



**Ntutu v County Council of Narok & 2 others (Environment & Land
Case 21 of 2021) [2025] KEELC 1064 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1064 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 21 OF 2021**

CG MBOGO, J

MARCH 6, 2025

BETWEEN

LIVINGSTONE KUNINI NTUTU PLAINTIFF

AND

COUNTY COUNCIL OF NAROK 1ST DEFENDANT

OLKIOMBO LIMITED 2ND DEFENDANT

THE HON ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

1. The plaintiff filed the amended plaint dated 18th December, 2000 seeking judgment against the 1st defendant for: -
 - a. A declaration that with effect from 14th October, 1997, all rights interests and privileges hitherto enjoyed or had by the 1st defendant in or over or in relation to the leased portion, including but not limited to, reversionary interest, levying or collection of rent, tariffs, royalties, fees or other revenue were, and each of them, was extinguished and the same were vested in the plaintiff instead.
 - b. A permanent injunction restraining the 1st defendant whether by itself, its servants or agents or otherwise howsoever from purporting to exercise such purported rights, interests or privileges and in particular from demanding, levying or collecting from the 2nd defendant or any other person rent, tariffs, royalties, fees or any other revenue whatsoever in respect of the use, occupation or enjoyment of the leased portion or any part thereof.
 - c. An account of all the rent, tariffs, royalties, fees and other revenue collected or received by the 1st defendant from the 2nd defendant and any other person since 14th October, 1997 for the use, occupation or enjoyment of the leased portion or any part thereof.



- d. An order for the payment by the 1st defendant to the plaintiff of all the moneys received or found due to the plaintiff on the taking of such accounts.
 - e. Interest on the amount found due to the plaintiff at such rate and for such period as this honourable court shall think fit.
 - f. The costs of this suit.
 - g. Further or other relief.
2. The plaintiff pleaded that by a notice dated 6th May, 1997, the land adjudication officer, Narok, declared the Talek degazetted area as an adjudication section, and following the said declaration, the adjudication exercise was duly carried out as provided for in the law and that by a Notice dated 15th June, 1997, the adjudication officer certified the same as complete and gave a sixty (60) day period for any objections thereto.
 3. Further, he pleaded that a total of 155 parcels of land, i.e. parcels nos. 1 to 155 resulted from the said adjudication exercise, which were ascertained, recorded and registered in the names of their respective owners. That in his case, he was ascertained, recorded and registered as the absolute owner or proprietor of all that parcel of land measuring approximately 1610Ha (4000 acres) known as title no. Cis-Mara/ Talek/ 155 (hereinafter referred to as “the suit land”).
 4. The plaintiff further pleaded that he was registered on 14th October, 1997 as the owner of the suit land, and has at all material times held all rights, privileges and appurtenances belonging thereto and free from all other interests and claims whatsoever. Further, he pleaded that forming part of the suit land, is a portion of a land known as LR. No. 13325, measuring approximately 20 acres which was leased by the 1st defendant to the 2nd defendant for a term of 33 years from 1st July, 1984 (referred to as “the leased portion”).
 5. The plaintiff contended that with effect from 14th October, 1997, when the suit land was registered in his favour, all rights, interests and privileges that the 1st defendant had hitherto enjoyed in relation to the leased portion, including, but not limited to the reversionary interest, levying or collection of rent, tariffs, royalties, fees or other revenue, were, and each of them was, ipso facto extinguished and the same were instead vested in him.
 6. The plaintiff pleaded that despite the demands, 1st defendant has unlawfully and without any colour of right or legal justification, continued to purport to exercise such rights or privileges by, among others, demanding and collecting rent, tariffs, royalties, fees and other revenue for the use and occupation by the 2nd defendant of the leased portion. The Plaintiff further pleaded that the 1st defendant has failed and refused to render true or accurate accounts of such rent, tariffs, royalties, fees or revenue or to pay over to the plaintiff any of the moneys received by it.
 7. The 1st defendant filed its statement of defence and counter claim dated 7th October, 2000. While denying the contents of the plaint, the 1st defendant pleaded that the notice of establishment of an adjudication section dated 6th May, 1997 was never implemented and that it was cancelled and/or modified vide the notice of establishment of an adjudication section dated 31st July, 1997. Further, it was pleaded that no demarcation and/or adjudication was actually carried out in respect of the suit land, and therefore the preparation and completion of the adjudication record thereof is wholly misconceived, null and void.
 8. The 1st defendant further pleaded that the suit land does not constitute part of Talek area referred to and described in the cessation order published vide legal notice No. 412 of 1992 dated 28th October, 1992,



and further contended that no proper invocation and/or application of the fundamental provisions of the Land Adjudication Act in the alleged manner would have been commenced and carried out in respect of the suit land without the mandatory prior cessation and/or de-gazettement thereof under Section 7 of the Wildlife Conservation and Management Act, Cap 376.

9. The 1st defendant admitted that whereas the first registration of the plaintiff as the proprietor of the suit land was effected on 14th October, 1997, the mandatory provisions of the Trusts of Land Act and the Wildlife Conservation and Management Act were not adhered to since the suit land has never been surveyed, and that it is not identifiable on the ground as required by law. The 1st Defendant pleaded that the apparent superimposition of the suit land over L.R. No 13325 or the purported annihilation of the same is legally and practically untenable, and that it holds and deals with the suit land as a matter of right under the provisions of the Constitution of Kenya and the Trusts of Land Act.
10. In their counter claim, the 1st defendant pleaded that it is the holder of the Maasai Mara National Reserve which it administers and manages in conjunction with the Wildlife Conservation and Management service, and that on or about 28th October, 1992, the Minister for Tourism and Wildlife following consultations with the 1st defendant exercised his powers by declaring vide legal notice No. 412 the cessation of Talek area as part of the Maasai Mara National reserve for the purpose of registering individual titles in favour of and for the benefit of the members of the “Talek group”.
11. The 1st defendant further pleaded that legal notice No. 412 categorically specified the subject Talek area as “all that area of land marked B on the boundary plan measuring approximately forty-eight square kilometers and situated to the north-east of the Maasai Mara National reserve” with the afore-referred boundary plan being no. 216/50, and that the suit land did not constitute part of the aforesaid Talek area and is merely an informal and fraudulent extension of the same.
12. Accordingly, the 1st defendant pleaded that the alleged application of the Land Adjudication Act to the portion constituting the suit land was fundamentally irregular, invalid and ineffectual for all legal intents and purposes thereof. Further, that the purported adjudication exercise was invalid on account of the notice of establishment of an adjudication section i.e. the correction of declaration notice No. LA/9/4/97 dated 6th May, 1997 vide the notice dated 31st July, 1997 which effectively excluded the suit land from Talek adjudication section.
13. The 1st defendant contended that it has legitimate rights and interests over the suit land hence its petition to the Commissioner for Lands and the Chief Lands Registrar to disregard, cancel and/or expunge the purported registration regarding the same.
14. The 1st defendant prays that the plaintiff’s suit be dismissed with costs and judgement on the counter-claim for:
 - a. A declaration that the plaintiff’s purported first registration as the proprietor of the suit premises, namely L.R No. Cis-mara/Talek/155 is invalid, null and void for all legal and practical intents and purposes.
 - b. An order cancelling the purported registration dated 14th October, 1997 respecting the suit premises, namely L.R.No. Cis-mara/Talek/155.
 - c. Costs the suit.
15. The 2nd defendant filed its statement of defence and counter claim dated 2nd March, 2001. On 9th May, 2023 vide the notice of withdrawal of the suit dated 26th April, 2023 and filed in court on 27th April, 2023, the 2nd defendant’s claim against the plaintiff was marked as withdrawn with no orders as to costs.



16. The 3rd defendant filed its defence and counter claim dated 30th October, 2001. Vide the orders issued on 18th October, 2005, the defence and counter claim was marked as withdrawn and discontinued forthwith.
17. The plaintiff's case proceeded for hearing on 27th June, 2023. Livingstone Kunini Ntutu (PW1) adopted his witness statement dated 21st March, 2022 as his evidence in chief. It was his evidence that he was registered as owner and issued with a title deed for the suit land on 14th October, 1997. He produced the title as P. Exhibit No. 1, and testified that there was no other person registered before, and that as such the title is a first registered under the repealed Registered Land Act, Cap 300. PW1 produced a certified copy of the green card as P. Ex. No. 2, and a certificate of official search as P. Ex. No. 3. He testified that as a registered owner of the suit land, he gave a lease to Olkiombo Limited for 50 years which he produced as P. Ex. No. 4.
18. PW1 testified that he became the registered owner of the suit land after the adjudication process was conducted. That prior to that, Talek area was declared as an adjudication section, and he laid a claim to land in that section. That after completion of the adjudication process, he was notified that he had been registered. It was his testimony that in Talek adjudication section, 155 parcels were parceled out, and he produced the letter indicating 155 parcels as P. Ex. No. 5. He further produced the letter by the District Land Registrar addressed to the Chief Land Registrar forwarding the documents pertaining to the suit land which included the adjudication record, a green card, and the area list pertaining as P. Ex. No. 6.
19. PW1 testified that after his registration as the owner of the suit land, the matter became the subject of criminal investigations. He produced the letter written by the Provincial CID Officer to the Land Registrar Narok forwarding the documents for safe custody as P. Ex. no. 7. He also produced the letter from the Chief Land Registrar addressed to the Clerk County Council of Narok which had complained about the registration of the suit land as P. Ex. no. 8. He stated that parcel nos. 152 and 153 belong to the 1st defendant and he wanted to demonstrate that the defunct county council participated in the adjudication process and benefited out of it.
20. He testified that the 1st defendant did not object to the constitution of the adjudication process, and produced the documents at pages 56 to 61 as P. Ex. no. 9(a) and (b), and the documents for parcel no 153 as P. Ex. no. 10(a) and (b). He said that he was aware that there was an adjudication committee for Talek Adjudication Section whose chairman was Raketa Musesian. Further, he stated that the role of the committee was to ascertain the rights in the adjudication section and to oversee the adjudication process. He produced the sworn statutory declaration as P. Ex. no. 11.
21. PW1 further produced a certified copy of Talek Adjudication Section as P. Ex. no. 12, a copy of the notice of the appointment of Talek Adjudication Committee as P. Ex. no. 13, the notice of completion as P. Ex. no. 14, the certificate of finality that was issued as P. Ex. no. 15. He testified that the 3rd defendant discontinued its counterclaim and withdrew its defence which he produced as P. Ex. no. 16. He also identified the survey report which was marked as PMFI 17, and produced the Registration Index map for Talek which he obtained from the survey department, and the receipt of payment for it as P. Ex. no. 18. He informed the court that in the course of the proceedings before this court, Mr Joseph Kayioni, the clerk of the defunct 1st defendant who was answering to the issues raised by the 2nd defendant filed an affidavit which he produced as P. Ex. no. 19.
22. PW1 also said that he was aware that the defunct 1st defendant passed a resolution that this case should be settled, and he produced the resolution of the decision as P. Ex. no. 20. He further informed the court that a consent order settling the matter was recorded in the High Court, and that the High



- Court set aside the consent. He testified that the Court of Appeal revised the order of the High Court, and that the Supreme Court decided that the matter must be decided on merit. It was his testimony that he was subsequently charged in criminal case no. 2157 of 2000, and acquitted. He produced the proceedings and judgement as P. Ex. no. 21. He further testified that the defunct 1st defendant trespassed into his land, and an employee was arrested and convicted in Narok criminal case no. 1132 of 2006. He produced the proceedings and judgment as P. Ex. no. 22, and P. Ex. no. 23 being the ruling before court relating to the 2nd defendant seeking to quash the resolution of the defunct 1st defendant. He further produced the ruling of the court which determined the 2nd defendant's leadership wrangles as P. Ex. no. 24.
23. PW1 produced a copy of the judgment of the High Court reinstating his title deed and the decree as P. Ex. no. 25 and 26, the order of the High Court setting aside the consent as P. Exhibit No. 27, the formal decree that was extracted from the 3-judge bench as P. Ex. no. 28, and the judgement of the Court of Appeal as P. Ex. no. 29. He further produced the decision of the Supreme Court as P. Ex. no. 30. PW1 informed the court that there is no relationship between Koyiaki Group and Talek Adjudication section. He produced the register for Koyiaki Group and the receipt of payment as P. Ex. no. 31 and 32. PW1 testified that from the year 1997, the 1st defendant has been collecting money from the suit land and in particular from the 2nd defendant, and that they have never rendered an account of the money collected.
 24. On cross-examination, PW1 testified that he has ever lived in the suit land, but not over the last 2 to 3 years. He agreed that the suit land is under the control of the now County Government of Narok including revenue collection, and it is used as part of Maasai Mara. While he knew some of the members of Koyiaki Group, he disagreed that Talek Adjudication Section was to benefit the members of Koyiaki Group, and according to him, it is not true that the land occupied by Koyiaki Group was part of Maasai Mara. He stated that Talek is distinct from Koyiaki Group.
 25. PW1 further testified that the degazettment in page 203 of the 1st defendant's list of documents shows that the land was to benefit Koyiaki group ranch, and he disagreed that the minister had to comply with Section 7 of the Wildlife (Conservation and Management) Act before degazetting part of the Maasai Mara. While being referred to page 196 of the same bundle of documents, he testified that the area being set apart measures 48 square kilometres and is marked "B". He also testified that the letter contained in page 49 is from the Ministry of Lands and Settlement shows the boundary of Talek area.
 26. With regard to the letter dated 31st July, 1997 PW1 testified that it is correcting the adjudication declaration of 6th May, 1997 and gives a description of an area that was being set apart for adjudication. He could not be able to identify the 11 km from the map that was shown to him, and neither could he tell if his land falls in the documents produced by the 1st defendant which he did not know. He stated that he is not a member of Koyiaki group ranch, and maintained that his land is under the area marked in the map, but could not tell with certainty where it falls in the area marked "B". While being referred to the letter at page 189, PW1 testified that the said letter is meant to settle a long-standing dispute. He knew that there has been controversy surrounding his title, and was aware of allegations that the adjudication only brought 154 parcels. As to the validity of title, he stated that the court did not determine whether his title was lawful.
 27. On the issue of the consent, he said that he was aware that the Supreme Court held that parties cannot consent to an illegality. He agreed that the area that was set apart measured 48 square km, and that the issue in contention is whether there were 155 or 154 parcels. While being referred to page 28 of the 1st defendant's bundle of documents, PW1 testified that there are varying lesser acreages, and that none of them has similar acreage as himself. He admitted that nobody got beyond 150 acres, and stated that



it was not true that between beneficiary number 1 to 154, they take the entire 47 square kilometers, since he hasn't calculated.

28. With reference to page 51 of his list of documents as read together with page 27 of the 1st defendant list and bundle of documents, he stated that the former indicates 155 parcels while the latter indicates 154 parcels, and he agreed that the two letters have fundamental differences, and that one of them is a forgery. While being referred to page 33 of 1st defendant's bundle, and reading the contents of the letter, he testified that according to the letter, the suit land should not appear, and the area that was covered by 154 parcels was 4521.81 hectares which would tally with what was set aside. That whereas he said that the adjudication process was not meant to benefit members of Koiyak group, the letter shows that the 48 square km was to be returned to members of Koyiaki group ranch.
29. While being referred to page 36 of the 1st defendant's documents, PW1 testified that when the area was declared an adjudication section on 6th May, 1997 there was only one objection in respect of parcel 55 which created 154 parcels, and that there is no mention of the suit land. He said that the letter states that a certificate of finality was signed on 29th August, 1997 covering as a total of 4521.81 hectares, and that the same letter shows that the suit land is not contained in the documents forwarded to the Chief Land Registrar. He also said that the letter also shows that the source of the record and it was not amongst the records forwarded.
30. While admitting that Kenya Wildlife Service is a major stake holder in matters wildlife, he stated that the letter at page 40 of the list and bundle of documents states that the boundaries of the reserve cannot be altered by an individual or a group of people. He testified that the erroneous letter was corrected by another letter contained at page 215 of the 1st defendant's bundle of documents. He agreed that his title can only be valid if it falls within the area that was set apart.
31. While being referred to page 44 of the 1st defendant's bundle of documents, PW1 further stated that the letter states that his parcel was registered illegally and that he has a burden to demonstrate how he acquired his title. At page 45, he stated that the issue of his title was the subject of enquiry before the office of the 3rd defendant, and that the letter shows that the survey completion register originally contained only 154 parcels, and that the original register was intercepted and changed with another one which contained double entry with regard to parcel no. 154. He agreed that it is important for the court to get an explanation on how parcel number 155 got its title, and that any title outside a gazette area cannot be an illegal title. It was his testimony that the suit land is within the gazette area but he could not be able to point out from the map where his land is.
32. PW1 further testified that Naiwash Trading Centre is mentioned in the declaration, and that it is outside the area marked B. He also agreed to have brought the minutes to show that the 1st defendant passed a motion for a consent. At page 272, he stated that the court indicated that his acquittal in Nairobi criminal case no. 2157 of 2003 did not address the constitutionality and the legality of the registration of the suit land. While informing the court that he has leased part of the land to the 2nd defendant, he stated that he did not annex receipts of payments. PW1 disagreed that the suit land was not degazetted from Maasai Mara National Reserve, and that he holds an illegal title.
33. On further cross-examination, PW1 testified that he has no claim against the 3rd defendant, and that he acquired his title through the adjudication process. Further, he stated that the county government is in possession of the suit land, and that he does not know why the Kenya Wildlife Service has an interest in the same. While being referred to the legal notice no. 412, he testified that Talek is the one that is referred to as area B, and that he was not in a position to show if his land falls under area B. Being familiar with the lease, it was his testimony that after the title was issued, the lease was extinguished. He acknowledged the certificate at page 52 was done on 4th October, 2021 and it was his testimony



- that he is the one who applied for certification, and paid for the same, but he could not see the receipt that was issued to him. He reiterated that he is not a member of Koyiaki Group, and whereas the land adjudication officer declares Koyiaki as an adjudication section, it is distinct from Talek.
34. On re-examination, PW1 testified that the declaration notice gives a description of the land where adjudication was to take place, and that the adjudication officer had surveyors on the ground to read and identify the area that was the subject of demarcation. He testified that a look at page 215 of the 1st defendants list and bundle of documents gives directions and the distance that were to be followed by the surveyors, and that it corrects the document at page 66 of his documents. He testified that there is reference to 3 km and reference to 11 km, and that it was the duty of the land adjudication officer to implement the documents with the expertise of the surveyors. He said that he was not aware if the officers received both the documents at page 66 and the one at page 215, but he knows that the first document was used in carrying out the demarcation.
35. Regarding the boundary plan, he stated that his title is legal following advice from his advocate and also in accordance with Section 143 of the Registered Land Act (repealed). He added that a first registration cannot be revoked, and that he acquired his title under the former Constitution. Having been referred to the letter by Kenya Wildlife Service, he testified that the fact of exceeding the area set for demarcation does not render his title invalid. He also testified that as per the letter at page 40 of the 1st defendants bundle dated 26th September, 2000 he already had a title issued on 4th February, 2000 and that the letter from Kenya Wildlife Service came after his title had been issued. With regard to the judgement read on 8th May, 2009 he stated that it upheld the power of the 1st defendant to make a resolution, and that there has never been any appeal to challenge the said judgement.
36. Further, he testified that the area list in the 1st defendant's bundle of documents does not give the beneficiaries, that there is no link between it and Koyiaki Group, and that there is no equal size of land. He stated that he participated in the adjudication process, and it was his testimony that the duty of pointing out the land is done by the person claiming the land. He testified that the land one gets is dependent on what one shows, and that in his case, he showed the adjudication committee the land indicated in P. Ex. no. 1. He stated that the document at page 51 of his documents and page 27 of the 1st defendants document, the former bears a signature by one FRS Onyango, Chief Land Registrar while the latter document is not signed. It was his testimony that nobody owns the said document. Further, he testified that at page 40 of the 1st defendant's document, it shows that the description notice to establish an adjudication section at Talek Ref.LA/9/4/18 dated 6th May, 1997 was erroneous which error is admitted by Kenya Wildlife Service. He testified that the error was made by Ministry of Lands officials and not himself, and that the exhibits he has placed before the court are certified.
37. On 13th May, 2024 Kennedy Kubasu (PW2) introduced himself as a licensed surveyor who received instructions from PW1 to verify the boundaries of his land and to ascertain whether it was properly registered in the land registry and whether the area on the ground tallied with the area in the Land Registry. He relied on his witness statement dated 21st March, 2022, as his evidence in chief. He also relied on the survey report - MFI-17 which he prepared. That while preparing his report, he relied on the Registry Index Map (RIM) for Cismara/Talek/Block/1 that covers the area in the adjudication notice of 6th May, 1997, the topographical map, map sheet 145/3/Emarti Narok and 145/4/Bardamat which are standard map sheets produced by the survey of Kenya, the declaration notice of 6th May, 1997 produced as P. Ex. No.12, the title deed for the suit land, and the official search.
38. PW2 testified that the survey instruments that he used were a precise handheld GPS, a measuring tape and a scale rule, and the necessary softwares. He stated that using these maps in his computer, he obtained thumbnail of the area whose purpose is to describe the area so that one can get a satellite image



of the area. Further, that he digitized the area described in the adjudication notice of 6th May, 1997, then digitized the suit land and georeferenced it so that its position in space was true. From all these, he said that he produced the map at page 77 which covers the adjudication section as described in the adjudication notice. He testified that he went further and produced a satellite image of the adjudication section, and extracted the coordinates of the prescribed land adjudication section, and the coordinates of the suit land to enable inspection on the ground.

39. While on the ground, PW2 testified that the suit land is very easily identifiable, and that at its northern part of the boundary is where river Orlale and river Ntiakliak meet. That the next point is where Ntiakliak river meets river Talek at Naiwashi, and that at the third point is at a river bend with a big old fig tree. He stated that on calculating the area of the parcel, he discovered that it was 1610 hectares which tallies with the search certificate and title deed. He also confirmed that it is within the adjudication section. PW2 produced the survey report together with its annexures initially marked as MFI-17 as PEX No.17.
40. On cross-examination, PW2 testified that his license is not in his exhibits, but that he received instructions sometime in September 2001, and that the said instructions were verbal. According to him, his instructions were to ascertain whether the suit land is surveyed and ascertainable on the ground, whether it was within the area covered by the declaration of 6th May, 1997, and whether the title documents of the land confirms with the records at the land registry and Survey of Kenya. Further, he stated that PW1 supplied him with a copy of the title deed and the declaration notice of 6th May, 1997 which is what he solely relied on. Further, that his client informed him that the matter was pending before court, and he did not tell him that what was in issue is the constitutionality of the title and not the title itself.
41. PW2 stated that he did not know that the suit land was part of Maasai Mara game reserve, and he did not come across gazette notice number 412. While reading the gazette notice in the 1st defendant's list of documents, it was his testimony that the area marked B is a setting apart, and he did not take measurement of the area that was set apart. He stated that the area that was set apart is not part of his evidence in court, and that the commencement from Endonyo Oloip SK Pillar is not in the map. He also stated that the map shown to him is too general, and that it does not show the area marked B. He stated that according to the gazette notice, the boundary runs for 3 kilometres which would not reach Talek river. It was his evidence that he was not given any other declaration notice, and that the declaration notice of 31st July, 1997 which talks of 11 kms shows that it amends the declaration notice of 6th May, 1997. He stated that his report cites the reality on the ground which tallies with the declaration notice of 31st July, 1997.
42. PW2 further testified that he has seen the error corrected by the notice of 31st July, 1997, which was the 3km being corrected to 11km, and that it describes the boundary of the adjudication section. He said that he was not aware that the area was being set apart to assist a particular clan of the Maasai community. He agreed that a number of parcels were issued out to include the suit land, and that he did not take the measurements of parcels number 1 to 154. He was also not aware of the 48 sq. kms, and neither did he have any evidence to tell the court about the 48 sq. km area. He also did not refer to the private surveyor who had been hired to survey the area before, and neither did he talk to members of Koyiak group while undertaking his work. He stated that the documents at page 36 has plots 1 to 154, and that plot no. 154 appears twice. Also, that he did not know the dispute in court before he came to testify.
43. On further cross-examination, PW2 testified that the nature of the instruction from PW1 were to find out if the suit land is surveyed and identifiable on the ground among others. He stated that together



with his team, they went to the ground and carried out the survey exercise which took them 2 days. He added that the suit land has general boundaries, and that he came up with approximate estimates of the boundary. He agreed that the RIM in the plaintiff's bundle is not georeferenced and that it cannot be used or relied upon to indicate the actual boundaries. He also said that the legal notice no. 412 which refers to 48 sq. km, was outside the scope of his instructions.

44. PW2 further testified that he was aware that the suit land had been excised from Maasai Mara game reserve, and that parcels of this nature are defined through boundary plans. He admitted that this was not part of the settling apart that he oversaw. He stated that Maasai Mara game reserve was surveyed as a fixed survey standard, and that his work came in after the fixed survey standard. He stated that his report shows that they share river Talek as a common boundary. He also stated that he was not familiar with the fixed survey title in reference to title number 13325, and that in the deed plan no. 142009 dated 15th December, 1995, it is possible to have a fixed cadastral survey within the adjudication section. He stated that it can only be done upon the request of the owner, and that generally, a RIM can be georeferenced if they were produced from rectified area of photography. He stated that he obtained the photographic maps 145/3 and 145/4 in October, 2021, with no evidence that he obtained them from the Survey of Kenya, but it was certified by the survey office in Narok. He testified that the certification was on 6th August, 2021, which was after he received the instructions. In respect of the declaration notice dated 6th May, 1997, he said that he got it from his client.
45. On re-examination, PW2 testified that when the land is set apart, it is put to use for the purpose it was set apart for, and that what follows would be an adjudication exercise. He testified that the declaration of 6th May, 1997 is signed by J. Okech as the principal land adjudication Officer, and that the second one dated 31st July, 1997 is signed by the same officer. He stated that in between these 2 documents, there are about 85 days, and that he does not know when the adjudication exercise commenced and ended. He also did not know if the adjudication exercise had ended by the time the second declaration was gazetted but one could tell from the map. It was his testimony that once an adjudication exercise is complete, there would be a certificate of completion. Further, that as per P. Ex Nos. 13 to 15 at pages 68 to 71, the adjudication exercise was completed by 5th June, 1997 which was long before the declaration notice of 31st July, 1997.
46. Rakita Ole Muserian (PW3) relied on his thumb printed statement dated 21st March, 2022 as his evidence in chief. He testified that he was the chairman of Talek Adjudication Section Committee in 1997, and that his vice chairman was Njaaga Ololoigero (check spelling). Further, he stated that there were other members such as Saman Ole Sairuwua, Dickson Kenya Taek, Oloishuno Ole Kool, Kadipo Saiyalel, Lerionka Koshal, Meletta Nawurosi, Saningo Tompoi, Nkoiboo Kaleku and Siti Ketere. He testified that they adjudicated claims to land in Talek adjudication section, and there were 155 parcels of land, and that the suit land belonged to PW1. It was his evidence that he signed the records of the parcels on the same day which was on 16th May, 1997.
47. On cross-examination, PW3 could not be able to tell exactly where he was when he signed the statement, but that he was approached by PW1 to record a statement. He testified that he knows PW1, and that he last spoke to him when the latter told him that he had this case in court. Whereas he could not remember the exact date, he recalled it was at the time when they visited the advocate's office to sign the document in Nairobi, and that he did so in the presence of PW1 and the advocate. He further testified that the statement was prepared in the same office after he told the advocate that he was the one who allocated the land to PW1. He said that he does not remember if the statement was read out to him, but that there was no Maasai interpreter when he thumb printed it. He also said that PW1 had asked him to reveal whether he was the one who allocated the land.



48. PW3 testified that he cannot remember how long it took to carry out the exercise of allocating land, and that according to him, there were no objections that were lodged after they allocated land. That all he can remember is that they allocated 155 parcels of land. He stated that there was a surveyor whose name he could remember, and that he was not sure whether it was the name Gatome. He also said that he did not know if the surveyor's report indicated that there were 135 parcels of land as per the document at page 192 of the 1st defendant's list of documents. He stated that he has forgotten because the exercise went on well, and he was never told that the parcels were increased by 19 after disputes arose.
49. PW3 testified that the process of land adjudication took about one and half months to two months, and that no one disputed the exercise that they carried out. He testified that their committee comprised of 15 members, but he cannot remember the committee members who signed that the exercise was complete. He testified that 3 of them out of the 15 members signed that the exercise was complete, and that there was no dispute over the suit land. He recalls Dickson Pemba Taek, and according to him, Pemba did not tell him that he was opposed to the allocation of land to PW1. He also did not remember the case where PW1 was charged with a criminal offence, but he recalled that the CID officers visited him over the land that the committee allocated. He admitted that he was arrested by the CID officers, and the reason was the officers wanted to know why he allocated land. While he remembered the issue of his arrest as it concerned the suit land, he did not hear Dickson Pemba Taek tell the court that the committee allocated 154 parcels of land, and he could not remember if there were people who raised objections.
50. PW3 remembered a government surveyor by the name of Okech instructing those who were dissatisfied with the adjudication process to lodge their complaints after the exercise was declared complete. That in his location, there were no objections. It was his evidence that he has lived in Talek for a long time, and that there was human/wildlife conflict. He added that the government intervened to solve the human/wildlife conflict through the adjudication process.
51. PW3 further testified that Koyiaki group requested for the land where there was human/wildlife conflict to be allocated to the group ranch, and that the government granted the same. He testified that PW1 was a member of Koyiaki, and that he does not know who prepared the list of members at page 511 of the plaintiff's list of documents. That if PW1's name is in the list, he wondered how he came to be allocated land, as he did not have a boma in that area. He testified that the persons who were resident in the area were allocated land, and he also agreed that no one else was allocated land that was as large as that of PW1. He testified that PW1 got the largest parcel of land because it was the last one in the area and also because he was a young man then. He added that he was instructed by PW1's father to allocate land to PW1, and that the other persons who were allocated land were his (PW3) agemates.
52. PW3 did not remember that parcel no.154 was entered twice with one of it being 2.08 hectares and the other one being 1610 hectares. He stated that it is only the government that knows how the suit land came to be. He stated that he signed to confirm that work was complete, and that Taek translated to him in Maasai language that work was complete before he signed. He testified that Taek read to him that there were 155 parcels of land, and that he would be surprised to learn that the report shows that there were 154 parcels of land. He admitted that he did not give the advocate documents to show that he was the chairman of the committee, together with evidence on the rest of the committee members. He stated that he was not the treasurer as was alleged by Dickson before the court that heard the criminal case. Further, he testified that the surveyor is the one who knew the boundaries of the land that was adjudicated.
53. On further cross-examination, PW3 testified that he was the chairman of Talek Adjudication section in a year he could not recall, and also the treasurer of Koyiaki group ranch. He testified that those who



resided in Koyiaki were allocated land in Koyiak area while those who were in Talek were allocated land in Talek, and that all the members of the group were entitled to be allocated land. It was his testimony that the register for Koyiaki was maintained by Ole Tereto, and that he allocated land in Talek, and that the said land was for Talek and Koyiak. He stated that the suit land was within Talek area, and he kept the area list. While he did not produce the area list for Talek, it was his testimony that the area list was kept by one Njaaga. He said that he knew Dickson Pemba who was a clerical officer of Talek. He stated that there were 155 members of the group ranch, and that all the members were allocated land, and that there were no disputes. He further stated that he also knew Tipapa Ole Satilel who was a member of the group and that he filed an objection.

54. On re-examination, PW3 testified that he mentioned Lerionka ole Ntutu, and stated that he is the father of PW1. He went on to state that Lerionka who was not a member of Koyiak, told him to allocate land to PW1 as he was a chief of the area, and he had land in the area. He stated that every member showed the land they were claiming, and that they were allocated whatever acreage that the members were claiming. He testified that PW1 claimed 1610 hectares, and that there were no objections about the land allocated to PW1 apart from this case.
55. Saitoti Kiok (PW4) adopted his witness statement dated 21st March, 2022, as his evidence in chief. He testified that in the year 2000, he was a member of the 1st defendant nominated on KANU ticket and he served for one term. That during the term he served as a councillor, the issue of the suit land came up in the council, and it was discussed by the council's committee and minutes were kept by the council. While referring to P. Ex. No. 26, PW4 testified that the 1st defendant resolved to pull out of the case since PW1 had been issued with a title deed. He referred to the minutes of the meeting held on 10th May, 2002, and stated that the adoption of the committee minutes was done under minute number 4903. That as a result of the resolution of the council, the same was filed at the High Court. He further testified that the 2nd defendant had a lease from the 1st defendant, and he did not know if the 2nd defendant subsequently got a lease from PW1.
56. On cross-examination, PW4 testified that together with PW1, they attended Ole Sankale primary school from 1976 up to class 7. He did not know where PW1 was living while the latter worked at the county council as a clerical officer. His evidence was that by the time he was nominated as a councillor, PW1 had already left the county council. While being shown the letter dated 30th May, 1999 signed by PW1, PW4 testified that it concerns the resolutions passed by the 1st defendant over the suit land. He did not know when the title deed was issued, and when the matter before the High Court was filed. He also did not know when PW1 left the county council, but he agreed that the letter by PW1 is written in respect of several sites. He testified that PW1 sought for the sites to pay revenue to the 1st defendant, and that in the year 1999, PW1 was demanding for revenue from the 1st defendant and further that in the year 2002, the council gave him a condition to waive his claim against the council. He did not know if the suit land had been set apart for the residents of the area.
57. While being referred to the letter at page 194 of the 1st defendant's list of documents which is addressed to the chairman of the 1st defendant, PW4 testified that it was the first time that he was seeing the documents as well as the map with an area marked B. He did not visit the suit land as they were passed the resolution, and neither did he know if the council had sent a surveyor to the ground. He further testified that in the year 2002, he was not nominated as a councillor, and on being shown the letter at page 187 of the 1st defendant's list of documents, PW4 stated that he does not remember if they had a surveyor report in May, 2002 when they came up with the minutes. He said that they relied on the advice from advocate Wambu Wainaina on the issue of title.



58. PW4 further testified that the report at page 192 shows that there were 135 parcels within Talek section which covers 47.20 hectares, and that he wouldn't know if there were subsequent council meetings over the issue after he left the council. He read the contents of the documents contained at pages 52 and 53 which shows that the survey report by Gatome and associates was adopted, and that it also revoked the council's resolution of 10th May, 2002. While further being shown the ruling setting aside the consent, PW4 stated that it was the first time that he had seen the document, and that in the year 2005, he was not a councillor. Further, he stated that he was not involved in the process that led to the issuance of the suit land, and while being referred to page 19 of the 1st defendant's list of documents, he said that he did not know if there were parks fees from the camp in question. He stated that it is only the treasurer and the revenue officers who knew how the payment was being made. While being shown the lease for 33 years, he testified that he did not bother to check the lease in question as they discussed the matter in the year 2002. He disagreed that his evidence does not assist the plaintiff on the issue of the title.
59. On further cross-examination, PW4 testified that he served as a councillor between the years 1997 to 2002, and that before then, he did not carry out any work for the 1st defendant, and further after that, he did not deal with the county government. He stated that he did not participate in the land adjudication process. While his statement showed that he visited advocate Wambuu Wainaina, he stated that there was no resolution of the committee to seek advice from the advocate as per the committee meeting held on 10th May, 2002. He was also not aware that this matter was ongoing by the time he approached Wainaina for legal advice. As per his statement, it was his testimony that the opinion from the advocate was verbal, and that he was informed that the land issue was political. He testified that he did not write the letter dated 30th October, 2002 where they were asking the clerk to convene a meeting, he nevertheless signed the same. Whereas he knew that Joseph Kayioni was the clerk, he stated that he did not know anything about the lease that the 2nd defendant had.
60. On re-examination, PW4 testified that he was 3 years old as at 9th April, 1975, and that at page 194 of the plaintiff's list of documents, the government was willing from the year 1975 to set apart part of the Maasai Mara reserve for the community. He did not know when the legal process of setting apart started. With regard to the contents at page 38 of the 1st defendant's list of documents, PW4 testified that the letter deals with camp sites within the reserve, and that it does not refer to the suit land. He testified that the lease document for the 2nd defendant was for 33 years starting from 1st July, 1984, and that the period was to run up to the year 2017. He also did not know if there were circumstances in which the lease could be extinguished before the 33 years were over. With regard to page 197 which refers to the boundary report dated June, 2004, it was his testimony that he had already left the council. With the close of the testimony by PW4, the plaintiff rested his case.
61. On 23rd September, 2024, Joseph Nderitu (DW2) introduced himself as a land surveyor duly licensed and who has been practicing since the year 1976. He testified that he worked as an associate at Gatome and Associates from the year 1980 to date. DW2 testified that their firm was instructed to carry out some survey work for the 1st defendant in the year 1994 and he prepared a report in the 2004 arising out of that exercise. Being familiar with the report, he stated that the specific assignment was to go and point out the boundary that they had surveyed. He said that in the 1994 they sought the authority of the 1st defendant to enable their entry into Maasai Mara, and that he did the setting apart survey of the Maasai Mara area that was designated as Talek Block. He stated that there was some communication from the government vide gazette notices, as well as the maps. He went on to state that the letter dated 9th April, 1975 acknowledges discussion between the government and the 1st defendant concerning the conversion of part of the Maasai Mara to community land. That in the said letter, the Minister



- described the area of Talek that was to be handed over which was the area along the old Maasai Mara boundary up to Talek river and it runs for 15 Kilometres.
62. DW2 further testified that the original boundary of the Maasai Mara was a straight line, and that there were 2 gazette notices published by the Ministry of Tourism expressing their intention to excise a part of the portion. He testified that there was a legal notice number 100 of 1969 which declared the Maasai land area as an adjudication except Maasai Mara Game reserve. DW2 detailed the process where they started the process of setting apart 3 areas in legal notice no. 145 of 1984 for the community. He referred to page 16 of the 1st defendants bundle of documents which is the declaration of cessation of the 3 portions of land, Talek included, as being part of Maasai Mara. He also referred to the boundary plan, and the declaration of an adjudication section in that area in 1997 dated 6th May, 1997.
 63. DW2 testified that the declaration dated 6th May, 1997 does not agree with the area that was set apart, and that the error was that it goes beyond what was set apart and what they had done a survey for as it goes beyond the stream described in the gazette notice. It was his evidence that he is sure that somebody in the government noticed the error and the error was corrected vide a subsequent declaration describing the correct area that had been set apart. He stated that the figure of the area set apart was 48sq km in the gazette notice, and that the dual survey returned 47.2sq km. He testified that the declaration must align with what was set apart, and that the setting apart was supposed to benefit the members who resided in the block in question which included Koyiak.
 64. He further testified that members of Koyiak requested that the adjudication process be applied to the Talek Block, and that by 5th Jun, 1996, he had already completed sub-division of Talek Block into 135 parcels of land. He testified that all the titles were to emanate from the survey that he carried out. According to DW2, the land varied in size from one (1) acre to 209 acres, and that the owners of the land under the leadership of one person would point out portions to him. He testified that after finalizing the process, he delivered the map to the director of survey with a Registry of Index Map (RIM) prepared for registration of titles, and that to his knowledge, there were no disputes over the ownership of the 135 parcels. Further, that if there were disputes the land adjudication department after taking over would solve the disputes. He testified that it came to their general knowledge that some of the large portions were held by brothers who could not agree on how to sub-divide their joint ownership but he was never consulted on the same.
 65. With regard to the suit land, DW2 stated that he could not remember having done survey on the area of Talek. He also could not remember having met PW1 among the 135 persons who owned 135 parcels of land. Also, that the suit land was not among the 135 parcels that he submitted to the survey department. He could not remember carrying out a survey for a parcel of land that created 16.1 square kilometres. While being referred to page 74 to 75 of the plaintiff's bundle of documents, he stated that the descriptions given goes back to the declaration notice that was earlier on corrected, and that it did not agree with the declaration that set apart the block. He stated that the declaration dated 6th May, 1997 talks of 3 kilometres from a specific point of the boundary, and that the report by Highland valuers talks of 11 kms which is a material difference.
 66. With regard to the declaration dated 31st July, 1997, DW2 testified that it does not agree with the survey report by the plaintiff, and that both ways, the survey report is erroneous. It was his testimony that he carried out the survey work in conjunction with the 1st defendant, and that the report made in the year 2004 was adopted by the county council vide the minutes of 12th July, 2005. He produced the report which has several attachments, documents related to Maasai Mara boundaries, several maps/plans related to the boundaries, the anticipated boundary layout of the whole Maasai Mara from pages 187 to 221 as D. Ex no.1.



67. On cross-examination, DW2 testified that he commenced survey in Talek in the year 1994 up to the end of the year 1995 as a private surveyor. That between 1994 to 1995, Talek had not been declared an adjudication section, and that the same was declared on 6th May, 1997 by the Principal Land Adjudication officer, Mr. John Okech. He agreed that since the area was declared as an adjudication section, the law that applied was the *Land Adjudication Act* and the regulations made thereto. He informed the court that he met John Oketch in his official capacity, and that he was not engaged by the Government in the adjudication process. He stated that he prepared the 2 maps which clearly show that they were not for registration purposes, and that it meant that the Chief Land Registrar could not use them for registration purposes.
68. DW2 further testified that the maps to be used were to be prepared by the officers working with the land adjudication officers, all of whom would be officers working with the government. While being referred to pages 28 and 29 of the 1st defendant's bundle of documents, DW2 testified that it was a survey computation area list which had 154 parcels of land and 154 was repeated twice. It was his testimony that he did not prepare the area list, as that would be prepared by the surveyor and the recording officer. He said that he believed that his survey work could have been used by the public officials during the adjudication process, and he agreed that the documentation backing those titles would be public documents and not his survey work.
69. DW2 further stated that there was a distinction between the Talek adjudication section and Koyiak adjudication, and that the adjudication process in Koyiak group ranch started in the year 1972 and a title was subsequently issued. He testified that Talek adjudication section had its process start in the year 1997 as per the declaration documents he referred to, and that he was not competent to say if one needed to be a member of Koyiak group ranch in order to lay a claim in Talek. That in his survey work, he came across one Lakita Museian who was the Treasurer in Koyiak group ranch and the chairman of Talek adjudication section. He stated that Lakita was a respected person in the area.
70. He further testified that the 135 parcels would vary during the adjudication process based on the claim and the determination of the adjudication committee. He reiterated that the declaration of the adjudication section of 6th May, 1997 was the only one, and it was subsequently amended. He added that between the issuance of the declaration of notice on 6th May, 1997 and 31st July, 1997, he did not know what was happening on the ground. While being referred to the letter dated 5th June, 1997, DW2 stated that it showed that the adjudication process was complete and only objections were being invited. Further, that at the time the correction was being done, the adjudication process was already over.
71. While further being referred to the letter dated 05th October, 2000, DW2 testified that the adjudication section was declared complete on 5th June, 1997. While further being referred to page 215 of the 1st defendant's bundle of documents, he stated that the same refers to 3 kilometres, and that the correction at page 220 refers to 11 kilometres. Further, that the other report at page 75 refers to 11 kilometres, and that the author of the latter report refers to what he was shown in the correction. With reference to page 16 of the 1st defendant's list of documents, DW2 testified that Talek area is described therein as measuring 48 sq. kms, and that the minimum and maximum of the area is plus or minus 2%. Further, that the acres on the higher side would be 200 and on the lower side, it would be 200 which is within the acceptable margin.
72. DW2 testified that the 47.2 sq. km was the land that he surveyed, and that he had not tallied what the Ministry of Land surveyed. He also did not know where the suit land fell in the adjudication section, and stated that the declaration of 6th May, 1997 overshoot what was set apart. It was his testimony that he is not competent to answer if the suit land was adjudicated out of error, and that he was not able



- to tell if it falls within the amended declaration. DW2 further testified that he got a brief from the 1st defendant on 27th May, 2004 who notified him of the matter before the court. He testified that the 1st defendant did not tell him that they had passed a resolution to settle the case, and that neither did they tell him that they had recorded a consent to settle. He testified that in May, 2005 the 1st defendant adopted his report, and that he had no idea if the whole purpose of adopting his report was to enable them walk out of the consent.
73. On further cross-examination, DW2 testified that he was familiar with the Survey Act, and that he has worked with Gatome and Associates from 1980 to date. He stated that the survey report in respect of Koyiaki group ranch was for work which started in 1994, and the instructing client was Koyiaki group ranch. He testified that the process of setting apart involves the setting apart of land under the Trust Land Act, and that he carried out a cadastral fixed survey work for Talek. He stated that there were physical features that he relied on, and that the relationship between the fixed cadastral survey and the area which was the subject of adjudication by the notice of 6th May, 1997 was to return the land to the community once the excision ceased to become the part of Masai Mara, and for the adjudication process to kick in to determine the rightful owners who were to benefit.
74. DW2 testified that he referred to cadastral PR 2155/14, which he prepared and that it was approved and authenticated by the Director of Survey. He reiterated that he did not participate in the adjudication process after handing over the documents to the Ministry of Lands. With regard to the error in LR 20640, he stated that it is the total land reference issued to the whole block after setting apart, and his assumption is that the Director of Survey in confirmation converted from the Registration of Titles Act (repealed) to the Registered Land Act Cap 300 (repealed). He also identified the letter dated 24/4/1997 authored by J. M. Nderitu, and it was his testimony that there is a difference between Koyiak group ranch and Talek, and that the former had its own title. He testified that he referred to it because the persons in Koyiaki were the ones who approached him to do the survey work in Talek. He said that he went to the 1st defendant to find out if the land had been set apart. With regard to the 1st defendant's document at page 20, he stated that he has never interacted with the same.
75. On re-examination, DW2 testified that the survey report at page 175 of the plaintiff's bundle of documents materially differs with the measurements in the declaration at page 215. Further, that the author of the report says that he was relying on the declaration notice of 6th May, 1997 which indicated about 3 kilometres, and that the correction dated 31st July, 1997, the kilometres read "for about 11 kilometres". That in making his report the author made reference to the declaration that was erroneous and the one that had corrected the error. He stated that only the Trust Land Act governs the process of setting apart.
76. DW2 said that he was not aware of the Wildlife (Conservation and Management) Act Cap 376 as it then was, and that Section 7 of the Act gave the Minister powers to set apart a specific part of a game park or a game reserve, and that the Land Adjudication Act cannot be used until the Minister sets apart the area. He stated that setting apart must set boundaries, and the importance of setting boundaries is to set the limit of the adjudication process. He testified that was not proper to do adjudication outside what has been set apart.
77. Further, he stated that the minutes of the 1st defendant on 12th July, 2005 show that there was a report by the district surveyor and that apart from the report, at page 106, the council's resolution revoked a resolution that they had earlier on passed. He disagreed that his report was intended to assist the 1st defendant walk away from the consent it had entered into. With regard to the letter at page 69 of the plaintiff's list of documents, it was his evidence that it should not conflict with what had been set apart, and that parcels 1 to 154 would not add up to 47.2 sq. Kms because of the acreage of the access roads.



- He stated that 1610 hectares is 16.1sq kms, and that if it is added on top of 48sq km, it would go way beyond, and would not be an acceptable margin of error. He stated that he did not survey the suit land to confirm that it falls within Talek adjudication section.
78. Cleophas Leshan Tokosh (DW3) introduced himself as the chief officer for land, Narok County. He confirmed that a defence dated 7th October, 2000 was filed on behalf of the 1st defendant. DW3 adopted his witness statement dated 8th June, 2023 as his evidence in chief. While referring to grant number 3436 of 26th October 1982, it was his testimony that the lease was between the 1st and 2nd defendants for the period commencing 1st July, 1984, and ending in July, 2017. That by that grant, they were to collect levy from the 2nd defendant. He produced the lease as D. Ex. No.2, and further testified that they collect revenue from other hotels within the game reserve as per the documents contained in the supplementary list and bundle of documents dated 14th June, 2024.
79. DW3 produced the receipts in pages 182 to 186 of their list of documents as D. Ex. No.3, and stated that the same shows that they were still in possession of the land and that they collect revenue from it. He testified that the plaintiff does not collect any revenue from the suit land, and that if the place is given to the plaintiff, it means that he will own the crocodiles and hippos. He was also aware of the letter dated 5th October, 2000 addressed to the Permanent Secretary Ministry of Lands and Settlement, and he produced it as D. Ex No.4. He produced the witness statement dated 20th, September, 2001 at page 36 to 37 of the 1st defendant's list and bundle of documents as D. Ex. No. 5, the letter dated 30th May, 1999 as D. Ex. No. 6, and the letter by KWS addressed to the acting clerk Narok County as D. Ex. No.7.
80. DW3 further produced the letter by the Commissioner of Lands dated 6th October, 2008, addressed to Dr. Leaky, the Permanent Secretary as D. Ex. No.8. He stated that he was also aware of the investigations against the plaintiff vide the letter dated 23rd April, 2003 addressed to the DCI headquarters which he produced as D. Ex. No.9, and he further produced the minutes by the 1st defendant dated 12th July, 2005, revoking minute 18 of 2002 as D. Ex. No.10, and the members register for Koyiaki group ranch as D. Ex. No. 11. DW3 produced the valuation report dated 28th July, 2010 as D. Ex. No.12.
81. On cross-examination, DW3 testified that he joined the county government of Narok on 09th December, 2022, and that he has never previously worked for the 1st defendant. He testified that he got the documents from the county registry, and on being shown the gazette notice number 3436 for the year 1982, he stated that once land is registered in an individual's name, it ceases to be trust land. He agreed that the 1st defendant could not hold the land in trust, and further testified that whereas the registration of the lease was for a term of 33 years, the 1st defendant had the authority to lease. He stated that the 2nd defendant had been operating there for many years, and he is not sure if the lease was extinguished immediately when the plaintiff was registered as the owner of the land. He further agreed that the 2nd defendant entered into another lease with the plaintiff, and stated that they have been collecting rent and rates as Narok County Government.
82. DW3 said that he was not aware of an order from the High Court stopping the county government from trespassing, and having agreed to have referred to many letters, he stated that the title remains in the name of the plaintiff. While referring to page 27 of their list of documents, DW3 confirmed that the letter referring to parcels 1 to 155 is not signed, and the area list at page 28 to 29 at its tail end has parcel no. 154 appear twice. He stated that the acreage in the 154 is 2.08 acres and 1610 hectares, and that distinction is not brought out by their unsigned letter. He further testified that the letter at pages 33 and 34 specifically shows that despite the amendments that were done, there was no corresponding change on the maps and that is the genesis of the problem.



83. At page 35, he stated that it is indicated that the map by Mr. Gatome which was at the District Lands officers' office was not recognized as official document, and that the author of the statement at pages 36 to 37 is not indicated in the statement. While being referred to D. Ex. No.6, DW3 testified that he had no evidence that any of the campsites were within the suit land, and that some of the campsites are temporary. He testified that the letter from the Kenya Wildlife Service talks of a declaration of adjudication section which was erroneous. Further, that the whereas the valuation report is for 23,437,500 United States Dollars done on 28th July, 2010, the land has dramatically increased in its value. He testified that they can easily account for the monies collected for the last 24 years, but he is not sure how long it would take to provide the accounts.
84. On further cross-examination, DW3 testified that he is an economist by profession, and that he has worked for the county government from 9th December, 2022 as the Chief Officer, Lands, and that he has never served as a clerk of the 1st defendant. DW3 testified that he came across various minutes of the 1st defendant over the issue, and that he did not know Joseph Kayioni and that he has never come across the replying affidavit by the said Joseph Kayioni as he was preparing for this matter. While being referred to the documents at pages 52 to 53 of the 1st defendant's bundle of documents, DW3 testified that he was familiar with the same, and that apart from these minutes, he did not come across any other minutes in respect of Olkiombo Limited over the suit land. He also did not come across the minutes of the meeting held on 10th May, 2002 of the finance staff and general purpose committee of the 1st defendant, and that it was his testimony that the County Assembly would be in custody of the minutes of the County Council.
85. With regard to the document at page 117 of the plaintiff's bundle of documents volume 1, it was his evidence that he was seeing the deliberations of the committee for the first time. On the process of acquisition which was marked by illegalities, he stated that the same is premised on the correspondence from the Kenya Wildlife Service and the Ministry of Lands. He was also not able to tell who was the author of the letter dated 20th September, 2001, and that he was not familiar with the boundary plans as contained in the letter dated 26th September, 2000, and neither had he come across any material that talks of a collusion between the plaintiff and Oketch. DW3 was not familiar with the processes of land adjudication during the period that he has served, and neither was he familiar with cadastral processes either. He said that as a Chief Officer, he had never had the occasion to visit the area in dispute.
86. On re-examination, DW3 testified that he is the custodian of the documents relating to this suit, and that on matters touching land and revenue from the game reserve, is a shared responsibility. He further informed the court that the county government believes that the acquisition of the title deed was not procedural, and that while he is aware that the plaintiff was acquitted of the criminal offence, the issue of title was not addressed in the criminal trial. With regard to the document at page 21 of the 1st defendant's list and bundle of documents and the document at page 220, he testified that the setting apart commences at Oldonyo Oloipi Pillar S.A Pillar 145 S.G 4 and the Maasai Mara national reserve, and that it was to run for 11 kilometres until it touches Talek River to a point where it meets Empuai stream and back to the original point. He testified that the tented camps are outside the gazette area of Maasai Mara game reserve, and that the area where they collect rent is from the area belonging to the county government.
87. DW3 further testified that the letter at page 38 to 39 of the 1st defendant's bundle of documents was written by the plaintiff as the county treasurer, and that the document at page 20 to 23 of the 1st defendant's bundle of documents is a lease that the 1st defendant had with the 2nd defendant from 1st July, 1984 to July 2017. That on the basis of the lease, the 2nd defendant was paying rates to the 1st defendant, and that while the plaintiff's title was issued in the year 2000, the lease between two was still



- valid as at that time. It was his testimony further that the area where the title is can only apply if it has been degazetted, and that the issue of 48sq km was discussed in parliament and approved. Further, that the Minister's letter shows that the purpose of the degazetment was to benefit members of Koyiaki.
88. DW3 further testified that pages 28 to 29 that shows the people who benefited as per the area list plot number 1 to plot number 154, 135 plots were created, and that disputes arose amongst the 135 parcels resulting into 19 more parcels. It was his evidence that parcel number 155 does not appear anywhere, and that the area covers 48sq km with an addition of 16sq km would not be within the degazetted area. DW3 said that he was aware that the 1st defendant met on 12th July, 2005 to pass a resolution to revoke minute number 18 of 2022 as per the minutes at page 52 to 53 of the 1st defendant's bundle of documents. It was his evidence that the 1st defendant took into consideration the survey report on Olkiombo by Gatome and Associates and the district surveyor's report which informed their resolution to revoke the earlier resolution.
89. DW3 informed the court that he produced the letter from the Kenya Wildlife Service showing that there was an error in the declaration with the boundary that was to run for 3 kilometres. He testified that it was necessary to do a correction to indicate 11 kilometres as per the 1st defendant's bundle of document at page 200, and page 75 volume 1 of the plaintiff's list of documents. DW3 further stated that Joseph Kayoni was not the only clerk for the county council, and that there was Stanslus Ondimu whose position on the issue was that the boundaries described in May, 1997 went beyond what was degazetted, and that the suit land is inside the game reserve.
90. DW3 further testified that pages 85 to 90 of the plaintiff's bundle of documents show that the affidavit of Joseph Kayoni relied on minutes that were later vacated, and that the Kenya Wildlife Service raised the issue of erroneous notice as per the letter dated 26th September, 2000, regarding the encroachment into the game reserve and a title illegally issued. In sum, he stated that his evidence is backed by the position later adopted by various government departments.
91. While being referred to the letter contained at page 44 of the 1st defendants list and bundle of documents, dated 6th October, 2000 from S.K. Mwaita, he testified that the suit land was registered illegally under the name of the plaintiff. He further stated that the letter dated 13th August, 1997 addressed to the Director of Land Adjudication and Settlement Nairobi shows that there were only 154 parcels, which is the position as backed by government documents.
92. John Ongalo Laku (DW4), a retired deputy director of land adjudication and settlement adopted his witness statement dated 5th May, 2023 as his evidence in chief. He produced the letter dated 6th May, 1997 as D. Ex No.13, the provision for election of the committee dated 6th May, 1997 as D. Ex No.14, the notice of completion for Talek adjudication section as D. Ex. No.15, a copy of the objection register in respect of Talek adjudication section as D. EX No.16, a certificate of finality dated 29th August, 1997 as D. Ex. No.17, a letter from Chief Land Registrar to Land Registrar Narok dated 16th September, 1997 as D. Ex No.18, and the letter dated 12th June, 2023 from the Director of Land Adjudication and Settlement to the Attorney General marked as DMFI – 19.
93. On cross-examination, DW4 testified that the land was set apart through legal notice no. 412 of 1992 by then the Minister for Tourism and Wildlife Mr. N. K. Ngala, and that the said notice describes what was set apart. He stated that in the notice, there was no reference to the Koyiaki group ranch. Further, that D. Ex. no.13, i.e. the declaration of the adjudication section, has no reference to Koyiaki group ranch, and that the land being declared as an adjudication section refers to the same land that was set apart by the Minister. Whilst narrating the process of adjudication, DW4 stated that he was not



involved in the adjudication process of Talek, and that he came across the same when the 1st defendant invited him to testify against the plaintiff.

94. With regard to the suit land, DW4 testified that as per the notice dated 5th June, 1997, the adjudication process had come to an end, and an adjudication record prepared. He stated that the only change that could arise, is if an objection had been raised that was successful. In this case, there was no objection in respect to the suit land, but that only one objection was raised as per D. Ex. No.16. He testified that the adjudication process ran from 6th May, 1997 to 5th, June, 1997, and that the document on page 220 of the 1st defendant's list of documents purports to correct an exercise that had been completed within the 60 days. Further, he stated that the person who issued the notice was the same officer who issued the declaration notice, and he admitted that there was an error in the initial declaration by the time the latter declaration was coming out, and that he did not have the powers to do so as it is exercisable before closing the register. He stated that the correction did not change anything that had been done.
95. DW4 further testified that D. Ex No.18 refers to 155 parcels, and he did not know if the suit land is still registered in the name of the plaintiff. With regard to DMFI – 19, DW4 informed the court that the purported correction was not done within the law, and that the suit land is within the land that was set apart by the Minister for Tourism.
96. On further cross-examination, DW4 testified that he was employed on 7th July, 1991, and had contact with the 1st defendant sometime in the year 1997. He stated that while he was testifying on behalf of the Attorney General's office, he does not know what position they have taken in this matter. It was his testimony that an adjudication officer cannot carry out adjudication over a land that has not be excised from the game reserve. DW4 was aware that the Minister did set apart 48sq km, and that it is correct to say that the adjudication officer had a legal duty to know the boundary of what was excised. He did not know the specific boundaries of the area that was to be excised, and on being shown legal notice number 412, he stated that the area on the map marked B is the one that they carried out the adjudication exercise. Whilst stating that the distance was supposed to be 3kms, he did not know the distance between the 2 points that was shown to him.
97. DW4 testified that the correction was done by his office, and according to him, there was nothing wrong in the officers correcting an error. Further, he stated that the land adjudication officers at the time were Mr. John Oketch and Mr. S. K. Thiong'o and others whom he may not know. He testified that he did not testify in the criminal case, as he did not know what happened on the ground and neither was he aware that some officers testified in the criminal case. On being shown page 449 of volume 2, DW4 testified that the Kenya Wildlife Service lodged a complaint of encroachment at Maasai Mara, and further that the officers found out that the declaration was erroneous and it had to be corrected. With regard to the letter dated 13th August, 1997, he stated that there were 154 parcels of land, and that the suit land was not there according to the letter. It was his evidence that he did not get the details of who was the owner of the said parcel. While he never came across a person by the name of Dickson Pemba Taek, he stated that the said Dickson claimed that the suit land belonged to his late father, and that number 154 came out of 55 which was subdivided. That according to Pemba Taek 55 produced only one parcel of land.
98. DW4 further identified the letter dated 21st August, 1997 by S. K. Thiong'o, and stated that based on this letter, no one else was allocated a plot after plot 154. While he stated that he knew Esther Ogega and Okeyo Onyambu, he testified that he was not aware that the land adjudication officers who did not follow the law were charged with the criminal case.
99. DW4 further stated that he has not contradicted his Director, and that he has never come across boundary plan number 216/50. With regard to the 1st defendants list of documents at page 194, he



stated that setting apart undergoes several processes and that none of them can be isolated, and that there is no law that bars correcting an error.

100. On re-examination, DW4 testified that the legal notice no. 412 referred to the area that was subject of the legal notice, and it talked of an area marked B, and that there was no reference to Koyiak group ranch. He restated that the land adjudication officer is assisted by 3 officers, and that he was not involved in the adjudication process at Talek. He testified that no other notice superseded the notice of completion that was issued, and that the purported correction of the declaration notice must come from an objection. While further stating that he had not been forced to testify, he stated that the evidence of Samuel Kabiru Thion'go is not in tandem with his testimony regarding parcel no. 154. With regard to D. Ex No.14 which is the letter dated 6th May, 1997, he stated that the same does not contain the name of Dickson Pemba Taek, but Dickson Penya Taek who are not one and the same person. According to him, the adjudication process was seamless.
101. Further, and in respect of the objection in D. Ex. No.16, he stated that one objection can create as many titles, and while being shown page 423 of the plaintiff's bundle volume 2, he said that he did not know who stated that no other parcel was created apart from 154 as there is no name. Further, he stated that DMFI – 19 clarifies any contradicting ambiguities taken by the office, and that it is not possible to undertake adjudication in an area that has not been gazetted.
102. Tom Manja Chepkwesi (DW5) adopted his witness stated dated 5th May, 2023 as his evidence in chief. As a land registrar working with the ministry of lands, DW5 informed the court that he did not play any role in the registration of the suit land and that his evidence is predicated on the records available at the Lands Office Narok. DW5 produced the letter dated 17th November, 2000 as D. Ex. No. 20, the letter from the DCI Nakuru addressed to the district land registrar dated 10th January, 2008 as D. Ex. No. 21, a certified copy of the green card of the suit land as D. Ex. No. 22, the letter from the office of the Chief Land Registrar addressed to the Clerk County Council of Narok dated 17th May, 2007 as D. Ex. No.23, and the lease between the plaintiff and the 2nd defendant registered on 17th September, 2021 as DEX No. 24.
103. On cross-examination, DW5 testified that the registration of the suit land is a first registration under the repealed Registered *Land Act* which carries legal consequences set out in Section 143 which would govern the resolution of this dispute. With reference to the letter dated 16th September, 1997, DW5 testified that it refers to the area list, adjudication record with parcels 1 to 155 and Registry Index Map (RIM) – sheet 1 and sheet 2. That for him to have certified the letter as a true of the original on 24th April, 2023, he had the original which is available at the Narok registration office. Further, he stated that the letter dated 13th August, 1997 by S.K. Thiongo transmits the original and duplicate records for the said adjudication section for parcel nos. 1 to 154, RIM sheet 1 and sheet 2, the area list and the cases list. It was his testimony that parcel no. 154 appears twice at the end of the area list, one whose area is 2.08 hectares while the second one has an area of 1610 hectares. He stated that these are two different parcels of land, and that the adjudication officer should be able to answer if the total number of parcels was 155. It was further his testimony that the author of the letter dated 13th August, 1997 noticed that parcel no. 154 was entered twice, and that the lease has specific portion of land measuring 9.035 hectares which is what has been leased out.
104. On further cross-examination, DW5 testified that his office issued the plaintiff with a title deed, and that he did not interact with the adjudication process when it was being conducted. While being referred to page 16 of the 1st defendant's list of documents, DW5 testified that the excision was meant to benefit the local people, and the gazettelement was meant to ensure that there would be no infringement by the plaintiff into the remainder of the Game Reserve thereafter. DW5 said that he was not aware



if the map in page 221 of the 1st defendant's list of documents shows the area marked B, and neither was he aware of any declaration notice.

105. While being shown the declaration notice of 6th May, 1997 and 31st July, 1997, DW5 stated that the latter declaration was correcting the notice dated 6th May, 1997. While further being referred to page 425 of the plaintiff's list of documents, DW5 testified that as per the testimony of John Kimoi Chepkurui, parcel no. 155 does not appear, and that parcel no. 154 appears twice which is not normal. According to him, he does not know how parcel no. 155 was created. DW5 did not know Dickson Pemba Taek, but according to the statement at page 428 of the 1st defendant's list of documents, the said Dickson was allocated parcel nos. 63,143 and 154, and claimed that parcel no. 55 belonged to his late father, and that no. 154 came out of 55 whose size is 2.08 hectares.
106. DW5 further testified that page 33 of the 1st defendant's list of documents shows that parcel no. 154 came out of parcel no. 55 as a result of determination of a dispute, and that the said Dickson at page 429 stated that no member has thousands of acres. With regard to the statement by Ondimu at page 442, DW5 stated that the declaration notice of 6th May, 1997 went beyond 48 sq km, and that the suit land is inside the game reserve. That based on the documents, the grant issued to the 2nd defendant was in existence when the title deed was issued to the plaintiff. Further, that the statement by Sergeant Stephen Tangi shows that Mr. Onyango confirmed that he forwarded the list containing parcel nos. 1 to 154.
107. DW5 said that he believed that the court determined the legality and constitutionality of the title. While being referred to page 214 of the plaintiff's list of documents, he pointed out that the court pronounced itself that it could not in any way determine the legality of the applicant's title, and further that the Supreme Court decision questions the legality of how the title was acquired. He agreed that for the plaintiff to have his title, it must be within the law, and within the correct declaration notice describing the boundaries and for the purpose it was intended to.
108. DW5 went on to state that he certified the letter dated 16th September, 1997, and he did not provide the original in court as he no longer works in Narok. He read the contents of the said letter, and testified that there was only one objection case with no appeal to the Minister. He agreed that it is the land adjudication officer who can forward the documents and that in this case, and as per page 9 of the 2nd defendant's list of documents, the letters dated 13th August, 1997 and 16th September, 1997 are forwarded by different officers i.e. the land adjudication officer and the chief land registrar. He testified that the letter dated 16th September, 1997 forwarded an area list, one volume of adjudication ranging parcel number 1 to 155, the RIM sheet one (1) and two (2), cases list and that no parcels of land were affected by appeals to the Minister. Further, that Esther Ogenga – who was a Director of Land Adjudication and Settlement contended that the letter dated 16th September, 1997 does not form part of their record.
109. DW5 said that he was not aware of the letter by the Kenya Wildlife Service dated 26/09/2000. He testified that the letter showed that Mr. Oketch colluded with the plaintiff and that they managed to get the title for the suit land. With regard to the inquiry dated 23rd April, 2003, he stated that the survey computation registered initially contained 154 parcels only and that the said letter was intercepted and replaced with the one containing 155 parcels.
110. That whereas he did not have any statement by Mr. Onyango stating that there were 155 parcels, the statement by S. K. Mwaita, who was the former Commissioner of Lands noted that parcel number 155 is registered illegally in the name of the plaintiff. Further, that the district land adjudication officer forwarded the letter dated 13th August, 1997 and that there was no record of parcel number 155, and



- that paragraph 9(b) terms the registration of 155 as fraudulent and it is cancelled. He stated that not all the statements that he seen indicate that the suit land does not exist.
111. On further cross-examination, DW5 testified that he does not know whether the letter dated 5th April, 1997 which was the notice of completion of the adjudication register included the adjudication process as it only refers to the register. DW5 did not know what was contained in an adjudication register, and that he relied on the adjudication map as one of the records which he did not bring to court.
 112. DW5 further testified that the statement by S.K. Mwaita expressed the frustration of the land registrar to locate documents that facilitated registration of the section, and that it was not clear how titles were prepared without a map. He testified that the grant is registered under Registration of Title Act, Cap 281 (repealed), while the title is registered under the Registered *Land Act*, Cap 300 (repealed) which are 2 different legal regimes, and that he was not aware of Section 1 (2) and 19 (1) of the Registration of Titles Act.
 113. DW5 further identified the letter dated 17th November, 2000, and it was his testimony that the conclusion was that the map was taken by the Director of land adjudication and settlement on the same matter for further investigations. With regard to the letters dated 16th September, 1997 and 1st September, 1997, he stated that the first letter referred to the adjudication register of parcels running from 1 to 154, and that the second one referred to the adjudication register that runs from parcel nos. 1 to 155. Further, that there is a contradiction of the sheets with regard to the RIM. In all these, Esther Ogega, noted that the letter containing the adjudication register with 155 parcels was a forgery. DW5 could remember if Mr. Onyango signed a statement to show that there were 155 parcels of land and he was not aware of such statement.
 114. On re-examination, DW5 testified that one letter is signed while the other letter is not signed, and further, that with regard to the letter dated 13th August, 1997, what was being forwarded were the original and duplicates adjudication records, and that it had no indication of an appeal to the Minister. DW5 was not in a position to state if one number appears twice. Further, that the letter dated 09th April, 1975 described Talek and the legal notice no. 412 talks of 48 sq. Kms. With regard to the declaration notices, it was his testimony that he has never worked as an adjudication officer. With regard to Dickson Pemba, he stated that he did not know him, and that neither did he participate in the criminal trial. DW5 could not vouch to the correctness of the evidence by Stantus Ondimu and Sergeant Stephen Tangi in the criminal matter as he did not know them.
 115. Maurice Robert Otieno (DW6) introduced himself as an Assistant Director, Land Adjudication and Settlement. He adopted his witness statement dated 11th October, 2024, as his evidence and produced the letter dated 12th June, 2024 as D. Ex No.19, and the letter dated 11th October, 2024 as D. Ex. No.25.
 116. On cross-examination, DW6 testified that he was never involved in the adjudication process of Talek adjudication section. While being referred to the legal notice no 145, he stated that the notice gave the period to declare the land described in the schedule. Further, he stated that legal notice no. 412 of 1984 gave the description of what would be excised from the game reserve being 48 sq. kms. DW6 was not aware of the boundary plan no. 216/50, but he went ahead to discuss the contents of the letter dated 13th August, 1997 which referred parcel no. 1 to 154, the area lists, RIMS and summary of the case register.
 117. DW6 further testified that as per the said letter, there was only one appeal which was heard and determined, and that there was no reference to parcel no. 155, but in the area list, there was a duplication of parcel no. 154. Further, he stated that there was no adjudication of any other parcel in the area list apart from 154. With regard to the letter dated 21st August, 1997, DW6 testified that



- there was a corrected area list displaying parcel no. 154 which was created as a result of objection of parcel no. 55. Further, that parcel no. 154 was birthed from parcel number 155 according to the letter, and it gave the correct acreage of parcel number 154 as 2.08 hectares. DW6 did not know the person who owns parcel number 55, and it was his evidence that the letter does not say that parcel no. 155 is 1610 hectares.
118. While being referred to the testimony of Samuel Kibiru Thiongo, DW6 stated that if parcel no. 155 was created, it would have to follow the law. On the declaration notices, DW6 stated that the notice dated 6th May, 1997 gave a description of the boundaries and that any title issued outside the area marked B would be an illegality. He further stated that the declaration notice of 31st July, 1997 corrects the area that erroneously showed encroachment into the Masai Mara game reserve. He agreed that any parcel of land would have to fall within the second declaration. He stated that Naiwash and Ntiakatiak were omitted, and that it talks of 11 kms and not 3 kms from Oldonyo Oilop up to Talek river. He further stated that he is aware of the initial land subdivision on the area marked “B”, and according to him, the adjudication register was complete but the adjudication process was not complete. He testified that any person who owned land in the initial land was bound to object, and apart from parcel no. 55, there was no other objection. While being referred to the complaint by the Kenya Wildlife Service, he stated that the correction was done long before the exercise was completed and he did not agree with it. According to him, the plaintiff got his title because their department demarcated parcel nos. 1 to 155, and that the letter dated 13th August, 1997 corrected the error. Further, that he was surprised that Mr. John Oketch continued to conspire with the plaintiff leading to a title being issued 3 years later.
119. While further reading the contents of the statement in pages 422 and 423 of the plaintiff’s list of documents, DW6 testified that it is shown that no one was allocated land after parcel no. 154. With regard to the affidavit of Esther Ogega, DW6 stated that titles are issued as per the are list, and that parcel no. 155 did not exist. He stated that under the Survey Act, a title cannot be issued if there are two duplicated numbers.
120. On re-examination, DW6 testified that the several gazette notices are in the custody of their office, and that legal notice no. 412 was issued under the Wildlife (Conservation and Management) Act on 28th October, 1982. He stated that the area that was set apart was not completely defined, and that he was not familiar with the boundary map no. 216/50. With regard to the affidavit of Esther Ogega, DW6 stated that parcel no. 154 could have been duplicated when the objection was heard, and that the dated 28th August, 1997 was clarifying how parcel no. 154 was created from parcel 55. He stated that the question of duplication of 154 was not part of the letter.
121. DW6 informed the court that there can only be one declaration for a declaration section, and that under Section 11 of the Land Adjudication Act, the land adjudication officer can rectify errors or correction before an area is published as complete. That once a section is published complete, he cannot rectify errors as that can only be done pursuant to an objection under Section 25. With regard to Dickson Pemba, it was his testimony that he was not a party to the case, and neither did he interact with him. On the evidence of Samuel K. Thiongo, DW6 stated that he was not a party to the process in question. He stated that the adjudication process was not complete when the notice of 31st July, 1997 was made, and he disagreed with the correction made before the adjudication process was declared complete. He informed the court that the letter dated 05th October, 2000, was new to him, and that he had not seen it before. DW6 stated that area lists are created by the survey of Kenya, and that he had not computed the area comprised in the area list. He also disowned the letter contained in D. Ex. No.19.
122. Sammy Silas Komen Mwaita (DW7), a former commissioner for lands and director of land adjudication and settlement, adopted his witness statement dated 2nd November, 2023 which he relied



- on as his evidence in chief. He testified that he wrote a letter dated 6th October, 2000 to Dr. Richard Leaky concerning the authenticity of the title to the suit land. He also stated that clause 6 of his statement talks of the correct area of 47.2 square km as per the legal notice number 412 of 28th October, 1998. He stated that there was need to see the original aerial photos, the original adjudication registers which comprises the original map.
123. On cross-examination, DW7 testified that there was a gazette issued by the Minister of Tourism at the time to degazette the land for excision. It was his evidence that the excision must be specific and supported by a boundary plan showing the area in question. In this case, he was not familiar with the boundary, as he had just seen it, and according to the 3rd defendant's bundle of documents, the area that was to be excised is written as 'V13B', and that they were bound by the document. DW7 agreed to the contents of paragraphs 5, and 8 of his witness statement, and further stated that an original objection was presented to him while they had a meeting in his office. Further that with regard to the letter dated 13th August, 1997, he stated that it supports his contention that plot no. 154 came from 55 and that parcel no. 155 did not follow the process.
124. DW7 further testified that he indicated the record was backdated because there was no reason, and that the map presented by Kenya Wildlife Service, clearly shows that there was an overlap of the land into parcels number 10 and 11 and it has encroached on small portions of parcel nos. 12, 13 and 25 as shown on the map prepared by the licensed surveyor. As far as he could recall, the late Justice Keiwua went to his office to complain that the 2nd defendant had completely been swallowed by the parcel of land. While further agreeing to the contents of his letter, and on being shown the letter contained in page 33 of the 1st defendant's list of documents, he stated that the letter written by the then Director Njenga, raises more or less the same issues as he had raised which prompted his statement.
125. DW7 further agreed that the boundaries on Maasai Mara Reserve cannot be altered by an individual or a group of people. Further, that in his letter dated 06/10/2000, he indicated that the adjudication process as shown was illegally carried out as it exceeded the parcel numbers. Further, that he also enclosed a detailed report from the Director of Land Adjudication with the same recommendation.
126. On further cross-examination, DW7 stated that the adjudication section consisted of 153 plots and that one parcel was subdivided to create parcel no. 154. While further reading the contents of page 422, 423, and 425 of the plaintiff's list of documents, DW7 stated that based on these documents, no one else was allocated land after parcel no. 154 and that parcel no. 155 does not appear on the map. Further, he stated that based on the information by Dickson Pemba Taek, there was no member with a thousand acres, and that any land that falls outside the map 216/50 is irregular. He also stated that the declaration notice dated 31st July, 1997 corrected the notice dated 6th May, 1997. It was his evidence that the suit land falls around Naiwasi and Ongata Oljorai which was outside the degazetted area and inside Maasai Mara National Reserve. He stated that the suit land converges with Talek at Ntiakliak inside the reserve, and that the notice does not talk about Ntiakliak and Naiwashi.
127. On further cross-examination, DW7 testified that he did not personally participate in the adjudication process of Talek, and that the evidence that he had gave was not based on his personal knowledge. He stated that legal notice no. 412 of 1992 talks of 48sq km, and that in survey terms the upper limit of those 48sq km would be plus or minus one (1). He said that while the notice did not make any reference to Koyiak, the approximate size of the land would be equivalent to 45.218 square kilometers. It was also his evidence that Talek was declared an adjudication section after the land was set apart, and that a notice of completion was published on 5th June, 1997. He stated that members were invited to inspect the register, and that the process was ascertained complete. He stated that the latter notice was correcting an error that was done two months after the exercise was declared complete. He also could



- not tell if the error was corrected on the ground, and that he was aware that after the completion of the adjudication process, one has no power to correct the area except by way of an adjudication process.
128. DW7 further stated that when the two maps are compared, it appears that although the amendment notice via Ref No. LA19/4/189 of 31st July, 1997 was published, no corresponding changes were effected on the map to harmonize the situation. Further, that the letter dated 12th June, 2023 shows that the adjudication of Talek was done as per the first adjudication notice and not as per the corrected notice. He further informed the court that there was one notice of a declaration of Talek, followed by an amendment. That whereas he talked of the area being exceeded creating other titles, he could not be able to recall the other parcels, and according to his statements, there were more than one parcel. He admitted that the whole process is not backed up by maps, and that Gatome's maps were not accepted by the land adjudication officer. Further, that the report by the land registrar and the land adjudication officer had no registry index maps, and that in the absence of the RIM, title deed cannot be issued under the Registered *Land Act* (repealed).
129. While being referred to P. Ex. No.18, DW7 agreed that the RIM for Talek exists, and that as per the letter dated 13th August, 1997, serial no. 154 appears twice, with the first entry showing 2.08 hectares while the second one reads 1610 hectares. Further, that in the letter dated 16th August, 1997, the chief land registrar makes it clear that there are 155 parcels and he instruct the land registrar to register it. That based on the letter which was certified as a true copy, a reference is made of parcels number 1 to 155, and that parcel 155 fell within the area declared on 6th May, 1997. He stated that he wrote his letter based on the information given to him by Mrs. Njenga, and that it was not his personal view.
130. On re-examination, DW7 testified that his basis of parcel number 155 is not as a result of his personal dealing, and that with reference to legal notice number 412, the error of margin could be either 47 or 48. That while he did not participate in the adjudication process in Talek, it was his position that if there are grave mistakes an adjudication could be corrected after it is declared complete but in most cases, that is not done. He also stated that there was one notice of establishment of the adjudication that was published. According to him, the basis of his complaint was that the amendment seems not to have been harmonized. Further, he stated that his letter to Dr. Richard Leakey was based on information provided by the Director of Land Adjudication and Settlement and it was team work. While having stated that he had not seen the RIM for the area, DW7 testified that the same is contained at page 281 of the plaintiff's list and bundle of documents, and that he did not see it when he made his statement last year (2024).
131. Wilfred Muchae Kabue (DW8), an assistant director of survey, adopted his witness statement dated 14th November, 2024 as his evidence in chief. He produced the documents contained in the 3rd defendants list of documents dated 26th June, 2023, as D. Ex. Nos. 72 to 76 respectively, and the supplementary list and bundle of documents dated 14th November, 2024, as D. Ex. Nos. 26 to 71 respectively.
132. On cross-examination, DW8 testified that based on the survey work carried out by J.M. Gatome, the parcels of land that were created were 154, and that the suit land was not in their records. He stated that Mr. Gatome forwarded the records to the Director of Survey, and that the same were approved and authenticated. Further, that the told area surveyed was 4720 hectares which is 47.2 sq. km, and less than 48 sq. km which appears severally in their records. He stated that the difference is 0.8 sq km which is approximately 200 acres or 80.94 hectares, and in terms of error, it is approximately 1.7% which is acceptable.
133. With regard to the suit land, DW8 testified that the approximate area which is 1610.08 hectares cannot fit in the error of margin 1.7%. Further, that the letter at page 2 of the 3rd defendants list and bundle of documents sets the specific description where the alteration of the boundary of the game reserve and



- excision was to commence and end. He stated that it was to commence due north of the source of the Enombuaai Stream/Luggah then following Enombuaai stream in southern direction to its intersection with Talek river.
134. With regard to the excision, DW8 testified that there was a difference between the two maps, and that the one containing the excision is consistent with the amended declaration of 31st July, 1997, and the gazette notice number 145 of 20th January, 1984 which was in respect of excision of Talek adjudication section from Maasai Mara national reserve. He stated that the excision commences from point A running down 11 kms to a point up to point F which is at the intersection of Talek river, running along Talek river to its intersection with the stream Enombuaai back to the point of commencement, and that this legal notice agrees with the letter from Mr. Oguttu. It was further his testimony that the notice with the error has the commencement point that runs from transudation 145 STV 4 for 3 kms up to the intersection with Talek river then turns in a westerly direction following the Talek river up to a place called Naiwash, and it terminated where there is a purple boundary. Further, that the second one goes all the way to Naiwash up to a boundary marked in green in the map to the intersection of the boundary of Maasai Mara game reserve.
135. DW8 testified that Mr. Gatome did not take a survey of the erroneous part marked in the map, and that the area shaded red in the map 44 indicates the location of the suit land which is outside the area that was excised. He said was not aware of any gazette notice that had degazetted the area from the game reserve. Further, that according to the map, the suit land is inside the Maasai Mara game reserve, and that there is a very small portion of it that is inside the declaration of 31st May, 1997. Further, he stated that the area marked A is inside the reserve in the area marked in red and it is not in the area that was in the declaration. He also said that they have no records of the excision of the particular title.
136. DW8 further testified that no survey belonging to the reserve can be carried out for private purposes. That based on the letter dated 13th August, 1997, addressed to the Director Land Adjudication and Settlement, the total number of plots forwarded were from 1 to 154 which included a complete adjudication record from 1 to 154 together with RIM sheet 1 and 2 which were forwarded, and that plot no. 155 does not appear anywhere in the record. He stated that other than S. K. Gatome, he did not know of any other surveyor who did work for the 1st defendant.
137. On further cross-examination, DW8 testified that Siana and Talek were excised from Maasai Mara national reserve, and that in this case, he did not participate at all in Talek adjudication process. While agreeing that the declaration was founded on legal notice no. 412 of 1992 as per the 1st defendant's list of documents, DW8 testified that in his understanding the highest would be to give or take plus one (1) kilometer, and that the gazette notice did not give a specific description of where the land was.
138. With regard to page 215 of the 1st defendant's list and bundle of documents, DW8 found the document to be erroneous as it did not tally with the legal notice no. 412. Further, that the land went over and above 48 sq. km which is an error that was committed by Mr. J. Oketch. He agreed that the suit land falls within the erroneous notice, and that about 5% of it falls under the legal notice. He also stated that there was only one declaration notice which was later amended, and that he did not know if the correction was effected on the ground, and neither does he know whether the adjudication process had been declared complete.
139. While admitting that he never participated in the adjudication process, he said that he was aware that an adjudication officer appoints a demarcation officer, a surveyor and a recording officer who must be public officers. That in this case, he is not aware who the demarcation officer and the surveyor were. DW8 did not produce the demarcation map for each parcel, and that under the [*Land Adjudication Act*](#), there is no provision for a private surveyor.



140. DW8 stated that he was aware that J. N. Nderitu gave evidence in this court, and that it is a matter of knowledge that he did not participate in the adjudication process. He said that he was aware that Nderitu's work comprised of 135 parcels, which contradicted his statement which stated that parcels 1 to 154 were derived from Talek/Lokwan sheet number 1 and 2 which are 2 sheets of RIM that were prepared in respect of Talek adjudication section.
141. DW8 further stated that parcel no. 155 is in the RIM, and that from 1997, the parcel has not been subdivided or amalgamated to date. Further, that for any parcel to appear in the RIM, it must have a survey, and that in this case, the Director of survey does not have a survey record for the suit land. He stated that they did not ask for the survey record, and whether or not it exists, he did not know. DW8 admitted that he had not provided the area list by Gatome, for the reason that he did not come across it, yet, Gatome prepared an area list. He stated that if Njuguna said that he did not prepare an area list, he lied, as the record shows otherwise.
142. DW8 further stated that the survey computation from C 22 runs from parcel number 1 to 154, and that parcel no. 154 is duplicated, one with an area of 2.08 hectares and the second one is 1610 hectares. From the record, he did not know who prepared the area list, but he stated that the document was prepared by the surveyor and the demarcation officer. While being referred to page 41 of the 3rd defendant's list and bundle of documents, DW8 stated that the letter does not indicate that parcel no. 154 has been duplicated, whereas the area list shows that it has been duplicated. He agreed that the RIM at Narok Lands office has been amended to reflect the changes that have occurred from time to time, and that the Director of Survey considers it as an authenticated document.
143. On re-examination, DW8 testified that in respect of the RIM, it reflects the record held by the Director of Survey, and that he did not know who prepared the survey computation, as they are not part of the record that he came across at the Director of Survey. He further stated that the documents forwarded to the Director of Survey by Gatome were 3 demarcation sheets (field sheets) and area list prepared by Gatome which were received on 09th May, 1995. He also did not come across any survey record in support of survey of the suit land, and that parcel no. 155 may only have arisen out of an amendment of the RIM.
144. While being aware of Mr. Nderitu's testimony in court, DW8 informed the court that Mr. Gatome participated in the adjudication process of Talek, by carrying out a fixed survey that defined the boundaries of Talek adjudication section sometime on or about 6th January, 1995. He was not aware if the *Land Adjudication Act* has a role for private surveyors.
145. DW8 was not in a position to know who were the demarcation and survey officers at that time, but that the person who committed the error in the notice of 6th May, 1997 is J. O. Oketch. The document at page 15 of the 1st defendant's list and bundle of documents is legal number 412 of 28th October, 1992. In respect of Talek, and the boundary plan, he stated that the basis of the 5% that he arrived at is for the suit land that would be inside the demarcation was graphically estimated to be 5% of the total area of 1610 which would bring a figure 80.50 hectares. Further, that the area marked B in the notice of 28th October, 1992 did not give a description of Talek adjudication section as it was supposed to be read together with boundary plan number 216/50 marked B. DW8 stated that he has never participated in adjudication process in his 30 years' experience, including Talek, and that his evidence is based on the records held and maintained by Director of Survey.



146. The plaintiff filed his written submissions dated 25th November, 2024 where he raised four issues for determination as follows: -
- a. Whether there was compliance with the Constitution, the law and procedure set out in the Land Adjudication Act and the Registered Land Act on the adjudication and registration of the Plaintiff as proprietor of all that parcel of land known as CIS-Mara/ Talek/ 155.
 - b. Was the registration of the Plaintiff as the first registered absolute proprietor of all that parcel of land known as CIS Mara/ Talek/ 155 constitutional, lawful and legally valid.
 - c. Is title deed for all that parcel of land known as CIS Mara/ Talek/ 155 constitutional and legally valid or it should be declared unconstitutional, unlawful, illegal, invalid and cancelled.
 - d. Who should bear the costs of the proceedings.
147. In summary of the above issues, the plaintiff submitted that his title to the suit land was legally and lawfully registered and issued to him after following all the processes under the Land Adjudication Act and Registered Land Act (repealed). He submitted that the declaration notice of 6th May, 1997 by the land adjudication officer overshot or elongated the adjudication area in excess of what was gazetted by the Minister, and that the error by the adjudication officer is not attributable to him nor does the error vitiate his title.
148. The plaintiff urged the court to accept the testimony of DW4 as it accords with the tenor of the Land Adjudication Act under Section 11 on the powers of an adjudication officer to make corrections to the register. He submitted that the adjudication officer had no powers to issue the correction notice dated 31st July 1997, as it was done outside the mandatory provisions of Section 11(b) of Land Adjudication Act. To buttress on this submission, the plaintiff relied on the case of *Manangoi & 5 others (Suing on their own behalf and on behalf of all the members of the Ildamat Clan) v Attorney General & 10 others; Kilusu & 8 others (Interested Parties)* [2024] KEELC 4261 (KLR).
149. The plaintiff submitted that the only residual power that the land adjudication officer had after the completion notice is to entertain objections under Section 26 of the Act and alter the register in conformity with determinations arising therefrom, and that the correction notice was an illegality and could not be the basis of adjudication of the Talek Section.
150. Under the presumption of regularity, the plaintiff submitted that it is presumed that all acts have been done rightly and regularly by public bodies unless the same are challenged. While relying on the Supreme Court case in *Odinga & 5 Others v Independent Electoral and Boundaries Commission & 3 others (Petition 5, 3 & 4 of 2013 (Consolidated))* [2013] KESC 6 (KLR) (16 April 2013) (Judgment) and the Court of Appeal (*Asike-Makhandia, JA*) in *Kibos Distillers Limited & 4 others v Benson Ambuti Andega & 3 others* [2020] eKLR, it was submitted that the onus to disprove the presumption of regularity lay with the 1st defendant, and that it has failed to do so, and as a matter of fact, the 1st defendant ratified and participated in the process throughout and even derived two parcels of land being parcel nos. 152 and 153.
151. On registration, the plaintiff submitted that in accordance with Section 116 of the former Constitution, upon registration of the suit land in the name of the plaintiff, the land ceased to be trust land, and the lease granted to the 2nd defendant by the 1st Defendant for a period of 33 years



was extinguished by operation of a constitutional provision. He submitted that no provision in the Registration of Titles Act or any other statutory provisions could override a constitutional provision. Reliance was placed in the case of *Torino Enterprises Limited v Attorney General* (Petition 5 (E006 of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment).

152. Further, the plaintiff submitted that the title to the suit land is absolute to the plaintiff and he is entitled to all rights and privileges accruing from such ownership as provided under Sections 27,28 and 30 of the Registered *Land Act* (repealed). The plaintiff went on to submit that whereas, the Registered *Land Act*(repealed) makes provisions for rectification of a register, the 1st defendant has not demonstrated any form of mistake or fraud by the plaintiff that led to the registration of the suit land in his name. Further reliance was placed in the following cases *John Teleyio Ole Sawoyo v David Omwenga Maobe* [2013] eKLR, *Geoffrey Wambanda Wandambusi & another v Attorney General & 3 others* [2015] eKLR, *Epaphrus Muturi Kigoro v William Mukui Nyaga* [2015] eKLR, *Ngatuni Murugu & Mukindia Magambo, Ntiba Mburugu, Wilfred Mbaka, Delfino Mukuba & Meru County Council (Civil Appeal 327 of 2009)* [2013] KECA 198 (KLR) (4 July 2013) (Judgment), *David K. Kipsang v James Kipchenger (Civil Appeal 214 of 2001)* [2005] KECA 206 (KLR) (15 April 2005) (Judgment), *Mugogo v Sihowa* [1988] eKLR, *Leonida Nekesa v Musa Wanjala (Civil Appeal 23 of 1985)* [1985] KECA 38 (KLR) (9 August 1985) (Judgment), *Gladys Wanjiru Ngacha v Teresia Chepsaat & 4 Others* [2008] eKLR, *Violet Omusula Sikenyi v Vincent Kamari* [2006] eKLR, *Joseph Gitonga Githongo V Wahome Muchura & 2 others* [2005] eKLR, *Hannah Wangui Ithebu & another v Joel Ngugi Magu & 2 others* [2005] eKLR, *Ochola v Obeti* [2004] eKLR and *Chacha v Mwitwa Manini* [2002] eKLR.
153. On the issue of the accounts, the plaintiff urged the court to order the 1st defendant to a file within seven days, an account of all monies collected or received from the suit land from the 14th October, 1997 to the date of judgment.
154. The 1st defendant filed its written submissions dated 27th November, 2024 where it raised eleven issues for determination as outlined below: -
- i. The process of excision of the area marked “B” from Maasai Mara National Reserve.
 - ii. The process of adjudication of the Talek Area marked “B” as per Legal Notices Nos. 145 of 1984 and 412 of 1992.
 - iii. Whether it was notice of 6th May, 1997 or the correction of the declaration notice of 31st July, 1997 that complied with the legal notices.
 - iv. Whether there were 154 or 155 parcels of land and whether the plaintiff produced any proof that there were 155 parcels of land.
 - v. Whether the plaintiff’s land falls inside or outside the degazetted area or in the Maasai Mara National Reserve.
 - vi. Whether the adjudicated area was for a specific purpose and for residents of the Koyiaki group ranch.
 - vii. Whether the plaintiff could acquire a clean title when there was an existing grant No. IR. 4453 in favour of Olkiombo Limited.
 - viii. Whether the plaintiff’s title is therefore indefeasible.



- ix. Whether the plaintiff could rely on the letter dated 16th September 1997 to procure his title.
 - x. Rebuttability of presumption of regularity
 - xi. Who should bear the costs of the suit.
155. On the first issue, it was submitted that adjudication of any parcel of land is a process that must be followed, and that the same must not suffer any imperfection. Reliance was placed in the case of *Narok County Government v Livingstone Kunini Ntutu & 2 Others*, Petition no. 3 of 2015. It was also submitted that to establish the legality and validity of the title, its roots must be challenged as it was held in the case of *Dina Management Limited v County Government of Mombasa & 5 Others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) (Judgment).
156. While referring to the boundary plan prepared by the Director of Survey for Maasai Mara National Reserve, the 1st defendant submitted that the area marked “B” was surveyed both by the survey firm of Gatome & Associates and the district surveyor in the presence of the members of the Narok County Council. It was further submitted that the legal notices remain in place and the plaintiff has never challenged the same nor did he attack them during the course of these proceedings.
157. While relying on the Court of Appeal case in *Nderitu Gachagua v Thuo Mathenge & 2 others*, Civil Appeal No. 14 of 2013, the 1st defendant submitted that the government through the Minister for Tourism as required by law, had already communicated to all and sundry of the intention to carve out a part of the Masai Mara National Reserve and the parts carved out would cease to be part of the Maasai Mara National Reserve. It was submitted that the boundaries were known and any declaration notice that would be made later would have to be in line with the gazette notices issued by the Minister for Wildlife and Tourism.
158. On the second issue, the 1st defendant submitted that this is a new issue that was never pleaded by the plaintiff anywhere in the pleadings but the plaintiff has in essence tried to introduce new grounds to their claim thus amending it through backdoor. To buttress on this submission, the 1st defendant relied on the case of *Dakianga Distributors (K) Ltd v Kenya Seed Company Limited* [2015] eKLR. The 1st defendant further submitted that the issue of appointment of surveyors under Section 4 of the [Land Adjudication Act](#) was a new issue which was never pleaded, and that this court should not adjudicate on that issue as parties are bound by their own pleadings. It was submitted that the action by the plaintiff to try and sneak in new issues is a fishing expedition which this court must not allow and thus should accordingly limit its observations and judgement to what was pleaded in the pleadings. In any event, they submitted that there were surveyors on the ground appointed in accordance with Section 4(1) of the [Land Adjudication Act](#).
159. On the third issue, the 1st defendant submitted, it was before the adjudication process could be completed that issues were raised on the correctness and/or accuracy of the description of the boundaries of the notice of the establishment of the adjudication notice of 6th May, 1997 in that the said adjudication notice did not comply with legal notice no. 145 of 1982. It was further submitted that there was need to have the adjudication notice of 6th May, 1997 corrected thus the adjudication officer had to comply with the legal notices issued by the Minister. They submitted that the notice of declaration which was relied on is the notice of 31st July 1997 as it complied with the legal notice No, 145 of 1984 and 412 of 1992. The 1st Defendant submitted that the declaration of 6th May, 1997 was erroneous and it triggered the land adjudication officer to correct it so as to align it with the legal notices Nos. 145 of 1984 and 412 of 1992. It was submitted that the correction was done long before



the land adjudication process was completed and there was only one objection which was raised and determined, and that the said correction vide the correction notice of 31st July, 1997 was done so as to comply with the constitutional dictates of Sections 115 - 117 of the retired constitution and Sections 6, 7 and 8 of the Wildlife (Conservation and Management Act) (repealed).

160. On the fourth issue, the 1st defendant submitted that there were only 154 parcels of land based on the evidence and testimonies of witnesses. It was further submitted that after the adjudication record has been published, it cannot be altered except under Section 27 of the [Land Adjudication Act](#), and that the process of altering the parcels of land and insertion of parcel number 155 belonging to the plaintiff was contrary to the law and tainted with illegalities yet as earlier submitted, the Supreme Court has stated that the process must be beyond reproach. The 1st defendant submitted that the interception of the letter dated 13th August, 1997 and exchanging it with the letter dated 16th September, 1997 was an act of fraud, and that the chain of the root of the plaintiff's title was broken and it cannot be established. Reliance was placed in the case of [Caroline Awinja Ochieng & another v Jane Anne Mbithe Gitau & 2 others, ELC Case no. 694 of 2012](#).
161. On the fifth issue, the 1st defendant submitted that for the plaintiff to get a valid title, then his parcel of land must fall within the Talek area marked "B" which was carved out of the Maasai Mara national Reserve measuring 48 square kilometers and not more. It was submitted that the plaintiff agreed that the area was set apart measured 48 sq. kms, but during cross examination, he could not point out where his land was situated since he did not know. While relying on the case of [Mwaja & 5 others v National Land Commission & another \(Environment & Land Case 100 Of 2021\)](#) [2023] KEELC 16458 (KLR) (27 March 2023) (Judgment), the 1st defendant submitted that the plaintiff's land falls outside the declaration of 6th May, 1997, and that there is no evidence that the land falls within any of the degazetted areas. Most importantly, it was submitted, that the constitutional foundation of any title to land is that only titles that have been acquired in accordance with the law can afford protection of the law. Thus, the letter and the spirit of Article 40 of [the Constitution](#) of Kenya which applies retrospectively as was pronounced by the Supreme Court in [Janmohammed \(SC\) \(Suing as the Executrix of the Estate of the Late H.E. Daniel Toroitich Arap Moi\) & another v district Land Registrar Uasin Gishu & 4 others, Petition 17 \(E021\) Of 2023 & 24 \(E027\) Of 2022 \(Consolidated\)](#) [2024] KESC 39 (KLR) (2 August 2024) (Judgment) Neutral Citation: [2024] KESC 39 (KLR). Further reliance was placed in the case of [Henry Muthee Kathurima v Commissioner of Lands & another, Civil Appeal No. 8 of 2014](#), and [Samuel Kamau Macharia and Another vs Kenya Commercial Bank Ltd & 2 Others](#) [2012] eKLR.
162. The 1st defendant submitted that the question before the court is the lawfulness, legality, constitutionality and whether the plaintiff illegally obtained property that can be protected under Article 40 of [the Constitution](#) of Kenya noting that the plaintiff waived a title issued to him on land that has not been degazetted, the title thus was acquired illegally. To further buttress on this submission, the 1st defendant relied on the cases of [Benja Properties Limited v Syenda Mohammed Burhannudin Sahed & 4 others, Civil Appeal no. 79 of 2007](#) and [Republic v Minister for Transport and Communication & 5 Others Ex Parte Waa Ship Garbage Collector & 15 Others, HCMCA No. 617 of 2003](#) [2006] 1 KLR (E&L) 563.
163. The 1st defendant further submitted that the registrar of lands purported to issue the title deed to the plaintiff in the absence of any legal backing which was clearly an abuse of office. It was further submitted that once an issue arises regarding the procedural propriety of the acquisition of a title, the presumption of indefeasibility of the title is open to scrutiny, as it was the position in [Embakasi Properties Limited & Anor. V Commissioner of Lands & Anor](#) [2019] eKLR.



164. On the sixth issue, the 1st defendant submitted that the degazettement of Talek area was for a specific purpose and for the benefit of the residents of the Koyiaki group ranch which the plaintiff was not part of. The 1st defendant reiterated that the plaintiff was not a resident of the Koyiaki group ranch, and that on several occasions, he admitted on oath during cross examination that he was not a member of the Koyiaki group ranch residents. It was further submitted that the land held in trust for communities is set aside for a specific purpose or use and it cannot be set aside for personal gain. To further buttress on their submissions, the 1st defendant relied on the cases of *Pati Limited v Funzi Island Development Limited & 4 others* (Petition 37 of 2019) [2021] KESC 29 (KLR) (16 July 2021) (Judgment), and *The National Land Commission –And Attorney-General & 6 Others, Advisory Opinion Reference No. 2 of 2014*.
165. On the seventh issue, the 1st defendant questioned how the plaintiff registered an interest in land while there was an existing interest under Section 28 of the Registration of Titles Act (repealed) which calls for sanctity of titles. While relying on the on cases of *Wibeso Investments Limited & Another V Tamarind Meadows Limited & 5 Others*, ELC Case No. 226 of 2017, and the Court of Appeal in *Munyu Maina v Hiram Gathiba Maina, Civil Appeal No. 239 of 2009*, the 1st defendant submitted that the plaintiff's land is tainted with illegality, and the root of his title is rotten and it cannot stand. The 1st defendant submitted that there was no surrender of the lease and by the time the plaintiff was being issued with his title deed, the lease was still in existence. It was further submitted that the registrar could not purport to issue a title over another existing interest and that the same grant was never surrendered under Section 44 of the Registration of Titles Act. That in any event, the plaintiff never brought any evidence to demonstrate that the lease had lapsed and that he was capable of registering his title.
166. On the eighth issue, the 1st defendant submitted that the title to the plaintiff was issued contrary to Sections 115, 116 and 117 of the former Constitution, and Sections 7 and 8 of the *Wildlife Conservation and Management Act* as the suit property was not adjudicated under Section 14 of the *Land Adjudication Act*, and in the absence of a valid notice of demarcation of the suit land under Section 5 of the said Act. The 1st defendant submitted that the suit land was the subject of a constitutional trust held by the Narok County Council pursuant to the provisions of Section 115 of the former Constitution and had never prior to its registration in the plaintiff's name been adjudicated under the provisions of the *Land Adjudication Act* as stipulated by Section 116 of the former Constitution. The 1st defendant relied on the cases of *Timothy Ingosi and 87 Others vs KFS and 2 others* [2016] eKLR, *Chemei Investments Limited vs The Attorney General & Others*, Nairobi Petition No. 94 Of 2005, and *Mureithi & 2 Others (For Mbari Ya Murathimi Clan) vs Attorney General & 5 Others*, Nairobi HCMCA No. 158 of 2005 [2006] 1 KLR 443.
167. The 1st defendant submitted that the title deed in respect of the suit land is not indefeasible as the land lies in the Maasai Mara game reserve, and that it cannot come under the ambit of indefeasibility as the same was illegally acquired and should be cancelled as it is a nullity.
168. On the ninth issue, the 1st defendant submitted that the plaintiff hinges his title deed on the letter dated 16th September, 1997, which was disowned by the author, FRS Onyango. Additionally, it was submitted that the said letter was also renounced by Esther Ogega in her affidavit dated 22nd September, 2015 which was corroborated by DW6. That in this instance, the letter dated 16th September, 1997, was a forgery as the Chief Land Registrar denied that he ever signed and/or authored the same yet the plaintiff fully aware of the same, used it as an anchor for his claim. To buttress on this submission, the 1st defendant relied on the cases of *Daudi Kiptugen v Commissioner of Lands & 4 Others*, [2015] eKLR, *Wambui v Mwangi & 3 others* (Civil Appeal 465 of 2019) [2021] KECA 144 (KLR) (19 November



- 2021) (Judgment), *Zaabwe v Orient Bank Ltd and 5 Others* (Civil Appeal 4 Of 2006) [2007] UGSC 21 (10 July 2007), and *Isaac Omwonga Mariera & Another vs. Abel Moranga Ongwancho & 2 Others*, ELC Case No. 958 Of 2016.
169. On the tenth issue, the 1st defendant submitted that the fraudulent activities of public officers cannot afford them any protection under the law, and that if a public officer acted outside the confines of the law and/or his powers, then the doctrine does not apply. It was further submitted that Article 40 (6) of *the Constitution* of Kenya clearly stipulates that the right to property that has been found to have been unlawfully acquired cannot be used as shield to protect unlawfully acquired property and/or circumvent constitutional provisions, or override express statutory procedures. It was also submitted that due process must be followed to alienate public land before the doctrine of *Omnia praesumuntur rite et solemniter esse acta* can be pleaded, and that in this case, the said doctrine cannot be pleaded without adherence to statutory or constitutional provisions.
170. The 3rd defendant filed its written submissions dated 22nd January, 2025. While relying on the cases of *Adan Abdirahani Hassan & 2 others v Registrar of Titles & 2 others* [2013] eKLR, *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR and *Daudi Kiptugen v Commissioner of Lands & 4 Others* [2015] eKLR, the 3rd defendant submitted that a quick perusal of all the pleadings on the record filed by the 1st defendant shows that the 1st defendant has never pleaded the issue of Article 40(6) of *the Constitution* of Kenya, and that it has never amended or sought leave to plead to this issues. The 3rd defendant submitted that the issue is being raised by the 1st defendant for the first time in its submissions, and in doing so, it has in essence set out to argue an issue that is not part of its pleadings on record. It was also submitted that it is a settled legal position that no party should be permitted to travel beyond its pleadings and that in absence of pleadings, evidence if any, produced by the party in support of an un-pleaded issue cannot be considered by the court. Further reliance was placed in the case of *Kiluwa Limited & another v Business Liaison Company Limited & 3 others* (Petition 14 of 2017) (2021) KESC 37 (KLR) (6th August 2021) (Judgment).
171. While further relying on the cases of *Cortec Mining Kenya Limited v Cabinet Secretary Ministry of Mining & 9 others* [2015] eKLR, *John Peter Mureithi & 2 others v Attorney General & 4 others* [2006] eKLR, *Republic v Permanent Secretary Ministry of Public Works & Housing Ex-parte Tom Maliach Sitima* [2014] eKLR, *Benja Properties Limited v Syedna Mohammed Burhannudin Sahed & 4 others* [2015] eKLR, *Republic v Land Registrar Kilifi and Ex-parte Daniel Ricci* [2013] eKLR, *William Musembi & Others v Moi Educational Center Company & 3 Others* [2021] eKLR, *Chemey Investments Ltd v Attorney General & 2 Others* [2018] eKLR, and *Dina Management Ltd v The County Government of Mombasa and Others*, Supreme Court Petition No. 8 (E010) of 2021 (unreported), the 3rd defendant submitted that it is not in issue that before registration of the suit land in the name of the plaintiff, it was trust land under the former Constitution, and by dint of Section 115, such land was vested in and held by the 1st defendant within the area of jurisdiction on behalf of the people ordinarily residing in the area. The 3rd defendant submitted that the trust land in this case was under the trusteeship of the county council of Narok. Further, it was submitted that the former Constitution also provided for the manner in which trust Land could be alienated and registered in the name of individuals.
172. The 3rd defendant submitted that to determine the legality and constitutionality of the title to the suit land, the court has to interrogate whether the substantive laws and procedures were adhered to the letter in the adjudication process and consequent registration. It was submitted that by gazette notice No. 145 of 1984, the Minister for Tourism and Wildlife issued a notice of his intention to declare a specified part of Maasai Mara National Reserve to cease to be part of the reserve pursuant to Section 7 (2) of the Wildlife (Conservation and Management Act) (Repealed). It was further submitted that the



- same was followed by gazette notice no. 412 of 1992 where he specifically declared an area known as Talek to cease being part of Maasai Mara, and that after declaration, Talek ceased to be part of Maasai Mara National Reserve and the [Land Adjudication Act](#) became applicable in the ensuing process.
173. The 3rd defendant submitted that pursuant to Section 5 of the [Land Adjudication Act](#), the Principal Adjudication and Settlement Officer Narok, one John Oketch, vide declaration notice dated 6th May, 1997, established Talek adjudication section which was clearly defined under the declaration. While quoting the dictum of Lady Justice L.N. Mbugua in *Fatuma Adan Dullo & 4 others v Cabinet Secretary Ministry of Lands and Physical Planning & 2 others* [2020] eKLR, the 3rd defendant submitted that in the instant case, the adjudication area was specific enough, and that the adjudication process commenced in the specified area whence upon the claims were ascertained and recorded, survey was carried out and demarcation done. It was submitted that the plaintiff was allocated the suit land in the adjudication section as per the records held in the Department of Lands, and that the adjudication officer would thereafter, on 5th June 1997, declare the adjudication register complete.
174. The 3rd defendant further submitted that due process was followed including display and inspection of the adjudication register, and the notice inviting any objections pursuant to Section 25(c) of the Act. It was also submitted that on 31st July 1997, almost 2 months after the adjudication register became complete, the same Principal Adjudication Officer, Narok, issued correction of the declaration Notice No. LA/9/4/188 correcting the earlier declaration of 6th May, 1997. It was submitted that the same was legally untenable as the adjudication register was complete and could not be implemented. While relying on the case of *Kiluwa Limited & another v Business Liaison Company Limited & 3 Others* (Petition 14 of 2017) (2021) KESC 37 (KLR) (6th August 2021) (Judgment), the 3rd defendant submitted that on indefeasibility of title, the courts have held that the responsibility to prove legitimacy of the title is not only limited to the party whose title is being challenged but also to the other one claiming infringement to prove entitlement warranting the constitutional protection sought.
175. The 3rd defendant submitted that it is a fundamental principle of law that a litigant bears the burden of proof in respect of the propositions he asserts to prove his claims. While relying on the cases of *Dr. Samson Gwer & 5 Others v Kenya Medical Research Institute & 3 Others* [2020] eKLR, *Rhesa Shipping Co SA v Edmunds* [1955] 1WLR 948, and *Agnes Nyambura Munga (Suing as the Executrix of the Estate of the late William Earl Nelson) v Lita Violet Shepherd (Sued in her capacity as the Executrix of the Estate of the late Brian Walter Shepherd)* [2018] eKLR, the 3rd defendant submitted that it is trite law that whoever desires a court to give judgment as to any legal right or liability, dependent on the existence of fact, which he asserts, must prove that those facts exist. It was further submitted that a court of law can only weigh up the proved facts without concerning itself with speculating on evidence that was never adduced, or which does not follow by reasonable inference from the proved facts. It was also submitted that the respective parties before the court have filed their respective pleadings and it is imperative to highlight the importance of pleading in our jurisprudence, and to take cognizance of the holding of the Court of Appeal in the case of *IEBC v Stephen Mutinda Mule & Others* [2014] eKLR.
176. On whether the plaintiff could acquire a clean title when there was an existing Grant No. IR. No. 4453 in favour of Olkiombo Limited, the 3rd defendant submitted that the land remained trust land despite the lease (“Grant No. IR. No. 4453”), as the grant did not convert the land into private property, but merely covered a lease hold interest for a term of 33 years. It was also submitted that neither the 1st defendant nor the 2nd defendant made a claim during the adjudication process under the [Land Adjudication Act](#). It was submitted that the plaintiff did assert a claim, was recorded as owner and received a valid title deed. Consequently, the land was removed from its trust land status and became the plaintiff’s private property. It was submitted that the earlier grant to the 2nd defendant effectively



expired or terminated by operation of law, and that the registration of the prior grant under the repealed Registration of Titles Act no longer had legal force.

177. The 3rd defendant submitted that under Section 44 of the Registration of Titles Act (repealed) the law envisages instances where a grant can be extinguished by operation of law without the necessity of a formal surrender instrument and in recognizing this outcome, the 2nd defendant eventually settled its claim against the plaintiff and obtained a new lease directly from the plaintiff which has been duly registered against the plaintiff's title.
178. On the reliefs sought, the 3rd defendant submitted that the 1st defendant having failed to pursue the remedies available under the *Land Adjudication Act*, it is estopped from seeking under the guise of a counter claim, redress from the court outside the limitation period. To buttress on this submission, the 3rd defendant relied on the cases of John Kariri Mucheke v M'itabari M'arunga [2008] eKLR, Mohamed Ahamed Khalid (Chairman) and 10 Others v Director of Land Adjudication & 2 others [2013] eKLR, and Jimmy Parnyumbe Luka & 3 others v Chairman Land Adjudication Committee Leshuta Land Adjudication Section & 6 others [2021] eKLR.
179. The plaintiff filed his further written submissions in reply to the submissions by the 1st and 3rd defendants. Upon careful perusal of the same, I do note that the plaintiff reiterates the contents of the initial submissions filed, and there would be no need of rehashing the same save to note its contents.
180. I have carefully analysed and considered the pleadings, the testimonies of the witnesses, the evidence tendered and the written submissions filed by the respective parties. In my view, the issues for determination are as follows: -
1. Whether the title held by the plaintiff is a valid and legal title.
 2. Whether the plaintiff is entitled to the orders sought in the amended plaint.
 3. Whether the 1st defendant is entitled to the orders sought in the counterclaim.
 4. Who is to bear costs.
181. To answer all the above issues, it is not disputed that the plaintiff is the registered proprietor of the suit land, having acquired the title as a first registration under the repealed Registered *Land Act*. However, and in contention is the validity and legality of the title which has been challenged in various courts for more than twenty years. The plaintiff contended that vide the notice dated 6th May, 1997, Talek was declared as an adjudication section, and the adjudication exercise was carried out. That by a notice dated 15th June, 1997, the adjudication officer certified the register as complete, and that 155 parcels of land came out of the exercise which was ascertained, recorded and registered in the names of individuals. The plaintiff contended that his interest in the suit land was ascertained, recorded, registered and a title deed issued on 14th October, 1997. Forming part of the suit land was 20 acres lease by the 1st defendant to the 2nd defendant for a term of 33 years which he maintained vested in him as opposed to the 1st defendant.
182. On the other hand, the 1st defendant contended that the declaration notice dated 6th May, 1997 was never implemented as it was cancelled by the declaration notice of 31st July, 1997, and that no demarcation or adjudication process was carried out in respect of the suit land. The 1st defendant maintained that the suit land does not form part of Talek area described in the cessation order published in legal notice no. 412 of 1992, and that no proper application of the fundamental provisions of the *Land Adjudication Act* would have been carried out without prior mandatory cessation or degazettement under Section 7 of the Wildlife (Conservation and Management) Act.



183. From the evidence tendered, the principal land adjudication officer issued a notice of establishment of an adjudication section-Talek, dated 6th May, 1997, and declared Talek adjudication section, Koiyaki location, Ololulunga division to be an adjudication section. The notice gave the boundaries as described therein. Preceding this notice, and as alluded to by the parties, Talek formed part of the Maasai Mara National Reserve which had been excised for use by the community.
184. Based on the declaration notice published on 6th May, 1997, the applicable law in the administration of land is the [Land Adjudication Act](#). According to the plaintiff, and the evidence of PW3, there was a committee that was responsible in ensuring that the interest in land was ascertained. PW3 testified that as the chairman of Talek adjudication section, there were 155 parcels which resulted from the adjudication process, and as far as he could recall, no one disputed the adjudication process. Indeed, the contest has been whether or not the suit land existed during the adjudication process, and in support thereof, the plaintiff produced a copy of the survey computation certified as a true copy on 17th November, 2000. On 5th June, 1997, a notice was published inviting members to inspect the register, and by a certificate of finality dated 29th August, 1997, the land adjudication officer was informed that all objections had been determined and the register consisting of the demarcation map and adjudication record was certified as final. In between this period, a subsequent declaration notice was issued dated 31st July, 1997 seeking to correct the declaration notice dated 6th May, 1997. As I understand it, the certificate of finality meant that the interest in land had been recorded, and was awaiting registration of the individual proprietors.
185. From the above, it is clear that the interest of the suit land stemmed from an adjudication process, and any issue arising therefrom would only be dealt with under Section 25 of the [Land Adjudication Act](#). The 1st defendant was aware of the ongoing adjudication process owing to its acquisition of parcel nos. 152 and 153. Having such knowledge, the 1st defendant would have taken the necessary action to file an objection against the plaintiff's land. From the look of things, the 1st defendant woke up from slumber as it engaged the services of Gatome and Associates to carry out survey works way after individuals had acquired interest in their respective parcels of land. In my view, the 1st Defendant having failed to invoke the necessary mechanism to resolve any issue arising out of the adjudication process, it would be safe to state that the 1st defendant forfeited its right to file any objection/ claim.
186. Whereas, the plaintiff contended that the amended declaration notice of 31st July, 1997 was never effected on the ground, and whilst the 1st defendant argued that there was no harm in the land adjudication officer correcting an error through an amendment, I hold a different view. In the case of *Managoi & 5 Others (Suing on their own behalf and on behalf of all the members of the Ildamat Clan) v Attorney General & 10 Others; Kilusu & 8 Others (Interested Parties)* (Miscellaneous Civil Application No. 13 of 2018) [2024] KEELC 4261(KLR) (24 May 2024) (Judgment), this court held as follows: -

“ 157. First and foremost, we re-emphasize that indeed Section 5 of the [Land Adjudication Act](#) gives powers to the 2nd respondent to declare a certain area to be an adjudication section.

158. This power under Section 5 of the [Land Adjudication Act](#) is statutorily donated in the Act and cannot be challenged.

159. However, the [Land Adjudication Act](#) does not donate any power to the 2nd respondent to cancel a declaration of an adjudication section after it has been published. The 2nd respondent in the declaration of 26th November, 1992, did



not give the provision that authorized him to cancel a declaration which had already been gazzetted.

160. If parliament in its wisdom had intended to give such power to the Land Adjudication Officer, then it would have been expressly done so in the Act.
 161. The Land Adjudication Officer could not nullify an exercise that had cost time and resources with one stroke of a pen without giving reasons and without hearing the parties.
 162. In our considered view, before an adjudication section is declared, a lot of consultations are done among the occupants of the area to be adjudicated and if there were any changes to be done, the same ought to have been consultative and consensus achieved from all the interested parties...”
187. From the above, it is my view that the principal land adjudication and settlement officer did not have the power to order a correction of the notice. In any case, there is no record of the purported implementation of the correction on the ground.
188. It is also my view that having not pleaded Article 40 (6) of *the Constitution*, 2010 in its defence and counter-claim dated 7th October, 2000 or even sought leave to amend the said claim and counter-claim, the 1st Defendant cannot be heard to invoke the above mentioned Article in its submissions. In a nutshell, the 1st Defendant is bound by its pleadings and it cannot seek to apply the provisions of *the Constitution* of Kenya, 2010 retrospectively. In other words, the 1st Defendant did not challenge the history of the Plaintiff’s title in the manner that it ought to have done.
189. The above being the case, it is my finding that the 1st Defendant had and has no business remaining in the Plaintiff’s suit land and more so there was no justification for it to collect monies that ought to have been collected by the Plaintiff himself in respect of the suit property. The 1st Defendant is therefore duty bound to render an accurate account of monies received by it and to pay the same to the Plaintiff.
190. In sum, and on a balance of probabilities, I find that the amended plaint dated 18th December, 2000 has merit. It is also my finding that the 1st defendant failed to present its grievances to the relevant body mandated to hear disputes arising from the adjudication process as at the time when it was due. The defence and counter claim dated 7th October, 2000 thus fails.
191. In the circumstances, the orders/prayers that recommend themselves for granting and which I hereby proceed to grant are:-
- a. A declaration that with effect from 14th October, 1997, all rights interests and privileges hitherto enjoyed or had by the 1st defendant in or over or in relation to the leased portion, including but not limited to, reversionary interest, levying or collection of rent, tariffs, royalties, fees or other revenue were, and each of them, was extinguished and the same were vested in the plaintiff instead.
 - b. A permanent injunction restraining the 1st defendant whether by itself, its servants or agents or otherwise howsoever from purporting to exercise such purported rights, interests or privileges and in particular from demanding, levying or collecting from the 2nd defendant or any other person rent, tariffs, royalties, fees or any other revenue whatsoever in respect of the use, occupation or enjoyment of the leased portion or any part thereof.
 - c. An account of all the rent, tariffs, royalties, fees and other revenue collected or received by the 1st defendant from the 2nd defendant and any other person since 14th October, 1997 for the use,



occupation or enjoyment of the leased portion or any part thereof within the next thirty (30) days from the date of this judgment.

- d. An order for the payment by the 1st defendant to the plaintiff of all the moneys received or found due to the plaintiff on the taking of such accounts.
- e. Interest on the amount found due to the plaintiff at such rate and for such period as this honourable court shall think fit.
- f. The costs of this suit.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY ON THIS 6TH DAY OF MARCH, 2025.

HON. MBOGO C.G.

JUDGE

06/03/2025.

In the presence of:

Mr. B. Agunga – Court assistant

