



**Gathinji v Obure (Environmental and Land Originating Summons
E002 of 2024) [2025] KEELC 6471 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6471 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2024
MN MWANYALE, J
SEPTEMBER 30, 2025**

BETWEEN

PAUL NYAGA GATHINJI APPLICANT

AND

THOMAS OKENYE OBURE RESPONDENT

JUDGMENT

1. Vide his Originating summons dated 18th January 2024, Paul Nyaga Gathinji sought for orders interalia that; -
 - a. A declaration that the titles/registration of the said Thomas Okenye Obure to the freehold interest in the land tile numbers Transmara/Ololchani/437 has been extinguished by the Applicants adverse possession thereof for a period of more than 12 years in terms of section 17 and 38 of the *limitation of Actions Act*.
 - b. That a declaration that the Applicant has acquired the freehold interest in land parcel title numbers Transmara/Ololchani/437 by his adverse possession thereof for a period of more than 12 years.
 - c. That an order do issue requiring and directing the Transmara sub-county Land Registrar to register the Applicant Paul Nyaga as the absolute proprietor of lands parcel title numbers Transmara/Ololchani/437 in place of Thomas Okenye Obure and in place of any other person succeeding the Respondents.
 - d. This court be pleased to issue a permanent injunction restraining Respondents by themselves, agents, employees and/or servants acting at their behest from disposing and/or in any other way interfering with land parcel title number Transmara/Ololchani/437.
 - e. The costs of this suit be borne by the Respondents.



- f. That this court be pleased to make any other order as it shall deem fit to meet the end of justice.
2. Directions under order 37 were issued for the OS to proceed by way of vivavoce evidence hence converting the OS to a plaint and the supporting affidavit to a witness statement.
3. The Respondent had instead of filing a Replying affidavit, filed a Defence dated 13.11.2024 and a counter-claim.
4. A defence to counter-claim was also filed. The Applicant thus become the plaintiff on the conversion of the O.S to a Plaint and the Respondent, Thomas Obure Okenye, became the Defendant.

Plaintiffs Case and Evidence

5. The plaintiff sought for the prayers set out at paragraph 1 of this judgment ad sought for a determination of the following questions.
 - i. Whether the Applicant has been in exclusive and uninterrupted possession and occupation of land parcel title number Transmara/Ololchani/437 hereinafter referred to as the suit parcels for a period exceeding 12 years.
 - ii. Whether the said Applicant occupation and possession of the suit parcels has been and/or remains adverse to the Respondents rights and interests over the suit properties.
 - iii. Whether the Applicant is entitled to registration as proprietor of the suit parcels by virtue of the operation of adverse possession.
6. In support of the prayers set out at paragraph 1 and the questions sought to be determined, the plaintiff filed a supporting affidavit, in which he deposes interalia; that; -
 - i. He has been in possession Transmara/Ololchani/437 from 2006, That he never displaced anyone from the suit land which had been under his total control and use, his occupation has been notorious as it is not a secret.
 - ii. He has developed the suit property extensively, by constructing a home, planted trees which had matured including sugarcane.
 - iii. That he had occupied the suit property for 17 years, without interruption and the Defendant was registered on 30.09.2010 when the plaintiff was already in possession.
 - iv. The Respondent rights and interests over the said parcels of land lapsed and/or got extinguished at the expiry of 12 years of his occupation and possession from the date of their registration in 2006.
 - v. That the Respondent was well aware of the occupation by the plaintiff and never laid any claim to the suit property by evicting the plaintiff and/or interrupted the possession.

7. In support of his case 6 witnesses testified for the plaintiff.

PW 1, the plaintiff Paul Nyaga Gathinji testified and adopted his supporting affidavit/witness statement dated 18.01.2021 and further statement dated 3rd January 2025 as part of his evidence in chief.

He produced a copy of the official search of Transmara/Ololchani/437 as P.Exhibit 1, photographs of constructions, sugarcane plantations as P.Exhibit 2(a) and (b) an affidavit sworn n 718/1989 as P.Exhibit 3 copies of Kenya Advanced certificate of Educate certificate No. 147530 as P.Exhibit 4, Kenya certificate of Education certificate No. 484459 as P.Exhibit 5, Deployment letter dated



17.11.2003 as P.Exhibit No. 6, Reporting letter to the station dated 07.01.2004 as P.Exhibit No. 7. He identified an Agricultural report dated 23.10.2024 as PMFI.1.

8. It was his further evidence that he entered the suit property in 2006
9. That in the 1980's and 1990's he was not in Transmara and in 1985 he was still in secondary school. He had bought Transmara/Ololchani/511, the bordering plot (suit property) was vacant and he took possession of the same without the knowledge of the Defendant who did not give him permission to occupy.

He planted trees in 2009 and he had used the property openly, planted and harvested sugarcane, potatoes, tomatoes and vegetables and now had planted the industrial sugarcane type. He had fenced the property, dug a borehole. He owned the adjacent property Transmara/Ololchani/511 and had fenced both properties. He was shown the boundary of Transmara/Ololchani/511 but there was no boundary as to where Transmara/Ololchani/437 had started, on the ground.

10. On cross-examination, the witness stated that he had bought parcel No. Transmara/Ololchani/511 from Rhoda Wanjiru and was shown beacons, he had seen an idle property (suit property) and took possession. At time of purchase Rhoda Wanjiru had no title number but an adjudication number. He further stated that he had developed Transmara/Ololchani/437. He stated that the surveyors report indicated that the house was not on Transmara/Ololchani/437 and boundary was changed by a third party.

He had dug the borehole on Transmara/Ololchani/437, he was not aware when the title was issued.

The witness stated that he could not distinguish the boundaries of Transmara/Ololchani/511 and Transmara/Ololchani/437, and Rhoda Wanjiru who sold to him was now deceased.

11. On re-examination, the witness stated that he had not been shown a statement that he had acquired fraudulently No. 511. On P.Exhibit 2(a), he stated that the fence was in 437. When he filed suit, his house was sitting in 437, the lands office used the existing boundaries and he did not attend the boundary dispute since the hearing was not the registered owner, but would pursue the boundary dispute when he becomes to registered owner.
12. PW 2, Joshua Ochieng Okello, an Agricultural Extension office testified and produce PMFI as P.Exhibit 8. It was his testimony that he had found blue gum trees and sugarcane on the suit property. He took consideration of diameters of the trees, and trees grown about 1 to 2 centimeters in a year and vertically about 1 meter.
13. The trees were about 20 meters and had different diameters. Crop valuation was 482,000/= and trees had been planted about 13 years ago.
14. On cross-examination PW2 indicated that the trees were within the G/O (GPS) he had indicated but he could not verify the title, although the property measured about ¼ of an acre. The trees and sugarcane covered the whole property, the trees were on the lower side up to the river, while sugar was on the upper side. The witness was not aware whether there were two parcels of land.
He stated that trees grew about 2cm per year. Since the trees were not grown to recommendation hence had not grown horizontally but vertically. His report did not indicate the title.
15. PW3, the registered owner of Transmara/Ololchani/443 testified it was his testimony that he knew that the plaintiff utilized Transmara/Ololchani/437 and that he owned Transmara/Ololchani/511. He identified the photographs P.Exhibit 2a and 2b as photographs from Transmara/Ololchani/511



- and 437, the witness stated that there was no distinction on the property as they were used by the same person.
16. On cross-examination, the witness indicated that his property borders Transmara/Ololchani/511 and he got his title in about 2010. He stated that the property was only one, and the trees had been planted. The witness indicated that he did not know the Defendant.
 17. PW.4 Issac Mwangi Ngeeti adopted his witness statement as part of his evidence in chief. On cross-examination, he stated that he was aware that his late aunt Rhoda Wanjiju sold Transmara/Ololchani/511 to the plaintiff. He did not witness the transaction, but there was no boundary between Transmara/Ololchani/511 and 437, it was one property utilized by the plaintiff who built a house thereon and developed both properties. He stated that the plaintiff had built a house where his person used to reside. They were plants planted in the compound by Mr. Gathenji.
 18. On re-examination, the witness stated that the vendor of Transmara/Ololchani/511 was Rhoda Wanjiru Mwangi who was his aunt. The properties had no internal boundaries, but an external boundary was clear.
 19. PW 5, Mr. Samson Matundura testified and adopted his witness statements as part of his evidence in chief. He recognized the house on P.Exhibit 2(a) as the house he built for Mr. Gathenji in 2009. He had constructed the house on plot number 2137. On P.Exhibit 2b, the witness recognized the borehole on Mr. Gathenji property.
 20. On cross-examination, the witness confirmed that he did not witness the Agreement for sale, but on the ground, there was no boundary of the two plots and the plot was vacant. The external boundary was visible. The witness had known the plaintiff from 2006. He had built the house on 437 where a lady resided thereon. The house was now outside the suit property due to a fence.
 21. On re-examination, the witness stated that there were boundaries on the suit property that the original fence had been altered in December of 2023, but there was no fence between 511 and 437. He was not present when the Agreement had been drawn; he planted the trees on behalf of Paul Gathinji.
 22. PW6 Grace Wanjala Masombe testified and adopted her witness statement as part of her evidence in chief. It was her testimony that she had lived on the property on photograph P.Exhibit 2a in 2010. She did not recognize the house on P.Exhibit 2(b). She stated that there was no internal boundary but external boundary and the house was in the property.
 23. On cross-examination, the witness stated that P.Exhibit 2(a) showed a house with a fence, she had lived in the said house, she did not see people who surveyed the property. She had lived in the farm from 2010 as a farm worker and would water the trees from the water from the borehole. She did not see the surveyors who came. She knew that the property belonged to Mr. Gathenji she had not met Mr. Okenye. There was no internal boundary, as it was the same plot.
 24. On re-examination, she stated that Mr. Harrison and Mr. Mwangi who had testified were Mr. Gathenji's neighbours.
 25. With the testimony of the 6 witnesses the plaintiff's closed his case.

Defence Case and Evidence

26. Vide the statement of Defence and counter-claim dated 13th November 2024 it is the Defendants case that



- i. He is the Bonafide registered proprietor of Transmara/Ololchani/437 having purchased the same from Akanga Kerandi took possession in 1984 and developed the same.
 - ii. That he had to vacate the area due to interclan clashes which resulted to his house being burnt down in 1985.
 - iii. That the plaintiffs claim on adverse possession is not founded as the plaintiff's house is built on Transmara/Ololchani/1373 and not on the suit property Transmara/Ololchani/437.
 - iv. By way of the counter-claim, the Defendant now plaintiff avers that the plaintiff now Defendant fraudulently curved out parcel No. Transmara/Ololchani/511 measuring approximately 0.12 Ha from Transmara/Ololchani/437, without the consent and knowledge of the counter-claimer.
27. Whereof the counter-claimer prayed for; -
- a. A declaration that he is the Bonafide owner of the parcel Transmara/Ololchani/437.
 - b. A declaration that Transmara/Ololchani/511 measuring 0.12 Ha was illegally and/or fraudulently curved out of parcel Transmara/Ololchani/437.
 - c. A declaration that the Respondent has built his house on Transmara/Ololchani/1373 and not Transmara/Ololchani/437.
 - d. Eviction of the Defendant from both Transmara/Ololchani/437 and 511.
 - e. An order for cancellation of the Defendant's name and insertion of the counter-claim as the owner of Transmara/Ololchani/511.
28. The first Defence witness D.W.1 was Mr. Ronald Kishoyian a surveyor based at Kilgoris lands office. It was his testimony that pursuant to an order of the court he had visited Transmara/Ololchani/437 on 26.06.2024, where both the plaintiff and the Defendant gave evidence and he took measurements on the ground acreage vis-a-vis the acreage on the green card. On the RIM, the parcel No. Transmara/Ololchani/437 exists and borders Transmara/Ololchani/511 and 1373, the structures on the parcel revealed the parcel number was 1373 and not 437. He produced the survey report as D.Exhibit 1.
29. On cross-examination DW1 stated that there was no physical boundary between Transmara/Ololchani/437 and 511. He indicated that they visited the suit property twice, on the first visit, there was no boundary dispute reported to the office, there was no fence but there was a boundary. With regard to P.Exhibit 2(a) the witness stated that the fence was towards 511. They were 3 plantations along the river; that cut across properties.
30. On re-examination the witness stated that the house was on Transmara/Ololchani/1373.
31. D.W.2, was the Defendant/Counter-claimer, Mr. Thomas Okenye Obure. He adopted his witness statement as part of his evidence in chief and produced a total of 17 documents as exhibits including copy of title deed and search of Transmara/Ololchani/437 as D.Exhibit 2 ad 3, and other documents detailing the history of his purchase of the property and Adjudication process. It was his testimony that the plaintiff moved to his property when he had vacated the same due to the clashes, he allowed him to take care of the property but the plaintiff refused to vacate the same when he requested him to; offering to buy the same, which offer was rejected leading to the suit.
- the acreage in the title deed is less than what he owed. He had asked the plaintiff to vacate the previous year.



32. On cross-examination, D.W.2 indicated that he was the registered owner having been registered thereof on 30.09.2010. He left the suit parcel in 2005 and it was not true that the plaintiff had been utilizing it from 2006, as he had requested the plaintiff to take care of the suit property, the permission was not in writing, but the plaintiff was not on the suit property. It was his answer that the property had been subdivided unlawfully as he had documents to support the alleged fraud. The witness states that he had the title deed to the suit property and he had planted the sugarcane from 1984 to 2005, and he had left because of clashes between 1986 to 1997. He met the plaintiff at the lands office but he did not sue because he did not have the title deed but he gave him permission to look after the property.
33. The witness did not agree with the surveyor's report, as his documents predated the entry of Paul Gathinji. He had drilled the borehole in 1987 before Paul Gathinji's entry.
34. In re-examination, the witness stated that he did not visit the property since he was sick, and that he had given permission to Paul Gathinji in 2006.
He had planted and harvested trees which would regrow.
35. D.W.3 Mr. Silvester Sambo Nyamari testified and adopted his witness statement dated 13.11.2024 as part of his evidence in chief. He further stated that he knew the Defendant as well as Akanga Kerandi (who is now deceased) but had sold to Thomas Obure a parcel of land.
The witness stated that Paul Gathinji had been requested to take care of the suit property by Thomas Obure.
36. On cross-examination, the witness did not remember when the request to take care of the property had been made. The witness confirmed that Paul Gathinji was on the suit property and was utilizing the same and he had not evicted Thomas. The dispute began when Thomas went to pick his title after he was called by the chief.
Paul Gathinji had harvested sugarcane and trees on the suit property, while the borehole had been dug by Thomas. The witness indicated that he did not remember when the borehole was dug and whether Mr. Gathinji's farm hand resided on the suit property. He did not recall the beacons on the suit property.
37. On re-examination the witness stated that the clashes happened once. There was a house on the suit property, which was outside the fence.
38. D.W.4, Mr. Samuel Matoke Moranga adopted the witness statement as part of his evidence in chief, and testified that he was aware that the Defendant had purchased the property from Mr. Kerandi.
During demarcation, the defendant had planted sugarcane and was given a number before clashes come in and his house was burnt down. He had left the property in someone's care who later refused to hand over possession.
39. On cross-examination, the witness indicated that he did not know the number of suit property; but the same who being utilized by the person who was left to the care of. The witness was not present when the plaintiff was left in possession of the suit property. He could not remember when the plaintiff started using the suit property.
40. On re-examination, the witness stated that the suit property was near the road.
41. Mr. Job Mitto Kobado testified as a common witness, pursuant to court summons, he had prepared a site visit report on 26.06.2024, together with surveyor. He testified that there was a live fence



that separated Transmara/Ololchani/437 and Transmara/Ololchani/1373. He stated that Transmara/Ololchani/437 measuring 0.06 Ha was registered in the name of the Defendant Thomas Okenye.

A one roomed house built by Paul Nyaga Gathinji had been built on Transmara/Ololchani/1373 registered in the name of Samson Oshipai. There was a borehole drilled by Paul Nyaga, blue gum and trees planted.

42. On cross-examination, the witness stated he did not have ownership records of parcel 511. There was no boundary between Transmara/Ololchani/1373 and Transmara/Ololchani/437, and similarly no boundary between 511 and 437, the one-bedroom house was built on 1373; while the blue gum trees and sugarcane were both in parcels 511 and 437
43. The witness further stated on cross-examination that the person using 437 also utilized 511. 437 had blue gums trees sugarcane and boreholes.
44. After the close of the Defendants' case, parties were directed to file and exchange submissions.

Plaintiff's Submissions

45. The plaintiff has framed three issues for determination
 - i. Whether or not the plaintiff has acquired title of the suit properties by adverse possession.
 - ii. Whether the deputy registrar of court can be directed to execute transfer forms in favour of plaintiff.
 - iii. Who should bear costs of the suit.
46. On issue number 1, the plaintiff submits that on the legal foundations of adverse possession provided for vide section 7, 13, 17, 38(1) and (2) of the *Limitation of Actions Act*, and further submits that a registered proprietor's title is extinguished for a period of over 12 years.
47. The plaintiff submits that he has been in adverse occupation and possession for about 14 years, time having started to run in 2010.

On the Defendants counter-claim, the plaintiff submits that the onus to prove the same under section 107 and 108 of the *Evidence Act* was not discharged. In conclusion the plaintiff prays for the award of the reliefs sought in the originating summons now turned Plaintiff.

Defendant's Submissions

48. It is the Defendant submission that he is the registered owner of the suit property, having purchased the same from Akanga Kerandi in 1984 and eventually being registered thereof and a title deed offered. The defendant submits that the plaintiff's house was built on Transmara/Ololchani/1373 and not on Transmara/Ololchani/437.
49. In support of his registration over Transmara/Ololchani/437, the Defendant submits that under section 26(1) of the *Land Registration Act*, that the title deed issued to him is prima facie evidence of proprietorship.
50. The Defendant submits that the occupation by the plaintiff was vide permission and thus not adverse. That the defendant did grant permission and hence negates the requirement of adverse possession. In support of this reliance was placed on the decision in the case of Samuel Miki Waweru Vs. Jane Njeri Richu



51. The Defendant submits that the plaintiff has failed to satisfy the requirements of adverse possession as set out in the *Mtara Lewa Vs. Kahindi Ngala Mwangandi* (2015) eKLR.
52. The Defendant submits that the claim of adverse possession could only commence in the year 2010 when he obtained registration over the parcel.
53. The Defendant submits that there was no distinct boundary separating Transmara/Ololchani/511 and Transmara/Ololchani/437, and the plaintiff constructed on Transmara/Ololchani/1373
The Defendant on the strength of the above submits that the plaintiff case be dismissed and counterclaim be allowed.
54. In the course of trial, a number issues were settled
 - i. It is common ground between the parties that the plaintiff is the registered proprietor of Transmara/Ololchani/511 and the Defendant is the registered owner of Transmara/Ololchani/437.
 - ii. That Transmara/Ololchani/511, Transmara/Ololchani/437 as well as Transmara/Ololchani/1373 are distinct properties, as a result of first registration pursuant to adjudication.
 - iii. That there is no physical boundary between Transmara/Ololchani/437 and Transmara/Ololchani/511.
 - iv. The plaintiffs house was established/constructed on Transmara/Ololchani/1373 pursuant to a survey report dated 25.09.2024.

Issues for Determination

55. The court having analyzed the pleadings, evidence, submissions and considered the law frames to following as issues for determination.
 - i. Whether or not the plaintiff's suit is merited? And in analyzing this issue, regard shall be given to the following
 - a. When time started running for purposes of adverse possession.
 - b. Whether plaintiff proved all the elements of adverse possession.
 - ii. Whether the Defendants counterclaim is merited?
 - iii. What reliefs ought to issue?
 - iv. Who bears the costs of the suit and the counterclaim?

Analysis and Determination?

56. On sub-issue number 1, as to when time started for purpose of adverse possession.
The plaintiff pleaded two possible scenarios, the first being that time started running for purposes of adverse possession in 2006, when he gained entry on parcel number Transmara/Ololchani/437. In his testimony he indicated that the said parcel was vacant and he took possession thereof without the knowledge of the Defendant and thus time for adverse possession started running at the said entry.
57. The other scenario that the plaintiff pleaded in the alternative was that time started running for purposes of adverse possession from 2010 when the Defendant become registered as the proprietor of the suit parcel and that by the time he filed suit it was 14 years.



58. The Defendant submitted that time could not have commenced in 2006 since the suit property had not been registered at all.
59. Before registration of the suit property to the Defendant on 2010; the suit property was public Land that was being subject of the adjudication process hence time for purposes of adverse possession could not run in favour of the plaintiff upon his entry in 2006, and the provisions of Limitations of Actions Act do not apply to public land under section 41 of the said Act, and prior to the said registration of the suit property.
60. Certainly, time for purposes of adverse possession did not start in 2006, and the court shall now examine whether the said time starting running in 2010 as had been alternatively pleaded by the plaintiff.
61. In his testimony, the plaintiff indicated that there was no boundary between Transmara/Ololchani/437 and Transmara/Ololchani/511 and that when he gained entry the same was vacant. All the plaintiff's witnesses as well as the Defendant's witnesses, the surveyor and Land Registrar, confirmed that there was no boundary between the two properties.
62. Furthermore, the plaintiff constructed the house in what the survey report confirmed to have been on Transmara/Ololchani/1373.
63. The significance and import of the above evidence, that there was no boundary between the two parcels, to wit Transmara/Ololchani/511 and Transmara/Ololchani/437, is that the plaintiff's entry on the suit property in 2010 was under a mistake of fact that the two properties were one and the same; which mistake of fact is further revealed by the construction of the plaintiff's house on Transmara/Ololchani/1373 and the fact that the plaintiff concedes that he would pursue the boundary dispute of Transmara/Ololchani/1373 once he is registered as owner of Transmara/Ololchani/437.
64. The said mistake of fact changes when the time started running for purposes of adverse possession by operation of the law under section 26(c) of the limitations of action Act which provides as follows; _
- “ where, in the case of an action for which a period of limitation is prescribed, either
- a.
 - b. ...
 - c. The action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it.”
65. In the present case, the discovery of the mistake was in 2024 when the site visit report established the distinction of the two properties and established that the plaintiff's house was in fact on a different property which is not subject of this suit.
- It follows therefrom that time for purposes of adverse possession started once the mistake was discovered in 2024 and therefore 12 years have not lapsed.
66. In finding that the cause of action arose when the mistake was discovered I'm guided by the Court of Appeal, decision in the case of Alba Petroleum Limited vs. Total Marketing Kenya Limited (2019) KECA 846 KCR, where the court interpreted section 26(c) of the Limitations of Actions Act.
- At paragraph 46 and 49 of the said decision the court of Appeal observed as follows;



- “46 The Appellant cited the dicta in Philip Higgras vs. Harper (1954) IALLER 116 to support its submissions that there must be a prayer for relief from the consequence of mistake before mistake can extend the limitation period, we have analyzed this case and observe that the G.K House of Lords in Deutsche Morgan Grenfell Group PLC (Respondents) vs. Her Majesty Commissioners of inland Revenue and Another (Appellants) 2006 UKHL49, held that a limitation period in a claim for mistake starts to run when the mistake is discovered at paragraph 49 the court went on to hold “49 persuaded by the foregoing dicta, section 26(c) of the Limitation of Actions Act does not specify which party must have committed the mistake. It suffices that the court is satisfied a mistake of fact or law exists and time begins to run when the mistake is discovered.”
67. In our present case, the plaintiff’s entry on Transmara/Ololchani/437 was definitely under a mistake of fact that Transmara/Ololchani/437, Transmara/Ololchani/511 and Transmara/Ololchani/1373 were one and the same parcel. This mistake is further evidenced that all the witnesses testified that there was no boundary between the said boundaries and further that the plaintiff constructed his houses on Transmara/Ololchani/1373 and the borehole on Transmara/Ololchani/437 and the planted trees and sugarcanes on both parcels as though they were one.
68. On sub-issue number 2, whether the plaintiff has proved elements of adverse possession, the court finds that time started running in 2024 when the mistake was discovered and the suit having been filled the same year the 12 year period required for adverse possession under Section 7 of the Limitation of Actions Act.
69. In light of the above findings, time started running when the court ordered a ground site visit report which report was produced in evidence and was prepared in 2024, hence from 2024 12 years for adverse possession have not lapsed and the plaintiff’s claim of adverse possession though the entry was in 2010 has not crystallized due to the mistake of fact and operation of section 26(c) of the Limitation of Action Act.
70. On the totality of the above sub-issues, the court finds on issue number 1 that the plaintiff has not proven entitlement to Transmara/Ololchani/437, time having started to run in 2024; and the plaintiff’s suit is thus destined to fail.
71. On whether the Defendant has proven hi counter-claim, the court made a finding that Transmara/Ololchani/437 and Transmara/Ololchani/511 were separate properties, both registered on the same date pursuant to an adjudication process, it follows that the Defendant claim that the plaintiff fraudulently subdivided Transmara/Ololchani/437 has equally not been proved and it was merely a red herring.
- On this issue the court finds that the allegations of fraudulent subdivision of Transmara/Ololchani/437 were not supported and the same failed; but the court finds that the Defendant is entitled to quiet enjoyment possession of his property Transmara/Ololchani/437; in view of being the registered owner thereof, whose title has not been impeached.
72. On what reliefs ought to issue, the court hereby dismisses the plaintiff’s suit, and partially allows the counter-claim so as to allow the Defendant/Plaintiff in the counter-claim gain possession of his property, his title having been upheld by the court, the same having been acquired regularly through adjudication.

Disposition

73. Accordingly, the plaintiff’s suit is hereby dismissed with costs to the Defendant.



The counter-claim is allowed in terms that

- i. That Thomas Okenye Obure is the Bonafide owner of Transmara/Ololchani/437.
- ii. An order of eviction hereby issues evicting Paul Nyaga Gathinji from Transmara/Ololchani/437, and an order of permanent injunction restraining Paul Nyaga Gathinji by himself, his agent and/or his servants and/or anyone claiming under him from entering, trespassing into, interfering with and/or in any manner dealing with parcel No. Transmara/Ololchani/437.
- iii. The counter-claimer shall issue the requisite Notice under Section 152 of the Lands Act to Paul Nyaga Gathinji before the eviction, to enable Mr. Githinji harvest his current crop of sugarcane.
- iv. Costs of the suit and counter-claim are awarded to the Defendant/Counter-claimer.

74. Judgment accordingly.

DATED AT KILGORIS THIS 30TH DAY OF SEPTEMBER, 2025.

HON. M.N MWANYALE

JUDGE

In the presence of

C/A Emmanuel/ Sylvia/ Sandra

Mr. Kiprotich h/b for Mr. Shira for Plaintiff

Mr. Omwoyo for the Defendant/Counter-claimer

