



**Gitae (Suing as the Administrator of the Estate of Gitae Thaiya - Deceased)  
v Mwaura & 2 others (Environment and Land Case E019 of 2024)  
[2025] KEELC 6289 (KLR) (Environment and Land) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6289 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA  
ENVIRONMENT AND LAND  
ENVIRONMENT AND LAND CASE E019 OF 2024**

**MC OUNDO, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**GITUKU GITAE (SUING AS THE ADMINISTRATOR OF THE ESTATE OF  
GITAE THAIYA - DECEASED) ..... PLAINTIFF**

**AND**

**JOSEPH IHUGO MWAURA ..... 1<sup>ST</sup> DEFENDANT  
THE LAND REGISTRAR, NAIVASHA SUB-COUNTY ..... 2<sup>ND</sup> DEFENDANT  
THE HON. ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. Vide a Further Amended Plaint of 20<sup>th</sup> February, 2025, the Plaintiff herein sought for judgement against the Defendants jointly and severally for the following orders:
  - i. An eviction order to issue to the court bailiffs or an auctioneer to remove and evict the Defendants by, themselves, their agents, servants, and his employees and to demolish and uproot all the structures, buildings, crops and other buildings and fences from the property of the late Thaiya Gitae known as LR.No. Kajiado/Ntashatet/3727(sic) Naivasha Mwingiri Block 2/211 (sic).
  - ii. A permanent order of injunction restraining the Defendants by, themselves agents, their servants, and any other persons acting under the Defendant's instructions (express or implied) from entering into, trespassing onto, ploughing, constructing, cultivating crops, dealing with or in any way interfering with parcel of land known as LR. No. Naivasha/Mwingiri Block 2/211(sic).



- iii. An order compelling the 2<sup>nd</sup> Defendant to cancel LR No. Naivasha/Mwicingiri Block 2/211(sic) in the names of Mwaura Gitare.
  - iv. An order compelling the 2<sup>nd</sup> Defendant to issue a new title for LR No. Naivasha/Mwicingiri Block 2/211(sic) in the names of the Plaintiff being the personal representative of the estate of Gitae Thaiya.
  - v. Costs of this suit together with interest thereon at such rate and for such period of time as this Honorable Court may deem fit to grant.
2. Upon service, the 1<sup>st</sup> Defendant filed his Statement of Defence dated 27<sup>th</sup> June, 2024 denying the contents contained in the Plaintiff while putting the Plaintiff to strict proof. His argument being that the suit property was gifted to his father Mwaura Gitare by his grandfather Gitae Thaiya and therefore ceased to be part of his estate. That subsequently, his father had processed the title, which had then been issued posthumously. That they had been in occupation of the suit property since the year 1965 and therefore the instant suit should be dismissed with costs.
  3. In a rejoinder, the Plaintiff reiterated the contents of his Plaintiff seeking that the 1<sup>st</sup> Defendant's statement of defense be struck out with costs together with interest thereon and judgment be entered against him as prayed in the Plaintiff.
  4. An Interlocutory Judgement was entered against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on 21<sup>st</sup> November 2024 pursuant to them having only entered appearance but having failed to file any Defence.
  5. After parties complied with the pre-trial directions, the matter proceeded for hearing on the 18<sup>th</sup> March, 2025 wherein PW 1, Githuku Gitae, the Plaintiff herein, adopted his witness statement and proceeded to testify that he was the son to Gitae Thaiye whose land was number 220 by virtue of a shareholder certificate from Nyamathi Farmers' Co-operative (society).
  6. That his father died in the year 1966 wherein vide Succession Cause No. E007/2024 filed at Limuru Chief Magistrate's Court, they had been issued with letters ad litem dated 15<sup>th</sup> February 2024 herein produced as Pf exh 1.
  7. He maintained that his father's share No. 220 was for land measuring 15 acres issued by the society in the year 1964 at a purchase price of Kshs. 1400/=. That his sister Mirriam Wambui used to live on the land before balloting and when the society decided to share the land, she had taken the ballot No. 220 and given it to their father who was not a member of the society and who then purchased it using the money received from Mirriam Wambui's dowry since he father did not have enough money.
  8. That their father however did not live on the said land but had instead allowed his children Mariam Wambui, John Njoroge, Samuel Mwaura and another Mwaura Gitae to live therein. This was around the year 1994 when he himself was still young.
  9. That after his father's death, in the year 1966, his siblings had been chased away from the land by Mwaura Gitae and that was when he had seen letters of Administration from his father's first family. He explained that Mwaura Gitae was his brother from the first wife and they were his father's 2<sup>nd</sup> wife's children.
  10. That Gitae Mwaura had also filed a Succession Cause No. 171 of 2020 in which he had included the property herein to which they had filed their objection vide an affidavit which he produced as Pf exh 2.



11. That upon visiting the lands office, he had found that the title to the land was missing and they later discovered that it had been issued to Mwaura in the year 1991. He produced the copy of the title to Naivasha/Mwichiringiri Block 2/211 as Pf exh 3.
12. He proceeded to testify that whereas the said title had been registered to Mwaura Gitae on the 31<sup>st</sup> July 1992, the officers at the land's office had told him that the same was a false title, having been issued after the death of Mr. Mwaura Gitae who died on 12<sup>th</sup> November 1991 as per the death certificate.
13. That whilst he had applied for a Green Card through an advocate's letter dated 9<sup>th</sup> November 2023, herein produced as Pf exh 4(a), he was not issued with the same wherein a reminder, vide a letter dated 6<sup>th</sup> February 2024 herein produced as Pf exh 4(b), had been written. That they had also unsuccessfully carried out a search for the land wherein they applied for a caution to be placed on the land as evidence by Pf exh 4 (c).
14. That after a search dated 23<sup>rd</sup> March 2024, herein produced as Pf exh 4(d) revealed the owner of the land as Mwaura Gitae, he had gone back to the society who sent him to the Board where he did not find anything. That on 5<sup>th</sup> April 2024, they went to see the District Officer who advised them to have a family sitting and issued summons dated 5<sup>th</sup> April 2024 herein produced as Pf exh 5, to Mwaura Gitae's family who refused to attend wherein vide a letter dated 11<sup>th</sup> April 2024, their Advocate had opined that the matter had better be ventilated through a court case. He produced the letter as as Pf exh 6.
15. He explained that he was the eldest in the family and had wanted them to share the land, which belonged to his father who had two wives, as a family. That he did not know how the land had been registered to Mr. Mwaura without passing through the society.
16. He confirmed that Joseph Mwaura, the 1<sup>st</sup> Defendant herein was Mwaura's son and also that his father had bought the land. However, he denied that his father had been given the money by Mwaura Gitae emphasising that the money was from Mirriam's dowry. He also refuted that his father had transferred the land to Mwaura Gitae.
17. His evidence was that after his father's death, Mwaura's family had taken all documents and refused to give his mother when she asked for them. He sought that the court gives them back the land so that the plots could be amalgamated for equal sub-division among the family.
18. He explained that the 1<sup>st</sup> Defendant was in school when the land was bought and by the time he went to live on the land, there had been a house built therein and cultivation was ongoing. That he knew more about the history of the land than the 1<sup>st</sup> Defendant. He then produced the summons for confirmation by the 1<sup>st</sup> Defendant dated 20<sup>th</sup> August 2021 and the Affidavit of similar date as Pf exh 7(a) and (b) respectively.
19. He proceeded to testify that when they had been summoned by the District Officer, he had sought from the land's office documents pertaining the land wherein he had found a letter stating that the land had been given by the Government despite the liquidator having informed them that the land had belonged to the society.
20. When he was examined by the Court, he responded that in the year 1964, his father had asked his siblings to live on the land wherein they had been removed therein in the year 1967. That from the year 1967 to date, the family of Mwaura Gitae had been living on that land and that it had been 58 years since they had been sent away from the suit land.
21. In cross-examination he confirmed that whereas his father was not a member of the Society the share certificate 220 belonged to the land held by the Society. That his father had paid Kshs. 1400/= and that



- he had a receipt to that effect. He confirmed that Mwaura's family had lived on the land for 58 years although they (Plaintiff's family) had not known it had been taken by them.
22. He confirmed that Miriam, John and Samuel were chased away from the land in the year 1967 during which time they did not file suit. He also confirmed that the money that had been used to buy the land had been dowry money and that it was Mwaura who had been given the said money to take to his father. He also confirmed that his father was alive in the year 1967 having had died in the year 1966.
  23. When he was referred to Pf exh 7 (a), he confirmed that they had been chased away after the death of his father. Upon being referred to Pf exh 3, the title to the suit land herein being Naivasha/Mwichiringiri Block 2/211, he confirmed that the date of issue had been on 28<sup>th</sup> January 1985. That he would not know if there had been an earlier title issued. He confirmed that although the 1<sup>st</sup> Defendant had stated that the title had been issued by the Government, yet the letter that had stated the same was not before the court as the same was with the liquidator. That whereas at the lands office, they had been told the title had was fake, they had not been supplied with any evidence.
  24. In reference to Pf exh 4 (a), he admitted that the letter seeking for a Green Card could not help his case in proving that the land had belonged to his father. His response on being referred to Pf exh 4 (c) was that whereas a caution had been placed on the land, he had no evidence to prove the same since the documents were in the custody of their advocate.
  25. When he was referred to Pf exh 4 (d), he confirmed that the search had shown that the land had belonged to Mwaura Gitae. On being referred to Pf exh 5 he confirmed that the same was the D. O's letter and whereas he had not read the letter from the 1<sup>st</sup> Defendant's Counsel, he had informed the court that Counsel had opined that the matter was a court case.
  26. He also confirmed that Mwaura's family had refused to sit as a family to discuss the matter. That whereas they had filed Succession Cause in relation to his father's estate, he could not remember the year of the filing although the said Succession matter had not been determined.
  27. That they had sub-divided the land at home, wherein his mother had been given her share and that Mwaura's mother had also been given her portion hence the succession had been completed. That whereas he had not sold the property, the other house had started selling their share.
  28. When he was referred to DMFI 1 a Certificate of Confirmation of Grant, he confirmed that the said document related to his father's property where the Grant had been issued to himself and Njoroge Gitae. He explained that Margaret had been given one part and Ann Nyambura had been given another part. He confirmed that DMFI 2 was a Grant of letters of Administration.
  29. In re-examination, he was referred to DMFI 1 and 2 wherein he confirmed that whereas the confirmation had been in relation to Limuru/Bibirioni/854, the land was Limuru/Bibirioni/T.98 wherein the suit land had not been included. That from the year 1967 to when they had filed the instant suit, they did not know that there was a title in existence. That it was after they had discovered of the existence of the said title that they had filed the suit herein. That they were just seeking to share the land herein between their family and other family.
  30. He maintained that his father was not a member of the society, but that the members had been asked to look for somebody to buy the remainder of the land after they had received their shares. That subsequently, his father had bought the land and had been issued with a receipt. That it was his sister Mirriam who had balloted for the land. He confirmed that the Green card had shown the ownership of the land.



31. On being referred to Pf exh 3, he confirmed that the same had been issued on 31<sup>st</sup> July 1992 where the file had been opened in the year 1995. That whereas they had applied for a caution to be placed on the land, when they later visited the registry, they had found out that the same had not been placed.
32. That the Succession had been conducted wherein he had taken his mother's share while Njoroge from the other family had taken the share of their mother. That nonetheless, he did not know how the said shares had been divided. He maintained all that the documents in relation to the land had been taken by the other family.
33. Mirriam Wangui, testified as PW2 to the effect that the suit land belonged to their deceased father, one Gitae. That whereas she could not recall when he died, it was a long time ago. That her father had been allocated the land by a society, although she could not recall when.
34. She confirmed as having balloted for the land wherein her father had sold part of his property to buy the suit land herein. That after she had balloted for the land, the society had given it to her father wherein it had been decided that the land be sub-divided into two portions, one portion for the first wife and the other one for the second wife being the suit land herein.
35. That Mwaura went to live on the land. She confirmed that the 1<sup>st</sup> Defendant was her step brother and sought for the land to be sub-divided into two portions. That she was not aware of the issuance of a title to the land since they had not been given any.
36. In cross-examination, she testified that they had been given the ballot as members of the society and that the said ballot was in her father's name although she did not know where it was. She confirmed that her father was a member of the society. She maintained that her father had made a decision for the land to be sub-divided between the first wife and the second wife but he had died before the said sub-division.
37. She confirmed that Mwaura's family resides on the land and that Mwaura was deceased. That whereas the said family had never been asked to vacate, they were told that the land would be sub-divided. That she could not tell the period of time that Mwaura's Children had lived on the land. She confirmed that Mwaura and his wife had been buried on that land. That they had come to court because the land was to be sub-divided into two and further because she had balloted.
38. Her evidence was that after her father had died, they did not file a Succession Cause and that she was not aware of any Succession Cause. She however confirmed that her father's properties had been sub-divided. That after she had balloted, she lived on the suit land after which she had left the same peacefully to go to her husband's home.
39. In re-examination, she confirmed that Mwaura's family were currently occupying the whole of the land herein. She confirmed whereas the land had been her father's, she had balloted for the same. She confirmed that the other parcels of land had no dispute save for the suit land.
40. PW 3, one John Ndungi Kimolini, the liquidator of Nyamathi Farmer's Co-operative Society testified that the society was under liquidation and that his task had been to help members get title deeds. He adopted his report dated 13<sup>th</sup> February 2025 as his evidence in chief and then proceeded to testify that his appointment as a liquidator was to help the members to acquire Phases B and C.
41. That according to the records they had, the lease to the suit land was registered to Mwaura Gitai although he could not certain as they had been waiting for receipts to know who the shareholders were. That he needed to see the documents to verify membership of the society to see who the original



- member was which was the same situation in regard to Phase B and C. That Phase A had already been dealt with.
42. That members had been providing him with membership receipt and receipts of purchase and in cases where the property had been transferred, they needed a transfer document. That in this case the Gitae family had not provided him with any documents.
  43. He maintained that his task did not cover parcel A but the two portions in Phase B and C. That the suit land herein had belonged to the society. That he did not think that the property could come directly from the government to a member. That he had only recently seen the copy of the title deed.
  44. In cross-examination, he confirmed that he was in court on the issue of ownership. He confirmed that he had remembered the property in issue and whose proprietorship was Mwaura Gitae.
  45. He explained that whoever owned block A was supposed to be the owner of Block B and C and that he needed documents just for verification of membership. He explained that the 15 acres did not include block B and C since they were different portions of land. That from his records, title had been issued for block 2/211. That he was just a liquidator and had no interest in the society since he was not a member of the society. That for a title to be issued, one had to be cleared by the society.
  46. In re-examination he confirmed that he had been appointed as a liquidator by the Government and that he had no interest in the property. He explained that Phase A had been the bigger portion when the society had bought the land hence the members had agreed that whoever gets a portion in Phase A should also get a portion in Phase B and C. That however, if one had sold and transferred their land, a different person could get the land. He maintained that as a liquidator, he had to verify membership and that they had been dealing with receipts.

**The Plaintiffs thus closed his case.**

47. The Defence case proceeded for hearing with the testimony of Joseph Ihungo Mwaura, the 1<sup>st</sup> Defendant herein, who testified as DW1 to the effect that the Plaintiff was his uncle. That they were in court in regard to parcel of land No. Naivasha/Mwichiringiri Block 2/2011 whose owner was his father Mwaura Gitare. That upon their migration from Rift valley, his father had bought the land from the Society in the year 1966 whereupon they had taken occupation in September 1966.
48. When he was referred to Pf exh 3, he confirmed that the same was the title No. Naivasha Mwichiringiri Block 2/2011 which had been issued and registered to Mwaura Gitare on 19<sup>th</sup> July 1992. That the land measured 6.25 hectares. He confirmed that his father had died in 1991.
49. He clarified that whereas the title had been issued in the year 1985, when the society was issued with titles for its members, some titles had mistakes and therefore they had been returned for rectification. That his father's title was one of the titles that had mistakes wherein his father had returned the same during his lifetime. That subsequently, he had accompanied his mother to pick the corrected title to the land herein.
50. Upon being referred to part B of the title, he confirmed that the register had been opened on the 28<sup>th</sup> January 1985 and that they had lived on the land for about 60 years during which period nobody had interfered with their occupation save for the present case.
51. That whereas Gitai Thaiya had been his grandfather, the land did not belong to him. That his father who had been the first born used to work in Kipkelion where he had been employed by the white man. That however, when the land was being sold, the only person who was close to the said land was his grandfather who had been in Limuru and who had then travelled to Kipkelion to inform his father.



- That since his father could not leave work for fear of being fired, he had sent his grandfather to buy the land. That at the time, only two shares were remaining wherein his grandfather had been registered to one of the shares and had been asked to pay a sum of Kshs. 900/= so that he could take occupation and continue to look for the balance.
52. That his grandfather had then gone back to Kipkelion where his son gave him Kshs. 400/= to pay for the share. That every time that money was required, his grandfather would go back to his son who had added him Kshs. 300/= thus totalling to Ksh. 700/=
  53. That thereafter, his father had asked for permission to go and see the land that he was buying wherein his grandfather had taken him to the society and introduced him as the owner of the land. That since there had been a balance of Kshs. 200/= he went to look for the said balance from his brother who lived in Bahati – Nakuru and whose name was Ezekiel Muchunge. That in the 1960's there were no telephones. That it was his father who had asked his grandfather to borrow the money from the said Ezekiel. That his grandfather had been given the Kshs, 200/=. That afterwards, his father had left Kipkelion where he built a grass thatched hut on the land and later went back to the Rift valley.
  54. That his father had then asked his grandfather to ask his uncle Njoroge to look after the land. That ultimately, in the year 1966, his father had left Kipkelion to take possession of the land while his grandfather was still alive. That in the year 1992, there had been a Succession Cause to his father's estate wherein his land had been sub-divided.
  55. He explained that whereas Githaiya's land had been divided, they did not inherit anything since his father had his own portion of land. That the Administrator of Thaiya's Estate was the Plaintiff and another uncle.
  56. When he was referred to DMFI 2, he confirmed that the Administrators were Gituku Gitae, the Plaintiff herein and Njoroge Gitae. He produced the Succession Cause No. 80 of 1992 as Df exh 2.
  57. Upon being referred to DMFI 1, he confirmed that the same was the Certificate of Confirmation of Grant showing that the property had been inherited. That the Succession Cause of Gitae Thaiya had been finalized. He adopted his witness statement as his evidence in chief and sought for the dismissal of the suit, stating that his father had already subdivided his property.
  58. In cross-examination, he produced his ID Card and confirmed that the Plaintiff who was his uncle was younger than his father although he was older than he himself. He also acknowledged that his father told him the story of the land when he was 14 years old. He confirmed that the Plaintiff was older than he, although he did not know his age.
  59. He also confirmed that Succession Cause No. 80 of 1992 had been in Kiambu and that the same had been in regard to the estate of his grandfather. He confirmed that his grandfather had two wives – Nyambura and Margaret Wairimu and that there were two administrators to his estate.
  60. That whereas the suit land herein had been included in the succession, his elder brother had stated that the same belonged to Nyamathi Society. That the judge told them that if the land had a title, they should go back to the court and explain why the land had been registered to Mwaura.
  61. That they did not know that the land had been bought when he was 14 years old. That he knew the difference between a gift and a purchased item in that a gift was not bought.
  62. He denied that the land had been gifted to their father by his grandfather stating that his father had given his grandfather the money to buy it. That they used to work at the society so that they could pay for the money that had remained as balance.



63. He explained that the Ksh. 40/= that his grandfather had paid was to book the 2 shares that had remained thus it was not true that his grandfather had bought the land. He confirmed that whereas Mwaura was a member of the Society, they did not know his membership number.
64. He further confirmed that they got into the land in September 1966 and when he was asked whether the defence had filed a counter claim for adverse possession, he did not respond.
65. He also confirmed that the 1<sup>st</sup> registered owner of the land was Nyamathi Society and that there was a process for the land to leave the society and be registered to another person. That if Mwaura was alive, he would answer where the transfer documents were. He confirmed that there was Kshs. 900/= to be paid before being issued with a ballot and that if his father was alive he would give out the documents.
66. He confirmed that he was aware that Nyamathi Society had been dissolved after the land had been subdivided and issued to members. That there were only two plots remaining wherein titles had not been issued. He explained that in one portion, they had put up constructions while on another plot, they were mining soil. He confirmed that the Receiver had asked them for documents and secondly that he had not attended to a meeting called for by the District Commissioner.
67. When he was referred to Pf exh 5 he denied ever seeing the letter or knowledge of such a meeting although he knew Advocate Kimani. His response on being referred Pf exh 6 was that the letter had been received in the evening hence he could not attend the meeting. That in any case, if a case had been filed in court, it was upon their Advocates to call them to go for the meeting.
68. He confirmed that his father had died on 12<sup>th</sup> November 1991 wherein the title had been issued on 31<sup>st</sup> July 1992. He however explained that the register had been opened on 28<sup>th</sup> January 1985 by the Registrar wherein they had been given the titles in the year 1985 which title had been returned.
69. That the land initially belonged to white settlers and then to the society who then allocated it to its members. That he did not understand why the Plaintiff had stated that the title had been obtained fraudulently.
70. Upon being referred to Pf exh 1, he confirmed that he had filed the Succession Cause where the grant had been issued on 1<sup>st</sup> February 2021. That the Chairman of the society had taken the titles to Nakuru and it was the said Chairman that used to take the members to pick their titles. That indeed, he had also taken him and his mother to pick his father's title after his father had died.
71. He confirmed that his uncle Ezekiel who lives in Nakuru had given them Kshs. 200/= and that they had also worked in the society to complete the payment. He also confirmed that Wangui was his Aunty and that the dowry that had been paid for her hand had also been used for the payment of the land which money had been refunded by the money borrowed from Ezekiel.
72. He confirmed that his father, mother, brother, and sister in law were all buried on that land and that they had burial permits although they did not bring them to court. He confirmed that his mother had died in the year 2014. That there was no way that one could be buried without a burial permit.
73. He confirmed that the land had buildings and that he had not been asked to bring pictures as proof although he could produce the same if asked to. That the land was free hold. That the Plaintiff was in court because of Mwaura's parcel of land. That the title had been issued to Mwaura the way all other titles were being issued and that he had not transferred the same.
74. That in the Succession Cause, he had been seeking for my father's land as an administrator. That however, he did not conduct a search because the land was not his. That in any case, the title of the land had been produced by the Plaintiff.



75. In re-examination, he confirmed that they had lived on the land for 59 years and that nobody had claimed the same. That they had buried family members on the land and nobody has objected to the burial. That there was no other case pending in court in regard to the land. He clarified that the parcels of land in the Succession Cause were plots that were not connected with the suit land herein and that they were just awaiting titles for those plots.
76. That the instant case was in reference to Mwaura's property and that it was the Plaintiff who had filed the case in court. That since he knew who the owner of the land was, there had been no need to conduct a search. He however confirmed that he had a search for the land. That he could not attend the meetings because he was busy. That his sister-in law, one Esther wa Maina was the one currently living on the land because his brother had recently died.
77. DW2 one Kahenyio Iregi, testified that his father and Mwaura's father had bought land at Nyamathi Society and that they were neighbours. He explained that the sale of the land had begun in the year 1965 and that his father had come to the land around December 1965.
78. That Mwaura's son had come later around the year 1966 as they had gone to their house to look for a 'tarimbo' (digging tool/hoe) for construction on the land. That they had lived on the land from the year 1966 until when Mr. Mwaura died.
79. That at the time, 1-acre parcel of land cost Kshs. 900/= wherein his father had paid the same and had been given land. That thereafter, he had seen Mwaura near their land. He was sure that Mwaura had paid the Kshs. 900/= because he could not have taken possession. He confirmed that they sometimes worked in the society where their salary was deducted to pay for their respective father's share. That he had contributed Kshs. 1,500/= for his father's share after which a surveyor had sub-divided the land at 15 acres per share.
80. That thereafter title deeds had been issued around the 1980's. That nonetheless, the titles had typographical mistakes and had to be returned to Nakuru. That unfortunately, his father died before he could get back his title. That they were informed by a member of the society once the titles were corrected, wherein they went to pick them in Nakuru.
81. That he had gone and picked his father's title and had not heard of any disputes on Mwaura's land. That when Mwaura died, he dug the grave and there had been no dispute. He confirmed that Mwaura, his wife and some children had been buried on Mwaura's land. That he did not know Thaiya.
82. In cross-examination, he produced his identity card and confirmed that he was born in the year 1951. That whereas he knew Mwaura he did not know his parents since the said Mwaura had come to the land alone. He maintained that the 1<sup>st</sup> Defendant had gone to their house to borrow a 'tarimbo'(digging hoe/tool).
83. That he knew Mwaura Gitae in the year 1966 who was old at the time and he did not know where he had come from. He confirmed that Mwaura was a member of the society but he did not know his membership number since he was not the secretary.
84. That the family had been their neighbour. That the land had belonged to his father who was a member of Nyamathi. That the land used to belong to Nyamathi before they were given to members. He confirmed that his father's title deed was No. 67.
85. That whereas his father had been given the ballot by the society, he did not remember the number. He however confirmed that only members were given the land. That he only knew that Mwaura's father



was the owner of the land. He explained that when one had raised an amount of Kshs.1540/= they were given 15 acres of land.

86. That he did not know where his father had been issued with any certificate. He maintained that he had known Mwaura in the year 1966 when he came to the land. That whereas Mwaura had been employed by the manager at Nyamathi, he did not know where the said Mwaura had come from. That he had been working as a farmer, to plant, plough plant wheat whichever work he would be given by the manager.
87. That although he picked his father's title from Nakuru where there were many people, he had not signed anywhere. That he did not know if they had taken pictures of the burials of Mwaura or his family. That however, he had come to court to testify that the land had belonged to Mwaura.
88. He confirmed that the initial titles contained mistakes and had to be returned to Nakuru for rectification. That it would be wrong to say that he was not Mwaura's neighbour. That whereas he could not remember when the titles had come out, it was in the year 1982. He maintained that he was not given anything in Nakuru. That the society had been dissolved. That further, there was no land remaining.
89. Peter Ndungu Kimwana, testified as DW3 to the effect that the land belonged to Mwaura Gitae. That he had been employed at Nyamathi Farmers' Co-operative Society as a Secretary. He confirmed that Mwaura was a member of the society. That when he left employment, he had left Mwaura therein.
90. That he during his employment, he had been present when Mwaura was shown the land and that he knew the records of the land. He confirmed that Mwaura Gitae's name was in the register. That the land was given to people from different areas and once one contributed Kshs. 900/=, they were shown a place (land) measuring 1 acre to build and plough.
91. That on the other hand, if one contributed a sum of Kshs.1500/= they would be cleared of what they had been loaned. He confirmed that he was employed in the Society in the year 1970 and left in the year 1977 or 1978. That if one got cash in whichever way, they would pay and they would receipt them. That however, where people had no money, they would give them manual work to do. These people were the young youths who were often brought by their fathers. Their payments would be made towards offsetting their father's share. He explained that Mwaura's family was one of such people.
92. In cross-examination, he confirmed that he was a member of Nyamathi Farmer's Society and a secretary. That he however did not carry any identification to confirm the same as he did not know that it would be required. That whereas Mr. Mwaura was a member, he could not remember his number. That his father was also a member but he could not also remember his number.
93. He confirmed that they had a register, but he was not in a position to know whether somebody had bought the land on behalf of Mwaura. He confirmed that to have land, one had to be a member of the society.
94. That he did not know Githae Thaiya but only knew Mwaura Githae. That further, he did not know about the gift neither did he know where Mwaura had come from. He confirmed that Githae Thaiya was not on the records and that he did not know if he was Mwaura's father or whether he had paid the money. That if he had been given money to pay, it could have been before he assumed office.
95. That since he had been employed there in the year 1970– 1977 or 1978, he would not know what had happened in the year 1966. He however confirmed that the members' register had not been changed and that he had found the register which had the names of members. He explained that once payment



- was done by a member, they would be issued with a receipt and their name recorded wherein after the Society would transfer the land to the member.
96. He confirmed that Kshs. 1500/= was full payment which had been done after he had left. That he was aware that apart from the land, the society also had plots. That if there was land remaining, members would share the same equally.
97. The Defence closed his case and parties were directed to file their written submissions
98. The Plaintiff's submissions dated 9<sup>th</sup> June 2025 raised the following issues for determination:
- i. Whether the Plaintiff's suit is time barred.
  - ii. Whether the Defendant proved possession of the suit property for more than 50 years?
  - iii. Whether the suit property was a gift from Gitae Thaiya to Mwaura Gitare or whether the suit property was bought by Mwaura Gitare?
  - iv. What is the root title of LR. No. Naivasha Mwingiri Block 2/211 (sic)?
  - v. Whether there was posthumous registration of Naivasha/Mwichiringiri Block 2/211 in the names of Mwaura Gitare?
  - vi. What is the role of PW3 the receiver of Nyamathi Society?
  - vii. Whether the Plaintiff has proved his case on a balance of probability?
99. On the first issue for determination as to whether the Plaintiff's suit was time barred, the Plaintiff's submission was that the Defendant never raised any preliminary objection as to the issue of the claim being time barred. That despite the court having drawn the Plaintiff's Advocate's attention to paragraph 8 of the defence dated 27<sup>th</sup> June 2024, there had been no specifics of what the 1<sup>st</sup> Defendant or his family had done on the said parcel for 50 years. Reliance was placed in the decided case of Peter Ndungunya Ole Sono & 2 others v Lands Limited & another [2019] KEELC 569 (KLR).
100. That it had been incumbent upon the 1<sup>st</sup> Defendant to prove possession of the land for 50 years through documentary evidence where none had been adduced. That the evidence DW1's witness statement dated 18<sup>th</sup> September 2024 had been that during the interim period before his relocation, his uncle Gideon Njoroge had occupied the house with the understanding that it had belonged to Mwaura Gitare. In cross-examination, he had admitted that his brother's wife, Esther Wainaina was living on the suit land. That within the alleged 50 years, there had been an intermittent period when DW1 was not in occupation of the suit property.
101. He placed reliance in the decided case of Sarah Jelangat Siele v Attorney General & 2 others [2016] eKLR where the court had cited the court of appeal's decision in Global Vehicles Kenya Limited Vs Lenana Road Motors, Civil Appeal No. 7 of 2015, on the central role of pleadings. Further reliance was placed on the definition of possession from the Black's Law Dictionary 10th Edition and the decided case of Cheromei v Muigai (Environment & Land Case E005 of 2023) [2024] KEELC 5604 (KLR) (25 July 2024) (Judgment) to submit that possession was a matter of fact which the 1<sup>st</sup> Defendant was supposed to prove his alleged 50+ years of occupation of the suit property. he also placed reliance on the provisions of Section 107(1) and 109 of the Evidence Act on the burden of proof.
102. On the second issue for determination as to whether the Defendant had proved possession of the suit property for more than 50 years, the Plaintiff submitted that the burden of proof had shifted upon the 1<sup>st</sup> Defendant to proof possession of the land for a period of 50 years and not the Plaintiff. That further, the petition for letters of administration by the 1<sup>st</sup> Defendant in P&A 171 of 2021 in the matter of the



Estate of Mwaura Gitare had been lodged by the 1<sup>st</sup> Defendant after 30 years upon his death on 12<sup>th</sup> November 1991 thus raising question marks on the alleged issue of possession.

103. He placed reliance on the Halsbury's Laws of England, 4<sup>th</sup> Edition, Volume 17, paragraphs 13 and 14 on the legal burden of proof as well as the decisions in the Nigerian case of Jiringho Isaiah Oboyowa Sule vs Isat Global Services Ltd where the court had cited the case of Victor Isonguyo v. State (2023) 3 NWLR (PT. 1872) 519, Lopusonyang v Longorenyang & 2 others (Environment & Land Case 165 of 2016) [2023] KEELC 280 (KLR) (26 January 2023) and In re Estate of Amos Kiteria Madeda-Deceased (Probate & Administration E004 of 2021) [2022] KEHC 12950 (KLR) (21 September 2022) to retaliate that it was trite law that he who alleges must prove. That subsequently, if one was to claim that he had built a castle on his parcel of land then logically, the first impression was to accept that fact as true or false. That the next step was the confirmation and proving of the allegations by tabling evidence to prove the same.
104. That the 1<sup>st</sup> Defendant never adduced any evidence to show his alleged stay on the suit property in form of photographs, a sketch map on the development carried evidence of the burial of Mwaura Gitare, Lucia Gakeri, and Jennifer Waithiegeni on the suit property or an introduction letter from the local area chief to that effect.
105. He placed reliance on the provisions of Section 60 of the *Evidence Act* to submit that the occupation of a parcel of land for over 50 years was not a matter that the court could take judicial notice of since the burden had shifted upon the 1<sup>st</sup> Defendant to prove the same. Reliance was placed in the decisions in the cases of Cheromei v Muigai (Environment & Land Case E005 of 2023) [2024] KEELC 5604 (KLR) (25 July 2024) (Judgment) and James Maina Kinya v Geral Kwendaka (2018) eKLR.
106. On the third issue for determination as to whether the suit property had been a gift from Gitae Thaiya to Mwaura Gitare or whether the suit property had been bought by Mwaura Gitare, he placed reliance on the provisions of Order 2 Rule 6 of the Civil Procedure Rules to submit that the 1<sup>st</sup> Defendant had advanced 3 positions, the first that the suit property was a gift, the second that the deceased had bought the suit property and lastly that the Plaintiff's father had bought the suit property on behalf of Mwaura Gitare which three (3) positions were not permitted in law.
107. That were the suit property a gift from Gitae Thaiya to Mwaura Gitare, it follows that the suit was not time barred. He placed reliance in the Court of Appeal's decision in the case of Malcom Bell v Daniel Toroitich Arap Moi & nother [2012] eKLR - Civil Appeal 129 of 2006.
108. As to whether Mwaura Gitare had bought LR. No. Naivasha/Mwiciringiri Block 2/211(sic), he submitted that the original owner of the suit property as had been Nyamathi Society. That evidence on record had been to the effect that Mwaura was never a member of Nyamathi Society from which he claimed to have bought the suit property. That there had been no evidence to show that he had been issued with any receipt to acknowledge payment neither was there a sale agreement that had been adduced in evidence by the said DW1.
109. That further, there had been no proof of any of the allegations of payment as had been claimed by DW1 in his evidence. That further, there had been no proof of where Mwaura used to work in Kipkelion, Rift Valley. He placed reliance on the provisions of Section 120 of the *Evidence Act* to submit that since there was already an admission that Mwaura had handed over the accompanying documents by DW1, it could not be expected that PW1 would have in his possession the same documents. That the burden was upon DW1 to produce the said documents in court. That the 1<sup>st</sup> Defendant had neither produced the title deed nor any documents relating to the suit property or any document to show that the deceased was a member of Nyamathi Society. He placed reliance on the decisions in the cases of



Nyanza Management Limited & another v National Bank of Kenya Limited & 3 others (Commercial Case 68 of 2018) [2023] KEHC 19329 (KLR) (27 June 2023) (Ruling).

110. On the fourth issue for determination as to the root title of LR. No. Naivasha Mwingiri Block 2/211(sic), he submitted that there was no dispute that the first owner of the title in question was Nyamathi Society. That however, whereas the Plaintiff's had through exhibits adduced Pf exh 4 (a) and (b) which were letters dated 9<sup>th</sup> November 2023 and 6<sup>th</sup> February 2024 addressed to the Registrar of Lands Naivasha requesting for a copy of a green card to no avail. That on a balance of probability, the Plaintiff had taken the initiative of establishing the root of the title that had been issued to the 1<sup>st</sup> Defendant who did not adduce any documents from any government authority to back up his claim over the suit property.
111. He placed reliance on the decisions in the cases of Dina Management Limited v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) (Judgment) among others.
112. On the fifth issue for determination as to whether there had been posthumous registration of Naivasha/Mwicingiri Block 2/211 in the names of Mwaura Gitare, he placed reliance on the provisions of Section 45[1] of the Law of Succession Act that forbids intermeddling with the property of deceased, person to submit that whereas DW1 had alleged that the lands registry file in relation to the suit property had been opened on 28<sup>th</sup> January 1985 which could be true, there was no doubt that the title had been issued on 31<sup>st</sup> July 1992. That otherwise, if the court was to go by the assumption of DW1, the title ought to have been issued on 28<sup>th</sup> January 1985 and not on 31<sup>st</sup> July 1992.
113. That further, it was undisputed that Mwaura Gitare, had died on 12<sup>th</sup> November 1991 and that a death certificate had been adduced to that effect. That it was also undisputed that title no.LR. Naivasha Mwingiri Block 2/211 (sic) had been issued on 31<sup>st</sup> July 1992. That however, whereas DW1 had petitioned the lower court vide P&A 171 of 2020 wherein a grant had been issued on 11<sup>th</sup> February 2021, to date the said grant had not been confirmed by the lower court.
114. He wondered who had signed the consent for transmission, all relevant requisite consents and transferred the suit property to the deceased if indeed the deceased had died on 12<sup>th</sup> November 1991. It was thus his submission that the entire process had been tainted with illegality and had been in breach of the Law of Succession Act thus the same had been vitiated by that illegality which was protected even under the provisions of Article 40 of the Constitution.
115. He placed reliance in the decided case Monica Achieng Akumu & 3 Others v Dishon Omindi Nyamondo & 2 Others 2013 KLR and In the Estate of Mutugi Mbutii (deceased) [2018] eKLR to submit that it was forbidden to transfer immovable property of the deceased before grant was confirmed.
116. On the sixth issue for determination as to the role of PW3, the receiver of Nyamathi Society, he submitted that PW3's evidence ought to be looked and gauged in a neutral and a non-conflicted perspective since he was the only government official who had appeared in the instant matter to shed light on the controversy that the court had been called upon to solve. That since PW3's status as a receiver appointed by the government had not been challenged, his evidence could not be waived away as non-consequential. That PW 3 was right in first verifying who had the correct title documents and the supporting evidence since that was the standard procedure in all land related matters. He placed reliance in Surya Holdings Limited & 2 others v Cfc Stanbic Bank Limited [2015] eKLR.
117. As to whether the Plaintiff had proved his case on a balance of probability, he submitted that the amended Plaint filed by the Plaintiff had pleaded that his claim was based on fraud, illegality and



- misrepresentation and that the law states that claims on fraud must be brought to court within 3 years after the said discovery. That the Plaintiff become aware of the fraud on 26<sup>th</sup> September 2022 when he had been enjoined as a party to the 1<sup>st</sup> Defendant's filed Succession Cause No. 171 of 2022 in relation to the estate of his father Mwaura Gitare.
118. That in any case, the Plaintiff had also pleaded trespass which has no limitation of time to file. That had the Plaintiff known that the land had been taken by the 1<sup>st</sup> Defendant's family, he would not have lodged a protest before the family court in P& A 171 of 2021 where he was a protestor. That further, had the 1<sup>st</sup> Defendant petitioned the court in the year 1991 when his father had died, then the claim by the Plaintiff would have been time barred, however, the issue had emerged upon filing of the Succession Cause. He submitted that the delay in filing the P& A 171 of 2021 was because the suit property had been subject to Kiambu Succession Cause No.80 Of 1992 in the matter of the Estate of Gitae Thaiya which fact had been admitted by the 1<sup>st</sup> Defendant.
119. That lowing from the evidence on record where the 1<sup>st</sup> Defendant admitted that the Plaintiff's father had bought the suit property on behalf of his father, that the PW2, had balloted for the suit property and given an account of the events leading to the purchase and the source of funds where she had confirmed that all the title documents had been taken by the 1<sup>st</sup> Defendant's family, that the Plaintiff had indeed proved his case on a balance of probability wherein the court ought to grant the orders sought herein.
120. The 1<sup>st</sup> Defendant on the other hand vide his written submissions dated 4<sup>th</sup> June 2025 summarized the factual background of the matter as well as the evidence that had been adduced in court before framing his issues for determination as follows:
- i. Whether the suit is time-barred.
  - ii. Whether the suit property forms part of the estate of Gitae Thaiya.
  - iii. Whether the property lawfully belongs to the estate of Mwaura Gitae.
  - iv. Whether the Plaintiff has proved his case on a balance of probabilities.
  - v. Who should bear the costs of the suit.
121. On the first issue for determination as to whether the suit was time- barred, he placed reliance on the provisions of Section 7 of the *Limitation of Actions Act* to submit that the instant suit was fatally defective for being time-barred. That the Plaintiff's own evidence had revealed that the 1<sup>st</sup> Defendant's family had taken possession and settled on the suit land in 1965. That no complaint, objection, or eviction proceedings were ever initiated for over five decades. That the Plaintiff offered no plausible explanation for the extraordinary delay. He paced reliance in the decisions in the cases of *Divecon v Samani* [1995–1998] 1 EA 48, *Gathoni v Kenya Co-operative Creameries Ltd* [1982–88] 1 KAR 104 and *Benjamin Kamau Murungi & Others v Gladys Njeri* [2015] eKLR to submit that the Plaintiff's cause of action, if any, crystallized no later than the 1960s when the 1<sup>st</sup> Defendant's family had taken possession and commenced long, continuous, and uninterrupted occupation hence the Plaintiff's inertia, spanning over 60 years, had rendered the instant suit statute-barred and the Court bereft of jurisdiction.
122. On the absence of Proprietary Claim, he submitted that the Plaintiff's lack of documentary and legal foundation assuming, without conceding, that the suit was not time-barred, the Plaintiff still carried the evidentiary burden under the provisions of Sections 107, 108, and 109 of the *Evidence Act*, to prove that the suit property formed part of the estate of the late Gitae Thaiya which he failed to do so. No sale agreement, Sacco membership records, minutes, share certificate, green card extract, receipt



- of purchase, mutation, and conveyance record linking his father or his estate to the suit property were produced in evidence.
123. That in any case, PW1 admitted that the confirmed Grant for the estate of Gitae Thaiya did not list the suit land as among the deceased's assets which fact alone had defeated any claim of beneficial ownership. He placed reliance in the Gathoni's case (supra) to submit that the court should not entertain vague and undocumented assertions of property ownership decades after the fact for which the doctrine of finality in title and the limitation statutes had been enacted to guard against.
  124. On the legal validity of the 1<sup>st</sup> Defendant's Title and the Doctrine of Indefeasibility, the 1<sup>st</sup> Defendant submitted that he had presented documentary proof of ownership that is, valid certificate of title issued in his name after rectification of clerical errors through the proper channels. He placed reliance on the provisions of Section 26(1) of the [Land Registration Act](#) to submit that the statutory protection under the said provisions was not merely procedural but substantive. That the title, once issued regularly and in accordance with the law, may only be challenged on specific and well proven grounds of fraud, misrepresentation, or illegality, as stipulated under the provisions of Section 26(1)(a) and (b) of the [Land Registration Act](#) which the Plaintiff had failed to establish.
  125. That in any case, the Plaintiff had not pleaded fraud with specificity, as required under the provisions of Order 2 Rule 10 of the Civil Procedure Rules. He submitted that allegations of fraud must not be left to be inference but must be particularized and supported by cogent evidence. Reliance was placed in the decided case of *Davy v Garrett* (1878) 7 Ch D 473 at 489 and the definition of fraud from the Black's Law Dictionary to submit that fraud as a tort of deceit, required four elements, being false representation of an existing fact, knowledge of its falsity or reckless disregard, intention that the other party act upon it and actual reliance and resulting loss. That in the present case, the Plaintiff had not established any of the said elements. That instead, the claim of fraud had only existed in oral submissions, not in the pleadings or evidence.
  126. He placed reliance on the decisions in the cases of *Arthi Highway Developers Ltd v West End Butchery Ltd & Others* [2015] eKLR and *Dr. Joseph Arap Ngok v Justice Moiwo Ole Keiwua & Others* [CA No. 60 of 1997] to submit that it was legally untenable to ask the Court to revoke a title without satisfying the high evidentiary burden required to rebut its indefeasibility since no such burden has been discharged.
  127. That the 1<sup>st</sup> Defendant's evidence was internally consistent, supported by third-party witnesses, and corroborated by documentary evidence. That indeed, DW1 had explained the historical background of the title to the effect that the land had been purchased by his father, Mwaura Gitae, who had occupied the same since the year 1965, with assistance from his own father, Gitae Thaiya. That the administrative corrections had led to the issuance of the corrected title in DW1's name.
  128. That DW2, the former Secretary of Nyamathi Farmers' Co-operative Society Ltd had testified that Mwaura Gitae was a registered member and known landowner. That DW3 on the other hand who was a neighbor had confirmed the uninterrupted possession by the 1<sup>st</sup> Defendant's family. That both DW2 and DW3 had testified credibly and consistently. That indeed, DW3 had also testified that posthumous title issuance after land adjudication corrections had been common, thus further undermining the Plaintiff's suspicion.
  129. On the reliefs and costs, he submitted that litigation must have limits. That the Plaintiff had approached the Honorable Court without evidence, without diligence, and without legal merit. That he sought to overturn a valid title that had been registered more than 60 years ago without even identifying a single act of fraud. He urged the Court to protect the sanctity of title, the integrity of the



register, and the interests of justice. He thus prayed that the Court dismisses the suit and grants the 1<sup>st</sup> Defendant the following reliefs:

- i. That the Plaintiff's suit be and is hereby dismissed with costs to the 1<sup>st</sup> Defendant.
- ii. That the Honourable Court do affirm and uphold the 1<sup>st</sup> Defendant's title to land parcel No. Naivasha/Mwicingiri Block 2/211(sic) as valid, lawful, and indefeasible under Section 26 of the *Land Registration Act*.

#### **Determination.**

130. I have considered the evidence as adduced in court, the written submissions by learned Counsel, the authorities cited and the applicable law. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not participate in the proceedings.
131. Briefly, the present matter revolves around parcel No. Naivasha/Mwicingiri Block 2/211 measuring 6.254 hectares to which the Plaintiff, herein being the son and one of the legal administrators of the deceased Gitae Thaiya lay claim that the same was fraudulently and unlawfully registered to the 1<sup>st</sup> Defendant's father Mwaura Gitare.
132. The Plaintiff has thus sought for the eviction of the 1<sup>st</sup> Defendant from the suit land and thereafter demolition of all the structures, buildings, and crops from the property and thereafter there be a permanent order of injunction restraining the Defendants by, themselves agents, their servants, and any other persons acting under the Defendant's instructions (express or implied) from entering into, trespassing onto, ploughing, constructing, cultivating crops, or dealing with the said parcel of land. The Plaintiff further seeks cancellation of the title to the suit land in the name of name of Mwaura Gitare and there be issuance of a new title in his name as the personal representative of the estate of Gitae Thaiya. Lastly, he sought for costs of the suit.
133. The 1<sup>st</sup> Defendant's defence on the other hand is to the effect that his grandfather Gitae Thaiya gifted the land to his father, Mwaura Gitae wherein they had been in possession and occupation of the same since 1956 which was more than 50 years wherein the legitimacy of his father's ownership had never been questioned.
134. The summary of the evidence adduced by the Plaintiff in court, was to the effect that the 1<sup>st</sup> Defendant herein was his uncle. That the land dispute involved land number 220, owned by his late father, Gitae Thaiye, through a shareholder certificate from the Nyamathi Farmers' Co-operative (society).
135. That he was one of the children from Gitae Thaiye's second wife wherein his father died in 1966. That his sister, PW2 - Mirriam Wambui, initially lived on the land and later gave the ballot number to their father who using money from his daughter's (Mirriam Wambui) dowry, purchased the 15-acre plot and thereafter allowed his children to live there, including Mirriam Wambui, John Njoroge, Samuel Mwaura, and another Mwaura Gitae.
136. That after their father's death, in the year 1966 Mwaura Gitae, the 1<sup>st</sup> Defendant's father, who was also his brother from their father's first wife, chased him and his other siblings from the land wherein after he had filed a Succession Cause No. 171 of 2020 in which he had included the suit property. That he and his siblings had objected to this claim through an affidavit. That however later in 1991, Mwaura Gitae fraudulently obtained a title deed to the suit land, LR No. Naivasha/Mwicingiri Block 2/211, the key reason being that the same had been registered to Mwaura Gitae on the 31<sup>st</sup> July 1992, after his death, him having died on 12<sup>th</sup> November 1991. That their efforts to reclaim the land, including applying for a Green Card, searching land records, and attempting to place a caution on the property



was futile leading his family, through the District Officer, to seek a family meeting, which Mwaura Gitae's family refused to attend, prompting legal action.

137. The Plaintiff confirmed during cross-examination and examination by the court several key points, including that Mwaura Gitae's family has occupied the land for 58 years since his family was allegedly "chased away" in 1967. He also admitted that while a search showed Mwaura Gitae as the registered owner, his family had not known about the title's existence until after the filing of the succession Cause. He thus sought to have the land returned so it can be equitably subdivided among all family members.
138. The 1<sup>st</sup> Defendant's evidence on the other hand had been that he was the son of Mwaura Gitare. That his family had been in occupation of the suit land, Naivasha/Mwichiringiri Block 2/211, since his father purchased it from the Nyamathi Farmers' Co-operative Society in the year 1966. He explained that his father, while working in Kipkelion, had sent his grandfather Gitai Thaiya, to purchase the land on his behalf wherein using a combination of his son's money and a loan from his uncle Ezekiel, he had secured one of the two remaining shares. The 1<sup>st</sup> Defendant had given a detailed history of how his father's original title to the suit land had been issued in 1985, but owing to the typographical mistakes in some of the titles, they were all returned to Nakuru for correction wherein he and his mother had only collected the rectified title in 1992, after his father's death in 1991. He maintained that the land was solely his father's property and was neither a gift or inherited from his grandfather, as his father had his own portion of land. He confirmed that his father, mother, and other family members are all buried on the property, and that his family had lived on the land for nearly 60 years without any prior disputes until the filing of this case.
139. He also clarified that his father's succession case had been finalized wherein his estate had been subdivided among his heirs. He acknowledged that his family had not attended a meeting called by the District Commissioner, stating that they had felt that it was a matter for the courts. He maintained that the title was issued legitimately to his father and that the Plaintiff, his uncle, had no claim to the property. He concluded by reiterating that his family had been in undisputed possession of the land for 59 years and had even buried family members there, demonstrating their clear ownership and long-standing connection to the property. He clarified that the parcels of land in the Succession Cause were plots that were not connected with the suit land herein and that they were awaiting titles for those plots.
140. Having given a brief history of the matter herein, I find the issues arising therein for determination as follows:
  - i. Whether the Plaintiff's suit was time barred if not,
  - ii. Whether Naivasha/Mwichiringiri Block 2/211, the suit property forms part of the estate of Gitae Thaiya.
  - iii. Whether the property lawfully belongs to the estate of Mwaura Gitae.
  - iv. Whether the Plaintiff has proved his case on a balance of probabilities.
141. Before I proceed to discuss the issues for determination, I must point out that while anxiously considering the Plaintiff's submissions, it is imperative to point out that it is now well settled law that submissions do not amount to evidence unless expressly adopted as such submissions are a course by which counsel or able litigants focus the court's attention on points of the case that should be given close scrutiny in order to, crystallize the substance of the case, the evidence and the law relating to that case.



142. Indeed, the Court of Appeal in *Daniel Toroitich Arap Moi vs. Mwangi Stephen Muriithi & Another* [2014] eKLR had held as follows;

Submissions cannot take the place of evidence. The 1<sup>st</sup> respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties' "marketing language", each side endeavoring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence presented."

143. That said and done and hoping that counsel has taken cue of the court's sentiments, on the first issue for determination, there is no dispute judging from the prayers sought in the Plaint dated the 3<sup>rd</sup> July 2024, amended on the 11<sup>th</sup> October 2024 and further amended on the 20<sup>th</sup> February, 2025, that the Plaintiff herein sought for the recovery of his deceased father's alleged parcel of land being Naivasha/Mwichiringiri Block 2/211.

144. It is trite that a time-barred suit is a legal claim that cannot be pursued in court because the period of time for filing it has expired after an event has occurred. Section 7 of the *Limitation of Actions Act*, provides that an action to recover land may not be brought after the end of twelve years from the date on which the right accrued and stipulates as follows;

"An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person

145. Section 7 of the *Limitation of Actions Act*, provides that an action to recover land may not be brought after the end of twelve years from the date on which the right accrued. This means that the Plaintiff could only sue to recover the suit land from the Defendants within twelve years after the cause of action.

146. The Plaintiff filed suit to recover the land from the Defendants vide a Plaint dated 3<sup>rd</sup> June 2024, amended on 11<sup>th</sup> October 2024 and further amended on the 20<sup>th</sup> February 2025. Quite clearly a period of about thirty-two (32) years have lapsed since 1992 when Mwaura Gitare was registered as the proprietor of the suit land on 31<sup>st</sup> July 1992 as per Pf exh 3.

147. The Court of Appeal in *Mukuru Munge vs. Florence Shingi Mwawana & 2 others* [2016] eKLR held that:

The purpose of the law on limitation of actions is to avoid stale claims, based on the sensible and rationale appreciation that over time memories fade and evidence is lost. The law of limitation therefore seeks to compel claimants not to sleep on their rights and to bring their claims to court promptly. Secondly, the law on limitation of actions ensures that claims are instituted within reasonable time after the cause of action has arisen, so as to secure fair trial when all the evidence is available and to ensure that justice is not delayed. In our minds, those are important constitutional values and principles, which are underpinned by legislation on limitation of actions."

148. The Plaintiff needed to commence his claim within the time prescribed under Section 7 of the *Limitation of Actions Act*. It follows therefore that by the time the Plaintiff filed this suit, the claim was already statute barred.



149. In the case before me however it is not in dispute that the Plaintiff herein filed suit on behalf of his deceased father, to recover land. Section 9(2) of the *Limitation of Actions Act* stipulates as follows:
- (2) Where a person brings an action to recover land of a deceased person, whether under a will or on intestacy, and the deceased person was on the date of his death in possession of the land, and was the last person entitled to the land to be in possession of the land, the right of action accrues on the date of death.”
150. In essence therefore, this provision of the law deals with the accrual of a right of action in cases involving an interest in land and specifies the exact moment in time when the clock starts ticking for the purpose of the statute of limitations for lawsuits concerning land. The provision of the law envisages a situation where a person suing to recover the deceased’s land does so within the 12 years from the date of the deceased’s death, provided that the deceased was in possession of the land at that time.
151. Essentially, therefore the provision of Section 9 of the *Limitation of Actions Act* is crucial for determining whether a lawsuit to recover land is time-barred for the "start date" for the 12-year limitation period stipulated in Section 7 of the same Act.
152. It is not disputed that the Plaintiff’s father, Gitae Thaiya died in the year 1966, which then meant that the Plaintiff could only sue to recover the suit land from the Defendants within twelve years after the said death wherein time started ticking and stopped ticking in August of 1978. The suit herein was initially filed vide a Plaint on the 3<sup>rd</sup> July 2024 which was 46 years after the death of Gitae Thaiya and out of the prescribed time frame of 12 years.
153. Further, Section 9 of the *Limitation of actions Act* clearly stipulates that in order to bring suit on behalf of a deceased person, the deceased person must have been or ought to have been “in possession” of the land for the clock to start ticking for the purpose of the statute of limitations. In the present case no evidence had been tendered that the deceased, Gitae Thaiya had been in possession of the suit parcel of land prior to his death, indeed what came out clearly had been that the 1<sup>st</sup> Defendant and his family had been in possession and occupation of the suit land from the year 1966 to date.
154. The Plaintiff has craftly submitted that their claim was based on fraud illegality and misrepresentation and therefore the limitation period did not begin to run until the fraud was discovered. It is trite as was held by the Court of Appeal in R.G Patel vs Lalji Makanji 1957 E.A 314, that allegations of fraud must be strictly proved although the standard of proof may not be so heavy as to require proof beyond reasonable doubt. No evidence on the fraud was led during the hearing and therefore as stated herein above by the Court of Appeal in the Daniel Toroitich Arap Moi case supra that submissions cannot take the place of evidence.
155. A look at the orders sought for by the Plaintiff in this matter, points irresistibly to the fact that he had filed suit to recover land for which Section 7 of the *Limitation of Actions Act* explicitly states that a suit to recover land cannot be brought after 12 years from the date the right of action accrued. This 12-year period is an absolute time bar. The law assumes that a landowner who fails to take action after 12 years, to remove a trespasser or an unauthorized occupant for such a long period has effectively slept on their rights.
156. Section 17 of the Act further solidifies this position by stating that at the end of the 12-year limitation period, the title of the original owner is extinguished. This means the rightful owner loses their legal ownership, and the adverse possessor can then claim title to the land. This is a deliberate legal policy to ensure that land titles, which are foundational to economic and social stability, are not perpetually



challenged. The integrity of land ownership is protected by this strict time limit. Once the 12-year statutory period for adverse possession has run out, their right to recover the land is lost forever.

157. In the case of *Bosire Ongero vs Royal Media Services* [2015] eKLR the court had held that the issue of limitation went to the jurisdiction of the court to entertain claims and therefore if a matter is statute barred the court has no jurisdiction to entertain the same.

158. The locus classicus on jurisdiction is the celebrated case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1 where Justice Nyarangi of the Court of Appeal had held as follows;

'I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.'

159. Clearly, this Court lacks jurisdiction over the matter which is at its end. I will have to down my tools and take no further step in determining the other issues herein above crafted. The Plaintiff's suit herein is thus dismissed with costs.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

