



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT EMBU

E.L.C. CASE NO. 148 OF 2017

TANA AND ATHI

RIVERS DEVELOPMENT AUTHORITY.....PLAINTIFF

VERSUS

JOSEPH MULI MUKULUTA & 26 OTHERS.....DEFENDANTS

JUDGEMENT

A. Introduction:

1. By a plaint dated 18th September 2017 and filed on 19th September 2017 the Plaintiff sought the following reliefs against the Defendants jointly and severally:

a) That a declaration be issued to declare that the Defendants' occupation, use and encroachment of the suit properties namely L.R. No. 28670, 28671 and 12621 are illegal actions.

b) That a declaration be issued to declare that the actions and omissions of the Defendants relating to the occupation, use and encroachment of the suit properties namely L.R. No. 28670, 28671 and 12621 contravene the right of communities living downstream of Masinga Dam protected by Article 42 of the Constitution.

c) That a declaration be issued to declare that the Defendants' occupation use and encroachment of the suit properties namely L.R. No. 28670, 28671 and 12621 constitute a violation of Article 69 (2) of the Constitution.

d) That an order of eviction of the Defendants, their families, servants and agents from the suit properties namely L.R. No. 28670, 28671 and 12621 be issued.

e) That an order of permanent injunction be issued to restrain the Defendants from trespassing on, occupation, encroachment and use of the suit properties namely L.R. No. 28670, 28671 and 12621, the riparian land and Tana River banks.

f) That an order for payment of general damages for the illegal actions of the Defendants.

g) Costs of this suit.

B. The Plaintiff's case

2. The Plaintiff pleaded that it was the registered proprietor of the parcels of land described as *L.R. No. 28670, 28671 and 12621* (hereafter the *suit properties*) collectively measuring approximately 13,241 ha which constituted the buffer zone of Masinga Dam which is utilized for generation of electric power.

3. It was pleaded that the suit properties largely fall within Embu County whereas a smaller portion falls within the neighbouring Machakos County. It was further pleaded that Masinga Dam was the largest man-made dam in East Africa which generates 40 MW of electricity which is supplied to the national grid.

4. The Plaintiff further pleaded that the suit properties constituted vital riparian land for the conservation of the environment including the preservation of flora and fauna within Masinga dam area and downstream counties such as Machakos, Meru, Tharaka Nithi, Garissa, Kitui and Tana River.

5. It was pleaded that the Defendants had on diverse dates over the last five (5) years preceding the filing of the suit wrongfully invaded and trespassed upon parts of the suit properties and carried out the following activities:

- a) *Construction of permanent, semi-permanent and temporary homesteads.*
- b) *Large and small scale livestock grazing.*
- c) *Felling of trees for charcoal and domestic use.*
- d) *Clearance of land for cultivation within the dam's high water mark.*
- e) *Massive use of the water for irrigation.*

6. The Plaintiff contended that the Defendants' said activities had negatively impacted the environment in the following ways:

- a) *Environmental pollution and degradation due to lack of sewer and sanitation facilities.*
- b) *Exposure to massive soil erosion and degradation and the siltation of Masinga dam and other dams downstream.*
- c) *The use of pesticides, fertilizers and other chemicals for agricultural farming had resulted into water pollution thus endangering the safety, health and welfare of downstream water users.*
- d) *There was massive siltation which posed a danger to flooding and also shortened the lifespan of the dam.*

7. It was the Plaintiff's contention that the Defendants' said actions were unlawful and in contravention of **Articles 42 and 69 (2) of the Constitution of Kenya**. It was further contended that the Defendants had elevated their selfish personal interests over the wider public interest in the protection and conservation of the environment.

C. The Defendants' case

a) The 1st Defendant

8. The 1st Defendant entered an appearance through the firm of B.M. Mungata & Co. Advocates and filed a statement of defence dated 11th October 2017. The 1st Defendant denied all the material allegations against him contained in the plaint. He denied the Plaintiff's ownership of the suit properties. He also denied having invaded the suit properties or having carried out any activities thereon. He further contended that the court had no jurisdiction to entertain the suit because the suit properties were located in Machakos County and threatened to raise a preliminary objection to that effect before the hearing of the suit.

b) The 2nd – 27th Defendants

9. The firm of Duncan Muyodi & Co. Advocates entered appearance for the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th & 27th Defendants. However, the statement of defence on record dated 27th October 2017 only relates to the 4th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 15th, 23rd & 27th Defendants. By their statement of defence these Defendants denied all the material allegations contained in the plaint and put the Plaintiff to strict proof thereof. They denied that:

- a) *The Plaintiff was the registered owner of the suit properties.*
- b) *There was a power plant at Masinga dam generating 40 MW of electricity.*
- c) *They had invaded the suit properties recently and undertaken the activities harmful to the environment as alleged by the Plaintiff.*

10. The Defendants contended that they had occupied and lived on the suit properties for over 45 years and that they and their parents were in occupation by the time Masinga dam was constructed in 1980. They further stated that during construction of Masinga dam they were asked to relocate to the upper side of the river bank beyond the flooding point and that they had never violated that restriction.

11. The Defendants further pleaded that there were public schools, churches, markets and other social amenities in the area they occupied which had been in existence for over 40 years. It was further pleaded that the Plaintiff had never objected to the construction of the said facilities hence it was too late to reclaim the land on which they stood.

12. The Defendants also contended that the residents or the owners of the land on which Masinga dam was established were supposed to be compensated for the expropriation of their land but were never compensated. Finally, they contended that, in any event, the Plaintiff had never surveyed its buffer zone so as to clearly delineate the boundaries to enable the Defendants to know whether or not there was any encroachment upon it.

D. Joinder of issue upon the defence

13. There was no reply to defence filed by the Plaintiff hence there was a joinder of issue upon the defence pursuant to the provisions of **Order 2 Rule 12** of the **Civil Procedure Rules**.

E. The summary of evidence at the trial

a) The Plaintiff's evidence

14. At the trial hereof, the Plaintiff called one witness, Stephen Githaiga Riumuku (PW1), who was its Managing Director. He adopted his witness statement dated 18th September 2017 as his sworn testimony. He also produced the documents in the Plaintiff's list of documents dated 18th September 2017 as exhibits. His evidence simply followed the script of the plaintiff.

15. It was the evidence of PW1 that the buffer zone of Masinga comprises the dam and surrounding areas. The said area was surveyed and comprised in the 3 titles to the suit properties. It was his evidence that if the holding bank of the dam was destroyed there would be a danger of water escaping and causing damage to the neighbourhood. He further stated that siltation of the dam was taking place rapidly due to poor farming practices and deforestation by the trespassers encroaching on the buffer zone.

16. PW1 further informed the court that he was aware that the original inhabitants of the buffer zone were compensated because he was the Finance Officer of the Plaintiff at the material time. It was his further evidence that the Defendants were not the ones who were in occupation at the time of the construction of the dam hence they were recent entrants.

b) The Defendants' evidence

17. The Defendants had lined up 7 witnesses at the trial but it was agreed by the advocates for the parties that the 12th Defendant, Paul Nthiwa Ndeto would testify on their behalf. It was also agreed that the rest of the witness statements would be admitted as evidence without calling the makers. The evidence of the 12th Defendant who testified as DW1 was contained in his witness statement dated 9th July 2019 which was adopted as his evidence in- chief. It was his evidence that he was born in 1972 in Twanyoni village in Mbondoni sub-location within the vicinity of Masinga dam.

18. He stated that he attended a local primary school called Twanyoni Primary School which was in existence at the time the dam was built between 1978 and 1980. It was his case that his late father settled in the area in 1940. He further stated that he knew most of the Defendants and that they had been in occupation for a very long period of time. He stated that Twanyoni Primary School was built in 1970. The market centres were also built around the same period of time. He contended that only 2 schools were built after construction of the dam.

19. The rest of the Defendants' statements were to the same effect as the evidence of DW1. They all contended that they and their families had been in occupation for decades, even before the dam was constructed. They put emphasis on the fact that there were several schools, shopping centres, and churches within the area claimed by the Plaintiff. They also stated that their farming activities did not adversely affect the environment along Tana River.

F. Directions on submissions

20. Upon conclusion of the trial on 26th September 2019, the Plaintiff was given 30 days within which to file written submissions whereas the Defendants were given 30 days upon the lapse of the Plaintiff's period to file theirs. The matter was thereupon fixed for highlighting of submissions on 28th November 2019.

21. When the matter was listed on 28th November 2019 none of the parties had filed submissions hence they requested for more time to do the needful. The court consequently extended the time for filing of submissions. The Plaintiff was given 14 days to file its submissions whereas the Defendants were given 30 days upon the lapse of the Plaintiff's period to file theirs. The suit was thereupon stood over to 19th February 2020 for highlighting of submissions and for judgement on 12th March 2020.

22. When the matter was listed on 19th February 2020 the Plaintiff had filed its submissions dated 10th February 2020 but its advocate was not ready to highlight the submissions whereas the Defendants had not filed their submissions. The court consequently dispensed with highlighting of submissions and confirmed the judgement date of 12th August 2020. According to the record, the Defendants had not filed any submissions by the time of preparation of judgement.

G. Issues for determination

23. The court has noted that the parties did not file any agreed statement of issues for determination. As such, the court shall frame the issues for determination as provided for in law. Under **Order 15 Rule 2** of the **Civil Procedure Rules**, the court may frame issues from any of the following:

- a) *The allegations contained in the pleadings.*
- b) *The contents of documents produced by the parties.*
- c) *The statements made on oath by or on behalf of the parties.*

24. The court has considered the pleadings, documents and evidence on record in this matter. The court is of the opinion that the following

issues arise for determination:

- a) *Whether this court has jurisdiction to entertain the suit.*
- b) *Whether the Plaintiff is the registered proprietor of the suit properties.*
- c) *Whether the Defendants have encroached or trespassed upon the suit properties.*
- d) *If the answer to (c) above is in the affirmative, whether the Defendants' activities on the suit properties are in contravention of Articles 42 and 69 (2) of the Constitution of Kenya.*
- e) *Whether the Defendants have demonstrated any legitimate defence to the action or claim upon the suit properties.*
- f) *Whether the Plaintiff is entitled to the reliefs sought in the plaint.*
- g) *Who shall bear the costs of the suit.*

H. Analysis and determinations

25. The issue of the court's jurisdiction to entertain the suit was raised by the 1st Defendant in paragraph 13 of his statement of defence dated 11th October 2017. It was contended that the suit properties were situated within Machakos County which fell within the jurisdiction of the Environment and Land Court at Machakos. Although the 1st Defendants had indicated that he would raise a preliminary objection on jurisdiction before the trial, he never did so. The record shows that he never participated at the hearing hereof and he never filed any submissions on the issue of jurisdiction. In fact, his advocates M/s B.M. Mungata & Co. Advocates filed an application to cease acting for the 1st Defendant after conclusion of the trial even though it was never prosecuted.

26. The rest of the Defendants did not object to the jurisdiction of the court in their statement of defence. However, in their witness statements they emphasized that two out of the three suit properties fell within Machakos County. The material on record indicates that the Defendants submitted to the jurisdiction of the court and fully participated in the proceedings including the trial.

27. Be that as it may, the court is of the opinion that the jurisdiction of the court is not limited by geographical boundaries under **Article 162 (2) (b)** of the **Constitution of Kenya**. It is also not geographically limited under the **Environment and Land Court Act, 2011**. In fact, **Section 4 (3)** of the said **Act** stipulates that "the court shall have and exercise jurisdiction throughout Kenya." It would be cumbersome and expensive for the Plaintiff to split the suit into two where the cause of action arises from the same acts or series transactions for the purpose of having them litigated in two or more different counties. Accordingly, the court finds that it has jurisdiction even where some of the suit properties fall within a neighbouring county.

28. The 2nd issue relates to the registration and the ownership of the suit properties. The Plaintiff pleaded that it was the registered owner of the 3 suit properties but all the Defendants denied that allegation. The court has examined the evidence, documents and submissions on record on this issue. The court is satisfied that the Plaintiff has demonstrated that it is the registered proprietor of the 3 suit properties. The Plaintiff produced copies of the title documents without objection by the Defendants. The court accepts them as valid evidence of ownership.

29. The 3rd issue is whether the Defendants have encroached or trespassed upon the suit properties. The court has considered the evidence, documents, photographs and submissions on record. The Plaintiff produced the relevant survey plans and aerial photographs to demonstrate the boundaries of the buffer zone comprised in the suit properties. Some of the photographs depicted some of the beacons on the suit properties even though some were missing or had been interfered with. The photographs also depicted some permanent and semi-permanent structures on the ground.

30. The Defendants' defence was three fold. First, they contended that they and their parents were in occupation long before the Plaintiff constructed the dam. Second, they contended that during the construction of the dam they were instructed by the Plaintiff to relocate to the upper side of the Tana River beyond a certain yellow line and that they had never crossed that boundary line. Third, they contended that, in any event, the Plaintiff had failed to survey the suit properties and clearly delineate the boundaries to enable them know whether their activities were within or without the buffer zone.

31. The court does not accept the first defence as a valid one. The mere fact that the Defendants' occupation may have predated the construction of the dam cannot be a legitimate answer to a suit by a property owner to assert its property rights. The court is of the opinion that the moment the land in question was acquired for public purposes and registered in the name of the Plaintiff, whatever interest the Defendants and their families may have had thereon ceased to exist.

32. The court is also unable to accept the second and third explanations by the Defendants. They could not on the one hand claim that they were unaware of the boundaries of the buffer zone and at the same time contend that they have never gone beyond the cut line marking out the boundaries of the buffer zone. The court is satisfied on the basis of the material on record that the buffer zone was surveyed as demonstrated by the survey plans which were produced at the trial.

33. The court is further satisfied that the Defendants have indeed encroached upon the Plaintiff's suit properties by undertaking the various activities which the Plaintiff complained of. Even assuming for a moment that the Defendants were not aware of the boundaries on the ground, that would not be a lawful excuse or justification to an action for trespass. Trespass to land is committed as soon as there is the

slightest interference with the property rights of another person. The trespasser does not have to be aware that he is committing trespass. The trespasser may even be genuinely mistaken as to the boundaries of the land in question but it, nevertheless, amounts to trespass.

34. The 4th issue is whether the Defendants' activities on the suit properties are adverse to the environment and Masinga dam. The Plaintiff contended that the Defendants' actions were in contravention of **Articles 42 and 69 (2)** of the **Constitution of Kenya**. **Article 42** stipulates as follows:

“Every person has the right to a clean and healthy environment, which includes the right—

a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and

b) to have obligations relating to the environment fulfilled under Article 70.”

On the other hand, **Article 69 (2)** of the **Constitution** stipulates that:

“Every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.”

35. The Plaintiff relied upon the case of **Mohamed Ali Baadi & Others Vs Attorney General & 11 Others [2018] eKLR** in support of its submission that environmental rights are justiciable rights in Kenya. In the said case, the High Court held, *inter alia*, that:

“281. Also, in *Subhash Kuimar vs. State of Uttar Pradesh*, the Indian Supreme Court expressly determined that Article 21 of the Indian Constitution includes a right to a clean environment:- “any action that would cause environmental, ecological, air, water pollution, etc., should be regarded as amounting to a violation of Article 21.”^[129] In so deciding, the Court reasoned that, “life in its proper dimension could not be enjoyed unless the ecological balance and the purity of air and water were preserved.”^[130]

282. This extension of the fundamental rights doctrine makes sense in the context of our transformative Constitution's jurisprudence. The right to life “includes the right to live with human dignity and all that goes along with it.” Fundamental rights “weave together a pattern of human rights guarantees” that are not mutually exclusive and distinct.”^[131] It is clear, our legal system provides an express, justiciable constitutional right to a clean and healthy environment. Kenyans secured this powerful right to the environment through the promulgation of the Constitution and Courts have a solemn duty to enforce this right in the context of environmental harms.

283. The adverse effects of the Project on the marine environment and eco-system in Lamu has been acknowledged and appreciated by the Respondents as well as the 3rd Interested Party. This is clear from the assembly of the Respondents' and 3rd Interested Party's pleadings, documents, evidence and submissions, and may especially be gathered by an examination of the ESIA Report for the first three berths of the proposed Lamu Port. Some of the major identified present or potential adverse environmental effects and the suggested mitigation measures, according to the Respondents' and 3rd Interested Party's own documents include the following ...”

36. So, what is the evidence before this court on the Defendants' alleged violation of **Articles 42 and 69 (2)** of the **Constitution**? The material on record indicates that there is very scanty evidence on the environmental effect of the Defendants' activities on the suit properties. The Defendants admitted that they have been residing on what they consider to be their ancestral land. They admitted that they have been cultivating crops and tapping water from Masinga dam for domestic use and irrigation. They admitted that they did not have any licence from the concerned regulatory authorities to harvest water from the dam. There was no evidence tendered on their specific farming practices and whether they were good or bad. There was no evidence on what chemicals, if any, they were employing and whether their contents were harmful to the environment.

37. Unlike in the case of **Mohamed Ali Baadi & Others** (*supra*) there was no report from any expert or authority on the matters in question which was tendered by the Plaintiff. The mere fact that the Defendants were harvesting water from the dam without a licence, by itself, could not constitute evidence of environmental degradation either through soil erosion or pollution. It was not demonstrated that the Defendants were improperly disposing or managing liquid and solid waste within the buffer zone. Equally, there was no evidence that the Defendants had fallen any trees. The court, therefore, finds that the Plaintiff did not tender sufficient evidence to demonstrate that the Defendants' occupation and cultivation had resulted into environmental degradation as pleaded in the plaint.

38. The 5th issue is whether the Defendants have demonstrated any legitimate defence to the action or a legitimate claim upon the suit properties. The Plaintiff's claim is hinged upon trespass to land. The pleading on environmental degradation is an auxiliary ground. The Defendants who admitted occupation contended that they and their families had occupied the suit properties since the 1940s. They further contended that they were never compensated by the Government when their land was taken up for construction of Masinga dam hence the land should remain theirs. They also contended that there were many public facilities within the suit properties such as schools, churches and shopping centres which had been in use for a very long time. Finally, it was contended that the various developments on the suit properties had taken place over the years without objection by the Plaintiff.

39. The court has noted that the Defendants did not lodge any counterclaim against the Plaintiff. They did not pray for cancellation of the Plaintiff's titles. They did not ask for compensation, relocation or any other relief. The court is of the opinion that the Defendants have not demonstrated any legitimate defence to the Plaintiff's claim. They did not produce any documents to demonstrate their interest in the suit

properties. They did not even demonstrate that they had previously lodged any claims for compensation and that the same had been declined without lawful justification or excuse. The mere longevity of occupation *per se* cannot be a valid defence to the action. The mere fact that the Plaintiff did not object to the various developments on the suit property cannot be a legitimate defence. The fact that there are public facilities within the buffer zone cannot help the Defendants either.

40. The court has noted from the evidence on record that even though DW1 claimed that only two schools had been built since the construction of the dam, the material on record indicates that apart from Twanyoni Primary School which may have been established in the 1970s, the rest of the schools, shopping centres and churches were established between 1980 and 2012. However, as indicated before, the existence of those facilities has no bearing on the Plaintiff's proprietary rights over the suit properties.

41. The 6th issue is whether the Plaintiff is entitled to the reliefs sought in the plaint. The court has found that the Plaintiff has demonstrated its proprietorship of the suit properties. The court has also found that the Defendants have encroached and trespassed upon the suit properties. The court has further found that the Defendants have no legitimate defence to the action or legitimate claim upon the suit properties. It would therefore follow that the Plaintiff is entitled to the reliefs sought in the plaint save as qualified hereafter with respect to declarations. The Plaintiff is entitled to enjoy and enforce its property rights even though it has failed to demonstrate that the Defendants' actions have resulted into environmental pollution and degradation.

42. The court has considered the claim for the various declarations to the effect that the Defendants' encroachment was illegal and that their actions constituted a violation of **Articles 42 and 69 (2) of the Constitution of Kenya**. The court is of the opinion that a declaration to the effect that the Defendants' encroachment and trespass was illegal would not serve any useful purpose in the context of this civil suit. A declaration merely declares the adjudicated rights of the parties and stops at that. It does not provide an enforcement mechanism hence further proceedings might be required to enforce such declared rights. The other two declarations relating to violation of constitutional rights are not available to the Plaintiff since there was no demonstration of violation of **Articles 42 and 69 (2)** by the Defendants.

43. The court has considered the claim for general damages for the Defendants' actions. It was not clear in the plaint whether the Plaintiff was seeking general damages for trespass or mesne profits for user of the suit properties. Since no particulars of the claim for mesne profits were pleaded and no evidence was led at the trial on the earnings or income the Defendants may have enjoyed from their use of the suit properties, the only option available to the Plaintiff is general damages for trespass.

44. The court is in agreement with the Plaintiff's submission that trespass to land is actionable *per se* hence there is no requirement of proving any specific loss or damage on the part of the claimant. The court has borne in mind the statutory functions of the Plaintiff as set out in **Section 8** the establishing statute. The Plaintiff is a government, regional development authority mandated to ensure co-ordinated and sustainable development of the regions where the Tana River runs through right from the source through to its delta. The court is of the opinion that the main concern of the Plaintiff should be to eject any trespassers who may be impeding the execution of its statutory mandate whereupon it should move to swiftly execute its mandate and fulfil its promises to the people of Kenya. Moreover, the Plaintiff had waited for about 5 years before filing the instant suit for eviction. Accordingly, the court shall not award the Plaintiff any substantial damages but shall award only nominal damages of Kshs. 100/- in recognition of violation of its legal rights by the Defendants.

45. The 7th and final issue is on costs of the suit. Although costs of an action are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to **Section 27 of the Civil Procedure Act (Cap. 21)**. As such, a successful litigant will normally be awarded costs of the suit unless, for good reason, the court directs otherwise. See **Hussein Janmohamed & Sons Vs Twentsche Overseas Trading Co. Ltd [1967] EA 287**. The court has considered the peculiar circumstances of this case in which the Defendants have found themselves on the wrong side of the law. The court has borne in mind that they will have to mobilize substantial resources in order to relocate from the suit properties either now or later. The court is of the opinion that the appropriate order to make on costs is that each party shall bear his own costs of the suit.

I. Summary of court's findings on the issues

46. In summary, the court makes the following findings on the issues for determination in this suit:

*a) The court has jurisdiction to entertain the suit under **Article 162 (2) (b) of the Constitution of Kenya and Section 4 (3) of the Environment and Land Court Act 2011.***

b) The Plaintiff is the registered proprietor of the suit properties, to wit, L.R. No. 28670, 28671 & 12621.

c) The Plaintiff has demonstrated on a balance of probabilities that the Defendants have encroached and trespassed upon the suit properties.

*d) There is no evidence on record to demonstrate that the Defendants' activities on the suit properties were adverse to the environment or Masinga dam. Equally, there was no evidence to demonstrate that the Defendants' actions had violated **Articles 42 and 69 (2) of the Constitution of Kenya.***

e) The Defendants have not demonstrated any legitimate defence to the action for trespass or any legitimate claim upon the suit properties.

f) The Plaintiff is entitled to some but not all of the reliefs sought as more specifically qualified in the judgement.

g) The order on costs which commends itself to the court is that each party shall bear his own costs.

J. Conclusion and disposal orders

47. The upshot of the foregoing is that the court finds and holds that the Plaintiff has demonstrated its claim as set out in the judgement. Accordingly, there shall be judgement for the Plaintiff against the Defendants jointly and severally in the following terms:

a) An eviction order be and is hereby issued against the Defendants, their families, servants and agents from the suit properties, that is, L.R. No. 28670, 28671 and 12621.

b) The Plaintiff shall restore all missing beacons marking out the boundaries of the suit properties within 30 days and point them out to the Defendants and the Chiefs of the locations adjoining the suit properties.

c) The Defendants shall have a grace period of 30 days from the date of restoration of the beacons to vacate the suit properties in default of which eviction may ensue.

d) An order of permanent injunction be and is hereby issued to restrain the Defendants, their families, servants and agents from encroaching or trespassing upon L.R. Nos. 28670, 28671 and 12621 upon eviction or vacation.

e) The Plaintiff is hereby awarded nominal damages for trespass in the sum of Kshs. 100/- against the Defendants jointly and severally.

f) The declarations sought in reliefs (a) (b) and (c) of the plaint are hereby declined.

g) Each party shall bear his own costs of the suit.

48. It is so adjudicated.

JUDGEMENT DATED, SIGNED and DELIVERED in open court at EMBU this 12TH DAY of MARCH, 2020.

In the presence of Mr. Mwathe holding brief for Mr. Kibe Mungai for the Plaintiff, Ms. Nzekele holding brief for Mr. Okwaro for 2nd – 27th Defendants and in the absence of the 1st Defendant.

Court Assistant Mr. Muinde

Y.M. ANGIMA

JUDGE

12.03.2020