Case No. 566 of 2011: R -vs- Mary Waitthera Njoroge;*
- 3. Naivasha Criminal Case No. 567 of 2011: R-vs- Margaret Wanja Makumi.*

However, in all the above cases a judgment of not guilty was entered due to the proprietary rights possessed by the Plaintiffs over the plots.

Given the above the allocations to the 4th – 60th Defendants should therefore be cancelled and any title deeds issued revoked. We are therefore seeking for prayers in the plaint.

That is all I wish to state.

SIGNED BY: PAUL NDIRANGU MBUGUA.

DATED: 17th October 2017

7. Mr Ndirangu produced copies of the following documents as exhibits: two letters of allotment dated 22nd December 1994 in respect of Ngugi Kirumba and Mary Wanjiku; 5 allocation cards in respect of Alice Ngai Murithi, Mary Wanjiku Mwaura, Joseph Kariuki Kinyanjui, Ngugi Kirumba and Paul Ndirangu Mbugua; letter of offer in respect of Paul Ndirangu Mbugua and a letter dated 4th November 2014 from Muriuki Ngunjiri & Co. He added that when the plaintiffs were allocated the plots in 2007, they were not aware that the earlier allocations were being cancelled by virtue of the second allocation.

8. Under cross-examination and re-examination, Mr Ndirangu stated that the plaintiffs did not request to be relocated due to El Nino. He denied that letters issued to them by the government stated that the relocation was due to floods or that earlier allocations were cancelled. He confirmed that none of the plaintiffs has any title deed in respect of the plots they are claiming. He further confirmed that the plaintiffs were each given a new plot for which they paid to the government and obtained title deeds. That about 200 of them were given the new plots and that it is only 85 of them who have filed this case. He added that the plaintiffs herein filed Nakuru HC Petition No. 11 of 2013 while the defendants herein filed Nakuru HC Petition No. 46 of 2013. That this case was filed after judgment in the petitions was delivered and that the plaintiffs herein did not file any appeal against the judgment.

9. The plaintiffs' case was then closed.

10. Next on the stand was Mr Francis Ngugi Githua who testified for the 4th – 60th defendants as DW1. He stated that although the plaintiffs had each been allocated 2.5 acres of land in Moi Ndabi Settlement Scheme Phase I, they were relocated to higher ground at their own demand due to flooding caused by the El Nino rains of 1997 and all the plots reverted to the Settlement Funds Trustees (SFT). He referred to a letter dated 7th January 2010 from Ministry of Lands to the District Commissioner Naivasha. He also referred to a letter dated 8th December 2010 from the District Commissioner Naivasha to the 1st plaintiff herein and added that the 1st plaintiff was relocated pursuant to the said letter. He stated that the plaintiffs' allocation documents in respect of the initial plots were cancelled by letter similar to the aforesaid letter dated 8th December 2010 and that they were all relocated to new plots.

11. Mr Githua further testified that since the El Nino flooding did not affect all areas of Moi Ndabi Settlement Scheme Phase I, the government settled the 4th to 60th defendants herein on the unaffected higher grounds of Moi Ndabi Settlement Scheme Phase I in the year 2009 by giving them letters of offer. That they complied with the terms of the letters, paid charges specified, the parcels were transferred to them and they were issued with titles. According to him, the 4th to 60th defendants herein validly own the suit properties and the plaintiffs have no claim over the plots. He added that despite the judgment in Nakuru HC Petition No. 46 of 2013, the plaintiffs are illegally in possession of the suit properties yet they also have their new parcels of land.

12. Mr Githua produced copies of the following documents as exhibits: various receipts issued by the government, title in respect of plot No. 60, title in respect of plot No. 62, letter dated 3rd December 2012 from Godon Ogolla Advocates.

13. Under cross-examination and re-examination, Mr Githua stated that beneficiaries in Moi Ndabi Settlement Scheme Phases 2 and 3 were allocated 5 acres each and that the letters of offer to the 4th to 60th defendants were not delivered to them on the days they are dated hence the late payments. He also stated conceded that some of the defendants have not received their title deeds due to the pendency of this case but was unable to give a precise number of those whose titles have not been issued. He added that if there was a genuine grievance concerning the relocation and issuance of titles to the 4th to 60th defendants, all the 224 persons affected by relocation would have joined this case but in this case only 85 are in court.

14. Next on the stand was Wacuka Minnie, the Sub-County Land Registrar, Naivasha, who testified as DW2. She produced certified copies of green cards in respect of Naivasha/Moi Ndabi/142 and Naivasha/Moi Ndabi/93. She stated that the registered proprietor of Naivasha/Moi Ndabi/142 is Francis Ngugi Githua who was issued with a title deed on 9th February 2012 and that the registered proprietor of Naivasha/Moi Ndabi/93 is Rahab Waithera Njoroge who was issued with a title deed on 23rd July 2011. She added that the 1st entry in respect of both parcels was the government of Kenya.

15. DW3 was James Wachira, the Sub-County Land Adjudication and Settlement Officer in charge of Naivasha and Gilgil. He produced a copy of a letter dated 7th January 2010 from Ministry of Lands to the District Commissioner (DC) Naivasha and stated that the letter was written by his predecessor and that its subject matter was "Relocation of Flood Victims – Moi Ndabi Settlement Scheme". He added that the letter asked the DC that the beneficiaries of phase 1 be relocated. That consequently, the group of 224 people were relocated from Phase 1 of the scheme to higher ground and that their former plots were reverted to Settlement Fund Trustees. According to him, none of the 224 persons has any claim to the land on phase 1 since their old allotment letters stood cancelled and they were compensated with equal portions of land on higher ground. He also produced a copy of a list of persons who were moved to higher ground pursuant to letter dated 7th January 2010. The list bears their names, identity card numbers, their old and new plot numbers as well as the plot sizes.

16. DW3 further testified that after the land was reverted back to SFT, the District Plot Selection Committee which was chaired by DC Naivasha considered needy cases as regards portions that were not in the flooded areas, allocated the area that was not flooded and issued letters of offer in 2009.

17. Under cross-examination and re-examination, DW3 stated that the plaintiffs were lawfully allocated 2.5 acres of land each in Moi Ndabi Settlement Scheme Phase I but the said allotments were later cancelled around 1997. By way of example, he pointed out that letter dated 8th December 2010 found at page 272 of the plaintiffs' bundle stated that the 1994 allocation letters and cards were cancelled. He added that the Director of Land Adjudication and Settlement has power to cancel allotment letters and that such cancellation is normally done after the District Settler Plot Selection Committee chaired by the DC forwards its recommendation to the director.

18. The 4th to 60th defendants' case was then closed.

19. Parties filed and exchanged written submissions. I have considered the pleadings, evidence and the submissions. There is no dispute that the government of Kenya initially allocated the plaintiffs plot numbers 142, 55, 93, 155, 14, 60, 136, 138, 20, 144, 42, 94, 104, 15, 139, 9, 3, 168, 69, 7, 126, 171, 141, 41, 13, 101, 186, 90, 195, 82, 30, 16, 50, 79, 152, 49, 122, 146, 169, 24, 194, 10, 66, 91, 476, 200, 39, 74, 148, 140, 156, 173, 98, 77, 64, 185, 72, 151, 33, 83, 12, 2, 63, 1, 32, 99, 86, 36, 197, 120, 166, 58, 178, 35, 127, 115, 61, 40, 88, 188, 78, 112, 76, 70, 28 within Moi Ndabi Settlement Scheme Phase I. It is further not contested that the government relocated the plaintiffs to new plots on higher ground following flooding that was caused by El nino rains of 1997 and that subsequently, the same government allocated land to the 4th to 60th defendants within the areas that were previously occupied by the plaintiffs in Moi Ndabi Settlement Scheme Phase I. The 4th to 60th defendants have since been issued with title deeds in respect of the parcels allocated to them. It is for that reason that the plaintiffs in ELCC No. 338 of 2014 seek cancellation of the 4th to 60th defendants' titles, *vide* prayer 6 of their plaint.

20. Although relocated and allocated new plots, the plaintiffs in ELCC No. 338 of 2014 have retained possession of their initial plots in Moi Ndabi Settlement Scheme Phase I despite the 4th to 60th defendants having been issued with titles. The dispute between the parties is not new. They have litigated against each other in two consolidated petitions being Nakuru HC Petition No. 11 of 2013 and Nakuru HC Petition No. 46 of 2013. Judgment in the petitions was delivered on 19th September 2014 by L N Waithaka J. It emerged at the hearing herein that no appeal has been preferred against the judgment.

21. Among the issues that the parties herein have placed before this court for determination are whether allocations to the plaintiffs in Moi Ndabi Settlement Scheme Phase I were lawfully cancelled, whether they were discriminated against by being allocated 2.5 acres as opposed to 5 acres and whether the 4th to 60th defendants were lawfully allocated land in Moi Ndabi Settlement Scheme Phase I.

22. Whereas the law is that once an allottee complies with the terms of an allotment and makes full payment as required in the allotment letter then the land is no longer available for allotment to a third party, the plaintiffs in ELCC No. 338 of 2014 have not produced any evidence of such compliance and payment. Therefore, in theory, their allotments could have been validly cancelled since there was as yet no binding agreements between them and the government. Further, in the unique circumstances of this case, the said plaintiffs requested relocation thereby justifying ensuing actions on the part of the government. So, were the allotments in favour of the plaintiffs in ELCC No. 338 of 2014 lawfully cancelled? The answer is in the affirmative.

23. Material on record includes a letter dated 7th January 2010 from Ministry of Lands to the District Commissioner (DC) Naivasha whose subject matter was "Relocation of Flood Victims – Moi Ndabi Settlement Scheme". It was produced by DW3 who was the Sub-County Land Adjudication and Settlement Officer in charge of Naivasha and Gilgil. The letter asked the DC that the beneficiaries of phase 1 be relocated. DW3 confirmed that following the letter, a group of 224 people were relocated from Phase 1 of the scheme to higher ground and that their former plots reverted to Settlement Fund Trustees. His evidence corroborates that of DW1 who testified that the said plaintiffs' allocation documents in respect of the initial plots were cancelled by letters similar to a letter dated 8th December 2010 from the District Commissioner Naivasha to the 1st plaintiff in ELCC No. 338 of 2014. A perusal of the said letter dated 8th December 2010 reveals that it specifically advised the 1st plaintiff in ELCC No. 338 of 2014 that he had been compensated through relocation to his current plot whose acreage is the same as that of the old one and that the allocation to him in 1994 stood cancelled. I am satisfied that the allotments in favour of the plaintiffs in ELCC No. 338 of 2014 were lawfully cancelled. That being the case, the said plaintiffs have no basis for claiming a declaration that they are entitled to retain possession and occupation of the parcels, or to seek removal of the 4th – 60th defendants from the parcels or even to seek cancellation of the said defendants' titles. Their suit fails.

24. As noted earlier, there is no dispute that the 4th to 60th defendants have since been issued with title deeds in respect of the parcels allocated to them. Both the Sub-County Land Registrar Naivasha and the Sub-County Land Adjudication and Settlement Officer in charge of Naivasha and Gilgil confirmed as much in their testimonies. As registered proprietors of land, the 4th to 60th defendants are by law entitled to the rights, privileges and benefits under **Article 40** of the **Constitution** and **Section 24** of the **Land Registration Act**. Further, **Section 26** of the **Land Registration Act** obligates the court to accept the certificates of title of the 4th to 60th defendants as conclusive evidence of proprietorship, unless of course the provisos under **Section 26 (1) (a)** or **(b)** are alleged and established. The said sections provide as follows:

24. Interest conferred by registration

Subject to this Act—

(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;

26. Certificate of title to be held as conclusive evidence of proprietorship

(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions

contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. ...

25. The defendants in ELCC No. 334 of 2014 have not shown any valid reason why they should keep the registered proprietors from their land. They have failed to establish their claim seeking cancellation of the proprietors' titles. In the circumstances I am satisfied that the plaintiffs in ELCC No. 334 of 2014 are entitled to the reliefs sought in the said matter.

26. In the end, I make the following orders:

a) The plaintiffs' case in ELCC No. 338 of 2014 is dismissed.

b) A permanent injunction is issued restraining the defendants in ELCC No. 334 of 2014 from sub-dividing and/or further developing all that land comprised in Moi Ndabi Settlement Scheme Phase I.

c) The defendants in ELCC No. 334 of 2014 to vacate from all that land comprised in Moi Ndabi Settlement Scheme Phase I within 45 (forty-five) days from the date of delivery of this judgment.

d) In default of defendants in ELCC No. 334 of 2014 vacating as ordered in (c) above, the said defendants be evicted from Moi Ndabi Settlement Scheme Phase I.

e) The defendants in ELCC No. 338 of 2014 and the plaintiffs in ELCC No. 334 of 2014 shall have costs of the said cases.

Dated, signed and delivered at Nakuru this 25th day of February 2021.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Karei for the plaintiffs

Mr Opar holding brief for the 1st, 2nd and 3rd defendants

Mr Opar for the 4th to 60th defendants

Court Assistants: B. Jelimo & J. Lotkomoi