



Njeri & 9 others v Ngure & another (Environment & Land Case 12 of 2023) [2024] KEELC 528 (KLR) (8 February 2024) (Judgment)

Neutral citation: [2024] KEELC 528 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE 12 OF 2023
LN GACHERU, J
FEBRUARY 8, 2024**

BETWEEN

**LOISE NJERI 1ST PLAINTIFF
PETER KARIUKI 2ND PLAINTIFF
JOHNSON KARURU 3RD PLAINTIFF
JAMES IRUNGU MACHARIA 4TH PLAINTIFF
MWANGI GATHEYU 5TH PLAINTIFF
PETER NDUNGU 6TH PLAINTIFF
DAVID MAINA GACHANGIRI 7TH PLAINTIFF
EUNICE NYOKABI MUIRURI 8TH PLAINTIFF
MBUTHIA KAHIGA 9TH PLAINTIFF
JOHN NGUGI MUIRURI 10TH PLAINTIFF**

AND

KAMAU NGURE DECEASED

AND

JOSEPPH MAINA KAMAU SUBSTITUTE

JUDGMENT

1. The Plaintiffs herein filed this claim vide a Plaint dated 26th October 2012, and prayed for Judgement against the original Defendant (Kamau Ngure-deceased), for the following orders: -



- i. A permanent injunction to restrain the Defendant either by himself or through his agents, servants, employees, proxies or anyone acting on his behalf from trespassing, encroaching, selling, advertising or offering for sale or in any other way interfering with the Plaintiffs' quiet possession of all those parcels of land known as Maragua/Ridge/259, Maragua/ Ridge/260, Maragua/Ridge/261, Maragua/Ridge/262, Maragua/Ridge/263, Maragua/Ridge/264, Maragua/Ridge/265, Maragua/Ridge/266, Maragua/Ridge/267, Maragua/Ridge/268 and Maragua/Ridge/269 .
 - ii. The Defendant to pay costs of the suit.
 - iii. Any other order or relief that this court may deem fit and just to grant.
2. The Plaintiffs in their claim averred that on or about the year 1962, the Plaintiffs were allocated by the Settlement Fund Trustees, all that parcel of land then known as Plot No. 39A, within Maragua Ridge, while the Defendant was allocated Plot No. 50, which bordered the Plaintiffs' land.
 3. Further, that in the year 1968, the plot No. 39A, was subdivided into various plots, which were distributed among the Plaintiffs herein as follows; -
 - a. 259 for Kibe Wanjohi
 - b. 260 for Peter Kariuki
 - c. 261 Jonson Karuru and Macharia Mbogo
 - d. 262 for James Irungu Macharia & Macharia Mugo
 - e. 263 for Public purpose
 - f. 264 for Mwangi Gathenyu
 - g. 265 for Peter Ndungu and Gathigo Gatune
 - h. 266 for David Maina Gichingiri & Gichingiri Njima
 - i. 267 for Eunice Nyokabi& Muiruri Njoroge
 - j. 268 for Mbuthia Kahiga
 - k. 269 for John Ngugi Muiruri & Francis Muiruri., and they were all named as Maragua/ Ridge 259- 269.
 4. After the demise of Kamau Ngure(Defendant), an Application was filed on 27th November 2013, for substitution of the said Kamau Ngure(deceased) with Joseph Maina Kamau, the current Defendant herein. The said Application was allowed on 10th December 2023.
 5. The Plaintiffs also averred that as from 1962, they were living peacefully on their respective parcels of land, until August 2011, when Kamau Ngure (deceased), started making demands that the Plaintiffs should vacate the suit plots as the same were located within the Defendant's parcel of land No. Maragua/Ridge/50.
 6. The Plaintiffs also averred that the Defendant "discreetly interfered" with the Green Cards for the said parcels of land, Maragua/ Ridge 259-269, at the Murang'a Lands Office, and executed a forgery in the records therein resulting in the suit plots being subsumed into or combined with the Defendant's parcel of land. Notwithstanding the foregoing averment, the Plaintiffs averred that a search of the



existing records in respect of the suit plots still shows that the said suit plots belong to the Settlement Fund Trustees, who holds the same on behalf of the Plaintiffs.

7. The Plaintiffs contended that in the Judgment of the High Court in Civil Case Number 252 of 1983 (Nyeri High Court), whereby, the Defendant (deceased), as a Plaintiff had accused the 5th, 8th and 9th Plaintiffs herein, who were named as Defendants in that suit, of encroaching on his plot number Maragua/Ridge/50, has no bearing or nexus with the instant suit, as the Plaintiffs have no claim whatsoever over plot number Maragua/Ridge/50.
8. The genesis of this dispute is traceable to the Judgment of the High Court in Civil Case Number 252 of 1983 (Nyeri High Court) delivered on 1st October 1999 whose import is that: the parcel of land LOC.17/Maragua Ridge/50 measures approximately 44 acres and belongs exclusively to the Defendant, Kamau Ngure.
9. In the above Civil Case Number 252 of 1983 (Nyeri High Court), the Defendant herein, Kamau Ngure(deceased), was the Plaintiff whereas, the 5th, 8th, 9th Plaintiffs herein were all Defendants thereon.
10. The Final Order/Decree of the HCCC NO.252 of 1983, was as follows;

“It is hereby ordered

 - a. The parcel of land LOC.7maragua/Ridge/50, which measures approximately 44 acres belongs exclusively to the Plaintiff.
 - b. The Defendants, their families, servants and/or agents be evicted from parcel of land 100.17 Maragua/Ridge/50.
 - c. M/S Matson Auctioneers And Court Bailiffs are hereby authorized to evict and/or remove the said Defendants their families, servants and/or agents or anybody claiming interest under them and remove/demolish any movable or immovable properties belonging to them and put the Plaintiff therein.”
11. The Plaintiffs further averred that on or about December 2012, the sons to the deceased Defendant (Kamau Ngure-deceased) entered unto the suit plots forcibly and asserted ownership over the same and started ploughing the land with the intention of evicting the Plaintiffs from the suit plots.
12. The suit was opposed by Defendant, Kamau Ngure(deceased), vide his Defence dated 4th January 2013, wherein he averred that the process of excising the 11 suit plots from his parcel of land MARAGUA/RIDGE/50, was nullified because it was found to have been illegal from the beginning and that his land parcel, MARAGUA/RIDGE/50, measures approximately 44 Acres.
13. The Defendant further averred that according to the policy applied by the Settlement Fund Trustees, in respect of the suit property, nobody was allocated two plots within the same settlement scheme, and the Plaintiffs being beneficiaries of land on the same settlement scheme wherein Maragua/Ridge/50, is located cannot, and do not have a lawful or legitimate claim to the 11 suit plots.
14. He further averred that he had sued the 5th, 8th and 9th Plaintiffs herein, Mwangi Gathaiyu (also Known As Mwangi Gatheyu), Mbuthia Kahiga And Muiruri Kamwaki in Nyeri HCCC Number 252 of 1983, for trespass, moving into his land parcel Maragua/Ridge/50, and settling therein and refusing to move out once the flooding had subsided from their portions of land located in the lower part of the settlement scheme.
15. The Defendant also averred that, during the time of allocation of his plot No. Maragua/Ridge/50, to himself, one was required to state the reasons for which one was seeking the land and if one's stated



reason was “farming” only, one was allocated not more than 25 Acres and that that was what happened in the case of the Plaintiffs or their predecessors in title.

16. In his statement, the Defendant stated the reason he was allocated Maragua/Ridge/50, measuring 44 Acres is because the stated reasons for seeking the land was “farming and grazing”.
17. This suit was originally filed at Nyeri High Court, later transferred to Nyeri ELC, and eventually vide an order dated 13th March 2023, the suit was transferred to this Court. It is evident that there were a number of interlocutory applications, wherein, one of it culminated in the suit being struck out for being Res-judicata, vide a Ruling of the Court dated 26th May 2016.
18. However, vide a judgement of the Court of Appeal dated 4th February 2022, the Ruling of the ELC Court that had struck out the suit for being Res -judicata, was set aside and the Court of Appeal directed the suit to proceed for full hearing in respect of 1st, 2nd, 3rd, 4th, 6th, 7th, and 10th Plaintiffs.
19. However, the Court of Appeal upheld the Ruling and Order of ELC in Nyeri ELC CASE NO.423/2014, to the effect that the suit was res-judicata in respect of the 5th, 8th, and 9th Plaintiffs.
20. Consequently, the suit being declared Res-judicata, in respect of the 5th, 8th, and 9th Plaintiffs meant that the said Plaintiffs are not parties to this suit and none of them can give evidence as a Plaintiff or claim to be Plaintiff herein.
21. On the date of the hearing, the Plaintiffs called one witness and closed their case. The Defendant too called one witness and closed his case.

Plaintiffs’ Case.

22. PW1, Mwangi Gatheyu, from Maragua Ridge Scheme gave evidence on behalf of the other Plaintiffs relying on the “Authority to Act” dated... He adopted his Witness statement dated 26th October 2012, as his evidence in Chief. He also produced a list of documents as his P. EXHIBITS, in support of the case. He told the Court that the plot in issue is Plot No. 39A.
23. In Cross exam by counsel for the Defendant, he confirmed that there is a Civil Case in Nyeri High Court, wherein he is the 1st Defendant. That the other Defendants are Muiruri and Mbuthia, who were also Plaintiffs in this case, and the said case is now determined, and was decided against them.
24. He identified the decree of the High Court, Nyeri, but denied that they were ordered to vacate the suit land, but he also told the Court that there is a pending Appeal, which has not been decided. He did not give the Court of Appeal Case Number.
25. It was his evidence that some of the Plaintiffs are deceased, such as Loice Njeri, Peter Kariuki, James Irungu Macharia, Mbuthia Kahiga and John Ngugi Muiruri. He also testified that they have not been substituted.
26. It was his further evidence that Maragua Ridge Settlement Scheme was set up in 1962, and he was among the first settlers and his land parcel is No. 28. He confirmed that Kamau Ngure’s land is Maragua Ridge 50, which is 34.4 acres, and the Plaintiffs were resettled because of flooding.
27. He denied that they have encroached on the Defendants land, but he claimed the Plaintiffs were resettled on plot No 39A, because their land was water logged. He confirmed that they did not pay for the resettlement, and their resettled land is No 39A.



28. In re-exam, he confirmed that some of the Plaintiffs are deceased, but he stated that their children were in Court. It was his evidence that Plot No. 28, was his, but it was waterlogged, and so he was resettled in plot No. 39A. That he cultivates on plot No 28, which is 13.5 acres, but plot No. 39A, is 11.6 acres.

Defendant's Case.

29. DW1, Joseph Maina Kamau, from Maragua Ridge told the Court that Kamau Ngure, was his father and is the Defendant herein, but now deceased. That he was substituted, in place of his father, who had been sued by the Plaintiffs. He recorded his Witness statement, which he adopted as his evidence together with the Witness Statement of Kamau Ngure dated 14th January 2013.

30. He also produced the bundle of documents as his D. Exhibits 1-15. He confirmed that there was a judgement of the Court of Appeal, which he relied on entirely and produced it as D. Exhibit 16.

31. It was his evidence that plot no Maragua Ridge 50, no longer exist as it was subdivided into various parcels of land, which are owned by his siblings.

32. In cross exam, he confirmed that he is the administrator of his father's estate, though he did not have the said letters of administration with him in Court. He confirmed that plot No 50, was in the name of Kamau Ngure, although it is now in the name of his children.

33. He further told the Court that his father's plot is No 50, but the Plaintiffs are claiming plot No. 39A, which he did not know about, or even its size. He also told the Court that he did not know about the case filed in 1983, by his father, Kamau Ngure. He denied that they have evicted the Plaintiffs from the suit land.

34. In re-exam, he confirmed that he has come to represent his father who is deceased, and he is the one who was allotted plot No 50. He confirmed that he has documents to show that the plot for his father was plot No 50.

35. He testified that his father was not paid to excise 11.4acres, from his parcel of land, Plot No 50, and he was not ordered to give the Plaintiffs the 11.4acres. He however testified that he has tried to evict the Plaintiffs to no avail.

36. After the close of viva voce evidence, the parties filed their respective written submissions as directed by the court. The Plaintiffs filed their submissions on 31st August 2023, through B.M. Musyoka & Co Advocates, and urged the Court to allow their claim. On his part, the Defendant filed his submissions on 4th September 2023, through Kabuka Wachira & Co Advocates, and urged the court to dismiss the Plaintiffs' suit with costs.

37. The Court has considered the available evidence and the written submissions and finds the issues for determination are as follows: -

- I. Whether the suit has abated in respect to the Plaintiffs herein who are deceased.
- II. Whether the 5th Plaintiff can properly represent the seven Plaintiffs in this suit whose claim was held by the Court of Appeal not to be res judicata.
- III. Whether there was an excision of 11.4 Acres, from plot number MARAGUA/RIDGE/50, to create plot number MARAGUA/RIDGE/39A or the 11 suit plots; and if yes, whether the same were lawfully created.



Issue Number 1

I. Whether the suit has abated in respect to the Plaintiffs herein who are deceased.

38. The suit herein was filed by the ten Plaintiffs in 2012. Thereafter, the suit was struck out for being res judicata by the Nyeri ELC, on 26th May 2016. However, on 4th February 2022, the Court of Appeal set aside that Ruling, and only upheld res judicata against the 5th, 8th and 9th Plaintiffs. In the course of the hearing, PW1, confirmed some of the Plaintiffs are deceased and have not been substituted. The deceased Plaintiffs are Loise Njeri, 1st pff, James Irungu Macharia, 4th pff, Mbuthia Kahiga, 9th Pff & John Ngugi Muiruri, 10th pff. He also confirmed that the said deceased Plaintiffs have not been substituted in this suit by their legal administrators.
39. Order 24. Rule 3(1) of the Civil Procedure Rules provides as follows:
- “Where one of two or more Plaintiffs dies and the cause of action does not survive or continue to the surviving Plaintiff or Plaintiffs alone, or a sole Plaintiff or sole surviving Plaintiff dies and the cause of action survives or continues, the court, on an application made on that behalf, shall cause the legal representative of the deceased Plaintiff to be made a party and shall proceed with the suit.”
40. Order 24. Rule 3(2) of the Civil Procedure Rules, also provides as follows:
- “Where within one year no application is made under sub-rule (1), the suit shall abate so far as the deceased Plaintiff is concerned, and, on the application of the defendant, the court may award him costs which he may have incurred in defending the suit to be recovered from the estate of the deceased Plaintiff:
- Provided the court may, for good reason on application, extend the time.”
- And again, Order 24. Rule 7(1) of the Civil Procedure Rules provides as follows:
- “Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.”
41. The foregoing provisions of the law are self-executing; meaning that they take effect within a year of the death of the Plaintiff if no application for joinder or substitution is made in the suit.
42. During the hearing of this suit on 17th July 2023, the Plaintiffs’ witness testified that 1st, 4th, and 10th Plaintiffs had died more than a year to the aforesaid hearing. However, PW1 told the Court that the deceased Plaintiffs had not been substituted, but alleged that their children were in court, and he did not present any documentary evidence such as death certificates of the three Plaintiffs in order for the Court to ascertain the date of their demise.
43. Notwithstanding the absence of death certificates or other documentary proof demonstrating that the 1st, 4th, and 10th Plaintiffs died more than a year to the hearing this suit on 17th July 2023, the testimony of the Plaintiffs’ witness as to the deaths of the three aforementioned Plaintiffs has not been controverted.
44. Without substitution of the deceased Plaintiffs, the Court finds that as provided by Order 24(3)(2), the suit by the said deceased Plaintiffs has abated as against the Defendant herein. See the case of Said Sweilem Gheithan Saanum vs. Commissioner of Lands & 5 Others (2015) eKLR, where the Court



of Appeal explained the provisions of Order 24 of the Civil Procedure Rules, 2010, and stated that where no application for substitution of a deceased person was made within one year, or within the time extended by leave of the Court, the suit shall abate.

45. Accordingly, the Court finds and holds that the suit has abated in respect of the 1st, 4th, and 10th Plaintiffs herein, who have not been substituted by their legal administrators in the suit following their deaths. For the suit to stand, the deceased Plaintiffs ought to have been substituted. Further in the above quoted case of Said Sweilem Gheithan Saanum v Commissioner of Lands (being sued through Attorney General) & 5 others [2015] eKLR, the court held as hereunder;

“There are three stages according to these provisions. As a general rule the death of a plaintiff does not cause the suit to abate if the cause of action survives. But within one year of the death of the plaintiff or within such time as the court may in its discretion for “good reason” determine, an application must be made for the legal representative of the deceased plaintiff to be made a party. The “good reason” therefore relates to application for extension of time to join the plaintiff’s legal representative to the suit.

Secondly, if no such application is made within one year or within the time extended by leave of the court, the suit shall abate. Where a suit abates no fresh suit can be brought on the same cause of action.”

ii) Whether the 5th Plaintiff can properly represent the seven Plaintiffs in this suit whose claim was held not to be res judicata by the Court of Appeal.

46. There is Court of Appeal Judgement dated 4th February 2022, wherein, the instant suit was declared res judicata, in respect to the 5th, 8th and 9th Plaintiffs herein. The 1st, 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, and 10th Plaintiffs herein authorized the 5th Plaintiff to prosecute the subject suit on their behalf by executing a form titled “Authority to Act” dated 26th October 2012, and the same was filed on record. With the said Judgement of the Court of Appeal, the 5th Plaintiff Mwangi Gatheyu is not a Plaintiff nor a Party to the suit. The said “Authority to Act” had been given to Mwangi Gatheyu, as a 5th Plaintiff.
47. The 1st, 2nd, 4th, 6th, 7th, 8th, and 10th Plaintiffs, have entrusted the 5th Plaintiff MWANGI GATHEYU, with the authority to execute, sign, prepare, draw and depone to all documents in respect of the present suit and to do all that is necessary on behalf of these Plaintiffs in prosecuting or taking proceedings in the instant suit. The aforesaid “Authority to Act” was given to the 5th Plaintiff, because he was a party to the suit. Even in his evidence in court, he testified like an aggrieved party. He did not testify like an agent of the Plaintiffs or a person who had “Power of Attorney” to represent the Plaintiffs.
48. What is the effect of a suit being declared res judicata? The doctrine of res judicata is a bar to future litigation. Once the suit in respect of the 5th Plaintiff was declared res judicata, it meant the 5th Plaintiff is no longer a party to the suit and has no standing in this suit. Without standing or locus standi, the 5th Plaintiff could not address the Court as the main Plaintiff in the case. See the case of Law Society



of Kenya...Vs... Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000, where the Court held as follows: -

“Locus Standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in Court of Law”. Further in the case of Alfred Njau and Others -Vs- City Council of Nairobi [1982] KAR 229, the Court also held that: -

“the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.

49. A party to a suit is one who has a claim. See the case of Zephir Holdings ltd vs Mimosa Plantations ltd & another (2014) eklr, where the court held; ‘‘ A proper party is one who is impleaded in the suit and qualifies the thresholds of a plaintiff or defendant under Order 1 rules 1&2 respectively or a third party...’’ The 5th Plaintiff having been removed from the suit vide the Court of Appeal Judgement, could therefore not give evidence for all the Plaintiffs as he has no Locus standi. What the Plaintiffs should have done is to call Mwangi Gatheyu, as one of their witness, but not the Plaintiff with Authority to Act for all the Plaintiffs.
50. Therefore, this Court finds and holds that Mwangi Gatheyu, who was initially a 5th Plaintiff before his claim was declared res judicata cannot properly represent the Plaintiffs herein. In that regards, his evidence is disregarded.

iii) Whether there was an excision of 11.4 Acres from plot number Maragua/Ridge/50, to create plot number Maragua/Ridge /39A or the 11 suit plots; and if yes, whether the same were lawfully created and are, therefore, subsisting.

51. The Court has disregarded the evidence adduced by PW1, on the fact that he has no standing in Court to give evidence as a Plaintiff, since he is no longer a party to the suit. That notwithstanding, the court is obligated to decide the suit on merit since the Defendant denied the suit and gave evidence in Court.
52. The Plaintiffs are the ones who has alleged, and the onus of proof is upon them. See Section 107 & 108 of the Evidence Act, which provides:
107. Burden of proof.
- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
108. Incidence of burden.
- The burden of proof in a suit or proceeding lies on that person who would fail if no evid
53. The burden of proof is on the person who would lose a claim or be prejudiced if no evidence is adduced at all. In this case, the burden of proof is upon the Plaintiffs herein. See case of Mbuthia Macharia vs Annah Mutua & another (2017)eklr, where the court held:” as the weight of evidence given by either side varies, so will the evidential burden shift to the party who would fail without further evidence.
54. Since the Plaintiffs main witness, was disregarded, the Court finds and holds that the Plaintiffs did not avail evidence in court. Therefore, the Court will consider the pleadings, and written submissions only



as availed by the Plaintiffs advocate. The Court too will consider the defence, the annexures thereto and the written submissions by the Defendant in arriving at its determination.

55. The Plaintiffs in their statement of claim had alleged that they were allocated Plot No 39A, within Maragua Ridge which was next to Plot No 50, after their land got waterlogged. The Plaintiffs had attached several letters, from the Ministry of lands to support their allegations. However, this allegation was denied by the Defendant, who testified that the Plaintiffs have wrongly encroached onto his land.
56. These allegations by the Plaintiffs could only be proved or ascertained by calling officials or witnesses from the Ministry of lands to elaborate on the said documents attached to the Plaintiffs claim. This Court has noted that the Defendant annexed and produced a bundle of documents filed on 14th November 2022, which contained a letter from the Director of Land Adjudication and Settlement addressed to the Director of Surveys and dated 28th April 2011, which reads as follows:
- “... As per Nyeri High court letter ref.no. NYR/HCCC.252/1983 dated 11th May 2010 (copy attached) plot no.50 measured 44 acres and exclusively belonged to the Plaintiff (the allottee).
- The purpose of this letter therefore is to request you to authorize the district surveyor- Murang’a to cancel the said mutation forms and the subsequent amendment of the R.I.M. This will revert to the original R.I.M. sheet 2(135/3/4). The final area list will also be revised to correspond with the revised ground occupation.
- Kindly authorize the district surveyor accordingly.”
57. Further the Defendant had annexed a communication titled “Discharge and Transfer Document for Plot 50 – Maragwa Ridge Scheme” authored by the Director of Land Adjudication and Settlement and addressed to the District Land Settlement and Adjudication Officer (Thika) dated 2nd February 2011, which reads in relevant part as follows:
- “The Scheme (Nyeri HCCC No. 252 of 1983) was concluded and no notice of appeal had been filed by 11th May 2010 (see letter from High Court of Kenya attached).
- You may proceed to release the discharge of charge and transfer documents for plot 50.”
58. From the foregoing two communications by the Director of Land Adjudication and Settlement addressed to the Director of Surveys and his/her officers, it is clear that the creation of the 11 suit plots was reversed by the appropriate authorities upon receipt of the Judgment and Decree of the High Court (Nyeri) in Civil Case Number 252 of 1983 (Nyeri High Court), and the title thereof discharged to the Original Defendant in this suit.
59. This Court finds and holds that there exist no subsequent events to the outcome in Civil Case Number 252 of 1983 (Nyeri High Court), that could alter the position as regards the actual acreage of plot number MARAGUA/RIDGE/50, which remains 44 Acres, and the fact that the High Court in Nyeri had held and found that the suit land herein belonged to Kamau Ngure(deceased). If the Plaintiffs wanted the court to believe that they were indeed given the 11.4 acres from Plot No, 39A, allegedly curved from Plot No 50, they should have called sufficient evidence to prove how plot No 39A, came into being, and how they were later allotted the same.
60. That evidence could only have come from the Ministry of Lands or the Land Registrar, Murang’a. The Plaintiffs did not find it necessary to call these crucial witnesses who could have given history of these disputed parcels of land, and whether indeed they were allocated the said parcels of land because of flooding.



61. Without evidence of the crucial or necessary witnesses, the Court finds and holds that the Plaintiffs have failed to prove their case on the required standard of balance of probabilities.

(v) who should bear costs of this suit?

62. Ordinarily costs are granted at the discretion of the Court, but it is trite that costs follow the event and is granted to the successful litigant. The Plaintiffs' suit has been found and held not merited, and therefore, the Defendant is the successful litigant and is thus entitled to costs. However, due the circumstances of this case and the fact that the case has taken too long in the Judicial system, the Court directs each party to bear his/ her own costs.

63. Ultimately, the court finds and holds that the Plaintiffs have failed to prove their case on the required standard of balance of probabilities. For the above reasons, "the Plaintiffs" suit is dismissed entirely, with an order that each party to bear his/ her own costs.

64. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 8TH DAY OF FEBRUARY, 2024

L. GACHERU

JUDGE

Delivered virtually in the presence of;

1st Plaintiff

2nd Plaintiff

3rd Plaintiff

4th Plaintiff

Mr Kassimu for the 6th Plaintiff

7th Plaintiff

10th Plaintiff

M/s Maina H/B for Kebuka Wachira for the Defendant

Joel Njonjo - Court Assistant

L. GACHERU

JUDGE.

8/2/2024

