



Gona & 27 others v Wanyoike & 17 others (Enviromental and Land Originating Summons 143 of 2014) [2024] KEELC 6732 (KLR) (16 October 2024) (Judgment)

Neutral citation: [2024] KEELC 6732 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 143 OF 2014
SM KIBUNJA, J
OCTOBER 16, 2024

BETWEEN

TEDSON GONA & 27 OTHERS PLAINTIFF

AND

JAMES MURIGI WANYOIKE & 17 OTHERS DEFENDANT

JUDGMENT

1. This suit was commenced through the originating summons dated the 10th June 2014, by 137 plaintiffs, against 18 defendants. The originating summons was amended on 10th November 2020, pursuant to the orders of 12th May 2020, among others reducing the number of the plaintiffs to 28; removing some of the named defendants, and introducing new ones, such as Family Bank Ltd and First Community Bank. The summons was served by substituted service through the Standard Newspaper of 23rd March 2023. The plaintiffs seek to be declared as proprietors of the 4.2242 hectares of the listed parcels of land for having been in adverse possession of the said parcels for over 12 years. The summons is supported by the affidavit of Tedson Gona, the 1st plaintiff, sworn on 9th November 2020, in which he inter alia deposed that the defendants are registered proprietors of various parcels of land namely:
 - a. LR 345/II/MN C.R No. 7913 registered to the 1st defendant.
 - b. LR 12051/II/MN C.R No. 51607 and 12058/II/MN C.R No. 51605 both registered to the 2nd defendant.
 - c. LR 12042/II/MN C.R No. 51613 registered to the 3rd defendant.
 - d. LR 12038/II/MN C.R No. 51614 registered to the 4th defendant.
 - e. LR 12055/II/MN C.R No. 51606 registered to the 5th defendant.
 - f. LR 12063/II/MN C.R No. 51610 registered to the 6th defendant, that is charged to First Community Bank Ltd, the 18th defendant.



- g. LR 12068/II/MN C.R No. 51609 registered to the 7th defendant.
- h. LR 12070/II/MN C.R No. 51618 registered to the 8th defendant.
- i. LR 12071/II/MN C.R No. 51620 registered to the 9th defendant.
- j. LR 12076/II/MN C.R No. 51612 and 12077/II/MN C.R No. 51608 both registered to the 10th defendant.
- k. LR 12081/II/MN C.R No. 51621 registered to the 11th defendant.
- l. LR 12082/II/MN C.R No. 51611 registered to the 12th defendant, which is charged to Family Bank Ltd, the 17th defendant.
- m. LR 12087/II/MN C.R No. 51619 and LR 12088/II/MN C.R No. 51622 both registered to the 13th defendant.
- n. LR 12091/II/MN C.R No. 51615 registered to the 14th defendant.
- o. LR 11913/II/MN C.R No. 51624 registered to the 15th defendant.
- p. LR 11916/II/MN C.R No. 51627 registered to the 16th defendant.

All the above parcels of land will hereinafter, be referred to as the suit properties. The 1st plaintiff further deposed inter alia that the plaintiffs have lived on the suit properties without permission, openly and uninterruptedly for over 12 years; that he moved onto the suit properties in 2000 and has since resided there; that some of the other plaintiffs were born there before 2000, while others have died and were buried on the suit properties; that the defendants do not reside on the said land and have not made any improvements thereon, and the plaintiffs prayers should be granted.

2. During the hearing, Tedson Gona Kombo, the 1st plaintiff, testified as PW1. He adopted the contents of his affidavit sworn on 9th November 2020 as his evidence in chief, and the further list of documents dated 18th January 2024 which shows a picture of various buildings, some complete and others incomplete, which he claimed are their houses and a church. That when he went to the land, he found some of the plaintiffs like the 2nd plaintiff already there, while others came later in 2002. He stated that sometime in 2005 he conducted a search and discovered that the land LR 345 was registered with the 1st defendant and it had been subdivided into 18 parcels, which were registered with the other defendants as shown above. That he obtained searches and deed plans for the subdivided parcels, and discovered some of the parcels had been charged to 17th and 18th defendants. That though the defendants were served, including through substituted service by advertisement through the Standard Newspaper of 7th July 2018 and 23rd February 2023, none entered appearance. In cross-examination by the court, PW1 stated that he built an academy/school on a portion of 60 by 80 feet on the land in 2010, and got issued with a permit from the Sub-County Director of Education in 2011, which he indicated he had not produced in court. He added that there was a Methodist church on the land that was built before his arrival, and that he has built a permanent house on a portion of 35 by 40 feet on the suit property.
3. The issues for determinations by the court in the plaintiffs' originating summons are as follows:
 - a. Whether the plaintiffs' have been in adverse possession of the suit properties, and if so, whether their occupation has terminated the defendants title to thereof.
 - b. Whether the plaintiffs have met the threshold to be declared the proprietors of the suit properties through prescription, and to be issued with the titles thereof.



- c. Who pays the costs?
4. After careful consideration of the amended originating summons, the oral and documentary evidence tendered in court by PW1, submissions by the learned counsel, the court has come to the following determinations:
- a. The though the suit is undefended, it is still the plaintiffs' duty to prove their claim of adverse possession over the suit properties on a balance of probabilities, so as to satisfy the requirements of sections 106 to 109 of the *Evidence Act* chapter 80 of Laws of Kenya. In the case of *Gabriel Mbui v Mukindia Maranya* [1993] eKLR the court stated as follows:

“Throughout the decided cases, the recurrent theme is that possession to be adverse must be actual, open, notorious, regular, continuously uninterrupted, hostile, exclusive occupancy held with a cherished animus possidendi under a claim of right held in good faith, without any form of permission from a knowing rightful owner entitled to immediate possession, for the statutory period. Out of these cases, the typical formulation of the classical requirements for adverse possession to be claimed, has been, that in order to acquire title to land without buying or paying for it in the traditional sense, or through some other legal disposition such as by inheritance or trust, there must be proved or established the elements of, (a) actual possession or occupancy of the land that is, (b) hostile to the current owner with a right to immediate possession, (c) which is visible, open, notorious, and exclusive, (d) exercised continuously and uninterrupted for a statutorily defined number of years, (e) maintain under some colour of right as against everyone else, (f) with an evinced unmistakable animus possidendi, (g) held in good faith, without fraud.”

The court set out the elements of adverse possession as follows:

- “(1) the intruder resisting suit or claiming right by adverse possession must make physical entry and be in actual possession or occupancy of the land for the statutory period. Time does not begin to run unless there is some person in adverse possession of the land. It does not run merely because the land is vacant. Adverse possession rests on de facto use and occupation by an entrant. The rule that his entry must be followed by possession and appropriation to his use is founded on the reason that a right of action cannot accrue unless there is somebody against whom it is enforceable. Possession is a matter of fact, depending on all the particular circumstances of the case, and the type of conduct which indicates possession, varies with the type of land. That there must be actual possession (which requires some sufficient degree of physical occupation for the requisite period) has been well-established in series of cases, of which *Athman Bwana and Alim Bwanahave v Haji Abdulla Ibrahim and Husein Haji Abdulrehman*, (1948) 15 EACA 7 (Sir G Graham Paul, CJ) at p 9 *Abmed Adbulkarim and another v Member for Lands and mines and another*, (1958) EA 436, at p 441 (per Forbes, JA); *Salim v Boyd and another* (1971) EA 550, at p 552 (Kneller, J (as he then was); *Jandu v Kirpal and another*, [1975] EA 225 at p 233 (Chanan Singh, J); *Gatimu Kinguru v Muya Gathangi* [1976] KenyaLR 253, at pp 257, 258 (per Madan, J (as he then was); *Isbmael Ithongo v Geoffrey Ithongo Thindiu* CA Civ Appeal No 16 of 1981 (per Law, JA); *Boniface Oredo v Wabomba Mukile*, CA Civ Appeal No 170 of



1989 (per Gicheru JA), and *Ernest Wesonga Kweyu v Kweyu Omuto*, CA Civ Appeal No 8 of 1990 (per Gicheru, JA), are but a few examples.

- (2) The entry and occupation must be with, or maintained under, some claim or colour of right or title, made in good faith by the stranger seeking to invoke the doctrine of adverse possession as against everyone else. In other words, the intruder must have some apparent title, the appearance or semblance of title but not the reality of it, for the expression “colour of title” in law means, that which is title in appearance but not in reality. He must have with him his own apparent right which affords him some semblance of title under which he claims to found his occupation of the land independently of anyone else’s power. If he has no semblance or shadow of right to be on the land, he cannot rely on adverse possession (see the cases cited in (1) above, especially the authority quoted by Gicheru, JA, in *Ernest Wesonga Kweyu v Kweyu Omuto* CA Civ Appeal No 8 of 1990)’
- (3) The occupation of the land by the intruder who pleads adverse possession must be non-permissive use, ie without permission from the true owner of the land occupied.....
- (4) The nonpermissive actual possession hostile to the current owner must be unequivocally exclusive, and with an evinced unmistakable animus possidendi, that is to say, occupation with the clear intention of excluding the owner as well as other people. Exclusive possession means that the exercise of dominion over the land must not be shared with the disseised owner, the land being in actual possession with intent to hold solely for the possessor to the exclusion of others. A person in possession of land is not entitled to the protection of the statute of limitations, as against the owner of the paper title, where the latter and his predecessors in title have not been kept dispossessed, or have not abandoned possession of the land for the statutory period, and the person claiming the protection of the statute has been in possession with an animus possidendi for the requisite time. It must be shown that the owner has ceased to be in occupation and that the claimant is and has continuously been in occupation. An owner ceases to be in occupation of land by reason of dispossession or discontinuance of possession. Dispossession is where a person comes in and drives another out of the land; discontinuance of possession is where the person in possession goes out and another person takes possession. The term “dispossession” imports ouster, ie a driving out of possession against the will of the person in actual possession; there is no driving out where the transfer of possession was voluntary, not against the will of the person in possession but in accordance with his wishes and active consent. There must be some element of force or fraud, with some positive and unequivocal acts, on the part of the person dispossessing, which can be referred only to the intention of obtaining exclusive control over the property. Discontinuance consists in the owner giving up, ceasing to use, and abandonment, of the land, a cessation of occupation. The fact that nothing is done to improve or work a piece of land is not evidence that a person has abandoned the possession or that he has otherwise been eliminated from the land. If a man does not use his land, either by himself or by some person claiming through him, he does not thereby necessarily discontinue possession of it, nor does that fact bring about the



elimination of his possession. In our law, the mere fact that for twelve years or more there has been no suit brought against the squatter, or the mere fact that for twelve years the squatter has been in actual possession of the land, is not enough to make the *Limitation of Actions Act* operative; possession for twelve years cannot per se make the Act come into operation against an owner of land. The Act is operative only where there has been exclusive possession for the statutory period by the person to be protected by the statute: it must be shown that the title holder has been dispossessed or has discontinued his possession of the land for the statutory period. The person relying on the statute must prove that he was in exclusive possession and that the true owner was out of possession.....A case of unequivocal exclusive possession sufficient to deprive the owner of the soil must be made out on a balance of probability. It is incumbent on the part of the claimant satisfactorily to establish an exclusive possession by himself or through his predecessors in title against the owner or his predecessors in title for the past twelve or more years. It is not enough to show a mere going out of possession by the owner. There must also be exclusive possession for the statutory period by the person to be protected: Sir Joseph Sheridan, P and Law, CJ, in *Hassanali Mamuji v Alibhai Ebrahimji Dar & Sons*, (1935), 12 EACA 11 at pp 113, 114, 115; Sir G Graham Paul, CJ, in *Athman Bwana and another v Haji Abdulla Ibrahim and another* (1948) 15 EACA 7 at p 9; Harris, J, in *Karanja Matheri v Kahnji* [1976] KenyaLR 140 at p 141; Simpson, J (as he then was), in *Wainaina v Murai and others*, [1976] KenyaLR 227 at p 231; Madan, J(as he then was), in *Gatimu Kinguru v Muya Gathangi*, 1976) KenyaLR 253 at p 259; Chesoni Ag JA, in *Sisto Wambugu v Kamau Njuguna*, [1982-88]1 KAR 217, at pp 226-227; and Madan, JA (as he then was), in *Public Trustee and Beatrice Muthoni v Kamau Wanduru* Court of Appeal at Nairobi Civil Appeal No 73 of 1982;

- (5) Acts of user by the person invoking the statute of limitation to found his title are not enough to take the soil out of the owner or his predecessors in title and to vest it in the encroacher or squatter, unless the acts be done which are inconsistent with the owner's enjoyment of the soil for the purposes for which he intended to use it. It is incumbent on the person alleging a right by adverse possession to show, not only that his possession has lasted twelve or more years, but also that it has all the time been in open conflict with the title on which the owner relies. He must show that his possession was of such a nature, and involved the exercised of rights so irreconcilable with those claimable by the owner of the land, as to give the owner occasion to dispute that possession, ie that the possession and user was such as to give a cause of action or right to sue for possession, throughout the twelve years next preceding the suit..... Accordingly, when the true owner of land intends to use it for a particular purpose in the future, but meanwhile has no immediate use for it, and so leaves it unoccupied, he does not lose his title to it simply because some other person enters on it and uses it for some purpose; not even if this purpose continues year after year for twelve years or more (see *Leigh v Jack* [1879] 5 Ex D 264; *Williams Brothers Direct Supply Stores Ltd v Raftery* [1957] 3 All E R 593; *Hayward and another v Chaloner* [1967] 3 WLR 10 68). The reason is not because the user does not amount to actual possession; it may. The line between acts of user and acts of possession is too fine for



words. The reason is, because it does not lie in that other person's mouth to assert that he used the land of his own wrong as a trespasser. Rather, his user is to be ascribed to the implied or actual licence or permission of the true owner. By using the land, knowing that it does not belong to him, he impliedly assumes that the owner will permit it; and the owner, by not turning him off, impliedly gives permission. And it has been held many times that acts done under licence or permitted by the owner do not give a licensee a title under the limitation statute (*Cobb v Lane* [1952] 1 All E R 1199; and the cases I have cited for the third element above). In *Lord Advocate v Lord Lovat* [1880] 5 App Case 273 at p 288, Lord O'Hagan said that possession must be considered in every case with reference to the particular circumstances. The character and value of the property, the suitable and natural mode of using it, the course of conduct which the proprietor might reasonably be expected to follow with a due regard to his own interests – all these things, greatly varying as they must, under various conditions, are to be taken into account in determining the sufficiency of possession. It is impossible to say that there was actual possession inconsistent to that of the owner, where there was no intention of the owner to do other than keep the land until he could use it, and it was land waiting to be developed or otherwise used when the time was opportune (Morris, LJ, in *Willimas Brothers Direct Supply Ltd v Raftery* [1957] 3 All E R 593 at p 599). If the true owner can make no immediate use of the land, as the years go by it cannot be accepted that he would lose his rights as owner merely by reason of acts of trespass or user which in no way would interfere with a contemplated subsequent user by the owner. Time, therefore, does not run against a true owner whose purposes are not prejudiced by the intruder's acts. And this seems a reasonable conclusion, because the interests of justice are not served by encouraging litigation to restrain harmless activities merely to preserve legal rights, the enjoyment of which is, for good reason, being deferred. (see Denning, Mr, and Ormrod, LJ, in *Wallis's Cayton Bay Holiday Camp Ltd v Shell-Mex and B P Ltd* [1974] 3 All E R 575). So, if the owner has little present use for his land, much may be done on it by others without demonstrating a possession inconsistent with the owner's title. There is no sin in the owner of the land saying to another person, "I have no immediate use for my land"; use it for your own needs, and when I need it, I shall come back to you over it", land then return after twenty years. In that period, a prudent squatter should use the land to acquire the means withal to get his own land elsewhere, and not to abuse generosity and a good heart of the owner. On this reasoning, the law has always been, that acts of user committed upon land, which do not interfere and are consistent with the purpose to which the owner intends to devote it, do not amount to a dispossession of the owner, and are not evidence of discontinuance of possession by him, within the meaning of the statute: Sir Joseph Sheridan, P, in *Hassanali Mamuji v Elibhai Ebrahimji Dar & Sons*, [1935] 2 EACA 111, at pp 112, 113, Kneller J (as he then was). In *Salim v Boyd and another* [1971] EA 550, at p 552; Madan, J (as he then was), in *Gatimu Kinguru v Maya Gathangi* [1976] KenyaLR 253 at pp 254, 255, 259 and 260.

- (6) The possession by the person seeking to prove title by adverse possession must be visible, open and notorious, giving reasonable notice to the owner



and the community, of the exercise of dominion over the land. The idea of open and notorious possession entails possession that gives visible evidence to one on the surface of the possessed land. The purpose of this element is to afford the owner an opportunity for notice. He need not actually have seen the evidence, but is charged with seeing what reasonable inspection would disclose. Possessory acts carried out only under cover of darkness will be insufficient to justify a claim based on adverse possession. Related to the requirement of actual possession, the requirement of openness and notoriety, also calls for the need that the possessory acts must be substantial and leave some physical evidence. If the acts are too insubstantial or temporary, there is no actual possession and the possession will not be notorious. Seasonal or sporadic use of land whose nature does not ordinarily justify such use, would not readily lend themselves as evidence of open and notorious and continuous actual possession. The nature of the acts on the ground usually determine if they are notorious, but weight may be given also to the possessors's reputation as owner or his having public records evidencing ownership. There must be a denial of the owner's right by an open assertion of a hostile title by the person setting up adverse possession and there must be notice of the denial to the owner, either given directly or inferred from notorious acts and circumstances. So notorious must be the overt acts of ouster that there must be nothing that would lead the owner to suppose that his rights remain intact. And this means, the possession taken should not be clandestine, that there must be notice or intimation to the owner of the hostile acts, and there should be no concealment of the intention to impugn his title. Surreptitious possessory acts do not found a claim of adverse possession. Fraud will destroy that claim: Forbes, JA, in *Ahmed Abdulkarim and another v Member of Lands and Mines and another* [1958] EA 436, at p 441; Kneller, J (as he then was), in *Salim v Boyd and another* [1971] EA 550 at p 552; Chanan Singh, J, in *Jandu v Kirpal and another*, [1975] EA 225 at p 234; Madan, J (as he then was), in *Gatimu Kinguru v Muya Gathangi* [1976] KenyaLR 253 at p 259;

- (7) The possession must be continuous, uninterrupted, unbroken, for the necessary statutory period. This element means that the possession by the adverse possessor must continue without significant interruption for a solid block of time at least as long as the period of limitation, being at the moment twelve years before the filing of suit. What is a significant interruption depends upon the nature of the land. Brief and ordinary absences, while the adverse possessor goes to town, is gone overnight, or is away working or on vacation, for instance, would surely not break any adverse possession. If the land, by its nature, is suitable and normally used for seasonable pursuits, then seasonal use may be continuous enough. The test is whether the adverse possessor used the land as a true owner would. But breaks caused by the owner's intermittent possession, for a few days or weeks every now and then, are likely to defeat both exclusivity and continuity of possession.Understand that since possession is *prima facie* evidence of seisin in fee, an adverse possessor holds a transmissible interest in the land that is why he can dispose of it. Accordingly, any person taking a squatter's interest can add the squatter's period of possession to his own. Situation two is, where a squatter is dispossessed by another squatter and there is continuous adverse possession by several different



persons each claiming some colour or right in himself, adversely to the other or others. In such a situation, since there is no distinct interval of time during which the possession is vacant, the second or last squatter can add the former period or periods of occupation to his own as against the true owner. This is because time runs as against the true owner from the time when the adverse possession began, and as long as adverse possession continues unbroken it makes no difference who continues it. But as against the first or other preceding squatter, the second or subsequent squatter must himself occupy for the full period before his title becomes unassailable (Kay, LJ, in *Willis v Howe* [1893] 2 Ch 545, 553). Situation number three divides itself into a fourth one. It arises from possession abandoned by the adverse possessor.....Possession may be interrupted:

- (a) by the physical entry upon the land by any person claiming the land in opposition to the person in actual possession, with the intention of causing interruption; or
- (b) by the institution of legal proceedings by the rightful owner to assert his right to the land; or
- (c) by any acknowledgement made by the person in possession, to any person claiming to be the rightful proprietor, that such claim is admitted or otherwise recognised.”

- b. I am in agreement with definition of what constitutes adverse possession, as set out in the *Gabriel Mbuji* [*supra*] case. In their endeavours to prove their claim, the plaintiffs’ case was presented by PW1, who testified inter alia that he and his family have been living on the suit properties since 2000; that before his arrival there were other squatters already on the suit properties, such as the 2nd plaintiff; that there were other squatters who came after him, with the last group coming there in 2002; that the plaintiffs have established their homes on the said land, and he produced photos of permanent buildings, some complete and others incomplete. While it may be taken that the testimony proves open and actual possession without permission, it is not clear what specific portion of the suit properties each of the plaintiffs occupies exclusive of others, and when the possession commenced. PW1 told the court during cross-examination that he has constructed his own house, as well as an academy/school for which he was issued with a permit in 2011 by the Sub-County Director of Education. The permit was however, not produced in court, and no documentary evidence like receipts for the purchase of the building materials, were availed, from which the court would have confirmed the dates. Section 109 of the *Evidence Act* states as follows:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

Section 112 of the same provides as follows:

“In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”

The plaintiffs, including PW1, had the burden of proving that they have been in exclusive occupation of specified portions of the suit properties for twelve (12) years. The mere fact that



PW1 claimed to have constructed his residential home and academy in 2010, and obtained a permit from the Education office in 2011, is not sufficient proof of actual possession of the suit properties for the 12 uninterrupted years.

- c. PW1 further testified that his claim was on LR 345/II/MN, which from the further list of documents dated 10th March 2019, is shown in the search for CR 51605 that L. R 345/II/MN was consolidated with 359/II/MN to create 11894/II/MN, which was again subdivided into LR Nos. 11895 to 11916/II/MN (C.R 51606 to 51627). The original parcel of land, 345/II/MN, ceased to exist on 4th March 2011, when it was consolidated with 359/II/MN. The consolidation of the two parcels changed not only the acreage but also the reference of the subsequent title. It is trite that no adverse possession claim can lie over a non-existing parcel of land. The consolidated land was then subdivided into smaller parcels, and transferred to the respective defendants as detailed above, on 4th March 2011. That as an adverse possession claim is against the title-holder, and this suit was filed on 10th June 2014, then it is doubtful whether the requisite twelve years had lapsed, against those defendants who become registered proprietors of the respective parcels in 2011, and thereafter.
- d. From the available evidence, even assuming the original parcel 345 was not consolidated and then subdivided into the several other parcels, the plaintiffs, including PW1, have not pinpointed where on the 9.5 acre land their portions are situated. PW1 did not specify where he has built his residential house, and academy/school, other than stating during cross-examination that his house is on a 35 by 40 feet, and the school on a 60 by 80 feet portion of the 9.5 acre land. There was no further identification as to the exact location or the exact suit property, though PW1 admitted that he was aware of the subdivisions and had even done search on the same. In the case of *Wilson Kazungu Katana & 101 Others vs. Salim Abdalla Bakshwein & Another* [2015] eKLR the Court observed that:

“The identification of the land in possession of an adverse possessor is an important and integral part of the process of proving adverse possession. This was so stated by this Court in the case of *Githu vs. Ndele* [1984] KLR 776. The appellants did not discharge the burden of proving and specifically identifying or even describing the portions, sizes and locations of those in their respective possession from the larger suit premises that they sought to have decreed to them.” [Emphasis added]”
- e. Though the initial originating summons dated 10th June 2014 had 137 plaintiffs, before being reduced to 28 through the amended originating summons of 10th November 2020, and in spite of the provisions of Order 1 Rule 8 of the *Civil Procedure Rules*, I notice that only one plaintiff, the 1st plaintiff, had filed a supporting affidavit. It is also the same 1st plaintiff who testified as a witness. All the other plaintiffs did not file supporting affidavits/written statements detailing their adverse possession claims over specified portions of particular/specific titles. The court is left wondering whether they were indeed in possession of any portions of the suit properties and from when. The plaintiffs’ claim has not been established or proved to the standard required of balance of probabilities, and should be dismissed.
- f. The provision of section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya is to the effect that costs shall follow the event unless where for good reasons the court orders differently. That as the defendants did not participate in this suit, and the plaintiffs have failed in their claim, then there shall be no orders as to costs.

5. From the foregoing determinations, the court finds and orders as follows:



- a. That the plaintiffs' suit commenced through the originating summons dated 10th June 2014, and amended on the 10th November 2020, is dismissed in its entirety.
- b. That there be orders as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 16TH DAY OF OCTOBER 2024.

S. M. KIBUNJA, J.

ELC MOMBASA.

In the presence of:

Plaintiffs : Mr Birir

Defendants : No Appearance

Leakey – Court Assistant.

