



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT MURANGA**

**ELC NO.373 OF 2017**

**NGIMU FARM LIMITED.....PLAINTIFF**

**VERSUS**

**THE HON ATTORNEY GENERAL.....DEFENDANT**

**JUDGMENT**

1. By a plaint filed on the 2/8/16 and amended with the leave of the Court on the 9/4/19 the Plaintiff sued the Defendant for orders interalia that;

- a. A declaration that the Plaintiff is as of right entitled to be registered as proprietor of the parcel of land MAKUYU/KIMORORI/BLOCK1/1806 in exchange with parcel MAKUYU/KIMORORI/BLOCK1/1605 and 1607.
- b. A declaration that the Plaintiff is the legal proprietor of land parcel MAKUYU/KIMORORI/BLOCK1/1806.
- c. Eviction orders to issue against the trespassers to land parcel MAKUYU/KIMORORI/BLOCK1/1806
- d. An order for the demolition of the structures erected on MAKUYU/KIMORORI/BLOCK1/1806
- e. A permanent injunction to issue against the Defendant and their servants/agents restraining them from interfering with land parcel No MAKUYU/KIMORORI/BLOCK1/1806 in any manner whatsoever.
- f. General damages for the trespass and waste carried out on the said land parcel
- g. Costs of the suit
- h. Interest on d and e above at Court rates.

2. It is the Plaintiff's case that at the request of Maragua District Headquarters steering committee it apportioned 5 acres out of the 13 acres of land then being utilised by Kimorori Primary School for the establishment of the District headquarters at Maragua.

3. In pursuance of the said resolution, it subdivided parcel MAKUYU/KIMORORI/BLOCK1/1619 into 1806 and 1807 which were reserved for the primary school and the Maragua District Headquarters respectively. That later it became necessary to relocate the school to neighbouring parcels MAKUYU/KIMORORI/BLOCK1/1607 and 1635 which lands had hitherto before been allocated to its members and allotment letters issued.

4. With the relocation of the primary school to the new site, parcel MAKUYU/KIMORORI/BLOCK1/1806 remained unoccupied save for old dilapidated structures on site. The Plaintiff avers that its members who had been allocated parcels MAKUYU/KIMORORI/BLOCK1/1607 and 1635 are now demanding allocations from the unoccupied land.

5. It is its case that on the 5/9/2006 the Primary School and the District Commissioner, Maragua begun to encroach and trespass onto the suit land with the aim of extending the school and the headquarters onto the suit land.

6. The particulars of trespass are cited under para 11 as follows;

- a. The District Commissioner Maragua has sought amalgamation of the parcel MAKUYU/KIMORORI/BLOCK1 /1806 and 1807 without colour of right or title;

b. The District Commissioner Maragua has assumed the role of a registered proprietor of parcels MAKUYU/KIMORORI/BLOCK1/1806 and 1807 without colour of right or title;

c. The District Commissioner Maragua has brought a bulldozer with intent to carry out illegal and unsanctioned activities on parcels MAKUYU/KIMORORI/BLOCK1/1806 and 1807 without colour of right or title.

7. The Defendant denied the Plaintiff's claims and in its defence filed on the 12/4/17 asserting that the suit land belongs to the Government of Kenya, it having been surrendered to the state free of all encumbrances.

8. Further that being government lands, the consent of the Plaintiff was unnecessary. That once surrendered, the lands became public land at the disposal of the government for public purposes.

9. In addition, the Defendant urged that the claim is statutory time barred and the Plaintiff is barred by the doctrine of laches successfully bringing a claim against the Defendant.

10. Further the Defendant filed grounds of opposition to the Plaintiffs suit whose grounds are as summed above.

11. The hearing of the suit proceeded exparte, the Defendant having been served with the hearing notice, did not attend.

12. The Plaintiff called one witness Paul Kamau Njoroge who introduced himself as the Director of the Plaintiff duly authorised to testify on its behalf.

13. He relied on his witness statement dated the dated the 31/5/16 which was adopted as his evidence in chief.

14. He produced the documents in support of the Plaintiff's case marked as PEX 1-11 and contained in the list of documents filed on the 2/8/16.

15. He informed the Court that parcel MAKUYU/KIMORORI/BLOCK1/1619 was subdivided into MAKUYU/KIMORORI/BLOCK1/1806 and 1807 and given to the school and the District headquarters respectively. Parcel MAKUYU/KIMORORI/BLOCK1/1806 measured 8 acres while MAKUYU/KIMORORI/BLOCK1/1807 measured 5 acres. That later the school was relocated to parcels MAKUYU/KIMORORI/BLOCK1/1607 and 1635 which lands were reserved for the trading centre. He stated that these lands were government lands/public lands.

16. It was his testimony that parcel MAKUYU/KIMORORI/BLOCK1/1806 was retaken back by the Plaintiff. He asserted that the whole land originally belonged to the Plaintiff and the subdivision was approved by the commissioner of lands to create various plots.

17. Arising from the subdivision and allocation of land to its members, he testified that some members were allocated MAKUYU/KIMORORI/BLOCK1/1607 and 1635 but gave them up to allow the relocation of the school. He stated that the Plaintiff therefore wants parcel MAKUYU/KIMORORI/BLOCK1/1806 declared as belonging to the Plaintiff to enable it allot the land to the said members.

18. He stated further in evidence that the provincial administration has no right over the suit land and it is trespassing onto it.

19. That the suit land MAKUYU/KIMORORI/BLOCK1/ 1806 is currently unoccupied except for the old structures that belonged to the Primary School. He however informed the Court that according to the copy of the title the land is registered in the name of the Government of Kenya and reserved for Kimorori Primary School.

20. It was his evidence that upon subdivision of the larger land of the Plaintiff, it was a condition precedent to the approval of the subdivision that the Plaintiff surrenders public lands free of charge which lands were registered in the name of Government of Kenya. He reiterated that parcels MAKUYU/KIMORORI/BLOCK1/1607 and 1635 were public lands reserved for trading centres.

21. The Plaintiff submitted that though the suit land is registered in the name of the Government of Kenya, the land was allocated to the Plaintiff and its members for purposes of a trading centre and a common market for its members.

22. Further it submitted that the land belonged to the Plaintiff all along and it was a Government policy then to have land registered in its name to avoid misuse of the land reserved for the general use of the members of the Plaintiff.

23. Save for the Plaintiff, the Defendant did not draw nor file any issues for the Court's determination.

24. Having heard the Plaintiffs witness, considered the pleadings, the evidence adduced on trial, the brief submissions of the Plaintiff and all the materials placed before me in this case the following issues will dispose of the suit.

a. Whether the suit property is public land

b. Whether the Plaintiff retained a reversionary interest in the suit land.

c. Whether the Defendant has trespassed onto the suit land.

d. Whether the suit is time barred.

e. Costs of the suit.

25. It is trite law that even in cases where a suit is undefended like the case here, the Plaintiff retains the burden of proof. He has to discharge that burden on a balance of probabilities.

26. It is the Plaintiff's case that it has a legitimate interest in the suit land having been the original land owner. Its case is that the suit land though surrendered to the Government of Kenya and reserved for primary school, remained its land. That once the school was relocated to the land reserved for market use by its members, the suit land should be released to it for allocation to its members who agreed to exchange their allocated portions in 1607 and 1635 for the school.

27. According to the evidence on record (PEX-1), the Plaintiff sought approval of subdivision of its land vide letter dated the 30/6/1986. On the 5/1/1987, the then Central Authority in a letter addressed to Ngimu Farm Limited responded as below;

“M/s Ngimu Farm Limited

P. O Box 839

Thika

The Land Planning Act (Cap 303)

North east of Thika Municipality-LR Nos 10723 and 10724

Leaseholds- 2115 acres and 899 acres respectively- proposed subdivision into 1.25 acres (0.5 ha) each, 8 coffee blocks, 5 community block, 2 labour line blocks, 1 coffee factory plot, 2 water pump plots and 4 dams and change of use for primary school, church and commercial centre, playing field, nursery school, health centre and petrol station CAR No 244/86.

I refer to your letter dated the 30/6/1980 on the above proposal and I am pleased to inform you that at its 66<sup>th</sup> meeting held on the 29/12/1986 the central authority considered and approved the same subject to the following conditions;

1. The areas earmarked for Primary School, community centre, playing fields nursery school and health centre being surrendered to the Government of Kenya free of costs and also subject to conditions A1-A5 attached.
2. The area earmarked for a Petrol station being surrendered to the Government to be issued with a 99 year lease at a rent to be assessed by this office's valuation section and also subject to the conditions at appendix "A6" attached.
3. The plots in the area earmarked for commercial centre being allocated under the supervision of the District Commissioner.
4. The area earmarked for church being surrendered to the Government for a freehold title and also subject to conditions at appendix "A7" attached.
5. The area earmarked for roads being surrendered to the Government free of costs.
6. The change of user to Petrol Station, Nursery School, Health Centre, Commercial Centre, Primary School, Church Community Centre being implemented by way of surrender of the existing titles in exchange with new ones.
7. No new access roads should be constructed in future to the classified Thika/Sagana road the A2 or any other road from the existing road network without prior approval from the Chief Engineer Head.
8. Favourable comments being obtained from your area Land Control Board.

28. Art 60 of the Constitution provides for sustainable development of land. It states as follows;

“(1) Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles—

- (a) equitable access to land;
- (b) security of land rights;
- (c) sustainable and productive management of land resources;

- (d) transparent and cost effective administration of land;
- (e) sound conservation and protection of ecologically sensitive areas;
- (f) elimination of gender discrimination in law, customs and practices related to land and property in land; and
- (g) encouragement of communities to settle land disputes through recognised local community initiatives consistent with this Constitution.

(2) These principles shall be implemented through a national land policy developed and reviewed regularly by the national government and through legislation.”

- (a) Equitable access to land;
- (b) security of land rights;
- (c) sustainable and productive management of land resources;
- (d) transparent and cost-effective administration of land;

Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles—

These principles shall be implemented through a national land policy developed and reviewed regularly by the national government and through legislation.

29. What is the legislative law underpinning surrender of land pursuant to subdivision? Anchored on Art 60 of the said Constitution, section 41 of the Physical Planning Act provided as follows;

“(1)No private land within the area of authority of a local authority may be subdivided except in accordance with the requirements of a local physical development plan approved in relation to that area under this Act and upon application made in the form prescribed in the Fourth Schedule to the local authority.

(2) The subdivision and land use plans in relation to any private land shall be prepared by a registered physical planner and such plans shall be subject to the approval of the Director.

(3) Where in the opinion of a local authority an application in respect of development, change of user or subdivision has important impact on contiguous land or does not conform to any conditions registered against the title deed of property, the local authority shall, at the expense of the applicant, publish the notice of the application in the *Gazette* or in such other manner as it deems expedient, and shall serve copies of the application on every owner or occupier of the property adjacent to the land to which the application relates and to such other persons as the local authority may deem fit.

(4) If the local authority receives any objection to, or representation in connection with, an application made under subsection (1) the local authority shall notify the applicant of such objections or representations and shall before the application is determined by it afford the applicant an opportunity to make representations in response to such objections or representations.

(5) A local authority may approve with or without such modifications and subject to such conditions as it may deem fit, or refuse to approve, an application made under subsection (1).

(6) Any person aggrieved by a decision of the local authority under subsection (5) may appeal against such decision to the respective liaison committee:

Provided that if such person is aggrieved by a decision of the liaison committee he may appeal against such decision to the National Liaison Committee in writing stating the grounds of his appeal:

Provided further that the appeal against a decision of the National Liaison Committee may be made to the High Court in accordance with the rules of procedure for the time being applicable to the High Court.

30. Further provisions are as stated;

“Requirements when subdivision schemes are submitted

In any scheme of subdivision of land within the area of a local authority the following conditions shall be complied with—

- (a) streets shall be laid out in a manner to facilitate natural storm water flow;

- (b) adequate drainage facilities by streets, drainage reserves wayleaves or otherwise as may be expedient and suitable shall be provided and such reserves and wayleaves shall not in any case be less than 3 metres in width;
- (c) wayleaves or reserves along any river, stream or water course shall be provided of not less than 10 metres in width on each bank, except in areas where there is an established flooding;
- (d) reserves along the ocean and lake beaches shall be provided of not less than 2 km. and 1 km. respectively;
- (e) where required by the local authority and the Director of Physical Planning, land suitable and adequate shall be reserved at no cost to the local authority for open spaces, amenities, recreational facilities, road reserves, public purpose relative to the area to be subdivided and for road widening;
- (f) streets connected at each end to other streets or which may be so connected shall be at a width required by the Director of Physical Planning;
- (g) provision, adequate in the opinion of the Director of Physical Planning shall be made for the truncation of street corners and the widening of existing streets or lanes;
- (h) plots shall be of appropriate shape and size and shall have proper and sufficient access to a street, such street not being a sanitary lane or passage;
- (i) the proposal shall conform with the provisions of any structure plan, local physical development plan, advisory plan, zoning, or development plan approved by the Minister;
- (j) notwithstanding the provisions of these Rules regarding the minimum size of plots in any area, plots at street corners shall be made to adequate size to permit establishment of satisfactory building lines (whenever appropriate) and to provide for proper utilization of such plots within the building lines;
- (k) where any proposed street or road is included in the scheme of subdivision, the layout and construction of such street or road shall conform to the requirements of the relevant local authority

[Rule 5(2)(c).]

#### CONDITIONS OF APPROVAL

When considering applications for subdivisions the local authority or liaison committee may impose conditions of approval in respect of the matter enumerated below, and after implementation of such approval the conditions shall be binding upon the owner, successors and assigns:—

1. The type and form of development to be carried out or permitted and the size, form and situation of holding and the conditions on which such holdings may be transferred.
2. The reservation of land for roads and public purpose or for other purposes referred to in the Act for which land may be reserved.
3. The character and type of roads and public utilities or other works, including the standard of construction and/or maintenance of a road, water supply, drainage and sewerage works which are to be undertaken and completed by the applicant for subdivision at the applicant's cost.
4. Provision as to the forms of security to be given by the applicant of any conditions imposed and provision as to the right of the local authority to carry out any such conditions at the expenses of the applicant.
5. The co-ordination of the subdivision of contiguous properties in order to ensure the proper development of such properties.
6. The transfer free of charge to Government or local authority of any land reserved in accordance with the provisions of paragraph 2 hereof may be by the applicant.
7. The registration by the applicant of any conditions imposed in the deed of the title of the property.

31. The above Act was repealed under section 91 of the new Act namely the Physical and Land Use Act No. 13 of 2019. The same Act similarly provides under section Sec 7- for Considerations for subdivision and amalgamation, which includes the Surrender of land for public utilities.

32. It is manifestly clear that the Plaintiff was to surrender some land from its large parcel in consideration for subdivision. The land was surrendered to the Government of Kenya for various public purposes such as schools, trading centres and other social amenities.

33. Sustainable development requires an effective and efficient management of the social, economic, and environmental aspects of land as a limited resource. Land Administration Officers a useful mechanism for sustainable development as the land functions to serve the society

either in the form of individual ownership, public purposes or for the purpose of consumption of natural resources.

34. Surrender of land either as a whole or a temporary title by owners to the Government for a particular purpose is borne of a legal process in Kenya. Once surrendered the land is reinstated back to the grantee, the Government of Kenya. The land owner retains the larger lot of land either in its current tenure or another. Surrender may be made in exchange of change of user, subdivision, conversion, amalgamation and or partition to name a few. Since the land is changing character, it becomes important to re plan it to meet the new use or state.

35. Land surrender is therefore one of the tools for land planning and development control by the county or national Government to achieve the Constitutional tenets of equitable access to land, sustainable and productive management of land resources transparent and cost effective administration of land stated in para 28 above. It is underpinned by the free will to surrender with the intentions to develop the particular land and not just a mere surrendering. For example, landowners who wish to develop agricultural land to a high-end housing projects. Thus, at the landowners' initiative it surrenders their land to the Government of Kenya for the conversion of the new land use categories. That explains why the land owner has to apply to the relevant ministry /National Land Commission for approval and thereafter meet the conditions attached to the conversion/subdivision whichever it is.

36. Following the surrender of public plots, among them the trading centres, vide a letter dated the 23/6/1988, the Plaintiff wrote to the clerk to Council of Muranga recommending that the council in allocating the plots from the 5 centres surrendered should use the list of allottees proposed by the Plaintiff. In the said letter it sought the approval of the Muranga County Council. The import of this letter is that upon surrender of the plots the same became vested in the Government/county council. That explains why the Plaintiff is seeking approval. If it owned the land there would have been no need to seek the approval of council.

37. By the act of accepting the surrender to the Government of Kenya of lands for public purpose, the Plaintiff extinguished all rights and interest in the said lands.

38. Evidence was led that the Plaintiff's proposed subdivision was approved and the mother title was subdivided and titles given to individual members of the company. Though the acceptance letter was not adduced in Court, it therefore safe to presume that the acceptance of the conditions of approval of subdivision was made by the company.

39. The above finding is borne out of PEX 3 which refers to allotment letters in respect to parcels 1607 and 1635 from the Muranga County Council in 1998. It is to be noted that the said allotment letters were not accepted by the allottees and therefore it could as well be that the lands remained public land under the Government of Kenya. I say so based on the letter dated the 19/2/2015 where the County Executive Member, Lands, Housing and Physical Planning, Hon S T Masaki advised the Governor that Ngimu Farm Limited surrendered some public parcels during subdivision inter alia to wit; MAKUYU/KIMORORI/BLOCK1/1806, 1807 alienated for the district headquarters Kenol and parcels MAKUYU/KIMORORI/BLOCK1/1607 and 1635 were allocated to Kimorori Primary School. She went on to state that the parcels are therefore public land and the Plaintiff has no right to deal with the said lands.

40. I have perused the PEX No 11, official searches for parcels dated the 12/1/16 indicated as public lands;

- a. 1607- Government of Kenya reserved for a centre/Kimorori Primary school. Note that the District Administration has an interest. This title was registered in Government of Kenya on the 15/4/88.
- b. 1635- registered in the name of Government of Kenya on the 15/4/88 with endorsements; reserved for centre – Kimorori Primary school /District administration has an interest.
- c. 1619- title closed on subdivision on the 17/7/02 to create 1806 and MAKUYU/KIMORORI/BLOCK1/1807 – reserved for Kimorori Primary school.
- d. MAKUYU/KIMORORI/BLOCK1/1807 – registered in the name of Government of Kenya on 17/7/2002
- e. MAKUYU/KIMORORI/BLOCK1/1806- registered in the name of Government of Kenya on the 17/7/02 – reserved for Primary School.

41. From the certificates of official searches adduced by the Plaintiff in evidence at the trial, it is clear that the suit lands are public lands reserved for the district headquarters and Kimorori Primary School as early as 1988 following the surrenders of the same by the Plaintiff in consideration for the approval of their subdivision plan.

42. The Plaintiff has not adduced any documentary evidence to support any ownership of the said plots. To the contrary, its witness admitted that the suit land was Government of Kenya reserved for public purposes. His contention that it became registered in the Government of Kenya to avoid abuse of the land by its officials is not borne out of any law. It is misleading.

43. Section 26 of the Land Registration Act mandates this Court to take the certificate of title as exemplified by the official searches as prima facie evidence that the Government of Kenya as named on the official searches as the proprietor of the land and the absolute and indefeasible owner subject to permitted limitations in law. These would be encumbrances, restrictions and conditions endorsed on the certificate of title.

44. The law provides under section 26 (1) a and b of Land Registration Act instances in which a proprietor's title may be impeached; in the case of fraud or misrepresentation to which the person is proved to be a party or where the certificate of title has been acquired illegally unprocedurally or through a corrupt scheme.

45. Section 23 of Registration of Titles Act repealed provides:-

“the certificate of title issued by the registrar to a purchaser of land upon transfer or transmission by the proprietor thereof shall be taken by all Courts as conclusive evidence that the person named therein as the proprietor of the land is the absolute and indefeasible owner thereof subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon”.

46. The above provisions mirror the current provisions in section 24, 25 and 26 of the Land Registration Act which emphasis on indefeasibility of title and the rights of the land owner subject to permitted restrictions and conditions in law.

47. The Plaintiff has not laid any evidence to impeach the title of the Defendant at all. The Defendant therefore is fully entitled to the protection of the law as set out in sections 24 and 25 of the Land Registration Act. That is to say that it enjoys absolute ownership of the suit land with all rights and privileges thereto. Such proprietary rights can only be defeated as provided by law and are subject such encumbrances liabilities and overriding interests permitted by law.

48. It is therefore the finding of the Court that the suit land is public land vested in the Government of Kenya.

49. Art 62 of the Constitution defines public land as follows;

“(a) land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date;

(b) land lawfully held, used or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease;

(c) land transferred to the State by way of sale, reversion or surrender;

(d) land in respect of which no individual or community ownership can be established by any legal process;

(e) land in respect of which no heir can be identified by any Classification of land. Public land legal process;

(f) all minerals and mineral oils as defined by law;

(g) government forests other than forests to which Article 63 (2)

(d) (i) applies, government game reserves, water catchment areas, national parks, government animal sanctuaries, and specially protected areas;

(h) all roads and thoroughfares provided for by an Act of Parliament;

(i) all rivers, lakes and other water bodies as defined by an Act of Parliament;

(j) the territorial sea, the exclusive economic zone and the sea bed;

(k) the continental shelf;

(l) all land between the high and low water marks;

(m) any land not classified as private or community land under this Constitution; and

(n) any other land declared to be public land by an Act of Parliament—

(i) in force at the effective date; or

(ii) enacted after the effective date.

50. The Constitution further decrees under Art 62(2) that public land shall vest in and be held by the county Government in trust for the people resident in the county and by the Government of Kenya in trust for the people of Kenya and in both instances shall be administered on their behalf by the National Land Commission.

51. It is clear that the suit lands were surrendered to the Government of Kenya free of costs and in consideration of approval of subdivision plan. The plots surrendered are to serve public purposes in accordance with the planning requirements of the subdivided land and the eventual uses that the lands will be put in. Unlike compulsory acquisition, there is no reversionary interest that the surrenderee retains in the case of surrender pursuant to subdivision. As stated above the surrender was a condition precedent to the approvals of the subdivision scheme.

52. The Plaintiff purported to approve the allocation of parcels MAKUYU/KIMORORI/BLOCK1/1607 and 1635 to the Primary School in its AGM held on the 13/11/2004. This approval in my view is of no legal effect because the Plaintiff had surrendered the land to the Government of Kenya way back in 1988 and the same had become registered in the Government of Kenya. By this time, it had divested itself

of all rights and interest in the suit land.

53. The trading centre plots were vested in the Government of Kenya and not the County Council of Muranga. It therefore means the allotments adduced by the Plaintiff in the names of individuals were not valid. Even if they were, it is only the County Government and or the individual allottees that may have a cause of action in respect to parcel MAKUYU/KIMORORI/BLOCK1/1607 and 1635 and never the Plaintiff.

54. Did the Defendant trespass onto the suit land? Trespass is defined as unlawful act committed against the person or property of another especially wrongful entry of another's land. See Black's Law Dictionary, 10<sup>th</sup> Edition at Page 1642.

55. In the case of **Entick Vs Carrington (1765)** Lord Camden CJ had this to say:-

“Our law holds the property of every man so sacred, that no man can set his foot upon his neighbor's close without his leave”.

56. The Trespass Act, Cap 294 defines trespass as thus;

“ any person who without reasonable excuse enters, is or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence

57. It is the finding of the Court that the Defendant cannot and could not have trespassed onto its own land.

58. Is the suit statutory barred? Section 7 of the Limitation of Actions Act provides as follows;

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person”

59. According to the evidence on record the suit land was registered in the name of the Government of Kenya in 1998. The suit was filed in 2016. Although its case was undefended, the Defendant misdirected itself when it urged that the claim is statutory time barred and the Plaintiff is barred by the doctrine of laches from successfully bringing a claim against the Defendant. To the contrary it is not. This is why.

60. Having determined that the suit lands are Government of Kenya lands, section 41 of the Limitation of Actions Act exempts Government of Kenya land from the provisions of the Act. It states as follows;

This Act does not—

(a) enable a person to acquire any title to, or any easement over—

(i) Government land or land otherwise enjoyed by the Government;

(ii) mines or minerals as defined in the Mining Act (Cap. 306);

(iii) mineral oil as defined in the Mineral Oil Act (Cap. 307);

(iv) water vested in the Government by the Water Act (Cap. 372);

(v) land vested in the county council (other than land vested in it by section 120(8) of the Registered Land Act (Cap. 300)); or

(vi) land vested in the trustees of the National Parks of Kenya; or

61. In the upshot the Plaintiff's case is dismissed with no orders as to costs.

**62. It is so ordered.**

**DELIVERED, DATED AND SIGNED AT MURANG'A THIS 24<sup>TH</sup> DAY OF OCTOBER 2019.**

**J G KEMEI**

**JUDGE**

**Delivered in open Court in the presence of:**

Maina HB Muhoro for the Plaintiff

Mugambi HB Ms. Mwalozi for the Defendant

