



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANG'A

ELC NO. 118 OF 2017

FRANCIS MAINA MUGO - 1ST PLAINTIFF

PETER MAINA MUGO - 2ND PLAINTIFF

VS

REGISTERED TRUSTEES -ANGLICAN

CHURCH OF KENYA- THIKA DIOCESE - 1ST DEFENDANT

CHURCH COMMISSIONER FOR KENYA

LIMITED - 2ND DEFENDANT

BISHOP JULIUS WANYOIKE, THE BISHOP

A.C.K THIKA DIOCESE - 3RD DEFENDANT

JUDGMENT

1. The Plaintiffs filed suit against the Defendants on the 8/2/17 which suit was later amended on the 11/7/17 seeking the following orders;
 - a. An order directing the Defendants to deliver vacant possession of the portion of land measuring 0.574 acres out of KAKUZI/KIRIMIRI/BLOCK111/38 (suit land) illegally occupied by the Defendants to the Plaintiffs and further payment of mesne profits for the loss of use.
 - b. Without prejudice to a) above an alternative to pay compensation for the portion at Kshs 600,000/- being the market value of the portion of land occupied by the Defendants and general damages for the loss of use.
 - c. Costs and interest of the suit.
 - d. Any other relief this honourable Court may deem fit to grant.
2. The 1st and 2nd entities are sued in their capacities on behalf of the Anglican Church of Kenya, Thika Diocese while the 3rd Defendant is the Bishop managing and overseeing the Diocese of Thika.
3. The Plaintiffs aver that they are the registered owners of the suit land having acquired the same through transmission via Succ cause No HCCC No 831 of 2013 upon the death of their father, Esbon Mugo Wainaina (Esbon), the original owner of the property.
4. It is their case that the Defendants have without their authority permission and any legal basis occupied and hived out a portion of 0.574 acres of the land and constructed a Church despite the Plaintiffs protestation. That the Defendants have been adamant in their illegal occupation of the suit land despite the demand to vacate. In the alternative, they have failed to consider an offer to sell 1 acre of the portion of the land on which the Church sits at the market price of Kshs 600,000/-
5. The Defendants on the other hand have denied the Plaintiffs claims and contend that the Plaintiffs' entitlement is only 5 acres which was the entitlement of their father as allocated by the Ndabatabi self-help group. That all the members of the group were allotted 5 acres, the Plaintiffs father included. It is their defence that the Church was allotted a portion of 1.2 ha to be excised from the large farm which was 719 acres on the 28/1/1973. The portion was located within the area earmarked for the development of the township with other commercial

spaces like shops and administration offices.

6. Further that in 1973 the group land was subdivided by the Land and Farm Management department of the Ministry of Agriculture wherein each member was allocated 5 acres of land. The Church was allocated land for building the Church and nursery school measuring 2 and 1 acres respectively. That in 1988/89 the group farm was resurveyed by a commission appointed by the Government which erroneously consolidated the Church 3 acres into parcel 38.

7. They averred that the Church has been in occupation of the 3 acres since 1973. The Church building is permanent with a vicarage.

8. They fault the Plaintiffs for conducting the succession proceedings without involving them with the knowledge that the Church property was part of the estate of the late Esbon.

9. At the hearing of the case the Plaintiffs case comprised of the amended plaint dated the 11/7/17 and filed on even date, the list of documents dated the 18/9/17 and the joint witness statements dated the 8/7/17.

10. The pleadings of the Defendants comprised of the defence dated the 10/7/17, witness statements of 3 witnesses all dated the 21/1/18 and list of documents dated the 8/2/18.

11. The evidence in the Plaintiffs case was led by PW1- Peter Muchoki Mugo, the 2nd Plaintiff. He informed the Court that he is the brother of the 1st Plaintiff, being sons of Esbon Mugo, deceased. He relied on the joint statement on record filed on the 8/2/17. The land measures 3.606 ha and is registered in their names having inherited it from their father, the original proprietor of the land. That the Defendants have hived off 0.574 acres out of the suit land and occupied without their permission and built a Church thereon and despite their demands to vacate they have been adamant.

12. At the trial the witness informed the Court that his father was a member of the Ndabatabi Self Group that bought 719 acres from a white settler in the early 1960s. In 1973 the land was subdivided and members were allocated individual plots and his father got plot No 38, settled his family and lived there till his demise in 2014. That in 1988 his father got a title for the land through the Presidential land commission which carried out the survey and issued titles to the members, his father included.

13. Further he added that the Church was not a member of the self-help group to warrant them being allocated any land. He averred that the Church was built on the land in 2004. That they have offered to sell the 0.6 acres to the Church at Kshs 600,000/- an offer that they are still keen to consider.

14. In cross examination the witness admitted that he was neither a member of the self-help group nor was he present when the land was allocated to his father. He was not present when the group farm was resurveyed in 1988 either. He was not aware that his father had been allocated Plot No 96 which was said to be rocky or that on his request the same was exchanged with plot 38 (which was the market plot) and the market shifted to plot 96. That he has not seen any documents to support the alleged land exchange. He was not present during the balloting in 1973. He refuted that his father's land was 5 acres. On further cross examination he could not explain how his father acquired the additional 3-4 acres over and above the 5 acres to make the current acreage of 9 acres. That they have not been sued for occupying public or Church land. That in any event no restriction has been lodged on their title at the Lands office by any party, the Church included. That their father's land is 9 acres and no complaint has even been raised against the acreage least of, all by the Church.

15. That his mother is still alive and lives on the suit land. That said, he admitted that his parents did not raise any objection in respect of the occupation of the land by the Church.

16. The defence was led by DW1 – Joseph Kimani Kamau. He introduced himself as the Secretary of the self-help group and that his duties include record keeping as well as addressing queries of the members in respect to their land holdings. He relied on his witness statement dated the 22/1/18. That he was a member of the group and owner of plot No 58. That Ndabatabi self-help group bought land namely KAKUZI/KIRIMIRI/BLOCK 111 measuring 719 acres from a white settler.

17. He explained that after the titles were issued there were some disputes relating to the public utility lands such as roads and dams and as officials for which they sought help from the Commissioner of Lands, local administration and the survey office in vain. He stated that he knew Esbon, the father of the Plaintiffs who are known to him as well. He explained that as way back as 1962 the land was surveyed by the department of Land and Farm machinery, part of the Ministry of Agriculture and thereafter members balloted for their lands using the allocation survey map. The allocation took place in 1973. The Plaintiff's father was allocated plot No 38. That 10% of the total land was reserved for public utilities including the Church, nursery school, dams, market shops roads etc. That the Mithini market land on the map measured 50*100 plots belonging to the 93 members of the self-help group. That the Defendants got 3 acres of land for the Church and the nursery school through an allotment letter signed by the officials of the self-help group.

18. That the members requested the committee to allot Mithini market land that was near the road and since the Plaintiff's father's land had a road frontage, they successfully pleaded with the committee to swap Wainaina's land with that of the market. The market then went to plot No 96 that had a road frontage and he moved to the portion next to the Church plot with the No. 38. The Plaintiffs' father land was 5 acres.

19. Fast-forward to 1988/89 he testified that the presidential commission on large scale farms engaged a surveyor called Githome to resurvey the farm for purposes of issuing titles to the members. This survey carried out the verification of the survey based on the earlier survey done by the Ministry of Agriculture. He produced Registry Index Map (RIM) 10th Edition for KAKUZI /KIRIMIRI BLOCK 3 (NDABATABI). In this RIM parcel 38 is placed where the Anglican Church of Kenya (ACK) Church and Mithini Market were. The new parcel 38 is now bigger having incorporated the land that was earlier allocated to the ACK Church for purposes of the school and the nursery. He testified that the ACK Church was built around 1973 when the land was allocated to members. He stated that he did not know how the Surveyor (Githome) gave the Plaintiffs' father the entire land including that of the Church.

20. In cross examination the witness stated that he was elected Secretary of the self-help group in 2000. When pressed he stated that he had no minutes in Court to authenticate his averment that he was an official of the group. He asserted that the Church was not a member of the self-help group and therefore could not ballot as it was not a member. In an apparent contradiction with his evidence in chief he stated that the self-help committee exchanged the land of Esbon with that of the Church. He however did not have any minutes to confirm the exchange. Further he stated that he was not present when the 1st survey map was prepared and that he saw the map for the first time in 2000. He did not know whether the map was registered with the survey of Kenya or not but he confirmed that this is the map that was used to allocate members the land and the 2nd RIM should have followed the earlier survey. It did not hence the many complaints that arose thereafter. He stated that in the initial survey map the Plaintiffs' land was separate and distinct from the one belonging to the Church. The Church land was between plot 45 and 50. The land parcels reserved for nursery, market and the Church were not numbered with a land reference number and had no titles. He did not produce any minutes or members resolution that approved the allocation of land to the Defendants. That the officials of the self-help group are all dead. When shown the RIM DEX 20, he confirmed that this is the only registered RIM upon which titles were prepared and issued in 1988. He confirmed that despite the Commissioner of Lands office directing them to prepare an amended RIM to address the disputes in respect to member complaints and public utility plots, they have not done so. He informed the Court that the authentic RIM is DEX No 20.

21. He stated that in the DEX No 20 RIM, the Church and nursery school land is in parcel 38 on the ground while on the map the Church and nursery are not indicated at all. They are missing. That parcel No 38 is about 9 acres. The Land officer in his letter dated the 28/3/03 stated that both maps that is the allocation map of 1973 and the RIM are legitimate and the solution to the disputes lay with the members of the Ndabatabi to meet and resolve the issues. He insisted that he did not know how the Church and nursery school land moved from its position in DMFI 1 to RIM DEX NO 20, the latter being that they are consolidated within parcel 38.

22. DW2 – The Venerable James Kiranga Kamura introduced himself as the Principal Administrative Secretary of the ACK Church, Thika Diocese. He relied on his witness statement filed on the 8/2/18.

23. He testified that the ACK was allocated 1.2 ha of land on the 22/5/1973 vide a letter addressed to the Church by Wainaina Kimani, the chairman of the self-help group following a General Meeting of the members held on the 28/1/1973 for the benefit of running a Church and a nursery school for the benefit of the 93 members of the group. That subdivision of the farm was carried out by the department of Land and Farm Management under the Ministry of Agriculture in 1972/73 from which map (allocation survey map) was used for purposes of balloting and allocation of land to the members and the Church. Upon allocation Esbon got plot No 38 which was situated on a rocky area and requested the officials to move him to a more arable land. His request was acceded to and was moved to a 5-acre plot next to the Church and nursery school. This was the market plot No 96. The market plot was relocated to the original plot of Esbon hence it was in exchange, he testified.

24. That come the Presidential commission in 1988/89, Gathome & Associates was commissioned to survey the land in preparation for issuance of titles. He stated that it seemed the surveyor did not consult the members of the Group nor paid attention to the allocation survey map of 1973 prepared by the department of Land and Farm management division of the Ministry of Agriculture. Therein errors occurred. For example, the 5 acres land of Esbon was consolidated together with that of the Church and the nursery school and registered under the name of Esbon. That notwithstanding he stated that the ground position of the Church land has never changed since 1973 but it is within land now registered in the names of the Plaintiffs. That the Church land and that of the Plaintiffs is distinctly settled and demarcated on the ground. That it is only in 2015, after the death of Esbon that the Plaintiffs raised the issue otherwise they have co-existed for over 40 years. He urged the Court to order for the subdivision of the suit land to sever the Church land from that of the suit land.

25. In cross examination by Mr Mwangi Ben, the Learned Counsel for the Plaintiff, the witness stated that he was born in 1971 and became the administrative secretary of the diocese in 2016 and therefore has testified from information that he gathered from the Church records. That the Defendants have never filed suit to claim the land from the Plaintiffs who are the registered owners having succeeded the estate of their father, Esbon. That though the Church was not a member nor balloted for land, it was his evidence that the Church was allocated land by the members of the self-help through a letter dated the 22/5/1973. That the Church did not get any land in 1988 and that it only realized in 2015 that it did not have a title for the land when it received a demand letter from the Plaintiffs that it should vacate the suit land. That the Church legally occupying the land pursuant to the allocation in 1973 by the self-help group members. He confirmed that no action has been taken by the Church to claim the land. That the Plaintiffs live on the land with their families.

26. DW3 – Grace Nyambura Githaiga stated that she is a holder of a certificate in Agricultural Engineering from Eldoret Institute of Agriculture the precursor of Moi University today. She works with the Department of Agriculture Kiambu County in the department of Agricultural Mechanization Services (AMS). She has worked for 29 years. Before 2013 the department was under the Ministry of Agriculture at Kilimo House. That she is a draughts person charged with drafting or drawing of maps, farm plans/demarcation plans etc. That as a draughts person she carries out tracing which is the inputting of survey data on a plan out of which the blue print is printed. She produced the DEX-21 (the original allocation map) which was prepared by a M Kakenya Onesmus in 1972/73 and traced by Philip Obuya , both who have since left the service. That this is the map that was used for the allocation and demarcation of the land to the members of the self-help group. The original was retained in their office and whenever it was required upon application coupled with a chief's letter, it would be made available.

27. In cross examination the witness stated that she is not a surveyor but a draughts person. That the DEX 21 is not signed by the persons who are attributed to have prepared it. That she did not know under whose instructions the map was prepared. That she did not have any primary data used to prepare the map such data was not presented in Court as she was not privy to. She clarified that she is not aware if there is another survey map for the land. That DEX 21 is not registered at the survey of Kenya hence not an official map for the land and her role was to produce the said map as she does not know the dispute in Court.

28. In conclusion she clarified that the Land and Farm management was a department in the ministry of Agriculture that assisted farmers to subdivide large scale farms for purposes of settling their members. In so doing the department prepared survey plans and maps for the purpose. That though she is not a surveyor, she is a draughts person, a role that is provided for within the surveying profession.

29. The Plaintiffs submitted that the Defendants were neither members of the self-help group nor balloted for the land in 1973 and

subsequently was not issued with a title for any land at Ndabatabi. That the Defendant has never claimed the land nor even challenged the judgement in the succession cause of 2015 in respect to the estate of Esbon. That when the Plaintiffs offered the Defendants to purchase 0.6 acres it is occupying at Kshs 600,000/- they declined and claimed a larger portion of the land. That said the Plaintiffs stated that they are still willing to consider the option should the Court grant the same.

30. In conclusion the Plaintiffs submitted that they are the true and legal owners of the suit land to which they hold a valid title. The succession cause was never challenged by the Defendants on grounds of nay claim on the land. That defense has no claim before the Court whether by a counterclaim or otherwise although they have alluded to some prescriptive rights. That the defence squandered their chance to amend their defence when it failed to file and serve the same within the required 14 days thus leaving the orders granting leave to expire by affluention of time.

31. In the alternative claim, the Plaintiffs aver that they have in good faith agreed to be compensated in the sum of Kshs 600,000/- for the area of 0.6 acres occupied by the Defendants at their election. If agreeable the Plaintiffs will transfer the same to the name of the Defendants. In respect to mesne profits the Plaintiffs left it to the discretion of the Court.

32. The Defendants submitted that the Plaintiff's entitlement was 5 acres of land is misplaced. That problems arose in 1988 when the surveyor Gathome was commissioned by the Presidential commission to resurvey the land for purposes of titling. The said surveyors failed to account for the land of the Church and lumped it together with the land of Esbon. That the Church was allocated land by the members in 1973 even though it was not a member. Other public utility lands such as dams, roads and were provided for at the time. That not all the allotments were done through balloting. The Defendants argued that according to the schedule of allocation DEX No1 parcel 38 is 5 acres and according to the title held by Esbon and consequently the Plaintiffs the land is 8.9 acres. It is their argument that the Plaintiffs have not demonstrated how the extra 3.9 acres was acquired leaving the only plausible reason that the land for the Church and the school was added to the land of Esbon. Further that it is not in dispute that the Church took possession of the land since 1973 and has continued in its occupation for the last 46 years developing the Church which currently has a permanent Church and a vicarage together with an orange farm. That Esbon did not raise any claim of illegal occupation by the Church.

33. As to whether the interest transferred to the Plaintiffs constitute a valid title, the Defendants argued that the Plaintiffs have not demonstrated that they hold a title free from all encumbrances which includes any or all interests which need not be noted on the register. That the estate held title to land far beyond the entitlement of Esbon and included the land belonging to the Church and the nursery school.

34. The Defendants refuted the Plaintiffs claim that the Defendants had offered to purchase 0.6 acres from the Plaintiffs. That no negotiations took place nor was the offer even accommodated by the Defendants.

35. Having considered the pleadings, the evidence adduced at the hearing and written submissions and all the materials placed before me at the trial, the issues that commend themselves for determination are; whether the Defendants are entitled to 1.2 hectares out of the suit land; whether the Defendants are in trespass of the suit land; whether the Plaintiffs are entitled to mesne profits; who meets the costs of the suit.

36. The case of the Plaintiffs is that they are the registered owners of the suit land having acquired through transmission from the estate of Esbon their deceased father. That their father acquired the land pursuant to his membership of the Ndabatabi self-help group in 1973 and was issued with a title in 1988 which he held till his death in 2014. That the Defendants are in illegal occupation of the land and urged the Court to order that they deliver vacant possession of 0.6 acres of the portion and pay mesne profits for loss of use. In the alternative they are not willing to compensate the Plaintiffs in the sum of Kshs 600,000/- for the occupied portion of 0.6 acres.

37. The Defendants' case is that the Plaintiffs entitlement in the suit land is only 5 acres. That the title held by the Plaintiffs comprise the land that was allocated or gifted to the Church vide letter dated the 22/5/1973 upon which the Church took possession and occupied since then to date developing the Church over the years until the current state where they have a permanent Church building, a vicarage and an orange farm.

38. It is not in dispute that the Plaintiffs are the registered proprietors of the suit land in equal shares as per the certified copy of the title issued on the 22/9/15. The land measures 3.606 ha which is 8.91 acres. According to the valuation report on record the land is occupied by the Plaintiffs and another portion is by ACK Church Mithini. This land is situated about 700 meters from Mithini trading centre. Although it is not in dispute that the land was originally registered in the name of Esbon neither party provided any documents in form of title or green card to support the averment.

39. To put the case in perspective, it is borne out of the evidence on record that the self-help group purchased 719 acres of land from a white settler in the 1960s/70s for the purpose of settling its 93 members. In 1973 through the help of the Land and Farm management, a department of the Ministry of Agriculture subdivided the land for purposes of enabling the members to ballot for the plots. A survey map DEX 21, which is christened the allocation/demarcation survey map was used to facilitate the exercise and the members were settled on the land.

40. In 1988 the Presidential Commission into large scale farming commissioned another survey through Gathome & Associates which prepared the RIM – DEX 20. The Defendants have faulted this survey for the disputes and the problems that arose thereafter. For example, they argue that the survey did not account for the land previously allocated to the ACK Church through the letter dated the 22/5/73 by the self-help group. Instead the ACK land was contained in the land of Esbon.

41. I have looked at DEX 21 which shows several subdivisions. Parcel 38 measures 5 acres and is situate next to plot 39 on the left and plot 41 on top. On the upper end of the map is space marked CPK Church, Nursery and Mithini market. The land is not referenced with a plot No, but is situate between plot No 50 on the top and 45 and 54 below. DW1 and DW2 have explained that Esbon was unhappy with the position of his parcel 38 and requested for exchange with the Mithini market land as it was more arable. That this was acceded to by the officials and he was moved to where the utility plots were that is to say between plot 50 and plot 45 and 54 at the bottom of the land. I have perused DEX 21, the RIM for Kakuzi/Kirimiri/Block 3 (Ndabatabi) and note that parcel No 38 is placed similarly like in DEX 21 that is between parcel 50 at the top and parcels 45, 100 and 54 below. The difference however is that there is no indication of ACK Church/nursery either on parcel 38

or in the RIM at all. Plot 96 is now marked as a “public utility purposes”. It is not explained what comprised of the public purposes/uses of parcel 96. It is to be noted that the position occupied by plot 96 in DEX 20 (RIM) is where parcel 38 occupied in DEX21 (allocation map of 1973). Neither party produced the area list before the Court which would have guided the Court as to the areas of the parcels and in particular parcel 38.

42. DW1 and DW2 did not produce the minutes of the self-help group that demonstrate that there was an exchange between Esbon’s and the market plot. The Plaintiffs have averred that they were not present during the subdivision and balloting and neither were they aware of any exchange. DW1 informed the Court that he became an official of the self-help in 2000 and therefore could not attest to the exchange. In any event as the secretary of the group whose key role was to keep records, he failed to present any of the resolutions and or minutes to show the exchange. He informed the Court that he only saw the DEX 21 in 2000 despite testifying that he was a member of the group and allottee of parcel 58. DW2 testified that he was born in 1971 and joined the Church in 2016 and was not present during the subdivision, balloting and allocation of the land at Ndabatabi. He stated that his testimony was from the Church records which he neither produced for the benefit of the Court. His evidence was therefore reduced to hearsay. He admitted that the Defendants only realized in 2015 upon receipt of a demand letter to vacate from the Plaintiffs that they did not have a title to the land the Church occupies.

43. The DW1 and DW2 informed the Court that the Defendant acquired 3 acres of land through an allocation vide the letter dated the 22/5/1973. This letter was produced in evidence and marked as DEX2. The letter is written by the Chairman of the self-help group and addressed to the CPK Church. The letter sated as follows;

“the committee and the of Ndabatabi self-help group in our general meeting which held on the 28/1/1973 decided to give you an area for the Church in our farm. The area which is 1.2 hectares approximately is just near Mithini Market P-Number 7. This permanent portion is for the Church to make use of it.”

44. According to DEX21 parcel No 7 is found on the lower tip of the farm near the Ndabatabi river while on the map (DEX 20) it is shown near parcel 50, 45 and 54. This lends doubt to the exact land position of the Church and the nursery school as per the DEX 21. DEX 21 shows on the index that CPK was allocated 2 acres and not 1.2 hectares. Two nursery schools were reserved measuring 1.2 and 1 ha or acres(?). DEX8 letter dated the 16/9/2011 seems to suggest that the nursery school is in parcel 110 and the vicar in charge is being informed that the members want the plot to be subdivided into two portions to cater for the nursery school which is a public institution. The question that begs an answer is whether the nursery school was part of the land given to the Church? It is not clear.

45. It is not known what steps the Defendant’s took upon being issued with the allocation letter above. DW2 informed the Court that they have never claimed the land. They were not issued with any title in 1988 and indeed they only realized that they did not have a title in 2015 when they were asked to vacate.

46. It is borne of the record that DEX 20 is the registered RIM of the land and DEX 21 was the allocation map prepared by the members of the self-help group. Going by the record and DEX 3-DEX13 there appears to be some truth that the RIM prepared by Gathome caused disputes that remain unresolved to date. The various correspondences suggest that some public utility plots were amalgamated with private lands, a case is given of parcel 38 and the land for the Church, nursery school, dams, roads etc. The members were advised to commission a surveyor to harmonize the two survey maps. According to the evidence of DW2 this has not been done.

47. It is to be noted that the Defendant’s case is that they have occupied the land since 1973 to date. They however failed to raise a counterclaim or any such claim in the suit. They admit that they did not demand for the land during the lifetime of Esbon even in 1988 when members were being issued with titles. The Defendants made submissions in respect to prescriptive rights arising from long occupation and possession of the land which unfortunately were not contained in the pleadings and or evidence. This is a critical step missed by the Defendants who though represented by Counsel should have known better. I say no more save that parties are bound by their pleadings.

48. Issue No is answered in the negative.

49. Section 24 of Land Registration Act (LRA) vests the registered owner of land the absolute ownership together with rights and privileges thereto. Under section 25 of the LRA it is provided that the rights of a proprietor of land shall not be defeated except as provided by the Act and are subject to limitations such as leases and overriding interests expressed under section 28 of the Act. Section 26 provides ways in which title may be impugned that is on ground of fraud or misrepresentation on which the person is proved to be a party or where the certificate of title has been acquired illegally procedurally or through a corrupt scheme.

50. The Plaintiffs led evidence that they are the registered proprietors of the suit land having acquired the same by way of transmission. The Defendants have not demonstrated how Esbon or the current owners of the land are guilty of such conduct as contemplated under section 26 above. In the absence of any evidence to the contrary I am persuaded that the Plaintiffs hold a valid title free from any taint.

51. Trespass to land has been defined as consisting of “any unjustifiable intrusion by one person upon land in the possession of another”, (see, Clerk & Lindsell on Torts, 18th Edition at paragraph 18-01). Section 3(1) of the Trespass Act states as follows;

“Any person who without reasonable excuse enters, is or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.”

52. According to the registered RIM from which the titles were prepared the Plaintiffs are the registered owners of the suit land. The Defendants have not mounted a justifiable reason to continue occupying the land of the Plaintiffs and in the circumstances the Court finds that they are in trespass or illegal occupation of the suit land. They have not demonstrated good reason why they should continue on the land.

53. In respect to the prayers for mesne profits it is to be noted that the Plaintiffs have not tendered evidence as to the quantum of loss that they have incurred for the loss of the use of their land. Though they have left it to the discretion of the Court, it would have guided the Court

if they shed light on the nature of the quantum if any. Such evidence would have been a valuation report showing the comparative rentals for similar land use for 0.6 acre. I decline to entertain this prayer in the absence of evidence.

54. In respect to the alternative prayer for compensation for sale of 0.6 acres, I find that this prayer is moot for two reasons; the Defendants have refuted the offer and secondly because of the holding of the Court in the preceding paras. It is a principle of law that parties contract freely and where there is no meeting of the minds it would be unconscionable to force parties to a contract against their free will.

55. Final orders;

a. The Defendants be and are hereby ordered to vacate the 0.6 acres out of the suit land and deliver vacant possession to the Plaintiffs within 6 months from the date of this judgement.

b. In default, eviction orders to issue accordingly and be carried out by a Court authorized bailiff.

c. The OCS commanding police station of the area shall supervise the eviction to ensure law and order is maintained.

d. The prayer for mesne profits is declined.

e. The costs of the suit shall be in favour of the Plaintiffs.

56. **It is so ordered**

DATED, SIGNED & DELIVERED AT MURANGA VIA EMAIL THIS 3RD DAY OF JUNE 2020

J.G. KEMEI

JUDGE