



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA

ELC CASE NO. 90 OF 2017

PETRONILLA NEKOYE KONG'ANI

(Suing as Administrator of the Estate of

AINEA WAWIRE KONG'ANI, also

known as AINEAH WABWILE KONG'ANI) PLAINTIFF

VERSUS

JOHN BARASA WANYAMA 1ST DEFENDANT

MUSA WANYONYI WANJALA 2ND DEFENDANT

FARIDA KHAOYA 3RD DEFENDANT

CEPHAS SIMIYU 4TH DEFENDANT

ANNA NANDWA 5TH DEFENDANT

ALFRED MIDIVA 6TH DEFENDANT

RICHARD WETOTO 7TH DEFENDANT

JOSEPH OUKO 8TH DEFENDANT

PETER BARASA BUSURU 9TH DEFENDANT

ERASMUS MULONGO KUTA 10TH DEFENDANT

HASSAN ASHIBENDE 11TH DEFENDANT

MOHAMMED WABWILE WANYAMA 12TH DEFENDANT

DORCAS NAFULA TONISIO 13TH DEFENDANT

J U D G M E N T

This is yet another case where fraudsters have taken advantage of a widow to steal from her. **Article 27(5)** of the **Constitution** makes it clear that a person shall not be discriminated upon on any grounds including marital status. Therefore, persons such as the defendants herein who live under the misguided illusion that they can trample upon the rights of widows and deprive them of their rights to property must be put on notice that those rights are protected by the supreme law of this country.

Land parcels **NO WEST BUKUSU/SOUTH MATEKA/800** and **WEST BUKUSU/SOUTH MATEKA/629** (herein the suit properties) have since 1973 been registered in the names of **AINEAH WABWILE KONG'ANI** (hereinafter the deceased). The copies of the land certificates indicate that he was registered as the proprietor of the land parcel **NO WEST BUKUSU/SOUTH MATEKA/800** on 17th August

1973 and land parcel **NO WEST BUKUSU/SOUTH MATEKA/ 629** on 19th November 1973. He took possession of the suit properties where he put up his family home and also practiced farming.

In 1990, one **GELAS WANYAMA BISAU** with the help of his clansmen and the local Administration trespassed onto the suit properties prompting the deceased to file at the **CHIEF MAGISTRATE'S COURT BUNGOMA, CIVIL CASE No 89 of 1991** in which the Court issued eviction orders against the said **GELAS WANYAMA BISAU**, his **JOHN BARASA WANYAMA** (1st defendant herein) and their family from the suit properties. The deceased's widow **PETRONILA NEKOYE KONG'ANI** (the plaintiff herein) thereafter moved to the **HIGH COURT BUNGOMA** and filed **SUCCESSION CAUSE No 104 of 2005** in which she obtained a Grant of Letters of Administration in respect to the Estate of the deceased. **JOHN BARASA WANYAMA** challenged that Grant as having been obtained fraudulently and specifically sought an order that the suit properties were not part of the Estate of the deceased. However, in a Judgment delivered on 12th March 2013, **GIKONYO J** dismissed the application for revocation of the Grant issued to the plaintiff. Aggrieved by that Judgment, **JOHN BARASA WANYAMA** the 1st defendant filed at the **COURT OF APPEAL, CIVIL APPEAL CASE No 271 of 2013**. That appeal was however dismissed on 29th July 2016 and the Court affirmed that the suit properties formed part of the Estate of the deceased. That Judgment therefore brought to rest any dispute regarding the ownership of the suit properties.

In August 2016, the plaintiff instructed her advocate to obtain an order for the eviction of the 1st defendant and his family from the suit properties. It was then that the plaintiff discovered that on 1st November 2011, the 1st defendant and **MUSA WANYONYI WANJALA** (the 2nd defendant) had transferred the land parcel **NO WEST BUKUSU/SOUTH MATEKA/629** in their names. That title was subsequently closed on 19th March 2012 upon sub – division to give rise to parcels **NO WEST BUKUSU/SOUTH MATEKA/4453** and **WEST BUKUSU/SOUTH MATEKA/4454**. The former is still registered in the names of the 1st and 2nd defendants while the latter was transferred to **DORCAS NAFULA TONISIO** (the 13th defendant herein) on 20th July 2012.

Upon discovery of this fraud, the plaintiff suing as the Administrator of the Estate of the deceased filed this suit through a plaint dated 18th July 2017 and later amended on 12th October 2018 seeking the following remedies against the defendants herein: -

1: An order to nullify all the illegal title deeds, the entire entries in the register within the custody of the defendants and other documents of title generated and issued by the defendants to and/or in favour of DORCAS NAFULA TONISIO, JOHN BARASA WANYAMA, MUSA WANYONYI WANJALA and to any other person and the same defendants to resurvey the suit properties, rectify the entries in the register and issue fresh title deeds in favour of AINEAH WAWIRE KONG'ANI.

2: An eviction order be issued to evict and restraint all the illegally registered owners DORCAS NAFULA TONISIO, JOHN BARASA WANYAMA, MUSA WANYONYI WANJALA and all persons claiming through them, their agents, servants, employees' contractors or otherwise howsoever whether on or out of the suit properties from remaining upon, entering and conducting any other business whatsoever in respect with the suit properties.

3: The Officer Commanding Police Division (OCPD) and Officer Commanding Police Station (OCS) BUMULA and the Local Police Administration post at KABULA to offer necessary support and security to evict and restrain all the illegally registered owners and all the persons claiming under or through them whether known or unknown to the plaintiff, their agents, servants, employees, contractors or otherwise howsoever whether on or out of the suit properties from remaining upon, entering and conducting any other business whatsoever in respect to the suit properties.

4: A declaration that the defendant's activities herein mentioned are fraudulent illegal and amount to intermeddling with the property of the deceased AINEAH KONG'ANI WAWIRE.

5: Deleted

6: Damages for loss of user and general destruction of amenities.

7: Damages for trespass.

8: Costs of this suit together with interest thereon for such period and at such rate as this Court deem appropriate.

The basis of the claim is as already summarized above. The particulars of fraud were pleaded as against the 1st, 2nd and 13th defendants with regard to the sub – division of the land parcel **NO WEST BUKUSU/EAST MATEKA/629** into land parcels **NO WEST BUKUSU/EAST MATEKA/4453** and **4454** and the registration thereof in the names of the 1st, 2nd and 13th defendants. Those particulars of fraud include: -

- Procuring the sub – division of the land parcel NO WEST BUKUSU/SOUTH MATEKA/629 into land parcels NO WEST BUKUSU/SOUTH MATEKA 4453 and 4454 while the same was the property of the deceased and without the knowledge, authority or consent of the Administrator of his Estate.

- Falsely presenting to the LAND REGISTRAR BUNGOMA documents issued in NAIROBI HIGH COURT SUCCESSION CAUSE No 2119 of 2009 purporting to be a valid Probate and Succession process in respect to the Estate of the deceased yet that cause related to the Estate of one GITAU TITUS MUREU.

- Appending their signatures on a scheme of sub – division (mutation forms) on 19th March 2012 purporting to be the registered proprietors of the land parcel NO WEST BUKUSU/SOUTH MATEKA/629 when they knew or ought to have known that the same was registered in the name of the deceased.

- Transferring the land parcel NO WEST BUKUSU/SOUTH MATEKA/629 in favour of JOHN BARASA WANYAMA and MUSA WANYONYI WANJALA (the 1st and 2nd defendants herein) as representatives of the family of WANYAMA when that family had lost all claims of entitlement to that land in four cases being: -

1: BUNGOMA CHIEF MAGISTRATE COURT CIVIL CASE No 89 of 1991.

2: BUNGOMA HIGH COURT CIVIL APPEAL No 66 of 1992.

3: BUNGOMA HIGH COURT SUCCESSION CAUSE No 104 of 2005.

4: COURT OF APPEAL CIVIL APPEAL No 271 of 2013 (ELDORET).

- Purporting to increase the size of the land parcel NO WEST BUKUSU/SOUTH MATEKA/629 from the original 6.4 Ha to 11.2 Ha by hiving off 4.8 Ha from the land parcel NO WEST BUKUSU/SOUTH MATEKA/800.

- Changing the particulars in the registration documents within the Land Registrar's custody effecting the increased size of the land parcel NO WEST BUKUSU/SOUTH MATEKA/629 by 4.8 Ha which portion was hived off from the land parcel NO WEST BUKUSU/SOUTH MATEKA/800 on the ground.

- Taking advantage of the vulnerability of the plaintiff as a widow and changing all the land documents and maps affecting the suit properties with the intent to inflict fear in her to cause her to back off from pursuing her rights with any hope of getting justice.

The plaintiff also pleaded particulars of loss and damage in paragraph 26(a) to (p) of the amended pleadings. I must however point out that I found those pleadings wanting. I shall revert to this later in this Judgment.

The plaintiff also filed her statement and that of her son **KIZITO MULONGO KONG'ANI (PW 2)**. She also filed her list of documentary exhibits dated 12th November 2018.

The plaintiff's statement is basically a rehash of the contents of her amended pleadings which I have already summarized above. Her son **KIZITO MULONGO KONG'ANI (PW 2)** affirmed the statement of the plaintiff stating that the suit properties belonged to his late father but the 1st and 2nd defendants had fraudulently sub – divided the land parcel **NO WEST BUKUSU/SOUTH MATEKA/629** to create parcels **NO WEST BUKUSU/SOUTH MATEKA/4453** and **4454** on which they have invited the other defendants who are now claiming ownership of the same.

The 1st, 2nd, 3rd, 9th, 10th and 12th defendants filed a joint statement of defence through the firm of **WABWILE & COMPANY ADVOCATES** in which they pleaded, inter alia, that the plaintiff's claim is a non – starter given that the land in dispute is **"BONA VOCANTIA"** and **"FAMILIAE EMPTORS"** and is an attempt to obtain the suit properties by false pretence. They also pleaded fraud on the part of the deceased in the manner in which he obtained the title to land parcel **NO WEST BUKUSU/SOUTH MATEKA/629** without the consent of the Land Control Board. Particulars of that fraud were pleaded in paragraph 4 of the joint defence but no Counter – Claim was made. The defendants however denied all the allegations of fraud levelled against them by the plaintiff and added that the plaintiff's claim is infact statute barred.

The other defendants did not file any defence and infact an application for the entry of interlocutory Judgment was made by the plaintiff on 3rd October 2019.

On 28th October 2020, the firm of **MALALAH & COMPANY ADVOCATES** filed a notice of appointment on behalf of the defendants. However, though served with the hearing notice, neither the defendants nor their Counsel appeared for the hearing on 16th February 2021. The hearing therefore proceeded ex – parte with **MR H. WASILWA ADVOCATE** leading the plaintiff and her witness.

I must first comment on the pleadings by both parties. The pleadings herein contain matters of evidence. This is contrary to the provisions of **Order 2 Rule 3(1)** of the **Civil Procedure Rules** which states: -

"Subject to the provisions of this rule and rules 6, 7 and 8, entry pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, but not evidence by which those facts are to be proved, and the statement shall be as brief as the nature of the case admits." Emphasis added

As much as possible, pleadings should be brief and concise. Much of what was contained in the plaintiff's 33 paragraph amended pleadings was evidence which was not necessary.

The defendants, on their part, pleaded in paragraphs 8 and 8A of their joint defence as follows: -

8 "The plaintiff herein is TRUSTEE EX. MALEFICIO is by bound to restitute the fraudulently obtained land back to the legal beneficiaries in this instance the family of NICHOLAS BISAU this they Counter – Claim for 31 acres."

8A "The plaintiff's suit is statute barred vis a vis prescriptive rights that arise out of effluxion of time."

Pleadings need not be verbose. They serve the purpose if they are concise and clear. And notwithstanding the fact that the defendants pleaded “*prescriptive rights*,” there was only a fleeting reference to a “*Counter – Claim for 31 acres.*” In the circumstances of this case, the Court would have expected the defendants to specifically plead a Counter – Claim on the basis of adverse possession indicating which of the two suit properties are being claimed and indeed the period of occupation and possession that justifies such a claim. The Court can only conclude that there was no serious intention on the part of the defendants to pursue any Counter – Claim with respect to the suit properties.

Finally, as per the copies of the land certificates and Certificates of Official Search produced herein, the suit properties are known as **WEST BUKUSU/ SOUTH MATEKA/800** and **WEST BUKUSU/SOUTH MATEKA/ 629** and not **WEST BUKUSU/EAST MATEKA/800** or **WEST BUKUSU/EAST MATEKA /629** as the plaint kept referring to them. This Court cannot over emphasize the need for clarity in pleadings. Parties are bound by their pleadings and it is not the duty of the Court to surmise the intent of the parties that appear before it for a determination of their dispute.

Having said so, the trial commenced on 16th February 2021 with only the plaintiff and her witness **KIZITO MULONGO KONG’ANI (PW 2)** testifying in support of their case. They were led by their Counsel **MR H. WASILWA** and adopted their witness statements as their evidence and also produced the documents filed. Their evidence was not rebutted as the defendants did not attend Court although their Counsel had been served with a hearing notice.

The plaintiff’s evidence is therefore not controverted. And whereas the 1st, 2nd, 3rd, 9th, 10th and 12th defendants filed a joint statement of defence denying the plaintiff’s averments, such pleadings, as **MADAN J A** (as he then was) stated in **CMC AVIATION LTD .V. CRUIS AIR LTD NO 1 1978 KLR 103**, are not evidence upon which any decision can be founded. The allegations of fraud levelled against the 1st, 2nd and 13th defendants in relation to the manner in which the suit properties were registered in their names therefore remain un – controverted.

The only issue worth consideration by this Court is the pleading by the defendants in paragraph 8A of their defence that the plaintiff’s claim is statute barred. A plea of Limitation is legal matter which the Court can even raise suo motto. In relation to an action to recover land, **Section 7 of the Limitation of Actions Act** states as follows: -

7: “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.”

Other than plead limitation, the defendants did not state in what way the plaintiff’s claim is statute barred. I have however considered whether that plea is justified in the circumstances of this case and I find that it is not. This is because, the plaintiff has pleaded fraud in the manner in which the 1st, 2nd and 3rd defendants registered the land parcel **NO WEST BUKUSU/SOUTH MATEKA/629** in their names and sub – divided it to give rise to the land parcels **NO WEST BUKUSU/SOUTH MATEKA/4453** and **4454**. According to the documents herein, this was done in 2011. This suit was first filed on 21st July 2017 and therefore the plea of limitation was not well taken.

And even through the plaintiff’s claim of fraud on the part of the defendants is not controverted, I have nonetheless considered it bearing in mind that allegations of fraud must be specifically pleaded and proved. In **VIJAY MORJARIA .V. NANSINGH MADHUSINGH DARBAR & ANOTHER 2000 eKLR, TUNOI J A** stated as follows: -

“it is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleadings. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

See also **KINYANJUI KAMAU .V. GEORGE KAMAU 2015 eKLR** and **NDOLO .V. NDOLO 2008 1 KLR [G & F] 742** among others.

The plaintiff pleaded the particulars of fraud in paragraph 23(a) to (q) of the amended plaint. She need not prove all those particulars of fraud some of which were repetitive. In paragraph 24(a), it is pleaded that the 1st and 2nd defendants procured the sub – division of the land parcel **NO WEST BUKUSU/SOUTH MATEKA/629** (the plaint wrongly refers to the land parcel as **WEST BUKUSU/ EAST MATEKA/629**) into parcels **NO 4453** and **4454** “*on 19th March 2012 being property comprised in the Estate of a deceased person without the knowledge authority or consent of the person who was at the time recognized by law as the legitimate administrator of the Estate.*” And in paragraph 23(a), it is pleaded that the 1st and 2nd defendants “*falsely representing to the Land Registrar Bungoma, Court documents issued in NAIROBI HIGH COURT SUCCESSION CAUSE No 2119 purporting it to be a valid Probate and Administration process in respect of the Estate of AINEAH WAWIRE KONG’ANI when indeed and in fact, that cause related to the Estate of one GITAU TITUS MUREU.*”

As I have already found above, the dispute with regard to the ownership of the suit properties was conclusively determined by the **COURT OF APPEAL** in **CIVIL APPEAL No 271 of 2013 (JOHN BARASA WANYAMA .V. NEKOYE PETRONILA KONG’ANI)** where the Court up – held the decision of the **HIGH COURT** that the suit properties were part of the Estate of the deceased. In the face of that determination, it was clearly fraudulent on the part of the 1st and 2nd defendants to transfer the land parcel **NO WEST BUKUSU/SOUTH MATEKA/ 629** into their names, sub – divide it and transfer the portion **NO WEST BUKUSU /SOUTH MATEKA/4454** to the 13th defendant.

Further, the Court that handled the succession process in relation to the Estate of the deceased was **BUNGOMA HIGH COURT** vide **SUCCESSION CAUSE No 104 of 2005**. That issue was never canvassed in **NAIROBI HIGH COURT SUCCESSION CAUSE No 2119 of 2009** which the Court has been informed related to the Estate of one **GITAU TITUS MUREU** and not the deceased. Indeed, that fraud is now the subject of criminal charges facing the 1st and 2nd defendants in **BUNGOMA CHIEF MAGISTRATE’S COURT CRIMINAL CASE No 1136 of 2017**. Yet the Green Card to the land parcel **NO WEST BUKUSU/SOUTH MATEKA/629** shows that the title was

transferred to the 1st and 2nd defendants in November 2011 and subsequently sub – divided on 19th March 2012 to give rise to parcels **NO WEST BUKUSU/SOUTH MATEKA 4453** and **4454** purportedly on the strength of orders issued in **NAIROBI HIGH COURT SECESSION CAUSE No 2119 of 2009**. I have no doubt therefore that the allegations of fraud levelled against the 1st, 2nd and 13th defendants have been proved as required in law. The 1st and 2nd defendants basically stole the land parcel **NO WEST BUKUSU/SOUTH MATEKA/629** from the Estate of the deceased. And as was held in **JANE GACHOKI GATHECA .V. PRISCILLA NYAWIRA GITUNGU & ANOTHER 2008 eKLR**, a thief acquires no right or interest which is transferable in the stolen property. It follows therefore that the transfer of the land parcel **NO WEST BUKUSU/SOUTH MATEKA/4454** to the 13th defendant was void ab initio and she acquired no interest in the said land parcel.

Evidence has also been adduced and supported by the documents herein, that following that fraudulent disposition with regard to the land parcel **NO WEST BUKUSU/SOUTH MATEKA/629**, it's acreage was increased from 6.4 Hectares to 11.2 Hectares. This was done by hiving off part of the land parcel **NO WEST BUKUSU/SOUTH MATEKA/629**. The Land Certificate with respect to the land parcel **NO WEST BUKUSU/SOUTH MATEKA/629** issued on 19th November 1973 shows that the approximate area was 6.4 Hectares. However, the Certificate of Search for the same land issued on 7th December 2012 shows that the approximate area was 11.2 Hectares. This Court must therefore intervene and make appropriate orders because this fraud could only have been meant to facilitate the accommodation of the other defendants on the said parcel of land.

With regard to the remedies available to the plaintiff, there is no doubt that the illegal title deeds issued to the 1st, 2nd and 13th defendants must be nullified and fresh title deeds issued so that the suit properties are restored to their previous acreage and owner.

The plaintiff has also sought for an order to evict from the suit properties the 1st, 2nd and 13th defendants and all persons claiming under them. The prayer is worded to include **“their agents, servants, employees, contractors or otherwise howsoever whether on or out of the suit property from remaining upon entering upon and conducting any other business whatsoever in respect with the suit property.”** Obviously persons who are **“out of the suit property”** cannot possibly be evicted. But though not so elegantly crafted, I believe the other limb of that prayer seeks an order of permanent injunction to restrain the defendants and all those claiming under them from re – entering the suit properties.

The plaintiff also seeks an order that the Officer Commanding Police Division (**OCPD**) and Officer Commanding Station at **BUMULA** as well as the local Police Administration at **KABULA** do offer the necessary support and security during the eviction process. The general rule is that the police should not be involved in the execution of the civil processes unless it is absolutely necessary. In any case, the law has already donated to the police the powers to maintain law and order. **Section 24** of the **National Police Service Act** states that the function of the Police includes the provision of assistance to the public when in need, the maintenance of law and order in the preservation of peace. Ideally therefore, where the law has entrusted anybody with a specific mandate, the Courts should be slow in interfering with that body in it's execution of it's duties unless of course people's rights have been violated in the process. In **KAMAU MUCUHA .V. THE RIPPLES LTD 1993 KLR 35**, the Court of Appeal stated thus: -

“The only valid criticism of the order of the Judge as of now, but which does not swing the scale one way or the other in this application is the direction that the assistance of the Police should be enlisted to secure compliance by the applicant. The Police should never be involved in securing compliance with Court orders as there is a specific provision for the enforcement of an injunction under Order 21 Rule 28 of the Civil Procedure Rules.”

But that is not to say that the Police cannot be directed to maintain law and order where that may be necessary as in cases where there is evidence of resistance. The first point of call therefore would be for those persons involved in the execution process to seek the necessary Police assistance and only resort to Court orders where there is a likelihood of a breach of the peace and requests for security have been rebuffed.

The prayer for a declaration that the defendants' activities are fraudulent, illegal and amount to intermeddling with the property of the deceased **AINEA KONG'ANI WAWIRE** is clearly merited in the circumstances.

The claim for damages for loss of user and general destruction of amenities is not available to the plaintiff. This is because, such a claim is a special damages claim which must be specifically pleaded and proved. It is not enough, for the plaintiff to plead, as she did in paragraph 26(d) of the amended plaint, that: -

“The registered purported owners and people claiming through then destroyed the entire 20 acres of the plaintiff's sugarcane plantation hence subjecting the plaintiff and family to abject poverty; the sugarcane crop would have generated income to the plaintiff at the rate of 2,000 shillings per tone from the usual harvest of 50 tonnes for a three-year valuation period.”

And in paragraph 33(6) that claim was pleaded as follows: -

(6) Damages for loss of user and general destruction of amenities.”

It is not clear why the plaintiff did not quantify the loss that she suffered when her sugarcane was destroyed. All that she has done is to throw figures at the Court and expect it to award her special damages. That will not suffice. She has not even named the **“amenities”** that were destroyed. This Court can only conclude that either she did not suffer any special damages or if she did, she is unable to quantify it. Obviously the Court cannot award her what she is incapable of proving.

With regard to damages for trespass, these are available per se. The plaintiff need not prove any actual loss and in assessing the same, the Court will consider, among other, the length of the trespass, the size of the land and the conduct of the defendants. The record herein shows

that as far back as 26th January 1995, eviction orders had been issued against **GELAS WANYAMA BISAU, WAFULA BISAU, WANYAMA MANINGI** and **WABWIRE WANYAMA** in **BUNGOMA SENIOR PRINCIPAL MAGISTRATE'S COURT CIVIL CASE No 81 of 1991** requiring them to vacate the suit property. **GELAS WANYAMA** was the father of the 1st defendant herein. Doing the best that I can in the circumstances, I would assess the damages for trespass at Kshs. 500,000/=.

Costs follow the event and the plaintiff is entitled to an award of costs.

Ultimately therefore and having considered the evidence herein, there shall be Judgment for the plaintiff against the defendants jointly and severally in the following terms: -

- 1. A declaration that the defendant's activities with regard to the land parcels NO WEST BUKUSU/SOUTH MATEKA/800 and WEST BUKUSU/SOUTH MATEKA/629 were fraudulent, illegal and amounted to intermeddling with the property of the deceased AINEAH WABWILE KONG'ANI.**
- 2. The LAND REGISTRAR and COUNTY SURVEYOR BUNGOMA are hereby directed to rectify the register by cancelling the registration of the names of JOHN BARASA WANYAMA, MUSA WANYONYI WANJALA and DORCAS NAFULA TONISIO from the register of the land parcels NO WEST BUKUSU/SOUTH MATEKA/629, 4453 and 4454 and restore the land parcel NO WEST BUKUSU/SOUTH MATEKA/629 in the names of AINEAH WABWILE KONG'ANI.**
- 3. The LAND REGISTRAR and COUNTY SURVEYOR are also hereby directed to re-survey and re-store the land parcel NO WEST BUKUSU/SOUTH MATEKA/629 to its original acreage of 6.4 Hectares and the land parcel NO WEST BUKUSU/SOUTH MATEKA/800 to its original 7.6 Hectares.**
- 4. The defendants herein together with those claiming through them including their agents, servants, employees and whosoever are directed to vacate from the land parcels NO WEST BUKUSU/SOUTH MATEKA 629, 800, 4453 and 4454 within three (3) months of this Judgment and in default, they be evicted therefrom. Should there be any resistance, the assistance of the Police be sought to maintain law and order.**
- 5. Thereafter the defendants, their agents, servants, employees and all those claiming under them are restrained from re – entering the land parcels NO WEST BUKUSU/SOUTH MATEKA/629, 800, 4453 and 4454.**
- 6. Kshs. 500,000/= being damages for trespass.**
- 7. Plaintiff is also awarded costs of the suit.**

Boaz N. Olao.

J U D G E

3rd June 2021.

Judgment dated, signed and delivered at **BUNGOMA** this 3rd day of June 2021 by way of electronic mail in keeping with the **COVID – 19** pandemic guidelines.

Right of Appeal explained.

Boaz N. Olao.

J U D G E

3rd June 2021.