

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT VOI

ELC CASE NO. 4 OF 2024

JOHN KIVURE & 7 OTHERS (Suing on their behalf and on behalf of 4201 members of KISHAMBA B GROUP RANCH.....PLAINTIFFS

=VERSUS=

- 1. BENSON MLAMBO MWAKINA, ANTHONY KISHAGHA MWASI & FLORENCE MALANDI (Sued as defunct Chairman, Secretary and Treasurer respectively of the Executive Committee of KISHAMBA B GROUP RANCH)**
- 2. CABINET SECRETARY MINISTRY OF LANDS, HOUSING AND PHYSICAL PLANNING**
- 3. DIRECTOR OF LAND ADJUDICATION/SETTLEMENT**
- 4. COUNTY LAND REGISTRAR - TAITA TAVETA COUNTY**
- 5. ATTORNEY GENERAL**

DEFENDANTS

- 1. COUNTY GOVERNMENT OF TAITA - TAVETA**
- 2. DUNSTON KIMBIO & 34 OTHERS.....INTERESTED**

PARTIES

JUDGMENT

1. The Plaintiffs instituted this suit vide a plaint dated 15th April 2019 seeking the following reliefs;-

(i) A declaration that the 1st Defendant was not properly constituted in accordance with Community Land Act No. 12 of 2017 hence has no capacity or authority to manage or deal in the property known as Sagalla/Kishamba B/1 (suit property) registered in the name of Kishamba B Group Ranch situate in Voi, Taita Taveta County and any dispositions by the 1st Defendant of the said property devoid of the County of Taita Taveta's consent or authority are illegal, unlawful, null and void.

(ii) A declaration that the decision by the 2nd, 3rd and 4th Defendant vide a letter ref: GR/2/324/168 to the 1st Defendant dated 12th November 2018 granting the 1st Defendant Consent to dissolve Kishamba B Group Ranch and subdivide the property known as Sagalla/Kishaba B/1 (suit property) registered in the name of Kishamba B Group Ranch situate in Voi, Taita Taveta County and any sub-

divisions, allocations or titles issued to any individuals consequent to the said decision hereof is illegal, unlawful, null and void.

(iii) An Order directing to call, remove, deliver up to this Honourable Court and quash the decision and or Order by the 2nd, 3rd and 4th Defendant vide a letter ref: GR/2/324/168 to the 1st Defendant dated 12th November 2018 granting the 1st Defendant Consent to dissolve Kishamba B Group Ranch and subdivide the property known as Sagalla/Kishamba B/1 (suit property) registered in the name of Kishamba B Group Ranch situate in Voi, Taita Taveta County and all consequential decisions, actions including but not limited to subdivisions, allocations and titles issued in respect of portions from the above property or arising from the said decision.

(iv) An Order of permanent injunction to restrain the Defendants either by themselves and or through their servants or whatsoever from implementing the decision and or Order by the

2nd, 3rd and 4th Defendant vide a letter ref: GR/2/324/168 to the 1st Defendant dated 12th November 2018 granting the 1st Defendant Consent to dissolve Kishamba B Group Ranch and sub-divide the property known as Sagalla/Kishamba B/1 (suit property) registered in the name of Kishamba B Group Ranch situate in Voi, Taita Taveta County and all consequential decisions, actions arising therefrom and or otherwise in any manner, dealing with, alienating, leasing, charging, demarcating, surveying, sub-dividing, disposing off or any manner dealing with the said property without the consent of the County Government of Taita-Taveta, the Plaintiffs and or contrary to the provisions of the Community Land Act.

- (v) An Order directing the Defendants to forthwith initiate, undertake and or cause issuance of a public notice in Daily newspapers, radio stations of wide nationwide circulation and or through all the County Administrative Officers**

convening a public meeting of the Plaintiffs, members of Kishamba B Group Ranch and any other persons claiming interest in an property known as Sagalla/Kishamba B/1 within Taita Taveta County to elect members of Community Land Management Committee to come up, update and develop an accurate register of Plaintiffs and or bonafide members of Kishamba B Group Ranch.

- (vi) An Order directing the Defendants to forthwith initiate, undertake and strictly comply with all the statutory obligations set out in the Community Land Act and all the relevant laws in registration, adjudication, demarcation, survey, sub-division and allocation of portions of the property known as Sagalla/Kishamba B/1 (suit property) registered in the name of Kishamba B Group Ranch situate in Voi, Taita Taveta County to the Plaintiffs and or bonafide members of Kishamba B Group Ranch.**

2. The suit was contested by the Defendants. The 1st Defendant filed a Statement of Defence and Counter

Claim dated 24th July 2019 in which they sought the following reliefs; that a permanent injunction be issued against the Plaintiffs from selling and or alienating any part of the suit parcel and from holding themselves out as members of the executive committee of Kishamba B Group Ranch.

3. The 21st to 34th Interested Parties upon being joined to these proceedings filed a Statement of Defence and Counterclaim dated 30th August 2024 seeking for the following reliefs;-

(i) A declaration that the Interested Parties/Defendants hold substantial stakes in the suit property known as Sagalla/Kishamba B/1 as individual original owners and/or beneficial owners which property rights are fully protected by relevant legislation and fully anchored in the Constitution of Kenya and any attempts by any person or group of persons to disposes, suppress, evict, and/or deny access, use and enjoyment of property rights by individual members and/or beneficial owners of

land within the suit property is wrongful, illegal and unlawful.

- (ii) An order that the processing of individual titles for holdings in the suit property known as Sagalla/Kishamba B/1 be carried out firstly as provided for under the Community Land act (No. 27 of 2016) in conjunction with the relevant enabling legislation for survey, adjudication and registration of private and public land rights and issuance of title deeds thereto.**
- (iii) An order compelling the current Management Committee of Kishamba B Group Ranch to comply with the relevant provisions of the Community Land Act (No. 27 of 2016) within thirty (30) days of the date hereof failing which the Taita Taveta County Land Settlement & Adjudication Officer to undertake and complete the survey, adjudication and registration of private and public land rights within the suit property known as Sagalla/Kishamba B/1 as per the provisions of relevant enabling laws within**

a period of twelve (12) months or such other duration as may be deemed appropriate.

(iv) An order that any outstanding issues relating to remainder current assets/debts be dealt with as provided in the members constitution of Kishamba B Group Ranch.

(v) Each party to bear its own costs.

The Plaintiffs case

4. It was the Plaintiffs case that at all times material to this suit, the Plaintiffs are part of 4209 persons listed in a signed list of members attached to the Plaint, inhabitants and members of Kishamba B Group Ranch registered under the Land Group (Representatives) Act Cap 287 Laws of Kenya (Repealed) living, residing and claiming under customary law a property known as Sagalla/Kishamba B/1 (suit property) registered in the name of Kishamba B Group Ranch.

5. It was averred that the suit property measuring 10.684 hectares situated in Voi, Taita Taveta County and comprises of villages namely Kijire Village, Kishamba Village, Mghange Village, Kizumanzi Village and Birikani Village and they have been and continue to live, occupy

and reside thereon with their families and the rights, claims and or interest under customary law were registered and recognised under the relevant laws and a title thereof issued in the name of **KISHAMBA B GROUP RANCH** (hereafter Group Ranch). The title to the suit property is still held under the said Kishamba B Group Ranch.

6. The Plaintiffs aver that the said Group Ranch and their activities, ownership claims and management of the suit property were governed by the Constitution of the Group Ranch whose defunct officials are the 1st Defendant prior to 26th September 2016. Prior to the commencement date for the Community Land Act No. 27 of 2016 on 26th September 2016, the affairs, activities and ownership of the suit property was governed by inter-alia Land Group (Representatives) Act Cap. 287 Laws of Kenya (Repealed). Land Adjudication Act, Registered Land Act Cap 300 Laws of Kenya (repealed).

7. It was averred that despite the mandatory provisions of Community Land act No. 27 of 2016, the Defendants have in breach of the above stated statute jointly and severally failed, neglected and or refused to register the suit

property as community land, dissolve the Group Ranch herein and establish a Community Land Management Committee, adjudicate, sub-divide and convert the suit property to private land transferrable to and or allocate the suit property to the Plaintiffs but instead threatened to and or allocate the suit property to the Plaintiffs but instead threatened and intend to demarcate, survey, sub-divide, alienate, deal and dispose off the property discriminatively against the Plaintiffs contrary to the provisions of Community Land Act to the prejudice of the Plaintiffs unless restrained by this Court.

8. It was also averred that by reasons of the provisions of the Community Land Act, the suit property is unregistered community land by reason of the Defendants failure to take steps to register the suit property under the Community Land Act hence the suit property is by reason of law held by the 1st Interested Party in trust for the Plaintiffs and any dealings thereon can only be carried out by consent of the Plaintiffs and the said 1st Interested Party.

9. It was also stated that the 1st Defendants have not been duly appointed as Land Management Committee members

as required by the Community Land Act or at all and cannot deal or act as Land Management Committee in respect of the suit property without the consent of the 1st Interested Party and or the Plaintiffs.

10. Despite the foregoing, the Plaintiffs have discovered on or about 9th April 2018, the 1st Defendants wrote to the 3rd Defendants requesting for dissolution of the Group Ranch and sub-division of suit property and purported to present to the 4th Defendant minutes of the Group Ranch signed by the said 1st Defendants on 22nd and 23rd June 2015 allegedly being minutes of the Group Ranch Annual General Meetings purportedly held on 15th May 2015.

11. The Plaintiffs have also discovered that on 12th November 2018, the 3rd Defendant working under the authority of the 2nd and 4th Defendants purported to approve the 1st Defendants request set out above, granted the 1st Defendant consent to dissolve the Group Ranch, obtain Land Control Board Consent to sub-divide the suit property and transfer the sub-divisions to the Group Ranch Membership before dissolving the Group Ranch Executive members.

12. The Plaintiffs have also discovered that the 4th Defendant by himself and or his officers in conspiracy with the 1st Defendants intend to discriminate the Plaintiffs, survey, sub-divide the suit property, register and issue titles of the selected few members of the Group Ranch to the prejudice of the Plaintiffs contrary to the Group Ranch Constitution, the relevant laws and the Constitution.
13. It was further avered that they have never been notified and or attended a special or annual general meeting of the Group Ranch convened and or called by the 1st Defendant and or the 4th Defendant for purposes of Group Ranch dissolution hence the purported Resolutions and or Annual General Meeting purportedly held on 15th May 2015 is illegal, unlawful, unprocedural and a nullity.
14. It was stated that the Plaintiffs claim against the 1st Defendant is secretly, illegally and unlawfully purporting to convene Group Ranch meetings, failure to convene annual general meeting as per the Group Ranch Constitution and purporting to unlawfully, illegally, fraudulently through corrupt means together with the 2nd, 3rd and 4th Defendants obtaining and presenting resolutions purporting to be the Plaintiffs or Group Ranch's

resolution to dissolve and sub-divide the suit property and intending to discriminatively allocate or transfer to few members of the Group Ranch without obtaining the requisite Group Ranch Consents, relevant County Government Consents and the due process of law with intent to defraud the Plaintiffs of their lawful interest in the suit property.

15. It was further stated that the Defendants are dealing, alienating, sub-dividing, transferring, allocating and registering the said transfers of portions of the suit property without the requisite consent of the Group Ranch or the Plaintiffs, consent of the Interested Party and contrary to the provisions of the Community Land Act. The Plaintiffs aver that the Defendants actions and dealings in respect of the suit property stated above are discriminative, fraudulent, illegal, unlawful, null and void *abi-nitio*.

16. During trial, **John Mwawasi the 5th Plaintiff testified on behalf of the Plaintiffs.** He adopted and relied on his witness statement dated 5th June 2024 and bundle of documents dated 6th June 2024 in his evidence in chief. It was his testimony that the title of the suit

property is registered in the names of Kishamba B and was issued on 25th March 1982. He also stated that there are 5 villages in the property. The 1st Defendants are committee members whose term expired but no elections have been held. He also stated that there was no resolution held to dissolve the group.

17. On cross-examination, he stated that the Plaintiffs are members of Kishamba B Group. He previously served as a Secretary for about 3 years. He also stated that he did not agree with the contents of the minutes of the meeting held on 15th May 2015. The Assistant Registrar was present on the meeting of 19th December 2014. The Chairman informed members that their attendance was less than 60% of the required threshold.

18. He further stated that there was no resolution to dissolve and subdivide. The register is supposed to be updated annually.

19. When re-examined, he stated that there is no letter advising the current committee to register the land under Community Land Act. The quorum of passing a dissolution is 60% of the registered members. There was no agenda to dissolve.

The 1st Defendant's case

20. It was the 1st Defendant's case that the provisions of the Community Land Act do not apply to the suit property by virtue of its members resolution No. 2 passed on 19th December 2014 resolving to subdivide and dissolve the said group ranch.
21. It was also averred that the group ranch was granted consent to subdivide the suit property on 16th January 2019 by the Land Control Board.
22. It was also pleaded that the Plaintiff's suit is vitiated by material misrepresentation, falsehood and fraud, particulars which were pleaded at paragraph 17 of their defence and counterclaim.
23. The 1st Defendant also prayed for an injunction to issue restraining the Plaintiff's in their Counter claim dated 24th January 2019.
24. During trial, three witnesses testified on their behalf. **Benson Mlambo Mwakina testified as DW1.** He adopted and relied on his witness statement dated 24th July 2019 together with the 1st Defendant's bundle of even date in his evidence in chief.

25. It was his testimony that he was elected on 28th March 2014 and they have not had any elections since then. He also stated that they got consent from the Land Control Board to proceed with the subdivision upon dissolution of the Ranch. There was an approval from the register to proceed with the dissolution and subdivision.

26. On further cross-examination he stated that the last Annual General Meeting was held in 2016. The Plaintiff's case was filed when they were in the process of subdivision of the land. The Ranch was not to be part of the community land.

27. He also stated on further cross-examination that the group had not been registered under Community Land Act. He was first elected in 2011 and then re-elected in 2014. The register was closed in 2012.

28. When re-examined, he stated that the Community Land Register had written to them informing them to proceed with the subdivision.

29. **Mitchel Musoka testified as DW2.** He adopted and relied on his witness statement dated 12th November 2024 in his evidence in chief. It was his testimony that his father is a member of the group ranch.

30. When cross-examined, he stated that his mother was the lawyer for the group ranch and she has land in the area which she was given.

31. He also stated that there was a criminal case which was withdrawn by the ODPP.

32. When re-examined, he stated that he went to check on the land as a son of the owner of the land and not as a process server.

33. **Muriuki Raaria, a Senior Superintendent of Police testified as DW3.** It was his testimony that he was still serving in Voi under investigations in respect to the land were undertaken. He did his recommendation and handed over the report when he was transferred. He also stated that he did not have the physical custody of the file.

The case of the 21st to 34th Interested Parties

34. They filed a Statement of Defence and Counter claim dated 30th August 2024. It was their case that they hold a substantial stake in the suit property. The intended subdivision can only be completed under the Community Land Act.

35. They sought for the following reliefs:-

- i. A declaration that the Interested Parties/Defendants hold substantial stakes in the suit property known as Sagalla/Kishamba B/1 as individual original owners and/or beneficial owners which property rights are fully protected by relevant legislation and fully anchored in the Constitution of Kenya and any attempts by any person or group of persons to disposes, suppress, evict, and/or deny access, use and enjoyment of property rights by individual members and/or beneficial owners of land within the suit property is wrongful, illegal and unlawful.**
- ii. An order that the processing of individual titles for holdings in the suit property known as Sagalla/Kishamba B/1 be carried out firstly as provided for under the Community Land act (No. 27 of 2016) in conjunction with the relevant enabling legislation for survey, adjudication and registration of private and public land rights and issuance of title deeds thereto.**

- iii. **An order compelling the current Management Committee of Kishamba B Group Ranch to comply with the relevant provisions of the Community Land Act (No. 27 of 2016) within thirty (30) days of the date hereof failing which the Taita Taveta County Land Settlement & Adjudication Officer to undertake and complete the survey, adjudication and registration of private and public land rights within the suit property known as Sagalla/Kishamba B/1 as per the provisions of relevant enabling laws within a period of twelve (12) months or such other duration as may be deemed appropriate.**
- iv. **An order that any outstanding issues relating to remainder current assets/debts be dealt with as provided in the members constitution of Kishamba B Group Ranch.**
- v. **Each party to bear its own costs.**

36. During trial, two witnesses testified on their behalf.

George Mwandoto who was an official at Kishamba B Group Ranch representing Mgange Village adopted his witness statement dated 7th March 2025. It was his

testimony that he was elected in 2014. He also stated that he previously served as a Councillor for the area from 2007 to 2012. The Ranch was registered in 1982. There is a register of members which has never been updated. The current leadership of the 1st Defendant is to be blamed for the same.

37. He reiterated on further cross-examination that the land should be registered as community land. The current officials are not properly in office. He has no problem with the land being registered as community land.

38. When re-examined, he stated that they have no problem in complying with the law and they would be happy to have elections.

39. **Juma Fundi Mohamed also testified on behalf of the Interested Parties.** He adopted his statement dated 7th March 2025 in his evidence in chief.

40. When cross-examined, he stated that he had no problem if the law is followed and more so the Community Land Act.

41. When re-examined, he stated that the land is community land and a Special General Meeting can be held to deal with any outstanding issues.

The Plaintiffs submissions

42. The Plaintiffs filed written submissions dated 27th June 2025. They submitted on the following issues:-

- (i) Whether the suit property is community land.**
- (ii) Whether the suit is competently in Court.**
- (iii) Whether the Group Ranch resolved on 19.12.2014 and 15.5.2015 to dissolve and subdivide the suit property before commencement of Community Land Act.**
- (iv) Whether the Group Ranch and the suit property are exempt from the provisions of Community Land Act and or the said Act does not apply to the said group Ranch and suit property.**
- (v) Whether the Plaintiffs have proved fraud, illegalities, discrimination and breach of statute and constitution against the Defendants in management of the suit property.**
- (vi) Whether the 1st Defendant has proved fraud against the Plaintiffs.**
- (vii) Whether the Plaintiffs are entitled to the reliefs sought in the plaint.**

(viii) Whether the 1st Defendants have proved and are entitled to the Counter-claim against the Plaintiffs.

(ix) Whether the Interested Parties have proved their claims and entitled to the reliefs sought in their Counter claim.

43. It was argued that it is not in dispute that the suit property is registered in the name of Kishamba B Group Ranch. The said group Ranch is incorporated under the provisions of Land (Group) Representatives Act, Cap 287 Laws of Kenya that was repealed by Section 45 of the Community Land Act whose commencement date was 21.9.2016. By the 27.8.2010 which is the commencement date of the Constitution of Kenya, it is trite that the suit property was community land within the definition of Article 63(2)(a) of the Constitution of Kenya.

44. Clause 3 of the Constitution of the Group Ranch acknowledges that the suit property of the Group Ranch which comprise of communities listed under Clause 5 of the Group Ranch constitution. The suit property is supposed to be managed as per the Group Ranch Constitution.

45. The 1st Defendant did not dispute the foregoing during the hearing of the suit. The 1st Defendant produced the Group Ranch's Certificate of Incorporation which acknowledges the law incorporating the Group Ranch. They also produced title to the suit property in the name of the Group Ranch and pleaded at paragraph 3 of the Defense that the Group Ranch is the registered owner of the suit property. The fact and evidence that the 1st Defendant was seeking approval from the 3rd and 4th Defendants to dissolve the Group Ranch, subdivide and allocate portions of the suit property confirms that the suit property was community land which the 1st defendant sought to convert portions thereof into private property allocated to members of the Group Ranch.

46. It was submitted that by reason of the foregoing, the 1st Defendants acknowledge that the suit property is community land as defined and classified at Article 63(1) and (2)(a-d) of the Constitution of Kenya. It is noteworthy that the legislation governing Community land is Community Land Act which was enacted pursuant to Article 63(4) of the Constitution of Kenya.

47. It was contended that Section 2 of the Community Land Act defines Community land as or means land declared as such under Article 63(2) of the Constitution; and or and converted into community land under any law.

48. The 1st Defendant has not given any contrary evidence divesting the suit property from the constitutional or statutory definition of the suit property as community land. The 1st Defendants defence which is by itself inconsistent with the plea that the suit property is private land, is that the Group ranch and the suit property are exempt from the provisions of Community Land Act. The said defence on exemption from provisions of Community Land Act is in itself an admission of the Plaintiffs claim but without proof of the said exemption.

49. On whether the suit is competent, it was argued that by a judgment given by the Court of Appeal on 14.4.2023 in Mombasa Court of Appeal Civil Appeal No. 52/2020, which is part of this court's record arising from an appeal against the decision of this court delivered on 26.2.2020 the Court of Appeal allowed the appeal and remitted the 1st Defendants Preliminary Objection on this point to this Court for determination. The 1st Defendant on 31.10.2023

abandoned the Preliminary Objection and the Plaintiffs Notice of Motion dated 24.4.2023 to advertise institution of the suit under Order 1 Rule 8 of the Civil Procedure Rules was allowed unopposed on the said date.

50. The Court on 31.10.2023 gave directions on publication of the notice of institution of the suit and the above preliminary objection in the defense is now overtaken by events and moot.

51. It was also submitted that the suit herein is representative filed on behalf of the Group Ranch and the Plaintiffs on their own behalf. Order 1 Rule 8 of the Civil Procedure Rules provides that the Plaintiffs may commence this suit but continue it only with orders of the Court as a representative suit.

52. The said orders are given in form of directions to publicize the suit under Order 1 Rule 8(2) of the Civil Procedure Rules. The 2nd to 20th Interested Parties applied and joined the suit after it was filed. The 21st - 34th Interested Parties joined the suit after the publication of the notice of institution of the suit by the Plaintiffs after the directions of the Court on 31.10.2023. There is no evidence of lack of authority to institute the suit as the letter of authority

filed with the suit has the names of the Plaintiffs stating that the annexed list of names of group ranch members support or authorize the Plaintiffs to continue the representative suit.

53. No opposition has been filed or a retraction of denunciation of Plaintiffs authority has been filed or demonstrated by the defense. Equally, no party joined the suit to express a defense against the suit other than the 1st Defendants.

54. It was also submitted that the 21st – 34th Interested Parties called George Mwandoto who is one officials of the 1st Defendant group ranch. He confirmed that the Committee was divided on the management of the Community land and sided with the Plaintiffs case. Juma F. Mwangomba was also a former official of the Group Ranch as per the Certificate of Incorporation dated 30.7.2014 produced by the 21st – 34th Interested Parties Supplementary List of Documents who also sided with the Plaintiffs and therefore it was clear that the allegation that the suit is not supported by the Group Ranch is baseless and frivolous defense by the 1st Defendant.

55. The court was urged to find that the suit is competently in Court as a representative suit compliant with Order 1 Rule 8 of the Civil Procedure Rule and further that the suit by Plaintiffs on their own behalf is competently before Court.
56. On whether the Plaintiffs have proved fraud, illegalities, discrimination and breach of statute and constitution against the Defendants in management of the suit property, it was submitted that it is not disputed that neither the suit property nor the community-Group Ranch have been registered under Community Land Act. DW1 who is the Chairman of the Group Ranch and 1st Defendant herein testified without supporting the assertion with evidence in court from the law or otherwise, that the Group Ranch and the suit property are exempt from the provisions of Community Land Act.
57. DW1 did not cite any provision in the Constitution of Kenya or Community Land Act exempting the Group Ranch or the suit property from the provisions of Community Land Act. DW1 admitted to having not registered the Community or the suit property under Community Land Act.

58. The suit property was by law to be held and managed by the 1st Interested Party on behalf of the Community. In neglecting to manage the suit property and leaving it to the 1st Defendants, the 1st Interested Party breached the law and obligations under Article 63(4) of the Constitution of Kenya and Section 6, 10(3) of the Community Land Act.

59. The 1st Defendant breached Section 47 of the Community Land Act which required them in mandatory terms to register the Group Ranch and the suit property as required by Section 7 and 11 of the Community Land Act. Section 47 of the Community Land Act prohibits the 1st Defendant from among others selling, leasing and converting the land to private property before registration under Community Land Act.

60. Counsel submitted that the Plaintiffs lead evidence during trial that the 1st Defendant had on 4.10.2020, awarded and or allocated 5 acres of the suit property to their Advocate in this case Ms. Mwanisha Saida Shariff. The said allocation is confirmed by DW1 Affidavit sworn on 20.1.2021. Mitchel Musoka Anyonyi – DW2 testified and confirmed that his mother Hon. Mwanisha Saida Shariff who was not a member of the Group Ranch had been

allocated and was utilizing the Group Ranch land as her own private land.

61. It was submitted that there was evidence of attempt to or conversion of Community land to private land without compliance with Community Land Act processes and provisions particularly registrations of the community, the land, regularization of the members registers, election of land management committee who thereafter seek requisite mandate from the community and the Community Land Registrar to sub-divide and allocate to members thereby converting it to private land.

62. There was no evidence of a resolution by the Group Ranch to allocate 5 acres of the suit property to a non-member and individual as private land. The resolution to allocate 5 acres of the suit property to Ms. Mwanaisha Saida Shariff was contrary to Clause 4 and 16 of the Group Ranch Constitution which requires that sub-division and allocation of the suit property be for members benefit. Occupation of such land must be by members within their ancestral land.

63. The 1st Defendant had no power to allocate suit property under the Group Ranch Constitution. The said fraudulent

misconduct deprived the Group Ranch 5 acres of the suit property and was discriminative in so far as it elected to allocate land to non-members without Group Ranch authority ultra vires their constitution and the applicable law.

64. It was argued that section 46(2) and 47 of Community Land Act requires in mandatory terms that any process commenced before promulgation of the new constitution or commencement of Community Land Act shall continue in accordance with the Community Land Act.

65. The 1st Defendants are not exempt from complying with the above law and to the extent that they failed to comply in dealing with the land before registration of the community, the land or election of land management committee, the 1st Defendant was in breach of the law and its above actions were illegal.

66. It was further submitted that the 1st Defendant did not demonstrate authority from the 1st Interested Party to deal in or manage the suit property after commencement of the community Land Act on 21.9.2016. The 2nd to 5th Defendants condoned, connived, abetted and conspired with the 1st Defendants in dealings that would have

deprived and discriminated the bonafide members of the Community from getting their entitled share of the suit property.

67. It was the Plaintiffs submissions that the said actions were perpetuated by dealings that would have led to subdivision of the land by the 1st Defendant who are not elected Community Land Management Committee, to survey, sub-divide and allocate portion of the suit property to private individuals prior to registration of the land or the community, verification of the register or compliances with Community Land Act. The 2nd - 5th Defendants did not file a defense or tender any evidence to convert the illegal dealings claimed against them with the 1st Defendant by the Plaintiff.

68. On whether the Group Ranch resolved on 19th December 2014 and 15th May 2015 to dissolve and subdivide the suit property before commencement of Community Land Act, it was argued that the 1st Defendant has in defense alleged that it obtained authority to dissolve and subdivide the suit property prior to commencement of Community Land Act. The 1st Defendant cited and evidenced Group Ranch Minutes of Meeting of 19.12.2014 and Minutes of

Group Ranch dated 15.5.2015. However, a perusal of the Minutes of 19.12.2014 showed at the Introduction that the said meeting lacked quorum, that is 60% of membership to pass a resolution to dissolve the Group Ranch. Clause 17 of the Group Ranch Constitution requires that a meeting to dissolve the Group Ranch must have a quorum of 60% membership present.

69. It was also submitted that there is no evidence that the said provisions of the Constitution of the Group Ranch was complied with prior to passing of the resolution under Minute 3 of the Minutes of the Meeting of 19.12.2024. The Assistant Registrar did not have power to amend or re-write the Constitution of the Group Ranch. Her actions were ultra vires Clause 15 of the GROUP Constitution. The Resolution was thus ultra vires the Constitution of the Group Ranch, illegal, null and void for want of compliance with the Group Constitution. It was fraudulent for the 1st Defendant to purport to proceed with voting and passing of resolutions without requisite quorum and there was no valid resolution passed to dissolve the Group Ranch.

70. It was contended that the meeting of 15.5.2015 did not pass a resolution to dissolve the Group Ranch. It only

confirmed the Minutes of an illegal and void Meeting of 19.12.2024. It cannot be said that members passed the resolution to dissolve the Group Ranch because that was not the Agenda of the said Meeting of 15.5.2015. There was no compliance of Clause 17 of the Group Ranch Constitution. The sub-division of the suit property was passed by the meeting of 15.5.2015 under Minute 4/15/5/2015 at the last paragraph which clearly required cleaning of the Register of Members and thus the purported threatened survey and sub-division without prior cleaning of the Register is unlawful.

71. On whether the Group Ranch and the suit property are exempt from the provisions of Community Land Act and or the said Act does not apply to the said Group Ranch and suit property, it was submitted that there was no exemption from complying with the law.

72. It was the Plaintiffs submissions that any purported exemption by the 3rd and 4th Defendants although not shown to have been given, would have been or is in fact ultra vires Article 63(4) of the Constitution of Kenya and Section 34, 46 and 47 of the Community Land Act hence illegal, unlawful, null and void abinitio.

73. On whether the 1st Defendant has proved fraud against the Plaintiffs, it was submitted that the 1st Defendant did not however prove their claims against the Plaintiffs by evidence during the hearing of the suit.

74. It was also submitted that there was no evidence that the Plaintiffs were selling or have sold the suit property as alleged by the 1st Defendant. There was no witness called by the 1st Defendant or any party alleging that he/she purchased any portion of the suit property or the suit property from the Plaintiffs.

75. On whether the 1st Defendant is entitled to the reliefs sought in the Counter claim, it was submitted that none of the same have been proved and the Counter claim is devoid of merit.

76. In respect to the Interested Parties claim, it was submitted that the 21st - 34th Interested Parties did not state which members they purchased from that notwithstanding they seek reliefs in support of the plaint which the Plaintiffs have no opposition to it so long as the suit property is dealt with in accordance to the Community Land Act.

77. The Plaintiffs concluded their submissions by urging the court to dismiss the 1st Defendant's Counter Claim and grant the reliefs sought in their plaint.

The 1st Defendant's submissions

78. The 1st Defendants filed written submissions dated 25th July 2025. They made submissions on the following issues:-

- (i) Whether the suit property is community land.**
- (ii) Whether the Group Ranch resolved on 19th December 2014 and 15th May 2015 to dissolve and sub-divide the suit property before the commencement of Community Land Act.**
- (iii) Whether the Group Ranch and the suit property are exempt from the provisions of Community Land Act and/or said Act does not apply to the said Group Ranch and suit property.**
- (iv) Whether the Plaintiffs and interested Parties have proved fraud, illegalities, discrimination and breach of statute and Constitution against the Defendants in management of the suit property.**

(v) Whether the 1st Defendant has proved fraud against the Plaintiffs.

(vi) Whether the Plaintiffs are entitled to the reliefs sought in the plaint.

(vii) Whether the 1st defendants have proved and are entitled to the counterclaim against the Plaintiffs.

(viii) Whether the Interested Parties have proved their claims and are entitled to the reliefs sought in the counter claim.

79. It was submitted that the suit parcel can be classified as Community Land. The cases filed relating to the suit property hindered the transition through dissolution of the group ranch.

80. On whether the Group Ranch resolved on 19th December 2014 and 15th May 2015 to dissolve and subdivide the suit property before the commencement of the Community Land Act, it was argued that on 19th December 2014, the group ranch held an Annual General Meeting in which one of the agenda items was subdivision and dissolution of the Group Ranch. In the said meeting, it was admitted that 60% quorum threshold was not achieved as members

present were 368. Subsequently, a second meeting was scheduled for 15th May 2015 as per the Group Ranch Constitution and it was resolved to proceed with the process of subdivision of the Group Ranch and that notices for both meetings were issued to all members.

81. On whether the Group Ranch and suit parcel is exempt from the provisions of Community Land Act, it was argued that the members had resolved on the 15th May 2015 to dissolve the ranch and dissolve the ranch and subdivide the property and as such they were exempt from the provisions of the Act.

82. On whether the Plaintiffs and Interested Parties have proved fraud, illegalities, discrimination and breach of statute and the Constitution against the defendants on management of the suit property, it was submitted that the 1st Defendant came into office by election by the members and no election could be held during the transition period and further that the Ranch does not fall under the provisions of the Community Land Act.

83. As to whether the 1st Defendant has proved fraud against the Plaintiffs, it was submitted that the Plaintiffs failed to collect all signatures to bring a representative suit

contrary to the provisions of the Civil Procedures Act and further that the Interested Parties denied being members of the representative suit.

84. As to whether the Plaintiffs are entitled to the reliefs sought, it was contended that the Plaintiffs are not entitled to the same and their suit should be dismissed.

85. In respect to the 1st Defendant's counter claim, it was argued that the 1st Defendant is entitled to the reliefs sought in the Counter claim and further that they should be awarded general damages of Kshs. 800,000,000/- together with costs of the suit.

The submissions of Anthony Kishagha Mwasi

86. **Anthony Kishagha Mwasi** who had initially been sued as among the 1st Defendants filed a Notice to Act in person and proceeded to file submissions dated 13th August 2025.

87. It was his submissions that the land belongs to the individuals resident within the Group Ranch and that this position has been universally accepted by all members in the past and in all General Meetings of the Group Ranch.

88. He also submitted that the entirety of Kishamba B Group Ranch land belongs to individual members who have found

themselves bundled under the Group Ranch title, but that their rights and entitlement to their respective lands have always been recognized by the Group Ranch and all members as between themselves.

89. It was his submissions that currently, there is no unclaimed land within Kishamba B Group Ranch, with all of it being occupied and claimed by the respective owners and there is no need for group ownership any more as evidently that stage has now been overtaken by events.

90. It was further submitted that the members have in the past sold and transferred their individual parcels of land without interference and indeed, with the facilitation of the Group Ranch when necessary. It is evident from the material on record that there has been a deliberate move by the Group Ranch following advise and direction by Government officials led by the Regional Commissioner, Director of Land Adjudication and Settlement, County Land Registrar and the County Executive for Lands and physical planning to regularize land ownership by persons who were not in the membership register so as to facilitate the intended subdivision and issuance of titles to individual land holders.

91. He further submitted that the dissolution of the Group Ranch and subdivision into individual titles was the prime objective of the Group Ranch itself, and it was never intended that the members shall live under common ownership for eternity. The meeting for dissolution was held on 15th May 2015 and the minutes were submitted to the Director of Land Adjudication and Settlement together with a formal application for dissolution. Approval of the minutes and dissolution was granted on 18th November 2018. Thereafter consent for subdivision was granted on 16th January 2019. That evidence is on record in these proceedings.

92. It was his submissions that the dissolution took place legitimately and before the promulgation of the Environment and Lands Act. All members and residents within the group ranch want the dissolution to be finalized and individual titles issued as per their land holdings.

93. According to him, the Plaintiffs in Mombasa ELC 74 of 2019 were all part of the agitation and took part in and indeed moved the motions for dissolution in the past and more particularly in the resolution to dissolve which they

are complaining about and are subject of these proceedings.

94.No member or the group ranch is in favour of continuing the system of joint or common ownership of land under any circuit and wish for their individual titles to land.

95.The ownership or purchase of land by persons acquiring from members of Kishamba B Group Ranch who have willingly sold or disposed of their land to other persons are perfectly within their rights to do so, and that such purchasers should be entitled to the protection of their rights so. That issue has been dealt with through regularization as such sales do not in any way violate the rights and interests of other members of Kishamba B Group Ranch.

96.He also submitted that it is also on record that the members decided that the holder of the position of Chairman, Mr. Benson Mlambo Mwakina as at 16.7.21 had been the source of disputes that had arisen from decisions made without Executive Committee consultation and/or mandate. It is also on record that a Special General Meeting of the Group Ranch held on 16.7.2021, Mr.

Benson Mlambo Mwakina was replaced as Chairman by Mr. Alfred Kilonzo.

Analysis and Determination

97. The court has considered the pleadings in the matter, parties submissions, evidence tendered and the existing legal framework herein and thus proceeds to determine the suit on the following issues:-

- (a) Whether the suit property is community land.**
- (b) Whether fraud, illegalities and breach of statute has been proved as against the Defendants.**
- (c) Whether the 1st Defendant has proved fraud as against the Plaintiffs.**
- (d) Whether the Plaintiffs are entitled to the reliefs sought in the plaint.**
- (e) Whether the 1st Defendant is entitled to the reliefs sought in their Counter claim.**
- (f) Whether the Interested Parties are entitled to the reliefs sought in the Counter claim.**

Issue No. 1

Whether the suit parcel is community

98. In the instant case, it was the Plaintiffs and Interested Parties case that the suit parcel is community land.

99. It was the 1st Defendant's case that Parcel No. Sagalla/Kishamba 'B'/1 can be classified as community land.

100. Article 63 and 64 of the Constitution of Kenya defines community land and private land respectively. Article 63 of the Constitution of Kenya provides as follows:

- (i) **Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.**
- (ii) **Community land consists of -**
 - (a) **Land lawfully registered in the name of group representatives under the provisions of any law;**
 - (b) **Land lawfully transferred to a specific community by any process of law;**
 - (c) **Any other land declared to be community land by an Act of Parliament; and;**

- (iii) **Any unregistered community land shall be held in trust by County Government on behalf of the communities for which it is held.**
- (iv) **Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.**
- (v) **Parliament shall enact legislation to give effect to this Article.**

101. It is not in dispute that the suit property is registered in the name of Kishamba B Group Ranch. The said Group Ranch is incorporated under the provisions of Land (Group) Representatives Act. Cap 287 Laws of Kenya that was repealed by Section 45 of the Community Land Act whose commencement date was 21.9.2016. By the 27.8.2010 which is the commencement date of the Constitution of Kenya, it is trite that the suit property was community land within the definition of Article 63(2)(a) of the Constitution of Kenya.

102. Clause 3 of the Constitution of the Group Ranch acknowledges that the suit property is a property of the

Group Ranch which comprise of communities listed under Clause 5 of the Group Ranch constitution. The suit property is supposed to be managed as per the Group Ranch constitution.

103. The 1st Defendant did not dispute the foregoing during the hearing of the suit. The 1st Defendant produced the Group Ranch's Certificate of Incorporation during trial which acknowledged the law incorporating the Group Ranch. They also produced title to the suit property in the name of the Group Ranch and pleaded at paragraph 3 of the Defense that the Group Ranch is the registered owner of the suit property. The fact and evidence that the 1st Defendant was seeking approval from the 3rd and 4th Defendants to dissolve the Group Ranch, subdivide and allocate portions of the suit property confirms that the suit property was community land which the 1st Defendant sought to convert portions thereof into private property allocated to members of the Group Ranch.

104. The legislation governing Community land is Community Land Act which was enacted pursuant to Article 63(4) of the Constitution of Kenya.

105. Section 2 of the Community Land Act defines Community land as or means land declared as such under Article 63(2) of the Constitution; and or and converted into community land under any law.

106. No contrary evidence divesting the suit property from the constitutional or statutory definition of the suit property as community land was tendered.

107. In view of the foregoing, it is the finding of this court that the suit parcel known as Sagalla/Kishamba 'B'/1 is Community Land.

Issue No. (ii)

Whether the Plaintiffs have proved fraud, illegalities and breach of statute as against the Defendants

108. It was the Plaintiffs case that Kishamba B Group Ranch comprise of Kajire, Kishamba, Mghange, Kizumanzi and Birikani Village who are represented in the Group Ranch Committee by members listed in the above Certificate of Incorporation. The suit property covers Sagalla area in Voi and borders Voi town, Maungu Ranch, Teri, Ndara A, Ngutuni and Kishamba A area in Voi town,

Maungu Ranch, Teri, Ndara A, Ngutuni and Kishamba A area in Voi, Taita Taveta County.

109. During trial it emerged that there was nothing exempting the suit property from the provisions of the Community Land Act.

110. It also emerged that the suit property was by law to be held and managed by the 1st Interested Party on behalf of the Community. In neglecting to manage the suit property and leaving it to the 1st Defendants, the 1st Interested Party breached the law and obligations under Article 63(4) of the Constitution of Kenya and Section 6, 10(3) of the Community Land Act.

111. The 1st Defendant breached Section 47 of the Community Land Act which required them in mandatory terms to register the Group Ranch and the suit property as required by Section 7 and 11 of the Community Land Act. Section 47 of the Community Land Act prohibits the 1st Defendant from among others selling, leasing and converting the land to private property before registration under Community Land Act.

112. During trial, the Plaintiffs lead evidence that the 1st Defendant had on 4.10.2020, awarded and or allocated 5

acres of the suit property to their Advocate in this case Ms. Mwanaisha Saida Shariff, who was not a member of the Group Ranch.

113. This was an attempt to or conversion of Community land to private land without compliance with Community Land Act processes and provisions particularly registrations of the community, the land, regularization of the members

114. There was no evidence of a resolution by the Group Ranch to allocate 5 acres of the suit property to a non-member and individual as private land. The said act deprived the Group Ranch 5 acres of the suit property and was discriminative in so far as it elected to allocate land to non-members without Group Ranch authority ultra vires their constitution and the applicable law.

115. The 1st Defendants had no capacity or legal authority to manage the suit property and their actions which included purported application and procuring of consents and approvals from the 3rd and 4th Defendants to subdivide the suit property. The 1st Defendant are not Community Land Management Committee elected under

Community Land Act and had no capacity to manage or deal in the suit property.

116. Any actions including the purported consent and approvals to sub-divide the suit property after 21.9.2016 prior to or without prior registration of the suit property or the community were contrary to Community Land Act and more particularly Section 47 of the Community Land act. The said actions were illegal and intended to deprive the bonafide Group Ranch members their rightful share of the suit property as the 1st Defendant have not updated or regularized the Group Ranch Register whether as per the Community Land Act or otherwise. DW1 admitted that the Group Ranch register has not been updated since 2016.

117. Further undisputed evidence or illegal dealings with the suit property contrary to the Community Land Act and Article 63(4) of the Constitution include a letter dated 9.4.2018 by the 2nd Defendant to the 3rd Defendant at pages 64 of the PSLBD, directing the latter to grant 1st Defendants consent to sub-divide the suit property, Land Control Board Consent letter dated 16.1.2019 at pages 74 of the PSLBD procured by 1st Defendants to sub-divide the suit property, a letter dated 4.3.2021 by the 2nd and 3rd

Defendant officers to the 1st Defendant at pages 77 – 78 of PSLBD directing the latter to dissolve the Group Ranch and sub-divide the suit property by June 2021 without compliance with Article 63(4) of the Constitution of Kenya and Community Land Act.

118. From a further analysis of the evidence that was tendered, it was also evident that the Plaintiffs demonstrated by letter dated 16.10.2018 and Petition dated 5.1.2019 to Assistant Registrar that they complained against the 1st Defendants actions and requested for fresh elections but the same was ignored. The 1st Defendant was also accused of overstaying in office contrary to the Group Ranch constitution but never rebutted the claim. DW1 admitted to have served beyond his constitutional term in office.

119. From the analysis of the evidence that was tendered during trial, the 1st Defendant did not demonstrate any authority from the 1st Interested Party to deal in any way manage the suit property after commencement of the Community Land Act on 21.9.2016.

120. In view of the foregoing, this court is satisfied that the Plaintiffs have been able to prove fraud, illegalities and breach of statute by the Defendants herein.

Issue No. (iii)

Whether the 1st Defendants have proved fraud as against the Plaintiffs

121. The 1st Defendants pleaded and particularized fraud against the Plaintiffs at paragraph 17 of their Defence and Counter claim. The main claims are that the Plaintiffs alleged to have authority of other members of the Group Ranch to pursue this suit, uttered false document, fraudulently listed non-members and that the Plaintiffs are fraudulently and illegally selling the Group Ranch land to non-members.

122. It is trite law that a party alleging fraud must specifically plead the particulars of fraud and specifically lead evidence to prove the allegations of fraud. There are steps that must be taken to prove fraud. In the case of **Vijay Morjaria Vs Nansign Madhusihn Darbar & Another (2000) eKLR**, the court of Appeal stated as follows"-

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts”.

123. The same procedure goes for allegations of misrepresentation and illegally as outlined under **Order 2 rule 4 of the Civil Procedure Rules**. As regards the standard of proof, the court of Appeal in the case of **Kinyanjui Kamau Vs George Kamau (2015) eKLR** expressed itself as follows: -

“ It is trite law that any allegations of fraud must be pleaded and strictly proved. (See Ndolo Vs Ndolo (2008) 2 KLR (G & F) 742 wherein the court stated that:-

“...We start by saying that it was the respondent who was alleging that the will was

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

“In cases where fraud is alleged, it is not enough to simply infer fraud from the facts”.

124. It is the burden of the person who makes such allegations to present cogent and believable evidence of the same. Indeed, given the seriousness of charges of such character that border on criminality, the standard of proof is necessarily higher than the usual civil standard of a preponderance of probabilities. The standard does not, however, reach the criminal law standard of proof beyond reasonable doubt. It is proof to a level just below beyond reasonable doubt but must, in my estimation, reach the level of assured and confident proof. See **Magutu**

**Electrical Services Ltd vs Miriam Nyawira Ngure
& Anor [2019] eKLR.**

125. However, during trial, the 1st Defendant did not prove its allegations against the Plaintiffs and as such, it is the finding of this court that the 1st Defendants have been unable to prove any fraud as pleaded as against the Plaintiffs.

Issue No. (iv)

Whether the Group Ranch resolved on 19th December 2024 and 15th May 2025 to dissolve and subdivide the suit property before commencement of the Community Land Act

126. In respect to this issue, it was contended by the Plaintiffs that the meeting of 15th May 2015 did not pass a resolution to dissolve the Group Ranch. It only confirmed the minutes of an illegal void meeting of 19th December 2024. It was also contended that the minutes of 19th December 2014 showed that there was a lack of quorum being 60% of the membership to pass a resolution to dissolve the Group Ranch.

127. The 1st Defendants on the other hand submitted that while indeed the first meeting held on 19th December 2014 did not have quorum, the second meeting held on 15th May 2015 resolved to proceed with the process of subdivision of the Group Ranch and further that notices had been issued to all members.

128. The Interested Parties on the other hand submitted that there was no evidence of quorum for the resolution and that the 1st Defendant was in office illegally.

129. From the analysis of the evidence tendered herein, it is evident that the meeting of 15.5.2015 did not pass a resolution to dissolve the Group Ranch. It only confirmed the minutes of the meeting of 19.12.2024. It cannot be said that members passed the resolution to dissolve the Group Ranch because that was not the Agenda of the said meeting of 15.5.2015. There was no compliance of Clause 17 of the Group Ranch Constitution. The sub-division of the suit property was passed by the meeting of 15.5.2015 under minute 4/15/5/2015 at the last paragraph which clearly required cleaning of the register of members. That is verification of the register yet DW1 admitted during trial that there has been no cleaning or updating the register.

130. It is also worth noting that the Community Land Act overrides the provisions of the Group Ranch Constitution by reason of Article 63(4) of the Constitution and Section 46(2) and 47(3) of the Community Land Act provide in mandatory terms that dealings in Community land must strictly comply with the said Act. It follows that failure to comply with the above Act cannot be remedied by an alleged resolution to sub-divide the land, although in this case, there is no evidence tendered to support the defense that 1st Defendants dealings in the suit property were authorized by the Community.

131. It was clear that the 1st Defendants purported survey, subdivision and allocation of suit property which is in very sense conversion of community land to private land was none compliant with the law, Group Ranch Constitution and the resolutions of the Group Ranch.

132. In the circumstances, it is the finding of this court that there was no resolution made by the Group Ranch to dissolve and subdivide the suit property before the commencement of the Community Land Act.

Issue No. (v)

Whether the Group Ranch and the suit property are exempt from the provisions of the Community Land Act

133. It was the 1st Defendants case that the suit property is exempt from the provisions of the Community Land Act for reasons that members of the group ranch resolved for dissolution and subdivision before enactment of the Act. The hindrance to actualizing the transition arose from the suits staying the process. The Ministry of Lands and Physical Planning vide letter dated 12th November 2018 confirmed receipt of minutes for dissolution of Kishamba 'B' Group Ranch. The letter from the Land Adjudication and Settlement, one Eustace N. Kithumbu, laid the next procedure which is Land Control Board consent. It is only at the stage of the Director of Land Adjudication and Settlement that the office downed its tools as the matters were now before various courts; including this present consolidated claim.

134. The Plaintiffs on the other hand argued that the same was community land and was not exempted from the provisions of the Act.

135. The court having found earlier that the suit property is community land, it therefore follows that the provisions of the community land are to apply.

136. Notwithstanding the foregoing and even if the Defendants were to be given a benefit of doubt, Section 46(2) and 47 of Community Land Act obligated the 1st Defendant and Co-Defendants to continue any actions or dealings in the suit property commenced prior to 21.9.2016 in accordance and in compliance with Community Land Act.

137. There was no exemption from complying with the law. The Plaintiffs submit that any purported exemption by the 3rd and 4th Defendants would have been or is in fact ultra vires Article 63(4) of the Constitution of Kenya and Section 34, 46 and 47 of the Community Land Act hence illegal, unlawful, null and void abinitio.

Issue No. (vi)

Whether the Plaintiffs are entitled to the relief sought

138. The Plaintiffs sought for several reliefs as was enumerated in the plaint.

139. In the instant case and this court pronounced itself on the issues raised herein it is satisfied that the Plaintiffs have proved their case to the required standard and are entitled to the reliefs sought which this court shall proceed to grant the same at the end of this judgment.

Issue No. (vii)

Whether the 1st Defendant is entitled to the reliefs sought in their Counter claim

140. The 1st Defendant sought for the following reliefs in their Counter claim, a permanent injunction to issue against the Plaintiffs either by themselves, their servants, agents and or whosoever acting under them from offering for sale, selling, disposing off and/or alienating any part of all that parcel of land known as Sagalla/Kishamba 'B'/1 and from holding themselves out as the Executive Committee of Kishamba 'B' Group Ranch.

141. A Counter claim just like a suit ought to be proved to the required standard. It is trite law that whoever alleges must proof. **Section 107 (1) of the Evidence Act**, Cap 80 Laws of Kenya provides that:

‘Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.’

On evidentiary burden of proof, **Sections 109 and 112 of the Evidence Act** provide as follows:

“109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.”

112. in civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving the fact is upon him.”

142. On the issues raised herein which this court has pronounced on itself and hence no need to reiterate on the same, it is the finding of this court that the 1st Defendants was unable to prove their case to the required standard and as such this court is unable to grant the reliefs sought in their counterclaim.

Issue No. (viii)

Whether the 21st - 34th Interested Parties are entitled to the reliefs sought

143. The 21st to 34th Interested Parties filed a Statement of Defence and Counter claim seeking the following reliefs:-

(a) A declaration that the Interested Parties/Defendants hold substantial stakes in the suit property known as Sagalla/Kishamba B/1 as individual original owners and/or beneficial owners which property rights are fully protected by relevant legislation and fully anchored in the Constitution of Kenya and any attempts by any person or group of persons to dispose, suppress, evict and/or deny access, use and enjoyment of property rights by individuals members and/or beneficial owners of land within the suit property is wrongful, illegal and unlawful.

(b) An order that the processing of individual titles for holdings in the suit property known as Sagalla/Kishamba B/1 be carried out firstly as provided for under the Community Land Act (No. 27 of 2016) in conjunction with the relevant enabling legislation for survey, adjudication and

registration of private and public land rights and issuance of title deeds thereto.

(c) An order compelling the current Management Committee of Kishamba B Group Ranch to comply with the relevant provisions of the Community Land Act (No. 27 of 2016) within thirty (30) days of the date hereof failing which the Taita Taveta County Land Settlement & Adjudication Officer to undertake and complete the survey, adjudication and registration of private and public land rights within the sit property known as Sagalla/Kishamba B/1 as per the provisions of relevant enabling laws within a period of twelve (12) months or such other duration as may deemed appropriate.

(d) An order that any outstanding issues relating to remainder current assets/debts be dealt with as provided in the members constitution of Kishamba B Group Ranch.

(e) Each party to bear its own costs.

144. From their pleadings the Interested Parties have sought for substantive reliefs against the other parties

herein. In the instant case, the issues raised by Interested party could have been well ventilated if they would have sought to be joined either as a primary party in the matter or separately if they would have filed their own suit.

145. In the circumstances this court is unable to grant the Interested Parties the reliefs sought.

Final Orders

146. In conclusion, it is the finding of this court that the Plaintiffs have proved their case to the required standard and they are entitled to the reliefs sought. The court proceeds to grant the following final orders:-

(a) A declaration be and is hereby issued that the 1st Defendant was not properly constituted in accordance with the Community Land Act No. 12 of 2017 and hence has no capacity or authority to manage or deal in the property known as Sagalla/Kishamba 'B'/1 registered in the names of Kishamba B Group Ranch and any dispositions by the 1st Defendant of the said property devoid of the County of Taita Taveta's consent or authority are illegal, null and void.

(b) A declaration be and is hereby issued that the decision by the 2nd, 3rd and 4th Defendants vide a letter ref CR/2/324/168 to the 1st Defendant dated 12th November 2018 granting the 1st Defendant consent to dissolve Kishamba B Group Ranch and subdivide the suit property and any subdivision, allocation or titles issued to any individual consequent to the said decree is illegal, unlawful, null and void.

(c) An Order be and is hereby issued quashing the decision and or order by the 2nd, 3rd and 4th Defendants vide a letter ref GR/2/324/168 to the 1st Defendant dated 12th November 2018 granting the 1st Defendant consent to dissolve Kishamba B Group Ranch and subdivide the property and all consequential decision, actions including but not limited to subdivisions, allocations and titles in respect to the portion from the above property or arising from the said decision.

(d) A permanent injunction be and is hereby issued restraining the Defendants either by themselves or through their servants or whatsoever from

implementing the decision and or order by the 2nd, 3rd and 4th Defendants vide a letter ref GR/2/324/168 to the 1st Defendant dated 12th November 2018 granting consent to dissolve Kishamba B Group Ranch and subdivide the property and all consequential decisions, actions arising therefrom and or otherwise in any manner dealing with alienating, leasing, charging, demarcating, surveying, subdividing, dispensing off or in any manner dealing with the said property without the consent of the County of Taita Taveta, Plaintiffs and or contrary to the provisions of the Community Land Act.

- (e) An order be and is hereby issued directing the Defendants to initiate, undertake and or cause issuance of a public notice in one of the leading Daily Newspapers, radio stations of wide nationwide circulation and also through the County Administration offices convening a public meeting of the Plaintiffs, members of Kishamba B Group Ranch and any other person claiming interest in the suit parcel to elect members of**

Community Land Management Committee to convene, update and develop an accurate register of Plaintiffs and or bonafide members of Kishamba B Group Ranch within 90 days from today the cost of the said advert and notices to be borne by the Plaintiffs.

(f) An order be and is hereby issued directing the Defendants to undertake and comply with all the statutory obligations set out in the Community Land Act and all the relevant laws in registration, adjudication, demarcation, survey, suit division and allocation of portions of the suit parcel to the Plaintiffs and or bonafide members of Kishamba B Group Ranch within 90 days from today. The cost of this exercise shall be borne equally by all the concerned parties.

(g) Each party to bear own costs of the suit and counterclaim.

Dated, Signed and Delivered Virtually/Open Court at Voi this 25th day of September 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Litoro for the Plaintiffs

Mr. Olendi for 1st Defendant

Ms. Nduku holding brief for Mr. Kariuki for 21st - 34th

Interested Parties

No appearance for other parties

Court Assistant: Mary Ngoira.