



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 79 OF 2016

MBUGUA THUO.....PLAINTIFF

VERSUS

LABAN GATONYE KAMAU.....DEFENDANT

JUDGMENT

1. By plaint filed on 10th March 2016, the plaintiff averred that he was a member of a land buying company known as Tayari Farmers Co. Ltd since the 1980s and that by virtue of such membership, he became the proprietor of parcels of land known as plot number 625 (Tayari) and plot number 626 (Tayari). That he has been in occupation of the plots for over 20 years and that on or around 8th March 2016, the defendant trespassed on the plots and deposited building materials thereon with an intention of ‘grabbing’ the land and building on it.

2. The plaintiff therefore seeks judgment against the defendant for:

- a) *A permanent injunction restraining him either by himself, his agents, his servants and/or employees from trespassing, developing and in any other way from interfering with the parcels of land known as plot No. 625 (Tayari) and plot No. 626 (Tayari).*
- b) *Compensation for mesne profits lost during the pendency of this suit.*
- c) *Costs of this suit.*
- d) *Interest on (2) and (3) above (sic) at court’s rate.*

3. In his Statement of defence, the defendant generally denied the allegations by the plaintiff and stated that the land belongs to him and that the plaintiff is the one trespassing on his land. He thus urged the court to dismiss the suit with costs. The defendant’s position generally is that his parcel of land is known as Mau Summit/Molo Block 7/1590 (Tayari) and that he is a registered proprietor of the said parcel.

4. Simultaneously with the plaint, the plaintiff filed an application seeking an interlocutory injunction. While dealing with the application, the court ordered on 12th October 2016 with the parties consent, that the District Land Registrar Nakuru and the District Surveyor Nakuru proceed to the ground, identify the parcels known as Mau Summit/Molo Block 7/1590 (Tayari), plot No. 625 (Tayari) and plot No. 626 (Tayari), establish their boundaries and make a written report to the court. The two officers did so and filed a report in court.

5. At the hearing, Stephen Maina Mwangi testified as PW1. He told the court that he was the District Surveyor Nakuru, since the year 2005. Pursuant to the court’s order made on 12th October 2016, he and the District Land Registrar Nakuru went to the site on 9th November 2016, carried out a survey and thereafter prepared a joint report dated 10th November 2016 which they filed in court on 14th November 2016. He stated that the plaintiff was present during the site visit while the defendant, who was absent though notified, was represented by his wife and one other person. They found that the plaintiff’s parcels No. 625 and 626 as were initially surveyed around the year 1984 were later overlapped by other parcels among them Mau Summit/Molo Block 7/1590 (Tayari) which belongs to the defendant, in a subsequent survey. PW1 and the District Land Registrar therefore recommended in their report that the plaintiff should be allowed to acquire back his parcels numbers 625 and 626 while parcel numbers Mau Summit/Molo Block 7/1577 to 1601, 1604 and part of 1602 and 1603 should be deleted from the registered index map. That new numbers should be issued to both parcel numbers 625 and 626. He produced the report dated 10th November 2016 as Plaintiff’s exhibit 1. Under cross examination, he stated that the defendant’s title in respect of Mau Summit/Molo Block 7/1590 (Tayari) was issued after the first survey.

6. Next in the witness stand was Madaline Vugutsa Bunyori, the Land Registrar Nakuru, who testified as PW2. She reiterated what PW1 had stated about the site visit and the survey. She added that two sets of surveys and subdivisions had been done on the land. The original one was by Olweny & Associates and the second one was by Muritu & Associates. She stated that both PW1 and herself concluded that the second subdivision was not well intended and thus their joint recommendations that the plaintiff should be issued with titles for parcels numbers 625 and 626 as per original demarcation of those plots while parcel numbers Mau Summit/Molo Block 7/1577 to 1601, 1604 and

part of 1602 and 1603 should be deleted from the registered index map.

7. Charles Njihia Nganga testified next as PW3. He told the court that he is a member of Tayari Farmers Company Ltd having joined it in 1978. He was later elected treasurer of the company on 3rd June 1983. He added that before joining the company, one was required to pay registration fee of KShs 25 and a subscription of KShs 2,000 for one share. The land which the company was interested in was known as Denisar Estate which comprised of three parcels: plot 535/1, 10364 and 10363. The first two parcels were owned by Denisar Estates while the third one was owned by Mrs H. D. Tayler. Denisar Estates was owned by Mr & Mrs Tayler. The ambition of Tayari Farmers was to purchase the entire farm comprising the three titles. Tayari Farmers Company was formed mainly by squatters who used to work for Denisar Estates and Mrs H. D. Tayler.

8. PW3 further testified that negotiations between Mrs H. D. Tayler & Denisar Estates on one side and Tayari Farmers Co. on the other broke down. The owners of Denisar Estates vacated the farm and Tayari Farmers Co. took over the farm. At that point, the government through the Ministry of Agriculture Farm Mapping Unit came in and subdivided 90% or 900 acres of the farm. The members were settled according to the shares they owned. Each share was allocated 1.5 acres of land. Since at that time Tayari Farmers had not paid Denisar Estates and Mrs H. D. Taylor for the farm, Denisar Estates and Mrs H. D. Tayler filed a case being HCC No. 288 of 1975 at Nakuru High Court. The case was heard and judgment delivered to the effect that if Tayari Farmers Co, wanted to buy the farm they had to pay Kshs.3, 600,000/= being the price of the land and Kshs.1, 900, 000 being the value of the livestock which were on the farm and damages. The total amount came to Kshs5.5 million. The company agreed to go by the judgment of the court but it did not have the money needed to pay for the farm. A sale agreement was signed on 10th May 1983. One of the conditions was that the amount of KShs 5.5 million was to be paid within six (6) months from the date of signing the agreement. Shares in Tayari Farmers were calculated and they added up to about 600 shares. It was resolved that for every share held a shareholder had to add KShs 11, 000/= to enable Tayari Farmers acquire the farm and pay for the survey fees.

9. The witness further stated that Tayari Farmers then opened a bank account No. 1937/2 at Barclays Bank Molo. Each member was supposed to go to the company's office, ensure his name was on the record then pay the additional amount by depositing it into the bank account. Upon the company confirming the deposit, the company would then issue a receipt to the member. In that way, the company collected enough money and eventually paid for the farm. So as to protect those who could not pay the KShs 11, 000, a portion of land was left. The company engaged a surveyor known as Olweny & Associates who surveyed the portion that had not been subdivided by the Farm Mapping Unit. The unsubdivided land was to be allocated at one plot of 50 by 100 feet per share. The remaining portion of the unsubdivided land was to cater for Tayari Primary School. Since it was decided that the site that was originally set aside for the school was not appropriate for a school, it was agreed that people be transferred from the land found to be suitable for the school to the new land surveyed by Olweny & Associates. They were given equivalent land size in the new area. Apart from those who were relocated to pave way for the school, others who had not been allocated land were also included. After the survey by Olweny and balloting which took place on 27th April 1984, no more company land was available for subdivision. The plaintiff participated in the balloting process since he had not been allocated plots in respect of two shares for which he had paid. He was entitled to a total of seven (7) shares but had only been allocated land in respect of 5 shares by the previous officials. On the day of balloting he balloted for two shares of agricultural land each measuring 1.5 acres. Besides the two shares of agricultural land, the plaintiff also balloted for a 50 by 100 residential plot. He paid KShs 77, 000 for 7 shares at the rate of KShs 11,000 per share. He then settled on his land and developed immediately after the balloting.

10. The witness added that after paying for the farm, Tayari Farmers had a balance of KShs 1.2 million in the bank account. The company started having problems because of this money since members of the provincial administration wanted to get the money. The witness got a phone call from Mwangi Wokabi, the chairman, stating that the company was to contribute money for a certain celebration. The witness and the other company officers were subsequently removed from office in August 1988. According to the witness, the removal was not done procedurally. After that, the District Officer Molo with his askaris collected company documents at gun point from Mr Mwangi Wokabi. Thereafter, using the new officials, they cleared the money and created new titles in 1994 which were not supported by land on the ground. They never went to the ground but just created new titles on air and superimposed them on the land. Mau Summit/Molo 7/1590 (Tayari) is one of those that were superimposed. They used one Mr Muritu, who is since deceased, as surveyor.

11. In conclusion of his evidence in chief, the witness stated that the defendant is not a member of Tayari Farmers and that he did not participate in the balloting. The witness observed that considering the defendant's age, he must have been in school when balloting was being done. He added that the defendant did not make any payment to the bank account. Any valid buyer of land from Tayari Farmers should have both a Barclays banking slip and a Tayari Farmers receipt.

12. Under brief cross examination, PW3 stated that he was removed as an official of Tayari Farmers unprocedurally at a Chief's baraza.

13. The plaintiff himself testified last as PW4. He stated that the defendant trespassed into his plot No. 625 and 626 at Tayari Farm. The plaintiff entered Tayari Farm on 4th March 1976. The plots were sold to him by a person known as Mugweru. Tayari Farm acquired the plot from a white man. One had to be a member of Tayari Farm so that he could acquire a plot. KShs 25 was to be paid as membership fee. The plaintiff stated that he paid the sum and was issued with a receipt dated 4th March 1976 (P Exb 9). Members also had to pay KShs 2,000 to get one plot measuring 1.5 acres. The plaintiff paid KShs 4,000 for two plots and was issued with two receipts one dated 4th March 1976 (P Exb 10A) and the other dated 18th April 1976 (P Exb 10B). Members were also required to pay KShs 200 per share for survey. The plaintiff paid KShs 400 and was given a receipt dated 11th March 1977 (P Exb11).

14. The plaintiff further testified that the directors of Tayari Farmers misappropriated the funds that the members had initially paid to purchase the farm from its original owners. As a result, Tayari Farmers did not pay for the farm. The owner filed a case in court against Tayari Farmers and succeeded in the claim. The members were now required to pay afresh. It was decided that those members who wanted to buy had to pay KShs 11,000 per share. The plaintiff had seven (7) shares and he paid a total of KShs.73,700. Out of this amount, he paid KShs 44,000 on 28th December 1983 by depositing it to the Barclays Bank account. He also paid KShs 7,000 on 12th June 1984 and KShs 22,700 on 6th August 1984. He produced three receipts in respect of these payments (P Exb 12A, 12B and 12C).

15. It was the plaintiff's further testimony that upon paying the KShs 73,700 he was entitled to seven (7) plots. Out of those 7 plots, he bought 2 from Tayari Farmers and the remaining 5 from members of Tayari Farmers. One such member was Mugweru Bundi who sold to the plaintiff plot No. 472 through sale agreement and transfer both dated 10th April 1982 (P Exb 13A and 13B) and plot No. 33B through another set of sale agreement and transfer both dated 10th April 1982 (P Exb 14A and 14B). When the plaintiff went to Tayari Farm so that they could enter his ownership of plot No. 472 and 33B in the ledger, Tayari Farm asked him to give them the two plots so that they allocate them to a member who really needed a plot. They promised to give him two other plots later. He agreed and gave the plots. They later gave him two plots as they had promised. This was done through balloting. He got ballot No. 625 and since he had two shares he was given the adjoining 626. He produced copies of the ballots (P Exb 15A and 15B). Title deeds were later issued to members of Tayari Farmers. He however does not have title deeds for plot No. 625 and 626 since according to him there was a case in court. He produced a copy of Gazette Notice No. 2546 dated 14th May 1999 (P Exb 16).

16. The witness added that a survey was done by Mr Olweny who prepared a map which shows all plots and that the survey report which was produced in this court as P Exb 1 shows that he owns the plot. He also produced a copy of a valuation report prepared by Applecross Surveyors and dated 8th July 2014 (P Exb 18). In conclusion, he stated that he currently lives on plots 625 and 626 and that he has lived there for 33 years. He urged the court to order 'removal' of the new titles. Under brief cross examination by the defendant, he stated that he did not have any documents showing that he was given plots 625 and 626 in exchange for plots 472 and 33B. He added that a subsequent survey was irregularly done by Muritu and that this new survey created the defendant's plot within his (the plaintiff's) plots. The plaintiff's case was closed at that point.

17. The defendant testified as DW1. He stated that on 18th February 2016 he bought a parcel of land measuring 70 feet by 30 feet from Johana Mungai Wangethi who was a member of Tayari Farmers. The defendant transferred ownership of the plot known as Mau Summit/Molo Block 7/1590 (Tayari) from the seller to himself. He produced a copy of the title deed (DExb 1) and a certified copy of green card (DExb 2). He stated that his plot much smaller than the plaintiff's which measures more than three acres and that his plot is therefore different from what the plaintiff's. He therefore urged the court to dismiss the plaintiff's case. Under cross-examination, he stated that he bought the property at KShs 260,000 in the year 2011. At that time, the seller showed him ballot papers which indicated that balloting done that year (2011). The seller was not in occupation at the time of sale. He further stated that he did not know the history of the plot well.

18. Joseph Kiragu Munya testified next for the defence as DW2. He adopted his witness statement dated 6th December 2017 and filed on 11th December 2017. He stated in the said witness statement that he was and still remains a shareholder of Tayari Farmers Limited. Tayari Farmers Company limited was registered as a land buying company on 4th September 1974. Around the year 1973 the company bought a parcel of land from a settler one Mr Taylor Densser since the settler could not settle in the said parcel of land due to hostility from the locals. He fled the country. When he came back around the year 1975 he alleged that the company had grabbed his land and even filed a court case being HCC No 288 of 1975. The court ordered the defendants to pay him KShs 5,500,000.

19. He further stated that around 18th December 1982 Tayari Farmers Ltd formed a probe committee whose mandate was to collect KShs 11,000 per each shareholder to offset the judgment debt. Each member who paid the KShs 11,000 was allocated one plot of 50 by 100 from land parcel LR NO 10364. After all the eligible members were allocated the land there remained 21 acres which the probe committee failed to disclose to members and instead subdivided the 21 acres and allocated to themselves and their family members. When the shareholders got wind of this they voted to disband the probe committee. Among the mandate of the new directors was to investigate how the 21 acres was allocated to non-members. During an annual general meeting on 11th December 1989 it was reported that among those who were allocated 1.5 acres from the 21 acres parcel was Mbugua Thuo (the plaintiff) without making any payments. It was resolved that the company was to take back the 21 acres land illegally allocated to the allottees. This prompted the allottees to go to court. The witness added that the plaintiff was allotted ballot numbers 75, 76, 85, 86, 627, 472 and 33B and that ballot no 625 and 626 do not exist having been nullified by the members in the aforesaid meeting. He stated that he attended the meeting as a member of the company and that he had the minutes of the meeting.

20. Under cross-examination he stated that his plot is No.620 and that he was residing at Tayari Farm even as at the date of his testimony. He however did not have any document in court showing that he owns the plot. He moved into his plot No.620 in 1983. Subdivision had by then not been done. The members were just deciding among themselves as shareholders where to occupy. Regarding the issue of survey, he stated that the plots were surveyed only once. This was by Muritu & Associates and was done in the 1990s. According to him, Olweny & Associates did not do any survey but only a proposal on how the members could be settled.

21. Defence case was thereby closed.

22. Parties thereafter filed and exchanged written submissions. For the plaintiff it was argued that the land in dispute is agricultural land and that the defendant had failed to demonstrate that he obtained consent of the Land Control Board in the process leading to issuance of title to him in respect of Mau Summit/Molo Block 7/1590 (Tayari). It was further argued that the plaintiff is the registered proprietor and is therefore entitled to the orders sought. The plaintiff relied on the cases of **Rose Wakanyi Karanja & 3 Others v Geoffrey Chege Kirundi & Another [2016] eKLR**, **Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others [2015] eKLR** and **Elijah Makeri Nyangw'ra v Stephen Mungai Njuguna & Another [2013] eKLR**. Considering that no portions of the authorities were highlighted and that no particular argument was advanced within the submissions in relation to these authorities, it is difficult to tell how the authorities aid the plaintiff's case.

23. In his submissions, the defendant reiterated that he is the registered proprietor of the parcel of land known as Mau Summit/Molo Block 7/1590 (Tayari) as shown in the copy of title deed and green card which he had produced in evidence. He added that the authenticity of the ballots which the plaintiff produced to support his claim to plot number 625 (Tayari) and plot number 626 (Tayari) cannot be verified since the ballots bore no name or stamp. He further argued that the issues raised by the plaintiff have been conclusively dealt with in previous cases. Among others, he cited the case of **HCCC No. 233 of 2006 (Nakuru) Mbugua Thuo v Josphat Mwangi Muhoro & 10 others**. He therefore urged the court to dismiss the plaintiff's case.

24. I have anxiously considered the pleadings, the evidence and the submissions in this matter. The case placed before the court by the plaintiff is fairly straight forward. He maintains that he is the proprietor of parcels of land known as plot number 625 (Tayari) and plot

number 626 (Tayari) and that on or around 8th March 2016, the defendant trespassed on the plots and deposited building materials thereon with an intention of 'grabbing' the land and building on it. Based on that case, he seeks the orders which I have reproduced at paragraph 2 of this judgment. The defendant's rejoinder is equally straight forward. He denies being a trespasser and maintains that his parcel of land is known as Mau Summit/Molo Block 7/1590 (Tayari) and that he is a registered proprietor of the said land.

25. There is only 1 issue that arises for determination: whether the plaintiff is entitled to the relief sought.

26. Although the plaintiff insists that he is the proprietor of parcels of land known as plot number 625 (Tayari) and plot number 626 (Tayari), he admits that no title document has been issued to him in respect of the said properties. On the other hand, the defendant is the registered proprietor of the parcel of land known as Mau Summit/Molo Block 7/1590 (Tayari) as confirmed by the copies of title deed and certified copy of green card which were produced in evidence. The existence of the defendant's title is also corroborated by PW1 (District Surveyor Nakuru) and PW2 (the Land Registrar Nakuru) in their joint report which was also produced in evidence.

27. I am alive to the fact that a lot of evidence was given regarding how the plaintiff is said to have acquired the two plots and alleged irregularity in the defendant's title. Both the plaintiff and PW1 (District Surveyor Nakuru) as well as PW2 (the Land Registrar Nakuru) have testified that the defendant's title in respect of Mau Summit/Molo Block 7/1590 (Tayari) is one which was superimposed on the plaintiff's plot number 625 (Tayari). That may be so. Nevertheless, a court of law can only decide a case which is pleaded before it. I have not been asked in this case either to declare the plaintiff the owner of plot number 625 (Tayari) and plot number 626 (Tayari) or to cancel the defendant's title to the parcel of land known as Mau Summit/Molo Block 7/1590 (Tayari). It is for that reason and due to clear provisions of law which I will shortly discuss that I find it totally unnecessary to go into a discussion as to who between the plaintiff and the defendant have a better title.

28. As long as the defendant herein remains a registered proprietor, the court is duty bound under **Section 26** of the **Land Registration Act** to accept his certificate of title as proof of ownership. The section provides:

26. Certificate of title to be held as conclusive evidence of proprietorship

(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

29. Further, under **Section 25** of the Act, the defendant is entitled to all the privileges that the law accords a registered proprietor. The section provides:

25. Rights of a proprietor

(1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

30. The law jealously protects the rights of a registered proprietor until such a time as the registration will have been cancelled after due process. Looking at the prayers sought by the plaintiff herein, they do not seek the cancellation of the defendant's title in respect of Mau Summit/Molo Block 7/1590 (Tayari) and cannot by any stretch of imagination result in such cancellation. No fraud, misrepresentation or procedural impropriety is pleaded against the defendant in the plaint. In fact, there is absolutely no mention of Mau Summit/Molo Block 7/1590 (Tayari) in the plaint. Any discussion on the validity or legality of the defendant's title in this case is therefore moot.

31. Among the prayers sought by the plaintiff is a permanent injunction restraining the defendant, his agents and servants from trespassing, developing and in any other way from interfering with the parcels of land known as plot No. 625 (Tayari) and plot No. 626 (Tayari). A party seeking judgment in the nature of a final order of permanent injunction must satisfy a higher test: proof on a balance of probabilities as opposed to merely establishing a prima facie case. The Court of Appeal stated as much in **Mohamed Ndoge v Mohamed Golo Ndogo & 3 others [2015] eKLR:**

As opposed to an order of temporary injunction issued provisionally before the court has had the opportunity to assess the merits

of the application, a permanent injunction comes at the end of the trial after parties have presented evidence and been cross examined on their rival claims. A temporary injunction serves to preserve the subject matter in status quo during the pendency of a suit. It follows, therefore that the standard of proof in either case will be different. At the interlocutory stage the proof is on a prima facie plane. Based on the evidence of the parties the court may grant a permanent injunction if it is satisfied, on a preponderance of that evidence that irreparable harm, loss or damage, not capable of being compensated by an award of damages, in the absence of injunction, will be occasioned. At the interlocutory stage the threshold (prima facie) is lower than that expected at the trial (on a balance of probabilities). ...

32. As we have previously noted, evidence adduced by and on behalf of the plaintiff was that the defendant's title in respect of Mau Summit/Molo Block 7/1590 (Tayari) is one which was superimposed on the plaintiff's plot number 625 (Tayari). The defendant's title is still intact and the court has not been asked to cancel it. Material has not been placed before the court that would deprive the defendant of the protection that his title and the benefits that accrue from it are accorded by law. Simply put, I am not persuaded that the plaintiff has established his claim for a permanent injunction. That claim must fail.

33. The plaintiff has also sought compensation in the nature of mesne profits. By their very nature, mesne profits are what a person who is a victim of wrongful occupation of his land by another receives from the aggressor. In **Mistry Valji v Janendra Raichand & 2 others [2016] eKLR** the Court of Appeal stated:

Mesne profit is defined in section 2 of the Civil Procedure Act to mean; - "in relation to property, means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession". ... Measure for mesne profit was described in the Privy Council decision in Invergue Investments v Hacketh (1995) 3 All ER 842 cited with approval in the Kenya Hotel Property Ltd case (supra) as follows:

"This is form of an ordinary claim for mesne profit, that is to say, a claim for damages for trespass to land....The question for decision is the appropriate measure of damages."

The privy council observed that that measure of damages must be reasonable rent. The usual practice is to assess mesne profits down to the date when possession is given.

34. Based on the material placed before the court and by his own admission, the plaintiff is not the registered proprietor of plot No. 625 (Tayari) and plot No. 626 (Tayari). The defendant on the other hand is the registered proprietor of Mau Summit/Molo Block 7/1590 (Tayari) which the plaintiff claims to have been superimposed on his plot No. 625 (Tayari). Since the defendant's title remains intact, there is no basis upon which to find that the defendant has been in wrongful possession and similarly no basis on which to award mesne profits. This limb of the claim also fails.

35. Before I pen off, I must comment on the report that was presented to the court by the District Land Registrar Nakuru and the District Surveyor Nakuru. The two officers had been ordered to proceed to the ground, identify the parcels known as Mau Summit/Molo Block 7/1590 (Tayari), plot No. 625 (Tayari) and plot No. 626 (Tayari), establish their boundaries and make a written report to the court. They state in their report that they were unable to identify the parcels known as Mau Summit/Molo Block 7/1590 (Tayari), plot No. 625 (Tayari) and plot No. 626 (Tayari) or even establish their boundaries since Mau Summit/Molo Block 7/1590 (Tayari) was superimposed on plot No. 625 (Tayari). The process of survey all the way to registration of new parcels of land is the statutory domain of those two offices. If indeed there was superimposition of titles upon existing ones then the two offices must take charge of righting the wrongs without burying their heads in the sand. Some attempt seems to have been made through Gazette Notice Number 2546 dated 14th May 1999 but the court was not informed of any further action. Considering that the issue of alleged superimposition of titles involves many other parties besides parties to this case, the two offices must find a solution within their statutory mandate.

36. In view of the foregoing, I find that the plaintiff has failed to prove his case. I dismiss it with costs to the defendant.

37. This judgment was initially scheduled for delivery on 31st January 2019. Delay in its delivery, which was occasioned by the fact that I proceeded on medical leave, is regretted.

Dated, signed and delivered in open court at Nakuru this 30th day of April 2019.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the plaintiff

Defendant present in person

Court Assistants: Beatrice & Lotkomo