



M'mutea & 5 others (Suing on Their Own Behalf and on Behalf of Seventy eight (78) other members of Gampogo Clan) v Waruiru & 2 others (Environment & Land Case E024 of 2021) [2024] KEELC 3243 (KLR) (1 February 2024) (Judgment)

Neutral citation: [2024] KEELC 3243 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E024 OF 2021
CK YANO, J
FEBRUARY 1, 2024**

BETWEEN

**JOHN RIUNGU M'MUTEA 1ST PLAINTIFF
FRANCIS MUTUGI NDATHO 2ND PLAINTIFF
JOHN MURIUNGI KAMANJA 3RD PLAINTIFF
JULIUS MUTWARUCHIU NDATHO 4TH PLAINTIFF
CATHERINE AYUB NGOCHI 5TH PLAINTIFF
PETER GICHUNGE 6TH PLAINTIFF
SUING ON THEIR OWN BEHALF AND ON BEHALF OF SEVENTY EIGHT (78)
OTHER MEMBERS OF GAMPOGO CLAN**

AND

**GLADYS NJERI WARUIRU 1ST DEFENDANT
STEPHEN MUTUMA KIANGURA 2ND DEFENDANT
THE LAND REGISTRAR, MERU 3RD DEFENDANT**

JUDGMENT

Plaintiff Case

1. The plaintiffs moved to court by way of a plaint dated 28th July, 2021 and filed in court on 5th August, 2021. The plaint seeks the following relief:-



- (a) A declaration that the suit property KIAMURI "A"/611 registered in the name of the deceased herein, or if already transferred to the 1st and 2nd defendants as the administrators of the estate was acquired irregularly by fraud or through a corrupt scheme.
 - (b) A declaration that the said suit property KIAMURI "A"/611 belongs to the plaintiffs herein and the 78 members of Gampogo Clan.
 - (c) An order for rectification of the register directed to and/or compelling the 3rd defendant to cancel and revoke title deed registration number KIAMURI "A"/611 and issuance of a new title in favour of the 1st and 6th plaintiffs on behalf of the other plaintiffs and Gampogo Clan Members.
 - (d) An order compelling the 1st and 2nd defendants to immediately execute transfer instruments in respect of the parcel land KIAMURI "A"/611 in favour of the plaintiffs; Or in default thereof the Deputy Registrar to execute the transfer documents in place of the said defendants.
 - (e) Damages for loss of use.
 - (f) The costs of this suit and interest
 - (g) Any other or further relief
2. The plaintiff's case is that at all material times relevant to the suit, the 1st to 6th plaintiffs and the seventy-eight (78) members of Gampogo Clan had occupied all that parcel of land known as Kiamuri "A"/611 prior to adjudication and demarcation of land in the region which took place in the 1980s. That the deceased was not a member of Gampogo Clan or Community and came in the area in the 1980s where he bought parcels of land registration Nos. Kiamuri "A"/606, Kiamuri "A"/607 and Kiamuri "A"/1369 from some of the residents and/or members of Gampogo Clan/Community.
 3. The plaintiffs state that in the 1980s, the deceased being influential individual in the society colluded with the surveyors carrying out adjudication, surveying and demarcation of the land in Kiamuri Area and had the suit land KIAMURI "A"/611 allocated to him.
 4. The plaintiffs aver that after the collusion by the deceased with the government officials carrying out the adjudication and demarcation of their land, they were forcefully expelled or evicted from their ancestral, community/clan land by the deceased and he was later registered as the owner or proprietor of the suit land on the 13th December, 1993.
 5. The plaintiffs aver that on 9th September, 2005, the plaintiffs lodged a land dispute at Meru Central District Land Dispute Tribunal in Case No. 90 of 2005. The plaintiffs further aver that the dispute was heard and determined and the court awarded the claimant declaring that parcel No. Kiamuri "A"/611 be returned to the 1st plaintiff and Gampogo Clan Members. The plaintiffs state that the said award was adopted as an order of the Court in Meru LDT NO. 47 of 2006 on 19th October, 2006. The plaintiff further state that they had raised their dissatisfaction and lodged a complaint with the Commission of Inquiry into the illegal/irregular allocation of Public Land which was established by the president Hon. Mwai Kibaki and presented its report in June 2004 in regard to Kiamuri "A" Adjudication Section Meru.
 7. The plaintiffs aver that by a ruling dated and delivered on 9th July, 2009 in the High Court Misc. Civil. App. No. 180 of 2006, Republic Versus Chairman Meru Central District Land Dispute Tribunal & 3 Others ex-parte Daniel Kamakia Kiangura, the High Court found that the tribunal had exceeded its jurisdiction for it had no powers to rectify a title and had the decision/award removed thereto and quashed.



8. The plaintiffs state that through the 1st plaintiff and in light of the Court's finding herein above, they moved to the High Court of Kenya at Meru in Civil Case No. 57 of 2008, John Riungu M'Mutea & Another Versus Daniel Kamakia Kiangura, but in an application the court ordered that the respondents furnish security for costs in the sum of Ksh. 100,000/= which they were unable to do timeously and the suit abated or was struck out.
9. It is the plaintiffs case that the acquisition and registration of Title No. KIAMURI "A"/611 in the name of the deceased was done through collusion with the Adjudication Officers and that he acquired the parcel of land through fraud.
10. The plaintiffs enumerated particulars of fraud as :-
 - i. The deceased not being a member of Gampogo Community or clan and pretending or representing himself as one.
 - ii. Compromising the surveyors or adjudication officers to allocate him the parcel of land whilst he was not a member of the Gampogo Community Clan
 - iii. Expelling or evicting the Gampogo Community or clan members from their ancestral land using threats and/or force.
 - iv. Registering the parcel of land in his name
 - v. Depriving the Gampogo Community/clan members of their rightful ancestral or community land.
11. The plaintiffs state that their claim against the 1st and 2nd defendants is as the administrators of the estate of the deceased. That other than the aforecited cases or proceedings in the Land Dispute Tribunal, Chief Magistrate's Court Miscellaneous Application NO. 180 of 2006 and High Court Case no. 47 of 2008 which was struck out technically, this suit is not resjudicata.

Plaintiff's Evidence

12. The plaintiffs called a total of 7 witnesses. John Riungu M'mutea, the 1st plaintiff herein testified as PW1. He testified that he was a farmer from Kiagu and was born in 1962. He stated that he was the Chairman of Gampogo Clan. He recalled that in the 1980s, there was adjudication and demarcation of land in the area, where his community had settled. He further stated that during the demarcation period, a person who was not part of the community came accompanied by several armed people who fenced off the clan land and evicted the original occupiers who belonged to Gampogo Clan who had to seek alternative settlement. That they later came to learn that the said foreigner was the late Daniel Kamakia Kiangura who is now represented in the case by the 1st and 2nd defendants herein.
13. PW1 stated that the suit land Kiamuri "A"/611 was fraudulently registered in the name of Daniel Kamakia Kiangura (deceased) who was issued with a Title Deed in 1993. That the 1st plaintiff together with other clan members sought redress in the cases and proceedings referred to hereinabove. PW1 adopted his statement dated 28th July, 2021 as his evidence -in - chief and produced copies of grant of letters of Administration intestate of the estate of Daniel Kamakia Kiangura (Deceased), Certificate of Official Search for title No. Kiamuri "A"/611, letter by the District Commissioner, Meru Central dated 9th September, 2005 application to file a claim at the Meru Central District Land Dispute Tribunal, Meru District Land Dispute Tribunal proceedings and award, Meru CMCC LTD No. 47 of 2006 proceedings and report of the Commission of inquiry into the illegal/irregular allocation of public



land, June 2004 – Kiamuri “A” Adjudication Section, Meru as P. Exhibits 1 to 7 respectively. He was cross-examined and re-examined.

14. PW2 was M’mbwiria M’rutere alias Bururia a farmer and traditional surgeon dealing in male circumcision. He stated that he is an elderly member of Gampogo Clan having been born in 1944. He adopted his witness statement dated 28th July, 2021 as his evidence in chief. His evidence mirrored that of PW1.
15. Francis Mutugi Ndatho, the 2nd plaintiff herein testified as PW3. He is the vice chairman of Gampogo Clan. He too adopted his statement dated 28th July, 2021 as his evidence in chief. The same basically repeats what PW1 stated.
16. Jackson Mbaya M’Biriki, a farmer and neighbour of Gampogo clan testified as PW4. He too adopted his statement dated 28th July 2021 as his evidence in chief. He stated that he owned a parcel of land Kiamuri “A”/607 which he sold to Daniel Kamakia Kiangura in the late 1990s for fear of being disposed of it by the said Daniel Kamakia Kiangura as he had done to the Gampogo Clan. He stated that when Gampogo Clan Members were evicted from their land, his father, the late Mathew M’Biriki M’Munene gave them temporary settlement. He was cross-examined and re-examined.
17. PW5 was Josephat Mwenda Toroka also a neighbour of Gampogo Clan. He too adopted his statement dated 28th July, 2021 as his evidence in chief and was cross-examined. He stated that he witnessed the eviction of Gampogo Clan Members during Adjudication.
18. John Muriungi Kamanya, the 3rd plaintiff herein and the treasurer of Gampogo clan testified as PW6. He adopted his statement dated 28th July, 2021. His evidence mirrored that of PW1 and he was cross-examined and re-examined.
19. The 6th plaintiff, Peter Gichunge testified as PW7. He adopted his statement dated 21st July, 2021 as his evidence in chief and was cross-examined. He stated that he witnessed the eviction of Gampogo Clan when he was in his late teenage.

Plaintiffs Submissions

20. The plaintiffs filed written submissions dated 17th November, 2023 through the firm of Gori Ombongi & Company Advocates. They identified the issues as proof in Civil Cases, cancellations of title acquired through fraud and award of damages. They summarized the case and submitted that the plaintiffs have proved their case to the required standard and urged the court to grant the orders sought. The plaintiffs counsel relied on the case of Hornal Versus Neuberger Products (1957) 1QB247, Miller Versus Minister of Pensions (1942) 2 AllER 372, Aspire Limited Versus Zedka Technical Services Limited & 2 others [2022] eKLR, Harp Invector Limited Versus National Social Security Fund Board of Trustees & 4 Others [2022] eKLR and Kenya Power & Lighting Company Limited Versus RIngeera & 2 others [2022] KECA 104 KLR (4th February, 2022) and cited Section 107 of the *Evidence Act*. The plaintiffs’ counsel submitted that the plaintiffs have demonstrated that the suit land was acquired fraudulently and the title should be cancelled and the register rectified in the plaintiff’s favour. It is submitted that for the period of time that the plaintiffs have been denied the use of the land, they should be awarded damages of Ksh. 30Million.

The Defence Case

21. The 1st and 2nd defendants entered appearance and filed a joint statement of defence dated 30th August 2021 wherein they denied the plaintiff’s claim in toto putting them to the strictest of proof. The 1st and 2nd defendants further pleaded inter alia that the suit is time barred and that the legal mechanisms



under the [Land Consolidation Act](#) Cap. 283 and the [Land Adjudication Act](#) Cap 284 have never been exhausted. The 1st and 2nd defendants aver that the deceased acquired the land lawfully and pursuant to the provisions for the said statutes.

22. The 1st and 2nd defendants called one witness Gladys Njeri Waruiru the 1st defendant herein who testified as DW1. She is the widow and Administratrix of the estate of Daniel Kamakia Kianguria (Deceased). She adopted her statement dated 15th July, 2022 as her evidence in chief and was cross-examined. She wondered why the plaintiffs are raising the allegations herein dating back to the 1980s and 1990s which they did not bring forth early enough and when the deceased was still alive so that he could respond to them himself and when the documentation and evidence could have been easily available. DW1 also wondered why the plaintiff's failed to pursue and exhaust the requisite dispute resolution mechanisms under the relevant laws during the adjudication of the land. It is her evidence that the deceased obtained the suit land regularly and that there was no fraud as alleged. It is also the evidence of DW1 that the suit is time barred and offends the provisions of the [Limitation of Actions Act](#) and the [Public Authorities Limitation Act](#).

1ST & 2ND Defendants Submissions

23. The 1st and 2nd defendants filed their submissions dated 7th December, 2023 through the firm of M/s Mutembei & Kimathi Advocates wherein they gave a background of the case and the evidence. They identified the issues as whether the suit is time barred, whether the plaintiffs ought to have exhausted the legal redress under the [land Adjudication Act](#), whether the plaintiffs have capacity to bring this suit, whether in any event, the plaintiffs have demonstrated a basis for their claim and whether the court has jurisdiction to award the suit land to the plaintiffs.
24. On whether the suit is time barred, counsel for the 1st and 2nd defendants pointed out that they had raised the issue earlier as a preliminary issue and by its ruling delivered on 23rd March 2022, the court noted that the issues of contested facts had been raised and based on the case of Mukhisa Biscuit Manufacturing Limited Versus West End Distributors Limited (1969) EA 697, the Preliminary Objection could not be sustained. Nonetheless, the 1st and 2nd defendants counsel stated that the court did not make a determination on whether the suit is time barred and urged the court to determine the issue the court having heard the matter to its conclusion. They relied on the case of George Mbugua Njuguna & 3 Others Versus Joseph Gachuhi Muthannyi & Another [2020]eKLR where the court whilst noting that it could not determine issues of res judicata in a preliminary objection proceeded to dismiss the preliminary objection but held that the issue of res judicata may be a future defence.
25. Learned counsel for the 1st and 2nd defendants referred to the averments made in the plaint and the evidence and submitted that whether taking the year 1993 as noted in the evidence of PW1 or the year 2005 when the plaintiffs filed Meru Central LDT Case No. 90 of 2005 as pleaded in Paragraph 10 of the plaint, or even the year 2008 when they filed Meru HCC. NO. 57 of 2008 as noted under Paragraph 15 of the plaint as the year(s) the plaintiffs came to realize of their cause of action, either way their cause of action in this suit is time barred. The 1st and 2nd defendants counsel submitted that the suit offends the provisions of Section 4(2) of the Limitations of Actions Act, Cap 22 Laws of Kenya. That their cause of action for the tort of fraud expired a long time ago and beyond the three (3) years provided under the law. It is the 1st and 2nd defendants' submissions that even if the suit was for recovery of land, it would still be caught up with limitation since an action for recovery of land may not be brought by any person after twelve (12) years from the date when the right accrued to such person. The 1st and 2nd defendants counsel therefore submitted that the suit is time barred and relied on the case of Francis Munyiri Kamau Versus Margaret Nyawira 78 others [2008]eKLR. They also cited Section 3(1) of the



- Public Authorities [Limitation of Actions Act](#) and added that the suit against the 3rd defendant and by extension all the defendant given the allegation about collusion is time barred.
26. Regarding the issue whether the plaintiffs ought to have exhausted the legal redress under the [Land Adjudication Act](#), the 1st and 2nd defendants counsel urged the court to also consider the issue and find that the plaintiffs failed to pursue the relevant procedure provided under Section 26 and 29 of the [Land Adjudication Act](#). They urged the court to find that it is not clothed with the requisite jurisdiction to hear and determine the matter and proceed to dismiss it with costs. The 1st and 2nd defendant counsel relied on the case of Kiroket Ole Punyua Versus Umash Ole Mwaniki & 2 Others [2021]eKLR and Republic Versus Land Adjudication Office Tutingung Adjudication Section Elgeyo Marakwet & Another ex-parte Biyaa Clan [2021]eKLR.
 27. On whether the plaintiffs have capacity to bring the suit, the 1st and 2nd defendants counsel submitted that the plaintiffs have not adduced any evidence to prove that they are members of Gampogo Clan, let alone officials of the said clan. That there is no evidence demonstrating that the said clan has given the plaintiffs authority to bring this suit over any alleged land related to the said clan. The 1st and 2nd defendants counsel relied on the case Isaiah Mbaabu & 2 Others Versus Land Adjudication & Settlement Officer Igembe South District & 4 Others [2020] eKLR and urged the court to find that the plaintiffs lack the requisite locus standi and dismiss the suit with costs.
 28. On whether in any way the plaintiffs have demonstrated a basis for their claim, learned counsel for the 1st and 2nd defendants pointed out that the plaintiffs had the burden of proof under Section 107 of the [Evidence Act](#) and submitted that the plaintiffs failed to place evidential material in front of court to support their claims of fraud or at all.
 29. On whether the court has jurisdiction to award the suit land to the plaintiffs, learned counsel for the 1st and 2nd defendant submitted that the land cannot be granted to the plaintiffs without the process of adjudication and which process is the only way that rights and interests by a party claiming such land were ascertained. They cited Sections 13 to 22 of the [Land Adjudication Act](#) and the process thereafter leading to preparation of the Adjudication Register which is presented to the Chief Land Registrar when all objections and appeals have been determined or time for appeals has expired and submitted that there is not room under the said Act for the court to award land to individuals whose rights and interests have not been determined under the Act. It was submitted therefore that this court lacks jurisdiction to award the suit land to the plaintiffs. The 1st and 2nd defendants urged the court to dismiss the suit with costs.
 30. In this case, the 3rd defendant neither filed any pleadings nor participated during the hearing.

Analysis And Determination

31. I have considered the pleadings, the evidence tendered and the submissions, made. The court finds that the issues for determination are:-
 - i. Whether the court has jurisdiction to hear and determine the matter.
 - ii. Whether the plaintiffs have the requisite locus standi to bring the suit.
 - iii. Whether the suit is time barred
 - iv. Whether fraud has been proved by the plaintiffs against the defendants.
 - v. Whether the plaintiffs are entitled to the prayers sought
 - vi. Who is to bear costs of the suit.



32. It was submitted that the court lacks the requisite jurisdiction to hear and determine the suit. The plaintiffs claim is set out in the plaint dated 28th July, 2021. The plaintiffs have pleaded that the registration of the suit property in the name of the deceased was out of fraud and collusion and hence pray for invalidation of the title, declaration that the land belongs to the plaintiffs and rectification of the register and have the land transferred and registered in the names of the plaintiffs.
33. In the case of owners of Motor Vessel “Lillians” Versus Caltex Oil Kenya Limited (1989) KLR1 Nyarangi, JA stated as follows:-
- “Where the court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.....
- Jurisdiction is everything without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”
34. Article 162(2)(b) of *the Constitution* states that this court shall have jurisdiction over disputes relating to the environment, the use and occupation of, and title to land. Further, Section 13 of the *Environment and Land Court Act* expounds on the Jurisdiction of this court. Section 13(1) provides that “The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to the Environment and Land”. Having perused the plaint dated 28th July, 2021, it is clear to me that the suit herein relates to ownership of the property known as Kiamuri “A”/611. It is the title to that land that the plaintiffs want cancelled and a new title issued in favour of the plaintiffs. In view of the above provisions of *the Constitution* and the *Environment and Land Court Act*, It is clear to me that the dispute in this suit falls squarely within the jurisdiction of this court. It is therefore my finding that this court has the requisite jurisdiction to hear and determine the matter.
35. The next issue to consider is whether the plaintiff’s have the locus to institute the suit. It is the 1st and 2nd defendants’ submissions that the plaintiffs have no capacity to bring the suit. In this case, the plaintiffs have pleaded that they have brought the suit on their own behalf and on behalf of 78 other members of Gampogo Clan. The effect of misjoinder or Non-joinder of parties is provided for by order 1 rule 9 of the Civil Procedure Rules which makes it patently clear that misjoinder or non-joinder of parties cannot be a ground to defeat a suit. That rule provides that:-
- “No suit shall be defeated by reason of the misjoinder or non-joinder of parties and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it”.
36. In William Kiprono Towett & 1597 Others Versus Farmland Aviation Ltd & 2 Others [2016]eKLR, the court of Appeal held that “most critically order 1 rule 9 of the Civil procedure Rules (2010) makes it abundantly clear that mis-joinder or non-joinder of parties cannot be a ground to defeat a suit”.
37. I should also add that Article 159(2) (d) of *the Constitution* provides that “Justice shall be administered without undue regard to procedural technicalities”. There are also sufficient Judicial authorities for the proposition that the courts of law are enjoined to sustain suits rather than terminate them on technicalities unless the case appears hopeless and beyond redemption (See DT Dobie Company (Kenya) Ltd Versus Joseph Muchina & Another (1980) eKLR. This position is underpinned on the need to administer substantive justice which cannot be achieved unless suits are sustained. It is therefore my finding that the plaintiffs named even on their own behalf have the capacity to bring the suit. I



therefore reject the 1st and 2nd defendants invitation to find that the plaintiffs lack the requisite capacity to institute the suit.

38. The next issue for determination is whether the suit is time barred. The plaintiffs claim as pleaded in their plaint, is that acquisition and registration of the suit land in the name of Daniel Kamakia Kiangura (Deceased) was done through fraud. The plaintiffs pleaded and testified that as at 9th September, 2005, they had lodged a dispute at Meru Central District Land Disputes Tribunal in case No.90 of 2005. According to Section 4(2) of the Limitations of Actions Act Cap 22 Laws of Kenya, an action founded on tort should not be brought after the expiry of 3 years from the date on which the cause of action accrued. Fraud is a tort and the cause of action for the tort of fraud accrues at the time the plaintiffs realized or knew about the fraud. Having cited the date of 9th September, 2005, it is clear that the plaintiffs' had known that they had an alleged cause of action in the nature of fraud involving the suit land and they lodged the Meru LDT Case No. 90 of 2005. Even from their own evidence, the plaintiffs admitted that as early as 1993, they knew of their rights and cause of action. This became clearer from the evidence of PW. Moreover, the plaintiffs had filed another suit Meru HCC No. 57 of 2008 which they stated was struck out. Therefore, even by the year 2008, the plaintiffs were well aware of their cause of action. Based on the material on record as outlined above, it is my finding that the plaintiffs suit offends the provisions of Section 4(2) of the *Limitation of Actions Act*.
39. Even assuming that the cause of action has not expired, the next issue is whether fraud has been proved against the defendants.
40. The plaintiffs have stated that the deceased fraudulently acquired titles to the suit property and prayed to court to cancel the title. To succeed in claiming fraud, the plaintiffs not only need to plead but also particularize it and laying out water tight evidence upon which the court would make such finding. It is trite law that any allegations of fraud must be pleaded and strictly proved. I am guided by the Court of Appeal in case of Kuria Kiarie & 2 Others – Versus – Sammy Magera [2018]eKLR where it was held:-
- “the next and only other issue is fraud. The law is clear and we take it from the case of Vijay Morjaria Versus Nansigh Madhusingh Darbar & Another [2000]eKLR, where (Tunoi JA as he then was) stated as follows;
- “It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proven, and it is not allowable to leave fraud to be inferred from the facts”.
41. As regard the standard of proof in the case of Kinyanji Kamau – Versus – George Kamau [2015]eKLR it was held as follows:-
- “.....it is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo Versus NDolo [2008]eKLR (G & F) 742 whrein the court stated that:”...we start by saying that it was the respondent who was alleging that the will was a forgery and the burden of prove that allegations lay squarely on him. Since the respondent was making a serious charge of forgery or fraud the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities, but the burden of proof on the respondent was certainly not beyond a reasonable doubt as in Criminal Cases....” In cases where fraud is alleged, it is not enough to simply infer fraud from the facts”



42. Whereas the plaintiffs are challenging the title to the suit property on a claim of fraud, the plaintiffs have not adduced sufficient evidence to prove the alleged fraud on the part of the defendants. Instead, the evidence that has come out clearly is that the suit land underwent Adjudication and demarcation process where after a title was issued in the name of Daniel Kamakia Kiangura (Deceased). In my view, and as rightly submitted by the 1st and 2nd defendants, if the plaintiffs had issues with the adjudication and demarcation process, the *land Adjudication Act* Cap 284 Laws of Kenya provided disputes resolution mechanisms to which the plaintiffs should have followed.
43. Firstly, under Section 26 of the said Act, any persons named in or affected by the adjudication register ought to object to the adjudication officer in writing and the dispute is determined by way of an objection. Any person aggrieved by the determination under Section 26 of the said Act had a right of appeal against such determination to the Minister under Section 29. Therefore, the plaintiffs had recourse under the said provisions of law but they never exercised that right and have not even given any explanation for their failure to pursue those avenues.
43. Having considered and reviewed all the evidence and material placed before this court, I find and hold that the plaintiffs have not proved their case against the defendants on a balance of probabilities and are therefore not entitled to the reliefs sought. Accordingly, the plaintiffs' suit is dismissed with costs to the 1st and 2nd defendants.
44. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 1ST DAY OF FEBRUARY, 2024.

HON. C. YANO

ELC – JUDGE

In the presence of:

Court Assistant: Kiragu

Makura for plaintiffs

Mageria holding brief for E. Kimathi for 1st & 2nd defendants

No appearance for 3rd defendant

