

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT KILGORIS
ELC NO.10 OF 2021

IGNATIUS CHEGE MWANGI.....PLAINTIFF

-VERSUS-

ADASON OLE MINIS.....1ST

DEFENDANT

OLE NANYOKIE LEMAYIAN ONYOKIE.....2ND

DEFENDANT

SHIROI KIMOKOTHOOLE NASHA.....3RD

DEFENDANT

MPOKE MATASI.....4TH

DEFENDANT

SAMSON MPATIAN RINKA.....5TH

DEFENDANT

AHAMAD SALIM.....6TH

DEFENDANT

COUNTY GOVERNMENT OF NAROK.....7TH

DEFENDANT

JUDGEMENT

1. The Plaintiff herein filed a Plaint dated 04.12.2019 (hereinafter referred to as **“the present suit”**) against the 1st to 7th Defendants seeking the following Orders; -

- a) An Order of Permanent Injunction do issue restraining the Defendants by themselves, agents, servants and/or anybody claiming under them from**

in anyway interfering with, damaging, wasting, alienating, trespassing and/or doing any other activity whatsoever on the Plaintiff's land parcel herein known as LR.NO.TRANSMARA/OLOLCHANI/237.

b) An Order of eviction of the Defendants from the suit property known as LR.NO.TRANSMARA/OLOCHANI/237.

c) General Damages for trespass.

d) Mesne Profits.

e) Costs of the suit and interest.

f) Any other alternative relief that this Honourable Court may deem just to grant.

2. The facts in support of the prayers above can be summarised as follows; -

i) The Plaintiff herein is the registered owner of the suit property known as LR.NO.TRANSMARA/OLOLCHANI/237 (hereinafter referred to as **“the suit property”**).

ii) On or about 08.09.2019, the Deputy County Commissioner Transmara West wrote a Letter to the Sub-County Land Registrar stating the suit property had been obtained by fraud.

iii) Similarly, the Deputy County Commissioner on the 05.11.2019 did another letter to Sub-County Commander Transmara West directing that the structures erected on the suit property were illegal and unlawful as they did

not have the approval of the Sub-County Physical Planner.

- iv) Based on the above communication, the Defendants herein jointly and severally trespassed into the Plaintiff's suit property and demolished various structures including 33 kiosks, 60 rooms and cut down all the trees therein.
 - v) The Plaintiff stated that the value of the structures demolished in the suit property was about Kenya Shillings Nine Million Five Hundred Thousand (KShs.9,500,000/-).
 - vi) Similarly, due to the destruction on the suit property, the Plaintiff lost a monthly income of Kenya Shillings One Hundred and Eighty-Seven Thousand Five Hundred (KShs.187,500/-) as rent collection.
 - vii) The Plaintiff pleaded that based on the conduct of the Defendants, an Order of Permanent Injunction be granted by the Court prohibiting them from interfering, wasting, trespassing and/or in any other manner interfering with the suit property.
3. The present Suit was duly served on the Defendants herein.
4. In opposition of the present suit, the 1st to 6th Defendants did file a Joint Statement of Defence and Counter-Claim dated 08.11.2021.
5. In the Joint Statement and Defence, the 1st to 6th Defendants opposed the present suit on the following grounds; -

- i) The 1st to 6th Defendants pleaded that the Plaintiff herein was not the rightful owner of the suit property as alleged.
- ii) According to the 1st to 6th Defendants, the suit property was created from the portion of land known as TRANSMARA/OLOLCHANI/110 after the determination of an Objection Case No. 27 of 1985 filed by the 5th Defendant's brother known as MICHAEL OTOMA NAPOKENYA.
- iii) At the time hearing of the Objection Case No. 27 of 1985, the original portion of land known as TRANSMARA/OLOLCHANI/110 was on Sheet No. 4.
- iv) However, the Plaintiff through fraudulent means transferred the suit property which was a portion of the property known as TRANSMARA/OLOLCHANI/110 contained in Sheet No. 4 to Sheet No. 9 and irregularly had the same registered in his name.
- v) In essence, the 1st to 6th Defendants pleaded that the Plaintiff's ownership document was fraudulent and illegal.
- vi) The 1st to 6th Defendants then denied any knowledge of the two letters dated 08.09.2019 and 05.11.2019 or the contents thereof.
- vii) The 1st to 6th Defendants similarly denied any participation in the destruction of the Plaintiff's structures on the suit property and put the strict proof thereof.

- viii) The 5th Defendant specifically pleaded that the Plaintiff's alleged suit property is actually in the same portion of land as TRANSMARA/OLOCHANI/232 in Sheet No. 9.
 - ix) The 5th Defendant reiterated that he was the one in actual possession of the true property known as TRANSMARA/OLOCHANI/237 which is within Sheet No. 4.
 - x) The 5th Respondent stated that the distance between the Plaintiff's fraudulent suit property and the legitimate property known as TRANSMARA/OLOLCHANI/237 was about 10 Kilometres apart.
 - xi) As such, the 1st to 6th Defendants pleaded that there would be no way they would have participated in the destruction of the Plaintiff's structures and/or trees as alleged.
 - xii) The 1st to 6th Defendant did reiterate that the Plaintiff's title of the suit property was acquired fraudulently and did not bestow him with any ownership rights.
 - xiii) In conclusion, the 1st to 6th Defendant sought this Court to dismiss the Plaintiff's suit with costs.
6. In the Counter-Claim by the 5th Defendant against the Plaintiff, the prayers sought were as follows; -
- a) The Title Deed for land parcel number TRANSMARA/OLOLCHANI/237 is in Sheet No.4.**
 - b) A declaration that the Plaintiff (5th Defendant) is the rightful owner of land parcel TRANSMARA/OLOLCHANI/237 in Sheet No. 4.**

- c) The Plaintiff (5th Defendant) be registered as the absolute owner of land parcel TRANSMATA/OLOCHANI/237 and the land registrar be directed to issue title deed to the Plaintiff.**
- d) The Land Registrar, Transmara West to effect the necessary changes regarding Map Sheets and that Parcel No. TRANSMARA/OLOLCHANI/237 to remain in Sheet No. 4 as it was originally.**
- e) Costs of the suit.**
7. The grounds in support of the above prayers by the 5th Defendant in the Counter-Claim were premised on the following Grounds; -
- i) The 5th Defendant pleaded that the Plaintiff's suit property was a creation from the property known as LR.NO.TRANSMARA/OLOLCHANI/232.
 - ii) Upon the sub-division of the property known as LR.NO.TRANSMARA/OLOLCHANI/232, the Plaintiff fraudulently created a second title known as LR.NO.TRANSMARA/OLOLCHANI/237 on Sheet No. 9.
 - iii) The 5th Defendant stated that the correct property known as LR.NO.TRANSMARA/OLOLCHANI/237 was created out of a property known as LR.NO.TRANSMATA/OLOLCHANI/110 upon the hearing and determination the Objection Case No. 27 of 1985 against one MICHAEL MPAYIAN NAPOKENYA.
 - iv) The 5th Defendant pleaded that the legitimate property known as LR.NO.TRANSMARA/OLOLCHANI237 is actually on Sheet No.4 and not Sheet No.9.

- v) In essence, the 5th Defendant was of the position that the Plaintiff's suit property was fraudulently superimposed on Sheet No. 9 and the subsequent Title issued thereof was fraudulent.
 - vi) The 5th Defendant disclosed that the fraudulent acts by the Plaintiff herein were reported to the investigation department as well as the Deputy County Commissioner for investigations.
 - vii) In conclusion thereof, the 5th Defendant sought this Court to grant the prayers sought in the Counter-Claim.
8. The Joint Statement of Defence dated 08.11.2021 was duly served on the Plaintiff who then did file a Reply to the Statement of Defence and Counter-Claim dated 18.11.2021.
9. In the Reply to the Statement of Defence and Counter-Claim dated 18.11.2021, the Plaintiff pleaded as follows; -
- i) The Plaintiff reiterated that he was the lawful and legitimate owner of the suit property known as LR.NO.TRANSMARA/OLOLCHANI/237 measuring approximately 2.00 Hectares.
 - ii) The Plaintiff further pleaded that the suit property was never a sub-division of the property known as LR.NO.TRANSMARA/OLOLCHANI/110 as alleged and put to the 1st to 6th Defendants to strict proof thereof.
 - iii) The Plaintiff specifically denied any knowledge of the Objection proceedings of one MICHAEL OTOMA as alleged by the 5th Defendant.

- iv) According to the Plaintiff, the suit property was created in Sheet No. 9 during Adjudication and not Sheet No. 4 as alleged by the 1st to 6th Defendants.
- v) The Plaintiff further stated that the property known as LR.NO.TRANSMARA/OLOLCHANI/232 was also within Sheet no. 9 close to the property known as LR.NO.TRANSMARA/OLOLCHANI/237.
- vi) In essence, the Plaintiff denied in toto the allegations that the suit property had been registered through fraud and put the 1st to 6th Defendants to strict proof thereof.
- vii) The Plaintiff similarly reiterated that the 1st to 6th Defendants herein were the ones that jointly and severally trespassed into the suit property and destroyed all the structures and trees therein without any justification and/or legal basis.
- viii) The Plaintiff therefore pleaded that he was entitled to compensation for both the demolished structures and the loss of income for the said demolition.
- ix) The Plaintiff stated that the property known as LR.NO.TRANSMARA/OLOLCHANI/237 which is in Sheet No. 4 does not belong to him and had no interest whatsoever in the same.
- x) As regards the property known as LR.NO.TRANSMARA/OLOLCHANI/232, the Plaintiff pleaded that the same was also located in Sheet No. 9 and was owned by one IBRAHIM SALIM KIPRASH before the same was transferred to PETERO OGWACHO MWANGI and MORACHA MWANGI JOSEPHAT equal shares.

- xii) In Reply to the 5th Defendant's Counter-Claim, the Plaintiff further stated that the property known as LR.NO.TRANSMARA/OLOLCHANI/232 had in fact been sub-divided and created the properties known as LR.NO.TRANSMARA/OLOLCHANI/1395 to 1415.
 - xiii) The Plaintiff reiterated that he was not aware of the Objection Case No. 27 of 1985 regarding the property known as LR.NO.TRANSMARA/OLOLCHANI/110 and put the 5th Defendant to strict proof thereof.
 - xiv) The Plaintiff specifically denied the allegation by the 5th Defendant that the suit property was transferred from Sheet No. 4 and superimposed on Sheet No. 9 hence the title held by the Plaintiff was fraudulent and irregular.
 - xv) The Plaintiff pleaded that he was not aware of the other property also recorded as LR.NO.TRANSMARA/OLOLCHANI/237 which is located at Lepolosi which is about 10 Kilometres from the suit property.
 - xvi) In concluding therefore, the Plaintiff vehemently opposed the 5th Defendant's prayer that the title held by the Plaintiff should be cancelled.
10. The matter was then listed for hearing of the testimonies and production of the documentary evidence.

PLAINTIFF'S TESTIMONY & DOCUMENTARY EVIDENCE

11. The Plaintiff's case began with the testimony of the Plaintiff who was marked as PW 1.

12. The Plaintiff introduced himself as a resident of Kilgoris within Transmara West who was familiar with the 1st to 6th Defendants in this matter.
13. The Plaintiff then did adopt his witness statement dated 04.12.2019 as his evidence in chief.
14. The Plaintiff in support of his evidence in chief proceeded to produce the following documents; -

PW 1 EXHIBIT 1- Copy of the Title Deed to the property known as LR.NO.TRANSMARA/OLOLCHANI/237 in the name of the Plaintiff.

PW 1 EXHIBIT 2- A Copy of an official search of the property known as LR.NO.TRANSMARA/OLOLCHANI/237 in the name of the Plaintiff.

PW 1 EXHIBIT 3- A copy of a Valuation Report dated 22.11.2019.

PW 1 EXHIBIT 4- A Copy of a Letter dated 08.10.2019 from the Deputy County Commissioner, Transmara West.

PW 1 EXHIBIT 5- A Copy of a Letter dated 05.11.2019 from the Deputy County Commissioner.

PW 1 EXHIBIT 6- A Copy of the Registration Sheet No. 9.

PW 1 EXHIBIT 7- A Copy of the Certified Register and/or Green Card of the property known as LR.NO.TRANSMARA/OLOLCHANI/237.

PW 1 EXHIBIT 8- A Copy of the Register and/or Green Card of the property known as LR.NO.TRANSMARA/OLOLCHANI/232.

PW 1 EXHIBIT 9- Copies of the payments Receipts from the Land Department for the application of the Official Searches.

PW 1 EXHIBIT 10- A Copy of the payment Receipts from the Land Department for the Registration Sheet dated 22.11.2020.

15. According to the Plaintiff, the suit property is lawfully registered in his name.
16. The Plaintiff testified that upon acquisition of the suit property, he developed various structures including Kiosks and planted trees on the same.
17. The Kiosks that were on the suit property were 33 in the front and 60 rooms at the back of the suit property.
18. The Plaintiff stated that all these structures were of temporary nature.
19. However, the same were demolished by the 1st to 6th Defendants herein.
20. The Plaintiff did aver that the 33 Kiosks were being rented at a sum of Kenyan Shillings Three Thousand (KShs.3,000/-) per

month while the 60 rooms were being rented at Kenyan Shillings One Thousand Five Hundred (KShs,1500/-).

21. The Plaintiff stated that he would earn about Kenya Shillings One Hundred and Fifty-Nine Thousand (KShs.159,000/-) per month for the structures on the suit property.
22. However, due to the destruction by the 1st to 6th Defendant, this income was no longer available.
23. The Plaintiff accused the 1st to 6th Defendants of unlawfully taking over possession of the suit property without his consent and developing various structures which are illegal.
24. The Plaintiff informed the Court that he was familiar with where the property known as LR.NO.TRANSMARA/OLOLCHANI/232 was located.
25. The Plaintiff indicated that the property known as LR.NO.TRANSMARA/OLOCHANI/232 initially belonged to one IBRAHIM KIPRASH (deceased) who had sold the same to two persons namely PETERO ONGWACHO and MORACHA MWANGI JOSEPHAT as shown in Entry No. 2 of PW 1 EXHIBIT 8.
26. On further reference to PW 1 EXHIBIT 8, the Plaintiff pointed out that based on Entry No.6, the property known as LR.NO.TRANSMARA/OLOLCHANI/232 was closed on 05.04.2018 and new sub-divisions namely 1395-1415 were created.
27. The Plaintiff clarified that the property known as LR.NO.TRANSMARA/OLOLCHANI/232 and the suit property were not 4 kilometres apart.

28. The Plaintiff therefore sought the Court to grant the prayers in the present suit and the 5th Defendant's Counter-Claim to be dismissed.
29. On cross-examination by the 1st - 6th Defendant's Counsel, the Plaintiff did reiterate that he is the lawful owner of the suit property.
30. The Plaintiff stated that according to the Demarcation List, the PLOT.NO. 237 OLOLCHANI was recorded in the name of two persons.
31. However, the Plaintiff denied owning the property known as PLOT NO. 237 with the 5th Defendant.
32. The Plaintiff was then referred to the Defendant's List of Documents (Item No. 8) which is a Letter dated 13.09.2019.
33. The Plaintiff did confirm that in this Letter, the Deputy County Commissioner, Transmara West was asking for the documents of PLOT.NO.232 and 237.
34. The Plaintiff admitted that based on the Letter dated 24.09.2019 which was responding to the Letter dated 13.09.2019, the property known as PLOT.NO. 237 had been recorded in the names of two persons.
35. However, now that PLOT.NO.237 was registered, the ownership is based on the Certificate of Title and the Official Search.
36. The Plaintiff did insist that the suit property was created on Sheet No. 9 at the time of Demarcation.

37. The Plaintiff stated that he was not aware of the Letter dated 20.08.2019 which was contained in the Defendant's List of Documents.
38. The Plaintiff denied the allegation that PLOT.NO.237 had been created from PLOT.NO.110.
39. The Plaintiff was then referred to the Adjudication Record of PLOT NO. 110 but stated that it did not have anything co-relationship with the PLOT NO. 237.
40. The Plaintiff informed the Court that the distance between PLOT.NO.110 and PLOT.NO.237 was about 4 Kilometres apart.
41. The Plaintiff stated that the suit property was on the road leading to Lolgorian opposite Magito Hospital.
42. According to the Plaintiff, the suit property had been allocated to him by the Adjudication Committee but he did not have the letter requesting to be allocated land by the Adjudication Committee.
43. On being referred to Defendant's List of Documents dated 06.10.2021 (Item No. 1) which was the Demarcation List of Allotees on Sheet No. 9, the Plaintiff admitted that his name was not on the said list.
44. The Plaintiff disclosed that OLOLCHANI ADJUDICATION SECTION was declared in 1977 and Adjudication was done between 1982 and 1988.
45. The Plaintiff confirmed that the Defendants were claiming PLOT NO. 237 on Sheet No. 4 and not Sheet No.9.

46. The Plaintiff was then referred to the Defendant's List of Documents dated 01.12.1998 which was the Demarcation Book dated 01.12.1988.
47. The Plaintiff confirmed that in the Demarcation Book, PLOT.NO.237 had been recorded in the names of two persons.
48. However, the current Title of PLOT.NO.237 which is LR.NO.TRANSMARA/OLOLCHANI/237 has the name of one person.
49. The Plaintiff stated that the Demarcation Book presented in Court was not genuine.
50. Similarly, the Plaintiff admitted that he had not produced copy of the Demarcation Book that only provided for his name alone.
51. The Plaintiff admitted that the suit property borders the property known as LR.NO.TRANSMARA/OLOLCHANI/232 which belonged to the late IBRAHIM KIPRASH.
52. However, the Plaintiff disputed the allegation that the suit property was within the property known as LR.NO.TRANSMARA/OLOLCHANI/232.
53. On being referred to the Defendant's List of Documents dated 06.10.2021 (Item No. 18) which is the Sheet No. 9, the Plaintiff indicated that PLOT NO. 232 borders PLOT.NO.135.
54. In essence therefore, the suit property was not bordering PLOT.NO.232.

55. The Plaintiff did testify that the confirmation of the developments on the suit property is contained in the Valuation Report which was produced as PW 1 EXHIBIT 3.
56. The Plaintiff stated that the Valuation Report contained pictures of the structures thereon.
57. The Plaintiff accused the 1st to 6th Defendants to be the ones that undertook the demolition exercise on the suit property but did not have any pictures to confirm the same.
58. The Plaintiff averred that he was not related to any Defendants save for the 5th Defendant.
59. The Plaintiff testified that he had not preferred any Criminal Charges against the Defendants for malicious damage to his property.
60. In concluding the cross-examination by the 1st - 6th Defendants, the Plaintiff admitted that he had not produced any documentary evidence of the monthly rentals he collected from the structures within the suit property.
61. On cross-examination by the 4th Defendant in Counter-Claim, the Plaintiff did state that the property known as LR.NO.TRANSMARA/OLOLCHANI/236 belongs to MARY SIPARO.
62. However, the Plaintiff did clarify that the suit property does not share a boundary with the property known as suit property.
63. The Plaintiff denied the allegation that the suit property is within the property known as LR.NO.TRANSMARA/OLOLCHANI/236 as there was no overlap within OLOLCHANI ADJUDICATION SECTION.

64. The Plaintiff confirmed that all the plots within OLOLCHANI ADJUDICATION SECTION that appear in the maps should be demarcated on the ground.
65. On being referred to the List of Documents (Item No.1) by the 4th Defendant in the Counter-Claim which were the proceedings done before the Kisii High Court, the Plaintiff stated that they had been filed by the 5th Defendant.
66. The Plaintiff stated that according to the proceedings, the 5th Defendant was claiming to have purchased land from the 4th Defendant in the Counter-Claim.
67. However, the Judgement and/or finding was that the 5th Defendant herein had no claim against the 4th Defendant in the Counter-Claim.
68. In essence, the Counter-Claim filed by the 5th Defendant against the 4th Defendant and himself was Res Judicata.
69. The 2nd and 3rd Defendants in the Counter-Claim did not have any cross-examination against the Plaintiff.
70. On re-examination, the Plaintiff sought the Court to declare him the lawful owner of the suit property and that an eviction order be issued against the 1st to 6th Defendants in the main suit.
71. The Plaintiff was then discharged from the witness box thereafter.
72. The Plaintiff's second witness was one DUNCAN NJIRI WAITHIGI who was marked as PW 2.

73. PW 2 did introduce himself as a licensed practicing Valuer registered in the year 2024 through Gazette Notice No. 122 of the year 2024.
74. PW 2 then did produce the Gazette Notice No.12 of 2024 as PW 1 EXHIBIT 8 (a) and (b).
75. PW 2 informed the Court that he visited the suit property on the 19.11.2019 on instructions of the Plaintiff.
76. PW 2 stated that the suit property was located along the Lolgorian Road opposite Transmara Medicare Hospital.
77. The instructions by the Plaintiff was to do a Valuation of the damages that had been occasioned on the suit property.
78. In preparation of the Valuation Report, PW 2 did an official search of the suit property and noted that it was registered in the name of the Plaintiff.
79. PW 2 testified that the suit property was approximately 5 Acres and was free hold.
80. On visiting the suit property, PW 2 was able to see a block of shops and a semi -permanent building that had been demolished.
81. PW 2 stated that the demolished building contained 33 Kiosks and 60 single rooms that were made of iron sheets.
82. On the same suit property, PW 2 also found a Brick building with two wings.

83. According to PW 2, the structures that had been demolished were worthy Kenya Shillings Nine Million Five Hundred Thousand (KShs.9,500,000/-)
84. The Brick Building that was on the ground was valued a Kenya Shillings Seven Million (KShs.7,000,000/-)
85. As regards the Loss of Income, PW 2 valued the same at Kenya shillings Four Million Five Hundred Thousand (KShs.4,500,000/-)
86. PW 2 then produced the Valuation Report as PW EXHIBIT 3.
87. On cross-examination by the 1st to 6th Defendants in the main suit, PW 2 stated that he had not produced the Registration Certificate of Damon Appraiser who were the makers of the Valuation Report.
88. PW 2 confirmed that the Valuer who prepared the Valuation Report was one DAVID ONGERI.
89. However, PW 2 did not have the Licence of DAVID ONGERI but insisted that he was a licensed Valuer.
90. PW 2 also admitted that he had no Letter of Authority to appear on behalf of DAVID ONGERI or Damon Appraisers.
91. PW 2 confirmed that on the date of the visit to the suit property, he was in the company of DAVID ONGERI.
92. PW 2 informed the Court that the site visit was undertaken after the demolition had taken place and the structures brought down.
93. On being referred to the Valuation Report, PW 2 stated that the first picture showed a vacant portion of land.

94. The second picture in the Valuation Report showed the invading of the suit property by traders.
95. The third picture was also of a vacant portion of land while the fourth picture had the Brick shop that had not been demolished.
96. The last picture had a vacant portion of land with the neighbouring properties.
97. PW 2 informed the Court that they located the suit property based on the Mutation.
98. Similarly, the suit property had been demarcated by a natural hedge.
99. PW 2 admitted that the Mutation was not clear to be able to identify the properties.
100. PW 2 stated that they did not inquire about the neighbouring parcels of land.
101. PW 2 informed the Court that their valuation was based on the IQSK (2018) Journal.
102. At the end of this cross-examination, PW 2 stated that they did not see any trees destroyed on the ground.
103. There was no cross-examination by the 4th Defendant in the Counter-Claim or re-examination.
104. The Court did seek clarification of various issues.

- 105.PW 2 informed the Court that the costs of the construction and the value of the structures do not core relate.
- 106.PW 2 stated that the Plaintiff did not provide any evidence of the costs incurred in building the structures demolished.
- 107.PW 2 testified that when they visited the suit property, most of the building material from the demolition had already been removed from the site.
- 108.PW 2 admitted that they did not visit the place the building materials from the demolition had been placed.
- 109.Similarly, PW 2 could not tell how many meter squares had been floored.
- 110.PW 2 informed the Court that the rental income from both the floored rooms and the ones not floored had similar rental income.
- 111.PW 2 stated that he did not verify which plots were neighbouring the Plaintiff's suit property.
- 112.PW 2 end his testimony by stating that there were no other structures of the suit property save for the brick building.
- 113.At the end of this inquiry by the Court, PW 2 was discharged and the Plaintiff closed his case.

DEFENCE TESTIMONY & DOCUMENTARY EVIDENCE

- 114.The Defence hearing began with the evidence of the 1st Defendant ADASON OLE MINIS who was marked as DW 1.

- 115.The 1st Defendant introduced himself as a resident of Kilgoris and a farmer by occupation.
- 116.The 1st Defendant did inform the Court that he was familiar with the Plaintiff herein.
- 117.The 1st Defendant however denied knowledge of the suit property before Court.
- 118.The 1st Defendant denied the allegation that he trespassed into the Plaintiff's property and demolished any structures therein.
- 119.The 1st Defendant admitted that he was familiar with the person known as IBRAHIM KIPRASH now deceased.
- 120.The 1st Defendant informed the Court that IBRAIM KIPRASH was his brother in law.
- 121.The 1st Defendant stated that the property known as LR.NO.TRANSMARA/OLOLCHANI/232 belonged to the late IBRAHIM KIPRASH.
- 122.The 1st Defendant testified that he was one of the witnesses that were present when the wife of the late IBRAHIM KIPRASH had gone to complain that her property had been grabbed to the Deputy County Commissioner.
- 123.In the meeting held by the Deputy County Commissioner, the person that had grabbed the property known as LR.NO.TRANSMARA/OLOLCHANI/232 was the Plaintiff.
- 124.Similarly, in the meeting before the Deputy County Commissioner, the Plaintiff's property was identified as the suit property.

125. In essence therefore, the 1st Defendant denied any trespass into the suit property and stated that he did not know where the same is even located.
126. There was no cross-examination by Counsel for all the Defendants in the Counter-Claim.
127. On cross-examination by the Plaintiff, the 1st Defendant stated that his name was ADASON PETRO OLE BOKULE and not the name outlined by the Plaintiff.
128. The 1st Defendant confirmed that previously, the late IBRAHIM KIPRASH had a case with the Plaintiff herein which was KISII ELC CASE NO. 71 (B) OF 2008.
129. The 1st Defendant stated that the cause of action was that the Plaintiff had fraudulently procured a title known as LR.NO.TRANSMARA/OLOLCHANI/237 on the property known as LR.NO.TRANSMARA/OLOLCHANI/232.
130. The 1st Defendant averred that this case was concluded but could not tell what the outcome was.
131. The 1st Defendant testified that the Complaint lodged before the Deputy County Commissioner was after the proceedings had been determined.
132. The 1st Defendant denied the allegations that they had been directed to go build on the suit property.
133. The 1st Defendant stated that he was familiar with the 5th Defendant.

134. The 1st Defendant confirmed that during the Adjudication of OLOLCHANI ADJUDICATION SECTION, he was already in Kilgoris.
135. In the end of this cross-examination, the 1st Defendant denied knowledge of whether the 5th Defendant had another case with the Plaintiff herein.
136. On re-examination, the 1st Defendant reiterated that his name was ADASON PETRO and not ADASON OLE MINIS.
137. The 1st Defendant denied being in the earlier proceedings between the late IBRAHIM KIPRASH and the Plaintiff hence could not say much about them.
138. The 1st Defendant similarly denied being a party in the proceedings between the 5th Defendant and the Plaintiff.
139. The 1st Defendant reiterated that the person who made a complaint to the Deputy County Commissioner was the wife of the late IBRAHIM KIPRASH who is the Sister in law.
140. The 1st Defendant did conclude his testimony by reiterating that he did not know where the Plaintiffs suit property was and never participated in any demolitions therein.
141. At the end of this re-examination, the 1st Defendant was discharged from the witness box.
142. The second Defence witness was SAMSON RINKA who is the 5th Defendant and the Plaintiff in the Counter-Claim marked as DW 2.
143. The 5th Defendant did introduce himself as a resident of Ololui and Ole Polos.

- 144.The 5th Defendant did inform the Court that he knew the Plaintiff by just seeing him in Kilgoris town but they were not friends.
- 145.The 5th Defendant stated that the property in Ole Polos was known as PLOT NO.237 OLOLCHANI.
- 146.The 5th Defendant did testify that he was in occupation of the property known as PLOT NO.237 OLOLCHANI and had settled his family on the same.
- 147.According to the 5th Defendant, the property known as PLOT NO.237 OLOLCHANI had been created from the property known as PLOT NO.110 OLOLCHANI after the hearing and determination of an Objection against his brother who had been allocated the land.
- 148.The 5th Defendant then produced the proceedings known as Objection Case No. 27 of 1985 as DW 2 EXHIBIT 1.
- 149.The 5th Defendant proceeded to produce the Adjudication Record No. 027110 of PLOT.NO.110 recorded in the name the late IBRAHIM KIPRASH and his wife as DW 2 EXHIBIT 2.
- 150.Upon creation of PLOT.NO.237 OLOLCHANI from the original PLOT.NO.110, the same was recorded in the name of the 5th Defendant and the Adjudication Register of OLOLCHANI ADJUDICATION SECTION was produced as DW 2 EXHIBIT 3.
- 151.The 5th Defendant could not explain how the name of the Plaintiff was recorded as the owner of PLOT.NO.237 OLOLCHANI.

- 152.The 5th Defendant's prayer to the Court was that the Plaintiff's name be removed from the Adjudication Record.
- 153.The 5th Defendant confirmed that he had procured a Sketch Map contained in Sheet No. 4 of where PLOT.NO.237 OLOLCHANI was located from the Land Adjudication office which was produced as DW 2 EXHIBIT 4.
- 154.The 5th Defendant informed the Court that he had not been able to procure the title of PLOT.NO.237 OLOLCHANI because the same had already been issued to the Plaintiff and produced a copy of an official search dated 21.01.2021 as DW 2 EXHIBIT 5.
- 155.It is on this information that the 5th Defendant filed the Counter-Claim herein and further made a report at Kilgoris Police Station against the Plaintiff to be investigated how he acquired the title to the PLOT.NO.237 OLOLCHANI and the OB NUMBER was produced as DW 2 EXHIBIT 6.
- 156.The 5th Defendant clarified that the location of the Plaintiff's suit property is not where the sub-division of PLOT.NO.110 known as PLOT.NO.237 OLOLCHANI is located.
- 157.The 5th Defendant could not tell if there are two PLOT.NO.237 OLOLCHANI within OLOLCHANI ADJUDICATIONS SECTION.
- 158.Similarly, the 5th Defendant could not tell where the location of the Plaintiff's suit property was located.
- 159.The 5th Defendant denied that allegation that he trespassed into the Plaintiff's suit property and/or demolished any structures on the same.

160. Consequently, the allegations that he is the one that caused the demolition of the Plaintiff's property and should compensate him was denied.
161. According to the 5th Defendant, the PLOT.NO.237 OLOLCHANI is located in Sheet No.4.
162. As regards the 4th Defendant in the Counter-Claim, the 5th Defendant informed the Court that she had only seen her in his portion of land.
163. The 5th Defendant testified that the 4th Defendant in the Counter-Claim occupies PLOT.NO.236 OLOLCHANI which is within his portion of land known as PLOT.NO.237 OLOLCHANI.
164. The 5th Defendant therefore sought this Court to direct the Mutation to be rectified and thereafter he be given his title deed to PLOT.NO.237 OLOLCHANI emanating from PLOT.NO.110 OLOLCHANI.
165. The 5th Defendant observed that the original number PLOT.NO.237 OLOLCHANI recorded to him should remain rather than be given a new number as it has a historical link with the property known as PLOT.NO.110 OLOLCHANI.
166. The 5th Defendant concluded his testimony in chief by stating that he did not know much about the property known as LR.NO.TRANSMARA/OLOLCHANI/232.
167. On cross-examination by the 4th Defendant in the Counter-Claim, the 5th Defendant stated that she knew the 4th Defendant in the Counter-Claim because he had sued her.
168. On being referred to List of Documents dated 04.08.2023 by the 4th Defendant in the Counter-Claim which were the

proceedings known as KISII HIGH COURT CIVIL CASE NO.163 OF 2006, the 5th Defendant confirmed that he was aware of the same.

169.However, the 5th Defendant could not remember whether or not he participated in the same proceedings.

170.The 5th Defendant was also referred to the proceedings known as KILGORIS SENIOR PRINICIPAL'S MAGISTRATES CRIMINAL CASE NO. 743 OF 2004 but he denied knowledge of the same.

171.On being referred to the Ground Report dated 22.07.2024 by the Land Registrar, Transmara West, the 5th Defendant confirmed that the person known as TABITHA NJERI MICHAEL was the wife to his brother.

172.The 5th Defendant stated that TABITHA NJERI MICHAEL resides on PLOT.NO.110 OLOLCHANI while he resides on PLOT.NO.237 OLOLCHANI.

173.The 5th Defendant averred that he was not aware of what she told the Land Registrar during the said visit.

174.The 5th Defendant reiterated that the Plaintiff herein did not have any ownership rights over PLOT.NO.237 OLOLCHANI.

175.On being referred to DW 2 EXHIBIT 2, the 5th Defendant admitted that the Sketch Map did not show the acreage of PLOT.NO.237 OLOLCHANI.

176.On being referred to DW 2 EXHIBIT 1, THE 5thDefendant could not confirm if the 4th Defendant in the Counter-Claim participated in the Objection proceedings.

- 177.The 5th Defendant testified that he had not been given an Adjudication Record for the property known as PLOT.NO.237 OLOLCHANI.
- 178.The 5th Defendant disclosed that both the 4th Defendant in the Counter-Claim and himself are located within PLOT.NO.110 OLOLCHANI which was not recorded in his name.
- 179.In concluding his cross-examination, the 5th Defendant disagreed that PLOT.NO.237 OLOLCHANI should remain in Sheet No. 9.
- 180.On further cross-examination by the 2nd and 3rd Defendants in the Counter-Claim, the 5th Defendant reiterated that PLOT.NO.237 OLOLCHANI was created out of PLOT.NO.110 OLOLCHANI.
- 181.According to the 5th Defendant, this was after the Demarcation had been complete and an Objection was filed.
- 182.The 5th Defendant stated that in the Adjudication Register, there was PLOT.NO.237 and an Adjudication Record of the same was issued in his name.
- 183.However, the 5th Defendant could not remember when the Adjudication Record was issued.
- 184.The 5th Defendant denied knowledge of any sell of PLOT.NO.110 OLOLCHANI.
- 185.The 5th Defendant did insist before the Court that the PLOT.NO.237 OLOLCHANI was located in Sheet No. 4.
- 186.On cross-examination by the Plaintiff herein, the 5th Defendant was referred to DW 2 EXHIBIT 2.

- 187.The 5th Defendant admitted that in the Objection proceedings, he did not mention the Plaintiff.
- 188.Similarly, the 5th Defendant did not make any allegations that the Plaintiff had another record of PLOT.NO.237 OLOLCHANI.
- 189.The 5th Defendant informed the Court that he came to learn about the Plaintiff's title in the year 2019.
- 190.It was in this year that he registered a Caution on the Register of LR.NO.TRANSMARA/OLOLCHANI/237 but never filed a suit to challenge the registration.
- 191.The 5th Defendant denied knowledge of any proceedings between the Plaintiff and the late IBRAHIM KIPRASH over the suit property.
- 192.The 5th Defendant denied that he is not the one known as SAMUEL MPATIAN RINKA as stated in the proceedings in KISII and that his name was SAMUEL MPAYIAN RINKA.
- 193.The 5th Defendant admitted that he did not have any Adjudication Record for PLOT.NO.237 OLOLCHANI.
- 194.On being referred to the Surveyor's Report dated 22.07.2024, the 5th Defendant denied knowledge that PLOT.NO.232 OLOLCHANI is located in Sheet No. 9 but insisted that his PLOT.NO.237 OLOLCHANI is in Sheet No. 4.
- 195.According to the 5th Defendant, PLOT.NO.237 emanating from PLOT.NO.110 OLOLCHANI is opposite KILGORIS GIRLS SCHOOL.

- 196.The 5th Defendant testified that the portion of land he was claiming is not the one close to Kilgoris Town.
- 197.The 5th Defendant stated that in the registration held by the Plaintiff on LR.NO.TRANSMARA/LOLOCHANI/237, his registration of a first registration emanates from an Adjudication.
- 198.On re-examination, the 5th Defendant stated that the property in dispute in the proceedings known as KISII HIGH COURT CIVIL CASE NO. 163 OF 2006, is different and the property known as PLOT.NO.237 was not in dispute.
- 199.As to the proceedings known as KILGORIS SENIOR PRINCIPAL MAGISTRATES COURT CRIMINAL CASE NO. 474 OF 2008, there were no proceedings that had been produced before this Court to prove the same.
- 200.On referring to DW 2 EXHIBIT 2, the 5th Defendant confirmed that he was given 8 acres from the PLOT.NO.110 OLOLOCHANI.
- 201.ON being referred to DW 2 EXHIBIT 3, the 5th Defendant stated that his name was recorded in the Adjudication Register but could not tell the actual date.
- 202.The 5th Defendant stated that it was only recently that he discovered that his name was not recorded as the owner of PLOT.NO.237 OLOLOCHANI.
- 203.The 5th Defendant could not tell where the PLOT.NO.236 OLOLOCHANI was located but his view was that if it exists, then the same was within PLOT.NO.237 OLOLOCHANI.

204. The 5th Defendant therefore concluded his re-examination by stating that the Counter-Claim filed herein was to have the Plaintiff's title cancelled and the records rectified.
205. At the end of this re-examination, the 5th Defendant was discharged from the witness box.
206. The third Defence witness was JOSHUA RUME who was marked as DW 3.
207. DW 3 introduced himself as the Sub-County Surveyor in charge of Transmara East, West and South.
208. DW 3 informed the Court that he had prepared and filed a Ground Report dated 22.07.2024.
209. DW3 confirmed that he was one of the persons that participated in the preparation of the Ground Report dated 22.07.2024 together with the Sub-County Land Registrar.
210. DW 3 stated that the Ground Report dated 22.07.2024 was prepared based on a Court Order directing the Sub-County Land Registrar, the Sub-County Land Surveyor and his office to try and locate where the suit property was located.
211. Similarly, the Court Order also required the offices of the Sub-County Land Registrar, Sub-County Land Surveyor and the Sub-County Land Adjudication Office to ascertain on which Sheet the suit property should be located.
212. DW 3 informed that the suit property was created through Adjudication of OLOLCHANI ADJUDICATION SECTION.

213. According to the Plaintiff, the suit property was created on Sheet No. 9 while the 5th Defendant claimed that the PLOT NO.237 OLOLCHANI was created on Sheet No. 4.
214. The net effect of this conflicting positions is that the PLOT NO.237 OLOLCHANI was located in two places within OLOLCHANI ADJUDICATION SECTION.
215. The first site that was visited is the one being claimed by the 5th Defendant which is within Sheet No. 4.
216. The 5th Defendant's claim was that PLOT.NO.237 OLOLCHANI was approximately 9 acres in size.
217. DW 3 stated that the portion pointed out by the 5th Defendant included the PLOTS.110, 684,441,226,236 and 240.
218. According to the Adjudication Records and Sketch Map, Sheet No. 4 contains two main properties namely PLOT.NO.110 OLOLCHANI and 226 OLOLCHANI.
219. During Adjudication, the PLOT No. 110 OLOLCHANI was demarcated and recorded first in the name of the RINKA'S FAMILY.
220. The 5th Defendant then filed an Objection before the Adjudication Committee and requested that his portion be carved out and recorded in his personal name.
221. The Objection by the 5th Defendant was ultimately granted.
222. However, before the 5th Defendant's Objection was concluded, other Objections were filed including the one that created PLOT.NO.226 OLOLCHANI.

223. Consequently, by the time the 5th Defendant's PLOT.NO.237 OLOLCHANI was being demarcated, it was overlapping with PLOTS.NO.110 OLOLCHANI AND 226 OLOLCHANI.
224. DW 3 confirmed that PLOT.NO.237 OLOLCHANI was hived off from the property known as PLOT.NO.110 OLOLCHANI.
225. All the Objections relating to PLOT.NO.110 OLOLCHANI were being done on Sheet No. 4.
226. On the Sketch Map, PLOT.NO.237 OLOLCHANI was placed between PLOT.NO.236 OLOLCHANI and PLOT.NO.240 OLOLCHANI and PLOT.NO.110 OLOLCHANI was on the left.
227. DW 3 stated that according to the Aerial Map, the PLOT.NO.237 OLOLCHANI being claimed by the 5th Defendant is actually less than an Acre.
228. DW 3 confirmed that the decision of the 5th Defendant by the Adjudication Committee was duly recognised in the Demarcation book.
229. In the Demarcation Book, PLOT 237 OLOLCHANI claimed by the 5th Defendant is clearly provided for in Sheet no. 4.
230. However, after these entries, this information was cancelled presumably by the keeper of this information who is the Land Adjudication Officer.
231. In place of this information, a comment was recorded that PLOT.NO.237 OLOLCHANI was not affected by the proceedings of the 5th Defendant's in Objection Proceedings No. 27 of 1985.

232. Thereafter, the Comment changed the location of PLOT.NO.237 from Sheet No.4 to Sheet No. 9.
233. On the ownership section, the name of the 5th Defendant was cancelled and the name of the Plaintiff was recorded.
234. On the Aerial Map on PLOT.NO.237 OLOLCHANI, the same was erased and its area merged with PLOT.NO.236.
235. DW 3 nevertheless informed the Court that the cancellation of the original records and replacement with the information of the Plaintiff was not supported by any records.
236. DW 3 stated that according to the Aerial Map, the location which PLOT.NO.237 OLOLCHANI appears on Sheet No. 9 is actual a portion of land reserved for a Government Agency.
237. DW 3 could not explain why the Land Adjudication Office failed to recognise the public use reserved for the Government Agency on Sheet No.9.
238. DW 3 was of the opinion that PLOT.NO.237 OLOLCHANI should be in Sheet No. 4 but was re-introduced in Sheet No. 9 when the Sketch Map was being published.
239. At the end of his evidence in Chief, DW 3 produced the Ground Report dated 22.07.2024 as DW3 EXHIBIT 1.
240. On cross-examination by the Plaintiff, DW 3 confirmed that PLOT.NO.237 OLOLCHANI being claimed by 5th Defendant is located next to KILGORIS GIRLS HIGH SCHOOL.
241. The 5th Defendant's stated that PLOT.NO.237 OLOLCHANI should be contained in Sheet No.4.

242. On the other side, the Plaintiff's suit property is located in Sheet No.9.
243. DW3 informed the Court that the numbering of plots is done by the Land Adjudication Officer.
244. DW3 stated that the Aerial maps and the Title Deeds are usually issued by government agencies.
245. DW3 confirmed that he had access to the official maps for all the properties.
246. DW3 stated that the Plaintiff's suit property exists on the ground in Sheet No. 9.
247. DW3 testified that the 5th Defendant was not claiming for the portion of land that is the Plaintiff's suit property.
248. DW3 informed the Court that during their site visit on the Plaintiff's suit property, he did not see any demolition.
249. According to DW3, the property known as TRANSMARA/ OLOLCHANI /232 neighbours TRANSMARA/ OLOLCHANI /237.
250. DW3 concluded his cross-examination by admitting that the Plaintiff's registration over the suit property was a first registration.
251. On further cross-examination by Counsel for the 1st to 6th Defendants, DW3 reiterated that PLOT NO. 237 OLOLCHANI was created in Sheet No. 4 but is currently on Sheet No. 9.
252. DW3 admitted that the ownership and location of PLOT NO. 237 OLOLCHANI had been altered by a cancellation in the

Demarcation Book and recorded in the name of the Plaintiff in Sheet No. 9.

253. DW3 was of the considered view that once a number is cancelled and vacated, it cannot be used in another sheet.

254. Similarly, DW3 stated that every time the Land Adjudication Officer cancels an entry in the Demarcation Book, the reasons must be indicated.

255. DW3 stated that all these exercises is usually done during the demarcation process.

256. In the instant case, PLOT NO. 237 OLOLCHANI was originally recorded in the name of the 5th Defendant.

257. Currently, the portion of land being claimed by the 5th Defendant as PLOT NO. 237 OLOLCHANI overlaps PLOT NO. 226 OLOLCHANI and PLOT NO. 110 OLOLCHANI.

258. DW3 further stated that on the ground, there is a claim that the 5th defendant sold PLOT NO. 237 OLOLCHANI to the owners of PLOT NO. 236 OLOLCHANI although we were not given any documents.

259. DW3 alleged that he was informed by the owners of PLOT NO. 110 OLOLCHANI that the 5th defendant had sold all his land save for the area which his parents are buried.

260. On cross-examination by the 4th Defendant in the Counter-Claim, DW3 stated that according to the Committee proceedings, PLOT NO. 237 OLOLCHANI was not in existence at that time.

261. From the Committee proceedings, PLOT NO. 110 OLOLCHANI and PLOT NO. 226 OLOLCHANI, should have been in existence at that time.
262. However, DW3 could not confirm the acreage of PLOT NO. 237 OLOLCHANI on the ground.
263. DW3 testified that PLOT NO. 236 OLOLCHANI was about 2 Acres.
264. Consequently therefore, if the 5th defendant's claim of 9 Acres is allowed as PLOT NO. 237 OLOLCHANI then it would mean that he would take over PLOT NO. 236 OLOLCHANI.
265. DW3 informed the Court that during the visit to the 5th Defendant's portion of land identified as PLOT NO. 237 OLOLCHANI they did not find any structures on the ground.
266. DW3 concluded his cross-examination by stating that PLOT NO. 237 OLOLCHANI would have to be re-established, the Aerial map would be the guiding document although its area is to be approximately an Acre.
267. At the end of this cross-examination, there was no re-examination and DW3 was discharged from the witness box.
268. The fourth Defence witness was JOSHUA LESSHAN, who was marked as DW4.
269. DW4 introduced himself as a Land Adjudication Officer in charge of Transmara East, West and South.
270. DW4 did inform the Court that according to the records held by the Land Adjudication Office, PLOT NO. 237 OLOLCHANI was initially recorded in the name of the 5th defendant but

the same was subsequently cancelled and the name of the Plaintiff inserted in place of the 5th Defendant.

271. Similarly, PLOT.NO.237 OLOLCHANI was initially created in Sheet No. 4 but was also subsequently cancelled and moved to Sheet No. 9.

272. According to DW4, PLOT.NO.237 OLOLCHANI was a Subdivision of PLOT NO.110 OLOLCHANI.

273. DW4 stated that the cancellation of the 5th Defendant's name was in his view uncalled for and not correct.

274. This is because in the Committee proceedings known as Objection No. 27 of 1985, the PLOT.NO.237 OLOLCHANI was the resultant sub-division of the property known as PLOT.NO.110 OLOLCHANI that was under Objection.

275. Similarly, keeping in mind that PLOT.NO.110 OLOLCHANI was in Sheet No. 4, then its subdivision automatically can only be created in Sheet No. 4.

276. Consequently, DW4 indicated that there was no valid explanation why PLOT.NO.237 OLOLCHANI was moved to Sheet No. 9.

277. On cross-examination by the Plaintiff, DW4 reiterated that PLOT.NO.237 OLOLCHANI had been created based on the Ruling of the Land Committee in Objection No. 27 of 1985 raised on PLOT.NO.110 OLOLCHANI.

278. DW4 informed the Court that the size of PLOT.NO.237 OLOLCHANI could only be ascertained after the survey is complete.

279. DW4 insisted that the decision by the Land Committee in Objection No. 27 of 1985 was valid and was recorded in the Demarcation Book.
280. However, DW4 could not explain how the 5th Defendant's name was cancelled and the Plaintiff's name recorded in its place.
281. In addition to the above, DW4 could not explain how PLOT.NO.237 OLOLCHANI moved from Sheet No. 4 to Sheet No. 9.
282. Nevertheless, all these entries in the Demarcation Book must have been undertaken by a Land Adjudication Officer who is the custodian of the Demarcation book.
283. DW4 indicated that when they visited PLOT.NO.237 claimed by the 5th Defendant on Sheet No.4, they but could only identify PLOT.NO.110 OLOLCHANI, PLOT.NO.684 OLOLCHANI, PLOT.NO.441 OLOLCHANI, PLOT.NO.226 OLOLCHAN, PLOT.NO.236 OLOLCHANI and PLOT.NO.240 OLOLCHANI.
284. On being referred to PW1 Exhibit 6, DW4 confirmed that there was an Adjudication Record in the name of the Plaintiff which was issued on 18.07.2012.
285. DW4 testified that when they visited the suit property claimed by the Plaintiff on Sheet No. 9, it was discovered to be on the portion of land as PLOT.NO.232 OLOLCHANI.
286. DW4 then produced the Adjudication Record No. C 037237 in the name of the Plaintiff as Expert Witness Exhibit 1.
287. On being referred to DW2 Exhibit 1, DW4 stated that according to the Ruling of the Land Committee in Objection

No. 27 of 1985, it showed that the 5th Defendant would be allocated land but did not give the parcel number.

288. However, in the Demarcation Book in implementing the Land Committee Ruling on Objection No. 27 of 1985, the Land Adjudication office created PLOT.NO.237 OLOLCHANI from PLOT.NO.110 OLOLCHANI and recorded it in the name of the 5th Defendant.

289. DW4 nevertheless confirmed that it is the Adjudication Record which was issued to the Plaintiff that created the Title Deed thereafter.

290. On further cross-examination by the 4th Defendant in the Counter-claim, DW4 stated that there is a possibility that PLOT.NO.237 OLOLCHANI was amalgamated with PLOT.NO.236 OLOLCHANI.

291. DW4 could not tell the total acreage of PLOT.NO.236 OLOLCHANI on the ground.

292. However, DW4 indicated that PLOT.NO.236 OLOLCHANI must have been created before PLOT.NO.237 OLOLCHANI.

293. In other words, DW 4 was of the position that demarcation of PLOT.NO.236 should have happened first before demarcation of PLOT.NO.237 OLOLCHANI.

294. DW4 did state that during demarcation of the two properties, there ought to have been a fence or feature to distinguish them.

295. DW4 averred that practically, PLOT.NO.237 OLOLCHANI if not occupied by the 5th Defendant should be vacant but it cannot be moved to another Sheet.

- 296.DW4 insisted that PLOT.NO.237 OLOLCHANI should be in Sheet No. 4 but could not confirm the actual acreage.
- 297.DW4 confirmed that the cancellation of PLOT.NO.237 OLOLCHANI from Sheet No. 4 and reusing the same number in Sheet No. 9 was illegal.
- 298.It was DW 4 position that PLOT.NO.237 OLOLCHANI should be retained in Sheet No. 4 and not Sheet No. 9.
- 299.DW4 stated that the portion of land being claimed by the 5th Defendant as PLOT.NO.237 OLOLCHANI in Sheet No. 4 measures approximately 20 Acres.
- 300.In essence therefore, PLOT.NO.237 OLOLCHANI being claimed by the 5th Defendant would overlap with PLOT.NO.236 OLOLCHANI.
- 301.On further cross-examination by the 2nd and 3rd Defendants in the Counter-Claim, DW4 stated that he did have the Demarcation Book.
- 302.In the Demarcation Book, PLOT NO.110 OLOLCHANI was in Sheet No. 4.
- 303.Based on the entries in the Demarcation Book, PLOT.NO.110 OLOLCHANI is what was subdivided to make PLOT.NO.237 OLOLCHANI.
- 304.However, DW4 did not have any supporting documents to justify why PLOT.NO. 237 OLOLCHANI was removed from Sheet No. 4 and inserted in Sheet No. 9.
- 305.At the end of this cross-examination, there was no re-examination and DW4 was discharged.

- 306.The fifth defence witness was one MARY MARENE SIPARO who was marked as DW5.
- 307.DW5 did introduce herself as a farmer, who resides in Enosean.
- 308.DW5 stated that she had come to court because she is the owner of PLOT.NO.236 OLOLCHANI.
- 309.DW5 stated that she purchased PLOT.NO.236 OLOLCHANI from the 5th Defendant herein and currently PLOT.NO.236 OLOLCHANI is in the name of SALOME MANDAI.
- 310.DW5 informed the Court that this was not the first suit which had been filed by the 5th Defendant against her.
- 311.DW5 disclosed to the Court that the 5th Defendant had filed a case before the Kisii High Court in the year 2006 and a judgment was pronounced in the year 2010 dismissing the 5th Defendant's claim.
- 312.DW5 confirmed to the Court that the 5th Defendant lives in Ololui.
- 313.DW5 then adopted her witness statement dated 04.08.2023 as her evidence in chief and produced the Judgment in the proceedings known as Kisii High Court Case No. 163 of 2006 as DW5 EXHIBIT 1.
- 314.On cross-examination by the 5th Defendant, DW5 stated that she acquired PLOT.NO.236 OLOLCHANI in the 1980's from the 5th Defendant.

315.DW5 did not have any Agreement for Sale to confirm the same.

316.However, DW5 denied the allegation that PLOT.NO. 236 OLOLCHANI had been grabbed from the 5th Defendant.

317.DW5 informed the Court that she did not know the 5th Defendant's property.

318.DW5 insisted that PLOT.NO.236 OLOLCHANI was registered and she was not ready to vacate the property.

319.On further Cross-examination by the 2nd and 3rd Defendants in the Counter-Claim, DW5 indicated that she purchased Plot No. 236 OLOLCHANI from the 5th Defendant before the same had not been issued with a title deed.

320.DW5 clarified that she only dealt with the 5th Defendant and not Michael Ole Rinka.

321.DW5 stated that Michael Ole Rinka has a piece of land but she did not know the Plot Number.

322.On further cross-examination by the Plaintiff, DW5 stated that she did not know if the 5th Defendant was on the ground.

323.At the end of this cross-examination, there was no re-examination and DW5 was discharged from the witness box and she closed her case.

324.The last defence witness was one TOM CHEPKWESI who was marked as DW6.

325.DW6 introduced himself as the Sub-County Land Registrar in charge of Transmara East, West and South.

326.DW6 informed the Court that he was coming to testify about the location of PLOT.NO.237 OLOLCHANI.

327.DW6 informed the Court that two ground visits were undertaken with the first one being on PLOT.NO.237 OLOLCHANI located in Sheet No. 4 claimed by the 5th Defendant.

328.The second visit was on the location of the suit property located on Sheet No. 9 claimed by the Plaintiff.

329.Upon visiting both portions of land by DW 6, the following observations were made; -

a) The documents from the local Land Adjudication Office were seriously in conflict.

b) The records at the Lands Adjudication Office had been altered and/or erased thereby giving conflicting information.

c) According to DW6, the property known as PLOT NO.237 OLOLCHANI had a history.

d) From the investigations done by DW6, the history of PLOT.NO.237 OLOLCHANI is PLOT.NO.110 OLOLCHANI which is in Sheet 4.

e) DW6 therefore stated that there is no justifiable or legal reason why PLOT.NO.237 OLOLCHANI was moved from Sheet No. 4 and to Sheet No. 9.

f) In conclusion, DW6 was of the view that PLOT NO. 237 OLOLCHANI was wrongly placed in Sheet No. 9.

330. On cross-examination by the 5th Defendant, DW6 reiterated that the property known as PLOT.NO. 237 OLOLCHANI should be in Sheet No. 4.

331. DW6 stated that the location where the Plaintiff's suit property located in Sheet No. 9 belongs to another property known as PLOT.NO.232 OLOLCHANI.

332. On cross-examination by the 4th Defendant in the Counter-Claim, DW6 was referred to the Demarcation Book and stated that he had not gone through the proceedings of the Land Committee Objection No. 27 of 1985.

333. However, upon perusal of the Ruling, DW6 confirmed that the proceedings were referring to PLOT.NO.110 OLOLCHANI.

334. DW6 stated that in the Demarcation Book, the name of the 5th Defendant was recorded first and thereafter cancelled and the name of the Plaintiff recorded.

335. DW6 informed the Court that his office issues title deeds to the people with Adjudication Records.

336. In this instance, the Adjudication Record that was presented for processing of the title deed was in the Plaintiff's name.

337. DW6 averred that when a site visit was done, PLOT.NO.236 OLOLCHANI could be traced in the ground but it did not have beacons to enable calculation of its size.

338. DW6 denied the allegations that PLOT.NO.237 OLOLCHANI was less than half an acre.

- 339.DW6 however admitted that during the ground visits, a big mix-up was discovered to the effect that PLOT.NO.237 OLOLCHANI was in Sheet No. 9 and not Sheet No. 4 as ought to be.
- 340.On cross-examination by the Plaintiff, DW6 did confirm that the Adjudication Record Serial No. C 037237 relating to the property known as PLOT.NO.237 OLOLCHANI was in the name of the Plaintiff.
- 341.DW6 stated that the Adjudication Record had been issued by a Land Adjudication Officer known as Francis Njuguna Kiiru.
- 342.DW6 nevertheless stated that the document had generally faded due to lapse in time.
- 343.DW6 testified that the information in the Adjudication Record and the Demarcation Book should be one and the same.
- 344.DW6 admitted that he had never seen an Adjudication Record in the name of the 5th Defendant.
- 345.DW6 informed the Court that the Demarcation Map was not in their offices as this is usually kept by the Land Adjudication Officer.
- 346.However, DW6 testified that the Green Card to the Plaintiff's suit property was opened on 30.08.2010 and it indicates that the suit property is in Sheet No. 9.
- 347.DW6 confirmed that the entries in the Demarcation Book and the issuance of the Adjudication Record is undertaken by the Land Adjudication Officer.
- 348.In concluding his cross-examination, DW6 stated that the Plaintiff's registration is a first registration.

349. On re-examination, DW6 clarified that his office is not involved in Land Adjudication.
350. DW6 informed the Court that the duty to demarcate land and issue Adjudication Records is undertaken by the Land Adjudication Office.
351. DW6 stated that although he had the Demarcation Book, he did not have the powers to alter any entries therein and only uses it for issuance of title deeds.
352. Similarly, DW6 stated that he did not have any powers to alter any maps as these were kept by the Director of Survey.
353. In concluding his re-examination, DW6 stated that his office had received quite a number of complaints about the suit property belonging to the Plaintiff emanating from its registration.
354. At the end of that re-examination, DW6 was discharged from the witness box and the defence hearing was closed.
355. Parties were then directed to file their submissions, wherein the Plaintiff filed his submissions dated 03.02.2025, the 5th Defendant filed his submissions on 13.02.2025 and the 4th Defendant in the Counter-Claim filed her submissions on 24.02.2025.
356. The Court has indeed carefully perused the pleadings filed herein, the testimonies of the witnesses, the documentary evidence placed before the Court and the submissions and identifies the following issues for determination; -

ISSUE NO. 1 - HOW WAS PLOT NO. 237 OLOLCHANI CREATED?

ISSUE NO. 2 - WHO IS THE LEGITIMATE PERSON ALLOCATED PLOT NO. 237 OLOLCHANI?

ISSUE NO. 3 - IN WHICH SHEET SHOULD THE PROPERTY KNOWN AS PLOT NO. 237 OLOLCHANI EXIST?

ISSUE NO. 4 - IS THE PLAINTIFF'S SUIT MERITED?

ISSUE NO. 5 - IS THE 5TH DEFENFDANT'S COUNTER-CLAIM MERITED?

ISSUE NO. 6 - WHO BEARS THE COSTS OF THE SUIT AND COUNTER-CLAIM?

357.The Court having identified the above-mentioned issues, the same will now be discussed as herein below;

ISSUE NO. 1 - HOW WAS PLOT NO. 237 OLOLCHANI CREATED?

358.The first issue for determination is how PLOT.NO.237 OLOLCHANI was created.

359.From the testimony of the Plaintiff, PLOT NO.237 OLOLCHANI was created during the Adjudication of OLOLCHANI ADJUDICATION SECTION.

360. According to the Plaintiff, he was recorded as the owner of PLOT.NO.237 OLOLCHANI by the Adjudication Committee and issued with the Adjudication Record No. C037237 on a date that was not indicated.
361. The 5th Defendant on the other hand pleads that PLOT.NO.237 OLOLCHANI was a creation from PLOT.NO.110 OLOLCHANI pursuant to the Ruling pronounced by the Land Committee in Objection No. 27 of 1985.
362. The testimonies of DW3, DW4 and DW6 speak to how PLOT.NO.237 OLOLCHANI was created.
363. The testimonies of DW3, DW4 and DW6 give the same information to the effect that PLOT.NO.237 OLOLCHANI was a subdivision of PLOT.NO.110 OLOLCHANI based on the Ruling pronounced by the Land Committee in Objection No. 27 of 1985.
364. This information is also recorded in the Demarcation Book.
365. The Plaintiff in proving that he had been allocated the property known as PLOT.NO.237 OLOLCHANI by the Adjudication Committee had a duty under Section 107 of the Evidence Act, Cap 80 to present the relevant evidence.
366. The evidence which the Plaintiff was expected to place before the Court was the Adjudication Register provided under Section 24 of the Land Adjudication Act Cap 284.
367. The Adjudication Register provided under Section 24 of the Land Adjudication Act, Cap 284 contains a Demarcation Map and the Adjudication Record.
368. In the Adjudication Register, the recording of the Plaintiff's name as the original allottee of PLOT.NO.237 OLOLCHANI

would have been confirmed and the location of his portion of land would also be traced from the Demarcation Map therein.

369. Unfortunately, the Plaintiff failed to provide this crucial evidence which would have demonstrated that indeed PLOT.NO.237 OLOLCHANI was allocated to him by the Adjudication Committee of OLOLCHANI ADJUDICATION SECTION.

370. In the absence of the Adjudication Register with the name of the Plaintiff, there is no evidence that the property known as PLOT.NO.237 OLOLCHANI was a creation of the Adjudication Committee and/or allocated to the Plaintiff by the Adjudication Committee.

371. The only remaining position is that PLOT.NO.237 OLOLCHANI was created from PLOT.NO.110 OLOLCHANI based on the Ruling in the Objection no. 27 of 1985 as recorded in the Demarcation Book produced before the Court.

ISSUE NO. 2 - WHO IS THE LEGITIMATE PERSON ALLOCATED PLOT NO. 237 OLOLCHANI?

372. The second issue for determination is who is the legitimate Allottee of PLOT.NO.237 OLOLCHANI?

373. According to the Plaintiff, he claims that PLOT.NO.237 OLOLCHANI was allocated to him by the Adjudication Committee and he was issued with an Adjudication Record which is No. C 037237.

374. On the other hand, the 5th Defendant also claims to be the lawful allottee of PLOT.NO.237 OLOLCHANI based on the Ruling of the Land Committee in Objection no. 27 of 1985 relating to PLOT.NO.110 OLOLCHANI.

375. According to the testimony of DW3, DW4 and DW6, the 5th Defendant based on the Ruling of the Land Committee in Objection No. 27 of 1985 was the one recorded in the Demarcation Book as the legitimate allottee of PLOT.NO.237 OLOLCHANI.

376. However, DW3, DW4 and DW6 could not all explain how the name of the 5th Defendant had been cancelled in the Demarcation Book and in its place the name of the Plaintiff inserted.

377. The question that arises then is if the Plaintiff had been directly allocated PLOT.NO.237 OLOLCHANI by the Adjudication Committee, why was there a need to cancel the name of the 5th Defendant in the Demarcation Book.

378. And if there was a need to cancel the 5th Defendant's name in the Demarcation Book, was the lawful procedure employed?

379. According to section 25 of the Land Adjudication Act Cap 284, if indeed the Plaintiff had been allocated Land by the Adjudication Committee and issued with the Adjudication Record No. C037237, the next step would have been for the Adjudication Record to be published and any person who has a claim on PLOT.NO.237 OLOLCHANI to have placed an objection.

380. As earlier stated, the Plaintiff did not produce the Adjudication Register provided under Section 24 of the Land Adjudication Act, Cap 284 to confirm that he was allocated the said property directly by the Land Adjudication Committee.

381. As such, the Plaintiff's Adjudication Record No. C.037237 then comes into question on how it was created.

382. According to the testimony of DW3 and DW4, they both state that the Demarcation Book after creation of PLOT.NO.237 OLOLCHANI pursuant to the Ruling of the Land Committee in Objection No. 27 of 1985 was recorded in the name of the 5th Defendant.
383. However, the name of the 5th Respondent as the allottee of was cancelled and the name of the Plaintiff inserted.
384. Looking at the scenario above, it is clear that the Plaintiff's interest on PLOT.NO.237 OLOLCHANI began after the cancellation of the 5th Defendant's name from the Demarcation Book and insertion of his name.
385. Consequently therefore, the Adjudication Record No. C 037237 can safely be concluded to have been issued to the Plaintiff after the name of the 5th Defendant was cancelled in the Demarcation Book.
386. The comments made by the Land Adjudication Officer during cancellation of the 5th Defendant's name from the Demarcation Book were that the Land Committee Proceedings No. 27 of 1985 do not relate to PLOT.NO.237 OLOLCHANI are misleading and misdirected.
387. A comprehensive review of the Ruling by the Land Committee in Objection No. 27 of 1985 confirms that the plot which was under discussion is PLOT.NO.110 OLOLCHANI which the 5th Defendant was seeking a portion thereof to be registered in his name.
388. After the Land Committee heard the 5th Defendant and possibly other objectors, the Ruling was to the effect that the 5th Defendant should be allocated land from PLOT.NO.110 OLOLCHANI as he had sought for.

389.It is on this basis that the Land Adjudication Officer then created PLOT.NO.237 OLOLCHANI within PLOT.NO.110 OLOCHANI and recorded it in the name of the 5th Defendant as the legitimate beneficial owner thereof.

390.In other words, the Land Committee proceedings in Objection No. 27 of 1985 did not relate to PLOT.NO.237 OLOLCHANI but this was the resultant sub-division that came out from PLOT.NO.110 OLOLCHANI which was under objection.

391.Consequently, the Land Adjudication Officer could not cancel the name of the 5th defendant because PLOT.NO.237 OLOLCHANI was the resultant plot created out PLOT.NO.110 OLOLCHANI based on the Objection No. 27 of 1985 and allocated to the 5th Defendant.

392.If these are the true facts, is the Plaintiff's name lawfully and procedurally recorded both in the Demarcation Book and the Adjudication Record?

393.The answer to the above is to the negative.

394.The first reason is that based on the determination in issue No. (i) hereinabove that PLOT.NO.237 OLOLCHANI was created from PLOT.NO.110 OLOLCHANI pursuant to the Land Committee ruling in objection No. 27 of 1985, then it goes without saying that the person who won the objection is the 5th Defendant as was initially recorded in the Demarcation Book.

395.The Land Adjudication Act, Cap 284 provides that it is the information in the Demarcation Book that should be captured in the Adjudication Register provided under section 24 of the Land Adjudication Act.

396.The Land Adjudication Act, Cap 284 does not have any provision for cancellation of the information in the

Demarcation Book at the discretion of the Land Adjudication Officer.

397. Consequently, the expectation of the Land Adjudication Act, Cap 284 is that the information in the Demarcation Book will remain as recorded until the Adjudication Register is published as provided for under Section 24 of the Land Adjudication Act, Cap 294 and thereafter whoever is aggrieved with the information will file an Objection pursuant to Section 26 of the Land Adjudication Act, Cap 284.

398. In essence therefore, after the Ruling by the Land Committee in Objection No. 27 of 1985 being recorded in the Demarcation Book and the 5th Defendant recognized as the legitimate owner of PLOT.NO.237 OLOLCHANI, the Land Adjudication Officer did not have the powers to make any cancellations and/or alterations until the Adjudication Register had been published and proper objections filed against the Adjudication Register in the name of the 5th Defendant.

399. In addition to the above, the Land Adjudication Officer in making the cancellation of the 5th Defendant's name in the Demarcation Book and recording the Plaintiff's name did not give any provision of the law that empowered him to do so or any legal basis and justification for exercising such powers.

400. In conclusion therefore, this Court is of the considered opinion and finding that the cancellation of the 5th Defendant's name in the Demarcation Book and the subsequent registration of the Plaintiff as well as the issuance of the Adjudication Record of PLOT.NO.237 OLOLCHANI in the name of the Plaintiff was fraudulent, illegal, unprocedural and without any legal basis.

401. The legitimate owner of PLOT.NO.237 OLOLCHANI is the 5th Defendant as had initially been recorded in the Demarcation Book in line with the decision of the Land Committee in Objection No. 27 of 1985.

ISSUE NO. 3 - IN WHICH SHEET SHOULD THE PROEPRTY KNOWN AS PLOT NO. 237 OLOLCHANI EXIST?

402. The third issue is the location of PLOT.NO.237 OLOLCHANI.

403. The Plaintiff in this matter pleaded that PLOT.NO.237 OLOLCHANI is located in Sheet No. 9 as indicated in the Register (Green Card) and the Certificate of Title.

404. The 5th Defendant on the other hand states that PLOT.NO.237 OLOLCHANI is in Sheet No. 4 in line with the location of PLOT.NO.110 OLOLCHANI.

405. When the Court directed DW3, DW4 and DW6 to visit the ground and identify the location of PLOT.NO.237 OLOLCHANI, the Plaintiff took DW3, DW4 and DW6 to a portion of land along Kilgoris-Lolgorian Road.

406. The 5th Defendant on the other hand took DW3, DW4 and DW6 to a portion of land opposite Kilgoris Girls High School on Kilgoris - Kisii Highway.

407. The Plaintiff seeks to rely on the Sheet provided in the Title Deed and register of LR.NO.TRANSMARA/OLOLCHANI/237.

408. The first document which places PLOT.NO.237 OLOLCHANI on Sheet No. 9 is the entry made by the Land Adjudication Officer in the Demarcation Book and not the Demarcation

Map that is part of the Adjudication Register provided under Section 24 of the Land Adjudication Act, Cap 284.

409. The Land Adjudication Officer did by a stroke of a Pen cancel the location of PLOT.NO.237 OLOLCHANI in Sheet No. 4 on the Demarcation Book as originally recorded and re-entered the same property in Sheet No. 9 thereafter.

410. Was this entry correct and accurate?

411. Looking at the Land Committee Ruling in Objection No. 27 of 1985, the property known as PLOT.NO.237 OLOLCHANI was created from PLOT.NO.110 OLOLCHANI which is in Sheet No. 4.

412. It means therefore, in the Adjudication Register and in particular the Demarcation Map, PLOT NO. 237 was in Sheet No. 4.

413. The testimonies of DW3, DW4 and DW6, PLOT.NO.110 OLOLCHANI is in Sheet No. 4 and therefore any resultant subdivision should appear in Sheet No. 4 including PLOT.NO.237 OLOLCHANI.

414. In the entry that cancelled PLOT.NO.237 OLOLCHANI from Sheet No. 4 and moved it to Sheet No. 9, there is no reason advanced for such a decision or the relevant provision that empowered the Land Adjudication Officer to do such an act.

415. Having said so, this Court is of the considered view and finding that the decision to remove PLOT.NO.237 OLOLCHANI from Sheet No. 4 and move it to Sheet No. 9 was fraudulent, illegal, unprocedural and a nullity.

416.The person with the powers to create registrable maps and identify where each parcel of land should be located is the Director of Survey.

417.Having said so, it is clear in the mind of this Court that the cancellation of PLOT.NO.237 OLOLCHANI from Sheet No. 4 and moving it to Sheet No. 9 as done by the Land Adjudication Officer cannot stand in the eye of the law and is therefore fraudulent, illegal, unprocedural and a nullity.

418.In a nutshell, this Court makes a further finding that PLOT.NO. 237 OLOLCHANI should be in Sheet No. 4 in line with PLOT.NO.110 OLOLCHANI and/or the other subdivisions emanating from the said property.

ISSUE NO. 4 - IS THE PLAINTIFF'S SUIT MERITED?

419.The fourth issue is whether the Plaintiff is entitled to the reliefs sought in the Plaint.

420.The first prayer that the Plaintiff seeks is an Order for Permanent Injunction restraining the Defendants from interfering with his quiet occupation and use of the suit property.

421.The basis of this prayer is the fact that the Plaintiff is the registered owner of the suit property.

422.The Certificate of Title to the suit property was issued on the basis of the Adjudication Record No. C 037237.

423.However, in issues No. 1, 2 and 3 hereinabove, the Court made findings that the Plaintiff's name was fraudulently and unprocedurally entered into the Demarcation Book that gave rise to the Adjudication Record No. C 037237 in his name.

424.As such, the Plaintiff is not the legitimate and bonafide owner of suit property and cannot therefore be granted a Permanent Injunction yet he does not have legitimate ownership rights over the same property.

425.To this effect, the prayer of a Permanent Injunction against the Defendants or any other person interfering with the occupation and use of the suit property cannot stand.

426.The second prayer was an order of eviction against the Defendants from the suit property owned by the Plaintiff.

427.During the hearing, the Plaintiff said that his structures and trees had been demolished and/or damaged by the Defendants.

428.However, the Plaintiff did not produce any documentary evidence or called any witness who identified the Defendants to have been the ones who demolished any structures or destroyed any trees on the suit property and/or are in occupation of the suit property.

429.Be as it may, this Court has also made a finding that the Plaintiff's ownership of the suit property is illegitimate and fraudulent and therefore the Plaintiff has no ownership rights that can form the basis of issuing any eviction orders against the Defendants if at all the Defendants are on the said suit property.

430.In other words, the Order of eviction against the Defendants also fails.

- 431.The third prayer and fourth prayer is for general damages and mesne profits for the destruction of the Plaintiff's structures on the suit property.
- 432.The Plaintiff called PW2 who was a Valuer and produced a Valuation Report of the structures demolished and the monthly income that it was generating.
- 433.Unfortunately, PW2 did not identify the Defendants as the persons who had demolished the structure on the suit property or link any of them to any activity of destruction on the Plaintiff's suit property.
- 434.In the absence of proper identification of the Defendants as the persons who demolished the structures on the suit property, this Court cannot make any orders of damages or mesne profits against them.
- 435.Clearly therefore, the reliefs sought in the Plaint cannot be granted as the Plaintiff herein is not the legitimate owner suit property and does not have any rights over the suit property that can be protected by the issuance of the Orders sought for in his Plaint.

ISSUE NO. 5 - IS THE 5TH DEFENDANT'S COUNTER-CLAIM MERITED?

- 436.The 5th Defendant has filed a Counter-Claim dated 08.11.2021.
- 437.In the Counter-Claim, the 5th Defendant seeks for a Declaration that he is the rightful owner of PLOT.NO.237 OLOLCHAN located on Sheet No. 4.

438. Based on this Declaration, the 5th Defendant seeks for cancellation of the title issued to the Plaintiff known as TRANSAMARA/ OLOLCHANI/ 237.

439. Similarly, the 5th Defendant is seeking for a rectification of the Sheets where PLOT.NO.237 OLOCHANI is located by cancelling it on Sheet No. 9 and reinstating it on Sheet No. 4 where it was originally drawn.

440. Based on the discussions in Issues No. 1, 2 and 3, the 5th Defendant's Counter-Claim is merited.

ISSUE NO. 6 - WHO BEARS THE COSTS OF THE SUIT AND COUNTER-CLAIM?

441. On the issue of Costs, the Plaintiff unfortunately has not succeeded in prosecuting his Plaint and the 5th Defendant has been successful in the Counter-Claim.

442. As such, the Plaintiff is condemned to pay costs of the Plaint as well as the Counter-Claim.

CONCLUSION

443. In conclusion therefore, this Court hereby makes the following orders in determination of this matter: -

A. THAT THE PLAINT DATED 14.12.2019 IS NOT MERIT AND IS THEREFORE DISMISSED.

B. THE COUNTER-CLAIM DATED 08.11.2021 IS MERITED.

C. THE TITLE DEED KNOWN AS TRANSAMARA/OLOLCHANI/237 IN THE NAME OF THE

PLAINTIFF, IGNATIUS CHEGE MWANGI BE AND IS HEREBY DECLARED FRAUDULENT AND IRREGULAR HENCE CANCELLED FORTHWITH.

D.THE 5TH DEFENDANT, SAMSON MPATIAN RINKA BE AND IS HEREBY DECLARED TO BE THE RIGHTFUL OWNER OF PLOT NO. 237 OLOLCHANI IN LINE WITH THE LAND COMMITTEE RULING IN OBJECTION NO. 27 OF 1985.

E.THE LAND ADJUDICATION OFFICER BE AND IS HEREBY DIRECTED TO CANCEL AND DELETE THE ENTRIES IN THE DEMARCATION BOOK CANCELLING THE OWNERSHIP OF THE 5TH DEFENDANT, SAMSON MPATIAN RINKA AND INSERTING THE NAME OF THE PLAINTIFF, IGNATIUS CHEGE MWANGI AND FURTHER RELOCATING THE SUIT PROPERTY FROM SHEET NO. 4 TO SHEET NO. 9 FORTHWITH.

F.THE PROPERTY KNOWN AS PLOT NO. 237 OLOLCHANI BE AND IS HEREBY DECLARED TO BE IN SHEET NO. 4 AS PROVIDED ORIGINALLY AND NOT SHEET NO. 9 AS CONTAINED IN THE CERTIFICATE OF TITLE AND/OR REGISTER AS PROVIDED BY THE SUBCOUNTY LAND REGISTRAR AND SUBCOUNTY LAND SURVEYOR.

G.THE SUBCOUNTY LAND ADJUDICATION OFFICER TRANSMARA EAST, WEST AND SOUTH BE AND IS HEREBY DIRECTED TO CANCEL AND/OR DELETE THE NAME OF THE PLAINTIFF, IGNATIUS CHEGE MWANGI AS THE LEGITIMATE OWNER OF PLOT NO. 237 OLOLCHANI AS INDICATED IN THE ADJUDICATION RECORD NO. C.037237 CURRENTLY HELD BY THE SUBCOUNTY LAND REGISTRAR AND THE SUBCOUNTY LAND ADJUDICATION OFFICER.

H. THE SUBCOUNTY LAND ADJUDICATION OFFICER BE AND IS HEREBY ORDERED TO ISSUE THE ADJUDICATION RECORD OF PLOT NO. 237 OLOLCHANI TO THE 5TH DEFENDANT, SAMSON MPATIAN RINKA IN LINE WITH THE RULING IN OBJECTION NO. 27 OF 1985 BY THE LAND COMMITTEE.

I. THAT THE SUBCOUNTY LAND SURVEYOR AND THE SUBCOUNTY LAND ADJUDICATION OFFICER WILL VISIT THE GROUND AND RE-ESTABLISH THE ACREAGE OF PLOT NO. 237 OLOLCHANI KEEPING IN MIND ALL OTHER OBJECTIONS THAT WERE RAISED FROM PLOT NO. 110 OLOLCHANI AND FIND THE CORRECT ACREAGE OF PLOT NO. 237 OLOLCHANI WHICH SHOULD REFLECT IN THE ADJUDICATION RECORD TO BE ISSUED TO THE 5TH DEFENDANT, SAMSON MPATIAN RINKA.

J. THE PLAINTIFF IS CONDEMNED TO PAY COSTS OF THE PLAINT AS WELL AS THE COUNTER-CLAIM.

DATED, SIGNED & DELIVERED Virtually at **ELDORET ELC** on this **25TH DAY OF NOVEMBER 2025.**

EMMANUEL.M. WASHE
JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT: BRIAN

COUNSEL FOR PLAINTIFF: MR. MUDEYI

COUNSEL FOR THE DEFENDANT: MS. PION FOR THE 1ST TO 6TH DEFENDANTS, MR. KIPROTICH FOR THE 4TH DEFENDANT IN THE COUNTER-CLAIM, MR.

RANAH FOR 2ND AND 3RD
DEFENDANTS IN THE
COUNTER-CLAIM.