



**Joseph (Suing as the Personal Representative of the Late Kuuro Arap Tapkeron - Deceased)
v Oldoinyo Orok Vocational Training Centre & 10 others (Environment and Land
Case Civil Suit E013 of 2022) [2024] KEELC 3368 (KLR) (8 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3368 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND CASE CIVIL SUIT E013 OF 2022
EM WASHE, J
APRIL 8, 2024**

BETWEEN

**RONO JOSEPH (SUING AS THE PERSONAL REPRESENTATIVE OF THE
LATE KUURO ARAP TAPKERON - DECEASED) PLAINTIFF**

AND

**OLDOINYO OROK VOCATIONAL TRAINING CENTRE 1ST DEFENDANT
COUNTY GOVERNMENT OF NAROK 2ND DEFENDANT
CHAIRMAN, WORLD FOOD PROGRAMME 3RD DEFENDANT
DAVID TERER 4TH DEFENDANT
ALICE OSORO 5TH DEFENDANT
JOSEPH KIMETO 6TH DEFENDANT
SAMWEL KIVILE KIRUI 7TH DEFENDANT
BENARD KIRUI 8TH DEFENDANT
PAUL RUTO 9TH DEFENDANT
ROP WESLEY 10TH DEFENDANT
LAND REGISTRAR- NAROK COUNTY 11TH DEFENDANT**

JUDGMENT

1. The Plaintiff herein instituted this suit by way of a Plaint dated 18.10.2022 (hereinafter referred as “the present suit”) against the 1st to 11th Defendant seeking for the following orders; -



- a. A declaration that the Plaintiff is the legal and lawful owner of all those parcels of land known as LR.NO.Transmara/Angata Bargoi/224, LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255.
 - b. An order cancelling the title deeds for those parcels of land known as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255.
 - c. An Order of permanent injunction restraining the Defendants, their servants, employees, workmen or representatives from trespassing, constructing, fencing or in any other way whatsoever interfering with the suit parcels of land.
 - d. General damages for trespass.
 - e. Costs of the suit.
 - f. Any other relief that this Honourable Court may deem just and fair to grant in the circumstances.
2. The Plaintiff herein pleaded the following facts in support of the prayers sought hereinabove; -
- a. The Plaintiff herein is the Legal Administrator for the Estate of the Late Kuuro Arap Tapkeron.
 - b. The Late Kuuro Arap Tapkeron was and/or is the beneficial owner of the property known as LR.NO.Transmara/Angata Bargoi/224 since the year 1972.
 - c. However, in the year 2022, the 1st to 11th Defendants began trespassing onto the property known as LR.NO.Transmara/Angata Bargoi/ 224 and started occupying the same without the consent and/or authority from the Estate of Kuuro Arap Tapkeron.
 - d. Based on the above illegal entries and/or activities of the 1st to 11th Defendants, the estate of the late Kuuro Arap Tapkeron made a visit to the offices of the 11th Defendant and upon inspection of the Green Card of the property known as LR.NO.Transmara/Angata Bargoi/224, it was discovered that the same had been sub-divided without their consent and two other properties known as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255 had been created.
 - e. The Plaintiff averred that the creation and registration of the properties known as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255 out of the original property known as LR.NO.Transmara/Angata Bargoi/224 was done through fraud and was therefore illegal and unlawful.
 - f. The Plaintiff then outlined the particulars of fraud against the 1st, 2nd and 11th Defendants in Paragraph 19 of the Plaint therein.
 - g. As a result of the above fraud perpetuated by the 1st to 11th Defendant, the Estate of the late Kuuro Arap Tapkeron are no longer able to enjoy and/or use the property known as LR.NO.Transmara/Angata Bargoi/224 or the sub-divisions thereof as is expected.
3. The Plaint dated 18.10.2022 was duly served on the 1st to 11th Defendants.
4. The 1st to 10th Defendants opposed the said Plaint dated 18.10.2022 by filing a Joint Statement of Defence on the 07.06.2023 to which they stated as follows; -



- a. The 1st to 10th Defendants first and foremost admitted that the property known as LR.NO.Transmara/Angata Bargoi/224 was adjudicated and registered in the name of the late Kuuro Arap Takkeron as contained in the Certificate of Title issued on the 04.12.2007.
 - b. On the other hand, the properties known as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255 were adjudicated and registered in the name of the 2nd Defendant in trust for the 1st Defendant herein.
 - c. In essence therefore, the 1st to 10th Defendants stated that it was not possible for their occupation on the properties known as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255 to be in trespass and/or interference of the property known as LR.NO.Transmara/Angata Bargoi/224.
 - d. The 1st to 10th Defendants further stated that the demarcation, adjudication and/or registration of the three parcels of land occurred in the year 1986 and therefore, if there were any complaint and/or objections on the creation of the properties known as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255, then the same should have been determined within the timeframe provided under the Land Adjudication Act, Cap 284 and not 36 years later.
 - e. The 1st to 10th Defendants averred that each of the Certificate of Titles for the property known as LR.NO.Transmara/Angata Bargoi/253, 224 and 255 had described the exact acreage and applicable boundaries which the Plaintiff herein has never challenged and/or raised any complaint.
 - f. In conclusion therefore, the 1st to 10th Defendants sought for this Honourable Court to dismiss the prayers sought in the Complaint dated 18.10.2022 with costs.
5. Upon service of the 1st to 10th Defendants Statement of Defence, the Plaintiff filed a Reply to the Defence on the 27.07.2023 and reiterated the contents of the Complaint dated 18.10.2022.
 6. Pleadings were consequently closed and the hearing began on the 27.11.2023.

Plaintiff's Case.

7. The first witness was the Plaintiff Joseph Rono (PW1).
8. The Plaintiff introduced himself as a teacher and the Legal Administrator of the Estate of Kuuro Arap Tapkeron.
9. The Plaintiff informed the Honourable Court that he would rely on his witness statement dated 25.08.2022 and adopted the same as his evidence in chief.
10. Further to adopting his witness statement dated 25.08.2022, the Plaintiff also produced the following documents as Exhibits in support of his case; -
 - a. Plaintiff's Exhibit 1- Copy of the Letter of Administration Ad-Litem dated 18.11.2022.
 - b. Plaintiff's Exhibit 2- Copies of the Certificate of Title relating to LR.NO.Transmara/Angata Bargoi/224.
 - c. Plaintiff's Exhibit 3- Certified copy of the Green Card of LR.NO.Transmara/Angata Bargoi/253 dated 22.11.2021.



- d. Plaintiff's Exhibit 4- Certified Copy of the Green Card of LR.NO.Transmara/Angata Bargoi/255.
 - e. Plaintiff's Exhibit 5- Copy of the Map Sheet No. 3 containing the demarcation of LR.NO.Transmara/Angata Bargoi/224M LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255.
 - f. Plaintiff's Exhibit 6- Copies of photographs of the Trespass by the Defendants on the property known as LR.NO.Transmara/Angata Bargoi/224.
11. The Plaintiff upon production of the above exhibits sought the Honourable Court to do justice by evicting the 1st to 10th Defendants from the property known as LR.NO.Transmara/Angata Bargoi/224 which they have trespassed upon.
 12. The Plaintiff informed the Honourable Court that the property known as LR.NO.Transmara/Angata Bargoi/224 has never been sold by the late Kuuro Arap Tapkeron since the year 1972 when he took possession.
 13. The Plaintiff concluded his evidence in chief by indicating that the 1st to 10th Defendants entered into the property known as LR.NO.Transmara/Angata Bargoi/224 way back in the year 2002 but had not developed the same until 2022.
 14. On cross-examination, the Plaintiff admitted that the late Kuuro Arap Tapkeron never complained about any trespass during his lifetime.
 15. The Plaintiff stated that the late Kuuro Arap Tapkeron was his uncle and although he has an immediate family, the responsibility of taking care of the property known as LR.NO.Transmara/Angata Bargoi/224 was left in his hands.
 16. The Plaintiff confirmed that the adjudication within Angata Bargoi was done in the year 1986.
 17. According to the Plaintiff, the late Kuuro Arap Tapkeron was allocated 15 acres during the adjudication process.
 18. The Plaintiff referred to the Plaintiff's Exhibit 5 which was a Map Sheet dated 05.10.2010.
 19. In the Plaintiff's considered view, the Map Sheet produced as Exhibit 5 was a recent one which had been used to create the other properties known as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255.
 20. The Plaintiff however did not have the Map Sheet which contained the original LR.NO.Transmara/Angata Bargoi/224.
 21. The Plaintiff stated that the properties known as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255 had been earmarked as public utilities but he objected to this user.
 22. The Plaintiff averred that he only came to learn about the existence of the properties known as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255 in the year 2022 when he applied for Green Cards of the said properties.
 23. The Plaintiff confirmed that the Certificate of Title to the property known as LR.NO.Transmara/Angata Bargoi/224 was issued and collected in the year 2007.



24. The Plaintiff admitted that he does not have the Adjudication Records of the properties known as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255.
25. The Plaintiff stated that the late Kuuro Arap Tapkeron died in the year 2015.
26. The Plaintiff however could not state how the fraud alleged in the Plaint had been executed.
27. Nevertheless, according to the Plaintiff's knowledge, the only public utility property was Parcel No. 804.
28. On re-examination, the Plaintiff confirmed that he was the lawful Administrator of the Estate of Kuuro Arap Tapkeron.
29. The Plaintiff reiterated that the properties known as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255 had been created out of the property known as LR.NO.Transmara/Angata Bargoi/224 the year 2002.
30. The Plaintiff complained that the 11th Defendant had not consulted the late Kuuro Arap Tapkeron before the property known as LR.NO.Transmara/Angata Bargoi/224 was interfered with.
31. The Plaintiff averred that the late Kuuro Arap Tapkeron occupied the property known as LR.NO.Transmara/Angata Bargoi/224 through grazing his cattle on it.
32. The Plaintiff informed the Honourable Court that the acreage of the property known as LR.NO.Transmara/Angata Bargoi/224 was indicated as 3.92 Hectares which translates to 9.8 Acres.
33. However, the property known as LR.NO.Transmara/Angata Bargoi/224 occupies a total of 15 acres on the ground which is 5 acres more that provided in the Certificate of Title.
34. The Plaintiff confirmed that it is the extra 5 acres that has been occupied by the 1st to 10th Defendants herein.
35. The Plaintiff admitted that he has never raised any dispute as regards the size provided in the Title and the actual occupation on the ground before the 11th Defendant.
36. At the end of this re-examination, the Plaintiff concluded his testimony and was discharged from the witness box.
37. The Plaintiff's 2nd witness was THOMAS NGENO (PW 2).
38. PW 2 introduced himself as a farmer by occupation and a neighbour to the late Kuuro Arap Tapkeron.
39. PW 2 confirmed that the property known as LR.NO.Transmara/Angata Bargoi/224 was the property of the late Kuuro Arap Tapkeron.
40. However, PW 2 did not know the actual acreage of the property known as LR.NO.Transmara/Angata Bargoi/224.
41. PW 2 nevertheless stated that during demarcation, there was land allocated for a school.
42. Consequently therefore, PW 2 did not know the parcel numbers upon which the schools have been built.
43. However, PW 2 was certain that the late Kuuro Arap Tapkeron had not given any portion of his land to the Government.
44. On cross-examination, PW 2 stated that he was one of the demarcation committee members.



45. PW 2 confirmed that one of the duties was to demarcate boundaries between various occupants.
46. During this demarcation exercise, PW 2 admitted that there were plots provided for a school and a shopping centre.
47. PW 2 confirmed that if any person was not satisfied with the said demarcation, then they would file and/or raise an objection.
48. PW 2 assured the Honourable Court that there was no objection raised by the late Kuuro Arap Tapkeron relating to the property known as LR.NO.Transmara/Angata Bargoi/224.
49. PW 2 could not remember the year when the titles within Angata were issued by the 11th Defendant and/or when the title to LR.NO.Transmara/Angata Bargoi/224 was collected by the late Kuuro Arap Tapkeron.
50. PW 2 however confirmed that he only came to know about the properties known as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255 just recently.
51. On re-examination, PW 2 reiterated that the property known as LR.NO.Transmara/Angata Bargoi/224 belonged to the late Kuuro Arap Tapkeron.
52. At the end of this re-examination, PW 2 was discharged from the witness box and the Plaintiff closed his case.

Defence Hearing.

53. The Defence 1st witness was Julious Kipketer Cheruiyot (DW1).
54. DW 1 introduced himself a resident of Oldonyo Orok and a farmer by occupation.
55. DW 1 then proceeded to inform the Honourable Court that he had prepared a witness statement dated 06.06.2023 to which he adopted the same as his evidence in chief.
56. Similarly, DW 1 also produced the following documents in support of his evidence in chief; -
 - a. Defence Exhibit 1- Copy of the Minutes of Oldonyo Orok Marketing Self-Help Group dated 05.07.2023.
 - b. Defence Exhibit 2- Copy of an official search of the property known as LR.NO.Transmara/Angata Bargoi/255 dated 05.06.2023.
 - c. Defence Exhibit 3- Copy of an official search of the property known as LR.NO.Transmara/Angata Bargoi/253 dated 05.06.2023.
 - d. Defence Exhibit 4- Copy of Green Card of the property known as LR.NO.Transmara/Angata Bargoi/224 dated 06.06.2023.
57. Further to the above, DW 1 confirmed that he was already a resident of Angata Bargoi when the demarcation and adjudication was done.
58. According to DW 1, before the residents would be allocated any land, the first exercise by the demarcation team was to identify plots which would be for public use.
59. Consequently therefore, Plot.No. 253 and 255 were earmarked as public utility plots.



60. At the time of demarcation, there was no person who filed any objection to the Plots.No. 253 and 255 which are now titled as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255 as public utility properties.
61. During the lifetime of the late Kuuro Arap Tapkeron, there was no case or complaint that was raised against the properties known as LR.NO.Transmara/Angata Bargoi/253 or LR.NO.Transmara/Angata Bargoi/255.
62. Consequently therefore, DW 1 stated that the allegation by the Plaintiff to the effect that the two properties known as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255 were hived off from LR.NO.Transmara/Angata Bargoi/224 was not factual and in fact a misrepresentation of the true position.
63. In essence, DW 1 sought this Honourable Court to dismiss the Plaintiff's case forthwith.
64. On cross-examination, DW 1 confirmed that all persons who owned land within the Adjudication Area participated in the adjudication.
65. DW 1 reiterated that the demarcation and recording of the public plots was done first before the general public were demarcated land.
66. Consequently therefore, the late Kuuru Arap Tapkeron's consent was not required because this was still community land.
67. According to DW 1, anyone who was not satisfied with the demarcation and/or allocation of his property was required to pay KShs 50 and then appear before the Land Tribunal for a proper hearing.
68. However, DW 1 was not aware of any objection that was filed by the late Kuuru Arap Tapkeron on any parcel of land.
69. At the end of this cross-examination, there was no re-examination and DW 1 was discharged from the witness box.
70. The Defence 2nd witness was Paul Kiprotich Too (DW2).
71. DW 2 introduced himself as a resident of Angata and a farmer by occupation.
72. DW 2 stated that he had prepared and signed a witness statement dated 06.07.2023 of which he adopted it as his evidence in chief.
73. On cross-examination, DW 2 confirmed to be familiar with the late Kuuru Arap Tapkeron.
74. DW 2 informed the Honourable Court that he was neighbours with the late Kuuru Arap Tapkeron on the ground.
75. According to DW 2, the properties known as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255 were public utilities.
76. DW 2 could not however ascertain who was the original owner of the properties known as LR.NO.Transmara/Angata Bargoi/253 and 255.
77. DW 2 confirmed that indeed a school has been built but could not remember the date when it was built.
78. The 1st to 10th Defendants Counsel did not have any re-examination hence DW 2 was discharged from the witness box and the Defence closed its case.
79. At the end of this hearing, the Honourable Court directed parties to file their final submissions.



80. However, the Plaintiff's Counsel did not file any submissions as directed but the 1st to 10th Defendants filed their submissions on the 17.01.2024.
81. The Honourable Court has perused the pleadings by both the Plaintiff and the Defendants herein, considered the testimonies of the witnesses and documentary evidence placed before it and in its considered view, the following are the issues for determination.
1. Issue No.1- What Is The Legitimate Acreage Of The Property Known As LR.NO.Transmara/Angata Bargoi/224 Owned By The Late Kuuro Arap Tapkeron?
 2. Issue No.2- Were The Properties Known As LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255 Fraudulently Hived Off From The Property Known AS LR.NO.Transmara/Angata Bargoi/224 Owned By The 11th Respondent?
 3. Issue No.3- Have The 1st To 10th Respondents Herein Encroached And/or Trespassed Into The Property Known As LR.NO.Transmara/Angata Bargoi/224?
 4. Issue No. 4- Is The Plaintiff Entitled To The Prayers Sought In The Plaint?
 5. Issue No.5- Who Bears The Costs Of This Suit?
82. The issues for determination having been duly identified hereinabove, the same will now be discussed as hereinbelow.

Issue No.1- What Is The Legitimate Acreage Of The Property Known As Lr.no.Transmara/angata Bargoi/224 Owned By The Late Kuuro Arap Tapkeron?

83. The first issue for determination is really the actual acreage which is contained in the Plaintiff's title known as LR.NO.Transmara/Angata Bargoi/224.
84. According to the testimony of the Plaintiff, the acreage of the property known as LR.NO.Transmara/Angata Bargoi/224 as indicated in the Certificate of Title issued on the 04.12.2007 is 3.92 Hectares which translates to approximately 10 acres.
85. This Acreage has been confirmed by the Green Card of LR.NO.Transmara/Angata Bargoi/224 which was produced by both the Plaintiff and the Defendants.
86. However, the Plaintiff further stated that on the ground, the property known as LR.NO.Transmara/Angata Bargoi/224 is actually 15 acres which is about 5 Acres more than what is provided in the Certificate of title issued on the 04.12.2007.
87. Consequently therefore, it is this extra 5 Acres which has now been invaded by the 1st to 10th Respondent and is being forcefully used without the consent from the Estate of Kuuro Arap Tapkeron.
88. On the other hand, the Defence witnesses disputed this allegation by the Plaintiff.
89. Both DW 1 and DW 2 expressly stated that the public utility plots were the first ones to be demarcated and recorded before the general public would be allocated land.
90. In essence therefore, by the time the late Kuuro Arap Kapteron was being allocated Parcel No. 224 which is now titled as LR.NO.Transmara/Angata Bargoi/224, the acreage was ascertained to be 10 acres.



91. Further to that, both DW1 and DW 2 stated that the late Kuuro Arap Kapteron did not raise any objection and/or complaint at the Adjudication stage or after issuance of the title to LR.NO.Transmara/Angata Bargoi/224 that the acreage was incorrect.
92. In other words, the Defendants were of the view that the proper acreage of LR.NO.Transmara/Angata Bargoi/224 was 3.92 Hectares as provided in the title and not the 15 acres being claimed by the Plaintiff herein.
93. Looking at the above conflicting positions, the Honourable Court is drawn to the provisions of Section 24 (1) of the *Land Registration Act*, No. 3 of 2012 which provides as follows; -
 - “ a) The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;”
94. According to the Green Card of the property known as LR.NO.Transmara/Angata Bargoi/224, the Certificate of Title issued on the 04.12.2007 only recognised the late Kuuro Arap Tapkeron as the proprietor of 3.92 Hectares which translate to approximately 10 acres.
95. There was no more acreage that was ever alienated and/or registered through the Certificate of Title issued on the 04.12.2007 on the property known as LR.NO.Transmara/Angata Bargoi/224.
96. If indeed the late Kuuro Arap Tapkeron was in occupation of more than the 3.92 Hectares provided in the Certificate of Title of LR.NO.Transmara/Angata Bargoi/224 issued on the 04.12.2007, then it was his duty to seek for a rectification of the acreage from the 11th Respondent upon which an Amended Registered Index Map and/or Mutation would be prepared and registered to allocate more land than the original 3.92 Hectares.
97. Unfortunately, the Plaintiff herein did not present an Amended Registered Index Map duly registered by the 11th Respondent to confirm that the extra 5 acres are part of the property known as LR.NO.Transmara/Angata Bargoi/224.
98. In the absence of a rectified Certificate of Title to the property known as LR.NO.Transmara/Angata Bargoi/224 with an acreage of 15 acres instead of 10 acres or an Amended Registered Index Map and/or Mutation confirming that LR.NO.Transmara/Angata Bargoi/224 measures approximately 15 acres, then the Plaintiffs claim for an extra 5 acres is misguided and without any legal basis.
99. In other words, it is this Honourable Court’s considered finding that the property known as LR.NO.Transmara/Angata Bargoi/224 is 3.92 Hectares which translates to approximately 10 acres which is the only acreage that the Plaintiff should occupy on the ground.

Issue No.2- Were The Properties Known As LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255 fraudulently hived off from the property known as LR.NO.Transmara/Angata Bargoi/224 Owned By The 11th Respondent?
100. The second issue for determination is whether or not the creation of the two properties known as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255 was from the property known as LR.NO.Transmara/Angata Bargoi/224 hence fraudulent.
101. The Plaintiff testified that the property known as LR.NO.Transmara/Angata Bargoi/224 was interfered with without the knowledge or consent of the late Kuuro Arap Tapkeron to create the two properties known as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255.



102. The Plaintiff further testified that the original Registered Index Map used to create and register the property known as LR.NO.Transmara/Angata Bargoi/224 was fraudulently altered, interfered and/or amended to the create and register the properties known as LR.NO.Transmara/Angata Bargoi/253 and LR.NO.Transmara/Angata Bargoi/255 on a portion of 5 acres originally earmarked for property known as LR.NO.Transmara/Angata Bargoi/224.
103. The Plaintiff relied on the Exhibit No. 5 which was the Registered Index Map which shows the manner in which the properties known as LR.NO.Transmara/Angata Bargoi/224, 253 and 255 occupy their respective areas on the ground.
104. The Defendants on the other hand disputed the allegation that the properties known as LR.NO.Transmara/Angata Bargoi/253 and 255 were hived off from the Registered Index Map of LR.NO.Transmara/Angata Bargoi/224.
105. According to DW 1 and DW 2, it is actually the two properties known as LR.NO.Transmara/Angata Bargoi/253 and 255 that were first demarcated and registered for public purposes and not the other way around.
106. The Defendants further stated that since the late Kuuro Arap Tapkeron collected his Certificate of Title in the year 2007, there has been no claim that the acreage of the property known as LR.NO.Transmara/Angata Bargoi/224 was ever tempered with until he death in the year 2015.
107. In the Defendant's considered view, this was a confirmation that the actual acreage of the property known as LR.NO.Transmara/Angata Bargoi/224 was 3.92 Hectares and not the alleged 15 acres being claimed by the Plaintiff.
108. As earlier stated in Issue No. 1, this Honourable Court is of the view that the only acreage alienated and/or which should be occupied by the estate of KUURO ARAP KAPTERON is 3.92 Hectares.
109. Consequently therefore, the extra 5 acres which the Plaintiff claims to be part of LR.NO.Transmara/Angata Bargoi/224 is not part of the land contained in the title of the late KUURO ARAP KAPTERON.
110. The creation of the two properties known as LR.NO.Transmara/Angata Bargoi 253 and 255 was not from the acreage demarcated for the property known as LR.NO.Transmara/Angata Bargoi/224 and therefore, there was no fraud and/or interference done by the 11th Respondent in the issuance of the two properties known as LR.NO.Transmara/Angata Bargoi/253 and 255 as alleged by the Plaintiff herein.

Issue no.3- have the 1st to 10th respondents herein encroached and/or trespassed into the property known as LR.NO.Transmara/Angata Bargoi/224?
111. The third issue for determination is whether the 1st to 10th Respondents have encroached and/or trespassed into the property known as LR.NO.Transmara/Angata Bargoi/224.
112. The Plaintiff testified that the 1st to 10th Respondents have invaded a portion of the property known as LR.NO.Transmara/Angata Bargoi/224 and started to develop the school.
113. According to the Plaintiff, the 1st to 10th Defendants are undertaking these activities on the disputed 5 acres which are supposed to be within the property known as LR.NO.Transmara/Angata Bargoi/224.
114. The Plaintiff produced as Exhibit 6 photographs of the various developments being undertaken by the 1st to 10th Respondent on the disputed portion of 5 acres within the property known as LR.NO.Transmara/Angata Bargoi/224.



115. The Defendants on the other hand testified that the developments and/or activities undertaken on the ground are within the two properties known as LR.NO.Transmara/Angata Bargoi/253 and 255 and not the Plaintiff's property known as LR.NO.Transmara/Angata Bargoi/224.
116. For the Plaintiff to prove a claim of trespass, the first aspect to demonstrate to the Honourable Court is the actual boundary and secondly to produce evidence that the activities of the Defendants are being done beyond the said boundary.
117. In this instance, the Plaintiff did not produce any evidence of where the boundaries of the property known as LR.NO.Transmara/Angata Bargoi/224 actually should be located and/or are placed.
118. Such evidence can be easily be obtained through a Surveyor's Report from either a private licensed Surveyor or the Sub-County Land Surveyor.
119. In the alternative, the Plaintiff was required to present a clear picture(s) of either the natural boundary markings and/or beacons that demarcate the property known as LR.NO.Transmara/Angata Bargoi/224.
120. Thereafter, produce the evidence that indeed the 1st to 10th Defendants had entered, developed and/or trespassed into the property known as LR.NO.Transmara/Angata Bargoi/224.
121. What the Plaintiff produced were photographs of developments but did not produce the boundary markings and/or beacons that demarcate the property known as LR.NO.Transmara/Angata Bargoi/224.
122. In the absence of these boundary markings and/or beacons, this Honourable Court is unable to satisfied itself that indeed the 1st to 10th Defendants have developed, encroached and/or entered the property known as LR.NO.Transmara/Angata Bargoi/224 as alleged.
123. In essence therefore, the Plaintiff has failed to prove that the 1st to 10th Defendants have encroached and/or trespassed into the property known as LR.NO.Transmara/Angata Bargoi/224 as alleged.

Issue No. 4- Is The Plaintiff Entitled To The Prayers Sought In The Plaint?

124. The fourth issue for determination is whether or not the Plaintiff is entitled to the prayers sought in the Plaint.
125. Unfortunately, based on the determinations in Issue No. 1, 2 and 3 hereinabove, the prayers sought in the Plaint are not merited and this Honourable Court is not satisfied that they can be granted.

Issue No.5- Who Bears The Costs Of This Suit?

126. The last issue for determination is who bears the costs of this suit.
127. The Plaintiff not been successful prosecuting his claim, then costs naturally follow the event.
128. The Plaintiff will bear the costs of this suit.

Conclusion

129. In conclusion therefore, the Honourable Court hereby makes the following orders in determination of the Plaint dated 18.10.2022; -
 - A. The Plaint Dated 18.10.2022 Be And Is Hereby Dismissed.
 - B. The Plaintiff Will Bear The Costs Of This Suit.



DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 8TH OF APRIL 2024.

EMMANUEL.M.WASHE

JUDGE

IN The Presence Of:

Court Assistant: Mr. Ngeno

Advocate For The Plaintiff: Mr. Ongiti (N/A)

Advocate For The Defendants: Mr. Kiprotich For 1st –

10TH Defendant

