



**Mbogho & another v Muruu & 2 others (Land Case 217 of 2018)
[2023] KEELC 20822 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20822 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
LAND CASE 217 OF 2018
LL NAIKUNI, J
OCTOBER 12, 2023**

BETWEEN

FAITH SUSAN MBOGHO 1ST PLAINTIFF

ISAAC JEREMIAH MBOGO 2ND PLAINTIFF

AND

JAMES JEMBE MURUU 1ST DEFENDANT

**DAVID MUMBA MURUU (AS THE ADMINISTRATOR OF THE ESTATE OF
THE LATE MUMBA MURUU) 2ND DEFENDANT**

REGISTRAR OF LANDS, KILIFI LANDS REGISTRY 3RD DEFENDANT

JUDGMENT

I. Preliminaries

1. The Judgment before this Honorable Court to the suit instituted by Faith Susan Mbogho and Isaac Mbogho the Plaintiffs herein through an originating Summons dated 27th September, 2018 against the Defendants herein.
2. Upon service the Defendants herein while opposing the suit on 21st November, 2018 they entered Memorandum of Appearance. Later on 20th December, 2018 the 2nd Defendant filed 32 Paragraphed Replying Affidavit while opposing the suit.
3. On diverse dated of 8th May, 2019 and 12th March, 2020 directions were taken under the provisions of Order 37 Rules 11 and 16 of the Civil Procedure Rules 2010 and in particular held that the matter heard by adducing of “Viva Voce” evidence thereof, on 12th October, 2021 the hearing commenced in earnest.



II. The 1st and 2nd Plaintiff's Case

4. From the filed pleadings herein the 1st and 2nd Plaintiff's herein claimed to be the owners of five (5) acres on Plot No. Kilifi/Mtwapa/592 by the way of Land Adverse Possession and therefore the creditors of part of the Estate of the Late Mumba Muruu Kailo also known as Mumba Muruu (Hereinafter referred to as "The Deceased") who died intestate on 31st May, 2012 for determination of the following questions: -
- a. Whether the 1st and/or 2nd Plaintiffs were entitled to proprietorship of five (5) acres on Plot No. Kilifi/Mtwapa/592 by virtue of the Limitation of Action Act, Cap 22 and by way of adverse Possession.
 - b. Whether the 1st and/or 2nd Plaintiffs as the occupants of five (5) acres on Plot No. Kilifi/Mtwapa/592 by virtue of the Limitation of Action Act and Adverse Possession were lawful creditors of the Estate of the Late Mumba Muruu Kailo also known as Mumba Muruu.
 - c. Whether the 1st and 2nd Plaintiffs prescriptive rights and proprietorship under the Doctrine of Adverse possession extinguished the Late Mumba Muruu Kailo also known as Mumba Muruu's title to five (5) acres of Plot No. Kilifi/Mtwapa/592.
 - d. Whether the 1st and 2nd Defendants as the Legal Administrators of the Estate of the Late Mumba Muruu Kailo also Known as Mumba Muruu were duly bound to recognize the Plaintiffs interest and ownership rights of five (5) acres on the parcel of land known as Plot No. Kilifi/Mtwapa/592 measuring 4.4 Ha which approximately is 12.0 acres as a liability of the Estate and to settle the same by sub-dividing and transferring the subject land to the 1st Plaintiff.
 - e. Whether the 3rd Defendant lawfully and validly registered and issued a Title Deed to Mumba Muruu Kiako also known as Mumba Muruu as the owner of Plot No. Kilifi/Mtwapa/592
 - f. Whether the late Mumba Muruu Kailo was registered as the owner of the suit property he became a trustee and held the title of the portion measuring five (5) acres on behalf of the 1st and 2nd Plaintiffs.
 - g. Whether the 3rd Defendant should rectify and cancel the registration of the entire suit land in the name of the late Mumba Muruu Kailo also known as Mumba Muruu.
 - h. Whether the 3rd Defendant should effect the sub-division and register the five (5) acres of the suit land in the name of the 1st Plaintiff.
 - i. Whether in default the Deputy Registrar of this Honorable Court should be ordered and/or directed by the Honorable Court to execute all the necessary documents to complete the sub-division and transfer of the five (5) acres of the suit plot to the 1st Plaintiff and to give effect to the Honorable Court's decision.
5. In a nut shell the 1st and 2nd Plaintiff held that on or about the 26th August 1986 the Late Mumba Muruu also known as Mumba Muruu Kailo entered into a sale agreement with the brother of the 1st Plaintiff, the 2nd Plaintiff for the purchase of Land measuring five (5) acres at Mtwapa settlement scheme/plot 291 at a purchase price of a sum of Kenya Shillings Seventy Thousand (Kshs. 70,000/=). The said agreement was witnessed by one of the Administrators of the Estate namely John Jembe Muruu. The 2nd Plaintiff paid the full purchase price and was issued with a receipt dated 15th November, 1986. They paid stamp duty for the sale agreement. On 11th August, 1986 the Kilifi



Settlement office approved the transfer of the subject property to the 2nd Plaintiff. Thereafter Mumba Muruu and the 2nd Plaintiff applied for the Land Control Board consent to sub-divide and sell the suit property. On 25th September, 1996 the Bahati Land Control Board approved the sub-division of the Mtwapa Scheme 291 into Plot No. 291 A measuring seven (7) acres and Plot No. 291 B measuring five (5) acres and the sale of Plot No. 291 B from Mumba Muruu to the 2nd Plaintiff. However, the registration of 2nd Plaintiff stalled because of the failure of Late Mumba Muruu to sign the Mutation forms without any reason or justification Isaac Jeremiah Mbogo 2nd Defendant immediately took possession of the subject property in the year 1986. Both him and the 1st Plaintiff had openly occupied and fenced the suit property using chain link barbed wire and mangrove poles for more than thirty (32) years by cultivating the land season after season, keeping cattle growing an orchard and forest, connecting water and electricity and building a house. There are indigenous trees and Plaintiff used it for commercial purposes.

6. Neither the late Mumba Muruu nor his family had ever encroached nor possession the suit land occupied by the Plaintiffs. No action or proceedings have been filed by the said family. In March 2013 the 2nd Plaintiff filed a Caution against the suit property to safeguard their interest. The deceased instituted a succession cause – HCCC (Mombasa) Succession cause No. 502 of 2014 but where the parcel for 4.4 HA 592 was wrongly issued in the sole name of the Deceased despite the approval of the sub-division carving out five (5) acres by the Bahati Land Control Board and Kilifi Settlement Scheme offices. The legal Administration failed to disclose material facts and take into account the 1st and 2nd Plaintiffs' interest in the suit property.
7. In summary the 1st and 2nd Plaintiffs prayed for:-
 - a. Declaration by this Honorable Court that the five (5) acres of Mtwapa Settlement Scheme Plot No. 291 later registered as Kilifi/Mtwapa/592 does not constitute part of the Deceased's Estate.
 - b. A declaration that the 1st Plaintiff is the rightful owner of the five (5) acres of Plot Kilifi/Mtwapa/592 by virtue of Land Adverse Possession for more than Sixteen (16) years.
 - c. A declaration that the 1st and 2nd Plaintiffs prescriptive rights and proprietorship under the Land Adverse Possession extinguished the late Mumba Muruu.
 - d. A declaration that the 3rd Defendant's action of registering and issuing of a title deed to Mumba Muruu Kialo.
 - e. A declaration that upon the registration of the late Mumba Muruu as the registered owner of the suit land, he became a trustee and held a title for the benefit and on behalf of the 1st and 2nd Plaintiffs.

The Evidence adduced by the Witnesses The 1st & 2nd Plaintiffs summoned three (3) PW - 1, PW - 2 and PW - 3 who testified as follows:- Examination in Chief of PW – 1, 3- M/s. Katisya Advocate

8. PW – 1 was sworn and testified in English language. Her name is Faith Susan Mbogo. She lived at Nyali, Mombasa. My national identification card bearing No. 5174064 issued on 24th August, 2011 – Plaintiff Exhibit 1. She recalled swearing an affidavit dated 27th September, 2018, she would like to adopt the supporting affidavit as her evidence. She was in Court as she was being questioned on how she acquired her land. The land was in Kikambala, Kilifi Plot No. 592 Sub-divided to five (5) acres which were hers. The remaining 7 acres belonged to Mumba Muru family. She had been occupying this land from the year 2002 when she retired from the UN, New York. Her brother, Jeremiah Mbogho,



- sold it to her at small fees. From that time, she had been on the land and cultivating it. In the year 2009, they went to the land offices but they could not get the title deed. They started following on the title.
9. He gave her the land from the year 2002. i.e. 592 B for 5 acres and 592 A was for Mumba Muruu – 7 acres in the year 2002. She started cultivating it. She had cattle and poultry which she supplied products to Nyali. It became laborious and she stopped. It' was not a forest. Her brother introduced her to the family of Mumba Muruu. From that time, she became the owner of the land. She could not get the title deed. But in the year 2012, she discovered that the family of Mumba Muruu had gotten the title deed for both the portion i.e. 592A and 592B being Certificate of Title deed for parcel LR No. Kilifi/Mtwapa/592 – 4.4. HA as seen from the further affidavit dated 21st March, 2019. The title was in the names of Mumba Muruu. In the year 2013, the family called her brother. I accompanied him. They told the Plaintiff to return back the land. PW – 1 was furious and told them that they were not discussing that issue. They left out of rage.
 10. It was from then that they filed this Civil Court case. She had been coming for three years. She had water there, a 2-bedroom permanent house – stone, trees as seen from the photographs annexed to the supporting affidavit, She would like to have the matter resolved. She was not living there now. It was land reserved earmarked for road construction to Lamu. She needed compensation. She would like to be given the land as prayed. Mr. Mumba Muruu died before in the year 2012, they got the title deed after Mumba Muruu had died. She filed the suit together with her brother Isaac Jeremiah Mbogo. She had no problem with the Land Registrar, 3rd Defendant herein. She would like to had the documents annexed to be adopted as Plaintiff's Exhibit 2 to 21 to be adopted (Refer to Paragraph 46 of the supporting affidavit). She produced the following documents:- (c) Sale agreement; (d) Receipt; (e) Letter of transfer

Cross Examination of PW – 1 by Mr. Origi Advocate

11. She came to the property from year 2002. She had the sale agreement with her brother. The sale agreement was evidence of occupation. The deceased was the initial owner of the land. Her had a sale agreement with the deceased. When she came in 2002. He had been residing in Voi and not in her occupation. He had been caretaker. He was residing at Voi.
12. The deceased entered into an agreement with her brother dated 2nd January, 2002. There was no witness and no stamp duty. She was not there when her brother and Mumba Muruu entered the agreement. She was not a witness to any payment. She was not aware of any business on the transaction between her brother and Mumba Muruu hence the same could be expunged from the record. She was not aware of any sub - division done in was 1986 (paragraph 8) of supporting affidavit. She was not there (Paragraph 10) 4 she was not there on any matter before year 2002. Her brother allowed her to occupy the suit. She resided at Nyali. She had never resided on the land. She had the one who constructed the fence. She had no evidence to proof that she constructed the fence apart from the photographs. She knew her brother had the permission of the 1st and 2nd Defendant to be in occupation of the land. She went to the land registry and they never found the Mutation Form. She was aware that her brother had no title deed when she entered into the sale agreement with him. By the time they called in they never have a title deed. It was the year 2016 they learnt from KeNHA that the road was earmarked for road construction to Lamu. She lived at Nyali it's her workers, and plantation that were there. She had only produced photographs. She wanted compensation for the use of the land but that was not the reason she purposely came to court. There was nothing to show the – water bills exhibit in paragraph 10 of the further affidavit to the suit land – apart from Bomani area; and account No. They showed she lived on property for 12 years though she lived at Nyali Estate. This was the first time she ever interacted with the 1st and 2nd Defendants as from January 2002.



Re - Examination by M/s. Katisya Advocate

13. In the year 2002 when her brother informed her about the land. She visited and found the plantation on cassava, coconut. He had tilled the land. It was a planted forest. She had blue gum, e.t.c. She had 30 mango trees. She tilled the land though she lived at Nyali. She knew the 1st and 2nd Defendants gave them permission but she was not there. That is all.

Court:-

The Court needs to know exactly when the deceased died. To get information from the succession cause No. 504 of 2014 Mombasa.

Examination in Chief of PW - 2 by M/s. Katisya Advocate.

14. PW – 2 was sworn and testified in English language. He identified himself as Isaac Jeremiah Mbogho. He was a holder of a National identity card bearing numbers 1123379 issued on 4th January, 2011 – Plaintiff Exhibit. He was the 2nd Plaintiff in the case. He had filed a Supporting Affidavit dated 15th October, 2021. It was filed on 18th October, 2021 and adopted as Plaintiff Exhibit. The deceased and him entered into a Sale Agreement dated 26th August, 1986 for the purchase of a Plot measuring 5 acres for a sum of Kenya Shillings Seventy Thousand (Kshs. 70,000/=). They obtained consent from the Land Control Board for the property. They received a consent from the Kilifi Settlement Scheme. The seller was Mumba Muruu Kailo, the deceased. The entire plot measured 12 acres. It was hived off from the main parcel of land getting him the 5 acres. He took possession of the property. He fenced it and started seeking for the title. He put up a structure and a fence around it. There was a farm worker. He was taking care of the land. The land was surveyed and they derived the 5 acres from it. He planted coconut trees.
15. He visited the Kilifi offices for the title deed but every time they would only be getting unhelpful answers. Eventually, it came to his knowledge in the month of February 2012, that a title deed had been issued of the whole 12 acres. Earlier in 1988 the family of Muuru sold him one (1) acre. But in the year 1988 they changed their mind. They asked for a return of a 1 acre back to him and paid a sum of Kenya Shillings Fourteen Thousand (Kshs. 14,000/=). They told PW – 2 that the land was not measuring 12 acres. He guessed perhaps they were doing that as they now had a large family. He attached several documents under Paragraph 41 (a) to (r) of the Supporting Affidavit dated 15th October, 2022 as the Plaintiff documents.

Cross Examination for the PW - 2 by Mr. Origi Advocate

16. PW – 2 was aware that the property was under a settlement scheme. When dealing, the wife was not involved. He took possession of the land. He had never lived on the property. He began to pursue the title as soon as they concluded the payments and the transaction in year 1986. Under Paragraph 10 of the Supporting Affidavit (Refer) it was in the end of the year 1986. By this time, there was breach of contract. It was the surveyor who signed the Mutation form. He pursue the breach by reporting to the Land Office.
17. He took possession of the property from the time he bought it. Mr. Muruu did not have to allow him to cultivate the crop. He needed not to have any permission from Mr. Muruu as he had already purchased the property. After employment he retired. He was never a resident of the property. The trip to Kilifi became cumbersome and hence he decided to enter into an agreement with his sister – the 1st Plaintiff. He did not have a title deed by the time of testifying in Court. There was no consent from Mr. Mumba Muruu as it was not necessary. From there the sister – Faith Mbogho - continued with



using the land. He bought a portion measuring 5 acres and left behind 7 acres. He had not produced any survey report as a support of the case. He registered the sale agreement on 8th August, 2012. But for the one with his sister was registered and dated 2nd January, 2002. They were taking their time as they waited to give priority for the issuance of the title deed.

18. He relinquished the interest of the land to his sister. He introduced the sister to the Mumba family. He introduced her as a neighbor. She resided at Nyali and not on the property. He was refunded a sum of Kenya Shillings Fourteen Thousand (Kshs. 14,000/=) for the 1 acre. He was never offered a refund for the 5 acres. It was a concluded transaction. He would not be agreeable for a refund. His claim was for Land Adverse possession. That is all.

No Re-Examination by Ms/ Katisya Advocate Examination in Chief of PW3 – M/s. Katisya Advocate.

19. PW – 3 was sworn and testified in English language. He identified himself as Mr. Edward Marenye Kiguru. He was a duly Licensed Land Surveyor. He had been practicing as such since the year 1989. He recalled having prepared a Land Survey Report as per the formal instructions of Messrs. Katisya Advocate. The Survey Land report was prepared in respect of Parcel No. Kilifi/592. It was located at the Mtwapa location. His task was to identify the boundary of the plot and give details of the sub-division and where it was located.
20. The plot was located on FR and RM. They carried out the survey exercise of locating the boundaries of Plot No. 592. The boundaries were well defined. Secondary the plot had a sub-division – on the southern part it measured 5 acres (2.03 HA) while on northern position it measured 6 acres (2.377 HA). The boundary was already marked. They found the 5 acres marked as (X) on the map. It was occupied by Faith Susan Mbogho. The 6 acres marked as (Y) was occupied by the descendants of the late Mumba Muruu – the Legal Administrator of the deceased. After the exercise, their finding was that the Plot No. 592 was intact but it was occupied as detailed by two parties. Hence the explanation to this was that there had been an effort to do an excision of the property upto the R/M which had not taken place. He produced the Land Survey Report as Plaintiff Exhibit. That was all.

Cross Examination of PW - 3 Mr. Origi Advocate

21. PW – 3 stated that the Plot was intact. It measured a total of 12 acres. He never conducted any official search at the Land Registry of the land. The records indicated that the suit property was not sub-divided officially. The parcel marked (X) was occupied by Faith Susan Mbogho while the one marked (Y) was by the deceased's family. They physically confirmed this information. He was not aware that the PW-1 stated that she was not in occupation of the land.

Re - Examination of PW – 3 by M/s. Katisya Advocate

22. This was his professional opinion not personal. That is all.

That was the close of the Plaintiff's case.

The documents by the 1st and 2nd Plaintiffs:-

- a. Irrevocable Power of Attorney dated 5th April, 2016
- b. Copy of Sale Agreement dated 26th August, 1986
- c. A Copy of a receipt dated 15th November, 1986.



- d. A Copy of a letter of transfer of Plots in Mtwapa Settlement Scheme issued by Kilifi Settlement Officer dated 11th August, 1986.
- e. Application for the consent of Land Control Board
- f. Copies of two (2) letters of consent for sub-division and sale issued by Bahati Land Control Board dated 25th September, 1986
- g. A copy of Mutation Forms.
- h. A Copy of the Sale Agreement dated 2nd January, 2002.
- i. A set of Photographs of Applicants developing on the suit property.
- j. A Copy of the official search dated 23rd July, 2007.
- k. A copy of the official receipt and application for Registration dated 8th August, 2012.
- l. A Copy of the KRA Stamp Duty payment receipt dated 8th August, 2012.
- m. A Copy of Caution and Statutory Declaration dated 12th March, 2013
- n. A Copy of demand Letter to the Defendant dated 7th June, 2018
- o. A Copy of Defendant's Advocates Response to the demand letter dated 25th June, 2018.
- p. A Copy of Official Search dated 17th July, 2018
- q. A Copy of Settlement Fund Trustee's letter of offer dated 8th August, 1978.
- r. A Copy of the Certificate of Title
- s. A Copy of the Surveyor's Report dated 7th March, 2019
- t. A bundle of water bills.
- u. A Copy of a Letter to Kenya Power Ltd. Dated 5th September, 2017
- v. A Copy of the Sale Agreement dated 29th January, 1988
- w. A Copy of payment receipt note dated 29th January, 1988.
- x. A Copy of department of lands receipt dated 29th January, 1988.
- y. A Copy of cancellation of Sale Agreement.

III. Defendant's case

23. While opposing the suit instituted by the 1st and 2nd Plaintiffs herein, the Defendants filed a 32 Paragraphed Replying Affidavit sworn by David Mumba Muruu, the 2nd Defendant with the authority of 1st Plaintiff and dated 20th December, 2018. They conceded that there existed an agreement entered between the deceased and Isaac Jeremiah Mbogo for the suit land and payment was made. According to them the property subject of the agreement was a settlement scheme which both the deceased and his family had an interest in it being a communal familial and matrimonial property. Further, they held that the said agreement entered was not consented to by the deceased's wife – Esther Mumba Muruu and family (which included six (6) sons) at the time nor made aware to them. The deceased failed to sign the Mutation Forms as deposed by the Plaintiffs because upon the family becoming aware of the proposed transaction they refused to give their consent.



24. The 2nd Plaintiff never took immediate possession nor openly and/or continuously possess the suit land – as the Defendants had lived on the suit land since the year 1986 and had never seen the Plaintiffs there. They were never known to them. But in subsequent years the 2nd Plaintiff put up structures on the suit land and planted some trees but this was with the consent of the deceased. She never resided there. Both the 1st and 2nd Plaintiffs stayed outside of Kenya for a considerable period of time. They were not known to the family. On 27th September, 2018 the 1st Plaintiff filed an objection to the Confirmation of Grant. They disputed that the 1st Plaintiff had acquired the prescriptive land adverse possession rights on grounds she could not have abandoned nor transferred it to the 2nd Plaintiff and also taking that the land was under a settlement scheme. The property remained legally registered in the names of the deceased from year 2002. He had title deed to it. None of them had taken possession for the suit land. For these reasons they urged court to dismiss the suit with costs.

The testimony by the Defendants' Witnesses

25. On 27th February, 2023, the Defendants summoned one (1) witness – David Mumba Muruu. He was sworn and testified in Kiswahili language. He was a holder of the national identity card bearing numbers 8527062. He recorded his statement on 20th December, 2018. He relied on it as his evidence in chief in this case. He had an authority to plead on behalf of the 2nd Defendant. DW – Exhibit1.
26. He informed court that he lived at Bomani Kelembe in the County of Kilifi. He worked as a Security Guard Company trading in the names and style of (“Radar Security”). He stated that he would rely on the contents of the Replying Affidavit sworn on 20th December, 2018 and the documents filed thereof. He produced the said documents as Defendant Exhibits.

Cross Examination of DW-1 by M/s. Katsiya Advocate

27. DW – 1 informed Court that he was 54 years. He stated that he knew the Deceased – Mumba Muruu. He was his father. He was one of the duly appointed Legal Administrator to the estate of the deceased. He confirmed that indeed there existed an agreement entered between the deceased and Jeremiah Mbogho, the 2nd Plaintiff. They allowed him to enter and occupy the suit land. He planted some trees and undertook a few developments on the land. According to him, the agreement was not complete as he was never given the title deed. DW - 1 stated that he knew Mr. Mumba and Jeremiah Mbogo could not be given title deed as he had not completed the payment for the sale of the land. He knew that it was the family that refused to have him being given the land. DW1 did not know Faith Mbogho – the 1st Plaintiff.
28. At the moment there was no one who lived on the land not even a caretaker. He only saw Faith Mbogho once when they called them to come over for a discussion over the land. DW-2 lived at Ukunda but was fully informed of all the happenings on the land. During the succession cause, DW - 1 stated that they informed court Jeremiah Mbogho had bought land but not completed in paying for it.

Re - Examination of DW-1 by Mr. Origi Advocate

29. The family was never involved during the land transaction. The payment was not completed due to reasons given. Neither Jeremiah Mbogo – the 2nd Plaintiff nor Faith Mbogo 1st Plaintiff lived on the suit land. There were a few trees which the Defendants allowed them to plant on the land. They lived there based on their permission. The Defendants called the Plaintiffs due to the outstanding payments and for them to commit themselves on the final settlement. That was the day they saw Faith Mbogho – 1st Plaintiff for the first time.



IV. The Submissions

30. As indicated, on 27th February, 2023 upon closure of the case by both the 1st and 2nd Plaintiffs and Defendants, Honorable Court directed that all parties file their written submission within the stipulated period. By the time of penning down the Judgment only the 1st and 2nd Plaintiff had filed their written submissions. In the given circumstances the Honorable Court will proceed to make its determination based on the filed pleadings and the evidence adduced thereof accordingly.

A. The Written Submissions by the 1st and 2nd Plaintiffs

31. On 22nd March, 2023 the Learned Counsel for the 1st and 2nd Plaintiffs the law firm of Messrs. Njoroge and Katisya Advocates filed their written submissions dated even date. M/s. Katisya Advocate commenced her submission by providing a brief introduction and facts of the case to the effect that the case was mainly for land adverse possession as instituted by the 1st and 2nd Plaintiffs instituted through an Originating Summons dated 27th September, 2018 but later on converted into a Plaint. There were three (3) Plaintiff witnesses who testified. The Counsel held that on 26th August, 1986 the deceased and the 2nd Plaintiff entered into a sale agreement for the purchase of 5 acres land at a sum of Kenya Shillings Seventy Thousand (Kshs. 70,000/=). The 2nd Plaintiff paid the sum in full of the purchase price and was issued with a receipt on 11th August 1986. Indeed, the Kilifi Settlement Office approved the transfer of the suit land from the deceased to the 2nd Plaintiff. She stated that on 25th September, 1986, the Bahari Land Control Board approved the sub-division of Mtwapa Settlement Scheme/291 into Plots No. 291A measuring 7 acres and Plot No. 291B measuring 5 acres. The sale was of Plot No. 291B from the Deceased to the 2nd Plaintiff.
32. Accordingly, the Learned Counsel informed Court that immediately the 2nd Plaintiff took possession of Mtwapa Settlement Scheme /Plot 291B measuring 5 acres or 2.03 HA in the year 1986. From then onwards, he occupied it for over sixteen (16) years by cultivating it. The transfer and registration of the 2nd Plaintiff stalled because of the failure of the deceased to sign the Mutation forms.
33. According to the Counsel, on 2nd January, 2002 the 2nd Plaintiff entered into a sale agreement with the 1st Plaintiff for sale of the five (5) acres for a sum of Kenya Shillings One Hundred and Sixty Thousand (Kshs. 160,000/=). The 1st Plaintiff immediately took possession of the suit property in the year 2002 and she had occupied it to date by cultivating the land – season after season, rearing livestock, growing orchard and forest, connecting water and electricity and building a house. They fenced it using chain link and barbed wire and mangrove poles to demarcate and secure her occupation of the suit land – PW-3 a surveyor produced a Land Survey report to that effect. For these reason, it justified the 1st and 2nd Plaintiffs being granted land through Land Adverse Possession and purchase.
34. The Learned Counsel submitted the doctrine of Land Adverse Possession which stipulated from the provisions of Law *Limitation of Action Act* Cap 22 - under Sections 7, 13 and 38(1) were applicable in the instant case. She argued that the 1st Plaintiff had proved open and exclusive possession of the suit land and the dispossession of the deceased and his descendants to the required standard of proof. They fenced it, occupied, possession and developed it with permanent structures and utilized it for farming and housing her employees, planted trees, livestock sheds and water well and other developments on it in full view and knowledge of the deceased and his family. In other words, the 1st Plaintiff had demonstrated animus possidendi i.e. unmistakable exclusive possession ousting the title holder by farming occupying and commercializing the suit property ousting the title holder. To buttress her case, the Learned Counsel relied on the cases of “Sisto Wambugu –Versus- Kamau Njuguna (1983) eKLR, Kynoch Limited –Versus- Rowland (1912) 1 Ch 527, 534 and Leigh –Versus- Jack 1879 5 EX D 264



272 and to the effect that the Plaintiffs had continuously disposed the deceased and family of the suit land.

35. Further the Learned Counsel held that the Plaintiffs possession of the suit land was done in good faith and colour of title. To this effect, she cited the case of “Gabriel Mbui –Versus- Mukundia Maranya (1993) eKLR” where the Court held:-

“The entirety and occupation must be with or maintained under some claim or color 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 offends 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”.

Thus, the Learned Counsel urged court to find that the 1st Plaintiff acquired sufficient “Colour of title” in her own right to be on the subject land. She contended that even a squatter could claim for land adverse possession. Besides, the legality of the sale agreement was not an issue at all. It was never disputed. Secondly, the 1st Plaintiff would be considered a Successor in possession of the 2nd Plaintiff. Further, a purchaser could claim for adverse possession after the final statement of the purchase price was paid.

36. The Learned Counsel countered the argument advanced by the 1st and 2nd Defendants on the claim that the subject land was a Settlement Scheme and therefore public land. On this aspect, the Learned Counsel refuted this argument. While she confirmed that indeed, the subject land was initially part of Mtwapa Settlement Scheme 452 Plot 291 but subsequently it was registered and issued with a title and renamed as Kilifi/Mtwapa/592 and the Certificate of title issued which was produced as Plaintiff Exhibit 19. The Learned Counsel pointed to court that from the proprietorship section of the title, it was indicated that the land was registered to Mumba Muruu on 29th August, 2006. To this effect the Plaintiff produced an official search dated 23rd July, 2007 and dated 17th July, 2018 and marked as Plaintiff Exhibits No. 11 and 17 which indicated it was registered in the names of Mumba Muruu. Hence, it was private land and not Settlement scheme. Ideally, the Counsel asserted that the Government ceased to have any interest in the subject land after it was registered in the name of the deceased that 29th August, 2006. That is, it was more than twelve (12) years since the Settlement Fund Trustee discharged their interest and it was converted to private land. There was no evidence to prove that the suit land was under the Government.
37. For this reason therefore, and according to the Counsel, from the year 2006, it started running for purposes of computing the 12 years for the claim of land adverse possession. Finally, the Learned Counsel submitted that the title for the subject land though registered in the name of the deceased, but he held it in trust for the 1st and 2nd Plaintiffs. Despite of all these facts, the Defendants intended to distribute the suit land as part of the Estate of the deceased without acknowledging the trusteeship of the suit land.

In conclusion the Learned Counsel urged the Honorable Court to grant the orders sought in favor of the 1st and 2nd Plaintiffs from the filed Plaintiff.



VI. Analysis and Determination

38. I have keenly considered all the filed pleadings in this matter, the evidence adduced by the summoned witnesses, the filed written submission, the myriad of authorities cited hereof, the relevant Provisions of *the Constitution* of Kenya, 2010 and the statutes hereof.
39. For this Honorable Court to arrive at an informed reasonable just and fair decision in the subject matter, it has crystalized all subject matter before it into the following three 93) issues for its determination these are: -
- (a) Whether the suit instituted by the 1st and 2nd Plaintiffs against the 1st, 2nd and 3rd Defendants herein through an Originating Summons dated 27th September, 2018 (later on converted to a Plaint) has any merit.
 - (b) Whether the parties herein are entitled to the relief sought herein through Land Adverse possession or Sale of land as a purchaser for value.
 - (c) Who will bear the costs of the suit?

Issue No. (a) Whether the suit instituted by the 1st and 2nd Plaintiff against the 1st, 2nd and 3rd Defendants herein has any merit.

40. From the above proceedings the facts of this case are graphically stated herein. The 1st and 2nd Plaintiffs are making claim of ownership to the five (5) acres on Plot No. Kilifi/Mtwapa/592 by virtue of the Limitation of Action Cap 22 and by way of Land Adverse Possession. Further to this, they were also claiming to have bought the parcel of land from the deceased after duly entering into a Sale Agreement between the deceased and the 2nd Plaintiff on 26th August 1986 at Mtwapa settlement scheme/Plot 291 for purchase price of a sum of Kenya Shillings Seventy Thousand (Kshs. 70,000/=). The said agreement was witnessed by one of the Legal Administration of the Estate namely John Jembe Muruu. The 2nd Plaintiff paid the full purchase price and was issued with a receipt dated 15th November 1986 and paid stamp duty for the sale agreement and on 11th August 1986 the Kilifi Settlement Office approved the transfer of the subject property to the 2nd Plaintiff. Indeed, the issue of the agreement was never disputed save for the completion of its terms and conditions. Subsequently, the land was sub-divided into two (2) – Plot No. 291A measuring seven (7) acres and Plot No. 291 B measuring five (5) acres and the sale of plot No. 291B from deceased to the 2nd Plaintiff. However, the registration of it to the 2nd Plaintiff stalled because of the failure of late Mumba Muruu to sign the Mutation Forms without any reason. The only explanation given was because the family refused to give their consent. Isaac Jeremiah Mbogo – 2nd Defendant immediately took possession of the subject property in the year 1986. The Plaintiffs claim to have openly occupied and also fenced it using chain link barbed wire and caused enormous development on it – which included cultivating keeping cattle, growing an orchard and forest, connecting water and electricity and building a house. Later on, for no clear nor justifiable reason nor cause, the deceased’s family seem to have changed their mind on this transaction. They summoned the Plaintiffs at their home and informed them of wanting to repudiate the agreement by refunding the purchase funds to the Plaintiffs on grounds that the sale was never complete. The Plaintiffs could not hear this. They stormed out. Resultantly, this necessitated the institution of this case by the Plaintiffs. That is adequate on the brief facts.
41. Now turning to the main substratum of the case and the issues under this sub heading, the court is embraced with the responsibility on making a decision over two broad factors pertaining to the suit. Essentially, the pith and substance of the matter is on the proprietorship of the suit property. There are



two broad issues to be considered herein. These are firstly, has the ingredients for acquisition of the suit property by the 1st and 2nd Plaintiffs were entitled to it by way of Land Adverse Possession as required by law and claimed by them. Secondly, in the alternative were the 1st and 2nd Plaintiffs entitled to the land by way of acquisition through sale as innocent purchasers for value.

42. On the claim of land adverse possession. With the background of the matter, the Honorable Court feels it significant to expend a little more time deliberating on the concept of Land Adverse possession. The Doctrine of Land Adverse Possession is anchored on the provisions of Sections 7, 13 and 38 of the *Limitation of Actions Act*, Cap. 22. Section 7 provides that:-

“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.”

The provision of Section 13 on the other hand provides:

- (1) A right of action to recover land does not accrue unless the land is in possession of some person in whose favor the period of Limitation can run (which possession is this Act referred to as adverse possession), 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 cease 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 purpose 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.

Finally the provision of Section 38 states:-

38.

- (1) where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37, 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.”

(2) An order made under sub-section (1) of this section shall on registration take effect subject to any entry on the register which has not been extinguished under this Act.

43. From the above provisions of the law of the *Limitation of Actions Act*, Chapter 22 of the Laws of Kenya, the rights of registered owner of a property under article 40 of the constitutions become extinguished in favor of an adverse possessor of the same at the expiry of 12 years of adverse possession of that land.

The procedure for filing a claim for adverse possession in Kenya is provided for under Order 37 of the Civil Procedure Rules, 2010 wherein a person is required to file an Application under Section 38 of the *Limitation of Actions Act* by way of an Originating Summons supported by an Affidavit to which a



certified extract of the title to the land in question has been annexed. I take notice that this was exactly what the 1st and 2nd Plaintiffs herein did in the instant suit. Under the provision of Article 162 (2) of *the Constitution* of Kenya 2010, Section 13 of the *Environment and Land Court Act* and Section 38 of the *Limitation of actions Act* confer jurisdiction on the Environment and Land Court as to handle claims premised on adverse possession.

44. It should be noted that this doctrine is one that cannot be borne out of right. The Provisions of Order 37 Rules 1 and 7 of the *Civil Procedure Rules* 2010 provides for the mandatory procedure for applying to court which is through an Originating Summons where the court determines the questions arising on adverse possession. Order 37 Rule 7 is to the effect that adverse possession is only applicable where the land is registered and there is a title, where the land is yet to be registered, it cannot be subject to adverse possession, it awaits the ascertainment of rights through the process of adjudication. For a claim of adverse possession to be entertained by court the applicant must specifically identify the exact title of land that is the subject of the claim.
45. One must have to comply with certain strictures set out by the law before he can realize such a right. Such strictures are to ensure that the doctrine of adverse which is a limitation to the right to property complies with the test for limitations of certain constitutional right set out under Article 24. The principles were well set out in the case of “*Kahindi Ngala Mwangandi - Versus - Mtana Lewa* [2021] eKLR” where the Court of Appeal sitting in Malindi held:

“Reverting to the question I have posed above-whether the doctrine of adverse possession is arbitrary it must be borne in mind that before one can claim title to land by adverse possession and a part from proving 12 years of uninterrupted, open and peaceful possession, certain strictures must be satisfied. Those strictures are summarized in the Latin maxim, nec vi, nec clam, nec precario, that, one’s possession has not been through use of force, not in secrecy and without the authority or permission of the true owner. In terms of Section 38 of the *Limitation of Actions Act*, 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. It is therefore not automatic that once all the elements of adverse possession have been met the possessor, without more becomes the new owner. The elaborate procedure of moving the High Court is provided for in Order 37 Rule 7 as follows:-

“7(1) an application under Section 38 of the *Limitation of Actions Act* shall be made by originating summons.

(2) The summons shall be supported by an affidavit to which a certified extract of the title to the land in question has been annexed.

(3) The Court shall direct on whom and in what manner the summons shall be served.”

In the case of “*Teresa Wachuka Gachira – Versus - Joseph Mwangi Gachira*”, Civil Appeal No.325 of 2003, the Court emphasised the important of following the prescribed procedure in adverse possession claims. Because a claim based on adverse possession is anchored on the fact that the suit property belongs to a registered owner, that evidence, in the form of a copy of the document of title must be exhibited. Failure to do this has been found in a long line of cases to be fatal because it is only through such exhibit that the existence and ownership of the suit property can be ascertained by the court. See the case of:- “*Kyeyu - Versus - Omuto*, Civil Appeal No. 8 of 1990”. See also the present position in case “*Johnson Kinyua – Versus - Simon Gitura* Civil Appeal No.265 of 2005,” where this Court found that



the existence and proprietorship of land can be proved either by an extract copy of title or certificate of official search. The registered owner of any person who may have an interest in the property the subject of the summons must be served with it.

46. Within 30 days of filing and with notice to the parties, the summons may be set down for directions before a judge and thereafter fixed for hearing. At the hearing the burden is upon the person claiming adverse possession to prove, on a balance of probability that claim.

In the case of: "*Kimani Ruchine – Versus - Swift Rutherford & Co.Ltd* (1980) KLR it was stated on this point that:-

“The Plaintiffs have to prove that they have used this land which they claim, as of right: nec vi, nec clam, nec precario So the Plaintiffs must show that the company had knowledge (or the 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 endeavours to interrupt it or by any recurrent consideration; See the case of:- “*Wanyoike Gathire – Versus - Beverly* (1965) EA 514, 518, 519 per Miles, J.”

In *Teresa Wachuka Gachira* (Supra), a dispute between a stepmother and a stepson the latter sought to evict the former from a parcel of land he claimed to be his. The former for her part invoked prescriptive rights by virtue of having been married on the suit land many years before the action was instituted. This Court, on appeal found that the appellant did not discharge the onus placed on her in establishing a case for entitlement to the disputed land through adverse possession. The Court held;

“There is no proof of exclusive, continuous and uninterrupted possession of the land for twelve years or more before the suit against her was filed. Possession could have been by way of fencing or cultivating depending on the nature, situation or other characteristics of the land. Periodic use of the land is not inconsistent with the enjoyment of the land by the proprietor”

47. Therefore, applying these principles to the instant case, I discern that and being in full agreement with the Learned Counsel’s submission that the 1st and 2nd Plaintiffs acquired the suit land through the Doctrine of Land Adverse possession. Clearly, from their case, they were able to prove open and exclusive possession of the suit land and the dispossession of the deceased and his descendants to the required standard of proof. They fenced it, occupied, possession and developed it with permanent structures and utilized it for farming and housing her employees, planted trees, livestock sheds and water well and other developments on it in full view and knowledge of the deceased and his family. In other words, the 1st Plaintiff had demonstrated animus possidendi i.e. unmistakable exclusive possession ousting the title holder by farming occupying and commercializing the suit property ousting the title holder. The Plaintiffs had continuously disposed the deceased and family of the suit land. In my own opinion, and which attains direct concurrence with the contention by the Learned Counsel for the 1st and 2nd Plaintiffs that a purchaser as was the case here could claim for land for Land Adverse possession after the final settlement of the purchase price was paid.
48. Secondly, and further to this the 1st and 2nd Plaintiffs also acquired the proprietary rights and interest to the suit land as innocent purchasers for value. Its not in dispute at all by all the parties that a sale agreement dated 26th August, 1996 – Plaintiff Exhibit – 3 was duly executed by the deceased and the 2nd Plaintiff for the purchase of land measuring 5 acres at Mtwapa Settlement Scheme/Plot 291 at the purchase price a sum of Kenya Shillings Seventy Thousand (Kshs. 70,000/=). The amount was paid in full, on 11th August, 1986 the Kilifi Settlement Office approved the transfer of the land from the



deceased to the 2nd Plaintiff. See Plaintiff Exhibit No. 5. On 26th September, 1986 the Bahari Land Control Board approved the sub-division of Mtwapa Settlement Scheme/291 into Plots No. 291 A measuring 7 acres and Plot No. 291B measuring 5 acres which the 2nd Plaintiff took possession for the Sixteen (16) years by cultivating it season after season and under taking other extensive development. Hence the only singular reason why the land was never transferred to the Plaintiff was because of the failure by the deceased to sign the mutation form and disagreement by the family. I fully concur by the argument held by the Learned Counsel for the Plaintiff that the deceased held the title deed as s Trust on behalf of the Plaintiff from the decision of Gabriel Mbui (Supra) to wit:-

“When a land owner has been out of possession and stranger has been in possession for a statutory period sufficient to bear the owner’s right to re-enter or to recover possession by action, the owner’s title, if it is unregistered under any of the Land Registration Statutes is extinguished, but if it registered title it is not extinguished but the registered proprietor holds it in trust for the person who by virtue of the statute”

It is on record the deceased and the Plaintiffs on 29th August, 2006 entered into a sale agreement for the purchase of the suit land terms and conditions stipulated thereof. These are facts which even the Defendant from their Replying Affidavit under Paragraph 4 –

“I concede that an agreement was reached and payment pursuant thereto was made as deponed in Paragraph 3 and 5 of the Plaintiff’s affidavit in support of the Originating Summons dated 27th September, 2018”

The Sale Agreement and full payment was made and immediately the Plaintiffs took possession with the permission and of the land owner. The consents were acquired and the Plaintiff undertook development. Hence, the moment there as permissiveness by the Land owner – the deceased and the only issue that delayed the transfer was the signing of the Mutation form the ingredients of land that the Plaintiff acquired the land by “the colour of title” and occupation of the land from the time they acquired it on 29th August, 2006 and the fact that a purchaser could claim for adverse possession after the final instalment of the purchase price paid as argued by the Plaintiff and relying on the decision of “Gabriel Mbui (Supra). This Court is completely of a different opinion and defers from this possession has acquired the title and the stranger acquires title to the land which is good against all the world including the owner”

49. I fully concur with these legal reasoning. Further, the deceased and the Defendants failed to assert their rights over the subject land either by way of trespass, eviction or repudiation of contract suit. After all, by virtue of the Provisions of Section 7 of the Limitation of Action Act Cap 22 their right to do so has lapsed.

Issue No. (b) Whether the parties herein are entitled to the relief sought herein.

50. Under this heading, it’s clear that the Plaintiff is entitled to the suit property upon acquisition by sale as provided for under Section 7 of Land Act No. 6 of 2012. It follows that under the Provision of Section 24, 25 and 26 (1) of the Land Registration Act No. 3 of 2012 the 2nd Plaintiff has attained full ownership of the suit property accordingly.
51. The argument advanced by the Defendants that the Plaintiff are not entitled to the suit land on ground that the land was a settlement scheme and therefore public land. This argument is farfetched in that indeed the suit land critically part of Mtwapa Settlement Scheme 452 Plot 291 and was subsequently



registered and issued with a title and renamed Kilifi/Mtwapa/592 was issued Certificate of Title was produced as Plaintiff Exhibit 19.

52. I have taken note of the proprietorship section of the Certificate of Title which clearly indicates that the land was registered in the name of the deceased on 29th August, 2006. Additionally, this was shown from the two official searched dated 23rd July, 2007 and 17th July, 2018 marked as Plaintiff Exhibit 11 and 17 respectively. This was a clear demonstration that the deceased was the legal and absolute proprietor to the suit and thus the argument advanced by the Defendants to the effect that the land was under the Settlement Scheme to wit a Government land hence not available for sale was not only far fetched, immaterial but also unfounded. Furthermore, there was no empirical documentary evidence which was produced by the Defendant to indicate that the Government had an interest in the subject land. On the broad aspect that the 1st and 2nd Plaintiffs were innocent purchasers for value on notice, I have relied on the known decisions which are on all fours to the instant case of:- “Eldoret ELC No. 84 of 2018 *Annab Kimitei - Versus - Isaack Kipketer Talam & 2 Others*”: where Court held:-

This suit was commenced vide the Plaint dated 30th May, 2018 as amended on the 30th July, 2018 pursuant to the leave granted on the 23rd July, 2018. The Plaintiff sought out the following orders:

- (a) “A declaration that Annah Kimitei is the legitimate owner of Land parcel known as I.R.15449, Land Reference number 9723.
- (b) A declaration that the agreement for sale was null and void for lack of proper Land Control Board consent.
- (c) An eviction order to issue against the Defendants, their agents, servants from entering, occupying, selling, transferring, encumbering, wasting or otherwise interfering with the Plaintiffs quiet possession, enjoyment of the suit land to the detriment of the Plaintiff’s right as the proprietor of the same.

That the pleadings, evidence and submissions proffered by the 2nd and 3rd Defendants simply show that they are bona fide purchasers for a money consideration, with no notice as to any defect in title. That in the case of *Weston Gitonga & 10 Others – Versus - Peter Rugu Gikanga & Another* [2017] eKLR, the court cited with approval the Ugandan case of *Katende – Versus - Haridar & Company Limited* [2008] 2 E.A.173 in which it was held that;

“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, (he) must prove that:

- a. He holds a certificate of title
- b. He purchased the property in good faith
- c. he had no knowledge of the fraud;
- d. he purchased for valuable consideration;
- e. the vendors had apparent valid title;
- f. he purchased without notice of any fraud;
- g. he was not party to any fraud. [Emphasis added].



A bona fide purchaser of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner.”

That indeed the 2nd & 3rd Defendants are bona fide purchasers for value and without notice of any defect in the 1st Defendant’s claim of ownership. That I therefore find that the plaintiff has failed to prove her case against all the Defendants to the standard required.

That in view of the foregoing, the court finds and orders as follows;

- (a) That the plaintiff has failed to prove her claim to the standard required of a balance of probabilities and her suit is hereby dismissed.

53. For these reason I emphatically hold that the Plaintiffs are entitled to the suit land accordingly.

Issue No. (c) Who will bear the costs of the suit?

54. Its now well established that costs is at the discretion of the Court. Costs mean the award a party is granted at the conclusion of a legal action or proceedings. The proviso of Section 27 (1) of the [Civil Procedure Act](#), Cap. 21 holds that costs follow the event. By the event it means the result of any legal action or proceedings.

55. From the instant case the 1st and 2nd Plaintiffs herein have been able to successfully prove their case as instituted. Therefore, they are entitled to the costs of the suit to be borne by the 1st and 2nd Defendants herein jointly and severally. The 3rd Defendant is exonerated from any liabilities whatsoever.

VII. Conclusion and findings.

56. Consequently, after conducting such an elaborate analysis to the framed issues herein on preponderance of probabilities the Honorable Court finds that the Plaintiffs have successfully established their case against the 1st and 2nd Defendants herein. For avoidance of doubt I specifically order: -

1. That Judgment be and is hereby entered in favour of the 1st and 2nd Plaintiffs and as against the 1st and 2nd Defendants herein jointly and severally.
2. That a declaration be and is hereby made that the 1st and 2nd Plaintiffs are entitled to be registered as the legal and absolute owners to all that parcel of land known as Land Reference Kilifi/Mtwapa/592 measuring five (5) acres by way of Land Adverse possession and purchase through the sale agreement duly executed on 26th August, 1986 terms and conditions stipulated thereof.
3. That an order made that:-
 - a. The 1st and 2nd Legal Administrators to the Estate of the Land Mumba Muruu Kalio also known as Mumba Muruu recognize the Plaintiffs’ proprietary interest and ownership rights of five (5) acres of land from the parcel of land known as Plot Kilifi/Mtwapa/592 as a liability of the Estate and to settle the same by sub-dividing and transferring it to the Plaintiffs.
 - b. The 3rd Defendant directed to register and issue the Plaintiffs with the title deed from the sub - division of the parcel No. Kilifi/Mtwapa No. 592 deriving a portion of 5 acres from it within 45 days from the date of this judgment.



- c. In default, the Deputy Registrar of Environment and Land Court (ELC) be ordered to execute all the prerequisite approval and transfer documents to complete the subdivision and transfer of the Land of 5 acres to the Plaintiffs.

4. That the costs of the suit to be borne by the 1st and 2nd Defendants jointly and severally.

It is so ordered accordingly

JUDGEMENT DELIVERED THROUGH MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 12TH DAY OF OCTOBER 2023.

.....
HON. MR. JUSTICE L.L. NAIKUNI
ENVIRONMENT AND LAND COURT AT
MOMBASA

Judgement delivered in the presence of:-

- a. M/s Yumnah Hassan, the Court Assistant.
- b. M/s. Katisya Advocate for the 1st & 2nd Plaintiffs.
- c. Mr. Origi Advocate for the 1st & 2nd Defendants.
- d. M/s. Waswa Advocate for the 3rd Defendant.

