

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**ELC NO. 40 OF 2019**

**AGRICULTURAL DEVELOPMENT  
CORPORATION-----  
-1<sup>ST</sup> PLAINTIFF**

**LANDS  
LIMITED-----2<sup>ND</sup>  
PLAINTIFF**

**VERSUS**

**MICHAEL WANGILA MAKAWA &  
161  
OTHERS-----  
DEFENDANTS**

**JUDGMENT**

**(A) PLEADINGS IN THE 1<sup>ST</sup> SUIT**

**1.** The plaintiffs in the 1<sup>st</sup> suit approached this court through a further amended amended amended plaintiff dated **28/5/2024**. They seek:

**(a) Declaration that land comprising Japata Farm, namely, L.R. Nos. 4140/3, 6106/4, 7136/5, 7155,7156, 7156/7, 7156/9-11, 7156/14-16, 9437 and 9439, hereinafter the suit properties, belong solely to the 1<sup>st</sup> plaintiff.**

**(b) Declaration that the defendants, their agents, or anybody claiming under them are trespassers to the suit properties and**

**should be ordered to move out therefrom, failing which they will be forcefully evicted.**

**(c) Temporary and permanent injunction.**

**(d) Declaration that Bernard Barasa, Fredrick Makokha, and Daniel Nasambu Chakali obtained the title for L.R. No. 6106/4 fraudulently, which should be cancelled.**

- 2.** The plaintiffs contend that as a statutory corporation established under the Agricultural Development Corporation (ADC) Act, **Cap 444**, tasked with *inter alia*, promotion of agricultural production, it owns properties across the country, among them land through its subsidiary, the 2<sup>nd</sup> plaintiff. In this instance, the plaintiff avers that the 2<sup>nd</sup> plaintiff owns land commonly known as Japata Farm, measuring **6,302 acres**, which was transferred to it in or about **1969**, among its parcels of land comprised in the suit properties herein, with rights and privileges, which require protection of a registered property under the law.
- 3.** The 1<sup>st</sup> plaintiff avers that it has a workforce in Japata Farm of about **450** persons, who were previously housed within the Farm in six camps, namely Kambi Laini Moja, Kambi Cherubai, Kambi Wire, Kambi Rono, Kambi Wazee, and Kambi Japata,

and who had been allowed to cultivate the land within the residential camps.

4. The plaintiffs aver that the defendants, who are not part of the workforce of the 1<sup>st</sup> plaintiff, have, over time and without the permission of the 1<sup>st</sup> plaintiff, entered into Japata Farm and have remained in the residential camps aforementioned without the plaintiffs' permission; they are all trespassers in the land parcels with no proprietary interests whatsoever in Japata Farm.
5. The plaintiffs aver that in early **March 2018**, the government put **2,500 acres** of the Japata Farm under crop production, following which the farm received **650** animals from the Ministry of Livestock & Fisheries, thereby raising the total herd size to **1,006** and **380** dipper sheep. Given the said requirements, the plaintiffs aver that it became necessary for the 1<sup>st</sup> plaintiff to acquire more acreage for food production and thereby accommodate and promote the government's big four agenda, namely, to enhance food and nutrition security.
6. The plaintiffs aver that as a result, they decided to restructure their staff houses, by relocating their

staff to Kambi Laini Moja, Kambi Cherubi, Kambi Wire to Kambi Wazee and Kambi Japata, hence, was by now unable to put an additional **400 acres** or thereabout under crop production, which was not under crop production.

7. The plaintiffs aver that while its workers complied with the restructuring of the staff houses and moved to the identified camps, the defendants herein and others in the farm and who have been trespasser in the suit properties, refused to comply and instead proceeded to file **Kitale ELC Petition No. 1 of 2018** on **20/3/2018**, seeking to have the notice to vacate unconstitutional, and order that the National Land Commission do comply with **Article 67 (2)** of the Constitution and for a permanent injunction, out of which a conservatory order was made for the status quo to be maintained pending hearing and determination of the suit.
8. The plaintiffs aver that after the 1<sup>st</sup> plaintiff ploughed the land and planted it with maize, the defendants became extremely hostile and have undertaken criminal activities which are meant to defeat and frustrate the undertaking of the 1<sup>st</sup> plaintiff, by inter alia damaging their tractors,

working on the land, and threatening their workers with dire consequences over and above uprooting the germinated seed maize crops.

- 9.** The plaintiffs aver that even though the said incidents have been reported to the police for investigations, the police and GSU officers offering security in the farm have been attacked, resulting in the use of tear gas. The plaintiffs aver that the situation on the ground remains volatile and unless the court intervenes, the 1<sup>st</sup> plaintiff risks losing its heavy investments in the suit properties by the unjustified interference of the defendants, who continue to bring more strangers from Uganda and Bungoma into the suit properties situated in Endebess Sub-County.
- 10.** The plaintiffs aver that on or about **2023**, the 26<sup>th</sup>, 91<sup>st</sup>, and 92<sup>nd</sup> defendants have purported to have obtained a title deed for Parcel **No. 6106/4**. The plaintiffs aver that the land comprised of **L.R. No. 6106/4** has, at all material times from about **1968**, been registered in the name of the 2<sup>nd</sup> plaintiff and the said land has all through been under the use of the plaintiffs.

- 11.** Therefore, the plaintiffs aver that the title for **L.R. No. 6106/4** allegedly held by the said defendants alluded to above was obtained fraudulently, without following the laid down procedure for obtaining public land, it was not available for allocation to four defendants by the 2<sup>nd</sup> defendant, there was no transfers made by the 2<sup>nd</sup> plaintiff to the four defendants, and that the title was obtained before a prior parliamentary approval was made in compliance with the ADC (Special Farm) Rules **2001**, hence making the title null, void and subject to cancellation.
- 12.** The defendants opposed the suit through an amended, amended joint statement of defence dated **19/7/2024**. The defendants aver that their families have been staying on the farm in the six camps, which were established on or about **1938**, when wild animals were all over the stipulated region. The defendants aver that their forefathers were on the said land during the colonial arrival up to their departure, whereas the plaintiffs have no clue about the history.
- 13.** The defendants deny that the land was transferred to the plaintiffs, aver that the land remains under

demarcation of the British Colony as per the said names of the six claimed camps of the plaintiffs, with no title deed having been issued to anyone, including the plaintiffs. The defendants aver that the claim by the plaintiffs in paragraph 4 of the plaint is a calculation to trace the unfounded parcel of land, which is not properly identified by any land reference number as alleged, or at all, save for a generalised move to confuse the court.

- 14.** The defendants aver that the 2<sup>nd</sup> plaintiff has fraudulently been unlawfully obtaining people's property, and therefore cannot be trusted in any manner or way. The defendants aver that they have no proprietary interest in the titles mentioned in paragraph 5 of the plaint, save for **L.R. No. 6106/4**, which the 26<sup>th</sup>, 91<sup>st</sup>, and 92<sup>nd</sup> defendants hold.
- 15.** The defendants aver that they have been staying in Japata Farm since the arrival of the white settlers, which is a clear indication and demonstration that they are the bona fide owners of the suit parcel of land, with rights to own and be registered as proprietors of the land. The defendants aver that the alleged housing by the plaintiff is not within their stay, but outside; otherwise, the plaintiffs have

chosen to interfere with people's parcels of land for personal gain, and a few other individuals who are totally aware of it.

- 16.** The defendants aver that they are part of the plaintiffs' workforce, who have an interest in the suit land that is quite a distance from the plaintiffs' corporation land, which, according to them, is owned by the plaintiffs who are actually trespassers on the Japata Farm land. The defendants aver that they, together with their families, are not willing to know or interfere with the ADC land and any plan over them, given that they do not share any proprietary or unspelled category of those lands.
- 17.** The defendants aver that whereas it is the government's duty to actualise the demand in food production, that can only be done in the plaintiffs' own land, but not on people's residential land, in which they cannot be trespassers to their own land. The defendants aver that **Petition No. 1 of 2018** was withdrawn from court by their lawyer without prior notice, consultation, or good reason for doing so; thus, they are not ready to lose the land due to the oversight by their then advocate on record, who acted on his own direction.

- 18.** The defendants maintain that the order was not shown to them until it was annexed to the plaintiffs' suit papers. The defendants insist that **L.R. No. 6106/4** never formed part of the ADC Farm and has never been part of the alleged plaintiffs' suit properties.
- 19.** The defendants deny the contents of paragraphs **14, 15, and 16** of the plaint; otherwise, they have suffered through beatings, uprooting of their food crops from the land by the GSU, the police, and therefore no crime has been committed by them, for they are harmless, to have allegedly fought or attacked the security personnel.
- 20.** On the contrary, the defendants aver that their natural and constitutional rights have been seriously violated by the plaintiffs and their agencies, who have continued to use teargas and other dangerous weapons to injure, harm, and destroy their lives and livelihoods. The defendants insist that the land, having been under occupation of their forefathers, they legally own **L.R. No. 6106/4**, to which the plaintiffs have no genuine claim or reason to interfere with, as distant neighbours, going by the area map.

**21.** The 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants opposed the suit by an amended, amended, amended defence dated **25/11/2023**. The four defendants term the plaintiffs' suit as misconceived and bad in law. over and above associating themselves with the contents of the other defendants' defence, the four defendants insist that:

- a. *The plaintiffs have no right over Land Parcel No. Japata Farm **L.R. No. 6106/4**, which belongs to them.*
- b. *They have stayed on the farm since the arrival of white settlers, which land was handed over to them as a clear indication and demonstration that they are the bona fide owners with full right of ownership to **L.R. No. 6106/4**.*
- c. *Their occupation is outside on other parcels of land.*
- d. ***L.R. No. 6106/4** is quite distant from the ADC land.*
- e. *Food production activities are not in Japata Farm, **L.R. No. 6106/4**, which never formed part of the ADC land.*
- f. *The plaintiffs have never acquired or possessed Japata Farm, **L.R. No. 6106/4**, since the four defendants have been in possession since the time of their forefathers to date.*
- g. *They have suffered through beatings and their crops uprooted in Japata Farm, **L.R. No. 6106/4**.*

**22.** The four defendants insist that they have occupied Japata Farm **L.R. No. 6106/4** since it was allocated to them during their forefathers' time, and the registration was effectively done in their favour, as they legally own the land. The four defendants deny the contents of paragraphs **18(C) and 18(D)** of the amended, amended, amended plaintiff and the particulars of fraud therefor and aver that at no point in time did the 2<sup>nd</sup> plaintiff ever own the land **L.R. No. 6106/4**. The four defendants pray that the plaintiffs' suit be dismissed with costs.

**(B) PLEADINGS IN THE 2<sup>ND</sup> SUIT**

**23.** The plaintiffs in this suit are **1,094** in total. They have sued the 1<sup>st</sup> defendant in the 1<sup>st</sup> suit seeking that the court declare them entitled to the title to the whole of the land parcel, Japata Farm, **L.R. No. 6106/4, 7155, 9437, and 9439**, by virtue of adverse possession. The grounds are that out on the face of the originating summons dated **21/7/2020** and in a supporting affidavit sworn by Fredrick Makokha Mugusho, on behalf of the other plaintiffs. The authority to swear or plead was not attached to the initial affidavit or the list of documents filed herewith.

- 24.** The deponent deposes that the plaintiffs are residents of Japata Farm, are great-grandchildren of their labourers who worked for the white colonists by the name of Brook Bank, who owned the land situated in Chepchoina location, Endebess Sub-County, Trans Nzoia. The plaintiffs depose that they have been living and utilising the said land from the sixties to date, peacefully and without any interruption. The plaintiffs depose that they have been in actual possession and in exclusive use of the parcels of land for crop and animal production, as per annexed photographs marked **AB-(1)**.
- 25.** The plaintiffs depose that the land they reside on belongs to them and have been using the same as their only source of livelihood for more than fifty years, as per a copy of a letter dated **12/2/2004** from the District Commissioner, Trans Nzoia County, attached as **AB-(2)**. The plaintiffs depose that the land in which they reside is inhabited or used by them with a clear demarcation between the said land and that used by the defendants and or their agents.
- 26.** The plaintiffs depose that their families have been staying specifically in the farm known as Kambi Laini

Moja, Kambi Cherubai, Kambi Wire, Kambi Rono, Kambi Wazee, and Kambi Japata, which camps were established on or about **1938**, when wild animals were all over the stipulated region.

**27.** The plaintiffs depose that their forefathers were in the said land during colonial arrival and departure, and due to that, they aver that they have acquired the land and should be registered as owners by virtue of adverse possession. The plaintiffs depose that the suit land is still in the demarcation of the British colony, as per the names of the six claimed camps, and they deny that any title has been issued to any person(s). The map is attached as annexure **AB-(3)**.

**28.** Further, the plaintiffs depose that the defendants or their agents have never resided on these parcels of land at all, nor have they utilised the same at all to date. The plaintiffs depose that their peaceful and uninterrupted stay on Japata Farm since the departure of the white settlers indicates and demonstrates that they are the *bona fide* owners of the suit land as proprietors who have a right to ownership and registration under the law.

- 29.** The plaintiffs depose that they will suffer greater harm and loss if the orders prayed for are not granted, since, out of the uninterrupted and peaceful occupation, they have acquired a good title.
- 30.** The originating summons is opposed by the defendants through a replying affidavit sworn by Dr. Maurice Cherongony on **17/2/2021**. He deposes that the operation as a subsidiary of the ADC, the defendant is governed by the Agricultural Development Corporation Act, Cap 444, which owns Japata Farm comprised of **L.R. No. 4140/3, 6106/4, 7155, 7156/7, 7156/9-11, 7156/14-16, 9437** and **9439**, whose acreage is **6302** acres, as per annexed certificate of survey plan, and schedule marked **MC-(1), (2) and (3)**.
- 31.** The defendant deposes that the suit properties were transferred to the defendant during **1969**, which are being managed and cultivated by the ADC, as public land. The defendant averred that the 1<sup>st</sup> suit is pending against the plaintiffs herein seeking eviction orders, to which the court invited anyone who occupies or resides on the suit properties, besides the defendants in the 1<sup>st</sup> suit, to join.

- 32.** The defendant deposes that under **Cap 444**, the defendant is mandated to promote the production of Kenya's essential agricultural input for the purposes of developing agricultural production. The defendant deposed that its workforce of about **450** workers on Japata Farm were previously housed within the six camps alluded to above, and as workers, they were permitted to cultivate some land around the residential camps. The defendant denies that the plaintiffs are its workers or employees of the ADC, given that their identities or identities have not been disclosed.
- 33.** The defendant depose that the current suit is not a representative suit for the deceased person and their estate, and therefore, the 1<sup>st</sup> plaintiff has no authority from the rest of the plaintiffs to institute and prosecute the suit on their behalf, rendering the suit incompetent and misconceived. The defendant deposes that the plaintiffs have not stated which specific land they are occupying, and no extract of title has been availed.
- 34.** Further, the defendant deposes that if the 1<sup>st</sup> plaintiff's case is that the plaintiffs' families have been staying in the six residential camps, the same

camps are the ones housing the ADC employees, and since the plaintiffs are not employees of the said corporation, then they are outright trespassers on the land, who should be evicted therefrom.

**35.** The defendants depose that the suit properties being public land, **Cap 22** does apply. The defendants depose that during **2018**, the government required the ADC to put some **2,500** acres of Japata Farm under crop production, and as part of the exercise, they received **640** animals from the Ministry, thereby raising their herd to **1,006** cattle and **380** dorper sheep. The defendants depose that, given these developments, it became necessary for the ADC to acquire more acreage for food production as per a letter filed on **17/3/2018** explaining the necessary restructuring of staff housing, marked as **MC-(4)**.

**36.** The defendants depose that to avail more acreage, the ADC decided to restructure its staff houses by relocating its staff from the six residential camps and in so doing, its staff complied with the measures and moved to the identified camps, only for other strangers and trespassers therein those camps who must be including the plaintiffs to sue them on

**20/3/2018** in **Kitale ELC Petition No. 1 of 2018**, seeking for permanent injunction, where they obtained a conservatory order. The defendants depose that the petition was vigorously contested until it was withdrawn on **14/3/2019** as per the order attached as **MC-(5)**.

**37.** The defendants depose that issue to the trespass, the defendants filed the 1<sup>st</sup> suit and obtained an injunction order, a copy attached as **MC-(6)**. The defendants asked for the two suits to be consolidated.

**38.** At the hearing, **Dr Morris Cherongony**, a resident manager with the 1<sup>st</sup> plaintiff, testified as **PW1**. He relied on two witness statements dated **21/1/2022** and **10/2/2025** as his evidence-in-chief. Similarly, he relied on a replying affidavit in the 2<sup>nd</sup> suit, sworn on **17/2/2025**. As part of his exhibits, PW1 relied on a list of documents dated **13/6/2019**, namely, a schedule of special farm forming part of Japata Farm as **P. Exhibit No. (1) and (2)**, **Special Farm Rules 2001**, **P. Exhibit No. (3)**, copies of titles for **L.R. No. 4140/3**, **P. Exhibit No. (4)**, **L.R. No. 6106**, **P. Exhibit No. 5(a)**, subdivisions to **L.R. No. 6106**, **P. Exhibit No. 5(b)**, **L.R. No. 7155**, **P. Exhibit**

**No. (6), L.R. No. 7166/7, P. Exhibit No. (7), L.R. No 7156/15, L.R. No. 7156/14, L.R. No. 7156/5, L.R. No. 7156/6, L.R. No. 7156/9, L.R. No. 7156/11, as P. Exhibit No. 8(a) - (g).**

- 39.** PW1 also relied on documents in a supplementary list of documents, namely, a letter dated **17/3/2018, P. Exhibit No. (10)**, pleadings in Kitale **Petition No. 1 of 2018**, its response, and an order issued on **21/3/2018** and an order withdrawing it dated **14/3/2019, P. Exhibit No. (11), (12), (13),** and **(14)**. Letter dated **15/4/2019, P. Exhibit No. (15)**, letter dated **9/4/2019, P. Exhibit No. (16)**, photographs showing the destruction, **P. Exhibit No. (17)**, sample notice to vacate, **P. Exhibit No. (18)**, injunction order issued on **14/5/2019, P. Exhibit No. (19)**, confirmed order dated **9/8/2021, P. Exhibit No. (20)**, replying affidavits of the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants, **P. Exhibit No. (21)**, purported title by the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants, **P. Exhibit No. (22)**.
- 40.** PW1 said that the said title was lacking a transfer form and a parliamentary approval showing a letter dated **29/7/1986** appearing in the defendants' list of documents. PW1 told the court that it does not

refer to **L.R. No. 6106/4**. PW1 said that the plaintiffs had no policy in place for giving out their parcels of land to private individuals. PW1 asked about a letter dated **12/2/2004**, appearing on page **19** of the defendants' trial bundle, which said that it referred to parcel No. **7155** and not **L.R. No. 6106/4, which** was a resultant subdivision of **L.R. No. 7155**.

**41.** PW1 told the court that the Special Farm Rules became operational in **2011**. PW1 denied that the defendants are part of its workforce. PW1 said that all the plaintiffs' parcels of land as pleaded are duly registered with the lands office. PW1 availed all the original title deeds for the said farm before the court. PW1 denied that the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants were the ones paying land rates for **LR No. 6106/4**.

**42.** Further, PW1 denied that the four named defendants were lawfully allocated **L.R. No. 6106/4**, since the land belongs to the plaintiffs. PW1 said that the demand letter to vacate the disputed land dated **15/4/2009** was issued to all trespassers on the land. PW1 said that the 2<sup>nd</sup> plaintiff has been the registered owner of all the Japata Farm parcels

of land since **1969**, as per the transfer documents before the court. PW1 denied receipt of the letter dated **12/2/2004** on the defendants' list of documents.

- 43. Julius Makokha Simiyu** testified as **DW1**. He relied on a witness statement dated **14/10/2025** as his evidence-in-chief. As part of his exhibits, DW1 relied on an eviction notice dated **12/2/2018**, **D. Exhibit No. (1)**, letters dated **29/7/1986**, **12/2/2004**, **23/11/1983**, as **D. Exhibit No. (2)-(5)**, map for Japata Farm, **D. Exhibit No (6)**, letter dated **12/8/2018**, **29/7/1986**, **ID Card**, letter dated **12/2/2004**, **23/11/1983**, **10/3/1986**, and **17/3/2018** as **D. Exhibit No. 6(a)-(e)**.
- 44.** DW1 told the court that they were seeking rights over **L.R. No. 6106/4**, which has been under their use, possession, and occupation, now registered in the name of the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants. DW1 said that the said parcel of land is outside the land parcels owned and occupied by the plaintiffs. DW1 admitted that his witness statement was not accompanied by an authority to plead on behalf of the rest of the defendants in the suit.

- 45.** DW1 denied knowledge that **L.R. No. 6106/4** was transferred to the 2<sup>nd</sup> plaintiff in **1969** or is among the parcels of land listed in **P. Exhibit No. (3)** as belonging to the 1<sup>st</sup> and 2<sup>nd</sup> defendants.
- 46.** DW1 said that he possesses no allotment letter, sale agreement, or transfer form from the registered owner. DW1 said that he was not aware how the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants obtained title to **L.R. No. 6106/4**. DW1 said that he was not an employee of the plaintiffs. According to DW1, the six camps fall under **L.R. No. 6106/4**. DW1 admitted receiving an eviction notice from the plaintiffs after which he was among the petitioners in **Kitale ELC Petition No. 1 of 2018**, as per **P. Exhibit No. (18)**. DW1 confirmed that he is also a party in the 2<sup>nd</sup> suit, to which an injunction was issued regarding **L.R. No. 6106/4**.
- 47.** Asked about **D. Exhibit No. 6(a) and (f)**, DW1 said that the letters dated **29/7/1986** were written on behalf of Agnes Misako, and were responded to by the plaintiff. DW1 said that **D. Exhibit No. (5)** was obtained from the Lands Office concerning the deed plan produced as **P. Exhibit No. (4)** DW1 said that

he was not aware whether it accompanied the title deed issued to the 2<sup>nd</sup> plaintiff in **1969**.

- 48.** DW1 said that he was not aware that the title deed for ADC Farms requires parliamentary approval to be issued to a private person, such as the one dated **24/8/2016**. DW1 said that he was not privy to the events before he was born, particularly in **1956**. DW1 insisted that an authority to plead was filed on **22/4/2022**, which, from the court's record, is undated.
- 49. Fredrick Makokha** testified as **DW2**. He relied on a witness statement dated **9/6/2023** as his evidence-in-chief. DW2 told the court that he is the 32<sup>nd</sup> defendant in the matter, and that Japata Farm **L.R. No. 6106/4** is his, together with the 22<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants. DW2 told the court that the owners and their families have resided on the land since **1956**, when their forefathers settled there in the **1930s**, died, and left them living thereon.
- 50.** DW2 said that their forefathers were given the land by the white settlers, and after their death, they followed up with the process of allocation and registration till **2016**, when it was finalised. DW2 said that the land never belonged to the plaintiffs as

alleged, since it is completely outside the ADC land. DW2 said that the plaintiffs have fought, killed their relatives, and have forcefully been using goons to frustrate their occupation, yet they know that the land does not belong to them and are trespassers therein.

- 51.** DW2 told the court that he was given the land as a gift by one Mr. Brook Bank, though he has no agreement to that effect. He could not recall the parcel number he was given as a gift in **1969**. DW1 said that he was a former employee of the 1<sup>st</sup> defendant between **1980** and **1989**, and that he used to live in the Japata Farm camp.
- 52.** According to DW2, after retiring from employment, he continued living in the land which had been allocated to his forefathers by the white settler, until he acquired a title for it in **2016**. DW2 told the court that his title deed does not indicate whether he obtained the land through a transfer or as a gift. DW2 told the court that he was not aware that the 2<sup>nd</sup> plaintiff was in possession of a title deed for the same land after a transfer to it on **27/3/1969** from the former owner named Henry Broadburs as per **P. Exhibit No. (4)**.

- 53.** DW2 confirmed that the 2<sup>nd</sup> plaintiff's title was accompanied by a deed Plan No. **3788**, duly signed by the Director of Surveys. DW2 said that his transfer of the same land in **2016** was not effected by the 2<sup>nd</sup> plaintiff, though he obtained the same from the Land Office in Nairobi. DW2 denied that the transfer and the title held by him alongside the three other defendants were fraudulently or irregularly obtained for lack of parliamentary approval.
- 54.** Further, DW2 said that he was not certain if the transfer form before he obtained the title had been lawfully executed by the previous owner of the land. DW2 said that the white settler who had gifted the land to his forefather was not present in **2016** when he obtained the transfer and title deed in their names. DW2 said that he lives on the suit land alongside **34** other persons.
- 55.** **Margaret Chabari** testified as **DW3**. She relied on a witness statement dated **9/6/2023** as her evidence-in-chief. Her testimony was that **L.R. No. 6106/4** Japata Farm belongs to her and the 22<sup>nd</sup>, 32<sup>nd</sup>, and 161<sup>st</sup> defendants, which initially belonged to their forefathers. She associated her evidence

with that of DW2. DW3 said that she has never been an employee of the plaintiffs, though she initially worked with white settlers for eight years. DW3 said that she was **67 years** old, and through DW2, she visited the Lands Office in Nairobi, where they obtained a title deed for the land in **2016**.

- 56.** DW3 said that though the land was donated to them in **1967**, the white settler was not present to sign the transfer in **2016**. DW3 said that she paid no consideration to obtain the land situated in Kambi Wire Camp. DW3 could not tell who the former owner of the land title was before the transfer to their joint names. She denied that her title deed was irregularly obtained.
- 57.** In the absence of any witness statement or appearance of other witnesses, the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants' cases were marked as closed.
- 58.** The plaintiffs, through Mr. Kiarie, learned counsel submitted that based on the plaint amended on **13/10/2023** and the defence dated **19/7/2024** and **16/7/2024**, the issue for determination is who owns **L.R. No. 6106/4**, to be entitled to the reliefs sought. Learned counsel submitted that the plaintiffs have produced a title for the suit land

alongside the conveyance instruments executed on **27/3/1969**.

- 59.** The plaintiffs submit that **P. Exhibit No. (3)** is a schedule showing the Special Farm Rule **2001**, listing **L.R. No. 6106/4**, which rules prohibit any alienation of the parcels listed without the approval of parliament through a Special Bill. Learned counsel submitted that any sale or transfer of the listed land parcels, without compliance with the law, is invalid as per Rule **3** thereof. Learned counsel submits that the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants purport to hold a title for the land, yet they have been unable through DW1, DW2, and DW3 to demonstrate how they procured the title or are the owners of the land.
- 60.** Learned counsel submitted that, given there is no explanation, the title in pages **67-70** of the bundle of trial dated **10/2/2025** is invalid, having been obtained by the said defendants on **20/8/2016**.
- 61.** Further, learned counsel submitted that the title was fraudulently obtained; otherwise, its root is not verified, and the burden of how it was obtained rested on the holders of the same, which they have failed to discharge under **Section 26** of the Land Registration Act. Learned counsel submitted that the

defendant, having admitted occupation of the disputed land where only bona fide workers of the plaintiffs are supposed to occupy, and to which they are no longer workers, they remain mere trespassers thereon.

- 62.** Learned counsel Mr. Obuli for the defendant, relying on the statement of defence amended on **19/7/2024**, supported by the evidence of DW1 and the exhibits produced, submitted that it is the plaintiffs who dragged them to court and must prove the claim against them. Learned counsel submitted that the plaintiffs cannot shift the burden of proof to them after the counterclaim was withdrawn.
- 63.** Learned counsel submitted that the defendants have no burden to prove, since, after PW1 was cross-examined, it became clear that **L.R. No. 6106/4** does not fall under the Special Farms, by dint of **P. Exhibit No. (3)**, since it is outside the said ADC Farm, going by the map produced herein. Learned counsel submitted that the plaintiffs are out to overstep their parcel of land, and claim **L.R. No. 6106/4**, which is distinct and separate from the ADC Farm, as per **D. Exhibit No. (5)**.

- 64.** Mr. Nakitare, advocate, submitted that, as per **D. Exhibit Nos. 6(b) and (c)**, at paragraph **(3)**, parcel **No. 6106/4** is not part of the ADC Farm, for the plaintiffs to allege that it forms part of the Japata Farm. Learned counsel submitted that the court, guided by **D. Exhibit No. (5)** should make a finding that the suit land does not belong to the plaintiffs, as the boundary is clearly shown.
- 65.** Learned counsel submitted that **P. Exhibit No. (3)** came into force when the defendants were already in occupation of the land. Though the defendants have not challenged the Rules, learned counsel submitted that they only came to their knowledge before this court. Regarding **Section 3(1)** of the Trespass Act, learned counsel submitted that since the suit land falls outside ADC Farm, as per **D. Exhibit No. (5)**, the defendants are not liable.
- 66.** Subsequently, learned counsel for the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants, Miss. Khayo submitted that, based on the statement of defence amended on **25/10/2023**, supported by the testimony of DW2 and DW3, there is no evidence that there was fraud given **L.R. No. 6106/4**, as admitted in the cross-examination of PW1, which is not listed as among

the Special Farm. Learned counsel submitted that, as per **D. Exhibit No. (5)**, the title held by the plaintiffs is not enough to confirm ownership.

- 67.** Learned counsel submitted that the plaintiffs have not availed an official search certificate, rent, rates payment receipts, and a clearance certificate in support of their claim. Learned counsel submitted that PW1 did not prove any ownership of the disputed land; otherwise, he said that he was not even aware of the illegal occupation of their land.
- 68.** In a rejoinder, learned counsel for the plaintiffs submitted that fraud was pleaded in paragraph **8(a)** of the plaint as amended on **13/10/2023**, and as per **P. Exhibit No. (2)**, compared with **D. Exhibit No. (5)**, the special farm covers more than what is in the deed plan. Learned counsel submitted that the burden was on the four defendants holding the title to prove that it was formally and procedurally issued to them, more so when the 2<sup>nd</sup> plaintiff held an earlier issued title compared to the one issued after the enactment of the Rules in **2001**.
- 69.** Learned counsel submitted that the four defendants did not follow the law to obtain the title; hence, their admitted occupation without consent or justification

is an act of trespass. Learned counsel submitted that the issue of possession of the title came up in the course of this suit; hence, the amendment otherwise, the plaintiffs were not aware of a rival title to the land.

**70.** The court has carefully gone through the pleadings in the two files, evidence tendered by the parties, and oral submissions made by the parties' respective advocates. The issues calling for my determination are:

- (1) If the plaintiffs have pleaded and proved that L.R. No. 6106/4 forms part of special farms belonging to the 2<sup>nd</sup> plaintiff.**
- (2) If the plaintiffs have proved that the defendants are trespassers on L.R. No. 6106/4.**
- (3) If the plaintiffs have pleaded and proved that Bernard Barasa, Fredrick Makokha, and David Nasambu Chakali obtained title to L.R. No. 6106/4 fraudulently, illegally, and unprocedurally.**
- (4) If the defendants in the amended joint statement of defence dated 19/7/2024 have proved justification for being in occupation or possession in any of the six camps forming part of parcels of land comprised of Japata Farm, generally and in particular, L.R. No. 6106/4.**

- (5) *If the plaintiffs have proved that the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants in the amended defence dated 25/10/2023, obtained title to L.R. No. 6106/4 irregularly, unprocedurally, and fraudulently.*
- (6) *If the defendants in the amended statement of defence dated 25/10/2023 have pleaded and proved the root of the title to L.R. No. 6106/4.*
- (7) *If the plaintiffs in the 2<sup>nd</sup> suit by Originating Summons dated 21/7/2020, have pleaded and proved that they are entitled to L.R. No. 6106/4, 7155, 9437, and 9439 by virtue of adverse possession.*
- (8) *If the plaintiffs in the 2<sup>nd</sup> suit are entitled to the reliefs sought.*
- (9) *What is the order as to costs?*

**71.** It is trite law that parties are bound by their pleadings. **Sections 24(a)** and **26(1)** of the Land Registration Act provide that a certificate of title is prima facie evidence of ownership unless vitiated by fraud, illegality, or acquisition through corrupt means. In this suit, the plaintiffs have pleaded that the 2<sup>nd</sup> plaintiff became the registered owner of **L.R. No. 6106/4** as part of the parcels of land forming part of Japata Farm, which were transferred to it in **1969**.

- 72.** Further, the plaintiffs aver that the suit properties are among the gazetted ADC Farms as per the Special Farm Rule **2001**. On the other hand, the plaintiffs in the 2<sup>nd</sup> suit, who are also the 1<sup>st</sup> and 2<sup>nd</sup> sets of defendants in the amended statement of defence dated **19/7/2024** and **26/10/2023**, claim the suit properties as having been under their use, occupation, and possession before, during, and after the colonial period, to be entitled to them by virtue of adverse possession. Part of the plaintiffs in the 2<sup>nd</sup> suit, and in particular the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants separately claim **L.R. No. 6106/4** by virtue of a gift by the white settler and later registration as absolute owners.
- 73.** The defendants, therefore, urge the court to find that they are not trespassers on the land forming part of Japata Farm as alleged by the plaintiffs in the primary suit and who are the defendants in the secondary suit.
- 74.** Starting with the 1<sup>st</sup> suit, it is the law that a party who has been sued for vacant possession or eviction, like in this matter, is in law entitled to raise a defence of adverse possession. In **Chepkwony - vs- Malenya Civil Appeal No. 90 of 2018 [2021]**

**KECA 47 [KLR], Teresa Wachuka Gathira -vs- Joseph Mwangi CA No 325 of 2003, Wabala -vs- Okumu [1997] KLR 609 [CAK] and Gulam Mariam Noordin -vs- Julius Charo Karisa [2015] eKLR**, the court said that a party may, through a statement of defence, plead adverse possession so long as he can prove that he has used the land he is claiming without force, secrecy, or permission and is supported by credible evidence. See **Kenge & Others -vs- Mohamed Civil Appeal No. E052 of 2022 [2025] KECA 2219 [KLR] (19<sup>th</sup> December 2025) (Judgment)**.

75. In **Gulan Mariam Noordin -vs- Julius Charo Karisa** (*supra*), the court said that it is only when a party applies to be registered as the proprietor of land by adverse possession that **Order 37 Rule 7** of the Civil Procedure Rules requires that such a claim be brought by way of an originating summons.
76. Adverse possession was defined in **Mtana Lewa -vs- Kahindi Ngala Mwangandi [2015] eKLR**, as essentially a situation where a person takes possession of land and asserts right over it, and the person having title omits or neglects to take action against such person in assertion of his title for **12**

**years.** The court said the process springs into action essentially by the owner's default or inaction. The ingredients of adverse possession are possession by an adverse possessor, without force or stealth, without licence or authority of the true owner, adequate in continuity, in publicity, and in extent.

**77.** In **Mbira -vs- Gachuhi [2002] 1EALR 137**, the court said that the person seeking to acquire title by adverse possession must prove non-permissive, or non-consensual, actual, open, notorious, exclusive, and adverse use by him or those under whom he claims for the statutory period of **12 years** without interruption.

**78.** In **Kenge & 12 Others -vs- Mohamed Civil Appeal No. E052 of 2022 [2025] KECA 2219 [KLR] (19<sup>th</sup> December 2025) (Judgment)**, the court said that to establish such a claim, a claimant must demonstrate the following elements:

- (1)** *Date of entry.*
- (2)** *Nature of possession.*
- (3)** *Whether it was exclusive, open, or adverse.*
- (4)** *Knowledge by the true owner that such possession was being exercised.*
- (5)** *Duration of possession, 12 uninterrupted years.*

(6) *Open and undisturbed occupation.* The court said that a formal complaint and official intervention constituted a definite assertion of ownership and interruption of possession.

79. In **Hamadi -vs- Safaricom Investment Co-operative Society & Another Civil Appeal E026 of 2023 [2025] KECA 2104 [KLR] (5<sup>th</sup> December 2025) (Judgment)**, the court cited **Wambugu -vs- Njuguna [1983] KLR 173** and **Mbira -vs- Gachuhi [2002] 1 EA 137**, that a party relying on adverse possession must prove that the title holder has lost his title to the land, by either being dispossessed of it, or having discontinued his possession of it for the **12 years**, through abandonment, actual possession by the adverse possessor, the adverse possessor had no colour of right to be there, other than his entry and occupation, he had the sufficient *animus possidendi*, to dispossess, he was there openly, and without permission, he did acts in consistent with the enjoyment of the land by the true owner's purpose for which he intended to use.
80. The other fundamental requirement in adverse possession is the identification of the claimed land.

81. In **Wilson Kazungu Katana & 101 Others -vs- Salim Abdalla Bakshwein & Another [2015] KECA 728 [KLR]**, the court held that the identification of the land in possession of an adverse possessor is an important and integral part of proving adverse possession. The court cited **Githu -vs- Ndeete [1984] KLR 776**, that an adverse possessor must specifically identify or even describe the portion, sizes, and the location of those in their respective possession from the larger suit premises that they seek to be decreed to them.
82. In **Agricultural Development Corporation & Another -vs- Mbugua & 7 Others Civil Appeal Appl. E005 of 2026 [2026] KECA 359 [KLR] (2<sup>nd</sup> March 2026) (Ruling)**, the court observed that it is settled law that a person who approaches the court for a grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material facts which have a bearing on the adjudication of the issues raised in the case and that he owes a duty to the court to bring out all facts and refrain from concealing and or suppressing any material facts within his knowledge, which he could

have known by exercising diligence expected of a person of ordinary evidence.

- 83.** The court held that if one is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such a person. See **Republic -vs- Kensington Income Tax Commissioner [1917] 1 KB 486, and Brinks-MAT Ltd -vs- Elcombe [1988] 3 ALL ER 188.**
- 84.** In this suit, the plaintiffs in the primary suit claim trespass to their land parcel, termed as government land by the defendants, who are also the plaintiffs in the secondary suit, who alleged adverse possession generally and, in particular, the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants, who alleged they possess title to **L.R. No. 6106/4.**
- 85.** In **Nabiswa & Another -vs- Onyango Civil Appeal E057 of 2020 [2026] KECA 328 [KLR] (27<sup>th</sup> February 2026) (Judgment)**, the court held that when faced with two mutually destructive versions, the proper approach for the court to adopt was elucidated in **Stellenbosch Farmers Winery Group Ltd & Another -vs- Martell Et Cie and**

**Others (2003) 1 SA (11) SCA 148-1561**, on the disputed issues by making findings on the credibility of the various factual witnesses, their reliability, or the probabilities.

- 86.** The court said that the credibility of a witness depends on its impression, candor, demeanor, bias, latent, and blatant internal contradictions in his evidence, external contradictions with what is pleaded or put on his behalf, or with the facts or his own extra curial statement or actions, the probability or improbability of a particular aspects of his version, caliber and cogency of performance compared to that of other witnesses on the same incidence or events, quality, integrity and independence of recall.
- 87.** The first plaintiff claims that Japata Farm, measuring **6302** acres of land, was transferred to the 2<sup>nd</sup> plaintiff in or about 1969, being land parcels **Nos. 4140/3, 6106/4, 7136/5, 7155, 7156, 7156/7, 7157/9, 7157/10, 7156/11, 7157/14016, 9437,** and **9439**. In support of their claim, the plaintiffs relied on a survey plan, the Agricultural (Development) Corporation (Special Farm Rules) **2001, LR 157/2003** Schedule of Special Farm,

which comprised of Japata Farm, Certificate of Titles **Grant Nos I.R. No. 14817, L.R. No. 6641/2, L.R. No. 7156/7, Grant I.R. No. 9572 for L.R. Nos. 7156/5, 7156/6, 7156/9, 7156/10, 7156/11, 7156/14, and 7156/15.**

- 88.** In respect to the 2<sup>nd</sup> suit, the plaintiffs, as the defendants, relied on a replying affidavit sworn on **17/2/2025**, attached with a certificate of incorporation under the Companies Act **2015**, showing that the 2<sup>nd</sup> plaintiff is a registered company. **C4239**, which was registered on **26/7/1958**, to which the 1<sup>st</sup> plaintiff is a shareholder with **999** ordinary shares.
- 89.** What the plaintiffs are claiming are acts of trespass to Japata Farm by the defendants. Trespass, according to **Nabiswa & Another -vs- Onyango** (*supra*), is a tortious act involving direct, physical, and unauthorised interference with possession of land, which is actionable per se.
- 90.** To prove trespass, a claimant must prove immediate exclusive possession and wrongful entry to the land, without permission, consent, or justification. See **M'Ikiara M'Mukanya & Another -vs- Gilbert Kabeere M'Mbijiwe [1984] eKLR.** In this suit, the

defendants attack the plaintiffs' title to the suit land on account of adverse possession and a superior title to **L.R. No. 6106/4**, since it never formed part of the plaintiffs' parcels of land. On the other hand, the plaintiffs plead that the parcels of land comprising Japata Farm were lawfully transferred to the 2<sup>nd</sup> plaintiff in **1969** and were subsequently gazetted as special farms in **2001**.

- 91.** In *Munyu Maina -vs- Hiram Gathiha Maina [2013] eKLR*, the court observed that when a proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership, without going beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances, including any and all interests which need not be noted on the register.
- 92.** It is trite that whoever asserts the existence of a legal right or liability, the burden is on him to prove the existence of those facts to be able to be given judgment by the court.
- 93.** In a case of trespass, such as this one, the plaintiffs have the burden to establish ownership of the land and the acts of wrongful entry, possession, and

occupation by the defendants without their consent, authority, or justification. See **Jamal Salim -vs- Yusuf Abdullahi Abdi & Another [2018] eKLR.**

- 94.** In **Kithaka -vs- Wangari & Others Civil Appeal 155 of 2020 [2026] KECA 255 [KLR] (13<sup>th</sup> February 2026) (Judgment)**, the court said that a licensee of a rice-holding in Mwea, who is within the terms of the Irrigation Act, enjoys the same constitutional protection as the property owner in Muthaiga. The court said that as long as the licensee observes the terms of the statute, under which the license is granted, he or she is assured of the right of enjoyment of the rice-holding from year to year, and the right cannot be taken away arbitrarily because it is not a bare licence.
- 95.** In this suit, the plaintiffs further attack the title held by the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants for being fraudulently obtained. Fraud must be specifically pleaded and specifically proved on a balance higher than in ordinary suits. See **Vijay Morjaria -vs- Nansingh Madhusingh Darbar [2000] eKLR.**
- 96.** In **Kemboi -vs- Macharia & Others [2025] KECA 1665 [KLR] (21<sup>st</sup> October 2025) (Judgment)**, the

court held that a certificate of title cannot cure an unlawful allocation process. The court said that a title is merely the end product of a process, and where the process is tainted, whether through procedural irregularity, fraud, or illegality, then the resultant title is void. The court held that no right can flow from nothing; a nullity at inception remains a nullity, no matter how many hands it passes through.

- 97.** In this suit, the plaintiffs claim superior title. On the other hand, defendants generally claim overriding interests or right to the land before the white settlers came to the land and afterwards, to date, which the plaintiffs should not hold any claim, since they have extinguished their title, if any, by virtue of adverse possession. On the other hand, the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants claim to have acquired title to the **L.R. No. 6106/4** in **2016**, which was never part of the Japata Farm in the first instance.
- 98.** In **General & Another -vs- Hussein & Others Civil Appeal No. 100 of 2018 Eldoret [2025] KECA 1022 (KLR) (5<sup>th</sup> June 2025) (Judgment)**, the court held that when faced with conflicting

claims on one disputed land, the court scrutinizes the root of the title and follows all the processes and procedures that brought forth the two titles at hand. The court said that parties in such a litigation must demonstrate how they acquired their title, starting with its root.

**99.** The court cited **Presbyterian Foundation -vs- Kibera Siranga SHG Nursery School [2025] eKLR**, that the elements of a good title include:

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

**(b)** *It must contain a recognisable description of the property.*

**(c)** *It must not contain anything that casts any doubt on the title.*

**100.** In this suit, it is upon the plaintiffs to show before this court that the paper trail for which they obtained titles to the suit properties. The plaintiffs further have the burden to show that the acts of the defendants are invasive, unjustified, wrongful, or amount to a violation of their right to possession.

See **Margaret Iminza Luyayi -vs- Moses Opudo Mudaka [2014] eKLR**, **Ochako Obinchi -vs- Zachary Oyoti Nyamongo [2018] KEELC 3418**

**(KLR), and Bandi -vs- Dzomo & Others [2022] KECA 584 [KL]R (24<sup>th</sup> June 2022) (Judgment).**

- 101.** The plaintiffs have tendered documents to show that they obtained the titles comprised of Japata Farm from the initial owners of the land in **1969**, before the parcels were gazetted as special farms in **2001**, as per the Rules, Schedule, to the **2001** Rules, the survey plan, and the certificates of titles produced herein. On the other hand, the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants rely on a title issued in **2016**.
- 102.** DW2 and DW3 were unable, other than producing an area map and title, to call forth the person whom they transacted to transfer the land to them in **2016**. The defendants were unable to produce the Land Control Board Consents application forms. Land Control Board Consent, sale agreements, transfer forms, valuation for stamp duty, stamp duty payment receipts, and proof of payment of transfer fees.
- 103.** The 1<sup>st</sup> plaintiff is established by **Section 3** of the Agricultural Development Corporation Act, which came into force on **21/4/1965**. It has the power to hold, manage, and dispose of land. Its functions under **Section 12** include the promotion of Kenya's

production of agricultural inputs and agricultural production.

- 104.** The plaintiffs' documents of ownership, including a survey plan, have not been challenged by the defendants generally and, in particular, the 2<sup>nd</sup>, 3<sup>rd</sup>, 16<sup>th</sup>, and 16<sup>th</sup> defendants through rival or superior paper trial of ownership. **Article 40** (6) of the Constitution does not extend to property that has been found to have been unlawfully acquired. See **Funzi Island Development Ltd & Others -vs- County Council of Kwale & Others [2014]eKLR.**
- 105.** When a court is faced with two titles over the same piece of land, it has to make an investigation so that it can be discovered which of the two titles should be upheld, starting with the root of the title, and following all the processes and procedures that brought forth the two titles at hand. Every party in such a case must show that their title has a good foundation and was passed from the current title holder.
- 106.** The law of evidence provides that a Kenyan gazette be taken as prima facie evidence. The Special Farm Rules **2001**, as gazetted, are to be taken by the court as prima facie evidence of the existence of

sufficient notice and as a lawful reflection of reservation and alienation of land for public purposes. Equally, under **Section 97(1)** of the Evidence Act, any dispute of property reduced to the form of a document shall be taken as proof of such grant or document without parole or extrinsic evidence.

- 107.** In **Kositany -vs- Chania Logistics Ltd [2024] KECA 151 [KLR] (16<sup>th</sup> February 2024) (Judgment)**, the issue was competing titles held by separate individuals over the same parcel of land. The court cautioned itself that if a party fraudulently caused a title to be issued to him, that does not make him the owner of the property, without producing documents to show that the process and procedure of acquisition were formal, legal, and procedural.
- 108.** On appeal, the court cited **Karuri -vs- Gituru [1981] KLR 247, Kariuki -vs- Kariuki 1983] KLR 225,** and **Simiyu -vs- Watambala [1985] KLR 852,** that for one to purchase agricultural land, he must obtain a Land Control Board Consent. Further, the court said that when two equities are equal, the first in time prevails. The court cited **Moses**

**Lutomia Washiali -vs- Zephaniah Ngaira Angweye & Another [2018] eKLR**, that the title to property obtained fraudulently or irregularly in violation of the law was not sacrosanct and could not enjoy protection, and that a court has the power to order rectification of a register in such circumstances.

**109.** In this suit, the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants had listed the Land Registrar Trans Nzoia and the Land Registrar, Nairobi, as witnesses. The witnesses' statements of DW2 and DW3 did not refer to any paper trail or consideration paid to obtain the title. The list of documents filed by the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants did not refer to the paper trail they used or lodged to obtain title, starting with an application of the Land Control Board Consent, sale agreements, transfer forms, stamp duty payment, valuation report, for stamp duty, and payment receipts for registration of the title. In the supporting affidavit to the original summons in the 2<sup>nd</sup> suit, sworn by Fredrick Makokha Mugusho on **21/7/2021**, he did not refer to any conveyance documents regarding **L.R. No. 6106/4**.

**110.** The 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants are alleging that they are *bona fide* holders of title to **L.R. No. 6106/4** issued in **2016**. There is evidence that the said title is included in the gazetted special farms belonging to the plaintiffs. The burden was on the said four defendants to disapprove the gazette as public land unavailable for alienation on account of the **L.R. No. 6106/4**, being outside the gazetted Special Farms Rules **2001**. Public land is defined to include that which was held in the name of or under the use or occupation by a state agency or organ as of the effective date under the **2010** Constitution.

**111.** The maker of the area map relied upon by the said four defendants was not called to testify and substantiate the authenticity, veracity, and legality of the map under the Survey Act. There is no evidence that the title held by the said four defendants had a survey plan, deed plan, or a gazette on how the land was alienated or identified to be outside the gazetted Special Farms as of the date of issuance of the title in **2010**. The doctrine of *nemo dat* applies. If the person who transferred the title had no better title, it goes

without saying that the root of the title of the four defendants is shaky and built on quicksand.

- 112.** In **Torino Enterprises Ltd -vs- Attorney General [2023] KESC 79 [KLR]**, the court held that a *bona fide* purchaser for value denotes a purchaser who exercised due diligence, including inspecting the property. There is no paper trail showing that before **2016**, the said four defendants undertook due diligence, including, from the relevant offices, that **L.R. No. 6106/4** was available for transfer to a private person in view of its gazettelement as a Special Farm in **2001**.
- 113.** Land, as held in **Said -vs- Shume & Others [2024] KECA 866 [KLR]**, is not like vegetables but a valuable item where buyers are expected to make thorough investigations over both the owner and the property before the purchase. The maker of **D. Exhibit No. 6(B)** was not called to testify. The exhibit is not certified. The maker of **D. Exhibit No. 6(C)** was not called to testify and produce the letter. The copy is not certified. **D. Exhibit No. 6(d)** was not produced by the maker. The copy is not certified. The makers of the overwriting on the

document have not been called to ascertain or to testify and verify the contents.

**114. D. Exhibit No. 6(e)** is illegible and uncertified. The maker was not called to testify. **D. Exhibit 5** was not produced by the maker. The copy was not certified as originating from the Director of Surveys. The overwriting on the documents has not been substantiated.

**115.** Strangely, the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants filed the list of documents to the amended statement of defence and counterclaim and omitted to attach the certificate of title for **L.R. No. 6106/4**, allegedly transferred to them on **24/8/2016**, plus all the paper trail leading to its issuance. A title deed is an end product. The process leading to the issuance of the title must be legal, formal, regular, and free of any encumbrances, including overriding interests and rights.

**116.** The certificate of title waved to court by the four defendants allegedly shows that the amount paid in consideration was **Kshs. 16,000,000/=**. Evidence of who obtained the consideration and in which manner he was paid is not indicated at all. Stamp duty payment equivalent to Kshs. 16 million is

missing. Grant **I.R. No. 1755**, described as **L.R. No. 6106/4** with survey **No. 31885**, is among the gazetted special farms as per the replying affidavit sworn by Dr. Cherongony on **14/3/2023** and as per his testimony before this court, where he also availed the original certificates and title for perusal by this court during his testimony. The defendants did not term the same as a forgery or non-existent. Where there are two titles over the same land, each party is under an obligation to show the root of its title. Again, where there are two competing equities, the first in time prevails. See

**117.** If the defendants knew or believed that the titles held by the plaintiffs were non-existent or a forgery, nothing was stopping them, since its display in court in **2023**, from lodging a complaint with the Registrar of Titles for investigation that the plaintiffs were and are holding a land title for a parcel which is outside Japata Farm and which does not belong to them. It is not enough to allege fraud without proof. The deed plan attached to the certificate of title held by the four defendants lacks vital details, including the date it was signed by the Director of Surveys. The copy is not certified at all. The original title was also

not availed before the court by the four defendants. The copy before the court has been overwritten. The original and land reference numbers are missing. The subdivision number and section number are also missing.

- 118.** Coming to the status of the suit properties, the same is a matter of law. Public land is defined by **Article 62** of the Constitution and **Section 2** of the Land Act and the Survey Act to include reserved land for public purposes, land held by a state organ or agency on the effective date, and any other analogous public purpose. A state organ is defined under **Article 260** of the Constitution.
- 119.** The modes of acquisition of title to land are governed by **Section 7** of the Land Act. It includes, *inter alia*, any other manner prescribed by an Act of Parliament.
- 120.** **Section 7** of the Land Act provides the manner of converting public land to private use. **Subsection (4)** provides that any substantial transaction involving the conversion of public land to private land shall require approval by the National Assembly or County Assembly, as the case may be.

- 121.** Allocation of public land is governed by **Section 12** of the Land Act. Any land reserved for security, education, research, and other strategic public uses, or reserved land, or categorised as such, by an order published in the gazette or set aside for investment purposes, may not, under **Section 12(1)** and **(2)** of the Land Act, be allocated for any other purpose.
- 122.** **Section 12(8)** provides that public land shall not be allocated unless it has been planned, surveyed, and serviced, and guidelines for development prepared in accordance with **Section 16** of the Act. Allocation of public land must also follow the conditions under **Section 14** of the Land Act. Under **Section 15** of the Act, public land may be reserved for one or more purposes in the public interest. Under **Section 15(2)** of the Act, land reserved by the commission shall only be used for the purpose set out by the commission in the order designating the reservation and shall not be subject to allocation or development.
- 123.** Under **Section 16** of the Act, reserved land vests the care, control, and management with a statutory body, public corporation, or public agency for the same purpose as that for which the relevant public

land is reserved under **Section 15** and for purposes ancillary or beneficial to that purpose. **Section 152A-F** of the Land Act relates to unlawful occupation of private, public, and community land.

**124.** Public land under **Article 62(2)** of the Constitution shall vest in and be held by the National Government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission in the public interest. See **Supreme Court of Kenya Advisory Opinion Ref. No. 2 of 2014.**

**125.** It is a fact that most public land in use by state organs and public bodies is not titled. Some of it, however, is demarcated, mapped, surveyed, and identified through gazette notices without any form of title. As reported in the Report of the Commission of Inquiry into the illegal irregular allocation of public land, popularly known as the Ndungu Commission and also the Akiwumi Commission Reports.

**126. Article 66(1)** of the Constitution provides that the state may regulate the use of any land or interest in or right over any land in the public interest or land use planning. So any reservation of land for public

use must meet the specific nature of reservation under **Article 66(1)** of the Constitution.

**127.** In this suit, the primary plaintiffs plead that the suit properties are public land not only owned by but also reserved for agricultural purposes, vested in them. The defendants in the main suit and the plaintiffs in the 2<sup>nd</sup> suit argue that they held preemptive rights or interests and that they have also acquired ownership status by dint of adverse possession, as well as registration status regarding **L.R. No. 6106/4**, by the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants.

**128.** The plaintiffs in the main suit have produced a certificate of title in respect to the six parcels of land comprising Japata Farm, which the 2<sup>nd</sup> plaintiff, as a state corporation, acquired in **1969**. Under the Limitation of Actions Act and the Public Authority Act, **Cap 22** and **3A** respectively, an action to recover land may not be brought after the end of **12 years** from the date on which the right of action accrued to a claimant.

**129.** In **Dina Management Ltd -vs- County Government of Mombasa & Others SCOK Petition No. 8 (E010) of 2021**, the court cited

- African Line Transport Co. Ltd -vs- Hon. Attorney General [2007] eKLR**, that planning comes first, then surveying. The court said that a title or lease is an end product of a process, and therefore, if the process that was followed prior to issuance of the title deed does not comply with the law, then such a title cannot be held as indefeasible.
- 130.** The court said that **Article 40(6)** of the Constitution limits the rights so as not to extend them to any property found to have been unlawfully acquired.
- 131.** In **Mungania & Others -vs- County Government of Meru & 6 Others Petition E010 of 2024**, the court held that the land stood reserved for public use and or purpose. See also **Agalo -vs- County Government of Trans Nzoia & Others ELC Case No. 35 of 2017**. In **Aura -vs- Cabinet Secretary, Ministry of Education, Science and Technology & 9 Others [2025] KEELC 7646 (KLR)**.
- 132.** In **Mugenyu -vs- County Government of Nyeri & Others Civil Appeal E067 of 2023 [2025] KECA 593 [KLR] (Judgment)**, the issue was a Temporary Occupation License (TOL) on alienated public land. The court said that the principle of trust required the Commissioner of Lands not to sue the suit property

for any other purpose than that which could benefit the public. The court said that as a trustee of the public, the commissioner could not use the presidential powers delegated to him to alienate unalienated land to allocate land for any use other than for the public good, and for any private person. The court cited **Henry Muthee Kathurima -vs- Commissioner of Lands & Others [2015] eKLR**, that any action taken without authorization was a nullity *ab initio*.

**133.** The court cited **Faraj Maharus -vs- JB Martin Glass Industries & Others, Mombasa Civil Appeal No. 130 of 2003**, that a TOL to occupy government land is not sufficient to create or transfer title to the grantee or personal representative, guided by that reason.

**134.** In **Mugenyu -vs- County Government** (*supra*), the court held that the appellant could not cling to the same and say that she had been offered the land while it was clear that the land was alienated public land vested in the Ministry of Agriculture Department of Veterinary Services. The court said that a TOL was akin to a licence that conferred a licensee a right to work on the land in accordance

with the terms stipulated in the letter, but which the licensor can withdraw when the need arises. The court held that the letter does not confer on the holder a permanent proprietary right, unlike a title deed or certificate of lease.

**135.** In this suit, it is the defendants who seek to impeach the titles held by the plaintiffs in the primary suit, based on the concept of public land and reservation on account of preemptive and overriding interests or superior title. In **Municipal Council of Kisumu -vs- Teleposta Pension Scheme Registered Trustees & Others Civil Appeal No. 33 of 2020 [2025] KECA 619 [KLR]**, the court observed that a party laying claim to a right must table evidence against a defendant or respondent in support of his case that meets the required standard of proof on a balance of probabilities in civil matters, failure of which the claim cannot succeed.

**136.** The defendants have tendered no evidence that the suit properties belonged to them or their ancestors before **1935**. Evidence of the ancestry or tree relationship preceding pre-colonial times is missing. Evidence of gifts which were perfected in their

favour by the departing white settlers in line with the law on gifts *inter vivos* is missing.

- 137.** Evidence that the defendants' forefathers were bona fide workers of the former white settlers who were owners of the suit properties is missing. As a matter of fact, the defendants have not tendered as evidence in the copy of records for the suit properties before **1969**, to show that they had a nexus with the former owner(s), on account of being former workers in the land parcels before the plaintiffs in the main suit acquired the titles and took vacant possession of the suit parcels of land.
- 138.** It is the plaintiffs' case that the suit properties were lawfully transferred to them by the former owner as public entities and hence were at all times public land, hence unavailable for alienation to a private person.
- 139.** In the **Republic -vs- Minister for Transport & Communication & Others Ex parte Waa Ship Garbage Collectors & Others [2006] 1KLR E&L 563**, the court observed that the doctrine of public trust is recognised and provided for by the superior law of the land.

**140.** In *Kenya Anti-Corruption Commission -vs- Lima Ltd & Others [2019] eKLR*, the court said that public land could not be alienated in a manner that denies the public their right to use the land. Impeding access to reserved land undermines the social contract between the state and the citizen, which is essential for good governance and the rule of law under **Articles 40** and **65** of the Constitution, as held in the *Republic -vs- Ministry of Lands & Others [2015] eKLR*.

**141.** In this suit, the plaintiffs have tendered evidence that the 2<sup>nd</sup> plaintiff lawfully acquired titles to the six parcels comprising Japata Farm in **1969**, took possession, and subsequently, in **2001**, caused the said titles to be gazetted as special farms. There is no evidence that the defendants in the main suit and the plaintiffs in the secondary suit protested both the issuance of certificates of titles within **3 years, 6 years, or 12 years** with effect from **1969**, and later immediately, the said parcels of land were also gazetted as special farms in **2001**.

**142.** Due diligence required the defendants to ascertain the status of the **L.R. No. 6106/4** before they obtained title in **2016**. **Section 26(b)** of the Land

Registration Act provides that a title irregularly, illegally, and unprocedurally obtained can be recalled or invalidated by a court once evidence is tendered to that effect.

- 143.** The onus was on the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants to prove that they were bona fide transferees of **L.R. No. 6106/4** from a bona fide owner of the land. The *nemo dat* principle applies in this case. As held in **Samuel Kamere -vs- Land Registrar Kajiado [2015] eKLR**, a bona fide purchaser must prove that they acquired a valid and legal title, carried out the necessary due diligence to determine the lawful owner, and thirdly, they paid valuable consideration.
- 144.** There is evidence that the **L.R. No. 6106/4** was a gazetted public land as of **2001**, vested with the plaintiffs under **Article 62(2)** of the Constitution. Customary search certificate and hiring of a survey is what the 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants have not told this court that they had and obtained clear and valid expert evidence that **L.R. No. 6106/4** did not form part of the Japata Farm, duly gazetted as a special farm.

- 145.** In *Sehmi & Another -vs- Tarabana Co. Ltd & Others Petition E033 of 2023 [2025] KESC 21 [KLR]*, the court said that the element of innocence meant that the purchaser acted in good faith, had no notice or knowledge as to existence of a rival interest; consideration must be in money or in money' worth, which was paid, legal estate in land is one without notice of an equitable interest. The court held that the doctrine of innocent purchaser for value without notice did not protect a purchaser of an illegally or irregularly allocated title to public land.
- 146.** In this suit, there is evidence that the plaintiffs in the primary suit have been carrying out agricultural production on behalf of the government and have been housing their staff in the six camps comprised of Japata Farm. Among the defendants are the former workers of the plaintiffs, so the defendants cannot purport to deny and are estopped in law from denying knowledge that their former employer were government entities, using the land for public purposes.
- 147.** The law does not envisage or justify a claim of housing for former employees. The right to housing

under **Section 31** of the Employment Act to the former employees of the plaintiffs in the primary suit terminated with the contract. See **David Ngugi Elijah -vs- County Government of Embu & Another [2016] eKLR.**

- 148.** In **East African Railways Corporation -vs- Karangi [1988] KECA 113 [KLR]**, the court held that the respondent, having reached the regulated age, was retired by the corporation. He was in occupation of the corporation premises. He was given a notice, he refused to quit when the notice expired. What was his legal status vis-à-vis the corporation? It does not require a great deal of learning the law to say he was a trespasser. If that is right, what remedies did the corporation have to enable it to regain possession of its premises? The Act provides that the Director General may, without prejudice to any other means of recovery, apply for eviction.
- 149.** The plaintiffs in the 2<sup>nd</sup> suit seek to be declared entitled to the suit properties by virtue of adverse possession, **Section 41** of the Limitation of Actions Act excludes a person from acquiring land by virtue of adverse possession over government land or land

enjoyed by the government or to which the Public Authorities Limitation Act applies.

**150.** Public land is defined under **Article 62** of the Constitution as:

**(a)** *Land which, at the effective date, was alienated government land.*

**(b)** *Land lawfully held, used, or occupied by any state organ.*

**151.** In **Faraj Maharus** (*supra*), the Court of Appeal held that there can be no adverse possession on public or government land, however long one may have been squatting thereon without any hindrance from the government. The same position was taken in **Sammy Mwangangi & Others -vs- Commissioner of Lands & Others [2025] eKLR.**

**152.** The defendants admit that some of them were former workers of the plaintiffs in the main suit. Adverse possession does not apply where the possession is by consent of the true owner. In **Hamisi Ali -vs- Attorney General & Another Civil Appeal No. 125 of 1997** and in **Wambugu -vs- Njuguna (1983) KLR 173,** the court held that where the claimant is in exclusive possession of the land with leave and licence of the true owner, possession becomes adverse and time begins to run

at the time the licence is terminated. In this suit, no evidence has been tendered by the defendants when the time for adversity started to run. Evidence of entry into and the termination of employment of all or some or many of the claimants has not been tendered before this court.

**153.** Adverse possession must not be through stealth or force. In ***Songoi -vs- Songoi [2020] eKLR***, the court said that a person in possession must have a peaceful and uninterrupted user of the land, coupled with *animus possdeidi* to hold as owner to the physical exclusion of the actual owner. Identification of the land in possession of an adverse possessor is an important and integral part of the process of proving adverse possession. See ***Wilson Kazungu Katana (supra)***.

**154.** In this suit, the claimants in the 2<sup>nd</sup> suit have not tendered evidence on the size(s), portion(s), features, and development of each and every claimant herein for the exclusive use with acts inconsistent with the right of the true owner. There cannot, in law, be group adverse possession. Other than the authority to plead and sue issued to Fredric Makokha, the signatories to the authority have not

given the specific particulars of the distinct land acreages and portions on the ground, which this court should find, each of them entitled to by virtue of adverse possession.

**155.** Possession by itself does not amount to adverse possession. It must be coupled with each of the claimants taking possession of the land with *animus possissendi* and asserting thereon rights that are inconsistent with those of the true owner. See **Alfred Welimo -vs- Mulaa Samba Barasa C.A No. 186 of 2011.**

**156.** In **Maweu -vs- Kiu Ranching & Farming Cooperative Society [1985] eKLR**, the court said that adverse possession is a fact to be observed the land, and not seen on the title. Time begins to run after dispossession and discontinuance of possession of the true owner. Similarly, time ceased to run either when the owner takes or asserts his right or when his right is admitted by the adverse possessor. See **Githu -vs- Ndeete** (*supra*). Giving a notice to quit is not enough notice.

**157.** Interruption of possession occurs when the true owner takes legal proceedings or makes an effective entry into the land. Writing letters, acknowledging

ownership, or seeking compensation was stated to amount to acknowledging ownership in **Benson Mukuwa Wachira -vs- Assumption Sisters of Nairobi Registered Trustees [2016] KECA 227 [KLR]**. The plaintiffs in the main suit have tendered evidence that the claimants in the 2<sup>nd</sup> suit had initially filed a petition in which they withdrew before filing the 2<sup>nd</sup> suit, as per the order dated **15/3/2019**.

- 158.** In **Andafu -vs- Akhulunya Civil Appeal No. 70 of 2019 [2015] KECA 714 [KLR] (25<sup>th</sup> April 2025) (Judgment)**, the court held that actual as opposed to constructive possession is the key where the test is the degree of the actual use and enjoyment of the parcel of land involved by the claimant or his agent, tenant, or licensee. Open possession was said to be manifest to the community. Without force was defined as peaceful, not through actual or threatened violence.
- 159.** Exclusive was defined as excluding the true owner from the land. Continuous and uninterrupted was defined as meaning that the title holder did not re-enter the property under circumstances showing his

intention to assert dominion against the adverse user.

- 160.** Adverse possession, permissive entry, allegation of superior title, and customary trust are mutually exclusive, as held in **Mbasa -vs- Mbasa & Another Civil Appeal No. E034 of 2021 [2025] KECA 1420 [KLR] (31<sup>st</sup> February 2025) (Judgment)**. In **Njami -vs- Njami Civil Appeal No. 34 of 2018 [2025] KECA 492 [KLR] (14<sup>th</sup> March 2025) (Judgment)**.
- 161.** The 22<sup>nd</sup>, 32<sup>nd</sup>, 161<sup>st</sup>, and 162<sup>nd</sup> defendants are asserting a superior title to the one held by the plaintiffs in the main suit. Adverse possession starts with admitting the title of the true owner. The two competing claims cannot co-exist in the same suit. See **Paul Muthuita -vs- Wanoie [1982] eKLR and Githae -vs- Mwai & Others [2025] KECA 1563 [KLR]**.
- 162.** I think I have said enough to demonstrate that the plaintiffs in the 2<sup>nd</sup> suit have not discharged the burden of proof to establish the ingredients of adverse possession. Similarly, the defendants in the 1<sup>st</sup> suit have equally failed to justify their occupation,

use, or possession of the suit properties, in opposition to the claim of trespass.

**163.** The upshot is that the main suit is allowed and judgment is entered in favour of the plaintiff against the defendants in the following terms:

**a) A declaration be, and is hereby issued that the land comprising Japata Farm, namely, L.R. Nos. 4140/3, 6106/4, 7136/5, 7155, 7156, 7156/7, 7156/9-11, 7156/14-16, 9437 and 9439 belong to the 1<sup>st</sup> plaintiff.**

**b) An order of permanent injunction is hereby issued restraining the defendants or anyone claiming under them, from entering, remaining, and or interfering with the land comprising Japata Farm, namely, L.R. Nos. 4140/3, 6106/4, 7136/5, 7155, 7156, 7156/7, 7156/9-11, 7156/14-16, 9437, and 9439 belonging to the 1<sup>st</sup> plaintiff.**

**c) A declaration be, and is hereby issued that Bernard Barasa, Fredrick Makokha, and Daniel Nasambu Chakali obtained the**

**title to L.R. No. 6106/4 fraudulently and is hereby cancelled.**

**d)An eviction order and a 90-day notice, be and are hereby issued in line with Section 152E of the Land Act, against the defendants or anyone claiming through them, to be served by the plaintiffs, compelling the defendants to vacate L.R. Nos. 4140/3, 6106/4, 7136/5, 7155, 7156, 7156/7, 7156/9-11, 7156/14-16, 9437 and 9439, from the date hereof. In default of the notice, the defendants shall be evicted at their own costs and expenses.**

**e)Costs to the plaintiffs in both suits.**

**164.** Orders accordingly.

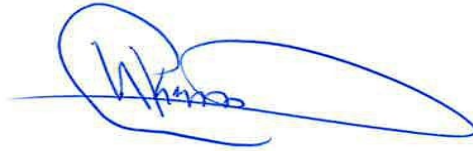
**Judgment dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 22<sup>nd</sup> day of April 2026.**

**In the presence of:**

Court Assistant - Dennis

Kiarie for the plaintiffs -present

Nakitare, Obuli and Khayo for the defendants



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**

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