



**REPUBLIC OF KENYA**  
**ENVIRONMENT AND LAND COURT**  
**AT NYAHURURU**  
**ELC CASE NO 398 OF 2017**  
**(FORMERLY NAKURU 266 OF 2010)**

**JOHN MATHENGE GICHUHI.....PLAINTIFF**

**VERSUS**

**CYRUS NDUNGU.....1<sup>st</sup> DEFENDANT**

**ABIGAIL MUTHONI GITARI.....2<sup>nd</sup> DEFENDANT**

**SAMUEL MAINA GACHENI.....3<sup>rd</sup> DEFENDANT**

**JUDGEMENT**

1. This case was filed on the 21<sup>st</sup> October 2010 vide a Complaint dated the 19<sup>th</sup> October 2010 at the Nakuru High Court as Civil Case No. 266 of 2010 where the Plaintiff claimed to be the registered proprietor of parcel No. Laikipia/Marmanet/711 (extension) measuring approximately 4.6 hectares (about 11.362 acres).
2. That the 1<sup>st</sup> Defendant herein had wrongfully alienated a big parcel of the said property under the pretext that the land he had alienated was parcel No. 712 which was separate and distinct from parcel No.711. He thus sought for an order for vacant possession/eviction of the 1<sup>st</sup> Defendant for the suit property No. Laikipia/Marmanet/711 (extension)
3. Pursuant to the filing of the Complaint herein, the Defendant filed his memorandum of Appearance and Defence on the 12<sup>th</sup> November 2010 in which he denied being in possession and occupation of No. Laikipia/Marmanet/711(extension) averring that he was the proprietor of parcel No. Laikipia/Marmanet/712 (extension) and was not in occupation of the Plaintiff's land. Further that the Plaintiff herein filed the present case knowing that there were eviction orders against him pursuant to the Land Dispute No.2 of 2004.
4. The matter proceeded for hearing where on the 20<sup>th</sup> January 2012, Judgment was entered against the 1<sup>st</sup> Defendant, as prayed with orders of eviction of the 1<sup>st</sup> Defendant from the Plaintiff's parcel of land. The execution of the orders for eviction was however stayed for 180 days pending clear demarcation on the ground for arrears occupied by plots No 711 and 712.
5. Pursuant to the delivery of the said judgment, the Defendant filed an application dated the 27<sup>th</sup> March

2012 for review of the court's judgment.

6. Before the said application was heard, an order for eviction was issued on the 16<sup>th</sup> November 2012. Subsequently on the 28<sup>th</sup> November 2012, the Plaintiff filed an application dated the same date, to amend the said order so as to direct the officer in charge of Rumuruti Police station to supervise the eviction of the 1<sup>st</sup> Defendant from parcel No. Laikipia/Marmanet/711 (extension) the suit land herein.

7. On the 29<sup>th</sup> November 2012, the Plaintiff filed yet another application dated the 28<sup>th</sup> November 2012 seeking orders for review of the court's judgment dated the 20<sup>th</sup> January 2012.

8. On the 5<sup>th</sup> December 2012, an order was issued granting the prayers to the application dated 28<sup>th</sup> November 2012 where the Plaintiff had sought to amend the order so as to direct the Officer in charge of Rumuruti Police station to supervise the eviction of the 1<sup>st</sup> Defendant from parcel No. Laikipia/Marmanet/711 (extension).

9. On the 6<sup>th</sup> December 2012, and 29<sup>th</sup> January 2013 there were applications filed by the 1<sup>st</sup> Defendant seeking that the Application dated the 28<sup>th</sup> November 2012, that sought to have the court's judgment reviewed, be certified as urgent.

10. Vide an application dated the 14<sup>th</sup> February 2013 and filed on the same date, counsel for the Plaintiff sought for three orders hence;

- i. to enjoin the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to the suit herein
- ii. to stay the stay the execution of the judgment and decree
- iii. to set aside the said Decree, pending the hearing and determination of the application

11. On the 18<sup>th</sup> February 2013, the application was certified as urgent and the Applicant directed to serve the same. On the same day another application dated the 17<sup>th</sup> February 2013 was filed seeking to have the Application dated the 14<sup>th</sup> February 2013 be heard as a matter of urgency.

12. On the 20<sup>th</sup> February 2013 there were directions that counsel for the Plaintiff/Respondents to file her response to the said applications within 14 days.

13. Pending the hearing and determination of the numerous applications herein above stated, a complaint was lodged to the Hon Chief Justice, the Judicial Service Commission and the Ombudsman wherein on the 19<sup>th</sup> November 2013, the court directed that the file be forwarded to the Hon Chief Justice for directions.

14. The Hon the Chief justice vide his directions dated the 6<sup>th</sup> December 2013 directed that the Applications dated the 14<sup>th</sup> February 2013 and February 2013 respectively be heard and determined, and that should there be an application for the recusal of the Hon Judge handling the matter then the said application was to be heard before the trial Judge on the basis of its merits.

15. Vide application dated the 24<sup>th</sup> March 2014 and filed on the same date, the Plaintiff sought leave to institute proceedings to cite the Defendant for contempt of court for disobeying the courts orders issued pursuant to the judgment of the 20<sup>th</sup> January 2012. The matter was certified urgent and leave was granted to the Plaintiff to commence contempt proceedings against the Defendant.

16. To this effect therefore on the 1<sup>st</sup> April 2014, the Plaintiff filed contempt proceedings against the Defendant dated the 31<sup>st</sup> March 2014 which application was later withdrawn vide a letter dated the 3<sup>rd</sup>

April 2014 and marked as such on the 15<sup>th</sup> May 2014.

17. On the 23<sup>rd</sup> July 2015 directions were taken to the effect that the parties maintain the status quo and that the applications dated the 14<sup>th</sup> February 2013 and 27<sup>th</sup> March 2012 be disposed of by way of written submissions.

18. Before the said applications could be heard, the Plaintiff, vide an application dated the 11<sup>th</sup> December 2015 sought for orders that the firm of Tango Auctioneers Nyahururu Branch do carry out the eviction of the Defendant from the suit property and that the eviction be supervised by the OCS Kinamba Police station. The said application was allowed on the 16<sup>th</sup> December 2015.

19. On the 12<sup>th</sup> April 2016, the court was informed that whilst the Plaintiff had filed their submissions to the Applications dated 14<sup>th</sup> February 2013 and 27<sup>th</sup> March 2012 and did not wish to highlight on the same, the Defendant had not filed their submissions. The ruling was subsequently delivered on the 21<sup>st</sup> July 2016, wherein the same set aside the judgment of the 20<sup>th</sup> January 2012 and all consequential orders, thereby ordering that there be a retrial with the inclusion of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants herein. Parties were also directed to amend their pleadings.

20. The Defendant filed their amended statement of defence dated the 26<sup>th</sup> September 2016 on the 6<sup>th</sup> October 2016 thereby incorporating the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant herein. They also filed their counter claim whereby they sought for the following orders:

i. A declaration that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are the rightful owners of the parcels of land known as ***Laikipia/Marmanet/Extension/1202, Laikipia/Marmanet/Extension/1200, Laikipia/Marmanet/Extension/1199*** respectively arising from the subdivision of Land References No ***Laikipia/Marmanet/Extension/712***.

ii. An order of Permanent Injunction **RESTRAINING** the Plaintiff by themselves or their agents and/or servants from sub dividing, alienating, transferring and or interfering or in any way dealing with the resultant subdivisions arising from ***land References Nos Laikipia/Marmanet/Extension/712*** being ***Laikipia/Marmanet/Extension/1202, Laikipia/Marmanet/Extension/1200, Laikipia/Marmanet/Extension/1199***

iii. An order of eviction of the plaintiff from all that parcels of land known as ***Laikipia/Marmanet/Extension/1202, Laikipia/Marmanet/Extension/1200, Laikipia/Marmanet/Extension/1199*** being the resultant subdivisions of ***Land References no Laikipia/Marmanet/Extension/712*** belonging to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants respectively

iv. An order directing the District Land Registrar- Laikipia to ascertain the actual boundary and plant a beacon between the plaintiff's parcel of land known as ***Laikipia/Marmanet/Extension/711 and Land References no Laikipia/Marmanet/Extension/1202, Laikipia/Marmanet/Extension/1200, Laikipia/Marmanet/Extension/1199*** being the resultant subdivisions of ***Laikipia/Marmanet/Extension/712*** belonging to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants respectively.

v. An order directing the OCPD Laikipia Police Division and OCS Kinamba Police Station to ensure that the orders of the Hon. Court are fully complied by all the parties complied

vi. General damages

vii. Costs and interest at courts rate from the date of judgment until payment in full.

21. The matter was certified ready for hearing on the 12<sup>th</sup> October 2017 wherein on the 13<sup>th</sup> December 2017 the Plaintiff testified.

## **Plaintiff's case**

22. PW 1 the Plaintiff herein, testified that he had sued the Defendants herein because they had trespassed on his land parcel No. Laikipia/Marmanet/711 which measured approximately 11 ½ acres. He further testified that he was given the land by the Land Settlement in the year 1977. He produced the letter of allotment dated 11<sup>th</sup> December 1978 as Pf Exh 1.

23. That upon completion of payment for the land, he had constructed on the same, land upon which he lived on. He further testified that he had documents to prove that the land was his and produced the Charge as Pf exhibit 2, and a copy of the title deed dated 30<sup>th</sup> October 1996 as Pf exhibit 3. He however testified that the original title deed was with the surveyor.

24. He testified that his problem with the Defendants was because they wanted to steal his land. That after the 1<sup>st</sup> Defendant herein, Cyrus Ndungu had sold his land, he encroached on his (Plaintiff's) land and built thereon.

25. That Cyrus' land No. 712 which was situated in Marmanet, was originally Suleiman's father's land and when it decreased in acreage, it was added to his parcel No. 711. Later the family of Cyrus Ndungu was given No 108 which was registered in their mother's name –Nyaruiru and which land they had sold and gone back to claim parcel No. 712, land which did not exist, thereby trespassing on 7 acres of his land out of the 11 acres.

26. That it was based on this trespass that he filed the case in court. That they had even visited the settlement office at the headquarters in Nairobi where they had been informed that there was no land known as parcel No. 712.

27. He produced several letters of correspondence pertaining to the complaint he had lodged which letters were marked as Plaintiff exh 4(a-e) as herein under:

i. Letter dated 2<sup>nd</sup> September 1982

ii. Letter dated 7<sup>th</sup> August 1985

iii. Letter dated 12<sup>th</sup> January 1993

iv. Letter dated 31<sup>st</sup> August 2000

v. Letter dated 2<sup>nd</sup> November 2000

28. That during the hearing of this case in Nakuru, a surveyor had visited the suit land where he had confirmed that indeed he had a smaller piece of land to which he (surveyor) wrote a report dated the 25<sup>th</sup> July 2011, which report he produced as Pf Exhibit 5.

29. That after trespassing on his land, the 1<sup>st</sup> Defendant had sold part of it to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

30. That Mary Nyaruiru Wamukunda, the registered proprietor to plot No. 108 was Suleiman's wife and the 1<sup>st</sup> Defendant's mother. That after her death, she had been buried in Nyeri because they could not have buried her on plot No. 711. That Mary's title to plot No. 711 dated 3<sup>rd</sup> November 2003 stating that her land had an acreage of 11 acres was fraudulent because Plot No. 712 and plot No. 711 could not add up to an acreage of 22 acres.

31. The Plaintiff produced a letter of consent dated 25<sup>th</sup> November 2004 as Pf Exhibit 6 and stated that the same was fraudulent and was being used to steal his land. He testified that there was no boundary between parcels No. 712 and 711 as parcel No. 712 did not exist. He produced the title deed to plot No.

712 dated 3<sup>rd</sup> November 2003 as Plaintiff exhibit 7.

32. The plaintiff further testified that it was not true that the 1<sup>st</sup> Defendant, Cyrus had subdivided parcel No. 712 and sold it to the 2<sup>nd</sup> Defendant, Abigale. That he and the 1<sup>st</sup> Defendant, Ndungu are the only people who lived on parcel No. 711 and that it is not true that the 2<sup>nd</sup> Defendant lived on plot No. 1200. He produced the title deed dated 20<sup>th</sup> November 2006 for plot No. 1200 as Plaintiff exhibit 8.

33. The Plaintiff testified that the 3<sup>rd</sup> Defendant lived on plot No 1199 which land was sold to him by the 1<sup>st</sup> Defendant and produced the title deed dated 19<sup>th</sup> February 2007 as Exhibit 9. He informed the court that all these titles were false.

34. He also produced the title to parcel No. 1201 dated 19<sup>th</sup> February 2007 as exhibit 10, for land measuring 3.19 hectares, about 7 acres and stated that the same was also false. He testified that although it was true that the Defendants were on land with titles deeds, yet it was his land to which they ought to be evicted and their title deeds cancelled.

35. In Cross Examination, the Plaintiff was adamant that he was given plot No. 711 by the settlement scheme land wherein he had paid rates/rents for it and even charged the same. That he had neither paid for parcel No. 712 nor taken a loan for No. 712.

36. He also confirmed that Plot No. 712 was not given to Mrs. Suleiman in 1977 as the same did not exist.

37. The witness disowned the demand notice dated the 29<sup>th</sup> September 2019, the letters dated the 2<sup>nd</sup> February 1995, 11<sup>th</sup> March 2003 and 8<sup>th</sup> July 2003 in his list of documents stating that the same were all fraudulent because the land No. 712 was nonexistent.

38. He also disowned the transfer of land consent dated the 23<sup>rd</sup> October 2003 transferring the parcel No 712 to Mrs. Suleiman stating that he did not file the documents as his list of documents. That the letters that he had been referred to herein above had errors. (at that moment, the Plaintiff who had been testifying while seated because of his age, (85 years) stood up to stress the point that the letters had errors and that there was no plot No 712).

39. When he was referred to the letter of consent from the land control board, herein produced as Pf exhibit 6, he stated that although he had disowned the letters, he was not refuting the fact that there is a title registered in the name of Mary Nyaruiru for parcel No. 712 although he knew that there is no plot No. 712.

40. He testified that he knew the 2<sup>nd</sup> Defendant who was a sister to the 1<sup>st</sup> Defendant herein. That she had also built on his land wherein they had demolished her building after getting orders from the court.

41. He confirmed that the whole piece of land was ploughed, that the 1<sup>st</sup> Defendant had refused to leave the land and that it was not true that he had ploughed on the 1<sup>st</sup> Defendant's land.

42. When the witness was asked whether from the documents he had produced, the 1<sup>st</sup> Defendant had claimed ownership of plot No. 711, he refused to answer the question.

### **Defendant's Case.**

43. The 1<sup>st</sup> Defendant testified as DW1 to the effect that he was aged 65 years and had lived in Marmanet forest extension scheme for 40 years. That Mrs. Suleiman Wamugunda whose baptism name was Mary was his mother, and that unlike what the Plaintiff was claiming, he was not on his land but on his mother's land, being Plot No. 712.

44. He testified that his mother was given plot No 712 by the settlement scheme vide an allotment letter dated April 1977 after which she had she paid Ksh 255/=for the charge and was issued with a title deed herein produced as Df exh 1, wherein she had then asked him to go and live on the land being Plot No 712. He testified that before his mother gave him the land, they had gone to the land Control Board wherein the Settlement Fund Trustee had effected a transfer to that effect, the transfer document which he produced as Df Exhibit 2.

45. That consequently, he had lived on his mother's land from the year 1977. That at one time they had had a land dispute issue with the plaintiff before the Rumuruti Tribunal where the dispute had been heard in the year 1983. Both parties and their witnesses were present and vide a finding of the Tribunal, the Plaintiff was the owner of the land No 711 and Mrs. Wamugunda was the owner of plot No 712. He produced the award by the panel of elders dated the 6<sup>th</sup> March 1987, as Df exhibit 3.

46. That pursuant to the report, the boundary issue was resolved wherein officers from the settlement Fund Trustee in Nairobi as well as surveyor's visited the suit land and fixed a boundary by putting beacons thereon. That thereafter he had put up a fence which was pulled down by the Plaintiff although the beacons were still on the land.

47. He further testified that following the verdict by the tribunal, the same was filed at the Nayhuruu Magistrate's court it was adopted and the Plaintiff filed an appeal against the Magistrate's ruling, in the Nakuru High Court, vide Case No 34 of 1987 which appeal was dismissed. He produced the proceedings as Df Exh 4 and further testified that in fact it was the Plaintiff who trespassed on his plot No. 712 yet nobody was residing on plot No 711 which was vacant.

48. That Plot No. 712 was subsequently sub divided giving rise to three parcels of land to which No Laikipia/Marmanet/1199, 1200 and 1202 wherein plot No 1200 measuring 1 acre, was given to his sister, Abigael Muthoni, the 2<sup>nd</sup> Defendant herein. The Second piece of land No. 1199 measuring 1 acre was sold to Samuel Maina Gachemi, the 3<sup>rd</sup> Defendant herein in the year 2004 wherein all parties were issued with their respective title deeds.

49. He testified that when his sister Abigail started constructing on her portion of land, the Plaintiff had demolished her house and was now farming therein. That the same case applied to the 3<sup>rd</sup> Defendant who was not utilizing his portion of land because the Plaintiff had also taken possession of his land too wherein the 1<sup>st</sup> Defendant had reported the matter to the National Land Commission herein referred to as NLC after which the Plaintiff had denied them access to the suit land. The NLC had, vide a letter dated 10<sup>th</sup> February 2015 herein produced as Df exh 5, written a report to the effect that parcel No. 711 and No. 712 existed on the ground.

50. That apart from the office of the NLC, he had also visited the offices of Land Settlement and adjudication in Nairobi, wherein a letter dated 8<sup>th</sup> March 2012 had been written to the Director of Settlement office stating that the parcels of land No. 711 and No. 712 existed. He produced the said letter as Df Exhibit 6.

51. It was the 1<sup>st</sup> Defendant's evidence that the Plaintiff had totally refused to leave his land and that the amalgamation of plot No. 711 and No. 712 had been done away with and therefore the two parcels of land were independent of each other where everyone had their respective titles. He therefore did not understand why they were fighting. He produced a copy of his title deed as Df Exh 7 and a search certificate dated 15<sup>th</sup> January 2014, to his parcel of land No. 1201, as Df Exh 8 as well as a copy of the green card issued on the 19<sup>th</sup> February 2007, as Df exh 9, showing that parcel No.1201 was registered in his name.

52. The 1<sup>st</sup> Defendant also produced a copy of search certificate to parcel No 711, dated the 5<sup>th</sup> February 2013 and a green card issued on 22<sup>nd</sup> February 1996 as Df Exhibit 10 and 11 respectively which documents confirmed the fact that parcel No. 711 was registered to the Plaintiff.

53. The 1<sup>st</sup> Defendant sought orders that everybody stays on their respective parcels of land. That the case had dragged for 40 years wherein the Plaintiff had been using (the 1<sup>st</sup> Defendant's) his piece of land by ploughing the same which has caused him a lot of hardship.
54. In Cross examination, the 1<sup>st</sup> Defendant confirmed that he was a son to Mary Nyaruai Wamugunda and Suleiman Wamugunda. He confirmed his evidence in chief but stated that at the time, he had no document to show that Mrs. Suleiman and Mrs. Nyaruiru were one and the same person but confirmed that she had died in the year 2006 although he could not remember the exact date. That he did not have her identity card because the same was surrendered so that they could obtain a death certificate.
55. He also confirmed that in the year 2010, a case had been filed at the Nakuru High Court being No 266 of 2010 at a time when his mother was alive and plot No 712 had already been sub divided.
56. That in the years 1977-1978, the government had sought to amalgamate the two plots being No. 711 and 712 into plot No. 711 in the Plaintiff's name but the process of the amalgamation had been set aside after a re-survey had been conducted and wherein it had been discovered that the parcels of land were distinct.
57. When the 1<sup>st</sup> Defendant was referred to the Plaintiff's exhibit 4 (a) he confirmed that he had signed the letter dated 1982 which had been written by Mrs. Suleiman Wamugunda to the Directors of settlement seeking for a development loan on plot No. 712.
58. When referred to Pf exh 4(b), the witness confirmed that the letter was addressed to Suleiman in reference to plot No 712 stating that there were documents to that land whereas the letter dated 12<sup>th</sup> January 1993 was in reference to Plot No. 712 stating that plot No.712 was amalgamated with plot No. 711 and that Mrs. Wamugunda was given plot No. 108.
59. When he was referred to the letter dated 2<sup>nd</sup> November 2000 herein produced as Pf exh 4 he stated that the Government officers through these documents had confirmed that plot No 711 belonged to the Plaintiff whereas Plot No. 712 was allocated to Mrs. Suleiman Wamugunda as per the a charge which he had produced confirming the position.
60. When he was referred to Df Exhibit 1, the witness confirmed that the title deed was in the name of Mary Nyaruiru, the transfer Df Exhibit 2 was also in the name of Mrs. Suleiman Wamugunda who was one and the same person.
61. The witness also confirmed that his Df Exhibit 2 was neither dated, signed or registered. That parcel No. 711 and 712 were two different plots measuring 11 acres respectively. That at the moment, he was supposed to be in possession of 9 acres of land as per the title deed whereas both the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were expected to each possess 1 acre each, in accordance to their respective title deeds.
62. In Re-examination, the 1<sup>st</sup> Defendant testified that the difference in the names on the documents to the suit land was attributed to the fact that the title deed was procured using his mother's identity card which bore the name of Mary Nyaruai.
63. That in regard to Pf Exhibit 4 (a), whereas he had sought for a loan to develop the land, his application had been denied load because the documents were in his mother's name. He also confirmed that since Plot No. 711 and 712 had not been amalgamated, plot No 108 which was to be given to his mother, was given to one Elijah Kariuki instead. He also corrected the fact that is mother died in the year 2014.
64. DW2, the 2<sup>nd</sup> Defendant herein corroborated the 1<sup>st</sup> Defendant's evidence to the effect that the initial land No.712 had belonged to their mother Mary Nyaruiru Wamugunda who had been allocated the same by the government.

65. That as children, irrespective of the fact that they had not lived on that suit land, yet it had been their mother and her brother, the 1<sup>st</sup> Defendant herein, who had taken care of the same. That before their mother passed away, she had left the land to the 1<sup>st</sup> Defendant who in turn gave her 1 acre to which she had procured title to it. She identified Df Exhibit 1 as title to parcel No 712, and Df exh 12 as title to her piece of land No. Laikipia/Marmanet/Ext/1200.

66. She identified both the location of Plot No 712, before the sub division, on the 4<sup>th</sup> edition of the Registry Index Map (RIM) which she produced as Df exh 13, as well as the location of the subsequent subdivision of plot No 1200 and 1900 in the 6<sup>th</sup> edition of the RIM which she produced as Df exhibit 14.

67. She proceeded to testify that after her brother had given her the land, she had fenced it and built upon it. But the Plaintiff whom she had known since child hood and who was their neighbor, had grabbed it from her, despite his land being No 711, and joined it to his land.

68. She confirmed that the Plaintiff had been ploughing her land since the year 2004. That they had visited many places, including Nakuru, Nyeri and Nairobi in pursuit of a solution of the issue which started when her mother was alive and has continued after her death. She also confirmed that at one point, the government had wanted to amalgamate small pieces of land but they were unable to do so.

69. In Cross examination, she confirmed that the Plaintiff got onto her land in the year 2004. That her brother had fenced the whole of parcel No. 712 before he subdivided it. That she did not know the acreage of the whole land. That her title was for parcel No. 1199 which land the Plaintiff had unlawfully taken possession of more than 40 years ago, claiming that it had been amalgamated with his own land.

70. That in the year 1952 they lived in the village where she had been born but they had been moved by the government in the year 1974 so that a school could be built thereon. By that time, their father had died. That a copy of the letter they had been given by the government asking them to shift was with chief Muhoya who was now deceased.

71. DW3, one Elijah Kariuki Njagi testified that plot No. 108, 711 and 712 were situated in Marmanet settlement scheme and that he was the proprietor of Plot No. 108 having been allocated the same by the Government in 1978.

72. He referred the court to a document entitled “settlement Scheme” at paragraph 5 which referred to parcel No. 108. Settlement where he was the allottee and where the land was charged for ksh 1,678/=

73. He produced a letter dated the 14<sup>th</sup> April 1987 by the District Land Adjudication and Settlement Officer entitled ‘Documentation of Plot 108 as Df Exhibit 15 showing that he had been issued the land by the government.

74. He also produced the charge in reference to plot No 108, which was in his name as Df exh 16 and testified that he had taken possession of the land which he has continued to plough.

75. In order to prove that he had been given Plot No. 108, he produced the following receipts;

i. A receipt dated the 14<sup>th</sup> April 1987 for ksh 255/= as Df exh 17 (a).

ii. A receipt dated 3<sup>rd</sup> March 2009 for Ksh 6,000/= for the repayment of a loan to the government for plot No. 108 as Df exhibit No. 17(b)

76. The witness stated that he had not bought or sold the plot from or to anybody and referred to a letter dated the 14<sup>th</sup> April 1997 which he produced as Df Exh 18 and which letter confirmed that he had paid his dues to the government. He also produced a letter dated the 20<sup>th</sup> September 1983 as Df Exhibit No 19 which letter was addressed to the District Settlement Officer Laikipia directing that the owners of plot No. 711,712, 760 and 108 to be documented. The letter also confirmed that the parcels of land actually existed

on the ground.

77. When referred to Df exhibit No. 3 dated 6<sup>th</sup> March 1987, he confirmed that the matter had been before the tribunal where parties had been asked to stay in their respective pieces of land being No. 108, 711 and 712.

78. He also confirmed that the Plaintiff had been unsatisfied with the award of the tribunal where he had moved to the law courts in Nyahururu where the court had found that there were three respective pieces of land. The plaintiff was still not satisfied and moved to Nakuru High court. That from the year 1983 to date, the issue of the land had not been finalised.

79. When referred to Df exhibit No. 7, he confirmed that the Plaintiff's parcel of land was Plot No. 711, while Plot No. 712 belonged to the 1<sup>st</sup> Defendant having had been given the same by his mother whereby he had given 1 acre to his sister and sold another 1 acre so that he could sustain himself. That after the 2<sup>nd</sup> Defendant had been given her land, the Plaintiff had taken the same and removed everything thereon. That the Plaintiff lived on plot No. 712 ploughing land that was not his.

80. While relying on a letter dated the 21<sup>st</sup> August 1984, by the District Settlement Officer Laikipia and addressed to the Plaintiff and Mrs. Suileiman, the witness confirmed the fact that the government, at one time had wanted to amalgamate the small pieces of land which move had been shelved when they realized that the land was enough for two pieces of land. He produced the said letter as Df exh 20 and asked that the court orders all parties to settle on their respective plots and live in harmony.

81. In Cross examination, the witness reaffirmed his earlier testimony adding that the parcels of land were issued to landless people. That he did not apply for any allotment. That before he got the land which measured 5 acres, there was nobody living on it wherein he took possession in 1978. That before the year 1978, there was no scheme.

82. That he had been both a party to the tribunal and a witness in both the cases before the Magistrate's court and the High Court sitting in Nakuru. That parcel No. 108 was not attached to parcel No. 711 or No. 712 as it was almost 5 km away from the two plots. That he witnessed the surveyor taking measurements of plot No. 711 and No. 712 and that both Plot No. 711 and Plot No. 712 measured more than 10 acres each.

83. That although he was not there when the Plaintiff destroyed the property on the 2<sup>nd</sup> Defendants land, yet he knew that he was the one because the Plaintiff now lives thereon.

84. In re-examination, the witness reaffirmed his testimony and informed the court that there were distinct boundaries to the parcels of land.

85. The 3<sup>rd</sup> Defendant testified as Dw4 to the effect that he had purchased 1(one) acre of land from Mrs Suleiman who was the 1<sup>st</sup> Defendant's Mother and who had passed away. That upon the purchase of the said piece of land, parties had gone to the Land Control Board wherein later he had obtained a title deed to land parcel No. Laikipia Marmanet/Extension/1199. He produced the title deed as Df exh 21.

86. That after he had bought the land, he ploughed for 2 years but in the 3<sup>rd</sup> year he was turned away by the Plaintiff herein and has not ploughed again since then.

87. He also testified that after a boundary dispute had been filed, boundaries had been placed on the disputed parcels of land by the Registrar which boundary exists to date. He sought that the court directs that the Plaintiff returns their land to them.

88. In Cross examination, the witness testified that he had been the Plaintiff's neighbor since 1994 and therefore knew his family. That he had paid for his land in cash and therefore did not have a receipt. That at the time of buying the land, there had been no structure. That his title deed was dated 19<sup>th</sup> February

2007 but he did not know when the Plaintiff had been issued his title. He also confirmed that when he conducted investigations, he found out that the land was Mrs. Suleiman's.

89. In re-examination, he confirmed that he had bought the land from Mrs. Suleiman Wamugunda and that he had never lived on it. That further, he was aware of the boundary dispute as well and the fact that the court had directed that the case be heard a fresh, reasons why they were before court again.

90. DW5, the District Surveyor Laikipia Mr. Nathan Mbugua Kinyanjui testified that upon receipt of summons to attend court, he had looked for the record in this matter which record indicated that there had been a visit by the surveyor, made to the suit land in the year 2013 because there had been a land dispute boundary.

91. That the Land Registrar was the person who would be in a better position to give evidence on the same because he had all the rulings and findings. That Laikipia County did not have an amendment center and that was why the custodian of the RIM was stationed in Nakuru. That he had perused all the files but could not find anything.

92. In cross examination, he testified that he had been a surveyor since the year 2012 and there was no way the same parcel of land could have two different title deeds.

93. At this juncture, counsel for the Defendant made an oral application to have the Laikipia District Land registrar furnish a report in court regarding parcels No. Laikipia/Marmanet/extension 711 and 712 which application was not opposed to by the Plaintiff's Counsel.

94. The court then directed that the report on the status of Laikipia/Marmanet/Extension 711 and 712 be filed within the next 21 days. The said report dated the 20<sup>th</sup> November 2018 was filed and adopted as the defence evidence on the 18<sup>th</sup> December 2018.

95. Upon the closure of the defence case, parties filed their respective submissions which I shall consider in sequence.

#### **The Plaintiff's submissions.**

96. The Plaintiff's submissions filed on the 28<sup>th</sup> January 2019 was framed as follows;

- i. Whether the properties title No. Laikipia/Marmanet/Extension 711 (extension) and Laikipia/Marmanet/Extension 712 (extension) both existed in the period 1977 to 2010 at the time of filing of this suit.
- ii. If they did, what were their respective sizes.
- iii. To whom was parcel No. 712 allocated to by the Settlement Fund Trustee.
- iv. Was there ever amalgamation of parcels No. 711 and 712 creating one parcel No. 711.
- v. What is the position on the ground.
- vi. Is the Plaintiff entitled to the prayers sought
- vii. Who pays the costs of this suit.

97. On the first issue for determination, it was the Plaintiff's submission that pursuant to the letter of allotment of parcel No. 711 produced as Pf exh 1, the said plot was issued to the Plaintiff who accepted the offer and thumb printed the certificate of acceptance. That he also signed the form as a recipient of the loan. That the said documents so produced were genuine as they had originated from the Settlement Fund

Trustees.

98. That vide the title deed issued to the Plaintiff and produced as Pf exh 3, the same showed that the parcel of land measured 4.6 hectares (about 11 acres) This was contrary to the documents produced by the 1<sup>st</sup> Defendant which did not support the fact that the land parcel No.712 was issued to either himself or his mother. That the absence of an allotment letter and loan details left a gap in the history of land parcel No.712.

99. That indeed pursuant to the Application letter addressed to the District Settlement Officer Nyahururu by Mrs Suleiman for a development loan, the same was signed by the 1<sup>st</sup> Defendant herein and bore official comments to the effect that the Plot No.712 was amalgamated with plot No. 711 wherein the holder of Plot No 712 was to move to plot No.108. There was further writings to the effect that then loan should not be approved as it applied to another Plot.

100. That there had also been a letter dated the 7<sup>th</sup> August 1985 addressed to Mrs Sulieiman Wamugunda headed 'Development Loan-Plot 712 Marmanet Forest' which letter was acknowledging receipt of the application for the loan but seeking for documents proving ownership of the parcel of land, 8 years after the Plaintiff had acquired parcel No. 711, letters which confirmed the non-existence of parcel No.712.

101. That the letter dated the 12<sup>th</sup> January 1993 authored by the Land Adjudication and Settlement Officer and addressed to Mrs Suleiman Wamugunda seeking that she vacates from plot No. 711, reiterated the fact that land No.711 was amalgamated with parcel No. 712 wherein she had been allotted an alternative parcel of land No 108 which she had subsequently sold to one Elijah Kariuki Njagi.

102. That since the issue of amalgamation had persisted, vide a letter dated the 31<sup>st</sup> August 2000, the Permanent Secretary Ministry of Lands and Settlement- Nairobi had written to the District Commissioner Laikipia confirming the status on amalgamation and also confirming that the Mrs Suleiman had been issued with an alternative plot No. 108. That the 1<sup>st</sup> Defendant's possession of land parcel No. 711 was therefore illegal.

103. That further, vide a letter dated the 2<sup>nd</sup> November 2000 by the Permanent Secretary Ministry of Lands and Settlement-Nairobi and addressed to the Director Lands Adjudication and Settlement-Nairobi, the same was to the effect that since the Plaintiff already held title to parcel of land No. 711, any other document issued for the same plot was invalid and ought to be cancelled to avoid confusion.

104. That the Defendants herein did not challenged the authenticity of these documents which were clear that from the year 1977 the parcel No 711 was allocated to the Plaintiff. That parcel No. 712 existed in 1977 but was amalgamated with parcel No 711 and ceased to exist beyond the year 1977 and therefore any document issued thereafter for this parcel of land were forgeries and untenable. That Mrs Suleiman Mugunda was allotted an alternative parcel of Land No. 108.

105. On the second issue, it was the Plaintiff's submission that Parcel No. 712 ceased to exist in the year 1977 after it was amalgamated with parcel No. 711 after it was found to be small. That upon amalgamation, parcel No. 711 now measured 4.6 hectares and still is 4.6 hectares. It therefore beats logic that the 1<sup>st</sup> Defendant's parcel of land No. 712 which was registered to one Mary Nyaruiru Wamugunda, a person the Plaintiff was categorical was not one and the same person as Mrs Suleimn Wamugunda, measured 4.6 hectares also.

106. That going by the documents produced by both the Defendants and the Plaintiff, the acreage of parcels of land No. 711 and 712 each measured 4.6 hectares meaning that if they had been consolidated, the acreage would have been 9 hectares which was not the case in this case. In any case there would have been no reason to consolidate them.

107. The Plaintiff also referred the court to a survey report at page 21 of their schedule of documents wherein the firm of M/s Plankon Enterprise Limited, a survey entity had found that the Defendants claim

seemed to have been created within parcel No. 711.

108. The Plaintiff's answer to his third issue as to whom Parcel No.712 had been allotted to by the Settlement Fund Trustee, was that although the 1<sup>st</sup> Defendant claimed that the said land was allotted to his mother Mary Wamugunda who transferred the same to him wherein he obtained a certificate of title, no evidence had been adduced to that effect. That the available government records were to the effect that although it had been intended that parcel No.712 be allotted to one Mrs Suleiman Wamugunda yet due to its small size it was not allotted but amalgamated with parcel No. 711 and therefore parcel No. 712 was never allotted to anybody.

109. That the officers from the Nyahururu Settlement Fund Trustee's office, the survey office and the local administration in Nyahururu with the convenience of the 1<sup>st</sup> Defendant had tampered with the documents, maps and RIM of the scheme to resurrect parcel No.712.

110. On the fourth issue as to whether there was amalgamation of parcels No. 711 and parcel No.712 into parcel No 711, it was the Plaintiff's contention that the parcels of land were amalgamated and that parcel No. 712 did not exist as at the year 2000. That letter produced as Df exh 19 dated the 20<sup>th</sup> September 1983 to the effect that the amalgamation was cancelled was not authentic and that if indeed the amalgamation was cancelled, it would have reflected in the records at the headquarters at Nairobi Survey and Lands office. Their stand was that the amalgamation was never reversed.

111. The Plaintiff also submitted that the DW 3 was not a truthful witness for reasons that the document he submitted as Df exh No.15 was not executed by the commissioner of Land who was mandated to allocate land, secondly, that the allocation of plot No 108 was indicated to have been in the year 1987 contrary to evidence adduced that the Plot No. 108 had been allocated to Mrs Wamugunda in the year 1977 as replacement of plot No 712.

112. In regard to the position on the ground, it was the Plaintiff's submission that although the court ordered for a report by the district surveyor to be filed in court, it must be cautious of the same in lieu of the document produced by the defence as Df exh 19 which document had warned the Defendant to keep of the suit land until a thorough report had been filed. There was no assurance that the surveyor would present the correct facts. Assurance was placed on the Plaintiff's document at page 21.

113. The Plaintiff was categorical that the prayers sought for vacant possession or eviction were tangible based on the evidence adduced that plot No 712 did not exist as it had been amalgamated with Parcel No 711 giving rise to parcel No. 711 to which title was issued to the Plaintiff.

114. It was therefore the Plaintiff's submission that the court had powers to cancel all titles that were created upon the sub division of parcel No.711 on the pretext that it was parcel No 712.

115. That no evidence had been adduced by the Defendants to confirm that parcel No.712 was ever allotted to Mrs Suleiman Wamugunda or Mary Nyaruiru Wamugunda or anyone else in the circumstance. That the root of the title to parcel No 712 was not established

116. The Plaintiff thus relied on the reported case of **Samuel Kamere vs Land Registrar, Kajiado [2015] eKLR** to submit that without any documents to support the registration of the 1<sup>st</sup> Defendant's mother herein as the proprietor of the suit property No. 712, the Defendants had failed to discharge their evidentiary burden of proof as required and therefore they could not acquire title to the suit property.

117. The Plaintiff prayed that the Defendants meet the cost of the suit.

#### **Defendant's submission.**

118. The Defendants' joint submission on the Plaintiff's suit after giving a brief history on the matter, was based on the following framed issue for determination;

- i. Whether the Land Parcel No. 711 and 712 exist on the ground.
- ii. Who are the legal proprietors of the above parcels of land.
- iii. Whether the Defendants were entitled to the reliefs sought.
- iv. Who should bear the cost of the suit.

119. On the first issue, it was the Defendants submission that the 1<sup>st</sup> Defendant's mother, Mary Nyaruiru Wamugunda Alias Mrs Suleiman Wamugunda gave him land parcel No. Laikipia/Marmanet/712 (extension) which had been registered in her name as per the Title deed herein produced as Df exh 1. That parties had executed the transfer as per Df exh 2.

120. That vide a boundary dispute between his mother and the Plaintiff, the matter had been arbitrated upon wherein the land Registrar and the surveyor had visited the suit land and filed their report herein produced as Df Exh 3, which report had confirmed that there were two distinct parcels of land being No 711 which was registered to the Plaintiff and parcel No. 712 which belonged to the 1<sup>st</sup> Defendant. The said report had been subsequently adopted in the Magistrate's court wherein an appeal to the High Court vide Civil Appeal No. 34 of 1987, herein produced as Df exh 4, had been dismissed for want of prosecution

121. That his documents herein produced as Df exh 5 and 6 being a letter from the National Lands Commission, as well as the official Certificate of search and the green card herein produced as Df Exh 8 and 9 respectively confirmed his proprietorship to land parcel No. 712, while the documents produced as Df Exh 10 and 11 being certificate of search and green card respectively, confirmed that the Plaintiff was the proprietor of parcel of land No. 711.

122. That upon the 1<sup>st</sup> Defendant being given parcel No 712 by his mother, he had subdivided it into 3 portions resulting into parcels No. 1200 which was registered to the 2<sup>nd</sup> Defendant as per the title produced as Df exh 12, the second portion No.1199 was sold and registered to the 3<sup>rd</sup> Defendant, as evidenced by the title produced as Df exh 21 wherein the 3<sup>rd</sup> portion No. 1202 was registered to the 1<sup>st</sup> Defendant as per the green card produced as Df exh 9.

123. That the RIM, which was produced as Df exh13 proved the existence of both parcels of land No.711 and No. 712, whereas the RIM that was produced as Df exh 14 confirmed the situation on the ground after the sub division of parcel No. 712.

124. The Defendants' further submission was that through the evidence of DW3, it had been confirmed that land parcel No. 108 was not allotted to Mrs Suleiman Wamugunda who then sold to DW3, but that the same had been allotted to DW3 by the Government on the 14<sup>th</sup> March 1987. This fact was confirmed through the production of the RIM herein produced as Df exh 15, the charge, produced as Df exh 16, the receipts for payment of the charge for the said parcel of land produced as well as Df exh17 (a) and (b), as well as letters produced as Df exh 18 and 19 respectively.

125. As to whether parcels of land No 711 and 712 were amalgamated, it was the Defendants' submission that this had always been the Plaintiff's perception which perception had caused a lot of confusion at the Ministry of Lands. That nothing of the sort took place and if there was such an intent, the same was cancelled vide a letter dated the 21<sup>st</sup> August 1984 which they had produced as Df exh 20.

126. The Defendants therefore submitted that the proprietors to the suit land was confirmed by the documents adduced as well as the Land Registrar's report dated the 20<sup>th</sup> November 2018 which was filed at the instance of the court and adopted as the Defendants' evidence on the 6<sup>th</sup> March 2019.

127. The Defendant's then submitted that Section 26(1) of the Land Registration Act was clear as to

issues pertaining the registered proprietor of land to the effect that the holder of the title shall be taken to be the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate with an exception of provisions (a) and (b).

128. That the principle of indefeasibility of the title was well enshrined under Section 25(1) of the and Registration Act that once a certificate of title was issued to a person, that person became the absolute registered proprietor of the respective parcel of that land with exclusive indefeasible rights, title and interest.

129. The Defendants were categorical that they deserved the orders so sought in their counterclaim and so as to have the matter finalized, that there be an order to the land Registrar to visit the suit land 30 days after delivery of the judgment so as to demarcate and fix beacons to the suit land to avoid future disputes.

130. On the issue of who would cater for the cost of the suit, it was the Defendants' submission and pursuant to the provisions of Section 27 of the Civil procedure Act, costs were usually awarded to compensate the successful party for the trouble taken That these costs be awarded to them upon dismissal of the suit as sought in their counterclaim.

### **Analyses and determination,**

131. I have considered both the oral, and documentary evidence on record, the submissions herein as well as the applicable law. Having considered the matter as a whole, it comes out clearly that the Plaintiff's case is that at the time the Settlement Fund Trustee were allocating parcels of land to the individuals within Marmanet scheme, they had discovered that land parcel No. Laikipia/Marmanet/Extension 712 (extension) which they allocated to one Mrs. Suleiman Wamugunda was too small and therefore amalgamated it to his own parcel of land being No. Laikipia/Marmanet/Extension 711 (extension) before allocating both parcels of land to him.

132. The Defendants on the other hand are categorical that no such amalgamation took place and that although there had been plans by the government to amalgamate parcels No Laikipia/Marmanet/Extension 711 (extension) and No. Laikipia/Marmanet/Extension 712 (extension) the plans were thwarted when it was realized that both parcels were big enough be allotted independently to the effect the parcel No. 711 was allotted to the Plaintiff whilst parcel No.712 was allotted to 1<sup>st</sup> Defendant's mother one Mary Nyaruiru Wamugunda alias Mrs Suleiman Wamugunda.

133. This state of uncertainty led the parties to appear before the Land Disputes Tribunal, and several other government offices dealing with land, the provincial Administration and even the National Commission of Land following which the Plaintiff filed suit in the High Court seeking for eviction of the 1<sup>st</sup> Defendant.

134. The matter proceeded for full hearing between the Plaintiff and the 1<sup>st</sup> Defendant wherein Judgment was delivered on the 20<sup>th</sup> January 2012 wherein the Defendant being dissatisfied, filed an application to set it aside so as to enjoin the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. Vide a ruling delivered on the 21<sup>st</sup> July 2016, the said judgment of 20<sup>th</sup> January 2012 and all consequential orders was set aside and a retrial ordered. Based on the above summary of events, I find the issues arising for determination as being;

- i. Whether parcels No Laikipia/Marmanet/711 (Extension)) and No. Laikipia/Marmanet/Extension 712 (extension) existed independently.
- ii. Whether the said parcels of land were allotted to the Plaintiff and Mary Nyaruiru Wamugunda respectively.
- iii. Whether there was amalgamation of the said parcels of land.

135. On the first and second issues, from the evidence adduced it was not in dispute that vide a letter of

offer of allotment and acceptance dated the 11<sup>th</sup> December 1978 herein produced as Pf exh 1, the Plaintiff herein was allotted land parcel No 711 in Marmanet Settlement scheme.

136. That the land was subsequently charged to the settlement fund Trustee where upon the discharge of charge, the Plaintiff was issued with a title deed dated the 30<sup>th</sup> October 1996 to land parcel No Laikipia/Marmanet/711(Extension)

137. The 1<sup>st</sup> Defendant also testified that his mother Mary Nyaruiru Wamugunda alias Mrs Suleiman Wamugunda was allotted plot No 712 by the Settlement Fund Trustees vide an allotment letter dated April 1977 herein produced as Df exh 1, after which she had she paid Ksh 255/=for the charge Df exh 2, wherein she had been issued with a title deed in her name dated the 3<sup>rd</sup> November 2003 for plot No Laikipia/Marmanet/712 (Extension) which title was produced as Df exh 1. The said allotment of parcel No 712 to Mrs Wamugunda was further confirmed through a letter dated the 20<sup>th</sup> September 1983 herein produced as Df exh 19.

138. On the 11<sup>th</sup> October 2018, the court directed the land Registrar to file a report as to the status of the two parcels of land wherein, a report was filed on the 23<sup>rd</sup> November 2018 to the effect that indeed there were two distinct title deeds issued to the two respective parcels of land in the year 1996 which titles were registered to the Settlement Fund Trustee before title to parcel of land No 711 was transferred and registered to the Plaintiff while parcel No 712 was transferred and registered to Mary Nyaruiru Wamugunda before it was closed on subdivision on the 27<sup>th</sup> November 2006 resulting into three parcels of land being No. 1199, 1200 and 1201.

139. Up to this point, I am satisfied that there were two distinct parcels of land with distinct title deeds being Laikipia/Marmanet/711 (Extension) and Laikipia/Marmanet/712 (Extension) which had been allotted to the Plaintiff and Mary Nyaruiru Wamugunda respectively and therefore the root to the Defendants title is traceable.

140. Section 26 (1) of the Land Registration Act of 2012 provides as follows:-

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

*a. On the ground of fraud or misrepresentation to which the person is proved to be a party;*  
*or*

*b. Where the certificate of title has been acquired illegally, unprocedurally, or through a corrupt scheme.*

141. I thus find that there was no evidence led that indeed the Defendants fraudulently and illegally presented conveyance to register themselves as the owners of the subsequent suits which resulted as a sub-division of title No 712. It is not sufficient to testify and/or allege that the Defendants herein obtained title to their respective parcels of land through fraudulent means. The onus was on the Plaintiff to prove those allegations. Fraud is a serious matter which must be proved to the required standard. In ***R.G Patel vs Lalji Makanji 1957 E.A 314***, the Court of Appeal stated as follows:

*“Allegations of fraud must be strictly proved although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required”.*

142. On the second issue for determination, I find that although the Plaintiff’s case was that parcel No 711 and No. 712 had been amalgamated to form parcel No 711 in the year 1977, yet there was evidence

adduced through the production of Df Exh 13 which was the 4<sup>th</sup> edition of the Registry Index Map (RIM) to the Marmanet extension settlement scheme, certified on the 19<sup>th</sup> November 2003, that clearly showed the position of both parcels of land indicating that indeed there existed parcels of land No.711 and No. 712.

143. Further, vide a letter dated the 20<sup>th</sup> September 1983, herein produced as Df exh 19 from the Department of Settlement Nairobi and addressed to the District Settlement Officer Laikipia, the same was to the effect that the original map was to remain the way it had originally been planned and further that the occupants of parcel no, 711, 712, 760 and 108 remain on their plots and should be documented if they had not been.

144. Indeed it had been the evidence by the 1<sup>st</sup> Defendant that in the years 1977-1978, the government had sought to amalgamate the two plots being No. 711 and 712 into plot No. 711 but the process of the amalgamation had been set aside after a re-survey had been conducted and wherein it had been discovered that the parcels of land were distinct.

145. I see that vide a letter dated the 21<sup>st</sup> January 1993 annexed in the Defendant's affidavit in the notice of motion dated the 14<sup>th</sup> February 2013 and marked as annexure "AMG 4 m" that the Plaintiff herein was informed of both the cancellation of a letter dated the 12<sup>th</sup> January 1993 which he produced as Pf exh 4(c) and of the fact that the amalgamation of plots No. 711 and No. 712 was never effected as earlier implied in the letter Ref No. EST/1/302/43 of 10<sup>th</sup> December 1977. The Plaintiff was also informed to honor the boundaries that had been set between the two parcels of land.

146. Vide a letter dated the 21<sup>st</sup> August 1984 herein produced as Df exh 20, the same was also clear that the amalgamation of the parcels of land in dispute herein was revoked vide a letter Ref No. 15/302/65 dated the 20<sup>th</sup> September 1983 and as such the letter Ref No. EST/1/302/43 and dated the 10<sup>th</sup> December 1977 stood cancelled

147. I have considered the proceedings that were held before the Land disputes Tribunal sitting at Rumuruti in Land Dispute No 2 of 2004 herein earlier mentioned and I note that there was noted two distinct boundaries between land parcels of land being No. 711 and No. 712 as at the year 2004, it cannot therefore be possible that with all this evidence that the land parcels in dispute herein were ever amalgamated.

148. Land amalgamation entails the combination of two or more adjoining pieces of land existing under separate titles but in the name of the same proprietor. The end result of amalgamation is that the separate titles are collapsed into a single title in the name of the same proprietor. Amalgamation process involves the drawing of an amalgamation scheme showing the pieces of land to be combined. The schemes are presented for approval. Once approved by relevant authorities, titles of the pieces of land proposed for amalgamation are surrendered to the lands registry for cancellation, noting in the register and registration of the amalgamated title.

149. From the above captioned analyses of what entitles to amalgamate land, I find that the Plaintiff did not present sufficient evidence of his alleged ownership of Parcel No. 712. No evidence of the amalgamation process and the resultant amalgamated title was presented by the plaintiff. I have carefully examined the Registry Index Map (RIM) to the Marmanet extension settlement scheme and find that indeed there existed parcels of land No.711 and No. 712 as separate parcels of land. I therefore reject the Plaintiff's contention that Parcel No. 711 and Parcel No. 712 were amalgamated into Parcel No. 711 since there is no evidence of such amalgamation.

150. The Plaintiff's contention that after Parcel No. 712 and 711 were amalgamated into 711, the previous allottee of parcel No. 712 Mrs Suleiman Mugunda was allotted an alternative parcel of Land being Laikipia/Marmanet/108 wherein the 1<sup>st</sup> Defendant sold it to someone else was displaced by the Defence evidence wherein they were able to demonstrate through the evidence of DW3 and documentary evidence

that that indeed the said parcel of land was allocated to DW3 by the government vide an allotment letter herein produced as Df exh 15 wherein he discharged the loan as evidenced by the Df Exh 17(a-b) and was issued the said parcel of land wherein he had been living since 1978( Ref to letter dated 14<sup>th</sup> April 1987 herein produced as Def ex 18)

151. In brief, what I am saying is that there is no evidence upon which I can cancel the title of the Defendants nor vest the suit land No Laikipia/Marmanet/711 (Extension) or its subdivisions thereon upon the plaintiff. To this effect the Plaintiff's suit is herein dismissed with costs to the Defendants.

152. On the other hand, based on the evidence herein above, I find in favour of the Defendants' counter claim and proceed to find that;

i. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are the rightful owners of the parcels of land known as ***Laikipia/ Marmanet/ Extension /1202, Laikipia/ Marmanet/ Extension/ 1200, Laikipia/ Marmanet/ Extension/ 1199*** respectively arising from the subdivision of Land References No ***Laikipia/ Marmanet/ Extension/ 712***.

ii. A Permanent Injunction is herein issued restraining the Plaintiff by himself or their agents and/or servants from sub dividing, alienating, transferring and or interfering or in any way dealing with the resultant subdivisions arising from ***land References Nos Laikipia/ Marmanet/ Extension/ 1202, 1200 and 119 which were a resultant of parcel No. 712***

iii. I further direct that since there is an existing boundary on the ground, that County Land Registrar-Laikipia to plant a beacon between the Plaintiff's parcel of land known as ***Laikipia/ Marmanet/ Extension/711*** and Land ***Parcels No. Laikipia/ Marmanet/ Extension/ 1202, Laikipia/ Marmanet/ Extension/ 1200, Laikipia/ Marmanet/ Extension/ 1199*** being the resultant subdivisions of ***Laikipia/ Marmanet/ Extension/ 712*** belonging to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants respectively.

iv. That if need be, the OCPD Laikipia Police Division and OCS Kinamba Police Station to ensure that these orders are fully complied with by all the parties.

v. I also award to the Defendants Costs and interest at courts rate from the date of judgment until payment in full.

**Dated and delivered at Nyahururu this 23<sup>rd</sup> day of July 2019.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**