



**Ngonge & 2 others v Dulo (Environment & Land Case E042 of 2022)  
[2023] KEELC 19031 (KLR) (3 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 19031 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE E042 OF 2022**

**LL NAIKUNI, J**

**JULY 3, 2023**

**BETWEEN**

**ANTONY KALUME NGONGE ..... 1<sup>ST</sup> PLAINTIFF**

**SIMEON ALLINGTON JEFWA ..... 2<sup>ND</sup> PLAINTIFF**

**JUMWA NZAVILA MBETSA & 11 OTHERS ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**DAVID OYUGI RIWA DULO ..... DEFENDANT**

**JUDGMENT**

**I. Preliminaries**

1. The Judgment herein relates to the civil suit instituted by the Plaintiffs herein. It was filed through the Originating summons dated and filed on April 14, 2022. The suit was brought under the Premises of Section 7, 13, 17, 37 and 38 of the Limitation of Action, Act, cap 22, Order 37 Rules 7, 8, 11, 13, 14, 15, 16, 17, 18 and 19 of the Civil Procedure Rules 2010.
2. Later on, upon obtaining the leave of Court, the Plaintiffs filed an Amended Originating Summons dated March 8, 2023. On September 28, 2022, the Plaintiffs were ordered to effect the service upon the Defendant by way of substituted means under the Provisions of Order 5 Rule 17 of the Civil Procedure Rules 2010.
3. Pursuant to that on September 26, 2022 the Plaintiffs filed 7 paragraphed Affidavit of Service Sworn by Samwel Musyoka – a Licensed Court Process Server duly authorized to court documents hence competent to swear the said affidavit dated September 26, 2022 held, inter alia:-



PARA 4:-

“That on the September 13, 2022 I brought the Daily Nation Newspapers to ascertain if the said advertisement was gazette.”

- 5 “That as I have annexed herein, the orders of substituted service by advertisement made by this Court on July 5, 2022 was fully complied with and annexed herein an original copy of the advertisement”
4. On February 20, 2022 the honorable court being satisfied that there was the proper service done the Defendant despite this the Defendant failed to enter appearance filed Defence and/or comply with the Provision of Orders 6, 7 and 11 of the Civil Procedure Rules for that reason therefore the matter was fixed for hearing in accordance with the Provisions of Order 10 Rules 4, 6 and 7 of the Civil Procedure Rules 2010 on March 20, 2023.

## **II. The Plaintiff's Case & the testimony**

5. The Plaintiff's case is about a claim to be entitled to the parcel of land known as Pot No. 195 Mtwapa Scheme Kioutani Mawamba Timbe, Timbe by virtue of land adverse possession. The Plaintiffs sought for the following questions to be determined by the Honorable Court
- a. Whether the Plaintiffs be declared to have become entitled by virtue of adverse possession of 40 years of the suit property registered under the names of the Defendants/Respondents.
  - b. Whether the Plaintiff/Applicants were entitled to be duly registered as a proprietor of the suit property by virtue of adverse Possession.
  - c. Whether the Honorable Court be pleased to order that the Land Registrar, Mombasa Lands Registry deletes the Respondents names herein and register the names of the Plaintiffs herein in place thereof absolutely and at no costs?
  - d. Whether the Honorable Court be pleased to order that the Registrar Mombasa Land Registry to reconstruct the parcel file in respect of the property in case the original file cannot be traced.
  - e. Whether the Honorable Court be pleased to order that after the reconstruction of the parcel file, the Registrar in Charge to issue a Provincial title and/or Certificate of title in favour of the Plaintiffs/Applicants without Gazettement.
  - f. Whether the Honorable Court be pleased to order that the Applicants be released from any obligations to pay outstanding rates in respect of the suit property and County Rates Department to alter its records to reflect the names of the Plaintiffs/Applicants to be the rate payer.
6. On March 20, 2023 the Plaintiff summoned two (2) witnesses who testified as follows:-

Examination in Chief of PW - 1 by M/s. Waithera Advocate.

PW - 1 was sworn and testified in Kiswahili language. He provided his name as Antony Kalume Ngonge a holder of the National identity card being numbers 10305014. He was born in 1968 and lived at Mtepele Mtwapa within the County of Kilifi. He was a fisherman. He recorded his statement on 8<sup>th</sup> March, 2023 and wished to rely on it for his evidence. Further that he filed a list of four (4) documents which he produced as his evidence marked



as his Plaintiff Exhibit Numbers 1 to 4 accordingly. It was filed on 14<sup>th</sup> April, 2022. Later on he filed a second list of documents dated 8<sup>th</sup> March, 2023. These documents were: -

- a. A list of 14 people making a claim to the suit land.
  - b. A copy of the certificate of search to the land Reference No. Kilifi/Mtwapa/195 measuring 19.2 HA dated August 26, 2020.
  - c. A set of copies of photographs.
  - d. A copy of letter from the National Land Commission (NLC) Kilifi County dated September 3, 2021.
  - e. A copy of report from the National Land Commission Kilifi dated June 11, 2018.
7. PW - 1 stated that he filed this case on behalf of the family of Ngonge. He held that their late father Ngonge Ngoma came and settled on the suit land way back in the year 1960s before the demarcation of the scheme. During the demarcation of the scheme his father was to have been issued with a letter of offer. However, they later on discovered that their portion was registered to somebody else by the name of Stephen Safari Kirao. Whom they never saw on the grounds or know his whereabouts PW-1 claimed that on doing further follow up they realized that the same person obtained title deed and later on sold it to the Defendant. But still the said Defendant also never stepped on the ground. They reported the matter to the National Land Commission.
8. His evidence was that he was born and lived on the land. The NLC guided them to conduct an official search to now the actual status of the land and which they undertook accordingly. The search indicated that the land was registered in the names of David Oyugi Riwa Dalo the Defendant herein, as the owner from the year June 17, 1988. They waited and went back to the NLC who upon conducting a thorough interrogation of the matter recommended that they file the case in court and that is why they were in Court.
9. PW - 1 testified that they had been farming on the land whereby they planted coconut trees and maize plantation thereon. He indicated that they had never left the land for the past 40 years and neither had their living on it been interrupted by anyone. According to him they lived on the suit land as four (4) families namely:-
- a. Simeon Allington Jefwa Ngome.
  - b. Kesi Karisa.
  - c. Kenga Charo Chiro.
  - d. Katana Maseka.

PW - 1 informed court that all these families named herein were present in court. They had all built houses using iron sheet. They had never seen the Defendant on the land. Hence it could never be claimed they were on the land following his permission. The land measured 40 acres approximately. They had never seen the title and were told that the file was missing.

In conclusion, he urged the court to allow the suit and grant the prayers sought from the pleadings with costs.



### **Examination in Chief of PW - 2 by M/s. Wiathera Advocate**

10. PW - 2 testified and was sworn in Kiswahili language. He identified himself as Simeon Allington Jefwa Ngome a holder of the Identity Card bearing numbers 0690600 and Date of Birth in the year 1952. He was the former Assistant Chief for Kidutani Jeuri. He was also a farmer.
11. He was in court to tender evidence on the matter of this case. He lived on the Plot No. Kilifi/ Mtwapa/195/Settlement Scheme since the year 1960. He was invited there by the father of Antony Kalume the PW-1 herein. He had lived on the suit land for over 12 years and hence need to be given and/or registered to the land.
12. He was a farmer where he cultivated maize, Cassava, vegetables and Coconut. He lived on the land with his family since the year 1980. He had recorded a witness statement dated March 8, 2023 and wished to adopt and rely on it so far there had been nobody who had claimed ownership to the land. He had never seen the Defendant. He had no permission from the Defendant to occupy and use the land.  
  
The land measured approximately 47 acres or thereabout. There were five (5) families on it. That was all.

### **III. Submissions**

13. Upon the closure of the Plaintiffs case they were granted 21 days to file and serve their written submissions. Thereafter the court reserved a date for delivery of the Judgement accordingly.

#### **A. The Written Submissions by the Plaintiffs**

14. On April 12, 2023, the Learned Counsels for the Plaintiffs the Law firm of Messrs. Okonji Wanjira and Company Advocates filed their written submissions upon the Closure of the Plaintiffs formal proof case as directed by court aforesaid. M/s. Waithera Advocate commenced her submissions by stating that the Plaintiffs instituted the suit by filing an Amended Originating Summons dated March 8, 2023 whereby the Plaintiffs are Claiming title of all that parcel of land known as Land Reference No. 195/ Mtwapa Scheme Kidutani Mawamba, Timbe Timbe measuring 19.2 Ha (Approximately 47.4 acres) found within the County of Kilifi in accordance with the Certificate of Search conducted on August 26, 2020 annexed thereto by land adverse possession. She provided all the questions that the Plaintiffs intended the Honorable Court to determine in its final decision and as found from the filed pleadings thereof.
15. The Counsel further brought out the following grounds in support of the Plaintiff's case. These were:-
  - a. That they had been in occupation of the suit property and hence openly, peacefully and as of right been in possession and occupation of the suit property for over forty (40) years.
  - b. That they lived on the suit property for the foregoing period of time, the Plaintiff/Applicants acquired prescriptive rights and the Respondents had never upset the status.
  - c. That the Respondent was the registered proprietor of the said parcel of land.
16. The Learned Counsel stated that PW-1 and 2 testified in court whereby they stated having taken occupation of the suit property in the year 1980s. they had been living on the suit property as four (4) families. They produced photographs showing the homesteads, food crops planted, livestock, letters and report from the National Land Commission based at the County of Kilifi.



17. The Counsel also underscored the fact that the witnesses testified that they had been living on the suit land with their families uninterruptedly for over 40 years and had planted some cash crops, rearing of livestock and chicken. They also earned a living through fishing from the Indian Ocean which is adjacent to the suit property.
18. The Counsel stressed on the fact the Defendant had never entered appearance despite having been served by substituted means as ordered by Court. To buttress on her point of law, the Learned Counsel relied on several authorities including:-

“Wilson Njoroge Kamau –Versus- Nganga Muceru Kamau (2020) eKLR , Kasuve –Versus- Mwaani Investment Ltd. & 4 others 1KLR 184 and Walter Kipchirchir Koech –Versus- Tapuyobi W/o. Melili and another (2021) eKLR whereby the Courts held in summary that the doctrine of Adverse Possession was one of the ways of Land acquisition in Kenya as stated under Section 7 of *Land Act*, No. 6 of 2012, Sections 7, 13 and 38 of the Limitation of Action Act Cap 22. Further that for the Applicant to be entitled land by Adverse Possession, the Claimant must prove that he had been in exclusive possession of the land openly and as without interruption for a period of 12 years either after dispossession the owner or by discontinuation of the possession by the owner on his own volition.

19. Additionally, the courts held:-

“ the onus is on the persons claiming adverse possession.

“To prove that they have used the land which they claim as of right Nee Vi, Nec Clam, Nec Precavio (No force; No Secrecy, No evasion) so the Applicants must show that the Company had knowledge (or means of knowing actual or constructive) of the possession or occupation. The possession must be continuous. It must not be broken for any temporary purpose or by any endeavors to interrupt it or by any recurrent consideration”

The Courts also held that the main elements of adverse possession that a claimant has to prove include:-

- i. Actual.
- ii. Open.
- iii. Exclusive.
- iv. And hostile possession of the land claimed.

The burden of proof was always on the claimant to prove all these elements and ingredients do exists.

20. In conclusion the Learned Counsel prayed for the suit to be allowed as per the prayers sought from the pleadings accordingly.

#### **IV. Analysis and Determination**

21. I have carefully read and analyzed through all the filed pleadings, both oral and documentary evidence adduced in court by PW-1 and PW-2, the written submissions, the cited authorities by the Plaintiffs the relevant provisions of the *constitution of Kenya*, and the statutes.
22. I have carefully read and analyzed all the pleadings herein, both the oral and all the documentary evidence adduced in court, the written submission, the cited authorities made by the Plaintiffs and the relevant provisions of the *Constitution of Kenya, 2010* and the statutes. There are three (3) key issues



framed herein for determination in order for the Honorable Court to arrive at an informed, reasonable, Just and fair decision. These are:

- a. Whether or not the Plaintiffs have acquired title by way of adverse possession. If yes when did time start running for purposes of determining these rights;
- b. Whether or not the Plaintiffs are entitled to the prayers in the suit in form of the originating summons.
- c. Who will bear the costs of the Suit.

ISSUE NO. a). Whether or not the Plaintiffs have acquired title by way of adverse possession. If yes when did time start running for purposes of determining these rights;

23. Under this sub heading, the main substratum of this suit is on the acquisition of title through the Doctrine of Land Adverse Possessions. For that reason, therefore, it is critical that the Court expends a little bit of time on the doctrine. The law in respect to adverse possession is now settled. The law on adverse possession is provided for under the Limitation of Actions Act. Section 7 of the Act provides:

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person. Section 13

“(1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 of this Act a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land

(2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and a fresh right of action does not accrue unless and until some person again takes adverse possession of the land.

(3) For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with section 12(3) of this Act, the land in reversion is taken to be adverse possession of the land”.

24. The provision of Section 17 extinguishes the rights of a registered owner where there is a successful claim for adverse possession.

Under the provision of Sections 37 and 38 of the Limitations Act, Cap. 22, clearly stipulated the mode of acquiring title in instances of adverse possession. The provision of Order 37 Rule 7 of the Civil Procedure Rules, 2010 also highlights the procedure. The provision of Section 37 of the Limitation Act states that:

“Where person claims to have been entitled by adverse possession to land registered under any of the Acts cited in section 37, to land or easement or land comprised in a lease registered under any of those acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land. Section 38 of the Limitations Acts states that



Where a person claims to have become entitled by adverse possession to land, he must apply to the High Court for an order that he be registered as the new proprietor of the land in place of the registered owner.”

25. Under the provision of Order 37 Rule 7 of the Civil procedure rules states as follows:-

- “(i) An application under Section 38 of the *Limitation of Actions Act* shall be made by originating summons
- (ii) The summons shall be supported by an affidavit to which a certified extract of the title to the land in question has been annexed.”

The provision of Section 38 on the other hand provides;

- “(1) (1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land.”

26. Legally speaking, for one to succeed in a claim of adverse possession he must satisfy the following criteria stated in the case of “Maweu – Versus - 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”.

27. In the instant case, the question to pose is whether the Plaintiffs have proved adverse possession? In the case of “Samuel Miki Waweru – Versus - 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 – Versus - Kirpal [1975] EA 225 possession does not become adverse before the end of the period for which permission to occupy has been granted.”

28. In the case of “Wambugu – Versus - 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”.

29. In the case of “Public Trustee – Versus - 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”.

30. In this instant case the Plaintiffs had been put in possession the 1960s as the family of Ngonge Ngoma when their father started occupying the land. In the case of “M’ikiara M’rinkanya & Another – Versus - 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 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 – Versus - Donovan [1948] 2 All ER 11, which we consider as still good law in this country, and the previous decisions 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. It follows, therefore, that, to hold that execution proceedings to recover land are excluded from the definition of “action” in section 4 (4) of the Act would be inconsistent with the law of adverse possession...

..as regard recovery of Judgment debts, the construction of Section 4 (4) of the Act by local courts barring recovery after 12 years, is as shown in Lowsley – Versus - Forbes [1999] 1 AC 329 , consistent with construction given by English Courts to Section 2 (4) of the Limitations Act 1939 and its predecessors for over 100 years that a judgment debt becomes statute barred after 12 years.’

31. The Court of Appeal in the case of “Kisumu Civ App. No. 110 of 2016 Richard Wefwafwa Songoi – Versus - Ben Munyifwa Songoi [2020] eKLR opined that a person claiming adverse possession must establish the following:-

- (a) On what date he came into possession.
- (b) What was the nature of his possession?
- (c) Whether the fact of his possession was known to the other party.
- (d) For how long his possession has continued and
- (e) That the possession was open and undisturbed for the requisite 12 years.

Further that for the Applicant to be entitled land by Adverse Possession, the Claimant must prove that he has been in exclusive possession of the land openly and as without interruption for a period of 12 years either after dispossession the owner or by discontinuation of the possession by the owner on his own volition.

32. Additionally, the courts held:-

“the onus is on the persons claiming adverse possession.

“To prove that they have used the land which they claim as of right Nee Vi, Nec Clam, Nec Precavio (No force; No Secrecy, No evasion) so the Applicants must show that the Company had knowledge (or means of knowing actual or constructive) of the possession or occupation. The possession must be continuous. It must not be broken for any temporary purpose or by any endeavors to interrupt it or by any recurrent consideration”



The courts also held that the main elements of adverse possession that a claimant has to prove include:-

- v. Actual
- vi. Open
- vii. Exclusive
- viii. And hostile possession of the land claimed.

The burden of proof is always on the claimant to prove all these elements and ingredients do exist.

ISSUE No. b). Whether or not the Plaintiffs are entitled to the prayers in the suit in form of the originating summons.

33. In the instant case, the Plaintiffs herein contended that their father had been on the suit property since the years 1960s even before the demarcation of the scheme. PW - 1 stated that during the demarcation, his father was to have been issued with a Letter of Offer. However, despite having this legitimate expectation they later on discovered that their portion was registered to somebody else by the names of Stephen Safari Kirao whom they never saw on the ground or know his whereabouts. PW - 1 claimed that they found out that Mr. Kirao was issued with Certificate of title Deed which he later on sold it to the Defendant. It was from the advise from the National Land Commission that upon conducting official search that it revealed the land was registered in the names of the Defendant from 17<sup>th</sup> June, 1988. PW - 1 testified that they had been cultivating coconut trees and maize plantation. They built iron sheet houses. They had been living on the suit property as four (4) families without any interruption from anyone for almost forty (40) years and which was beyond the statutory twelve (12) years claim. They had never seen the Defendant at all and thus the issue of having obtained permission from him was a non issue.
34. In the case of “Kasuve – Versus - Mwaani Investments Limited & 4 others 1 KLR 184, the Court of Appeal restated what a Plaintiff in a claim for Adverse Possession has to prove:-
- “In order to be entitled to land by Adverse Possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right without interruption for a period of 12 years either after dispossessing the owner or by discontinuation of possession by the owner on his own volition”.
35. The key test is that the owner of the land must have been dispossessed or has discontinued possession of the property. It is therefore the view of the Court that the right to Adverse Possession accrued and vested in the Plaintiffs as at 1960. There is no evidence that the Defendant ever retook possession of the suit land nor that he successfully removed or ousted the Plaintiff from the possession of the suit land. The subsequent cases cited above are not helpful either in assisting the Defendants to assert title to the suit land because title by way of Adverse Possession had accrued and vested in favour of the Plaintiffs.
36. The Plaintiffs led evidence that he has been in exclusive control of the suit land and demonstrated his animus possidendi in developing the suit land through Planting and tending tea bushes, growing trees and practicing subsistence farming on the suit land as though it was as of right.
37. In deciding the issue of Adverse Possession, the primary function of a Court is to draw legal inferences from proved facts. Such inferences are clearly matters of law. Thus, whereas possession is a matter of fact, the question whether that possession is adverse or not is a matter of legal conclusion to be drawn



from the findings of facts in the case of ‘Kweyu – Versus - Omuto, C A Civ Appeal 8 of 1990 (as yet unreported)’.

38. Therefore, based on all the surrounding facts and inferences in law herein, this Court is satisfied that the Plaintiffs have proved having acquired title based on the doctrine of Land Adverse Possession as stated out in the provisions of the law. The title of the suit land is being held in trust for the Plaintiffs.

ISSUE No. c). Who will bear the Costs of the suit.

39. It is now well established that the issue of costs is at the discretion of the Court. Costs mean the award that a party is granted at the conclusion of a legal action or proceedings in any litigation. The provision of Section 27 ( 1 ) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the event. By the event it means the results or out come of the legal action or proceedings.
40. In the instant case the Plaintiffs have been able to ably establish their case on the required standards of facts and laws. It follows therefore that the Plaintiffs herein are entitled to costs of this suit to be borne by the Defendants herein.

## V. Conclusion and Disposition

41. The totality of the evidence adduced herein above, it’s the Honorable Court’s legal view, on a preponderance of probabilities that the Plaintiffs have managed to prove their case. For avoidance of doubt, the Court proceeds to grant the following orders:
- a. That Judgment be and is hereby entered in favour of the Plaintiffs as prayed from the pleadings.
  - b. That a declaration be made that all that parcel of land registered in the names of David Oyugi Riwa Dulo in respect to Land Parcel. Plot No. 195 Mtwapa Scheme Kidutani Mwamba Timbe Timbe measuring 19.4 Ha. (approximately 49.9 acres) has been extinguished by the Plaintiff’s Adverse Possession thereof for a period of more than 12 years in accordance with the Provisions of Section 7, 13 and 38 of The Limitation of Action Act and proceedings taken up under Order 37 of the Civil procedure Rules, 2010.
  - c. That an order be and is hereby made that the Plaintiffs have now become the legal and absolute owners to the suit land Plot No. 195 Mtwapa Scheme Kidutani Mwamba Timbe Timbe.
  - d. That an order be and is hereby made to the Land Registrar, Kilifi to hence forth register the Plaintiffs as the absolute proprietors of land parcel. No. Plot No. 195 Mtwapa Scheme Kidutani Mwamba Timbe Timbe.
  - e. That an order be and is hereby made that the Land Registrar be directed that the order herein shall be an instrument of transfer of ownership of the whole suit land from the Defendant to the Plaintiffs herein.
  - f. That an order be made to the Land Registrar, Kilifi to ensure that the parcel file if missing from the record is reconstructed and in the meantime issue the Plaintiffs with Provincial title deed.
  - g. That there be issued an order against the Defendant, its agents, servants and/or any other authorized independent contractor be restrained by permanent injunction orders from entering, interfering and/or dealing on the suit land in any way by demolishing the Plaintiffs houses and/or properties, structures, thereof and/or eviting the Plaintiffs, their families and/or tenants or in any other manner whatsoever interfering with the Plaintiffs and their tenants peaceful occupation of the suit land.



h. That the costs of the suit to be awarded to the Plaintiffs.

it is so ordered accordingly

**JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS VIRTUAL MEANS, SIGNED  
AND DATED AT MOMBASA THIS .....3<sup>RD</sup> .....DAY OF .....JULY.....2023.**

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**HON. JUSTICE L. L. NAIKUNI, (JUDGE)  
ENVIRONMENT AND LAND COURT AT  
MOMBASA**

**Ruling delivered in the presence of:**

- a. M/s. Yumna, the Court Assistant.
- b. M/s. Waithera holding brief for Mr. Ayiro for the Plaintiffs.
- c. No Appearance for the Defendants.

JUDGMENT ELC. E042 OF 2022 (OS) Page **8** of **8** JUSTICE L.L. NAIKUNI

