

KAREN LESLEY GACERI2ND INTERESTED PARTY

JOSEPH MWORIA3RD INTERESTED PARTY

AND

ISAAC BUNDIPLAINTIFF/COUNTERCLAIMER

VERSUS

ZABLON MURIUNGI M'RINGERA1ST DEFENDANT TO THE COUNTERCLAIM

THE COUNTY LAND ADJUDICATION AND SETTLEMENT SURVEYOR MERU COUNTY.....2ND DEFENDANT TO THE COUNTERCLAIM

THE COUNTY LAND REGISTRAR.....3RD DEFENDANT TO THE COUNTERCLAIM

THE HON. ATTORNEY GENERAL4TH DEFENDANT TO THE COUNTERCLAIM

JUDGMENT

1. The Plaintiff approached the court *vide* amended Plaint dated 11th February 2022; and wherein same has sought a *plethora* of reliefs. The reliefs sought by the Plaintiff are as hereunder:

- (i) *A declaration that the 1st defendant's registration as the proprietor of the land parcel number Kiirua/Nkando/987 measuring 6.4 hectares is fraudulent and a nullity as the property is part of parcel Number Kiirua/Nkando/605 measuring approximately 8.4 hectares of thereabout and belongs to Zablun Murungi M'Ringeera the plaintiff.*

- (ii) *An order empowering and directing the land registrar Meru Imenti North/South/Central and Buuri to cancel titles for land parcel numbers Kiirua/Nkando/987 and subsequent subdivisions of Kiirua/Nkando/5780, 5781, 5782, 5783 respectively and revert the acreages to the plaintiff's land parcel number Kiirua/Nkando/605 to measure 8.4 ha or thereabout and issue title to the same with exact acreage.*
- (iii) *A declaration that the subdivision of land parcel number Kiirua/Nkando/987 was done by the 1st defendant in complete disregard of the law and fraudulent, the resultant subplots of the said parcel namely land parcels number Kiirua/Nkando/5780, 5781, 5782, 5783 respectively and their registration in the names of the 1st defendant be cancelled and the land registrar, Meru North/South/Meru central & Buuri be ordered to register and issue title deed for land parcel number Kiirua/Nakndo/605 in the names of the plaintiff with acreage of approximately 8.4 ha or thereabout.*
- (iv) *An order of permanent injunction against the 1st defendant restraining himself his family, agents, servants and/or anybody acting under the Defendants instructions from trespassing on, entering upon, cultivating, cutting down trees, committing acts of waste and degradation, barring and or preventing the plaintiff from accessing, occupying, using and/or exercising the plaintiff's proprietary rights over land parcel number Kiirua/Nkando/605.*
- (v) *An eviction order of the 1st defendant by himself, his servants and/or agents from the land parcel known as parcel No. Kiirua/Nkando/605 measuring 8.4 hectares or thereabout for being trespassers together with damages for trespass.*

- (vi) *Mesne profits for blockage of use of water pans, equipped borehole, water supply system and destruction of crops in the plaintiff's parcel of land.*
 - (vii) *Costs of the suit and interests.*
 - (viii) *Any other relief the court deems fit to grant.*
2. The 1st to 7th Defendant [*hereinafter referred to as the named Defendants*] duly entered an appearance and thereafter filed a statement of defence dated 13th January 2023; and wherein the same denied the claims by the Plaintiff. Moreover, the named defendants contended that the documents underpinning the registration of the suit property were undertaken in accordance with the provisions of the law. To this end, the named defendants contended that the plaintiff's suit is premature, misconceived and does not disclose any reasonable cause of action.
3. The 8th defendant entered appearance and thereafter filed a statement of defence and counterclaim dated 19th March 2024. The 8th defendant has denied the claims by the plaintiffs. Moreover, the 8th defendant contended that same is the lawful owner of L.R No. Kiirua/Nkando/5783, which same purchased from Yusuf Maitima M'Alaine. Additionally, the 8th defendant contended that same is an innocent purchaser for value without notice of any defect in the title of his predecessor.
4. Furthermore, the 8th defendant has sought the following reliefs at the foot of the counterclaim:
- (i) *A declaration that the certificate of title for all that parcel known as Kiirua/Nkando/5783 was legally, procedurally and lawfully registered and issued in favour of the plaintiff in the counterclaim as a bonafide proprietor.*

- (ii) *An order that the subdivision of L.R No. Kiirua/Nkando/987 was legally, procedurally and lawfully done and the results on subdivisions to wit Kiirua/Nkando/5783 were legal and lawful in favour of the plaintiff in the counterclaim.*
- (iii) *An order for costs for the counterclaim to be borne by the 1st defendant in the counterclaim.*

5. The 9th defendant [erroneously] referenced as the 10th defendant duly entered appearance and filed statement of defence dated 10th July 2024 and wherein same denied the claims on behalf of the plaintiff. Furthermore, the 9th defendant contended that the property known as Kiirua/Nkando/987, lawfully belonged to and was registered in the name of Jusuf Maitima M'Alaine [now deceased]. Besides, the 9th defendant also contended that upon the death of Jusuf Maitima M'Alaine, the said property was transferred to her and in this regard, the 9th defendant posited that same is the lawful owner of plot Kiirua/ Nkando/987.
6. The interested parties sought and obtained leave of the court to be joined as interested parties. The application dated **19th March 2024** was thereafter allowed and the interested parties were joined and constituted as such. Subsequently, the interested parties filed a statement of defence and [sic] a cross claim dated **12th July 2024**.
7. The cross claim by the Interested parties has highlighted the following reliefs;
 - a. *An order of declaration do issue that each of the interested parties, namely; Asenath Kaimuri Nyamu, Karen Lesley Gaceri, and Joseph Mworira are entitled to five acres as exercised from KIIRUA/NKANDO/987.*

- b. *An order of declaration do issue that Asenath Kaimuri Nyamu is the rightful owner of LR. Number KIIRUA/NKANDO/5782; while Karen Lesley Gaceri is the rightful owner of LR. Number KIIRUA/NKANDO/5780 and Joseph Mworira is the rightful owners of LR. Number of KIIRUA/NKANDO/5781.*
- c. *An order of specific performance be and is hereby issued to compel the 1st Defendant to transfer LR. No. KIIRUA/NKANDO/5782 to Asenath Kaimuri Nyamu, LR. Number KIIRUA/NKANDO/5780 to Karen Lesley Gaceri and LR. No. KIIRUA/NKANDO/5781 to Joseph Mworira and in default the deputy registrar of this court be empowered to execute all transfer instruments on his behalf.*
- d. *Costs of the cross claim.*
8. The subject matter came up for direction, whereupon the parties confirmed that same had duly filed and exchanged the list and bundle of documents; the list of witnesses, and the witness statements. Furthermore, the parties intimated to the court that the matter was ready for hearing. To this end, the court issued directions pertaining to and concerning the hearing of the matter.
9. The plaintiff's case is premised on the evidence of six [6] witnesses, *namely; **Valentine Kimathi Kiara, Benjamin Mugambi Mutunga, Stephen Muthuri, John Murithi Ikiara, Reuben Mwenda Murugu and Zablou Murungi M'Ringeera.*** Same testified as PW 1 to PW 6, respectively.
10. It was the testimony of PW 1 [Valentine Kimathi Kiara] that same is the district land adjudication officer. To this end, the witness confirmed that same is therefore conversant with the facts as pertains to the subject matter. Moreover, the witness averred that same has attended court on

the basis of a witness summons that was issued and directed to the Department of Land Adjudication.

11. It was the further testimony of the witness that the witness summons had alluded to/ referenced various documents which the department of Land Adjudication was called upon to produce before the court. In addition, the witness referenced the various documents at the foot of the list dated 19th June 2020 and thereafter, sought to produce same as exhibits before the court. There being no objection the documents at the foot of the list dated 19th June 2020 were tendered and produced before the court as exhibits P1 – P10, respectively.
12. Furthermore, the witness testified that same is conversant with the suit property. The witness averred that the suit property belongs to and is registered in the name of Zablon Murungi M’Ringera. Nevertheless, the Witness conceded that same has not brought a copy of the register of existing rights [RER] before the court.
13. Additionally, the witness testified that the suit property was subject to an adjudication and demarcation process. Moreover, the witness averred that the suit property was registered in the name of Jeniffer Kairuthi, before same was transferred to the Plaintiff.
14. On cross-examination by learned counsel for the 1st to the 7th defendant [The Hon. Attorney General] the witness testified that the land in question was registered in the name of the plaintiff. The witness averred that the plaintiff was, however not the 1st registered owner of the property. Moreover, the witness confirmed that the details of the 1st

registered owner would be found in the register of existing rights. However, the witness conceded that the register of the existing rights has not been produced before the court.

15. While still under cross-examination, the witness testified that the register of existing rights will ordinarily contain the details of the plot in question, the name of the owner and the outcome of the survey. Furthermore, the witness testified that if there is any further transactions/dealings over the land, such dealings will be indicated in part 14 of the register of existing rights.
16. It was the further testimony of the witness that the register of existing rights is prepared and signed by the adjudication office. Besides, the witness testified that a final register cannot be generated unless there exists the register of existing rights. In addition, the witness averred that same is not aware whether the name of the plaintiff was captured in the register of existing right.
17. The witness further testified that part of the register of existing rights and in particular, the ones relating to the suit property, are missing. In addition, the witness testified that the register of existing right[s] would also show the rights of the members of the lands committee.
18. On further cross-examination, the witness testified that the adjudication officer is not authorized to dispossess a person who is residing on the land. Nevertheless, the witness averred that such a scenario can only arise where there is an objection. In this case, the witness averred that same is not aware of whether there was any objection proceeding lodged

by Francis Kinoti to facilitate the transfer of the suit property to the name of Jeniffer Kairuthi M'Ikiao.

19. It was the further testimony of the witness that whenever land which is still under adjudication is sold, the purchaser would ordinarily lodge an objection with the land adjudication department and thereafter the adjudication officer would hear the objection. It was contended that the decision of the adjudication officer would relate to a specific land.
20. It was the further testimony of the witness that same is not aware of whether there was any objection that was lodged to facilitate the transfer of the land, namely, plot number 605; to the plaintiff. Moreover, the witness averred that the land adjudication officer would ordinarily work alongside the committee. The witness added that the work of the committee is to guide the adjudication officer on matters pertaining to and concerning customary laws and rights.
21. Other than the foregoing, the witness testified that same is not aware whether the dispute before the court was ever referred to Njuri Ncheke. However, the witness posited that the land adjudication and settlement officers do not ordinarily accompany the disputants to hearings before the Njuri Ncheke. In addition, it was contended that the land adjudication department does not implement the decisions of Njuri Ncheke.
22. While still under cross-examination, the witness testified that same has tendered and produced before the Court a copy of the adjudication register in respect of the suit property. Moreover, the witness averred that

the segment of the register touching on the name of the plaintiff has a cancellation. Furthermore, it has been averred that the name which has been cancelled is that of Jeniffer Kairuthi Francis. Thereafter, the name of Zablon Murungi M'Ringeera has been indicated.

23. It was the further testimony of the witness that the cancellation in question is indicated to have been in respect of a clerical error. Nevertheless, the witness admitted that the nature of the clerical error has neither been explained or provided for in the document.
24. The witness further testified that the adjudication register before the court has part 14 thereof. However, the witness clarified that part 14 of the adjudication register is blank. For good measure, the witness averred that part 14 should ordinarily show/contain the outcome of the objection proceedings, if any; and the actions taken by the land adjudication officer.
25. Upon being referred to the objection number 688, the witness testified that the said objection was lodged by Rebecca Mwonjiru M'Ikiao. Moreover, the witness has averred that the objection number contains some alteration. The witness further averred that the objection was, however filed by Rebecca Mwonjiru M'Ikiao. Furthermore, the witness testified that the objection was heard and determined. For good measure, it was posited that the objection was dismissed.
26. While still under cross-examination, the witness averred that even though same has referenced the objection proceedings, same has, however, not

tendered a copy of the revenue receipt [if any], that was utilized for purposes of filing the objection.

27. On cross-examination by learned counsel for the 8th defendant, the witness admitted that same has not tendered any copy of the revenue receipt that was utilized by Rebecca Mwonjiru towards filing the objection. Besides, the witness also averred that same has not seen any records showing the objection in respect of Zablon Murungi M'Ringeera. Nevertheless, the witness confirmed that the suit property was lawfully transferred to the Plaintiff.
28. Regarding the record of adjudication, the witness testified that same shows the details of the plot number and the owner of the plot. Moreover, the witness testified that the register/record of adjudication which has been produced before the court was duly signed by the parties.
29. As pertains to the objection proceedings, the witness averred that same were heard on 11th May 1993. Moreover, the witness testified that the proceedings of the objection ought to be heard and determined before the issuance of the certificate of finality. However, the witness testified that in respect of the instant matter, it appears that the objection proceedings were lodged after the issuance of the certificate of finality.
30. Additionally, the witness testified that the suit property was transferred to and registered in the name of Zablon Murungi M'Ringeera on the basis of an objection. Besides, it was the testimony of the witness that upon the

issuance of the certificate of finality, the adjudication records are thereafter forwarded to the director of land adjudication and settlement. Furthermore, the witness averred that the director of land adjudication would be the one to forward the records to chief land registrar for further action.

31. On cross examination by learned counsel for the 1st – 3rd interested party, the witness testified that the register of existing rights would ordinarily take into account the rights of persons in occupation of the land. To this end, it was posited that the register of rights would ordinarily accord with the occupancy on the ground. Moreover, the witness averred that the computation would be done and thereafter recorded in the register of existing rights. Nevertheless, the witness conceded that same has not brought or produced the register of existing rights.

32. While still under cross-examination, the witness testified that same has tendered and produced before the court a copy of the letter of confirmation in respect of the plot Kiirua Nkando/605. Moreover, the witness averred that the letter of confirmation shows that plot No. 605 belongs to Zablon Murungi M'Ringeera. In addition, the witness acknowledged that the letter of confirmation does not show the acreage of the property.

33. The witness further testified that the adjudication record is ordinarily a summary of all the information that was procured from the adjudication process. In this regard, the witness averred that the adjudication records cannot, therefore contradict the information that was obtained/recorded during the adjudication process. It was the further testimony of the

witness that the acreage of the plot would ordinarily be indicated on the adjudication register.

34. Upon being referred to the adjudication proceedings, the witness stated that the adjudication proceedings were not conducted by himself [witness]. Nevertheless, the witness testified that he only procured the records from the office. In any event, the witness testified that the objection proceedings tendered before the court show that the objector [Rebecca Mwonjiru M'Ikiao] thumb-printed the same. For good measure, the witness reiterated that the document contains the thumbprint of the objector.
35. While still under cross-examination, the witness testified that whenever a dispute arises after the adjudication record has been completed, any person aggrieved is obligated to appeal to the minister. Moreover, the witness averred that where there is an appeal to the minister, the title of land in question would be restricted. In this regard, the witness averred that a prohibition will ordinarily issue.
36. On cross-examination by learned counsel for the 9th defendant, the witness testified that Kiirua Nkando was declared as an adjudication section on 23rd August 1982. Moreover, the witness averred that the certificate of finality was issued on 30th May 1992. In addition, the witness testified that once a certificate of finality has been issued, the land adjudication department cannot entertain any further objections or at all.
37. Regarding the objection proceedings, the witness testified that same were heard and disposed of on 20th May 1993. However, the witness clarified

that it appears that the objection proceedings were heard after the issuance of the certificate of finality.

38. Upon being shown Exhibit P1, the witness confirmed that the exhibit is a copy of the letter of confirmation. Furthermore, the witness testified that the letter of confirmation does not reference the acreage of plot No. 605. Besides, the witness testified that the details of acreage would ordinarily come from the survey office. Moreover, the witness averred that the survey office would also be the one to issue the numbers before the completion of the adjudication process. In addition, the witness testified that the surveyors will also generate/prepare the registry index maps and thereafter forward same to the director of land adjudication and settlement.
39. It was the further testimony of the witness that the surveyors would rely on the provisional acreages obtained from the adjudication department. Furthermore, the witness testified that the surveyors would also generate the area list containing the acreages of the various plots. Moreover, the witness averred that by the time the letter of confirmation was issued the area in respect of plot No. 605 was already ascertained. However, the witness conceded that same does not have the area list before the court.
40. On further cross-examination, the witness testified that the documents which same has tendered and produced before the court are certified copies of the original. In any event, the witness averred that before the documents can be certified same are compared against the originals. Be

that as it may, the witness conceded that same did not carry the originals to court.

41. The 2nd witness who testified on behalf of the plaintiff was Benjamin Mugambi Mutunga. Same testified as PW 2.

42. It was the testimony of the witness that same is the deputy secretary general of Njuri Ncheke council of elders of the Ameru community. Furthermore, the witness averred that the headquarters of Njuri Ncheke is situated at Nchiru. In addition, the witness averred that same is conversant with one Zablon Murungi M'Lingeera. Furthermore, the witness also testified that same is also familiar with Yusuf Maitima M'Alaine.

43. The witness further testified that the dispute pertaining to the suit property was lodged with the Njuri Ncheke by the plaintiff. To this end, the witness testified that the Council of Elders [Njuri Ncheke] thereafter summoned the parties. It was the further testimony of the witness that the council issued summonses to the parties and in this regard, the witness referenced the summons dated 17th September 2012. Besides, the witness testified that the Njuri Ncheke also heard the parties and thereafter prepared the report. To this end, the witness sought to tender and produce summons and the report. There being no objection the summons and the report were marked as plaintiffs' exhibits 11 (a) & (b), respectively.

44. On cross-examination by learned counsel for the 1st to 7th defendants [the hon. Attorney general], the witness testified that the dispute was lodged by the plaintiff. Moreover, the witness averred that the dispute was thereafter heard by Njuri Ncheke before a report was prepared. Additionally, the witness testified that the report confirms that the suit property was allocated to the plaintiff.
45. It was the further testimony of the witness that the meeting of the Njuri Ncheke elders was held on the land. In particular, the witness stated that the meeting was not held at the home of Phares Rutere.
46. While still under cross-examination, the witness testified that there was a dispute over who were the first occupiers of the land. Nevertheless, the witness contended that after the hearing of the complaint, the council of Njuri Ncheke confirmed that the land belongs to the plaintiff. In addition, the witness averred that Yusuf Maitima M'Alaine and other defendants were present during the proceedings.
47. On cross-examination by learned counsel for the 8th defendant, the witness averred that same cannot confirm whether Rebecca Mwonjiru was the first person to occupy the land. Nevertheless, the witness testified that same was aware that there was a criminal case concerning arson where the houses of Rebecca Mwonjiru were said to have been burnt. Furthermore, the witness testified that the accused person in respect of the criminal matter was Kinoti Rarama. Moreover, the witness confirmed that the case was heard and determined.

48. It was the further testimony that one Francis Kinoti was a member of the land committee. Furthermore, the witness averred that the name of Francis Kinoti was captured as one of the panel members.
49. On cross-examination by learned counsel for the interested parties the witness averred that the complaint in respect of the suit property was heard on the suit land. In particular, the witness averred that the complaint was not heard at the home of Phares Rutere. Moreover, the witness averred that the plaintiff gave evidence and confirmed the manner in which same bought the land. In addition, the witness also averred that the plaintiff intimated to the council about the acreage of his land. To this end, the witness testified that the land in question measured 18.5 acres.
50. On cross-examination by learned counsel for the 9th defendant the witness reiterated that the dispute was heard on the land. Moreover, the witness posited that the land was situated about 300 metres from BBC Isiolo. It was the further testimony of the witness that the plaintiff gave an account of how he acquired the land. In this regard, the witness posited that the plaintiff intimated that he bought the land from Jeniffer Kairuthi M'Ikiao.
51. While still under cross-examination, the witness testified that when they heard the dispute they confirmed that there were some homesteads on the land. The witness averred that the homesteads were within the disputed land. Moreover, the witness testified that two homesteads belonged to Yusuf Maitima M'Alaine and Peter Murianki.
52. The 3rd witness who testified on behalf of the plaintiff was Stephen Muthuri M'Iburi. Same testified as PW 3.

53. It was the testimony of the witness that same is a farmer and a neighbour to the plaintiff. In particular, the witness averred that same is the owner of parcel No. Kiirua Nkando/608.
54. It was the further testimony of the witness that same has since recorded a witness statement dated 19th June 2020 and which the witness statement, the witness sought to adopt as his evidence in chief. To this end, the witness statement was adopted as the evidence in chief of the witness.
55. On cross-examination by learned counsel for the 1st – 7th defendants, the witness testified that his parcel of land borders the suit property. In addition, the witness averred that the suit property belongs to the plaintiff herein.
56. On cross-examination by learned counsel for the 8th defendant, the witness averred that same is a senior sub-area. Moreover, the witness testified that same was appointed as a sub-area by the area chief. In addition, the witness averred that same is familiar with Yusuf Maitima M'Alaine. Moreover, the witness posited that same is conversant with the suit property.
57. On cross-examination, by learned counsel for the 1st – 3rd interested party the witness averred that same is familiar with the parties in respect of the instant matter. Nevertheless, the witness testified that same does not know Rebecca Mwonjiru.

58. On cross-examination by counsel for 9th defendant, the witness testified that same went to Kiirua Nkando in 1988. Moreover, the witness averred that same was allocated a portion of land measuring 11 acres. In addition, the witness testified that same is familiar with Yusuf Maitima. The witness added that the area where Yusuf Maitima used to cut down trees belongs to the plaintiff.
59. The 4th witness who testified on behalf of the plaintiff was John Murithi Ikiara. Same testified as PW 4.
60. It was the testimony of the witness that same is a land surveyor. Moreover, the witness averred that same was retained and instructed by the plaintiff to visit the suit property and to prepare a report as pertains to the ground location; acreage; and the occupation thereof. In this regard, the witness averred that same indeed complied with the instructions and thereafter prepared a survey report dated 27th October 2021 and which survey report the witness sought to tender and produce before the court. There being no objection the survey report dated 17th October 2021; same was produced as exhibit P21.
61. On cross-examination by learned counsel for the 1st – 7th defendants, the witness averred that same indeed visited the locus in quo. However, the witness testified that he did not inform/notify the neighbours of his intended visitation and the purpose of his visitation. Moreover, the witness averred that when he went to the ground, he undertook the survey exercise and thereafter discerned the boundaries of the suit property.

62. On cross-examination by learned counsel for the 8th defendant the witness testified that the purpose of his visitation to the suit property was to establish the boundary of the suit property; and the acreage thereof. Moreover, the witness averred that during the exercise, same found that there are people who are in occupation of the suit property.
63. While still under cross-examination, the witness averred that same is privy to plot No. 987. Nevertheless, the witness testified that same is not familiar with the owner of the said plot.
64. On cross-examination by learned counsel for the 1st to the 3rd interested parties, the witness averred that same was retained/engaged by the advocate for the plaintiff. Moreover, the witness averred that before proceeding to the locus in quo, same procured the registry index map from the director of survey. Thereafter, the witness averred that same went to the ground and determined the boundaries of the suit properties.
65. On cross-examination by learned counsel for the 9th defendant, the witness testified that same is an assistant surveyor. Moreover, the witness averred that same is not a registered surveyor. It was the further testimony of the witness that upon carrying out the survey exercise, same established that the suit property measures approximately 21 acres.
66. It was the further testimony of the witness that in the course of the survey exercise, same established that there are three homesteads which are located within plot No. 605. Moreover, the witness averred that plot No. 987 does not exist on the ground.

67. The 5th witness who testified on behalf of the plaintiff was Reuben Mwenda Murugu. Same testified as PW 5.
68. The witness averred that same is a licensed surveyor and also a full member of the Institution of Surveyors of Kenya [ISK]. Moreover, the witness averred that same is before the court on the basis of a witness summons, with a view to producing assorted documents. The witness highlighted various documents, including a letter dated 6th January 2025; a letter dated 10th January 2025; mutation form No. 04451 in respect of Kiirua Nkando/987; an application for land control board consent for Kiirua Nkando/987; a letter of consent dated 18th July 2019 in respect of Kiirua Nkando/987 and mutation form No. 5KC6K9TATY for L.R No. Nkuene/Kathera/3106, respectively. Thereafter the witness tendered and produced the documents as exhibits P27 – 32, respectively.
69. The 6th witness who testified on behalf of the plaintiff was Zablon Murungi M'Ringeera. Same testified as PW6.
70. It was the testimony of the witness, PW 6 that same is the plaintiff in respect of the matter. Furthermore, the witness averred that same is an engineer by profession. In addition, the witness averred that by virtue of being the plaintiff same is conversant with the facts of the matter.
71. Moreover, the witness referenced the witness statement dated 19th June 2020; and which witness statement the witness sought to adopt and rely

on. To this end, the witness statement was adopted and constituted as the evidence in chief of the witness.

72. Additionally, the witness alluded to the lists and bundle of documents dated 19th June 2020; and thereafter sought to adopt and produce the documents as exhibits before the court. The documents were thereafter produced and admitted as exhibits P1 – P35, respectively.

73. On cross-examination by learned counsel for the 1st – 7th defendants, the witness testified that same purchased the suit property from Jeniffer Kairuthi M’Ikiao. Furthermore, the witness testified that there were objection proceedings which were lodged/taken against the suit property. The witness alluded to objection No. 688 and confirmed that same were lodged by Rebecca Mwonjiru. In addition, the witness testified that the objection was heard and dismissed *vide* decision delivered on 20th May 1993.

74. While still under cross-examination, the witness averred that before he purchased the suit property, same interrogated the adjudication records and confirmed that the suit property was registered in the name of Jeniffer Kairuthi M’Ikiao. Moreover, the witness averred that same has since tendered and produced a copy of the sale agreement which was entered into and executed by the vendor and himself. In addition, the witness posited that the same followed the adjudication process fully during the purchase/acquisition of the suit property.

75. While still under cross-examination, the witness testified that upon acquisition of the suit property same entered upon the land and dug a borehole. Nevertheless, it was the testimony of the witness that there are two people who have trespassed onto the land.
76. It is the further testimony of the witness that same lodged a complaint with Njuri Ncheke as pertains to the suit property. Furthermore, the witness testified that the complaint was thereafter heard by the council of Njuri Ncheke and a report was prepared. Regarding the place where the proceedings of Njuri Ncheke were carried out, the witness averred that same were carried out/undertaken on the suit property.
77. On cross-examination by learned counsel for the 8th defendant, the witness averred that the adjudication record in respect of the suit plot shows some cancellation on the face thereof. The witness averred that the cancellation does not have a date affixed against same. Moreover, the witness testified that the cancellation relates to the name of Jennifer Kairuthi M'Ikiao.
78. While still under cross-examination, the witness testified that the cancellation under reference was the one which led to the transfer and registration of the suit property to him. In addition, the witness averred that the transfer of the suit property into his name was informed by an objection. However, the witness conceded that same has not produced the objection proceedings underpinning the transfer of the suit property.

79. Additionally, it was the testimony of the witness that the land which he purchased measured approximately 18.5 acres. Moreover, the witness testified that the acreage of the land was alluded to/stated on the fact of the sale agreement.
80. Upon being referred to the adjudication record for Kiirua Nkando/605, the witness testified that the acreage shown on the record is 1.09 ha and not 18.5 acres.
81. On cross-examination by learned counsel for the 1st – 3rd interested parties, the witness testified that same duly entered into a sale/purchase agreement with Jeniffer Kairuthi M’Ikiao. Furthermore, the witness testified that the sale agreement was reduced into writing and signed by both parties. In addition, the witness also testified that the sale agreement was lodged with the land committee.
82. While still under cross-examination, the witness testified that even though the sale agreement was lodged with the land Adjudication, the committee members did not sign the sale agreement.
83. It was the further testimony of the witness that the surveyor's report before the court shows that the land is approximately 20 acres. Moreover, the witness averred that there are three homesteads located within the suit property. In any event, the witness posited that the said persons trespassed onto the suit property on or about 2009.
84. Upon being shown the adjudication record for plot No. 605, the witness testified that the acreage shown thereon is 1.09 ha. Moreover, the witness

conceded that same has neither tendered nor produced any adjudication record which shows that the suit property is 20 acres. Additionally, the witness admitted that the letter of confirmation in respect of the suit property does not reference any acreage.

85. Regarding plot no. 987, the witness testified that same only discovered the existence thereon in 2018. Moreover, the witness averred that plot No. 987 was created/sub subdivided from plot 605. Nevertheless, the witness clarified that same was not responsible for the said subdivision. Moreover, the witness averred that the subdivision leading to the creation of plot 987 has only been done in the registry index map and not on the ground. In this regard, the witness referenced a letter from the director of land adjudication and settlement dated 10th December 2018.
86. It was the further evidence of the witness that there was no objection that was filed pertaining to the subdivision of the suit plot. On the contrary, the witness testified that the only objection that was filed against the suit property was objection No. 688, which was heard and dismissed *vide* decision made on 20th May 1993.
87. It was the further testimony of the witness that same is aware that the certificate of finality as pertains to the adjudication process was issued in 2012. Moreover, the witness averred that the issuance of a certificate of finality denotes that the adjudication records have been authenticated and confirmed to be correct.

88. On cross-examination by learned counsel for the 9th defendant, the witness testified that same has tendered and produced a copy of the sale agreement that was entered into between himself and the vendor. The witness referenced the sale agreement dated 5th September 1987. In addition, the witness averred that the sale agreement was thereafter lodged with the adjudication office for purposes of transfer of the land. Moreover, the witness also testified that the transfer was ultimately perfected and the land was registered in his name.
89. It was the further testimony of the witness that the transfer of the land to him was undertaken by cancellation of the name of Jeniffer Kairuthi M'Ikiao and the insertion of his name. In this regard, the witness reiterated that the suit property lawfully belongs to him.
90. Moreover, the witness testified that the land which was being sold to him measured 18.5 acres. However, the witness conceded that same does not have any document to show that the suit property measured 18.5 acres. Regarding the trespass onto the suit property, the witness averred that there are two people who have since trespassed onto the suit property.
91. Regarding the subdivision of plot No. 605, the witness testified that the said plot has since been illegally subdivided, culminating into the creation of plot No. 987. Nevertheless, the witness clarified that the subdivision leading to plot No. 987 has only been done in the maps and not on the ground. In this respect, the witness testified that plot No. 987 does not exist on the ground. Moreover, the witness reiterated the contents of the letter dated 10th December 2018 by the director of land adjudication and settlement.

92. With the foregoing testimony, the plaintiff's case was closed.
93. The case for the 1st to the 7th defendants is anchored on the evidence of six witnesses, *namely*; Henry Kiogora, Peter Murianki Kajomo, Fredrick Mugambi, Joseph Mworira, Ibrahim Muthamia M'Ikiugu and Joseph Kiriga Mutungi. Same testified as DW 1 to DW 6 respectively.
94. It was the testimony of DW 1 [Henry Kiogora] that same was a member of Ithima self-help group. Moreover, the witness also averred that same is conversant with the facts of this matter. Moreover, the witness referenced the statement dated 7th March 2024 and thereafter sought to adopt the witness statement as evidence in chief. Instructively, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
95. Additionally, the witness referenced the list and bundle of documents dated 7th March 2024 and thereafter sought to tender and produce documents number[s] 1 and 2 thereof. There being no objection to the production of the said documents, same were tendered and produced as exhibits D1 – D2 on behalf of the 1st – 7th defendants.
96. On cross-examination by learned counsel for the 8th defendant, the witness testified that same was familiar/conversant with Rebecca Mwonjiru. Furthermore, the witness averred that the said Rebecca Mwonjiru occupied plot NO. 605 in the year 1988. In addition, the

witness averred that the children of Rebecca Mwonjiru are still in occupation of the suit property.

97. Regarding the plaintiff herein, the witness testified that same is not familiar with the plaintiff. In addition, the witness averred that he does not know when the plaintiff entered onto the land.
98. On cross-examination by learned counsel for the 1st – 3rd interested party, the witness averred that same was not aware of the proceedings before the Njuri Ncheke. To this end, the witness averred that he did not participate in the said proceedings. Furthermore, the witness testified that same is conversant with Ithima Water project. The witness contended that he was a member. Moreover, the witness averred that Rebecca Mwonjiru granted permission to the self-help group to construct a water tank/reservoir on the suit property.
99. On cross-examination by learned counsel for the 1st to 3rd interested party, the witness testified that same entered onto his land at Kiirua Nkando in 1988. Moreover, the witness testified that Rebecca Mwonjiru and her children were also in occupation of her land.
100. On cross-examination by learned counsel for the plaintiff, the witness testified that same was a member of Ithima self-help group. Furthermore, the witness averred that the self-help group/project was started in 1988. In addition, the witness averred that he was the secretary of the self-help group.

101. While still under cross-examination, the witness testified that the self-help group/project constructed a water tank on the suit property. Moreover, the witness averred that the water tank was constructed with the permission/consent of Rebecca Mwonjiru.
102. It was the further testimony of the witness that Rebecca Mwonjiru was occupying plot NO. 605. Moreover, the witness added that the grandchildren of Rebecca Mwonjiru are still in occupation of the suit property.
103. The 2nd witness who testified on behalf of the 1st – 7th defendants was Peter Murianki Kajomo. Same testified as DW 2.
104. It was the testimony of the witness that same is a grandson of Rebecca Mwonjiru. Furthermore, the witness averred that same was born on the suit property.
105. Other than the foregoing, the witness alluded to the witness statement dated 7th March 2024 and which witness statement the witness sought to adopt and rely on. To this end, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
106. On cross-examination by learned counsel for the 8th defendant, the witness testified that same is a son of Yusuf Maitima M'Alaine. Furthermore, the witness averred that Yusuf was the owner of plot no. 987.

107. On cross-examination by learned counsel for 1st – 3rd interested parties, the witness testified that he first saw the plaintiff in the year 2009. Furthermore, the witness averred that when he saw the plaintiff, the plaintiff indicated that he was reconstructing the house that had been burnt. Furthermore, the witness testified that the plaintiff also threatened to evict him and his brothers from the suit properties.
108. On cross-examination by learned counsel for the 9th defendant, the witness testified that Yusuf Maitima M'Alaine got the land No. 987 from his mother namely; Rebecca Mwonjiru. Moreover, the witness averred that it is Rebecca who partitioned her land and thereafter gave a portion to Yusuf. Moreover, the witness testified that Yusuf was residing on the land.
109. On cross-examination by learned counsel for the plaintiff, the witness testified that Yusuf was married to Jeonicia Kathure, the 9th defendant herein. Moreover, the witness testified that he is the first son of Yusuf. However, on further cross-examination, the witness testified that Yusuf Maitima M'Alaine was a brother of his father. In this regard, the witness clarified that Yusuf was his uncle.
110. While still under cross-examination, the witness testified that Rebecca Mwonjiru was the owner of plot No. 605. To this end, the witness reiterated that the land lawfully belonged to his grandmother.
111. Additionally, the witness testified that plot No. 987 belonged to Yusuf. Moreover, the witness clarified that same resides on plot No. 987.

Nevertheless, while under further cross-examination, the witness changed tune and averred that same resides on plot NO. 605.

112. Regarding the report by the land adjudication, the witness averred that the report confirms that there are three homes on the suit property. The witness admitted that the plaintiff herein has a house on the suit property. Moreover, the witness also admitted that the plaintiff sunk a borehole on the suit property.
113. As concerns the objection proceedings, which were filed by Rebecca Mwonjiru, the witness testified that the objection proceedings were challenging the demarcation of the land in the name of Jeniffer Kairuthi & Francis Kinoti. Nevertheless, the witness averred that same does not know whether the contents of the statement of Rebecca are correct. Moreover, the witness posited that same is not conversant with the content[s] of the proceedings that were undertaken before the land adjudication officer.
114. Upon being referred to the registry index map for plot No. 605, the witness averred that the map in question relates to the suit property. Furthermore, the witness testified that the suit property is located at Kiirua – Nkando.
115. The 3rd witness who testified on behalf of the 1st – 7th defendant was Fredrick Mugambi. Same testified as DW 3.
116. It was the testimony of the witness that same is familiar with the dispute before the court. Moreover, the witness averred that same has since

recorded a witness statement dated 7th March 2024 and which witness statement same sought to adopt and rely on as his evidence in chief. The witness statement was thereafter adopted as the evidence in chief of the witness.

117. On cross-examination by learned counsel for the 8th defendant, the witness testified that same owns plot No. 523 Kiirua – Nkando. Moreover, the witness averred that his plot is neighbouring that of Rebecca Mwonjiru. In addition, the witness averred that same has been on the land for more than 40 years.
118. On cross-examination, by learned counsel for the 1st – 3rd interested parties, the witness testified that Rebecca was allocated plot No. 605. Furthermore, the witness testified that Rebecca resided on the suit plot. In addition, the witness confirmed that there are three houses on the suit property.
119. While still under cross-examination, the witness testified that same does not know whether Zablon Murungi M’Ringera bought the suit plot from Jeniffer Kairuthi M’Ikiao. In any event, the witness averred that same does not know the plaintiff.
120. On cross-examination, by learned counsel for the 9th defendant, the witness testified that same has stayed on his land for more than 40 years. Furthermore, the witness averred that his neighbours include Rebecca Mwonjiru.

121. On cross-examination by learned counsel for the plaintiff, the witness testified that same was allocated plot No. 523 by the minister for land, *namely*; Jackson Angaine. The witness reiterated that same is the lawful owner of plot 523. Nevertheless, the witness conceded that same has not brought before the court the certificate of title in respect of his land.
122. While under further cross-examination, the witness testified that Rebecca Mwonjiru was buried at Mikinduri. Nevertheless, the witness stated that Rebecca who was duly allocated the suit property.
123. Regarding objection number 688, the witness testified that the said objection was filed by Rebecca Mwonjiru. Nevertheless, the witness averred that same was not aware of the outcome of the objection proceedings.
124. The next witness who testified on behalf of the 1st – 7th defendants was Joseph Mworira. Same testified as DW 4.
125. It was the testimony of the witness that same is a grandson of Rebecca Mwonjiru. Furthermore, the witness averred that same has since recorded a witness statement dated 7th March 2024 and which witness statement same sought to adopt as his evidence in chief. The witness statement under reference was thereafter adopted and constituted as the evidence in chief of the witness.
126. Additionally, the witness referenced four sets of documents, *namely*; documents number 4, 5, 6, and 7 at the foot of the lists of documents

dated 7th March 2024 and thereafter sought to produce the documents as exhibits. There being no objection to the production, the said documents were duly produced and admitted as exhibits before the court.

127. On cross-examination by learned counsel for the 8th defendant, the witness averred that same is a son of Yusuf Maitima M'Alaine. Furthermore, the witness averred that his father was the owner of plot No. 987. Moreover, the witness added that plot No. 987 was partitioned from plot No. 605, which belonged to Rebecca Mwonjiru.
128. On cross examination by learned counsel for the 1st – 3rd interested parties the witness testified that plot NO. 605 was sub-divided during the adjudication process and thereafter gave rise to two plots, *namely*; plot No. 605 and 987, respectively. Furthermore, the witness testified that same resides on plot No. 987.
129. Additionally, it was the testimony of the witness that Yusuf Maitima sold a portion of plot No. 987 to Karen Gaceri and Asenath Kaimuri Nyamu, respectively.
130. On cross-examination, the learned counsel for the 9th defendants, the witness averred that plot no. 987 was curved out of plot number 605. Moreover, the witness averred that plot No. 987 belonged to his father, *namely*; Yusuf Maitima, M'Alaine.
131. While still under cross-examination, the witness averred that Yusuf Maitima M'Alaine is now deceased. Moreover, the witness testified that

the said Yusuf was buried at a cemetery, in accordance with the muslim traditions.

132. On cross-examination by learned counsel by the plaintiff, the witness testified that same is a grandson of Rebecca Mwonjiru. Moreover, the witness averred that same resides on plot No. 987.
133. Regarding the replying affidavit which was sworn by Yusuf Maitima M'Alaine, the witness averred that plot No. 987 measures 22 acres. Moreover, the witness confirmed that the said plot belonged to Yusuf Maitima.
134. While still under cross-examination, the witness clarified that plot No. 987 was partitioned/curved out of plot No. 605. Moreover, it was stated that after the partitioning plot NO. 605 measured 6 acres only. In addition, the witness testified that the partitioning of plot No. 605 was undertaken by his grandmother, namely Rebecca Mwonjiru.
135. Regarding objection number 688 the witness averred that same is not aware whether the objection proceedings were lodged by his grandmother. In addition, the witness posited that same is not aware of the contents of the objection proceedings.
136. As pertains to the adjudication records concerning plot No. 987 registered in the name of John Thiaine, the witness stated that same is not knowledgeable of the said records. Nevertheless, the witness reiterated that plot No. 987 lawfully belonged to Yusuf Maitima.

137. While still under cross-examination, the witness testified that same does not know Jeniffer Kairuthi. Furthermore, the witness testified that same only got to know of the plaintiff herein around the year 2019/2020. In addition, averred that it was then that the plaintiff came into the land.
138. Regarding whether same has tendered any adjudication records showing that Rebecca Mwonjiru was the owner of the plot 605, the witness averred that same has neither tendered nor presented any such records. Moreover, the witness testified that his records relating to the ownership of plot 605 by Rebecca Mwonjiru were burnt in the house.
139. The next witness who testified on behalf of the 1st to 7th defendants was Ibrahim Muthamia M'Ikiugu. Same testified as DW 5.
140. It was the testimony of the witness that same comes from Tigania West subcounty. In addition, the witness averred that he is also an elder of the Njuri Ncheke council of elders. Moreover, the witness averred that same is conversant with the facts of this matter.
141. The witness thereafter referenced the witness statement dated 7th March 2024 and which witness statement the witness sought to adopt and rely on. Instructively, the witness statement was duly adopted and constituted as the evidence in chief of the witness. On cross-examination, by learned counsel for the 8th defendant, the witness testified that same is conversant with plot No. Kiirua/Nkando/987. Furthermore, the witness averred that the said plot belonged to and was registered in the name of Rebecca Mwonjiru. In addition, the witness testified that same is not aware whether the plot has been sold.

142. While still under cross-examination, the witness testified that the plot which belonged to Rebecca Mwonjiru was subdivided.
143. On cross-examination by learned counsel for the 1st to 3rd interested parties, the witness testified that Njuri Ncheke usually undertakes its meetings at the shrines of Njuri Ncheke or at the headquarters at Nchiru. Moreover, the witness testified that same is conversant with the facts of this case. The witness averred that the land in question belonged to Rebecca Mwonjiru.
144. It was the further testimony of the witness that same is familiar with the parties herein. In particular, the witness averred that Yusuf Maitima M'Alaine lodged a complaint with Njuri Ncheke. Thereafter, the witness averred that the council of elders of Njuri Ncheke issued summons to the respondents. However, the witness added that the respondent failed to attend.
145. Additionally, the witness averred that in his witness statement, he has stated that the complaint was brought by Yusuf Maitima. Moreover, the witness clarified that the opposite person did not attend.
146. On cross-examination, the learned counsel for the 9th defendant, the witness averred that he has been a member of Njuri Ncheke. Moreover, the witness testified that he was the divisional chair of Njuri Ncheke Mitundo division. In this regard, the witness posited that his area of jurisdiction included Tigania West, as well as Isiolo.

147. Furthermore, the witness testified that same knew Yusuf Maitima. The witness averred that Yusuf Maitima lived/resided at Kiirua Nkando. It was the further testimony of the witness that Yusuf Maitima lodged a complaint with Njuri Ncheke. The complaint was said to have concerned encroachment onto his land.
148. While still under cross-examination, the witness testified that same is conversant with one Phares Rutere. The witness averred that Phares Rutere was the secretary of Njuri Ncheke. However, the witness added that Phares Rutere was subsequently removed from his portfolio. Additionally, the witness averred that upon removal, Phares Rutere was never authorized to hold any meetings on behalf of Njuri Ncheke.
149. On cross-examination by the learned counsel for the plaintiff, the witness testified that Njuri Ncheke Council of Elders has its operational rules. Furthermore, the witness averred that the operational rules govern the affairs of Njuri Ncheke.
150. It was the further testimony of the witness that Rebecca Mwonjiru had/owned land at Kiirua Nkando. In particular, the witness averred that Rebecca was the owner of plot No. Kiirua/Nkando/987. Nevertheless, the witness conceded that same has not tendered any document to show that Rebecca Mwonjiru [Deceased] was indeed the owner of the said land.
151. While still under cross-examination, the witness testified that same was familiar with Yusuf Maitima M'Alaine. Moreover, the witness clarified

that Yusuf was a son of Rebecca. In addition, the witness testified that it is Rebecca who subdivided her land and thereafter gave a portion to Yusuf Maitima.

152. It was the further testimony of the witness that Rebecca was the owner of plot no. 605 and not 987. Nevertheless, the witness conceded that same has not seen any document to confirm that Rebecca Mwonjiru [Deceased] was the owner of the said plot.
153. The next witness who testified on behalf of the 1st – 7th defendant was Joseph Karika Mutungi. Same testified as DW 6.
154. It was the testimony of the said witness that same is familiar with the facts of this case. Moreover, the witness testified that same has since recorded a witness statement dated 7th March 2024 and which witness statement the witness sought to adopt and rely on. To this end, the witness statement under reference was duly adopted and constituted as the evidence in chief of the witness.
155. On cross-examination by learned counsel for the 8th defendant, the witness averred that same is not aware of plot No. 987. Nevertheless, the witness shortly changed tune and averred that plot No. 987 belongs to Yusuf Maitima M'Alaine. Furthermore, the witness averred that same is aware that plot No. 605 belonged to Rebecca Mwonjiru.

156. It was the further testimony of the witness that he is aware that plot No. Kiirua Nkando/987 has since been subdivided. In particular, the witness averred that a portion of the said plot was sold to Isaac Bundi.
157. On cross examination by learned counsel for the 1st – 3rd interested parties the witness testified that same comes from Kiirua Nkando. Furthermore, the witness averred that he was allocated land at Kiirua Nkando. In this regard, the witness testified that his land is plot number Kiirua Nkando/973. Moreover, the witness averred that his plot borders plot Number Kiirua Nkando 987.
158. Additionally, it was the testimony of the witness that same is aware that plot number 605 belonged to Rebecca. Besides the witness averred that the said plot was subsequently subdivided and thereafter culminated into the creation of plot number Kiirua Nkando 987.
159. It was the further evidence of the witness that same is familiar with one Asenath Kaimuri Nyamu. The witness testified that the said Asenath Kaimuri Nyamu has been working/ploughing on plot number Kiirua/Nkando/987. Moreover, the witness averred that the plot in question has a water point/water pan.
160. On cross-examination by learned counsel for 9th defendant, the witness reiterated that same is the owner of plot 973. Furthermore, the witness averred that the said plot was allocated to him in the year 1996. In addition, the witness testified that he went to the land after the adjudication process had been completed. Nevertheless, the witness shortly changed tune and stated that by the time he went to the land, the

adjudication process was still going on and the surveyors were still undertaking the survey exercise.

161. The witness testified that his plot number 973 was duly demarcated. On the other hand, the witness averred that same is familiar with one Jeniffer Kairuthi. However, the witness clarified that Jeniffer Kairuthi did not stay on plot No. 605.
162. On cross-examination by learned counsel for the plaintiff, the witness testified that same is the owner of plot 973. Furthermore, the witness reiterated that his plot neighbours plot no. 605. Upon being referred to the area map, the witness conceded that the map does not capture/reflect his plot number. For good measure, the witness conceded that his plot number is not reflected in map sheet number 51.
163. It was the further testimony of the witness that plot number 605 was demarcated to Rebecca Mwonjiru. However, the witness admitted that same does not have any document/proof to show that the said plot was demarcated to Rebecca. Nevertheless, the witness averred that same used to graze on the land belonging to Rebecca. Moreover, the witness clarified that it is Rebecca who was residing on plot No. 605.
164. Upon being referred to the report prepared by the district land adjudication and settlement officer, [DLASO], the witness averred that the report in question alludes to various houses. Furthermore, the witness testified that the report references plot no. 605. In addition, the witness clarified that plot No. 987 is next to plot No. 605.

165. While still under cross-examination, the witness testified that Jeniffer Kairuthi was not the owner of plot No. 605. On the contrary, the witness reiterated that plot No. 605 belonged to Rebecca Mwonjiru. Furthermore, the witness averred that a portion of plot number 605 was subdivided and given to Yusuf Maitima M'Alaine. Moreover, it was the testimony of the witness that Yusuf has since subdivided plot No. 987 and sold portions to various persons including: Asenath Kaimuri Nyamu; Karen Gaceri and Isaac Bundi, respectively.
166. With the foregoing testimony, the case for the 1st to the 7th defendants was closed.
167. The 8th defendant's case is premised on the evidence on one witness *namely*, Isaac Bundi M'Mwirichia.
168. It was the evidence of the witness that same is the 8th defendant in respect of the subject matter. The witness averred that same is conversant with the facts of the case. Moreover, the witness testified that same has since recorded a witness statement dated 19th March 2024 and which witness statement the witness sought to adopt and rely on as his evidence in chief. To this end, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
169. Furthermore, the witness referenced the list and bundle of documents dated 19th March 2024, containing four [4] documents and which documents the witness sought to tender and produce before the court. There being no objection to the production of the documents, same were

produced and admitted as exhibits D1 – D4, respectively on behalf of the 8th defendant.

170. Additionally, the witness adverted to the statement of defence and counterclaim dated 19th March 2024 and which statement of defence and counterclaim the witness sought to adopt and rely on. Moreover, the witness sought the reliefs at the foot of the counterclaim.
171. On cross-examination by learned counsel for the 1st to the 7th defendants, the witness averred that same bought/purchased his plot from Yusuf Maitima M'Alaine. Moreover, the witness averred that before he purchased his parcel of land, same undertook a search at the land registry and confirmed that Yusuf Maitima was duly registered as the owner of plot number Kiirua/Nkando/987. In addition, the witness averred that Yusuf was also the one in occupation of the land.
172. It was the further testimony of the witness that at the time he undertook the search, there was no restriction entered on the title. For good measure, the witness averred that the land was clear of any encumbrance. Furthermore, the witness testified that thereafter the vendor applied for land control board consent to subdivide the land.
173. The witness further testified that plot No. Kiirua/Nkando/987 was thereafter subdivided into various portions and his portion was assigned as plot No. Kiirua/Nkando/5783. In this regard, the witness testified that same is therefore the lawful owner and proprietor of the said parcel of land.

174. Regarding the claim by the plaintiff, the witness testified that the plaintiff has no claim or rights against his plot. Moreover, the witness averred that the land in question does not belong to the plaintiff.
175. On cross-examination by learned counsel for the 1st – 3rd interested parties, the witness testified that before purchasing what is now plot No. Kiirua Nkando/5783, same undertook due diligence to ascertain the ownership of plot No. Kiirua/Nkando/987. Moreover, the witness clarified that his plot arose out of the sub-division of plot No. Kiirua/Nkando/987. In addition, the witness averred that the sub-division was undertaken in 2019/2020.
176. It was the further evidence of the witness that after the subdivision, same was issued with a certificate of title. In particular, the witness clarified that he was issued with a certificate of title in the year 2020. Additionally, the witness testified that other than himself, the other portions of plot number 987 were given to Joancia Kathure; and Asenath Kaimuri Nyamu.
177. The witness further testified that it is him who is currently in occupation of the plot No. Kiirua Nkando/5783. Besides, the witness testified that the rest of the parties, *namely*; Joancia Kathure and Asenath Kaimuri Nyamu are also in occupation of their respective parcels of land. Furthermore, the witness averred that no one has ever gone to his land to interfere with his occupation and usage.

178. On cross-examination by learned counsel for the 9th defendant, the witness testified that same bought his parcel of land from Yusuf Maitima M'Alaine. In addition, the witness averred that the sale transaction was reduced into writing before an advocate. In addition, the witness testified that same also visited the ground to see the land before he entered into the sale agreement. It was the further testimony of the witness that when he visited the land, he found the land under the occupation of Mworira, Murianki and the family of Yusuf Maitima M'Alaine.
179. The witness further testified that it is Yusuf Maitima who applied for the land board consent. Besides, the witness testified that the purchasers were variously taken to the land board. The witness clarified that the purchasers were taken to the land board differently.
180. While still under cross-examination, the witness testified that upon purchase of the suit property, same entered upon and took possession of his land. Moreover, the witness testified that the land was vacant and he proceeded to and fenced the land in the year 2017.
181. It was the further testimony of the witness that by the time he obtained the title to his land, there was no one occupying the portion which was sold and thereafter transferred to him.
182. On cross-examination by learned counsel for the Plaintiff, the witness testified and reiterated that same bought a portion of plot No. Kiirua/Nkando/987. Furthermore, the witness testified that the portion which he bought was ultimately registered and assigned as plot number

Kiirua/Nkando/5783. Furthermore, the witness reiterated that the transaction was duly reduced into writing.

183. Additionally, the witness testified that same undertook due diligence, including obtaining a search from the land registry before entering into the sale agreement. In particular, the witness confirmed that the title of plot No. 987 was clear of any encumbrance.
184. Upon being referred to the adjudication record for plot number 987, the witness stated that the name shown therein is John Thiaine. Nevertheless, the witness averred that same has never met nor transacted with John Thiaine. Regarding the ground report by the DLASO the witness averred that the map attached to the report does not replicate the registry index map sheet number 61. Furthermore, the witness testified that plot No. 987 is not captured in the report by DLASO.
185. While still under cross-examination, the witness testified that plot No. 987 was registered in the name of Yusuf Maitima. In addition, the witness averred that the said plot was subjected to subdivision. Moreover, the witness alluded to the mutation form which led to the subdivision of the subject plot.
186. It was the further testimony of the witness that same has produced a copy of the certificate of title in respect of plot number Kiirua/Nkando/5783. Nevertheless, upon being referred to the green card, the witness confirmed that the green card references Kiirua/Kiirua/Nkando. In

particular, the witness acknowledged that the abbreviation of Kiirua is repeated twice.

187. It was the further testimony of the witness that the report by DLASO also did not take into account his occupation of the land. Nevertheless, the witness averred that he has been in occupation of his land. Furthermore, the witness denied that he obtained his certificate of title by fraud. On the contrary, the witness testified that his title was procedurally and lawfully issued by the land registrar.
188. With the foregoing testimony, the 8th defendant's case was closed.
189. The 9th defendant case is premised on the evidence of one witness, *namely*; Joancia Kathure. Same testified as DW 9.
190. It was the testimony of the witness that same is the widow of Yusuf Maitima M'Alaine. Furthermore, the witness averred that same is the 9th defendant in respect of the subject matter. In addition, the witness averred that same is conversant with the facts of this case.
191. The witness thereafter referenced the witness statement dated 4th September 2024; and which witness statement the witness sought to adopt and rely on as her evidence in chief. To this end, the witness statement was duly adopted and constituted as the evidence in chief of the witness. Furthermore, the witness also referenced the list and bundle of documents dated 4th September 2024, containing 13 documents, and which documents the witness sought to produce as exhibits before the

court. There being no objection the documents were produced and admitted as exhibits D1 – D13 respectively on behalf of the 9th defendant.

192. On cross-examination by learned counsel for the 1st – 7th defendants, the witness averred that same has been living/residing on plot No. Kiirua/Nkando/605. Furthermore, the witness testified that she has resided on the said plot for a long time. In addition, the witness averred that the plot belonged to Rebecca Mwonjiru. It was the further testimony of the witness that the house belonging to Rebecca Mwonjiru was burnt down. Moreover, the witness testified that the person who was responsible for the burning of the house was Kinoti Rarama. The witness added that the said Kinoti Rarama was subsequently arrested and charged with the offence before the court.
193. It was the further testimony of the witness that same was knowledgeable of Francis Kinoti. The witness averred that Francis Kinoti was a land committee member and same used to go round the land herein. Nevertheless, the witness testified that it is the said Francis Kinoti who caused the burning of the house of Rebecca Mwonjiru so as to chase her away from the land.
194. While still under cross-examination, the witness testified that Rebecca Mwonjiru owned the plot. Moreover, the witness averred that Rebecca Mwonjiru allowed the community to construct a water tank on the land. In addition, the witness averred that the plot belonging to Rebecca Mwonjiru was subsequently partitioned and a portion thereof given to Yusuf Maitima. The witness clarified that the portion which was given to Yusuf was thereafter registered as Kiirua/Nkando/987.

195. On cross-examination by learned counsel for the 8th defendant, the witness averred that same is indeed the widow of Yusuf Maitima M'Alaine. Furthermore, the witness averred that same got married to Yusuf in 1973. In addition, the witness testified that the registered owner of plot number 605 is Rebecca Mwonjiru. Besides the witness clarified that Rebecca Mwonjiru was her mother in law.
196. While still under cross-examination, the witness testified that same is aware of plot No. 987. In particular, the witness testified that the said plot belonged to Yusuf Maitima M'Alaine [now deceased]. Furthermore, the witness averred that the said plot has since been subdivided and the portions thereof sold to various persons including Isaac Bundi Mwirichia, Asenath Kaimuri Nyamu and Karen Gaceri.
197. On cross-examination by learned counsel for the 1st – 3rd interested parties, the witness testified that same only got to know of Zablon Murungi M'Ringeera in court. For coherence, the witness testified that same had never met the plaintiff.
198. It was the further testimony of the witness that plot number 605 did not belong to Jeniffer Kairuthi M'Ikiao. In this regard, the witness testified that Jeniffer Kairuthi, therefore, had no capacity to sell the land to Zablon Murungi M'Ringeera.
199. Additionally, the witness testified that the land namely No. 605 belonged to Rebecca. Besides, the witness reiterated that Rebecca partitioned the land leading to the creation of plot No. 987, which was registered in the

name of Yusuf. Besides, the witness reiterated that plot number 987 has since been subdivided and sold to various purchasers. The witness clarified that the purchasers include Isaac Bundi, Asenath Kaimuri Nyamu and Karen Gaceri.

200. On cross-examination by the learned counsel for the plaintiff, the witness testified that same is the widow of Yusuf Maitima M'Alaine. Nevertheless, the witness averred that same has not brought any document to show that she was married to Yusuf. The witness however, confirmed that she was married under the Islamic law.
201. It was the further testimony of the witness that the land in question belonged to Rebecca Mwonjiru. Furthermore, the witness clarified that plot number 605 was partitioned leading to the creation of plot number 987. In addition, the witness confirmed that plot number 987 belonged to Yusuf Maitima.
202. Upon being referred to objection No. 688; the witness testified that the said objection bears the name of Rebecca Mwonjiru. Nevertheless, the witness stated that same had just seen the objection proceedings before the court. Moreover, the witness averred that same does not know how to read.
203. It was the testimony of the witness that even though same avers that plot No. 605 belongs to Rebecca, same has not brought any document to show that Rebecca owned the land. In any event, the witness testified that plot No. 605 does not have a certificate of title.

204. Regarding the acreage of the land, the witness averred that plot number 605 measured 22 acres. However, the witness added that Rebecca partitioned the plot and gave out 16 acres which comprise of plot No. Kiirua Nkando 987.
205. It was the further testimony of the witness that same is claiming both parcels number 605 and 987. The witness testified that the two parcels of land belonged to Rebecca and Yusuf Maitima, respectively. Moreover, the witness averred that upon subdivision of plot No. 987, same was given a portion. The witness added that her portion is plot No. Kiirua/Nkando/5780.
206. On further cross-examination, the witness testified that she bought her portion of land from her husband [now deceased]. Furthermore, the witness added that she paid the sum of Kshs.100,000/= only. Nevertheless, the witness conceded that she has not brought to court any evidence to show purchase of a portion of plot 987 or evidence of payment of the purchase price.
207. Upon being referred to the green card tendered before the court, the witness averred that the green card reference parcel numbers Kiirua/Kiirua/Nkando/5780 to 83. The witness acknowledged that Kiirua/Kiirua is repeated twice.
208. Additionally, upon being shown the sale agreement between Asenath Kaimuri Nyamu and Yusuf Maitima, the witness confirmed that the property which was being sold was 605 and not 987. Moreover, the

witness confirmed that the sale agreement was reduced into writing and that same was a witness.

209. Regarding the occupation of plot number 605, the witness testified that the land in question is occupied by Mworira; Murianki and herself. Furthermore, the witness added that all of them have houses on the land. On the contrary, the witness testified that Asenath Kaimuri Nyamu does not have a house on the land.
210. While still under cross-examination, the witness testified that Isaac Bundi has a house on the land. Nevertheless, the witness conceded that the report by DLASO does not highlight the existence of the house belonging to Isaac Bundi Mwirichia.
211. With the foregoing testimony, the 9th defendant's case was closed.
212. The Interested parties' case is premised on the evidence of one witness, *namely*; Asenath Kaimuri Nyamu. Same testified as IPW 1.
213. It was the testimony of the witness that same is the 1st interested party in respect of the subject matter. Furthermore, the witness averred that same is conversant/familiar with the 2nd interested party, Karen Gaceri. It was the further testimony of the witness that same has recorded a witness statement in respect of the subject matter. To this end, the witness referenced the witness statement dated 16th August 2024 and which witness statement the witness sought to adopt and rely on as her evidence

in chief. To this end, the witness statement was duly adopted and constituted as the evidence in chief of the witness.

214. Additionally, the witness adverted to a list and bundle of document dated 16th August 2024, containing six [6] documents and which documents the witness sought to adopt and produce before the court. There being no objection to the production of the documents, same were produced and admitted as exhibits IP1 – 6 respectively.
215. On cross-examination by learned counsel for the 1st – 7th defendants, the witness testified that Karen Gaceri and herself purchased a portion of land from Yusuf Maitima M'Alaine. Moreover, the witness testified that before purchasing the land, same undertook due diligence to ascertain the ownership status of the land. In addition, the witness averred that subsequently, Yusuf Maitima applied for and obtained the consent to subdivide the land.
216. It was the testimony of the witness that same proceeded to and paid the requisite levies to facilitate the transfer and registration of the resultant subdivision to her name. Nevertheless, the witness conceded that her portion of land has not been transferred to and registered in her name.
217. While still under cross-examination, the witness testified that same was also knowledgeable of plot number Kiirua/Nkando/605. In particular, the witness averred that a portion of the said plot was partitioned and given to Yusuf Maitima. Moreover, the witness clarified that the portion which was given to Yusuf was registered and assigned as plot number Kiirua/Nkando/987.

218. It was the further testimony of the witness that same was familiar with Rebecca Mwonjiru. Furthermore, the witness added that Rebecca was related to her. The witness further testified that she got to know Rebecca when she [witness] was a young teacher in 1983. In addition, the witness averred that her father would send help/assistance to Rebecca Mwonjiru.
219. While still under cross-examination, the witness testified that Rebecca had a house on the land. Moreover, the witness added that Yusuf Maitima also had a house. Nevertheless, the witness clarified that Rebecca's house was burnt down by one Kinoti Rarama.
220. Additionally, it was the testimony of the witness that upon purchasing a portion of the land from Yusuf Maitima, same [witness] entered upon, took possession and commenced to use the land. In particular, the witness averred that same has planted trees, pawpaws and gravelia on the land. Moreover, the witness also averred that she has fenced the land and also dug a dam. Furthermore, the witness testified that the plaintiff herein has never stopped her from occupying and using the land.
221. On cross-examination, by learned counsel for the 8th defendant, the witness testified that plot number Kiirua/Nkando/605 belonged to Rebecca Mwonjiru. In addition, the witness clarified that a portion of that plot was sub-divided and thereafter transferred to Yusuf. It was clarified that the portion which was partitioned and transferred to Yusuf was registered as plot number 987.

222. It was the further testimony of the witness that the plot belonging to Yusuf was subsequently sub-divided, culminating into the creation of plot numbers Kiirua/Nkando/5780 to 5783 respectively. The witness thereafter stated that plot 5782 belongs to her; plot 5783 belongs to Bundi, while 5781 belongs to Joanisia Kathure.
223. On cross-examination, the learned counsel for the 9th defendants, the witness testified that Rebecca Mwonjiru was previously the owner of the land. The witness added that it is Rebecca who gathered the land in the years 1963 or thereabout[s]. Moreover, the witness testified that Rebecca is the one who was in possession of the land.
224. It was the further testimony of the witness that prior to entering into the sale agreement, same procured/obtained a search in respect of plot number 605. Furthermore, the witness testified that Rebecca Mwonjiru partitioned the plot on the ground and thereafter transferred 16 acres to Yusuf. In addition, the witness averred that Rebecca lodged an objection with the committee to formalize the transfer of the portion of land to Yusuf.
225. On further cross-examination, the witness testified that after the sale of a portion of the land to her, same took a surveyor to the land. In addition, the witness testified that the surveyor thereafter proceeded to and prepared the mutation. It was the further testimony of the witness that she is the one in occupation of her plot.

226. On cross examination by learned counsel for the plaintiff, the witness testified that same bought a portion of the land. To this end, the witness alluded to the sale agreement dated 8th October 2012. Furthermore, the witness clarified that the sale agreement references plot number Kiirua/Nkando/605.
227. It was the further testimony of the witness that the vendor reflected in the same agreement is Yusuf Maitima and the purchasers are shown as Asenath Kaimuri Nyamu and Karen Gaceri-Dona Gathure. Additionally, the witness averred that the purchase price is also shown on the face of the sale agreement.
228. While still under cross-examination, the witness averred that the land in question was subsequently subdivided and a portion given to Yusuf Maitima M'Alaine. Moreover, the witness testified that the portion of land which she bought was five acres, while Karen Gaceri bought five acres.
229. Regarding objection proceedings relating to objection number 688 the witness averred that the acreage of number 605 is shown to be 21 acres. In addition, the witness testified that parcel number 605 is duly reflected at the foot of the registry index map [RIM] sheet number 60.
230. Upon being referred to the letter dated 5th October 2012, the witness averred that the letter in question is indicated to have been authored by the sub-county land adjudication officer for Imenti North. In addition, the witness averred that the letter in question references plot number 605. Moreover, the witness testified that the letter indicates on the face thereof

that plot number Kiirua Nkando 605 belongs to the plaintiff. Nevertheless, the witness averred that the contents of the said letter are not true. For good measure, the witness stated that she does not agree that the land belongs to the plaintiff.

231. Moreover, the witness added that the contents of the said letter and the documents showing that the land belongs to the plaintiff are forgeries/fake.

232. Regarding the objection proceedings number 688, the witness testified that the said proceedings are also fake. On the contrary, the witness testified that plot number Kiirua/Nkando/605 belongs to Rebecca Mwonjiru while plot No. Kiirua/Nkando/987 belongs to Yusuf. Moreover, the witness added that plot number 987 is a subdivision of plot number 605.

233. Upon being referred to the replying affidavit which was sworn by Yusuf Maitima M'Alaine, the witness averred that no objection was lodged against plot 605 to facilitate its subdivision. Furthermore, the witness testified that plot number 987 has never belonged to John Thiaine. In any event, the witness averred that same does not know the said John Thiaine.

234. Regarding the adjudication records, in respect of plot number 987 in the name of John Thiaine, the witness averred that the said records are not correct. For good measure, the witness reiterated that plot number 987 belonged to Yusuf Maitima M'Alaine. In addition, the witness clarified that it is Yusuf who subdivided the said plot in the year 2019/2020. Moreover, the witness referenced the letter of consent which was issued in 2019.

235. Upon being referred to the green card filed by the 1st – 7th defendants in respect of L.R numbers 5780 to 5783, the witness confirmed that same show/reference the properties as Kiirua/Kiirua/Nkando 5780-83. Nevertheless, it was the testimony of the witness that what same bought was a portion of Kiirua/Nkando/605. Moreover, the witness testified that if there is an error, such an error was caused by the government.
236. It was the further testimony of the witness that her land is plot number Kiirua Nkando/5782; however, the witness conceded that she has not brought her certificate of title before the court. Additionally, the witness testified that her certificate of title has been hidden by a land registrar namely a Mr. Njoroge.
237. As concerns occupation, the witness testified that she is the one in occupation of her plot. Moreover, the witness testified that she has dug a dam on her plot. Regarding the report by DLASO dated 4th June 2020, the witness averred that the report in question does not reference the existence of her dam. Moreover, the witness stated that the report by DLASO is false and doctored.
238. Additionally, the witness testified that she is the lawful owner of plot number Kiirua/Nkando/5782. Nevertheless, the witness averred that same is only awaiting the issuance of a certificate of title. Moreover, the witness clarified that her plot, namely Kiirua/Nkando/5782, arose from Kiirua/Nkando/987.

239. With the foregoing testimony, the Interested parties' case was closed.
240. Upon the close of the hearing, the advocates for the parties sought time to file and exchange written submissions. To this end, the court proceeded to and issued directions pertaining to the filing and exchange of written submissions. Moreover, the court also circumscribed the timelines for filing the written submissions.
241. The Plaintiff filed two [2] sets of written submissions. The first set of written submissions is dated **20th August 2025** while the 2nd set of written submissions are dated **22nd October 2025**.
242. The Plaintiff has raised four [4] key issues, *namely*; the suit property to wit, LR. Number KIIRUA/NKANDO/605 lawfully belongs to the Plaintiff; Whether the acreage of the suit property was fraudulently altered and manipulated by the Defendants; Whether parcel number KIIRUA/NKANDO/987 was illegally and fraudulently curved out of the suit property; and Whether the plaintiff is entitled to the reliefs sought at the foot of the amended Plaint.
243. The 1st to 7th Defendants failed to file and serve written submissions within the prescribed timelines. In addition, even though the court extended the timeline[s] for the filing of written submissions, Learned Principal Counsel failed to comply with and adhere to the set timelines. For good measure, no submissions were filed by and on behalf of the 1st to 7th Defendants.
244. The 8th Defendant filed written submissions and wherein same reiterated the contents of the statement of defence; the witness statement and the evidence tendered. In particular, the 8th Defendant invited the court to find

and hold that same is the lawful and legitimate proprietor of LR. Number KIIRUA/NKANDO/5783.

245. The 9th Defendant filed written submissions dated **13th October 2025** and wherein same has highlighted various issues for consideration by the court. The issues canvased on behalf of the 9th Defendant are namely; whether the plaintiff has proved ownership of parcel number KIIRUA/NKANDO/605 and 987; whether reliance on KANU membership can confer ownership to land; whether the sale and transfers by the late husband of the 9th Defendant were valid; whether the Plaintiff's witnesses discredited the Defendant's evidence on cross-examination; whether the interested parties [Asenath Kaimuri Nyamu] acquired valid rights as a purchaser; and who should bear the costs of this suit.
246. The interested parties filed written submissions dated **14th October 2025** and wherein same have highlighted and canvased four [4] key issues for determination by the court. The issues highlighted on behalf of the interested parties are namely; whether Jenifer Kairuthi gathered and was the 1st Registered owner of LR. No. KIIRUA/NKANDO/605; whether Rebeca Mwonjiru gathered LR. No. KIIRUA/NKANDO/605; whether land parcel number KIIRUA/NKANDO/987 was acquired fraudulently by Yusuf Maithima; and whether the Interested Parties have proved their case on a balance of probabilities.

247. I have reviewed the pleadings filed by/on behalf of the parties; the evidence tendered [*both oral and documentary*] and upon consideration of the written submissions on record, I conclude that the determination of the subject matter turns on six [6] key issues, *namely*; whether an interested party/interested parties can raise and propagate a counter claim or cross claim under the law; whether Rebeca Mwonjiru was demarcated as the first registered owner of LR. Number KIIRUA/NKANDO/605 or otherwise; whether Plot Number KIIRUA/NKANDO/987 was illegally, irregularly and fraudulently created and thereafter registered in the name of Yusuf Maithima M’Alaine [now deceased] or otherwise; whether the Plaintiff herein is the lawful and legitimate owner of LR. Number KIIRUA/NKANDO/605 or otherwise; whether the counterclaim by the 8th defendant is merited or otherwise; and what reliefs [if any] ought to issue.
248. Regarding the first issue, *namely*; whether an interested party/interested parties can file a cross claim or otherwise; It is important to recall and reiterate that the interested parties herein filed an application dated **19th March 2024** and wherein same sought to be joined into the subject suit.
249. The primary prayer at the foot of the said application stated as hereunder;
“This honourable court be pleased to enjoin Asenath Kaimuri Nyamu, Karen Lesley Gaceri, and Joseph Mworira as the 1st, 2nd, and 3rd Interested Parties respectively in these proceedings.”
250. The subject application was heard and allowed. Consequently, the interested parties proceeded to and filed a statement of defence and cross claim dated **12th July 2024**. The interested parties have thereafter sought

and enumerated various reliefs at the foot of [sic] the cross claim. For good measure, the reliefs sought on behalf of the interested parties have been reproduced elsewhere herein before.

251. The question that does arise and which I must engage with is whether the interested parties can file a cross claim and seek precipitate/substantive reliefs or otherwise. To start with, it is common ground that a counterclaim or better still a cross claim [whichever is the case] can only be filed by a defendant in a suit. Instructively, an interested party is not at liberty to file a cross-claim.

252. The filing of a counterclaim or cross claim is governed or regulated by the provisions of **Order 7 Rule 3 of the Civil Procedure Rules 2010**. Given the significance of the said provisions in the determination of this issue, I find it apposite to reproduce the named provision.

253. Order 7 rule 3 of the Civil Procedure Rules 2010 stipulate thus;

“3. Set-off and counterclaim [Order 7, rule 3]
A defendant in a suit may set-off, or set-up by way of counterclaim against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim sound in damages or not, and whether it is for a liquidated or unliquidated amount, and such set-off or counterclaim shall have the same effect as a cross-suit, so as to enable the court to pronounce a final judgment in the same suit, both on the original and on the cross-claim; but the Court may on the application of the plaintiff before trial, if in the opinion of the court such set-off or counterclaim cannot be conveniently disposed of in the pending suit, or ought not to be allowed, refuse permission to defendant to avail himself thereof.”

254. The legal import and tenor of the provision of Order 7 rule 3 of the CPR [supra] have previously been expounded upon by the Court of Appeal.

255. In the case of *County Government of Kilifi v Mombasa Cement Limited [2017] KECA 633 (KLR)*, the Court stated as hereunder;

“Counterclaims are provided for under order 7 rule 3 of the Civil Procedure Rules which is in terms: -

“A defendant in a suit may set-off, or set-up by way of counterclaim against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim sound in damages or not, and whether it is for a liquidated or unliquidated amount, and such set-off or counterclaim shall have the same effect as a cross-suit, so as to enable the court to pronounce a final judgment in the same suit, both on the original and on the cross-claim; but the Court may on the application of the plaintiff before trial, if in the opinion of the court such set-off or counterclaim cannot be conveniently disposed of in the pending suit, or ought not to be allowed, refuse permission to defendant to avail himself thereof.” [Emphasis added]

In our view, a plain reading of the above provision allows or gives a defendant in a suit permission or a carte blanche, to raise a counterclaim based on any right or claim against a plaintiff. That provision says nothing to the effect that such counterclaim must be related to the original subject matter of the suit and neither does it attract such an implication. That position is supported by Halsbury’s Laws of England, Fourth Edition, vol. 42, which defines a counterclaim as follows: -

“When A has a claim of any kind against B and brings an action to enforce that claim, and B has a cross-claim of any kind against A which by law he is entitled to raise and have disposed of in the

action brought by A, then B is said to have a right of counterclaim.”
[Emphasis added].”

256. In the case of *Senate & 3 others v Speaker of the National Assembly & 10 others (Petition 19 (E027) of 2021) [2025] KESC 11 (KLR) (21 March 2025) (Judgment)*, the Supreme Court of Kenya had occasion to highlight the legal position pertaining to whether an Interested Party can file a cross-petition; cross claim or counterclaim.

257. For coherence, the apex court stated as hereunder;

“68. ...The Black’s Law Dictionary (11th ed) Bryan A Garner defines a cross petition as, “a claim asserted by a defendant ... for a matter relating to the subject of the action. Also known as a cross-complaint.” This definition underscores two critical elements: (i) the party asserting the claim is a defendant/respondent; and (ii) the claim must relate to the subject of the action at hand.

69. This requirement that a cross petition should relate to the subject of the action provides a crucial interpretative foundation for determining this question. This Court in Independent Electoral and Boundaries Commission vs. Chege [2023] KESC 74 (KLR) (IEBC Case) stated as follows at paragraph 69: “..., there is a difference between a cross appeal and a cross petition. A cross appeal is an action by a respondent, who intends to counter an appellant’s cause in an appeal with the view of obtaining certain relief(s) from the court. A cross petition on the other hand, is an action by a defendant in first-instance claims, intending to counter the claim of a petitioner with the view of obtaining certain remedies.” [Emphasis added]

70. From the foregoing, it becomes evident that a cross petition is designed specifically to counter the claims made by the petitioner in a petition. It is fundamentally reactive in nature, and meant to

answer or address the issues raised in the petitioner’s claim, rather than to introduce entirely new, unrelated issues or questions. In practical terms, this means that a cross petition must remain tethered to the same set of facts and questions of law presented in the original petition otherwise a respondent is supposed to file another suit where those different matters can be interrogated. A respondent should not use a cross-petition as a vehicle for raising unrelated claims or expanding the scope of the dispute beyond what has been framed by the petitioner. Therefore, the essence of a cross-petition is that it serves as a counter to the petition, addresses the claims and seeks remedies directly related to the issues raised by a petitioner.”

258. It is instructive to underscore that the Supreme Court was addressing whether or not an interested party can file a cross-petition or a cross-appeal. I am alive to the fact that what is before me is neither a cross-petition nor a cross-appeal. Nevertheless, there is no gainsaying that a counterclaim or a cross claim operates in a similar manner and has the same import. To this end, a counterclaim or a cross-suit can never be filed by an interested party.

259. Furthermore, it is not lost on me that whether a party is joined in a suit, either as an interested party, necessary party; or as an amicus, the determination of the dispute revolves around the issues that were canvassed by the primary parties and not otherwise. In this regard, there is no gainsaying that an interested party can neither champion; propagate; nor canvass a separate cause of action.

260. Before concluding on this matter, it is instructive to reference the *ratio decidendi* in the case of *Muruatetu & another vs. Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) [2016] KESC 12 (KLR)* where the apex court stated thus;

“Having carefully considered all arguments, we are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/principal parties’ before the court...Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the court will always remain the issues as presented by the principal parties, or as framed by the court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues or introduce new issues for determination by the court. [Emphasis added]

261. Flowing from the foregoing analysis, I conclude that the interested parties herein are not seized of the requisite legal capacity [Locus Standi] to mount; originate and propagate a cross-claim under the law. In this regard, the cross-claim dated **12th July 2024** was mounted in vacuum and same is therefore a nullity in the eyes of the law.

262. Turning to the second issue, *namely*; whether Rebeca Mwonjiru was demarcated as the first registered owner of LR. Number KIIRUA/NKANDO/605 or otherwise.

263. The 1st to 7th Defendants; the 9th Defendant; and the Interested Parties contended that the suit plot, *namely*; LR. No. KIIRUA/NKANDO/605

was gathered by one Rebeca Mwonjiru M'ikirima [now deceased]. Moreover, it was contended that Rebeca Mwonjiru moved on to the suit properties and commenced occupation thereof in the 1960s. In addition, it was contended that thereafter Rebecca Mwonjiru applied for and was duly allocated the land.

264. Furthermore, the 1st and 7th Defendants herein tendered and produced a copy of the affidavit of one Yusuf Maithima sworn on **28th September 2020**. The said affidavit was produced as Exhibit D17 on behalf of the named Defendants.

265. It is instructive to state that the deponent of the said affidavit [Jusuf Maithima- now deceased] and who was the husband of the 9th Defendant, has spoken to the circumstances leading to the allotment of the suit plot to and in favor of Rebecca Mwonjiru. Moreover, the deponent of the said affidavit has also adverted to the fact that the suit plot was thereafter subdivided culminating into the creation of plot number KIIRUA/NKANDO/987, the latter which was [sic] demarcated and registered in the name of Jusuf Maithima M'Alaine.

266. It is also important to recall that Asenath Kaimuri Nyamu [the 1st Interested Party] also provided elaborate evidence to demonstrate that Plot Number KIIRUA/NKANDO/605 was indeed owned and occupied by Rebecca Mwonjiru M'kirima- deceased.

267. Be that as it may, evidence abound that Rebecca Mwonjiru M'Kirima herself conceded that same was never allocated land by the Land Committee. In fact, Rebecca Mwonjiru- deceased proceeded to and lodged an objection number 688 of 1993 pertaining to and in respect of Plot Number 605. For good measure, the objection under reference was

mounted by Rebeca Mwonjiru as the objector, whereas Zablon Murungi was the Respondent.

268. The objection under reference was heard and determined vide decision rendered on **20th May 1993**. For coherence, the objection was dismissed.

269. It was the contention by Rebeca Mwonjiru that same was never allocated land by the committee. The said Rebeca Mwonjiru-deceased, is on record stating thus;

“I entered in this land some 20 years. When I entered there was nobody who had done any development on this land. The land committee came to demarcate land of which this Francis Kinoti is one of them. The committee never gave me any land. Later I came to discover this land belongs to Francis Kinoti when he burnt down my house. I filed an objection against Kinoti but discovered that he had transferred this land to his wife Jeniffer Kairuthi Francis but who in turn had transferred the land to Zabron Murungi M’Ringera.”

270. My understanding of the evidence which was given by Rebeca Mwonjiru before the land adjudication officer is to the effect that same was never allocated land at KIIRUA NKANDO. Furthermore, the testimony under reference confirms that Plot Number 605 Kiirua Nkando was demarcated in favor of Jennifer Kairuthi Francis.

271. Additionally, Rebeca Mwonjiru is also confirming that by the time same lodged the objection, namely; Objection Number 688 in respect of Plot

Number Kirrua/ Nkando/ 605, the land had been transferred to Zablon Murungi M’Ringera.

272. Simply put, it is difficult to reconcile the evidence that was tendered by DW2; DW3; DW4; and 9th Defendant [Jeonisia Kathure John], respectively, on one hand; and the statement on oath that was made by Rebeca Mwonjiru herself, during the Objection Proceedings. Nevertheless, there is no gainsaying that Rebeca Mwonjiru was never demarcated and registered as the owner of Plot Number 605. Moreover, it is worthy to recall that no demarcation or adjudication records were placed before the Court to demonstrate any such allocation.

273. Additionally, it is important to highlight that upon the dismissal of objection number 688 which was filed by Rebecca Mwonjiru same [Rebeca] wrote a letter dated **14th June 1993**, to the Minister for Lands and Urban Development. The letter under reference was produced as Exhibit D4 on behalf of the 1st to 7th Defendants.

274. The contents of the Letter under reference are explicit.

275. The contents of the Letter are reproduced hereunder;

***“Rebeca Mwonjiru M’Kiriam
C/O Salome Kanyiri Kiragu
C/O Priscila Kirimi
PO Box 653 Meru,
14th June 1993***

The Minister for Lands and Urban Settlement,

PO Box 30450 Nairobi,

Dear Sir,

**RE: OBJECTION KIIRUA NKANDO ADJUDICATION UNIT
PARCEL NUMBER 605- OBJECTION NUMBER 680**

**The above objection was heard and unilaterally decided upon by the
Land Adjudication officer Meru on 20th May 1993.**

***My witnesses were never allowed to testify and I was heard without
being given an opportunity to any witness at all. It will serve no
purpose for me to go and buy the proceedings for purposes of
appealing to you. Rather I shall be grateful if a different officer can
be requested to hear my case apart from the one in Meru who is
biased and who did not want to listen to my witnesses and who even
refused to call them in.***

Yours Faithfully,

Rebeca Mwonjiru M’Kirima

[Thumb printed]”

276. What is apparent from the letter under reference is a confirmation by Rebeca Mwonjiru M’Kirima [now Deceased] that same indeed filed objection [sic] Number 680 as against plot number 605 Kiiroa Nkando. In addition, it is also acknowledged that the objection was heard and dismissed. Moreover, the author is also confirming that no appeal was filed to challenge the decision of the land adjudication and settlement officer.

277. To my mind, the only way that Rebeca Mwonjiru M’Kirima could have obtained a favourable decision [if at all] was by way of an appeal to the

Minister [now Cabinet Secretary] in the manner stipulated *vide* section 29 of the **Land Adjudication Act Chapter 284**.

278. The section stipulates thus;

“29. Appeal

- (1) Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Cabinet Secretary by—***
- (a) delivering to the Cabinet Secretary an appeal in writing specifying the grounds of appeal; and***
 - (b) sending a copy of the appeal to the Director of Land Adjudication, and the Cabinet Secretary shall determine the appeal and make such order thereon as he thinks just and the order shall be final.***
- (2) The Cabinet Secretary shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar.***
- (3) When the appeals have been determined, the Director of Land Adjudication shall—***
- (a) alter the duplicate adjudication register to conform with the determinations; and***
 - (b) certify on the duplicate adjudication register that it has become final in all respects, and send details of the alterations and a copy of the certificate to the Chief Land Registrar, who shall alter the adjudication register accordingly.***
- (4) Notwithstanding the provisions of section 38(2) of the Interpretation and General Provisions Act (Cap. 2) or any other written law, the Cabinet Secretary may delegate, by notice in the Gazette, his powers to hear appeals and his duties and functions under this section to any public office by name, or to the person for***

the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that of the Cabinet Secretary.”

279. Notably, Rebeca Mwonjiru M’Kirima did not mount any appeal. For good measure, Rebeca contended that the filing of [sic] an appeal could serve no purpose. With the foregoing contention, Rebeca Mwonjiru divested herself of the only known legal avenue to impeach the decision of the land adjudication officer issued on **20th May 1993**.
280. In the premises, there is no gainsaying that Plot Number KIIRUA/NKANDO/605 was never demarcated to or registered in the name of Rebeca Mwonjiru. For good measure, any contrary position is not only hypothetical and misleading, but constitutes falsehoods.
281. Turning to third issue, *namely*; whether Plot Number KIIRUA/NKANDO/987 was un-procedurally, illegally, and fraudulently created and thereafter registered in the name of Jusuf Maithima M’Alaine [now deceased] or otherwise.
282. It is worthy to recall that Plot Number KIIRUA/NKANDO/987 is contended to have arisen from Plot Number 605. In particular, Exhibit D17 [the Replying Affidavit Sworn by Jusuf Maitima M’Alaine] produced on behalf of the 1st to the 7th Defendants highlights the fact that a portion of Plot Number 605 was subdivided and now constitutes Plot Number 987. Moreover, it was contended that it is Rebeca Mwonjiru M’Ikirima who partitioned her plot and thereafter caused the resultant

subdivision [sic] to be given to her Son, namely; Jusuf Maithima M'Alaini.

283. My reading of the affidavit sworn by Jusuf Maithima on **28th September 2019 [dated 28th September 2020]** and which was relied upon by the defence is to the effect that Plot Number 987 was indeed a subdivision of 605.
284. The foregoing position was equally reiterated by DW2 [Peter Murianki Kajomo]; and DW4 [Joseph Mworira, respectively. The two Witnesses contended that Rebecca Mwonjiru was the one who subdivided her Plot Number 605 and thereafter gave the resultant portion to Jusuf Maitima M'Alaine - Deceased.
285. Nevertheless, it is important to underscore that Rebeca Mwonjiru M'Ikirima- deceased, could only partition plot number KIIRUA/NKANDO/605 and give a portion to Yusuf Maithima, if [any only if] Rebecca herself was demarcated and registered as the owner of the said plot. Unfortunately, the copy of the Demarcation Book which was tendered before the Court does not contain her name. On the contrary, evidence abound that Rebeca Mwonjiru M'Ikirima was not the owner of Plot 605.
286. To the extent that Rebeca Mwonjiru [now deceased] was not the owner of Plot Number 605, she could therefore not portion the said plot and purport to give a portion thereof to Yusuf Maithima- now deceased. Suffice it to state that the doctrine of *nemo dat quod non habet* is relevant and apt, in the circumstances.

287. The import and tenor of the *nemo dat* doctrine was highlighted in the case of *M’Kiriara M’Mukanya & another v Gilbert Kabeere M’Mbijiwe [1984] KECA 21 (KLR)*, where the Court of Appeal stated as hereunder;

“What of the appellants? The plot they were granted was not available for allocation since 1967 when it was granted to the respondent. The Council had no plot No 58 at Nkubu Market to allocate and it could not allocate what it did not have.”[Emphasis Supplied].

288. Furthermore, the Court of Appeal in the case of *Arthi Highway Developers Limited v West End Butchery Limited & 6 others [2015] KECA 816 (KLR)* also had occasion to consider whether a person devoid of title or entitlement can pass any rights in favor of his/her successor.

289. For coherence, the court stated as hereunder;

“69. It is our finding that as between West End and Arthi, no valid Title passed and the one exhibited by Arthi before the trial court was an irredeemable fake. It follows that Arthi had no Title to pass to subsequent purchasers, and therefore KMAH, Yamin and Gachoni cannot purport to have purchased the disputed land or portions thereof.”

290. In my humble, *albeit* considered view, the holding[s] of the Court of Appeal in the decisions [supra] apply *mutatis mutandis* to the subject matter. Pertinently, Rebeca Mwonjiru M’Ikirima could not, by any chance, partition and give out land which she did not own in the first instance.

291. The other aspect that also merits consideration concerns the manner in which Plot Number KIIRUA/NKANDO/605 could have been partitioned [if at all]. It is worthy to recall that the said plot fell within an adjudication section which was declared in 1982 or thereabouts. [See the evidence of Valentine Kimathi Kiara- PW 1].
292. To the extent that the said parcel of land fell within an adjudication section and which section was still subject to the provisions of the Land Adjudication Act, Chapter 284, Laws of Kenya, there is no gainsaying that the sub-division or partition thereof could only have been undertaken by way of lodgement of an objection.
293. However, there is no gainsaying that no objection was ever lodged against plot 605, for purposes of partitioning or sub-division thereof. Instructively, the only objection which was lodged against Plot 605 was objection number 688; and which challenged the demarcation of the said plot in favor of Jeniffer Kairuthi Francis.
294. In the circumstances, I am not persuaded that Plot Number KIIRUA/NKANDO/687 was lawfully portioned or exercised from Plot Number 605. To this extent, the narrative being propagated by the Defendants and the interested parties is neither plausible, nor cogent.
295. Additionally, it is also important to take cognizance of the fact that Plot Number 987 was separately created during the demarcation process and same was registered in the name of one John Thiaine. [See P exhibit 14 and 16 respectively], which comprise of the letter dated **4th November 2020** by the Director of Land Adjudication and Settlement; and a Copy of the Adjudication Register in respect of the said parcel].

296. For good measure, the said exhibits clearly demonstrate that parcel number 987 did not emanate from subdivision of plot number KIIRUA/NKANDO/605. On the contrary, the said Plot was created during the Demarcation process and was registered in the Name of one, John Thiaine. Moreover, no evidence was tendered before the Court to show that Jusuf Maitima M'Alaine, now deceased, ever lodged any Objection against the said John Thiaine, or at all.
297. Finally, it is also worthy to take cognizance of the letter dated **10th December 2018** by the Director of Land Adjudication and Settlement and which letter was addressed to the law firm of **MS. Anyango Ogutu & Co. Advocates; Queensway House; 3rd Floor; Kanda Street Nairobi**. For the sake of clarity and transparency, the said Lawfirm and the Proprietor thereof have no relationship with the Judge.
298. The contents of Letter under reference are reproduced as hereunder:

“RE: CANCELLATION OF TITLE NUMBER KIIRUA/NKANDO/987; JUSUF MAITIMA M’ALAINÉ AND REGISTRATION OF PARCEL NUMBER KIIRUA/NKANDO/605 TO ZABRON MURUNGI LINGERA

Your letter ref; A0/JEN/2018 dated 1st October 2018 refers.

Please note that KIIRUA/NKANDO adjudication section was declared to be an adjudication section on 23rd August 1982 publication was done on 5th August 1990 and certificate of finality issued on 30th May 2012. So, the title deeds have been issued to wananchi as per Cap 284 section 27 of Land Adjudication Act, the

affairs of the Registration section are beyond the jurisdiction of this department.

Parcel Number 605 was demarcated and recorded to Zabron Murungi Ringera and the same was plotted on map sheet [print number 60] [original print 1] while other parcels have been issued with title deeds, this one is restricted because of a pending court case. See attached correspondence. Parcel number 987 was demarcated and recorded to John Thiaine as per the records held in this office. However, on the actual registration of title, the title deed was issued to Jusuf Maithima M'Alaine. There are no back up records to show how this parcel exchanged hands between John and Jusuf.

The parcel number 987 was placed on sheet number 60, see original map 2 [print] on a space meant for parcel number 605 for Zabron. In effect, parcel number 605 was subdivided to create parcel number 987 for Jusuf Maitima M'Alaine with no supporting documents or authority.

Given the lapse of the jurisdictional authority of the department, it is recommended this matter be referred to a court of law so that Messrs. John Thiaine and Jusuf Maitima will explain how this parcel exchanged hands between them and how it was subdivided from parcel number 605 for Zabron Muriungi M'Lingera.

S.G Mayaka

For: Director of Land Adjudication and Settlement”

299. The contents of the letter under reference [exhibit P14] are apt and succinct. The letter raises several pertinent issues, namely; the parcel number 987 was curved out of plot number KIIRUA/NKANDO/605;

parcel number 987 was superimposed on parcel number KIIRUA/NKANDO/605; parcel number 987 has no supporting documents to underpin its origin; and parcel number 987 was created without the knowledge of Zabron Murungi M'Ringeera from parcel KIIRUA/NKANDO/605.

300. I beg to highlight that the contents of the letter dated **10th December 2018** by the Director of Land Adjudication and settlement [who is the 5th Defendant] was never controverted and or impeached. The said contents confirm that the excision and creation of parcel number 987 was illegally undertaken.

301. I beg to highlight that the process pertaining to the creation of a title is paramount. In particular, whenever the title of a particular person is challenged and evidence is placed before the court to impeach such title; it behoves the registered owner to justify the root of his or her title. Failure to do so exposes the impugned title to invalidation and nullification.

302. In the case of *Presbyterian Foundation v Kibera Siranga Self Help Group Nursery School (Civil Appeal 64 of 2014) [2023] KECA 371 (KLR) (31 March 2023) (Judgment)*, the Court of Appeal elaborated on this point and stated thus;

“22. We will next address the pertinent issue regarding the existence of two titles in respect of the same parcel land. The best evidence of ownership of immovable property is the title deed to it and that is why the question of the root of title is important. Root of title is the deed to which title to a property is ultimately traced to prove that the owner has good title. Accordingly, when there are competing

interests as in this case, the parties are required to give evidence of title starting with a "good root of title." A good root of title and an unbroken chain of ownership is required. To be a good root of title, a document must satisfy each of the following requirements:

(a) it must deal with or show the origin of the ownership of the whole legal and equitable interest in the land in question;

(b) it must contain a recognizable description of the property;

(c) it must not contain anything that casts any doubt on the title.”

303. Having reviewed the documentation that were tendered by and on behalf of the defendants and more particularly the documents placed before the court on behalf of the 9th Defendant, I do not discern any evidence to underpin the root of the title in respect of LR. KIIRUA/NKANDO/987.

304. Moreover, it is not lost on me that the green card relating to parcel number 987 references KIIRUA/KIIRUA-NKANDO/987, whereas the Certificate of Official Search and the Certificate of Title that was tendered before the court relate to KIIRUA/NKANDO/987. The registration blocks alluded to are clearly distinct and separate.

305. In my humble view, there is a clear disconnect and thus contradiction in the documentation that was being relied upon by the 9th Defendant.

306. Before concluding on this issue, I beg to reference the holding in the case of *Wambui v Mwangi & 3 others (Civil Appeal 465 of 2019) [2021] KECA 144 (KLR) (19 November 2021) (Judgment)*, where the court held as hereunder:

“64. The jurisprudence relied upon by the appellant and which we find prudent not to replicate are as already highlighted above. We

have given due consideration to them in light of the record as assessed herein by us. Our take on the same is that the jurisprudential thread running through all of them is that no court of law should sanction and pass as valid any title to property founded on: fraud; deceitfulness; a contrived decree; illegality; nullity; irregularity, unprocedurality or otherwise a product of a corrupt scheme.”

307. My answer to issue number three is threefold. Firstly, plot/parcel number KIIRUA/NKANDO/987 was exercised from and carved out of plot number KIIRUA/NKANDO/605 illegally and fraudulently. For good measure, no supporting documents are obtainable from or traceable to the Department of Adjudication.
308. Secondly, what comprises of plot number KIIRUA/NKANDO/987 constitutes part of KIIRUA/NKANDO/605. Instructively, the Director of Land Adjudication and Settlement affirms that the said plot was superimposed on LR. KIIRUA/NKANDO/605.
309. Thirdly, the title in respect of LR. KIIRUA/NKANDO/987 was evidently procured unprocedurally, illegally and thus same cannot convey any legal rights or interests to the bearer thereof. The impugned certificate of title is negated by the provisions of section 26(1 b) of the Land Registration Act, 2012 [2016].
310. Turning to issue number four, *namely*; whether the Plaintiff herein is the lawful and legitimate owner of LR. Number KIIRUA/NKANDO/605 or otherwise; it is important to posit that the Plaintiff tendered and produced before the court a copy of the sale agreement dated 5th September 1987

relating to the purchase of plot number KIIRUA/NKANDO/605. The vendor at the foot of the said sale agreement was Jenifer Kairuthi M'Ikiao. Moreover, it is indicated that the plot which was being sold measured approximately 18.85 acres. In addition, the plaintiff also tendered a copy of an affidavit deposed to by the same vendor. For good measure, the affidavit was sworn on **8th August 2019**.

311. Other than the foregoing, it is also paramount to reference the letter dated **5th October 2012** which confirmed that the suit property belongs to and is registered in the name of Zabron Murungi M'Ringeera. The fact that the suit property is registered in the name of the plaintiff was also vindicated by PW1.
312. I beg to underscore that the totality of the evidence on record, including the letter by the Director of Land Adjudication and Settlement dated **10th December 2018**, confirmed ownership of plot number KIIRUA/NKANDO/605 by the Plaintiff.
313. Unlike the Defendants and the interested parties who struggled to demonstrate the demarcation of plot number 605 in the name of Rebecca Mwonjiru M'Ikiara; the plaintiff herein placed before the court plausible and concrete evidence demonstrating the demarcation of the suit plot in favor of Jenifer Kairuthi M'ikiao.
314. Furthermore, there is no gainsaying that Rebecca Mwonjiru herself conceded that same was never allocated land by the committee. Moreover, Rebecca Mwonjiru filed an objection challenging the demarcation and allotment of Plot number 605 KIIRUA/NKANDO. Nevertheless, the objection under reference was admittedly dismissed.

315. To my mind, the documentation that was tendered by and on behalf of the plaintiff provide a clear, consistent and unbroken chain underpinning the acquisition of the suit property. Simply put, the plaintiff has vindicated the root of his title to and in respect of LR. Number KIIRUA/NKANDO/605.
316. Other than the foregoing, there is also evidence that LR. Number KIIRUA/NKANDO/987 was excised from the suit property. This means that the acreage that was allegedly registered in respect of KIIRUA/NKANDO/987 lawfully belongs to and forms part of the suit property.
317. *In a nutshell*, I am duly convinced that the Plaintiff herein lawfully purchased plot number KIIRUA/NKANDO/605 from Jenifer Kairuthi M'Ikiao and thereafter the plot was transferred and registered in his [Plaintiff's] name. In addition, the plot which was purchased by plaintiff measured approximately 18.50 acres and not 1.09 hectares as indicated in the falsified adjudication record which was tendered before the court. For good measure, it is instructive to recall that PW1 [the District Land Adjudication Officer] conceded that the adjudication record in question was incomplete and invalid. Moreover, same also acknowledged that part 14 of the Adjudication record did not capture inter alia the outcome of objection 688 whose details form part of the demarcation book.
318. In the premises, my answer to issue number Four [4] is threefold. Firstly, the Plaintiff has proven and established the purchase, transfer and acquisition of LR. Number KIIRUA/NKANDO/605 [the suit property].

319. Secondly, the Plaintiff has also laid before the court evidence to demonstrate that what he bought was approximately 18.50 acres and not 1.09 hectares. Moreover, there is no gainsaying that the acreage that was carved out and transferred to plot number 987 forms part of the suit property.
320. Thirdly, the plaintiff has demonstrated that the acreage of the suit property was interfered with by the Defendants and more particularly the 2nd to 6th Defendants. In any event, there is no gainsaying that the 5th Defendant has acknowledged and conceded as much at the foot of the letter dated **10th December 2018**.
321. Turning the Fifth issue, *namely*; whether the counterclaim by the 8th defendant is merited or otherwise. It is instructive to recall that the 8th defendant contended that same entered into a sale agreement with one Yusuf Maitima M'Alaine, now deceased as pertains to a portion of L.R No. Kiiirua/Nkando/987. Furthermore, the 8th defendant contended that upon entering into the sale agreement, the vendor [Yusuf Maitima M'Alaine] applied for and obtained the consent to subdivide the named property.
322. It was the further testimony of the 8th defendant that the named property was subsequently subdivided culminating into the creation of inter-alia Kiiirua/Nkando/5783 [which is claimed by the 8th defendant herein]. Additionally, it was contended that prior to purchase of the portion of land, which now comprises of Kiiirua Nkando/5783, the purchaser [8th defendant] undertook due diligence. To this end, the 8th defendant has posited that the title in respect of his parcel of land is lawful and legitimate.

323. Nevertheless, it is not lost on me that parcel number Kiirua Nkando 987 and which was allegedly curved out of L.R Kiirua Nkando/605, was illegally created. Barring repetition, it is worthy to recall that parcel number 605 was never demarcated or adjudicated in favour of Rebecca Mwonjiru at all. For good measure, no adjudication record was ever tendered to underpin the said contention.
324. It is also worthy to recall that during the adjudication and demarcation process, parcel number Kiirua Nkando 987 was demarcated in the name of John Thiaine. Instructively, parcel number 987 did not emanate from parcel number 605 or at all.
325. Furthermore, there is no gainsaying that the director of land adjudication and settlement *vide* his letter dated 10th December 2018, confirmed that parcel number Kiirua/Nkando/987 was illegally and fraudulently created. For good measure, the director of land adjudication highlighted that there were no supporting document to underpin the creation of parcel number Kiirua Nkando/987 in the name of Yusuf Maitima M'Alaine.
326. Additionally, the same director is on record confirming that parcel number 987 was superimposed onto parcel number 605.
327. The bottom line is that any parcel of land, L.R number Kiirua/Nkando/5783, which arises from L.R Kiirua Nkando/987, is a nullity. Such a title is *devoid* of a legitimate root in the eyes of the law. To this end, I am afraid that the title in respect of L.R 5783 is vitiated by illegality and hence same is a nullity.

328. The 8th defendant may not have been privy or party to the fraud and illegality impacting upon L.R No. Kiirua/Nkando/987. However, the position of the law is to the effect that any title that arises out of an illegality, or a corrupt scheme, is invalid. [See the provisions 26 (1) (b) of the Land Registration Act]. [See the holding of the court of appeal in the case of **Frank Logistics Limited v Golden Lion Real Estate Company & 6 others [2025] KECA 1471 (KLR)**]
329. Regarding the reliefs, if at all to be granted; it is important to underscore that the plaintiff sought a plethora of reliefs at the foot of the amended plaint. Firstly, the Plaintiff sought a declaration to the effect that the registration of LR. No. KIIRUA/NKANDO/987 in favor of Jusuf Maitima M’Alaine [now deceased] was fraudulent and a nullity. Furthermore, the plaintiff sought for nullification of the said title and reversion of the acreage thereof to the suit property.
330. While discussing issues number three [3] and four [4] herein before, I have found and held that plot number KIIRUA/NKANDO/987 was unprocedural, illegal, and fraudulently created. Moreover, there is no gainsaying that its creation was never underpinned by any demarcation or adjudication record. To this end, I agree that the impugned title is a nullity.
331. Additionally, the plaintiff has also sought an order of eviction as against Jusuf Maitima M’Alaine [now deceased] by himself, agents and or servants. Though the said Jusuf Maitima M’Alaine is deceased, same was

replaced/substituted by the 9th Defendant. Moreover, there is no gainsaying that the said 9th defendant, who testified as DW 9, admitted/acknowledged that same is in occupation of a portion of L.R Kiiirua/Nkando/605. In addition, the said defendant laid a claim to both L.R Kiiirua Nkando/605 and 987, respectively.

332. Furthermore, evidence was tendered that Joseph Mworira [DW 4], Peter Murianki [DW 2]; Isaack Bundi Mwirichia DW 8 and the interested parties are in occupation of portions of the suit property. Even though DW 8 and the interested parties have contended that same are on portions of land that emanated from L.R. Kiiirua/Nkando/987, it is important to recall and reiterate that I have since found and held that plot number Kiiirua/Nkando/987 was un-procedurally and illegally created. Suffice it to state that the said plot did not emanate from the adjudication process.

333. In my humble view, the registered and lawful owner of a landed/immovable property is bestowed with several rights and privileges thereto. The rights and interests are underpinned by the provisions of sections 24 & 25 of the Land Registration Act 2012 [2016]. Notably, the lawful owner is entitled to *inter alia* exclusive and absolute occupation, possession, and use.

334. To my mind, the right to absolute and exclusive enjoyment of immovable property, the suit property not *excepted*, cannot be enjoyed if a third party has entered upon and taken possession, albeit without the consent of the registered owner. Such an entry by third parties without any colour of right constitutes an infringement of the rights of the registered owner; and thus a violation of the Proprietary rights vindicated by the provisions of **Article 40 of the Constitution, 2010.**

335. Pertinently, the registered owner and in this case, the plaintiff, is entitled to an order of eviction. In the case of *Waas Enterprises Limited v City Council of Nairobi & Another (2014) KEELC605(KLR) (1)*, the court [Lady Justice Gitumbi, Judge – as she then was] stated as hereunder;

“As a registered proprietor, the plaintiff is entitled to enjoy all proprietary rights to the exclusion of all others. This includes the right to exclusive possession of the suit land.”

336. The other prayer that has been sought relates to an order of permanent injunction. There is no gainsaying that the statutory rights and privileges of a registered owner cannot be appropriated and enjoyed without being protected from encroachment by third parties. The protection under reference can only accrue where an order of permanent injunction has been granted as against the offenders/intruders. [See *Moya Drift Farm Limited vs Theuri 1973 EA and Mohanson Kenya Limited vs The Registrar of Lands-Kajiado (2017) eKLR*].

337. Next is the prayer for *mesne profits*. The plaintiff has also sought for a prayer pertaining to mesne profits [sic] for blockage of use of water pans, equipped borehole, water supply system and destruction of crops in the Plaintiff’s parcel of land. However, it is imperative to underscore that the plaintiff herein did not particularly plead for the claim of mesne profits. Furthermore, the plaintiff did not particularize the basis for the claim. Neither has the plaintiff highlighted the specific amount[s] and how the amounts [if at all] accrue.

338. It is common ground that a claim for mesne profits is akin to special damages. In this regard, any claimant, the plaintiff not excepted, is enjoined to plead, supply particulars, and thereafter specifically prove the

claim on account of mesne profits. Absent the requisite pleading and specific proof, no *mesne profits* are awardable. [See **Christine Nyanchama Oanda v Catholic Diocese of Homa Bay Registered Trustees [2020] KECA 536 (KLR); and Karanja Mbugua & another v Marybin Holding Co. Ltd [2014] KEELC 378 (KLR); Attorney General versus Halai Meat Factory Limited [2016]eklr.**]

339. Turning to the reliefs that were sought by interested parties; it is instructive to recall that I found and held that an interested party cannot propagate, seek, or procure a substantive relief in a matter where same is joined merely as an interested party.

340. Notably, if the interested parties were keen to propagate own cause of action, same [interested parties] ought to have sought joinder as defendants and not otherwise.

341. Other than the foregoing deficiency, which is fundamental and not procedural, it is also important to observe that the interested parties did not meet the threshold to warrant the issuance of the orders of specific performance as pertains to various properties that were adverted to. Instructively, the law underpinning the grant of an order of specific performance [if at all] was expounded in the case of **Reliable Electrical Engineering v Mantrac Kenya Limited [2021] KEHC 7272 (KLR).**

342. The Interested Parties herein tendered and produced before the Court a copy of the Sale Agreement, that was said to have been entered into and executed by Jusuf Maitima M'Alaine [now deceased]. The Agreement shows that the Vendor was selling a portion of Plot Number 605.

However, it is common ground that the vendor herein could not sell what he did not own.

343. Furthermore, even though the sale agreement relates to Plot Number 605, the Interested Parties are now contending that their Plots emanated from Plot Number 987; and same now seek the Orders of Specific performance as pertains to the said plots.

344. For coherence, it is instructive to reference the evidence of IPW 1 [Asenath Kaimuri Nyamu]. Same stated as hereunder while under cross-examination by learned counsel for the Plaintiff.

“I was the first to purchase a portion of plot No. Kiirua/Nkando/987. There were other people who purchased portions of the land. I have availed a copy of the mutation forms over the land in question. The mutation form does not have parcel numbers. However, the parcel of lands were assigned numbers later”.

345. What I hear the witness [IPW 1] to be stating is that the portion of land which underpins the prayer of specific performance emanated from Kiirua/Nkando/987 and not 605. Nevertheless, there is no sale agreement which was tendered or availed to court in respect of the purchase/acquisition of a portion of Kiirua/Nkando/987. To this end, I am afraid that the evidence tendered on behalf of the interested parties falls short of the threshold envisaged before a claimant can partake of an order of specific performance.

346. Additionally, it is important to state that in the absence of an order of specific performance in favor of the interested parties, it is not tenable to return any declaration in the manner sought by/on behalf of the interested parties.

347. To my mind, the declaratory orders were sought in *vacuum*.

DISPOSITION.

348. Flowing from the analysis alluded to in the body of the Judgement, it must have become apparent that the Plaintiff has indeed established his claim to and in respect of the suit property. Simply put, the evidence tendered by the plaintiff was plausible; cogent; concrete; and thus credible.

349. On the contrary, the Interested Parties, who had also sought various orders/ reliefs before the Court, have not proven their claim[s]. In any event, there is no gainsaying that the cross-claim by the Interested Parties is fundamentally flawed.

FINAL ORDERS:

350. In the upshot, and for the reasons alluded to; the final orders that commend themselves to the court are as hereunder;

- i. A declaration be and is hereby issued that the creation and registration of L.R Kiirua/Nkando/987 in the name of Yusuf Maitima M'Alaine was unprocedural, illegal, fraudulent and thus a nullity.**
- ii. A declaration be and is hereby issued that the acreage of 6.4 ha forming L.R No. Kiirua/Nkando/987, which was illegally**

created forms part of L.R No. Kiirua/Nkando/605. [the suit property]

- iii. A declaration be and is hereby issued that L.R No. Kiirua/Nkando/605 measuring approximately 8.4 ha or thereabouts lawfully belongs to and is registered in the name of the plaintiff [Zablon Murungi M'Ringeera].
- iv. A declaration be and is hereby issued to the effect that there is no pending adjudication case affecting and or impacting on plot number Kiirua/Nkando/605 to negate the issuance of a certificate of a title in the name of the plaintiff or at all.
- v. An order be and is hereby issued directing the land registrar – Meru county [4th defendant] to cancel, nullify and revoke the certificate of title issued in respect of L.R Kiirua/Nkando/987; and all the resultant subdivisions arising therefrom.
- vi. For the avoidance of doubt, the titles in respect of L.R No's Kiirua/Nkando/5780, 5781, 5782 and 5783, be and are hereby revoked.
- vii. The Registry Index Map, sheet number 61, which brought forth L.R No's Kiirua/Nkando/5780, 5781, 5782 and 5783 be and is hereby revoked.
- viii. The 9th Defendant [Jionisia Kathure]; Peter Murianki [DW 2]; Joseph Mworua [DW 4], the 8th Defendant [Isaack Bundi Mwirichia] and the Interested parties be and are hereby ordered to vacate and hand over vacant possession of the suit property, *namely*; L.R No. Kiirua/Nkando/605 measuring 8.4 ha or thereabout within 120 days from the date hereof.
- ix. In default by the parties named in clause [viii] to vacate and hand over vacant possession to the plaintiff within the stipulated timeline, the plaintiff shall be at liberty to levy

eviction against the trespassers. In this regard, an Eviction order shall issue.

- x. **In the event**, of Eviction being levied in terms of clause [ix] above, the costs/expenses incurred by the plaintiff shall be certified by the deputy registrar and thereafter same shall be recovered as part of costs.
- xi. An order of permanent injunction be and is hereby issued to restrain and prohibit the 8th and 9th defendants; the interested parties; and all the trespassers either by themselves, agents, servants, employees, and or anyone claiming under them from trespassing onto, entering upon, and or otherwise interfering with the Plaintiff's rights to and in respect of land parcel number KIIRUA/NKANDO/605, measuring approximately 8.4 ha or thereabouts.
- xii. The Plaintiff be and is hereby awarded costs of the suit.
- xiii. The Interested Parties' Cross-Claim be and is hereby struck out with costs awarded to the Plaintiff only.
- xiv. The 8th Defendant's counterclaim be and is hereby **dismissed**.
- xv. Costs of the counterclaim be and are hereby awarded to the 1st Defendant to the counterclaim [the Plaintiff in the main suit].
- xvi. Any other relief not expressly granted is declined.

351. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 12TH DAY OF NOVEMBER 2025.

**OGUTTU MBOYA, FCIArb; CPM [MTI-EA].
JUDGE**

In the presence of:

Court Assistant Hussein

Otieno Obwanda for the Plaintiff

Mr. Benjamin Kimathi [Principal litigation counsel] for the 1st to 7th defendants

Mr. Joshua Mwiti for the 8th Defendant

Mr. Ondieki for the 9th Defendant

Mr. Thurania Atheru for the 1st, 2nd and 3rd Interested parties.