

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA**  
**ELCLC No. E006 OF 2023**

**SABINA KEMUNTO NYANGACHA .....**  
**PLAINTIFF**

**VERSUS**

**RAYMOND NYAGWOKA .....**  
**1<sup>ST</sup> DEFENDANT**

**WYCLIFFE NYAANGA NYAGITARI .....**  
**2<sup>ND</sup> DEFENDANT**

**INNOCENT NYAGITARI BARASA .....**  
**3<sup>RD</sup> DEFENDANT**

**LAND REGISTRAR, NYAMIRA .....**  
**4<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL .....**  
**5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. Litigation in this matter commenced on 5<sup>th</sup> December 2023 when the Plaintiff filed Plaintiff dated 4<sup>th</sup> December 2023. The Plaintiff averred that she was the registered owner of LR No. Kitaru Settlement Scheme/13 (hereinafter referred to as 'suit property') from 15<sup>th</sup> March 2016 following a transfer and therefore had absolute rights to own and possess the suit property.

2. The Plaintiff further averred that in the year 2016, she filed a suit against the First Defendant herein claiming that the First Defendant had trespassed into the suit property herein. That the said suit was heard and judgment delivered on 24<sup>th</sup> March 2022 wherein the trial Court held that the suit property belonged to the Plaintiff.
3. The Plaintiff also averred that during the pendency of the said suit, the Second and Third Defendants herein colluded with the Fourth Defendant herein and fraudulently subdivided the suit property into parcel numbers Kitaru Settlement Scheme/134, 135, 136, 137 and 138, thereby disinheriting her. That upon being served with the judgment, the Fourth Defendant rectified the register of the suit property, rescinded parcel numbers Kitaru Settlement Scheme/134, 135, 136, 137 and 138, and reinstated the Plaintiff as the registered owner of the suit property.
4. She further averred that despite the rectification of the register, the First to Third Defendants trespassed on the suit property, constructed on it, cultivated it and took possession of it without justifiable cause. Consequently, the Plaintiff prayed for judgment against the Defendants jointly and severally for:

*A. Declaration that the plaintiff is the registered and/or lawful owner of LR No. Kitaru Settlement Scheme/13.*

*B. A declaration that the subdivision of LR No. Kitaru Settlement Scheme/13 into Kitaru Settlement*

*Scheme/134, 135, 136, 137 and 138 was irregular, unlawful, illegal, null and void.*

*C. A declaration that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants herein are trespassers on LR No. Kitaru Settlement Scheme/13.*

*D. An order of eviction be issued against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, agents, and/or servants from LR No. Kitaru Settlement Scheme/13.*

*E. Permanent injunction be issued against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants their agents and servants from entering, re-entering, trespassing unto, building on, depositing, building materials and/or dealing in any manner with the suit land LR No. Kitaru Settlement Scheme/13.*

*F. General damages for trespass.*

*G. Costs and interest.*

5. The First to Third Defendants responded to the Plaint by filing Statement of Defence and Counter Claim dated 20<sup>th</sup> March 2024. They averred that any purported registration of the Plaintiff as proprietor of the suit property was an affront to a ruling delivered in Kisii ELC No. 354 of 2016 on 26<sup>th</sup> January 2023, and therefore null and void. They denied that the subdivisions were illegal, unlawful and irregular or were done fraudulently. They also denied the allegations of trespass.

6. The First to Third Defendants averred in their Counterclaim that the suit property was registered in the name of Sabina Kemunto (deceased) who was their mother and that they had been in its occupation for a period spanning 50 years. They also averred that they had developed the suit property with permanent houses, extensively cultivated tea bushes, planted maize and interred the remains of their deceased family members on it. That the Plaintiff purported to acquire the suit property on 15<sup>th</sup> March 2016 by means of fraud and that their longtime peaceful, uninterrupted, exclusive and extensive use of the suit property was inimical to the Plaintiff's claim to ownership of the same.
7. The First to Third Defendants averred that the suit was an affront to **Section 12** of the **Limitation of Actions Act** and that it was also *sub judice* in view of Kisii ELC No. 354 of 2016. They therefore urged the Court to dismiss this suit and to enter judgment in their favour as follows:
  - (a) *A declaration that the 1<sup>st</sup> defendant is registered proprietor of land parcel L.R. No. Kitaru Settlement Scheme/136, the 2<sup>nd</sup> defendant is the registered proprietor of land parcel L.R. No. Kitaru Settlement Scheme/137 and the 3<sup>rd</sup> defendant is the registered proprietor of land parcel L.R. Nos. Kitaru Settlement Scheme/134, 135, 138.*

*(b) A permanent injunction restraining the plaintiff from interfering with the defendants' quiet use, possession and occupation of land parcels LR. Nos. Kitaru Settlement Scheme/134, 135, 136, 137 and 138.*

*(c) Costs of the plaintiff's suit and of the counterclaim be awarded to the defendants.*

8. The Plaintiff then filed a Reply to the Statement of Defence and Defence to the Counterclaim dated 15<sup>th</sup> July 2024. She reiterated that she had possessory and occupation rights in respect of the suit property and that the Defendants had trespassed and colluded with the 4<sup>th</sup> Defendants to have the suit property illegally subdivided, thereby fraudulently disinheriting her.

9. In her Defence to the Counterclaim, the Plaintiff denied its averments and reiterated that the suit property had never been registered in the name of the mother of the First to Third Defendants and that it was the said Defendants who were fraudulently and corruptly trying to use the Fourth Defendant to have their mother registered as proprietor of the suit property. She denied the allegations of fraud as well as *sub judice* and averred that the Court in Kisii ELC 354 of 2016 allowed her to file another suit. She urged the Court to dismiss the Counterclaim with costs to her.

10. The Fourth and Fifth Defendants filed a joint Statement of Defence dated 19<sup>th</sup> July 2024. They denied the allegations of

fraud and illegality and averred that the register in respect of the suit property was rectified on 7<sup>th</sup> November 2016 to nullify the registration of the Plaintiff as its proprietor pursuant to **Section 79 (2)** of the **Land Registration Act 2012**. It was further averred that any registration, removal and/or cancellations, subdivisions or transfer were lawful, regular, procedural and in furtherance of the Fourth Defendant's statutory duties under the **Land Registration Act 2012**. They also averred that no demand letter was issued to them and prayed that the Plaintiff's suit be dismissed with costs.

11. Subsequently, the Plaintiff filed a Reply to the Fourth and Fifth Defendants' Statement of Defence, dated 20<sup>th</sup> January 2025.

12. Peter Moindi Nyangacha testified as PW1. He stated that the plaintiff was his mother and that she was alive as of the date of his testimony. That the Plaintiff donated to him a power of attorney on 8<sup>th</sup> October 2024 and also signed and filed a witness statement dated 4<sup>th</sup> December 2023. He adopted the statement as his testimony and also produced copies of the power of attorney and the documents listed in the Plaintiff's list of documents dated 4<sup>th</sup> December 2023 and as well as that in Plaintiff's supplementary list of documents dated 15<sup>th</sup> July 2024 as exhibits.

13. The Plaintiff stated in the statement that she was the registered owner of the suit property, having been so registered on 15<sup>th</sup> March 2016. That the First to Third

Defendants trespassed into the suit property and constructed houses thereon. She added that on 1<sup>st</sup> November 2016, she filed ELC Case Number 254 of 2016 against the First Defendant and that upon the case being heard, judgement was delivered in her favour on 24<sup>th</sup> March 2022.

14.The Plaintiff further stated that during pendency of the said case, the First to Third Defendants colluded with the Fourth Defendant and rectified the register of the parcel by generating new registration numbers being Kitaru Settlement Scheme/134, 135,136, 137 and 138. That the rectification was unlawful, illegal, irregular and the product of collusion between the First to Third Defendants and the Fourth Defendant. That upon delivery of the judgement and the Fourth Defendant being served with it, the Fourth Defendant again rectified the register, nullified the subdivisions and reinstated her as the owner of the suit property.

15.PW1 went on to testify that the Plaintiff acquired the suit property after paying money to the Settlement Fund Trustees (SFT). He added that he was not aware of any other person by the name Sabina Kemunto Nyangacha besides the Plaintiff and that prior to the year 2015 nobody was in occupation of the suit property although the Plaintiff was taking care of a 2 acre tea plantation thereon.

16.PW1 also testified that the Plaintiff filed Kisii ELC No. 354 of 2016 which was a trespass claim against the First Defendant.

That the Plaintiff employed a Mr Baraza who was the First Defendant's father to take care of the suit property in the 1970s and that Mr Baraza built a semipermanent house on the suit property in 1996 with financial support from the Plaintiff.

17. He also stated that Mr Baraza passed way in around the years 2010 and 2011 and added that he did not know where his remains were buried. That Mr Baraza's family started occupying the suit property in the year 2016 and went on to construct permanent buildings thereon despite being served with an order of injunction.

18. He further testified that the Plaintiff last visited the suit property in the year 2016 and that the judgment in Kisii ELC No. 354 of 2016 was later set aside on 26<sup>th</sup> January 2023. He added that he knew the First Defendant's parents and that the First Defendant's mother was called Leah Morangi. That the Plaintiff was called Sabina Kemunto and her husband was Nyangacha. That he did not have the land certificate which was issued to the Plaintiff on 20<sup>th</sup> January 1986.

19. The Plaintiff's case was then closed.

20. Raymond Nyagwoka Barasa, the First Defendant, testified as DW1. He adopted his witness statement dated 18<sup>th</sup> July 2024 as his testimony and also produced copies of the documents listed in the First to Third Defendants' list of documents dated 20<sup>th</sup> July 2024 as exhibits.

21.DW1 stated in his witness statement that he was a son of “Sabina Kemunto” (deceased) also known as “Sabina Kemunto Barasa” who was the registered proprietor of the suit property. That he had resided on the suit property for over 40 years and that he had developed it together with members of his family. He further denied that he had been a trespasser on the suit property and added that he and his family and had been using it as of right.

22.DW1 went on to state that the suit property was in full use by his family and that the Plaintiff who had never been in occupation only made a claim in the year 2016 after obtaining title. That his father’s remains were buried in the suit property in the year 2003, his mother’s remains in the year 2010 as well as the remains of his brother George Barasa were buried therein in year 2011. He also stated that George Barasa’s widow was alive and remained in the suit property and that crops such as tea, maize and Napier grass were being grown on the suit property as of the date of the statement.

23.He also stated that the Plaintiff passed off as his late mother and purported to effect a name change from “Sabina Kemunto” to “Sabina Kemunto Nyangacha’” as a means of acquiring the suit property. That after the Land Registrar was notified of the fraud perpetrated by the Plaintiff, he wrote a letter dated 7<sup>th</sup> November 2016 summoning the Plaintiff to return the title she had fraudulently obtained, hence the

Plaintiff's decision to claim that DW1 had trespassed in year 2016.

24. DW1 stated that even after the Plaintiff obtained title, the suit property was continuously in the sole possession and use of DW1's family and that the Plaintiff resided elsewhere. He added that the register was rectified after it was established that the Plaintiff had no proprietary interest in the suit property and urged the Court dismiss the Plaintiff's suit with costs.

25. He went on to testify that he had lived on the suit property since he was in nursery school and that they had massive developments on it with the oldest development being about 55 years old. That the tea bushes on the property were planted by his father, mother and uncle between 1970 and 1971 and that his family had used the bushes over the years. That he came from the suit property on the morning of his testimony and that the Plaintiff had never been on the property.

26. DW1 also testified that some of the documents he had produced was a copy of a photograph of his mother holding a paper with the number of the suit property in 1967 as was then a requirement, a statement of tea deliveries by his mother and burial permit in respect of his mother. He added that the suit property was the only piece of land that they had at Kitaru and that his mother was buried at Kitaru.

27. He further testified that entry number 2 dated 16<sup>th</sup> January 1986 in the green card was in the name of his mother Sabina Kemunto who was by then already married to his father and that her name by then was Sabina Kemunto Barasa. That a land certificate was issued to his mother on 20<sup>th</sup> January 1986, but he was unable to locate a copy of it. That by 15<sup>th</sup> March 2016 when change of name and issuance of title was effected in favour of Sabina Kemunto Nyangacha, his mother has passed away.

28. DW1 further testified that following the cancellation of the entries relating to change of name and issuance of title in favour of Sabina Kemunto Nyangacha, no succession in respect of his mother's estate was conducted and that instead of the suit property reverting to his mother's estate, his brother Innocent Nyagitari Barasa (the Third Defendant) was registered as proprietor without any succession. That the registration in favour of the Third Defendant was to enable them to subdivide the suit property. He also stated that there were cautions in the register of the suit property which were lodged by his sisters.

29. Wycliffe Nyaanga Nyagitari (DW2), the Second Defendant, adopted his witness statement dated 18<sup>th</sup> July 2024. He stated that he is a grandchild of Sabina Kemunto Barasa, that he was born and brought up on the suit property and that the Third Defendant is his father. He added that the suit property was in full use by his wider family and that he and his nuclear family

including three children were residing in a house built on the suit property by his father pending completion of his own house. He also stated that Annah Barasa, Jane and Immaculate were his aunts and sisters to the First and Third Defendants.

30.DW2 further testified that he attended burials of remains of his family members on the suit property being Alex Barasa Nyagwoka's in the year 2003, his grandmother Sabina Kemunto's in 2010 and his uncle George Barasa's in 2011. He also stated that he had never seen the Plaintiff on the suit property and that he had been in the suit property even on the morning of his testimony.

31.He also testified that he together with the First and Third Defendants subdivided the suit property around the year 2018. That following the subdivision, he became the registered owner of parcel number Kitaru Settlement Scheme/137. He added that he did not attend the land registry during the subdivision and registration in his favour, could not remember if he attended the Land Control Board and did not have any receipt in respect of payment of stamp duty for the transfer in his favour.

32.Innocent Nyagitari Barasa (the Third Defendant), testified as DW3. He stated that he was born in 1957 and entered the suit property in 1968. That the First Defendant is his brother and the Second Defendant his son. He adopted his witness statement dated 18<sup>th</sup> July 2024.

33.DW3 stated in the witness statement that he is a son to Sabina Kemunto and Alex Barasa Nyagwoka and that his said parents relocated from their original home in Keroka to Kitaru in 1968. That his parents constructed grass thatched houses on the suit property and cleared the surrounding thick forest with the help of relatives.

34.DW3 further stated that when his parents relocated to Kitaru, he and his siblings were initially left at their grandparents' home in Tindereti Settlement Scheme. That he moved to the suit property towards the end of 1968 and that he was admitted to Nyamiranga Primary School during the third term of 1968 while his sister by the name Magoma and the First Defendant were admitted to Kitaru Primary School in 1969.

35.DW3 also stated that his third brother by the name George Nyatigo was born in the suit property in the year 1968 while his last born sister Annah Bosibori was born in 1970. He further stated that he had never been a trespasser on the suit property and that the said property was fully in use by his family. That remains of three members of his family being his father, his mother and his brother George were buried in the suit property between the years 2003 and 2011 and that the Plaintiff had merely stolen his mother's identity and purported to be the owner of the suit property.

36.He went on to testify that as of the date of his testimony, he was growing tea, rearing dairy cattle, and goats on the suit

property and that in the year 2016, he had a home and cattle on the suit property. That in the year 2016, he complained to the County Commissioner about people who were claiming the suit property. That the County Commissioner referred him to the Fourth Defendant who acted on his complaint by cancelling the entries change of name was effected and title deed issued to the Plaintiff.

37.DW3 further testified that subsequently, the Fourth Defendant registered him as proprietor of the suit property without succession having been conducted in respect of his mother's estate. That he then subdivided the suit property and that the subdivision was handled on his behalf by proxies since he was away in the United States of America. He added that he did not sign any document in respect of the subdivision and that he paid money for a special Land Control Board. At the time of his testimony, he did not have any receipt in respect of stamp duty, any application for consent of the Land Control Board or any consent from the said board.

38.Agnes Moraa Mobegi (DW4) testified that the First to Third Defendants were her neighbours and that their land parcels were next to each other with a road separating them. That the First to Third Defendants' mother was Sabina Kemunto with whom she became a neighbour in 1967 and that Sabina Kemunto's husband was called Barasa. She further testified that Barasa planted tea on the suit property and that both

Sabina Kemunto's and her husband's remains were buried in the suit property.

39.DW4 also stated that she did not know the Plaintiff, had never seen her on the suit property and that Sabina Kemunto and her husband initially constructed a single house on the suit property. She added that the First to Third Defendants had been brought up on the suit property and had developed it by constructing houses, rearing cows and tending the tea bushes.

40.Richard Mogoya Omayio (DW5) testified that he was are Chief of Kitaru Location as of the date of his testimony and that he knew the First to Third Defendants as well as their residences. That he had shared a common boundary with them since he was born in 1973 and that he knew Sabina Kemunto Barasa who was mother to the First and Third Defendants and grandmother to the Second Defendant. That both Sabina Kemunto Barasa's and her husband's remains were buried in the suit property and that he attended the burial.

41.DW5 went on to testify that he did not know the Plaintiff and that the Plaintiff was not Sabina Kemunto Barasa. That the suit property had a tea plantation, trees and houses since he was born and it was not true that Sabina Kemunto Barasa entered it in 2016. He added that the Plaintiff had never occupied any portion of the suit property and that DW4 had been his neighbour for over 40 years.

42. He further testified that his land adjoined the suit property and was parcel number 15 while DW4's land was parcel number 14. That Sabina Kemunto Barasa and his parents acquired their parcels from a settlement scheme and that he had never been notified of any dispute concerning the suit property since he became the area Assistant Chief and later Chief. He also stated that as of the date of his testimony, the children and family of Sabina Kemunto Barasa were in occupation of the suit property and that he knew that Sabina Kemunto Barasa owned the suit property because he saw her use it since his birth.

43. The First to Third Defendants' case was then closed.

44. Martin Osano, the County Land Registrar Nyamira, testified as DW6 and produced certified copies of the registers in respect of the suit property and parcel numbers Kitaru Settlement Scheme/134 to 138. He stated that the register in respect of the suit property was opened on 21<sup>st</sup> September 1982 with the first registered proprietor under entry number 1 being the Settlement Fund Trustees (SFT). That entry number 2 dated 16<sup>th</sup> January 1986 was a transfer to Sabina Kemunto while entry number 3 dated 20<sup>th</sup> January 1986 was issuance of Land Certificate to Sabina Kemunto.

45. He stated that he did not have any document to support entry number 2 and that the consideration for the transfer was stated as KShs 5,296. He added that entry number 7 dated

15<sup>th</sup> March 2016 was a correction of proprietor's name to Sabina Kemunto Nyangancha ID No. 2672053 and that on the same day a title deed was issued in the new name. That entry number 9 dated 7<sup>th</sup> November 2016 was a rectification cancelling entry numbers 7 and 8. He explained that the rectification was done because the Land Registrar discovered that entry numbers 7 and 8 were fraudulent and that he did not have any application in respect of entry number 7.

46.DW6 further testified that the Land Registrar wrote a letter dated 7<sup>th</sup> November 2016 to Sabina Kemunto Nyangancha giving reasons for the rectification and asking her to surrender the title. He added that he was not aware if she surrendered the title as directed.

47.He went to testify that entry number 10 in the register of the suit property was in the name of Innocent Nyagitari Baraza, but the nature of transaction was not stated and that he neither had any records supporting the entry nor knew the nature of the transaction. He added that the effect of entry number 9 was to restore ownership to Sabina Kemunto as per entry number 2.

48.DW6 also testified that entry number 11 dated 26<sup>th</sup> August 2021 was a closure of the register on subdivision of the suit property to parcels numbers 134 to 138, but he did not have any documents to support the said entry. He added that ordinarily, such an entry should be supported by a mutation

from the survey office and that ordinarily, a subdivision should be indicated by the registered owner. That as of the date of the subdivision the registered owner was Innocent Nyagitari who was never issued with any title deed in respect of the suit property.

49. He further stated that consent of the Land Control Board (LCB) was required for the subdivision, but he did not see any such consent for the subdivision. That in the encumbrances section of the register of the suit property, there was a charge registered on 21<sup>st</sup> September 1982 in favour of SFT and that the charge was still registered as of the date of his testimony. That to remove the charge, a discharge of charge from SFT was required but there was no such discharge in the records at the registry.

50. He added that after joining the Nyamira Land Registry, he made entry numbers 12 and 13 in the register of the suit property, both dated 17<sup>th</sup> April 2023. That entry number 12 was a court order dated 24<sup>th</sup> March 2022 issued in Kisii ELC No. 354 of 2016 cancelling entry numbers 9, 10 and 11 and that in the order, the Court declared that Sabina Kemunto Nyangacha was the lawful registered owner. That he complied with the order and reinstated entry number 7. On the same date, he made entry number 13 which was a restriction on dealings since the title was still charged to SFT. That for the registered owner to do anything on the land, a discharge of charge from

SFT must be presented and that no discharge had been presented as of the date of his testimony.

51.DW6 further testified that the position prevailing on the date of his testimony was that the subdivisions 134 to 138 remained nullified. He also stated that his office had not been served with any court order besides the judgment dated 24<sup>th</sup> March 2022 and had not been notified of death of Sabina Kemunto Nyangancha. He denied any collusion with the Defendants and added that he was not in office when the subdivisions were done. That the correct owner of the land is Sabina Kemunto as per entry number 2 and not Sabina Kemunto Nyangancha and that he did not know if the Sabina Kemunto in entry number 2 was deceased since he had not received any succession documents concerning her estate. He also stated that by the time he was making the cancellation on 17<sup>th</sup> April 2023, he was not made aware of the ruling of 26<sup>th</sup> January 2023 and that the person who presented the order for cancellation did not tell him about the setting aside order of 26<sup>th</sup> January 2023.

52.The Fourth and Fifth Defendants' case was thereafter closed. Directions were then given that parties file and exchange their written submissions.

53.After all parties had closed their respective cases, it emerged that the First to Third Defendants had not filed a verifying affidavit in respect of their counterclaim. They filed an application dated 6<sup>th</sup> October 2025, seeking leave to file the

verifying affidavit. The application was heard and determined through ruling delivered on 26<sup>th</sup> November 2025. The Court granted them leave to file and serve the verifying affidavit within seven days from the date of delivery of the ruling. They complied by filing the verifying affidavit on 27<sup>th</sup> November 2025.

54.The Plaintiff filed submissions dated 16<sup>th</sup> August 2025. It was submitted on her behalf that the main question for determination by the Court was whether she was the registered owner of the suit property. That the copies of certificate of official search, the title deed and the register which she produced indicated that she was the registered owner of the suit property and that her registration had not be challenged at all by the Defendants.

55.It was further submitted that the registrar who testified in Court stated that the Plaintiff was exclusively registered as the owner and that pursuant to **Sections 24, 25 and 26** of the **Land Registration Act**, the certificate of title was conclusive evidence of proprietorship. Reliance was placed on **Mombasa ELC Case No. 197 of 2020 Abdulawahap Ahamed Majid vs. Sisters for Justice NGO & Others** where the court emphasized on the issue of registered proprietorship.

56.Counsel also submitted that the First to Third Defendants pretended to have a mother by the name Sabina Kemunto, yet their mother was Leah Barasa; that they conducted succession

in respect of their late father's estate in Keroka Succession Cause No. 16 of 2009 but did not include their mother as one of the beneficiaries without explaining the reason for the omission, thereby rendering them fraudsters.

57. It was also submitted that the Plaintiff produced a copy of a note from the Settlement Fund Trustees dated 1<sup>st</sup> April 2021, which indicated the particulars of a loan which she took and that on the other hand the First to Third Defendants produced a forged document which allegedly originated from the Settlement Fund Trustee but in respect of plot number 99. That the said document lacked a sequence of events on the progress of the loan which they had allegedly paid to own the land.

58. It was also submitted that the 4<sup>th</sup> Defendant had not authority to cancel a title deed as indicated in his letter of 7<sup>th</sup> November 2016 and could only do so through court orders. That in any event, the said Land Registrar never demonstrated the investigations that he conducted to conclude that the Plaintiff was not the duly registered owner of the suit parcel.

59. Regarding the Counterclaim, Counsel for the Plaintiff submitted that the Court could not issue an order declaring the First to Third Defendants as the registered owners of the new sub-divisions since the Land Registrar testified that all the subdivisions were illegal. It was further submitted that they

could also not be granted an order of permanent injunction on the basis of fake titles.

60. In conclusion, Counsel submitted that the First to Third Defendants had admitted trespassing on to the suit property and that their Counterclaim should be dismissed with costs. It was further contended that the Plaintiff had established her case and that she should be granted the reliefs sought in her plaint.

61. The First to Third Defendants filed submissions dated 6<sup>th</sup> February 2026. They identified the following issues for determination: whether this suit was sub judice in view of Kisii ELC No. 354 of 2016, whether the Plaintiff is one and the same person as Sabina Kemunto Nyangacha and therefore the lawful proprietor of the suit property, whether the rectification of the register by the Land Registrar which cancelled the registration of Sabina Kemunto Nyangacha of the suit property was lawful, whether the claim before court was an affront to **Section 12** of the **Limitation of Actions Act**, whether the subdivision of the suit property into parcel numbers 134 to 138 was lawful, whether the First to Third Defendants had trespassed onto the suit property, whether reliefs sought in the plaint should be granted and whether reliefs sought by the First to Third Defendants in their counterclaim should be granted.

62. It was submitted that Kisii ELC No. 354 of 2016 was still pending and that the filing of this suit over the same issues as

those raised in the said suit rendered the instant suit *sub judice*. It was contended that in a ruling delivered on 28<sup>th</sup> March 2023 in Kisii ELC No. 354 of 2016, the Court expressed a strong view that the Plaintiff needed to consider withdrawing Kisii ELC No. 354 of 2016 and then file a new suit if her intention was to challenge the subdivision of the suit property. That the Plaintiff did not provide any evidence that she had withdrawn Kisii ELC No. 354 of 2016.

63. Relying on the cases of **Daniel Kipkemoi Bett & Another v Joseph Rono [2022] eKLR** and **Eres N. V. & Another v Maina Murage & Co. Advocates [2013] eKLR**, it was submitted on behalf of the First to Third Defendants that the situation herein qualifies the instant suit to be declared *sub judice* and an abuse of due process. They therefore urged the Court to strike out the case.

64. On the issue of whether the Plaintiff is one and the same person as Sabina Kemunto Nyangacha and therefore the lawful proprietor of the suit property, it was submitted that the register of the suit property had cautions at entries numbers 4 and 5 which preceded entry number 7 pursuant to which change of name was registered to make the Plaintiff a registered proprietor of the suit property. It was further contended that there was no evidence that the statutory procedure for removal of a caution under **Section 73** of the **Land Registration Act** was followed.

65.It was further argued that had the procedure for removal of a caution been adhered to, entries numbers 6, 7 and 8 would not have been made because the Cautioners who were members of the family of the late Sabina Kemunto would have had an opportunity to contest the identity of the Plaintiff as a purported proprietor in place of their mother.

66.It was also contended that there was ample evidence that the person known as Sabina Kemunto was not the same person as the Plaintiff herein and that by presenting the application for change of name, the Plaintiff was actually trying to defraud the family of Sabina Kemunto of the suit property. In that regard, reference was made to the testimonies of Agnes Moraa Mobegi (DW4) who was a neighbour to the First and Third Defendants and Richard Mogoya Omayio (DW5) who was the area Chief who testified that the Sabina Kemunto they had known for several decades was not the Plaintiff.

67.On the issue of whether the rectification of the register by the Land Registrar which cancelled the registration of Sabina Kemunto Nyangacha of the suit property was lawful, it was submitted that evidence was led that before cancelling the entries the Land Registrar served prior notice dated 7<sup>th</sup> November 2016 upon the Plaintiff on 8<sup>th</sup> November 2016 through the area Chief. That, consequently, the Land Registrar properly cancelled the entries pursuant to **Section 79 (2)** of the **Land Registration Act**.

68. It was also submitted that even at the hearing of this suit, the plaintiff did not seize the opportunity to provide any plausible basis upon which she changed her name from Sabina Kemunto to Sabina Kemunto Nyangacha and that she did not satisfy the requirements of Section 79 (3) of the **Land Registration Act** by failing to produce any application for change of name and payment of statutory fees in respect thereof.

69. Regarding the issue of whether the claim before court was an affront to **Section 12** of the **Limitation of Actions Act**, it was argued that assuming that the Plaintiff was the true owner of the suit property, by filing suit in 2023 or in the first instance in the year 2016, her claim was statute barred. That there was ample evidence that the First to Third Defendants had been in uninterrupted quiet occupation of the suit property for over forty years. Relying *inter alia* on the cases of **Chevron (K) Ltd v Harrison Charo Wa Shutu [2016] KECA 248 (KLR)** and **Bosire Ongero vs Royal Media Services [2015] eKLR**, it was contended that the Court lacked jurisdiction to entertain the Plaintiff's claim since the First to Third Defendants would have acquired title by adverse possession.

70. On the issues of whether the subdivision of the suit property into parcel numbers 134 to 138 was lawful and whether the First to Third Defendants had trespassed onto the suit property, it was submitted that since the Plaintiff was not the proprietor of the suit property, she lacked *locus standi* and did

not have the capacity to question the Defendants' actions. Further, that the First to Third Defendants could not be trespassers in their own land.

71. In conclusion, the First to Third Defendants urged the Court to dismiss the Plaintiff's case. They further argued that even if the Plaintiff was found to be the registered proprietor of the suit property, the Court should declare them proprietors of the suit property by operation of the doctrine of adverse possession, on the authority of **Chevron (K) Ltd v Harrison Charo Wa Shutu** (supra). They submitted that they rather than the Plaintiff had lawful title to the suit property. They urged the Court to award them costs of both the Plaintiff's case and the counterclaim.

72. The Fourth and Fifth Defendants did not file any submissions.

73. I have carefully considered the pleadings, the evidence and submissions. The issues that arise for determination are whether the Court has jurisdiction, who between the Plaintiff and Sabina Kemunto Barasa was entitled to the suit property, and whether the reliefs sought by the parties ought to issue.

74. The First to Third Defendants contended that this suit was *sub-judice* in view of Kisii ELC No. 354 of 2016 and that consequently, the Court lacks jurisdiction to hear and determine the suit.

75. Jurisdiction, as has been severally restated by the Courts, is the entry point in any matter that a Court of law is called upon to determine. It is the very life and soul of any proceedings. Without it, the proceedings come to a certain end and the Court cannot take any further step. See **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR**.

76. As the Supreme Court held in **Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR**, a Court’s jurisdiction flows from the law, that is to say, either the Constitution or legislation or both. A Court of law can only exercise jurisdiction as conferred by law. Any attempt to arrogate to itself jurisdiction exceeding that which is conferred upon it by law is a futility.

77. It is the duty of every Court to satisfy itself, right from the onset, that it has jurisdiction. The duty remains whether the parties unanimously assure the Court that it has jurisdiction. Any temptation to assume jurisdiction beyond that which is granted by law, even if actuated by a desire to do justice, must be strenuously resisted. The reasoning is equally clear: justice attained through unlawful exercise of judicial power is hardly just. In that regard, the holding following of the Court of Appeal in **National Social Security Fund Board of Trustees vs. Kenya Tea Growers Association & 14 Others [2023] KECA 80 (KLR)** is a stark reminder:

***Where a Court is drained of the jurisdiction to entertain a matter, the proceedings flowing from it, no matter the quantum of diligence, dexterity, artistry, sophistry, transparency and objectivity injected into it, will be marooned in the intractable web of nullity.***

78. The rule on *sub-judice* has a statutory foundation in **Section 6** of the **Civil Procedure Act** which provides as follows:

***No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.***

79. The effect of the *sub-judice* rule is that it deprives a Court of jurisdiction to hear and determine a matter that runs afoul of it. The Supreme Court discussed the rule and its ramifications in **Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] KESC 54 (KLR)** thus:

***The term ‘sub-judice’ is defined in Black’s Law Dictionary 9<sup>th</sup> Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.***

80. There is no dispute that there is Kisii ELC No. 354 of 2016 which is pending and that the initial parties to the said suit were the Plaintiff herein and Raymond Nyagwoka (the First

Defendant herein). The suit was filed on 1<sup>st</sup> November 2016, proceeded to hearing and judgment was delivered on 24<sup>th</sup> March 2022. The Second and Third Defendants herein were later joined to the suit as Interested Parties pursuant to a ruling delivered on 26<sup>th</sup> January 2023. The ruling also set aside the judgment.

81. It is not contested that the Fourth and Fifth Defendants herein are not parties in Kisii ELC No. 354 of 2016. The subject matter of the suit is the suit property herein. The Plaintiff contended in her plaint therein that she was the registered owner of the suit property and that in the month of October 2016, Raymond Nyagwoka trespassed therein and started constructing a permanent house as well as cultivating a portion. Consequently, she sought a declaration that she was the lawful registered owner of the suit property, eviction and a permanent injunction restraining Raymond Nyagwoka, his agents, servants, and anyone claiming under him from entering, trespassing onto, cultivating, building structures and in any other manner dealing with the suit property.

82. A perusal of the pleadings and proceedings in Kisii ELC No. 354 of 2016 reveals that no reliefs affecting parcel numbers Kitaru Settlement Scheme/134, 135, 136, 137 and 138 are sought in the said case. In fact, when the Plaintiff sought leave to amend her plaint so as to include those titles in her reliefs, the Court delivered a ruling dated 28<sup>th</sup> March 2023 in which it dismissed the application and held in part thus:

**9. What the plaintiff is now saying is that her land parcel Kitaru Settlement Scheme/13 was unlawfully subdivided. This is a new cause of action since the original pleadings did not mention subdivision of this land parcel. The original cause of action is trespass, said to have occurred in the year 2016. This new cause of action sought to be introduced is subdivision of the land, which occurred in the year 2021. The original cause of action was against one defendant. This new cause of action can only be against the beneficiaries of the subdivisions. It is not now a case of trespass but a case related to title to land. The issue whether the original defendant was trespasser in the year 2016 and whether the new subdivisions are legal are too remote to be combined. This cause of action in the proposed amended plaint cannot in fact be against the original defendant in the original plaint. ...**

**11. What we have is a new cause of action arising from subdivision of the land parcel Kitaru Settlement Scheme/13 that can only be commenced and determined through the filing of a fresh suit, not an amendment to the existing suit. I even doubt, whether, with the subdivision**

***of the land parcel Kitaru Settlement Scheme/13, the original cause of action for trespass is still alive. It looks to me that whatever the plaintiff was complaining of has already been overtaken by events, in that there are new titles owned by other people. I think, strongly, that the plaintiff needs to consider withdrawing the present suit and file a new suit if her intention is to challenge the subdivision of the land parcel Kitaru Settlement Scheme/13.***

83. Thus, it is manifest that the parties in Kisii ELC No. 354 of 2016 are not entirely the same as those in this case. The parties herein include the Fourth and Fifth Defendants who are not parties in the earlier case. Further, while the subject matter of both cases is ownership of the suit property, the subject matter of this case additionally includes ownership of parcel numbers Kitaru Settlement Scheme/134, 135, 136, 137 and 138 and validity of the said titles.

84. In view of the foregoing, there is no complete convergence of parties and subject matter between this case and Kisii ELC No. 354 of 2016. I find and hold that this matter is not *sub-judice* in view of Kisii ELC No. 354 of 2016.

85. The next issue for determination is who between the Plaintiff and Sabina Kemunto Barasa was entitled to the suit property.

86. The dispute herein revolves around registered proprietorship of the suit property. The law on title to registered land is plain enough. A registered proprietor of land is entitled to rights and privileges clearly spelt out in the law. Foremost, **Article 40** of the **Constitution** guarantees protection of right to property. Additionally, **Section 24** of the **Land Registration Act** makes specific provisions as follows:

***Subject to this Act—***

***(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and***

***(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.***

87. **Section 26** of the **Land Registration Act** obligates the Court to accept the certificate of title issued by the Land Registrar as *prima facie* evidence that the person named as proprietor of the land is the absolute and indefeasible owner and the title is not to be challenged except on the grounds specified in the

provisos under **Section 26 (1) (a)** or **(b)**. Those provisos state that the grounds on which a title can be nullified are fraud or misrepresentation to which the registered proprietor is proved to be a party or where it is shown that the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme. Thus, despite the fortified protection, title to property which is found to have been unlawfully acquired is open to impeachment.

88.The Land Registrar (DW6) produced a certified copy of the register in respect of the suit property. While validity of some of the entries therein is contested, the fact of their existence is not in dispute.

89.A perusal of the register reveals that it was opened on 21<sup>st</sup> September 1982 with the first registered proprietor under entry number 1 in Part B - Proprietorship Section being the Settlement Fund Trustees (SFT). On the same date, a charge in favour of SFT was registered as entry number 1 in Part C - Encumbrances Section. The charge remains in the register to date. It is the only entry in the encumbrances section.

90.Other entries in the proprietorship section are entry number 2 dated 16<sup>th</sup> January 1986 which is a transfer to Sabina Kemunto for a consideration of KShs 5,296 and entry number 3 dated 20<sup>th</sup> January 1986 which is issuance of land certificate or title to Sabina Kemunto. Entry number 4 dated 23<sup>rd</sup> July 2010 is a caution by Annah Bosibori Barasa claiming beneficiary interest

while entry number 5 dated 13<sup>th</sup> October 2015 is a joint caution in favour of Immaculate Magoma Barasa, Jane Asumpta Barasa and Annah Bosibori Barasa claiming beneficiary interest.

91. Entry number 6 dated 15<sup>th</sup> March 2016 is removal of the two cautions above under entries number 4 and 5 under **Section 73 (2)** of the **Land Registration Act**. On the same date, under entry number 7, a correction of proprietor's name was registered to reflect the proprietor as Sabina Kemunto Nyangancha of National Identity Card Number 2672053 and a title deed was issued in the new name on the same date under entry number 8.

92. The next entry in the proprietorship section is number 9 dated 7<sup>th</sup> November 2016 and it is a rectification by the Land Registrar cancelling entry numbers 7 and 8. Subsequently, through entry number 10 dated 8<sup>th</sup> January 2019, the Third Defendant herein was registered as proprietor. Thereafter, on 26<sup>th</sup> August 2021 through entry number 11, the title in respect of the suit property was closed upon being subdivided into parcel numbers Kitaru Settlement Scheme/134, 135, 136, 137 and 138.

93. The next entry is number 12 dated 17<sup>th</sup> April 2023 is a cancellation of entries numbers 9, 10 and 11 above ostensibly on the strength of the judgment delivered on 24<sup>th</sup> March 2022 in Kisii ELC No. 354 of 2016. I say ostensibly because the

judgment did not order cancellation of any title. It is also important to recall that the judgment was subsequently set aside on 26<sup>th</sup> January 2023.

94. The last entry in the proprietorship section is number 13 dated 17<sup>th</sup> April 2023 and is a restriction against all dealings on the ground that the suit property was still charged in favour of SFT. The effect of all the foregoing entries is that according to the register, the registered proprietor of the suit property is Sabina Kemunto Nyangancha of National Identity Card Number 2672053 pursuant to the correction of proprietor's name that was registered on 15<sup>th</sup> March 2016.

95. The question that must however be answered is whether the Sabina Kemunto Nyangancha of National Identity Card Number 2672053 (the Plaintiff herein) is the same as the Sabina Kemunto who was registered as proprietor through entry number 2 dated 16<sup>th</sup> January 1986.

96. The Plaintiff's case as pleaded both in this case and Kisii ELC No. 354 of 2016 is that she is the true proprietor and that the First to the Third Defendants trespassed into the suit property in October 2016. On the other hand, the First to the Third Defendants contend that the true owner of the suit property is Sabina Kemunto (deceased) who was their mother and that they have been in occupation of the suit property for over 50 years and that they have developed it with permanent houses, tea bushes and even buried the remains of their deceased

family members including Sabina Kemunto on it. They maintain that the at the Plaintiff purported to acquire the suit property on 15<sup>th</sup> March 2016 fraudulently through the correction of proprietor's name.

97. There is no dispute that the First to the Third Defendants are in occupation of the suit property. Whereas the Plaintiff claims that they entered the property in October 2016, the material on record point otherwise. Although in his testimony, PW1 who is the Plaintiff's son stated that there was nobody in occupation of the suit property prior to the year 2015, he later stated that the Plaintiff employed the First Defendant's father to take care of the suit property in the 1970s and that the First Defendant's father built a semipermanent house on the suit property in 1996. There is thus an acknowledged connection between the First to the Third Defendants' family and the suit property, stretching way back to the 1970s.

98. On the part of the First to the Third Defendants, DW3 and DW1 gave detailed accounts of how they entered the suit property in 1968 with their parents including Sabina Kemunto (deceased) and how they had developed it over the years. I note that 1968 is not far off from the 1970s which is acknowledged by the Plaintiff. I also note that DW3 and DW1 further gave evidence about the burial of remains of members of the family including Sabina Kemunto, their father, and their brother George between the years 2003 and 2011. These accounts were corroborated by two longstanding neighbours:

DW5 who is the area Chief and DW4. Both DW5 and DW4 were emphatic that they had never seen the Plaintiff in the suit property.

99. Despite knowing Sabina Kemunto (deceased) and her husband, the Plaintiff did not offer anything to counter the First to the Third Defendants' position that they were buried on the suit property. The Plaintiff's witness simply said that he did not know where they were buried. I am satisfied that the family of Sabina Kemunto (deceased) was in possession of the suit property from as far back as 1968, long before the Plaintiff started laying claim to it.

100. It is important to note that that the Plaintiff only started laying claim to the suit property after her name was inserted in the register through the correction of proprietor's name on 15<sup>th</sup> March 2016. If she had any valid claim to the suit property, she would have taken action to stop the occupation by the family of Sabina Kemunto (deceased) as soon as the first registration was effected in 1986. She would also have stopped or objected to the burials on the suit property.

101. At common law, there is a long-standing principle that possession of property creates a presumption of ownership against everyone except the person who proves a better title. In the in the English case of **Asher v Whitlock (1865) LR 1 QB 1**, the Court stated:

***But I take it as clearly established, that possession is good against all the world except the person who can show a good title and it would be mischievous to change this established doctrine. In Doe V. Dyeball [1829] Mood & M. 346 one year's possession by the plaintiff was held good against a person who came and turned him out; and there are other authorities to the same effect ... Therefore I think the action can be maintained inasmuch as the defendant had not acquired any title by length of possession ... but at law I think the right of the original possessor is clear. On simple ground that possession is good title against all but the true owner ....***

102. Beyond being in possession, the family of Sabina Kemunto (deceased) also established a connection with the register of the suit property prior to the Plaintiff. They did so through the cautions which were registered by the daughters of Sabina Kemunto (deceased) between 23<sup>rd</sup> July 2010 and 13<sup>th</sup> October 2015. It was explained that they were claiming beneficiary interest for purposes of succession following the death of Sabina Kemunto (deceased) on 10<sup>th</sup> June 2010. Conversely, there is absolutely no connection between the Plaintiff and the register of the suit property prior to the correction of proprietor's name.

103. As I noted earlier in this judgment, the Plaintiff only started asserting rights of a proprietor after her name was inserted in the register through the correction of proprietor's name on 15<sup>th</sup> March 2016. While the Land Registrar has power under **Section 79 (1) and (3)** of the **Land Registration Act** to rectify the register by registering a change of the name of a proprietor, the power is limited and conditional. The section provides:

***(1)The Registrar may rectify the register or any instrument presented for registration in the following cases—***

***(a)in formal matters and in the case of errors, mistakes or omissions not materially affecting the interests of any proprietor;***

***(b)in any case and at any time with the consent of all affected parties;***

***(c)if upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel;***

***(d)for purposes of updating the register; or***

***(e)for purposes of correcting the name, address or other particulars of the proprietor***

***upon the written application by the proprietor in a prescribed form. ...***

***(3) Upon proof of the change of the name or address of any proprietor, the Registrar shall, on the written application of the proprietor, make an entry in the register to record the change.***

104. Thus, the power can only be exercised on the written application of the proprietor and upon proof of the change of the name. The Plaintiff did not produce any proof that her name formally changed from Sabina Kemunto to Sabina Kemunto Nyangacha. Further, she did not produce the required application for registration of change of name and did not demonstrate that she ever lodged such an application. Even the Land Registrar testified that he did not have such an application in his records. In his letter dated 7<sup>th</sup> November 2016, the Land Registrar made it clear that the Plaintiff is not the same person as the Sabina Kemunto who was registered as proprietor on 16<sup>th</sup> January 1986.

105. In view of the foregoing, I am satisfied that Sabina Kemunto Barasa, and not the Plaintiff, was entitled to the suit property. That is not the same thing as saying that Sabina Kemunto Barasa had a valid title to the suit property, as will be manifest later in this judgment.

106. The last issue for determination is whether the reliefs sought by the parties ought to issue. The reliefs sought by the parties

gravitate around validity of title to land. Earlier in this judgment, I highlighted the rights and privileges of a registered proprietor of land and the circumstances in which title to land can be nullified.

107. It has now been firmly established that to determine ownership of registered land where such ownership is contested, the Court must go to the root of the title, right from the first registration. That process is crucial since title is an end product of a process and where the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible. See **Dina Management Ltd v County Government of Mombasa & 5 others [2023] KESC 30 (KLR)** and **Sehmi & another v Tarabana Company Limited & 5 others [2025] KESC 21 (KLR)**.

108. The Plaintiff sought judgment against the Defendants jointly and severally for a declaration that she is the registered owner of the suit property. I cannot grant that prayer in view of the reality that no valid application for registration of change of name was presented and considering that there is proof that the Plaintiff's name changed. On the contrary, there is material on record showing that the family of Sabina Kemunto Barasa was in possession long before the Plaintiff appeared in the picture and remains in possession.

109. The Plaintiff's claim to title pursuant to the registration of change of name on 15<sup>th</sup> March 2016 cannot stand since as of that date, there were encumbrances in the register. Primarily, there was the charge in favour of the Settlement Fund Trustees which was registered on 21<sup>st</sup> September 1982 and remained undischarged. Further, the Plaintiff is not the same person as the Sabina Kemunto who was registered as proprietor on 16<sup>th</sup> January 1986.

110. More significantly, there were the cautions pursuant to entry number 4 dated 23<sup>rd</sup> July 2010 and entry number 5 dated 13<sup>th</sup> October 2015 in which the cautioners claimed beneficiary interest. **Section 72 (2)** of the **Land Registration Act**, provides that a *"disposition that is inconsistent with the caution shall not be registered while the caution is still registered except with the consent of the cautioner or by the order of the court."* The Plaintiff did not demonstrate that consent of the cautioners was obtained prior to the registration of the change of name. Thus, the registration was an illegality.

111. The Plaintiff further sought a declaration that the subdivision of the suit property into Kitaru Settlement Scheme/134, 135, 136, 137 and 138 was irregular, unlawful, illegal, null and void. I am persuaded that the declaration is merited and should issue for the reasons that the subdivision was done in disregard of both the registered charge and cautions. Even if it were to be assumed, as the First to Third Defendants contend, that Sabina Kemunto Barasa (deceased) was the valid

proprietor, there is evidence on record that Sabina Kemunto Barasa passed away on 10<sup>th</sup> June 2010 and that the transfer to the Third Defendant on 8<sup>th</sup> January 2019 was done without any grant of representation having been issued in respect of her estate. Thus, the transfer was in violation of **Section 45** of the **Law of Succession Act**.

112. Regarding the Plaintiff's prayer for a declaration that the First to Third Defendants are trespassers on the suit property, suffice it to restate that trespass is a violation of a person's right to possession. See **Municipal Council of Eldoret vs. Titus Gatitu Njau [2020] eKLR**. The Plaintiff has not established any right to possession of the suit property. The said Defendants have always been in occupation of the suit property and have a better claim to it than her. It follows that such a relief cannot issue to her. The same applies to her prayers for eviction, permanent injunction and general damages for trespass.

113. On the other hand, the First to Third Defendants sought judgment for a declaration that the First Defendant is registered proprietor of land parcel number Kitaru Settlement Scheme/136, the Second Defendant is the registered proprietor of land parcel number Kitaru Settlement Scheme/137, and the Third Defendant is the registered proprietor of land parcel numbers Kitaru Settlement Scheme/134, 135 and 138. That relief cannot issue in view of my finding that that the subdivision of the suit property into

Kitaru Settlement Scheme/134, 135, 136, 137 and 138 was irregular, unlawful, illegal, null and void. Similarly, the First to Third Defendants prayer for a permanent injunction against the Plaintiff cannot issue since it is founded on defective titles.

114. Even as the Plaintiff's purported registered title to the suit property has been found to be defective, Sabina Kemunto Barasa's purported registered title is affected by a similar defect. Her registration on 16<sup>th</sup> January 1986 and subsequent issuance of title on 20<sup>th</sup> January 1986 were contrary to the charge in favour of the Settlement Fund Trustees which was registered on 21<sup>st</sup> September 1982, and which remained undischarged as of the date of her registration as proprietor. Her title is therefore equally defective. Pursuant to my finding that Sabina Kemunto Barasa, and not the Plaintiff, was entitled to the suit property, her estate will have to retrace its steps to obtain a discharge followed by title.

115. Arising from the foregoing, I make the following orders:

**a) It is hereby declared that Sabina Kemunto Barasa (deceased), and not the Plaintiff, was entitled to the parcel of land known as Kitaru Settlement Scheme/13.**

**b) It is hereby declared that the subdivision of the parcel of land known as Kitaru Settlement Scheme/13 into Kitaru Settlement Scheme/134,**

**135, 136, 137 and 138 was irregular, unlawful, illegal, null and void.**

**c) Entries number 2 to 12 in Part B - Proprietorship Section of the register of Kitaru Settlement Scheme/13 are hereby cancelled.**

**d) The registered proprietor of the parcel of land known as Kitaru Settlement Scheme/13 remains the Settlement Fund Trustees in terms of entry number 1 in Part B - Proprietorship Section of the register.**

**e) In view of the charge in favour of the Settlement Fund Trustees registered as entry number 1 in Part C - Encumbrances Section, the estate of Sabina Kemunto Barasa (deceased) to be registered as proprietor of the parcel of land known as Kitaru Settlement Scheme/13 upon a valid discharge of charge being registered.**

**f) Considering the outcome, each party shall bear own costs of the suit.**

**Dated, signed, and delivered at Nyamira, this 11<sup>th</sup> day of March 2026.**

**D. O. OHUNGO  
JUDGE**

Delivered in the presence of:

Mr Ochwangi for the Plaintiff

Ms Mukoya holding brief for Mr Nyamurongi for the 1<sup>st</sup> to 3<sup>rd</sup>

Defendants

Mr Ndiritu for the 4<sup>th</sup> and 5<sup>th</sup> Defendants

Court Assistant: B Kerubo