



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ELDORET**

**ELC NO. 210 OF 2017**

**PETER LAVATSA KABWOYA.....PLAINTIFF**

**VERSUS**

**NICHOLAS G KARIRA.....1<sup>ST</sup> DEFENDANT**

**JAPHET KIPYEGO CHEPKWONY.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

By a plaint dated 26<sup>th</sup> May 2017 the plaintiff sued the defendants jointly and severally seeking for the following orders:

- a) An order for permanent injunction restraining the Defendant by himself, his servants and/or agents from interfering, trespassing, intermeddling and/or in any other manner dealing with the Plaintiff's use, possession and/or ownership of all that land parcel number Eldoret Municipality Block 14/603 measuring 0.4922 Ha or thereabout.***
- b) Declaration that the Plaintiff is entitled to mesne profits, general damages for trespass from the Defendant on land parcel Number Eldoret Municipality Block 14/603 measuring 0.4922 Ha or thereabout.***
- c) Eviction order against the Defendant from land parcel Number Eldoret Municipality Block 14/603 measuring 0.4922 Ha or thereabout.***
- d) Costs of the suit plus interests.***

In response, the 1<sup>st</sup> Defendant filed an amended statement of defence and counterclaim both dated 8<sup>th</sup> December 2020. He also made an application to serve a third party notice to the 2<sup>nd</sup> Defendant who was subsequently joined to these proceedings as the administrator of the estate of one Paulo Kimeto Arap Sirma. The orders sought in the counterclaim were as follows:

- a) That a declaration be made that the title held by the 2<sup>nd</sup> Defendant by the time it was transferred to the 1<sup>st</sup> Defendant had been extinguished by the operation of the law.***
- b) That a declaration that the 1<sup>st</sup> Defendant could not obtain a better title from the 2<sup>nd</sup> Defendant.***
- c) An order of cancellation of the 1<sup>st</sup> Defendant's title.***
- d) An order that the Plaintiff in the counterclaim claim Nicholas Karira be registered as the proprietor of the suit property.***
- e) The suit be dismissed and the counterclaim be upheld.***

**PLAINTIFF'S CASE**

PW1 adopted his statement and stated that he is the registered owner of the suit parcel of land known as land parcel No. Eldoret Municipality Block 14/603 measuring approximately 0.4922 Ha in 2011 from Framis Limited and was issued with a Certificate of Lease in 2012.

PW1 stated that he took vacant, actual and physical possession of the suit land, fenced it, cultivated without any interference until the year

2017 when the 1<sup>st</sup> defendant started to interfere with the suit land by putting up temporary structures which necessitated the filing of this suit.

PW1 produced and relied on a copy of the Lease Certificate, a bundle of photographs, transfer of lease forms, copy of an application for official search of the suit property, official search and receipt, rates payment receipts and invoices, copy of white card, copy of a letter from Tangoi & Co. Advocates, copy of stamp duty requisition form, copy of stamp duty payment receipt, copy of KRA stamp duty declaration and/or pay in slip, and copy of survey map as evidence before the court.

On cross-examination by Mr. Korir for the 1<sup>st</sup> Defendant, PW1 confirmed that he had an agreement but did not produce it in court as he had produced the transfer of lease, the lease certificate and all the documents showing the process of registration and transfer to his name. PW1 also stated that he did due diligence before he bought the suit land from Framis Limited who gave him a valuation report.

On cross examination by Mr. Mathai for the 2<sup>nd</sup> Defendant, PW1 stated that he did not produce a consent from the Commissioner of Lands and that he had not reported to the police that there were people who had trespassed on the suit land. He however stated that he filed the current suit against the defendants.

On reexamination PW1 stated that the land rates payment was in the name of Benedict since the relevant office takes long to effect changes thereon.

PW2 Dickson Asena Satsiru corroborated PW1's evidence of and stated that the Plaintiff is his younger brother and that he is aware that the Plaintiff is the lawful registered owner of the suit land.

PW2 also stated that the Plaintiff purchased the suit land from Framis Limited for a consideration of Kshs. 4,500,000/-. That the Plaintiff immediately took possession by fencing the same until recently when the Defendants entered the suit land.

On cross examination by Mr. Mathai, PW2 told the court that the Plaintiff would send him money to pay the land rates.

### **1<sup>ST</sup> DEFENDANT'S CASE**

DWI Nicholas Karira testified that in the year 1997, he was given the suit land as payment in lieu of legal fees for service rendered to the late Elizabeth Sirma being the administrator of the estate of Paulo Kimeto Arap Sirma and has been in control of the suit land without any objection from the children of the late Paulo Kimeto.

DW1 stated that he has utilized the land openly, without force, without secrecy and without permission hence the lease held by the plaintiff has been extinguished by operation of the law. According to DW1 it was his testimony that the plaintiff fraudulently acquired the suit land as there was no confirmed grant in the parcel filed at the Land Registry.

DW1 testified that the plaintiff's certificate of lease should be cancelled as he has acquired the suit land by adverse possession.

On cross examination by counsel for the plaintiff, DW1 stated that he did not report any fraud to the police and confirmed that the plaintiff was issued with a certificate of lease in 2012. He also stated that he does not have an agreement in lieu of legal fees and that he discovered the fraud in 2012 but never took any action.

DW1 also confirmed that it is the plaintiff who has been paying land rates for the suit land.

DW 2 the County Land Registrar Uasin Gishu produced a copy of the white card to the suit land and testified that the documents required for a transmission to be registered are LRA forms 39 (previously 19) and 42 (previously LRA 7) supported by probate and administration forms 41 and 54.

DW2 stated that the Land Registrar relies on the documentation to establish the beneficiaries and administrators. She further testified that entry No 3 was done in 1988 but the relevant transmission forms were not available in the file.

On cross examination by Mr. Mathai, DW2 stated that there has to be a letter of confirmation of grant for registration to be done; in relation to entry No. 7 on the certificate of lease, there was no record of a confirmed grant in the Lands records file.

### **2<sup>ND</sup> DEFENDANT'S CASE**

DW 3 Moses Kibet Metto testified that he is the administrator of the estate of the late Elizabeth Sirma and that he was aware that the suit property was initially bought by Paulo Sirma who passed on in the year 1984.

DW3 stated that they have been in occupation of the suit land since childhood and that the 1<sup>st</sup> Defendant was appointed as their lawyer in 1996. It was DW3's testimony that the suit land was sold to the 1<sup>st</sup> Defendant on 6<sup>th</sup> July 1997 in consideration of legal fees and cash of Ksh 85,000/ which he paid in full and that later the 1<sup>st</sup> Defendant took possession of the suit land in 1997 and has been on it ever since.

It was DW3's evidence that the Plaintiff was a trespasser onto the suit land and they even reported the matter at Langas police station that the Plaintiff had acquired the suit land illegally and through fraud.

On cross examination by Mr. Kagunza, DW3 stated that he neither had the sale agreement nor a copy of the agreement on the arrangement of payment of legal fees. DW3 also stated that his claim is on fraud and not adverse possession and that the plaintiff is the one who has been paying land rates of the suit land.

### **PLAINTIFF'S SUBMISSIONS**

Counsel for the plaintiff filed submissions and listed the following issues for determination:

- a) *Whether the Plaintiff is the rightful owner of the suit property*
- b) *Whether the alleged fraud by the Defendants has been particularized and specifically proven?*
- c) *Whether the 1<sup>st</sup> Defendant's prayer in his counterclaim for adverse possession can be granted?*
- d) *Whether the 1<sup>st</sup> Defendant's action of interference constitutes actionable trespass?*
- e) *Whether the Plaintiff is entitled to reliefs sought hereto?*

On the first issue as to whether the Plaintiff is the rightful owner of the suit property, counsel submitted that it is on record that the Plaintiff bought the suit land from Framis Limited and upon payment of the full consideration and stamp duty, and was issued with a certificate of lease on 22<sup>nd</sup> May 2012 which details are captured in entry no. 10 and 11 of the white card as produced in court as an exhibit.

On the second issue as to whether the alleged fraud by the Defendants has been particularized and specifically proven, counsel submitted that the Defendants have neither particularized nor proven the allegations of fraud on the part of the Plaintiff as required by law and procedure.

Counsel relied on the case ***Vijav Morjaria vs. Nansigh Madhusingh Darbar & Anor (2000) eKLR (Civil Appeal No. 106 of 2000)*** Tunoi JA (as then he was) as cited in the case of ***Laban Omuhaka Otumbula vs Truphosa Ukutovi (2019)*** where the court held that it is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.

Mr Kagunza also cited the provisions of Section 26 of the Land Registration Act States;

***The certificate of title issued by the registrar upon registration, or to a purchaser of the land upon a transfer or transmission be the proprietor shall be taken by all court as prima facie evidence that the person named as proprietor of the land is the absolute indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except***

- (a) *On the grounds of fraud or misrepresentation to which the person proved to be a party;*
- (b) *Where the certificate of title has been acquired illegally unprocedurally or through a corrupt scheme.*

Counsel therefore submitted that the defendants have not proved that the plaintiff acquired the suit land fraudulently.

On the issue whether the 1<sup>st</sup> Defendant's prayer for adverse possession can be granted, counsel relied on the case of ***Wellington Lusweti Barasa & 75 others v Lands Limited & another [2014] eKLR*** where the court held that:

***"a party cannot plead adverse possession and at the same time assert cancellation of the same title by way of fraud. The two orders cannot be made in the same suit, for to sustain a claim for adverse possession, there must be a title, to which the party claims possession that is adverse to that of the title holder".***

Mr. Kagunza submitted that an action for adverse possession can only be commenced by way of originating summons as required under section 38 of the Limitation of Actions Act further that the same ought to be commenced upon the lapse of 12 years. Counsel stated that the Plaintiff's title was issued in 2012 and the present suit commenced in 2017, the Defendants' claim for adverse possession is not tenable.

On the third issue as to whether the 1<sup>st</sup> Defendant's action of interference constitutes actionable trespass, counsel submitted that the 1<sup>st</sup> Defendant admitted moving into the suit land therefore the plaintiff is entitled to general damages and mesne profits.

Counsel relied on the case of ***Park Towers Ltd vs. John Mithamo Niika & 7 Others (2014) eKLR*** and the case of ***Aster Holdings Limited vs. City Council of Nairobi & 4 Others (2017) eKLR*** on general damages for trespass and urged the court to award the plaintiff Kshs 2million with costs of the suit.

### **1<sup>ST</sup> DEFENDANT'S SUBMISSIONS**

Counsel for the 1<sup>st</sup> defendant filed submissions and stated that the issues for determination by the court are as to whether the plaintiff has a claim on the suit land and whether there was fraud in the acquisition of the title.

On the first issue as to whether the plaintiff has a claim to the suit land, counsel submitted that the Plaintiff's right to ownership to property was not absolute by dint of Article 40 (1) and (2), sections 25 and 26 of the Land Registration Act, 2012. Counsel submitted that the documents produced by the plaintiff were questionable, as the Plaintiff did not produce any sale agreement showing how he purchased the same.

Mr Mathai submitted that the suit land was the property of Elizabeth Jepchoge Sirma (deceased) who never transferred to anybody the suit land and relied on the case of **Jacinta Wanja Kamau v Rosemary Wanjiru Wanyoike & Another (2013) eKLR**, where the Court of Appeal held that;

***"Before the appellant could seek protection as a purchaser under Section 93 of the Act she had first to prove that she is a purchaser. In this case, there was no prima facie evidence that she was a purchaser. In any case, and as provided by Section 82 (b) (II) of the Act, it would have been illegal for Beatrice Njeri Magondu to sell the land before the confirmation of the grant."***

Counsel submitted that the plaintiff's title should be cancelled as he did not prove that he was a purchaser.

On the issue whether there was fraud, counsel

Secondly, on whether there was fraud on the part of the Plaintiff, counsel cited the cases of **Munyu Maina v Hiram Gathiha Maina, Civil Appeal No. 239 of 2009; and Elijah Makeri Nyangwara v Stephen Mungai Njuguna & another in Eldoret ELC No. 609B of 2012** and submitted that the Plaintiff has not established a case against the 1<sup>st</sup> Defendant on a balance of probability. Counsel urged the court to dismiss the plaintiff's suit with costs and enter judgment as per the 1<sup>st</sup> defendant's counterclaim.

## **2<sup>ND</sup> DEFENDANT'S SUBMISSIONS**

Counsel for the 2<sup>nd</sup> defendant filed submissions and stated that the Plaintiff's title should be impeached as it was procured through fraud. Counsel relied on the cases of **Alice Chemutai Too v Nickson Kipkirui Korir & 2 others [2015] eKLR** and **Elijah Makeri Nyangwara v Stephen Mungai Njuguna & another (supra)**.

Counsel urged the court to dismiss the plaintiff's suit with costs to the defendant.

## **ANALYSIS AND DETERMINATION**

The issues for determination in this case are as to whether the plaintiff is the rightful owner of the suit land, whether the defendant has proved fraud and whether the 1<sup>st</sup> defendant's claim for adverse possession is sustainable.

It is not disputed that the Plaintiff is the registered owner of the suit land having produced a copy of the Lease Certificate, a bundle of photographs, transfer of lease forms, copy of an application for official search of the suit property, official search and receipt, rates payment receipts and invoices, copy of white card, a copy of stamp duty requisition form, copy of stamp duty payment receipt, copy of KRA stamp duty declaration and/or pay in slip, and copy of survey map as evidence before the court.

Further the testimonies of the witnesses also confirmed that the plaintiff is the registered owner of the suit land and that it is the plaintiff who has been paying rates to the county government.

What is in dispute is whether the suit land was acquired legally or fraudulently where the defendants claimed that the Plaintiff had the suit land fraudulently registered in his name since the original owner, Elizabeth Sirma, the administrator of Paulo Sirma (the first owner of the suit land) did not transfer the land to any person.

A party alleging fraud must specifically plead the particulars of fraud and specifically lead evidence to prove the allegations of fraud. It is not enough to wake up during the proceedings at claim that a title had been fraudulently acquired. There are steps that must be taken to prove fraud.

In the case of **Vijay Morjaria vs Nansingh Madhusingh Darbar & Another (supra)**, where **Tunoi, JA. (as he then was)** 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 pleading. 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 alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts."***

The same procedure goes for allegations of misrepresentation and illegality as outlined under Order 2 Rule 4 of the Civil Procedure Rules.

As regards the standard of proof, the Court of Appeal in the case of **Kinyanjui Kamau vs George Kamau [2015] eKLR** expressed itself as follows; -

***"...It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs Ndolo (2008) 1 KLR (G & F) 742 wherein the Court stated that: "...We start by saying that it was the respondent who was alleging that the will was a forgery***

**and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...** "...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts."

DW 1 gave evidence but fell short of the proving that there was fraud involved in the acquisition and transfer of the suit land to the plaintiff. The parcel file produced by DW2 who gave a chronology of the entries in the white card showed that there were many transactions which had taken place and no one raised an issue with the entries. The only entry which restricted any dealings with the suit land was entry No. 12 dated 2<sup>nd</sup> March 2018 which was entered while this matter was pending in court as this matter was filed in 2017.

The restriction was filed by the CID who had written a letter that they were carrying out investigations. There was no evidence on who had instigated the investigation and the outcome of the investigation. The white card has elaborate entries which the Land Registrar confirmed that they use documentations required for the transfer and registration of rights to parcels of land.

The plaintiff produced all the necessary documents which enabled the transfer of lease to him. Entry No. 8 indicates that the suit land was transferred to Framis Limited on 27<sup>th</sup> August 1998 who later transferred the suit land to the plaintiff on 22<sup>nd</sup> May 2012 and a certificated of lease issued on the same date.

The defendants never challenged the plaintiff's title until the plaintiff brought them to court. If they were really entitled to the suit land, why did they wait until 2017 when the plaintiff sued them to claim adverse possession and fraud.

DW2 's evidence indicated that the suit land had changed ownership severally. The first certificate of lease was issued to Paulo Kimeto Arap Sirma on 25<sup>th</sup> November 1985. Subsequently, there was a transfer to one Elizabeth Jepchoge Sirma as the administrator of Paulo Kimeto and a certificate of lease to that effect issued to her on 2<sup>nd</sup> February 1987. Thereafter the land was transferred to one Benedict Ongandi Jumba on 16<sup>th</sup> May 1988 and a certificate of lease issued on that same date.

It appears that the said Benedict passed on and the suit land transferred to one Janet Jumba as his personal representative on 27<sup>th</sup> August 1998. On that same date the land was transferred to Framis Limited which transferred the same to the Plaintiff on 22<sup>nd</sup> May 2012.

The Defendants' allegations are that the suit land was fraudulently transferred from Elizabeth to Benedict and consequently the rest but in his statement dated 27<sup>th</sup> May 2021, DW3 gave contradictory statements. At first he stated as follows:

***"It is true that on the 13<sup>th</sup> May 1988, my mother Elizabeth Sirma transferred the parcel of land to one Benedict Ogandi Jumba as per the transfer of lease dated the 13<sup>th</sup> May 1988."***

He then went further to challenge the related transfer of lease. He stated that her mother never signed the said transfer and that his family sold the suit land to the 1<sup>st</sup> Defendant. The Defendants did not tender any evidence in support of this allegation.

The 2<sup>nd</sup> Defendant's list of documents show that the said transfer of lease was duly executed, by way of fingerprint, by Elizabeth. It should be noted that the Land Registrar DW2 did not at any point in her testimony imply that the transfer from Elizabeth to Benedict was fraudulent.

I therefore find that the allegation of fraud has not been proved hence it fails. Further it is strange that the 1<sup>st</sup> Defendant allegedly discovered fraud on the Plaintiff's part, in 2012, but chose not to seek any redress against him. He admitted that he took no action on the fraud allegation. The only conclusion that the court can arrive at is the plaintiff is the absolute owner of the suit land.

On the issue whether the 1<sup>st</sup> defendant's claim for adverse possession is sustainable, counsel for the plaintiff submitted that a claim for adverse possession can only be brought by way of originating summons. In the case of **Kibutuk Arap Too v Peris Shanyasi Allulya & 4 others [2017] eKLR** when faced with a similar issue, this court held as follows:

***"On the issue whether the defendants' claim for adverse possession can be sustained by way of a counter claim, I will rely on the case Gulam Mariam Noordin v Julius Charo Karisa, Civil Appeal No 26 of 2015, where the claim was raised in the defence, the Court in rejecting the objection to the procedure, stated the law as follows;***

***"Where a party like the respondent in this appeal is sued for vacant possession, he can raise a defence of statute of limitation by filing a defence or a defence and counter-claim. It is only when the party applies to be registered as the proprietor of land by adverse possession that Order 37 Rule 7 requires such a claim to be brought by originating summons. It has also been held that the procedure of originating summons is not suitable for resolving complex and contentious questions of fact and law. Be that as it may, and to answer the question, whether it was erroneous to sanction a claim of adverse possession only pleaded in the defence, we refer to the case of Wabala v Okumu [ 1997] LLR 609 (CAK), which, like this appeal the claim for adverse possession was in the form of a defence in an action for eviction. The Court of Appeal in upholding the claim did not fault the procedure. Similarly, in Bayete Co. Ltd v Kosgey [1998] LLR 813 where the plaint made no specific plea of adverse possession, the plea was nonetheless granted."***

The law on Adverse Possession is now well settled and the essential requirements that one has to meet in order to succeed in a claim for Adverse Possession. The 1<sup>st</sup> Defendant claimed that he has been in occupation since 1997 when he bought the suit land, which is a period of over 12 years. He averred in his defence and counterclaim that his claim for adverse possession is against the 2<sup>nd</sup> Defendant therein named as

Elizabeth Sirma.

I find that the claim is not sustainable as a claim for adverse possession must be made against a holder of certificate of title and in this case the plaintiff is the holder of the certificate of lease. As it is already established that the suit title belongs to the Plaintiff, the 1<sup>st</sup> Defendant cannot therefore claim adverse possession against another person who is not a holder of the certificate of lease or title.

Further from the Deputy Registrar's report dated 16<sup>th</sup> August 2017, it is clear that the Defendants were not in actual occupation and the report further supports the Plaintiff's averment that he put up a fence when he acquired the suit land.

The photos exhibited show that there was mud walled structures which had been put up by the defendants and their agents without the plaintiff's authorization. This amounts to trespass on the plaintiff's suit land hence the plaintiff is entitled to damages for trespass.

The issue that arises is the measure of general damages that the plaintiff is entitled to. In the case of **Philip Ayaya Aluchio v Crispinus Ngayo [2014] eKLR** Obaga J held as follows:

***“The plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage? It has been held that the measure of damages for trespass is the difference in the value of the plaintiff's property immediately after the trespass or the costs of restoration, whichever is less See Hostler – VS – Green Park Development Co. 986 S. W 2d 500 (No. App. 1999).***

Similarly, in the case of **Nakuru Industries Limited v S S Mehta & Sons [2016] eKLR** the court held that:

***“A similar situation pertains in the present case. The exact value of the land before and after the trespass is not proved. However, I have found the defendants did trespass onto the plaintiff's land and conduct some excavation. For this reason, I award the defendant damages in the amount of Ksh 500,000/= (five hundred thousand only) plus interest and costs of this suit from the date of this judgment until payment in full.”***

Having found that the defendants were trespassers, I therefore award a nominal figure of Kshs. 500,000/ as a reasonable amount as general damages. Trespass is actionable per se and

The Plaintiff prayed for a declaration that he is entitled to mesne profits but mesne profits must be specifically pleaded and proved. In the case of **Monica Anyona Dongi v Richard Otieno Okumu [2019] eKLR** the court held that:

***Regarding the Appellant's prayers for mesne profits, the same must have been specifically pleaded and proved to be granted. The Court of Appeal in Chief Land Registrar & 4 others v Nathan Tirop Koech & 4 others [2018] eKLR stated:***

***“This Court in Peter Mwangi Mbuthia & another vs. Samow Edin Osman [2014] eKLR expressed that it is upon a party to place evidence before the court upon which an order of mesne profits could be made. It was stated:***

***“As regards the payment of mesne profit, we think the applicant has an arguable appeal. No specific sum was claimed in the plaint as mesne profit and it appears to us prima facie, that there was no evidence to support the actual figure awarded... That being so, it must be very hard on the applicant to be forced to pay an amount which had not even been pleaded in the first place, and on which the first respondent offered no evidence at all.”***

***“We agree with counsel for the appellants that it was incumbent upon the respondent to place material before the court demonstrating how the amount that was claimed for mesne profits was arrived at. Absent that, the learned judge erred in awarding an amount that was neither substantiated nor established.”***

***In Karanja Mbugua & another vs. Marybin Holding Co. Ltd [2014] eKLR it was correctly stated that mesne profits, being special damages must not only be pleaded but also proved, as shown by the provisions of Order 21, Rule 13 of Civil Procedure Act. In Dr. J K Bhakthavasala Rao –v - Industrial Engineers, Nellore AIR 2005 AP 438 it was held that mesne profits by its very nature, involves adjudication of a pure question of fact. “The onus of proving what mesne profits might, with due diligence, have been received in any year lies upon the party claiming mesne profits.”***

The Plaintiff just prayed generally in the pleadings for mesne profits but did not specifically plead on the amounts he is seeking for. The plaintiff also did not lead any evidence to prove the claim if any. I find that this limb for mesne profits must fail.

I have considered the pleadings, the evidence and submission by counsel and find that the plaintiff has proved his case against the defendants. The defendant has failed to prove his counterclaim and is therefore dismissed with costs to the plaintiff. I therefore grant specific orders as follows

a) An order for permanent injunction is hereby issued restraining the Defendants by themselves, their servants and/or agents from interfering, trespassing, intermeddling and/or in any other manner dealing with the Plaintiff's use, possession and/or ownership of all that land parcel number Eldoret Municipality Block 14/603 measuring 0.4922 Ha or thereabout.

b) A Declaration is hereby issued that the Plaintiff is entitled to general damages for trespass of Kshs. 500,000/ from the Defendants on land parcel Number Eldoret Municipality Block 14/603 measuring 0.4922 Ha or thereabout.

c) Defendant to give vacant possession of land parcel Number Eldoret Municipality Block 14/603 measuring 0.4922 Ha or thereabout within the next 30 days' failure to which eviction order to issue.

d) Defendants to pay costs of the suit.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2021.**

.....

**M.A. ODENY JUDGE**

***NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Judgment has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.***