



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC CIVIL CASE NO. 217 OF 2017**

**KENNEDY MUTISO MUTUKU.....1<sup>ST</sup>**

**PLAINTIFF**

**EDWARD MUSEMBI.....2<sup>ND</sup>**

**PLAINTIFF JOHN MUTETI**

**NZEVU.....3<sup>RD</sup> PLAINTIFF**

**VERONICAH MBATHA MULIKA.....4<sup>TH</sup>**

**PLAINTIFF NDULULU MAKAU**

**KILONZO.....5<sup>TH</sup> PLAINTIFF DENSON**

**MASILA MUTIE.....6<sup>TH</sup> PLAINTIFF**

**ROSE KANINI MUSYOKA.....7<sup>TH</sup>**

**PLAINTIFF**

**VERSUS**

**JACKSON NZUKI NGULI.....1<sup>ST</sup>**

**DEFENDANT JONES WAMBUA**

**NGULI.....2<sup>ND</sup> DEFENDANT HENRY**

**NZOMO NGULI.....3<sup>RD</sup> DEFENDANT**

**JAIRUS MUINDI NGULI.....4<sup>TH</sup>**

**DEFENDANT STANDARD INVESTMENT BANK  
LIMITED.....5<sup>TH</sup> DEFENDANT FREDRICK TSOFA  
MUENI.....6<sup>TH</sup> DEFENDANT**

**AND BY WAY OF COUNTERCLAIM**

**JACKSON NZUKI NGULI.....1<sup>ST</sup>  
PLAINTIFF**

**JONES WAMBUA NGULI.....2<sup>ND</sup>  
PLAINTIFF**

**HENRY NZOMO NGULI.....3<sup>RD</sup>  
PLAINTIFF**

**JAIRUS MUINDI NGULI.....4<sup>TH</sup>  
PLAINTIFF**

**STANDARD INVESTMENT BANK LIMITED.....5<sup>TH</sup>  
PLAINTIFF**

**VERSUS**

**KENNEDY MUTISO MUTUKU.....1<sup>ST</sup>**

**DEFENDANT EDWARD MUSEMBI.....**

**2<sup>ND</sup> DEFENDANT JOHN MUTETI**

**NZEVU.....3<sup>RD</sup> DEFENDANT VERONICA**

**MBATHA MULIKA.....4<sup>TH</sup> DEFENDANT**

**NDULULU MAKAU KILONZO.....5<sup>TH</sup>**

**DEFENDANT DENSON MASILA MUTIE.....**

**.....6<sup>TH</sup> DEFENDANT ROSE KANINI**

**MUSYOKA.....7<sup>TH</sup> DEFENDANT**

## JUDGMENT

### Background

1. This suit was initiated by a plaint dated 8/05/2017 by the plaintiffs against the defendants, which was subsequently amended on 22/05/2018.
2. The plaintiffs' case was that the 1<sup>st</sup> to 4<sup>th</sup> defendants are the sons and beneficiaries of the estate of Barnabas Nguli Kyomboyo (deceased), who was a member of Lukenya Ranching and Farming Co-operative Society with membership no. 304 and had been allocated plot no. 159, now land parcel no. **Mavoko Town Block 3/2489 ("suit property")**, comprising 18.6 hectares, approximately 45.96 acres or thereabouts.
3. They asserted that, being the deceased's beneficiaries, the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants, on different dates from the year 2002, entered into separate written agreements with the plaintiffs for the sale of specific parts of the suit property, which were to be excised.
4. They averred that, in accordance with the said agreements and payments made as agreed, the plaintiffs took possession of their respective portions, carried out extensive developments thereon, and have remained in occupation to date.

5. Nevertheless, the 1<sup>st</sup> defendant, who is the deceased's legal administrator, disregarded the plaintiffs' equitable interests and the status quo order in **HCCC No. 230 of 2009**, and entered into an agreement for the sale of the entire suit property with the 6<sup>th</sup> defendant in 2013, who in 2015 transferred it to the 5<sup>th</sup> defendant.
6. Additionally, they argued that these acts of transfer, which breached the various agreements between the plaintiffs and some of the defendants, were fraudulent. Therefore, they specified fraud and special loss and sought jointly and severally the following reliefs against the defendants: -

- a. Orders of specific performance of each contract between the parties.***
- b. Declarations that each plaintiff is entitled to ownership of the specific portions of land purchased from any one of the defendants.***
- c. General damages for emotional distress.***
- d. The land registrar, Machakos, be directed to rectify the register and issue to the plaintiffs and the 5<sup>th</sup> defendant their respective separate and distinct parcels of land to be excised from the suit property.***
- e. In the alternative, the defendants jointly and each one of them be ordered to refund each plaintiff at the current market rate the value of***

***their respective purchased portions of land and also compensate them for the value of their respective investment/development on the land.***

***f. Any other relief that may be deemed fit and just in the circumstances.***

***g. Costs of the suit.***

7. In response, and save for the 6<sup>th</sup> defendant, who did not participate in the proceedings, the other defendants opposed the suit. The 1<sup>st</sup> to 4<sup>th</sup> defendants filed their defence and counterclaim, dated 7/12/2017, which was amended on 27/03/2018. In it, they denied the plaintiffs' claim and put them to strict proof.
8. Furthermore, they argued that the various agreements between the plaintiffs and some of the defendants were unlawful, as probate proceedings had not been conducted over the deceased's estate at the time of the alleged purchase. Additionally, in the counterclaim, it was stated that in the **Succession Cause No. 842 of 2008 ("probate case")**, which concerned the deceased's estate, the 1<sup>st</sup> defendant was appointed as the legal administrator, and a certificate of grant was confirmed on 12/05/2009 and subsequently rectified on 21/05/2013. This had the effect of transferring the suit property to the 1<sup>st</sup> defendant.

9. To them, the transfer to the 1<sup>st</sup> defendant was valid, and there was no privity of contract with the plaintiffs. Furthermore, as it currently stands, they have no proprietary interests in the suit property. They stated that **HCCC No. 230 of 2009** never barred the 1<sup>st</sup> defendant from dealing with the suit property, including selling it to the 6<sup>th</sup> defendant on 14/05/2011, who subsequently sold it to the 5<sup>th</sup> defendant. They urged the court to dismiss the suit and grant the reliefs sought in the counterclaim.

***a. An order of permanent injunction restraining the plaintiffs, by themselves, their employees and any other person claiming an interest, through them, from trespassing or in any way encroaching onto, alienating, disposing, transferring or in any way interfering with the defendants' possession, ownership and or enjoyment of the suit property.***

***b. An order of eviction and demolition be issued against all the plaintiffs, their families, agents, assignees, successors, relatives and anyone claiming any interest through them in respect of the suit property.***

***c. An order directing the Machakos County Commander and DCIO, Athi River and Machakos County, to ensure compliance with court orders.***

***d. Costs of the suit.***

***e. Interest on (d) hereinabove.***

10. The 5<sup>th</sup> defendant filed a defence and counterclaim dated 27/07/2017, in which it denied the allegations made against it and stated that, as a matter of fact, it was a stranger to most of them. According to it, it purchased the suit property from the 6<sup>th</sup> defendant, and the plaintiffs had no equitable interest in it.
11. It maintained that when it purchased the suit property, it was free from encumbrances, it took immediate possession, and imposed a restriction. It stated that in the absence of privity of contract, it was not liable for any loss to the plaintiffs, and any claim they had lay with the 2<sup>nd</sup> to 4<sup>th</sup> defendants. Ultimately, it sought the following orders from this court.

***a. The plaintiffs' suit be dismissed with costs.***

***b. An order does issue permanently evicting the 1<sup>st</sup> to the 7<sup>th</sup> defendants in the counterclaim from the suit property.***

***c. Costs of the suit and the counterclaim, together with interest at court rates from the date of filing suit and counterclaim, respectively.***

***d. Any other relief that this honourable court shall deem fit to grant in the 5<sup>th</sup> defendant's favour.***

12. Having considered the aforesaid pleadings and evidence of the parties, the following issues commend themselves for determination: -

- I. Whether the plaintiffs held valid agreements for sale, if so, what reliefs are they entitled to?*
- II. Whether the particulars of fraud met the legal threshold and/or proved to the required standards*
- II. Whether the plaintiffs should vacate the suit property.*

13. Having outlined the issues for determination, this court shall now proceed to summarise the parties' evidence as presented on these issues.

#### **Hearing and evidence**

14. The hearing of this matter commenced on 16/11/2021, but due to the numerous witnesses and out-of-court negotiations, among other reasons, the final hearing was concluded on 11/02/2025.

15. All the plaintiffs testified except the 6<sup>th</sup>, and reliance was placed on their respective witness statements, oral testimonies, and produced documents marked as **Pex1-7**. In examination-in-chief, their evidence was a reiteration of their amended plaint, and it is unnecessary to repeat it. All of them

testified that at the time of purchase, they were aware that the suit property, then registered with Lukenya Ranching & Farming Cooperative Society Ltd, reflected the deceased as member no. 304 and the owner of plot no. 159.

16. Additionally, the 3<sup>rd</sup> plaintiff (**PW1**) informed the court that on 8/07/2002, he purchased 2 acres of the suit property from the 2<sup>nd</sup> and 3<sup>rd</sup> defendants for Kshs. 62,000/=, which he developed. Later, on 11/05/2005, he purchased an additional 1 acre from these defendants. (**See Pex. 1**).
17. He informed the court that the total value of his portion, including the developments, was Ksh. 1,500,000. He argued that it was the letter dated 14/7/2002 (**Pex. 2**) that bolstered his confidence to purchase additional land. He told the court he lacked proof of the purported value of Ksh. 1,500,000 and claimed that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants defrauded him by selling land they did not have the capacity to sell.
18. When the 5<sup>th</sup> plaintiff (**PW2**) took the stand, she informed the court that there was an error as her name was not **Susan Makau** but **Ndululu Makau Kilonzo**, and the pleadings and record were amended accordingly.
19. It was her testimony that, since she believed the 2<sup>nd</sup> defendant was entitled to 13 acres of the suit property belonging to the deceased, she bought 5 acres from him at Kshs 150,000/= on 3/05/2003 (**Pex.3**). When questioned

about the payments of these amounts, she maintained she had made partial payments of Kshs. 91,5000/- on various dates and did not have proof of payment for the balance. She stated that the 1<sup>st</sup> defendant could not perform the agreement for sale.

20. The 1<sup>st</sup> plaintiff (**PW3**) testified that he purchased 2 acres from the 3<sup>rd</sup> defendant for Kshs 72,000 on 5/05/2005 (**Pex. 4**), which he believed was his inheritance. He admitted that not all family members signed **Pex. 4** and that he only made payments of Kshs 36,000.
21. The 2<sup>nd</sup> plaintiff (**PW4**) testified that he bought 2 acres from the 2<sup>nd</sup> and 3<sup>rd</sup> defendants as follows; an acre from these defendants by an agreement dated 29/05/2005 and another dated 1/03/2006 for 1 acre with the 2<sup>nd</sup> defendant at kshs. 36,000/- per acre [**See Pex. 5**]. However, he only paid for an acre. He maintained that he had been lured into purchasing the land.
22. In her testimony, the 4<sup>th</sup> plaintiff (**PW5**) told the court that she purchased 5 acres from the 2<sup>nd</sup> and 3<sup>rd</sup> defendants for Kshs 160,000/= on 20/12/2003 [**See Pex.6**], and her sister Franciscah Katumbi, who allegedly had given her oral authority to represent her in the suit, also bought 2 acres at Kshs 60,000/- from the 2<sup>nd</sup> defendant [**See Pex.6**]. She stated that the 1<sup>st</sup> defendant never featured in these transactions.

23. When giving evidence, the 7<sup>th</sup> plaintiff (**PW6**), like the other witnesses, produced an agreement (**Pex. 7**) and stated that on 12/05/2005, she purchased 2 acres from the 2<sup>nd</sup> defendant for a sum of Kshs 66,000/= and took possession. However, there was an outstanding balance of Kshs 17,000/-. She informed the court that she relied on the 2<sup>nd</sup> defendant's words as truthful when he told her he was selling his inheritance, which was also confirmed by (**Pex. 2**).
24. The 1<sup>st</sup> defendant (**DW1**), with the authority of the 2<sup>nd</sup> -4<sup>th</sup> defendants, affirmed the assertions contained in the amended defence and counterclaim in his evidence in chief and relied on his witness statement and oral testimony.
25. Moreover, he stated that the agreements for sale constituted interference with the deceased's estate. He presented several documents, including the deceased's death certificate, which indicated he died on 6/03/2005 (**Dex. 1**), the petition for letters of administration (**Dex. 2**), the confirmation of grant and its rectification (**Dex. 3 & 4**), an agreement for sale between the 1<sup>st</sup> and 6<sup>th</sup> defendants dated 14/05/2011, documents on HCCC No. 230 of 2009 (**Dex. 7 & 8**), and a title deed of the suit property (**Dex. 6**).
26. On cross-examination, he stated that the 2<sup>nd</sup> to 4<sup>th</sup> defendants and a sister had no interest in the suit property, as during his lifetime, the deceased had given each of his sons their respective parcels. The properties listed in the rectified

confirmation of grant to him; the 2<sup>nd</sup> defendant land in Kaewa off Kathiani, which comprised parcel nos. 2286, 1505, and 365; the 3<sup>rd</sup> defendant land parcel nos. 2814 and 2343 at Kaewa; and the 4<sup>th</sup> defendant plot no. 2365.

27. When the court asked for clarification on why he was the sole recipient of all the deceased's assets listed in the probate case, he explained that this was the case because his siblings (the 2<sup>nd</sup> to 4<sup>th</sup> defendants) had already received their inheritance during the adjudication of various parcels of land that the deceased had directly registered in their names during his lifetime.

28. He maintained that he never held the suit properties in trust for his siblings and did not sell any parcels of land to the plaintiffs. He informed the court that when he became aware of transactions between his siblings and various buyers, he approached them to facilitate the refund of their purchase prices. Several individuals accepted his gesture; however, a few declined.

29. The evidence of the 5<sup>th</sup> defendant was presented by **Robin Mathenge Wachira (DW1)**, who confirmed the assertions in the amended defence and counterclaim through his evidence in chief. He relied on his witness statement, oral testimony, and documents **(Dex 1-10)**, most of which had been previously produced by the 1<sup>st</sup> defendant. He stated that when

the 5<sup>th</sup> defendant purchased the suit property, which was legally acquired, he found that the plaintiffs were in illegal occupation. Additionally, he informed the court that **HCCC No. 230 of 2009** was dismissed for want of prosecution.

### **Submissions.**

30. Following directions from the court, written submissions were received from the law firms of **Mss. Nzilani Muteti Advocates** for the plaintiff, dated 25/03/2025, **Mwanzia & Co. Advocates** for the 1<sup>st</sup> - 4<sup>th</sup> defendants, dated 19/05/2025, and **Akello Karuga & Co. Advocates** for the 5<sup>th</sup> defendant, dated 5/06/2025. This court is grateful to the counsels for their well-researched submissions, which will be taken into account in its analysis and decision, including the judicial precedents and legal provisions cited to support their arguments.

### **Preliminary issue**

31. Before proceeding further, this court considers it necessary to preliminarily address the issue of adverse possession raised in the plaintiff's submissions.

32. Firstly, it is a well-established legal principle that parties are bound by their pleadings, as affirmed in the case of **Chumo Arap Songok v David Kibiego Rotich [2006] KECA 106 (KLR)**. Beyond merely stating in their amended plaint that they had resided on the suit property for a period of twelve years, the principles of adverse possession were not examined

during the hearing. The well-cited decision of **Odd Jobs v Mubia [1970] EA 476** is not applicable to assist the plaintiffs. Moreover, a claim of fraud and a claim of adverse possession cannot coexist within a single lawsuit. **See Haro Yonda Juaje v Sadaka Dzenzo Mbauro & Kenya Commercial Bank (2014) eKLR.** This court will now pause and proceed to address the substantive issues for determination in chronological order.

### **Analysis and Determination**

#### **I. Whether the plaintiffs held valid agreements for sale, if so, what reliefs are they entitled to?**

33. It was undisputed that the suit property was first registered in the deceased's name on 24/01/2006, and before that, the deceased, who was member no. 304, held it as plot no. 159 through an allotment letter from Lukenya Ranching & Farming Cooperative Society Ltd issued on 15/06/1991. It was also undisputed that when the plaintiffs and various defendants dealt with parts of the suit property, they did so after the deceased had died on 6/03/1995, and probate proceedings for his estate had not been initiated. So, where does that leave us?

34. The response to this lies in emphasising the existing law and jurisprudence regarding acts of meddling with the estate of deceased individuals, actions for which the plaintiffs and some defendants are culpable. The pertinent legal provision is

located in **Section 45 (1)** of the **Law of Succession Act (LSA)**, which states as follows:

***“Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.”***

35. Counsels appreciated this provision of the law. It is noteworthy that although counsels for the defendants relied on **Sections 55** and **82 (b) (ii)** of the **LSA**, these are inapplicable in the present case, as at the time of the plaintiffs' agreements, the 1<sup>st</sup> to 4<sup>th</sup> defendants did not serve as the deceased's legal administrators and, consequently, did not possess any such powers.
36. Regarding jurisprudence, the legal counsels took opposing positions. The plaintiff's counsel argued that the 2<sup>nd</sup> to 4<sup>th</sup> defendants should be prevented from defrauding the plaintiffs and relied on the persuasive decision of **Stephen Waweru Ng'ang'a vs Kimani Ng'ang'a Nyeri HC P& A NO. 1 of 2011**. Regrettably, this decision was not submitted to this court for appreciation of its significance and implications.

37. Conversely, the defendants' counsels argued that **Section 45(1)** of **LSA** was explicit, and therefore, the contracts were deemed invalid. The counsel for the 1<sup>st</sup> to 4<sup>th</sup> defendants cited the Court of Appeal decision in **Nairobi Civil Appeal No. 140 of 2017, between Beth Mueni v. John Kinyanjui Gakunga & Another**, where, when faced with similar circumstances as in this case, the court stated:

*“There is the final issue as to whether the sale of the estate property by beneficiaries without a grant could pass interest capable of protection under the Act. A person can only lawfully deal with the estate of a deceased person pursuant to a confirmed grant. Section 45 of the Act prohibits intermeddling with property of a deceased person. It follows, therefore, that the transactions entered into before receipt of the letters of administration were issued and confirmed, were invalid as they offended Sections 45 and 82 of the Act. The trial court in holding that the appellant was not an interested party as provided under Section 76 of the Act, was, in our view, not in error in fact or law, as it has been established that the sale transaction was void for want of consent from the Land Control Board; and also that the transactions were void as the same were done by the beneficiaries before the Letters of Administration*

***were issued and confirmed. Indeed, the appellant would be at liberty to seek refund of the purchase price already paid from the respective beneficiaries.”***

38. The 5<sup>th</sup> defendant also relied on the decision of **Morris Mwiti Mburungu v. Denis Kimathi M’Mburungu (2016) (cited in re Estate of the late Epharus Nyambura Nduati (Deceased) (2021) eKLR)**, which held a similar position to **Beth Mueni (Supra)**, where the persuasive decision stated: -

***“Where any person interferes with the free property of the deceased or deals with an estate of a deceased person contrary to the provisions of section 45 and 82 of the Act that is intermeddling, is unlawful and cannot be protected by the Court. The transaction is subject to be nullified and set aside at the instance of innocent beneficiaries who may have been affected by the act but were not involved in the same.”***

39. Having carefully reviewed the decisions relied upon by the defence, this court remains unpersuaded to deviate from those decisions. The plaintiffs were not innocent purchasers, as they were all aware that the respective defendants with whom they engaged lacked legal capacity.

40. Accordingly, this court finds that in the absence of a confirmed grant, the segments of the suit property in which the 2<sup>nd</sup> to 4th defendants held no interest, as evidenced by the rectified confirmed grant, could not be legally sold to the plaintiffs. Furthermore, the purported agreements are deemed void, null, and incurably defective, and lacking legal validity. The court also finds that the plaintiffs did not acquire the property from the deceased or from an authorised person thereof. Contrary to this, they meddled with the estate of the deceased in violation of **Section 45** of the **LSA**.

41. As this court concludes on this issue, it is noted that the uncontroverted evidence presented by the 1<sup>st</sup> defendant indicates that he had offered to refund the plaintiffs' respective purchase prices; however, they declined to accept this offer. Consequently, the plaintiffs must bear the consequences of their decision.

**II. Whether the particulars of fraud met the legal threshold and/ or proved to the required standards**

42. Regarding jurisprudence, it is well-established law that fraudulent conduct must be specifically alleged and substantiated with a standard of proof exceeding the balance of probabilities but falling short of proof beyond a reasonable

doubt. Moreover, it is impermissible to rely solely on inference from the facts to establish fraud. **See the Court of Appeal decision in Vijay Morjaria v Nansingh Madhusingh Darbar & Hulashiba Nansingh Darbar (Civil Appeal 106 of 2000) [2000] KECA 223 (KLR) (Civ) 1 December 2000 (Judgment).**

43. Concerning the definition of fraud, **Black's Law Dictionary, 11<sup>th</sup> Edn at p. 802**, defines it as follows:

***"1. A knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment. Fraud is usu. a tort, but in some cases (esp. when conduct is willful) it maybe a crime.)- Also termed intentional fraud...***

***2. A reckless misrepresentation made without justified belief in its truth to induce another to act.***

***3. A tort arising from a knowing or reckless misrepresentation or concealment of material fact made to induce another to act to his or her detriment. Additional elements in a claim of fraud may include reasonable reliance on the misrepresentation and damages resulting from this reliance.***

**4. Unconscionable dealing; esp., in contract law, the unfair use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain."**

44. Having examined the details of the alleged fraud in light of the findings on **issue I**, above, which include the failure to disclose to the 6<sup>th</sup> defendant the interests of the plaintiffs and the court case, as well as the transfer of the suit property to the 6<sup>th</sup> defendant, this court concludes that these particulars do not meet the required standard of proof or the legal threshold. It is established that HCCC No. 230 of 2009 was dismissed for want of prosecution, the 5<sup>th</sup> defendant holds a valid title to the suit property, and the plaintiffs do not possess a valid claim over the said property. Consequently, this court determines that the claim of fraud is unfounded.

**III. Whether the plaintiffs should vacate the suit property.**

45. It is established from undisputed evidence that the 5<sup>th</sup> defendant is the registered owner of the suit property; however, some of the plaintiffs have constructed structures on it. In light of the court's determination on the above issues, it is concluded that the plaintiffs are in unlawful occupation and possession of the suit property, and they cannot derive

benefits from an illegality. Therefore, the court finds that the 5<sup>th</sup> defendant is entitled to vacant possession of the premises.

46. In light of this, it is trite that trespass is actionable *per se* and does not require proof of actual damage. Due to the circumstances of this case, this court hereby awards the 5<sup>th</sup> defendant general damages of Kshs. 2,000,000/=. However, since the 1<sup>st</sup> to 4<sup>th</sup> defendants are neither in possession nor registered owners, their counterclaim and the remedies they seek therein are deemed misplaced.

47. In conclusion, for the reasons and findings articulated hereinabove, this court determines that the plaintiffs have not demonstrated their case to the required standard of proof, whereas the 5<sup>th</sup> defendant has. Additionally, the court finds that the counterclaim of the 1<sup>st</sup> to 4<sup>th</sup> defendants is untenable. It is well established in law that costs follow the event; therefore, this court dismisses the plaintiffs' suit with costs awarded to the 5<sup>th</sup> defendant. The counterclaim of the 1<sup>st</sup> to 4<sup>th</sup> defendants is dismissed without any order as to costs. Conversely, the counterclaim of the 5<sup>th</sup> defendant is granted, with the plaintiff bearing this cost. Consequently, the following final disposal orders are hereby issued.

***a. The plaintiffs' suit is dismissed with costs to the 5<sup>th</sup> defendant.***

***b. The 1<sup>st</sup> to 4<sup>th</sup> defendants' counterclaim is dismissed with no orders as to costs.***

- c. The costs of the counterclaim are awarded to the 5<sup>th</sup> defendant and shall be borne by the plaintiff.**
- d. A permanent injunction is hereby issued against the plaintiffs, restraining them, their agents, and/or employees or assigns, from interfering with the 5<sup>th</sup> defendant's possession, ownership and or enjoyment of the land parcel no. Mavoko Town Block 3/2489 or in any way dealing with it.**
- e. The plaintiffs are hereby granted 120 days from the date of service of this court's orders to remove themselves and their developments from land parcel no. Mavoko Town Block 3/2489 and to give the 5<sup>th</sup> defendant vacant possession. If they fail to do so, the 5<sup>th</sup> defendant shall forcefully evict them along with their servants or agents.**
- f. General damages in the sum of Kshs. 2,000,000/= is awarded to the 5<sup>th</sup> defendant to be paid by the plaintiffs jointly and severally.**

Judgment accordingly.

**Delivered and Dated at Machakos this 30<sup>th</sup> day of September, 2025.**

**HON. A. Y. KOROSS  
JUDGE  
30.09.2025**

**Judgment delivered virtually through Microsoft Teams  
Video Conferencing Platform**

In the presence of;

Miss Nzuva for plaintiff.

N/A for defence.

Ms Kanja- Court Assistant.

ORIGINAL