



**M'turuchiu v M'guatu & another (Sued as the Legal Representatives
of the Estate of M'guatu M'itania) (Environment & Land Case
E003 of 2021) [2023] KEELC 18657 (KLR) (12 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 18657 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E003 OF 2021**

**CK YANO, J
JULY 12, 2023**

BETWEEN

JOSEPHINE KAGIRI M'TURUCHIU PLAINTIFF

AND

M'MWIRICHIA M'GUATU 1ST DEFENDANT

CECERINA KAROKI M'GUATU M'ITANIA 2ND DEFENDANT

**SUED AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF M'GUATU
M'ITANIA**

JUDGMENT

1. The plaintiff commenced the suit by an originating summons dated 11th January, 2021. The plaintiff claims to have acquired half ($\frac{1}{2}$) acre of parcel of land Kiirua/Naari-Maitai/505 by adverse possession and posed the following questions for determination:
 1. Whether or not the plaintiff has been in open, exclusive, continuous and uninterrupted occupation of half ($\frac{1}{2}$) acre of land number Kiirua/Naari-Maitai/505 for over 42 years.
 2. Whether or not the plaintiff has become entitled to half ($\frac{1}{2}$) acre of parcel of land number Kiirua/Naari-Maitai/505 by adverse possession.
 3. Whether or not the register of the parcel of land number Kiirua/Naari-Maitai/505 should be rectified and the plaintiff registered as the owner of half ($\frac{1}{2}$) acre thereof.
 4. Whether or not the Deputy Registrar of this Honourable Court should be empowered to sign all the necessary documents to transfer half ($\frac{1}{2}$) acre of parcel of land number Kiirua/Naari-Maitai/505 in default of the Defendant so signing.



5. Whether or not the Defendants should pay the plaintiff costs hereof.

Plaintiff's Case

2. The plaintiff filed a supporting affidavit dated 11th January 2021 wherein she averred that the suit land Kiirua/Naari-Maitei/505 measuring about 1.234 ha is currently registered in the name of the Defendant's deceased father M'guatu M'itania. That the defendants are the legal representatives of the estate of M'guatu M'itania (deceased) who is their father vide the grant of letters of administration issued in Meru HC Succession Cause No.401 of 1994.
3. The plaintiff averred that vide an agreement dated 17th December, 1988 he purchased half (½) acres which was to be excised from the suit land from the Defendant's deceased father at a consideration of Kshs.7000/= .That upon execution of the said agreement, M'guatu M'itaniu (deceased) put him into possession of the aforesaid portion of land. That the defendant's deceased father refused to obtain Land Control Board consent hence necessitating him to institute Meru CMCC No.49 of 1989 but the same was dismissed for want of prosecution and therefore ownership of the land was never determined.
4. The plaintiff stated that Section 8 (1) of the *Land Control Act*, provides that if the Land control Board consent is not acquired six months after the making of a written agreement then the said agreement becomes null and void and therefore the agreement dated 17th December, 1988 became null and void on 17th June,1989 when time for adverse possession started running. That she carried out extensive development of the said portion of land by planting gravellia trees, bananas, avocado trees, mango trees, cypress trees and built a house thereon.
5. It is the plaintiff case that she is occupying and utilizing the suit land measuring half (½) acre of parcel and that she has been utilizing, occupying and enjoying the possession of the said land exclusively, openly, peacefully and uninterrupted for over 42 years and has developed a beneficial interest thereto under the doctrine of adverse possession.
6. The plaintiff sated that recently, the defendants have been sending brokers and potential buyers and is reliably informed that the defendants are seeking to alienate the said land to third parties to her detriment. That if the suit land is sold and she is evicted by the defendants and/or the defendants interfere with her occupation thereon, she will suffer irreparable loss and damage
7. The plaintiff contended that none of the defendants' family members including the defendants have ever occupied the half (½) acre of the land she is in occupation or laid any claim over the suit land to date. That she has filed the suit before the court following advice from his advocates that this court is empowered by the Law to hear and determine her claim for adverse possession pursuant to section 38 (1) of the Limitations of Actions Act (Cap 22) of the Laws of Kenya. In view of the foregoing, she prayed the orders that the portion measuring half (1/2) acre of parcel of land Kiirua/Naari-Maitei/505 belongs to her and that she has acquired the same by adverse possession and the Title over the suit land registered in the name of the Defendant's deceased father has ceased by prescription. That the Succession Cause in Meru HC Succession No.401 of 1994 set aside land parcel No. Kiirua/Naari-Maitei/505 from the distribution table to allow determination of her claim of half (½) acre of parcel of land Kiirua/Naari-Maitei/505, hence this suit.
8. During the hearing the Plaintiff testified as P.w 1 and called two witnesses. She adopted her witness statement and produced her list of documents as exhibit. The plaintiff further stated that she entered the suit land in 1986 upon entering into a sale agreement with the deceased M'guatu M'itania and she did not complete the payment of the price as there was a balance of Kshs. 1600/=. She further stated that the deceased asked her to wait for the transfer of the land.



9. Upon cross examination by Learned counsel Mr. Mburugu for the defendants, PW1 stated that the deceased allowed her to enter the land and even put up a house. PW1 testified that she filed Meru CMC Case No.49 of 1989 seeking specific performance of the sale agreement but denied that the deceased asked her to go back for her money. It was the plaintiff's evidence that she had an advocate in that case by the name Daudi Kibanga but the case was taken over by Rimita advocate and then Esther Mwangi advocate. The plaintiff stated that she issued a demand letter to the deceased before filing the case.
10. It was the plaintiff's evidence that she had not paid the deceased the full purchase price and that she wanted to complete the outstanding balance but the deceased asked her not to. The plaintiff stated that she filed suit against the deceased because his wife refused to give her the land. The plaintiff testified that the deceased asked her to sue him so that he could sub divide the land and transfer the portion she had purchased. That when they came to court the deceased's wife and advocate attended and stated that the deceased was unwell and could not attend court.
11. The plaintiff stated that the deceased died in 1990 but was unsure on the date of death and further said he might have died on 9th October 1989. The plaintiff testified that the person who told her that the deceased wanted to sell land is one Geoffrey Marete and that when she went to Rimita Advocate she went with Joshua Kathurima, M'mwirichia M'guate, cecelia M'ganabu and the deceased who were part of the agreement though they were not included.
12. The plaintiff testified further that she was included in Succession No.104 of 1994 as an interested party and the reason she was included in the case is because she had purchased a portion of the land. The plaintiff testified that the grant was confirmed in which she was given 0.5 acres, and Cecirana Karoki was given 2.0 acres. The plaintiff further stated that the 2nd defendant filed summons for revocation of grant because she did not want her to get the land.
13. The plaintiff testified that she was aware of the judgement delivered on 16th December 2020 in which the grant was revoked and she was advised to file a case in ELC to get her land. It is the plaintiff case that she has been on the land for 36 years and further admitted that they have been having cases since 1988/1989 with the 2nd defendant until she filed the instant case.
14. When she was re-examined by Mr. Njeru the plaintiff stated that the balance of the purchase price was to be paid on transfer and that the deceased died before he transferred the land to her. The plaintiff reiterated that she filed a case for specific performance for the 0.5 acres that she had bought. She further testified that all the people who accompanied her at the time of agreement signed the agreement as well as the deceased.
15. The plaintiff further contended that she has been on the land and that no one had asked her to vacate but she claimed that they now wanted her to vacate since the value had gone up.
16. M'mwirichia M'iguatu testified as PW2. He adopted his witness statement dated 14th June 2022 and he further relied on the replying affidavit sworn on 3rd February 2021 in response to the originating summons.
17. PW2 stated that he was before court over land that belongs to his father and that he knew the plaintiff bought land from his father M'guatu M'itania (deceased). It was the evidence of P.W 2 that the plaintiff bought 0.5 acres of the land where she stays and that same was sold to the plaintiff before his father's death. PW2 evidence was that their father died on 6th October 1989 and had a death certificate to prove the same. PW2 stated that the 2nd defendant is her step mother and has attempted to ask the plaintiff to vacate from the suit land which his father had sold to the plaintiff. PW2 testified that his father told him he was paid by the plaintiff.



18. When cross examined by Mr.Mburugu, P.W 2 stated that his father's land No.505 was occupied by the plaintiff and the 1st defendant and her children. He testified that he was living on another parcel of land but that his father was to give him a portion of the suit land. It was the evidence of P.w 2 that he filed Succession cause over his late father's estate and in the confirmed grant, the 2nd defendant, the plaintiff and himself were awarded a share. PW2 stated his father was ready to transfer 0.5 acres to the plaintiff and further stated that his father told the plaintiff to sue him so that the land does not go missing and that his father never denied that claim.
19. PW2 testified that since there was a defence filed the plaintiff never proceeded with the matter until the case was dismissed for lack of prosecution.PW2 further testified that he filed succession cause no.401 of 1994 but without the plaintiff but added that he included the plaintiff so that she could get her share.
20. PW2 pointed out that he had informed the 2nd defendant about the existence of the Succession cause from the beginning but was not aware that the 2nd defendant filed an application for revocation of the grant that had been issued to him. He further stated that he was not aware of the judgement in Succession cause No.401 of 1994 delivered on 16th December 2020 as he had an advocate.
21. When PW2 was re -examined by Mr.Nyaga, he confirmed he filed a Succession cause in respect of the estate of his father alone and not with the plaintiff and stated that the 2nd defendant was aware about the Succession cause in respect to the estate of his father.
22. PW3 was Joshua Mugwika who stated that he knew the plaintiff who is his sister. He adopted his witness statement dated 4th June 2022 as his evidence in chief. He was cross examined and re-examined. He testified that the land bought by her sister is situated in Maitei Naari and Maitei which was different from Naari as they are in different locations. PW3 stated that before his sister bought the land she used to live in Naari. He testified that a brother of his who was a neighbour of M'guatu informed his sister that M'Guatu wanted to sell the said piece of land.
23. PW3 stated that M'mwirichia M'guatu is the son to M'guatu and therefore is a neighbour to his own brother.PW3 contended that in the year 1986 is when the conversation over the sale of the land started and that he was a witness when the sale agreement was made and that the first agreement was written at M'guatu's home.
24. PW3 stated that he could not recall if he was present when the agreement was executed at the offices of Rimita Advocate. He stated that by that time an acre was valued approximately Kshs.10,000/= and 0.5 acres was about 7,000/=.PW3 could not remember the consideration paid by his sister and that his sister had paid part of the purchase price and the remaining balance was Kshs. 1600/.=
25. When he was re- examined by Mr. Nyaga, P.W 3 stated that he was present when his sister visited the home of M'guatu M'itania and that his son was also present. He further testified that the conversation to buy the land started in 1986 and the transaction was also made the same year. He stated that they wrote another agreement when they converged as a family and later wrote another before Rimita Advocates but did not see his sister sign the agreement at Rimita's office but was just told that she signed.

Defendants' Case

26. The defendants filed a replying affidavit dated 3rd February 2021 sworn by Cecerina Karoki M'guathu wherein she averred that the 1st defendant is her step son. She averred that L.R Kiirua/Naari-Maitei/505 was about 1.234ha. and is registered in the name of her late husband M'Guathu M'Itania who died on 6th October 1989.That while her husband who was over 80 years was ill and wanted money for



- treatment sometime in December 1988, the 1st defendant came with the plaintiff and informed her husband that the plaintiff could buy a piece of L.R No. Kiirua/Naari-Maitei/505 so that he gets money to go for treatment. That consequently on 17th December 1988 the 1st defendant came and collected the deceased and that later she learnt that they had gone to the advocates office where they entered into a sale agreement and the plaintiff used the sale agreement as an exhibit in the matter. The defendant averred that her husband sold to the plaintiff ½ acre of land for Kshs 7000/= of which Kshs 5000 was paid at the time of execution of that agreement and Kshs 400/= paid afterwards leaving a balance of Kshs 1600/=.
27. The 2nd defendant further stated that without notice to her husband who was still ailing and before the expiry of 6 months which the plaintiff claimed would have rendered that sale agreement null and void, and without paying the balance of purchase price, on 9th February 1989 the plaintiff sued her husband in Meru principal Magistrate Court Civil Case No.49 of 1989 seeking specific performance of that sale agreement. That upon service of the suit, her husband was frustrated for he had consented the plaintiff to use part of the portion he was selling to her and on advice of his advocates, retracted that sale agreement as null and void for want of Land Control Board Consent.
 28. The 2nd defendant contended that upon receipt of her husband's defence to that suit the plaintiff found that she had no chances of success and abandoned the suit. That later upon her husband's death and without her knowledge, the plaintiff and the 1st defendant colluded and filed Meru High Court Succession Cause No. 401 of 1994 with the 1st defendant as the petitioner and proceeded to get confirmation of grant whereby the 1st defendant distributed the estate giving himself ½ acre, the plaintiff ½ acre and the 2nd defendant 2 acres.
 29. The 2nd defendant averred that when she learnt of that Succession cause and the outcome on 14th April 1999, she filed summons for revocation of grant and after long and protracted dispute, on 14th December 2020 the court ruled that ½ acre of the estate be set aside pending the ownership tussle between the plaintiff and the personal representatives and the balance of the estate was awarded to her and her children.
 30. The 2nd defendant contended that under the circumstances the court should find that the plaintiff has not been in peaceful and uninterrupted possession of ½ acre of L.R Kiirua/Naari-Maitei/505 for the duration she has been there but that her stay was facilitated first by the suit she abandoned and secondly by that Succession dispute. The 2nd defendant further contended that the plaintiff cannot rely on the doctrine of adverse possession since she entered the land with consent of the registered owner on agreement of sale which the plaintiff breached by suing for specific performance only 53 days after the date of the sale agreement.
 31. DW1 was Cecerina Karoki M'guatu who testified that the late M'guatu M'Itania was her husband. She further testified that she knew the plaintiff when she went to her husband to buy land from him. DW1 stated that the 1st defendant was her step son.
 32. DW1 relied on her replying affidavit and adopted her witness statement dated 21st April 2022 as her evidence in chief. She also produced a copy of confirmed grant, copy of application for revocation of grant, copy of petitioner's Replying Affidavit and a copy of the judgement in Succession Cause 401 of 1994 as D. Exhibit 1-4 respectively. She was cross examined and re-examined.
 33. The 2nd defendant testified that she never saw the 1st defendant when the plaintiff came to their home. It was her evidence that her late husband intended to sell 0.5 acres of land as he was sickly and that was the reason he wanted to sell the land to get money to take to hospital. She further testified that 0.5 acres



- was selling at Kshs 10,000 but her husband sold it at Ksh 7,000/=. She testified that she was not home at that time but when she came her husband had been given KShs.1000/= by the plaintiff.
34. The 2nd defendant testified that the plaintiff visited their home twice, the first time in the company of her brother when no payment was made. That during the second visit, the plaintiff was in the company of M'Marete and Francis Kyambi. She reiterated that when she came back her husband told her that they had made a payment of KShs. 1000/=.
 35. The 2nd defendant testified that she was not present when the agreement between the plaintiff and her late husband was made at Maitai Rimita Advocates office but stated that the same was later shown to her. She stated that she believes that the agreement was taken to the hospital because her husband was sick.
 36. It was the evidence of D.w 1 that when the agreement was signed at Rimita advocate's office her husband was paid KShs.2,400/= , making a total of 3,400/=. She further confirmed that there are some dealings over the sale of land between her husband and the plaintiff that were not disclosed to her and did not object that by 17th December 1988 the plaintiff had paid KShs 5,400/= because she was paying in instalments and therefore there was a balance of KShs 1,600/=. D.w 1 stated that in August 1989, the plaintiff confronted her late husband over the land requesting for a transfer but was only shown a place to put up a structure and that the transfer would be done when he returned from hospital. That the plaintiff took possession of the land in 1989 and that she is still on the land to date. The 2nd defendant further stated that the plaintiff erected some structures on the land and has also planted some crops such as maize.
 37. The court directed parties to file and exchange written submissions which both parties complied. The plaintiff filed her submissions on 27th March 2023 through the firm of Kiautha Arithi & Company Advocates while the 2nd respondent filed her submission dated 26th April 2023 through the firm of M/ S Wilson Mburugu & Company Advocates

Plaintiff's Submissions

38. The plaintiff cited the provisions of section 107, 108 and 109 of the [Evidence Act](#) and relied on the case of Kenya Power & Lighting Company Limited Vs Pamela Awino Ogunyo [2015] eKLR, and submitted that she tendered sufficient evidence. Counsel also cited section 7, 13, 17 and 38 of the [Limitation of Actions Act](#) and submitted that the combined effects of these sections is to extinguish the title of the proprietor of the land in favour of the adverse possessor at the expiry of 12 years of occupation of the suit land. The plaintiff's counsel also cited Section 28 (h) of the [Land Registration Act](#) which recognizes overriding interests on land some of which are rights acquired or in the process of being acquired by virtue of any written law relating to the limitation of actions or by prescription. The plaintiff's counsel also pointed out that under Section 7 of the [Land Act](#), prescription is one of the ways of acquisition of land.
39. Counsel for the plaintiff submitted that the law on adverse possession is also well settled and relied on the case of Wambugu – v- Njuguna (1983) KLR 173 Mbira Vs Gachuhi (2002) 1 EALR 137, Jandu Vs Kirpal & another (1975) EA 225 and Mtana Lewa Vs Kahindi Ngala Mwangandi [2015] eKLR on the ingredients for adverse possession. It is further submitted that a party claiming adverse possession ought to prove that his possession is nec vi, nec clam, nec precario, that is peaceful, open and continuous. That the possession should not have been through force not in secrecy and without the authority or permission of the owner.
40. The plaintiff's advocate submitted that the plaintiff entered into an agreement dated 17th December, 1988 for ½ of an acre which was excised from the main land LR NO. Kiirua/Naari-Maiti/505 for a



consideration of Kshs. 7,000/=. That the deceased who was the seller refused to obtain land control Board consent and that as provided in Section 8(1) of the *Land Control Act*, if consent is not obtained within six months after making the agreement, the same becomes null and void. It is the plaintiff's submission that the time for adverse possession started running from 17th June 1989, adding that she is still in occupation to-date.

41. It is further submitted that through the evidence, and the documents produced before court, it is satisfactory that the plaintiff has been in open, continuous and exclusive occupation and utilization of the suit land hence entitled under the doctrine of adverse possession. The plaintiff urged the court to allow her claim as prayed with costs.

2nd Defendant's Submissions

42. It is the 2nd defendant's submission that the plaintiff entered onto the suit land with the consent of the registered owner and that her possession was interrupted after 9 years and 29 days when the 2nd defendant challenged her acquisition in court and her further possession was afforded by dispute in the succession cause which was pending in court until 14th December, 2020. It is therefore the 2nd defendant's submissions that the plaintiff has not proved her case and should be dismissed with costs to the 2nd defendant and that to do justice to the parties, and to avoid further ligation order the plaintiff to vacate the land within a period the court considers appropriate. Counsel for the 2nd defendant relied on *Mistry Valji Vs Jenandia Renendra Raichand and 2 others* [2016] eKLR and *Ruth Wangari Kinyagia Vs Josepaine Muthoni Kinyanjui* [2017] eKLR.

Analysis And Determination

43. The court has carefully read and considered the pleadings by the parties, the evidence adduced, submissions, authorities cited and the relevant provisions of law and finds that the issues for determination are-;
- I. Whether the plaintiff has met the threshold for grant of orders for adverse possession
 - II. Who should bear the cost of the suit.
44. The current suit though seeking ownership is based on Limitation i.e adverse possession. The issue for determination in the suit is whether or not the plaintiff has established ownership by way of adverse possession. Admittedly the plaintiff entered the land pursuant to a sale agreement. The plaintiff also filed a claim for specific performance for the sale of the suit land which was dismissed for want of prosecution.
45. The Key issue for determination is whether or not the plaintiff has acquired title by way of adverse possession. If yes when did time start running for purpose of determining these rights and finally whether or not the plaintiff is entitled to the prayer in the originating summons.
46. It would appear from the record that the plaintiff and the 2nd defendant's husband entered into an agreement for sale dated 17 December 1988 to sell the suit property to the plaintiff at the sum of Kshs. 7,000/= . It is the 2nd defendant's case that the plaintiff paid Kshs. 4,500 leaving a balance of 1,600 which was not disputed by the plaintiff who then filed suit against the deceased seeking specific performance. This is the contractual aspect of a time claim by the plaintiff against the 2nd defendant's deceased husband which was dismissed. In any case the plaintiff stated that the deceased who was the seller refused to obtain land control Board consent as provided in Section 8(1) of the *land Control Act* within six months making the agreement null and void.



47. It is not in dispute that the plaintiffs' claim is based on adverse possession. What is adverse possession? The *Limitation of Actions Act* Cap 22 does not define adverse possession. It commences in wrong and is aimed against a right of the true owner. The person alleging a right of title on adverse possession must show by clear and unequivocal evidence that his possession was not permissible, open, with the knowledge of the true owner and excluded the true owner from the enjoyment of his property.
48. The law in respect to adverse possession is now settled. For one to succeed in a claim of adverse possession, he must satisfy the following criteria stated in the case of *Maweu Vs Liu Ranching and Farming Cooperative Society* 1985 KLR 430 where the court held-;
- “Thus, to prove title by adverse possession, it was not sufficient to show that some acts of adverse possession had been committed. It was also to prove that possession claimed was adequate, in continuity, in publicity and in extent and that it was adverse to the registered owner. In law, possession is a matter of fact depending on all circumstances.”
49. Has the plaintiff proved adverse possession? In the case of *Samuel Miki Waweru Vs Jane Njeru Richu*, Civil appeal No. 122 of 2001, the Court of appeal delivered the following dictum:
- “... It is trite law a claim of adverse possession cannot succeed if the person asserting the claim is in possession with the permission of the owner of, or in (accordance with) provisions of an agreement of sale or lease or otherwise. Further, as the High Court correctly held in *Jandu V Kirpal* [1975] EA 225 possession does not become adverse before the end of the period for which permission to occupy has been granted.”
50. Similarly in *Wambugu Vs Njuguna* (1983) KLR 172 the Court held.
- “Where the claimant is in exclusive possession of the land with leave and license of the appellant in pursuance to a valid agreement, the possession becomes adverse and time begins to run at the time the license is determined.”
51. The record shows that the plaintiff entered into the suit property pursuant to a sale agreement signed on 17th December, 1988 and in hot pursuit to a purchaser's right as a bonafide purchaser for value the plaintiff filed suit for specific performance. The entry in 1988 was therefore permitted by the 2nd defendant's deceased husband.
52. In the case of *Public Trustee Vs Wanduru*, Madan J.A stated as follows
- “... that adverse possession should be calculated from the date of payment of the purchase price to the full span of twelve years if the purchaser takes possession of the property because from this date, the true owner is dispossessed off possession. A purchaser in possession of the land purchased, after having paid the purchase price, is a person in whose favour the period of limitation can run.”
53. Did the filing of summons for revocation of the grant stop time from running? Once time begins to run for purposes of limitation it will continue to do so unless the true owner brings an action to recover the disputed land. *Re Berson* (1914) 2 Ch 68 page 76. The action must be brought to recover the disputed land. The true owner must seek to retake possession. It is trite law that time stops running the moment a suit is filed by the title owner.



54. In the case of M'Ikiara M'Rinkanya & another Vs Gilbert Kabeere M'Mbijiwe, Civil appeal 124 of 2003 [2007] eKLR the court held that:

“... From the above analysis it is clear that a judgment for possession of land should be enforced before the expiry of the 12 years limitation period stipulated period, in section 7 of the Act. If the judgment is not enforced within the stipulated period, the rights of the decree holder are extinguished as stipulated in section 17 of the Act and the judgment debtor acquires possessory title by adverse possession which he can enforce in appropriate proceedings. So quite apart from the authority of Lougher Vs Donovan [1948] 2 All ER 11, which we consider as still good law in this country, and the previous decision of this Court, there is a statutory bar in section 7 of the Act for recovery of land including the recovery of possession of land after expiration of 12 years.

55. It is trite law that to acquire land by way of adverse possession, one has to prove he entered the land without the consent of the registered owner, remained there in open, peaceful, continuous, exclusive and uninterrupted possession for 12 years.

56. In the instant case, the entry was with the permission of the registered owner. Further, there have been cases filed in court in respect of the suit land. These cases include one by the plaintiff seeking specific performance but which was dismissed and succession cause proceeding. I am not therefore persuaded that the plaintiff has brought herself within the confines of adverse possession. The plaintiff's occupation was not peaceful and was interrupted by the cases referred to. Further, the plaintiff's entry was with the permission of the registered owner. In that regard, the plaintiff's suit must fail and I dismiss it with costs.

57. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 12TH DAY OF JULY, 2023

C.K YANO

JUDGE

In The Presence Of

Court assistant – V. Kiragu

Nyaga for plaintiff

Atheru holding brief for Mburugu for 2nd defendant

1st defendant present in person

