



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NYAHURURU

ELC NO. 245 OF 2017

(Formerly ELC (NAKURU) 41 of 2016

PETER NGUGI KAINAMIA.....1st PLAINTIFF

JOHN MURAYA KAINAMIA.....2nd PLAINTIFF

VERSUS

TABITHA WAMBUI MUNYAO.....1st DEFENDANT

GEOFFREY KANIA MUNYAO.....2nd DEFENDANT

ISAAC NJENGA MUYAO.....3rd DEFENDANT

PETER GITHINJI MUNYAO.....4th DEFENDANT

JOHN MURAGE.....5th DEFENDANT

NGOTHO MUNYAO.....6th DEFENDANT

CHARLES KINUTHIA MUNYAO.....7th DEFENDANT

SAMWUEL NDUNGU MUNYAO.....8th DEFENDANT

JUDGMENT

1. The suit was filed at the Environment and Land Court sitting in Nakuru by the Plaintiffs vide a Plaint dated 10th February, 2016 and filed before this Honorable Court on 12th February, 2016 wherein they sought for the following:-

a. An order for the Defendants do deliver vacant possession of all that parcel of land known as Land reference numbers. Nyandarua/Olkalou South/1698 and demolish their illegal structures erected thereon and in default an order for forceful eviction be made at their own costs.

b. An order of permanent injunction granted against the 1st to 8th Defendants by themselves, their servants, employees, agents and/or proxies restraining them from sub – dividing, fencing, removing beacons, cutting trees, entering, encroaching, remaining, using, cultivating or in any manner interfering with all that parcel of land known as Land reference numbers. Nyandarua/Olkalou South/1698 and for eviction orders.

c. Mesne Profits for the period the Defendants been in occupation and possession.

d. The costs of the suit.

e. Any other relief that the Court may deem fit to grant.

2. Alongside the said plaint, the Plaintiffs filed an application by way of Notice of Motion seeking interim orders wherein on the 9th March, 2016, the Court issued interim orders that parties maintain the status quo wherein on the same date, the Defendants filed their memorandum of appearance and a Replying Affidavit to the Notice of Motion.

3. In the course of time, the matter was transferred to Environment and Land Court for hearing and final determination accordingly wherein on the 3rd May, 2017, by Consent, parties agreed to compromise the application dated 10th February, 2016 in order to pave for the full trial. To enable the hearing take place accordingly, it was directed that parties comply with the Provisions of Order 11 of Civil Procedure Rules

4. On the 19th May, 2017, the Defendants filed a Defence and a Counter Claim dated 16th May, 2017 wherein on the 9th June, 2017, the Plaintiffs filed a Reply of Defence and the Counter Claim dated 5th June, 2017.

5. The matter was heard on the 16th January, 2019 wherein the 2nd Plaintiff testified as PW 1 to the effect that their right to possession and use of plot No. 1698 had been violated by the Defendants whom had invaded the same purportedly to effect a succession Grant from the Nakuru High Court in Succession Cause No. 33 of 2009 wherein they had tried to evict the Plaintiffs. That the 1st Defendant herein was a co-wife to his sister one Esther Wangui who is still alive.

6. That his father was known as Kainamia Muriame while the deceased, Munyao who was his brother in law was also the husband to the 1st Defendant. That in the year 1965, son in law and a father sat down and agreed to buy land from the Settlement Funds Trustees (Hereinafter referred to as SFT) wherein his father paid Ksh 3040/= while Munyao contributed Ksh. 1960/= wherein they had bought Plot No. 90 which was the original number. It was an average of 65 acres. Both of them proceeded to develop the land. That since the SFT could not allow two (2) people to be registered on the same parcel of land, and since his father was illiterate, his brother law Munyao Kakuria was registered. Since the land now belonged to both his father and his brother in law, and his brother in law having been registered as a holder in trust for his father, the said Munyao took possession of the livestock, cows, sheep, and iron sheets given out by the SFT for people to start off work on the farms.

7. According to PW-1 this was where the land dispute and problem pertaining to the ownership of the suit land commenced as Munyao Kakuria denied PW-1's father the right to benefit from the livestock and iron sheet provided for by SFT. By this time, PW-1's sister – Esther Wangui was still co-habiting with Munyao Kakuria as husband and wife.

8. PW 1 testified further that in the year 1968, the 1st Defendant, Tabitha was married to Munyao Kakuria wherein his sister was returned back home. All this time all the families were living together on Plot No. 90. As a result of the disagreement and the separation of his sister from her husband and the denial of his father to use whatever was provided for by SFT, the PW 1's father and Munyao Kakuria called elders to resolve the matter. After deliberations, the elders decided that Plot No. 9 belonged to both his father and Munyao.

9. Thereafter his father started ailing and became bed ridden wherein Munyao Kakuria took advantage of the situation and caused the sub-division of the Plot No. 90 into two (2) equal portions being Plots No 173 and 174 respectively wherein Munyao sold Plot No. 173 to one Michael Ngotho and registered plot No. 174 in his name. That at the time they had all been living together on plot No. 174.

10. In January, 1979 his father succumbed to his illness, and was buried on Plot No. 174 without any

resistance. That thereafter he and his brothers decided to institute a Civil Proceedings in Nairobi- being Civil Case No. 1994 of 1979 seeking to recover their land.

11. On 29th April 1999, the matter was determined and judgment delivered. Their prayers were granted in that 30 acres from plot no 174 was to be registered in their names and the remaining 2.5 acres were given to Munyao Gakuria's family. The Plaintiff produced the certified copy of the judgment in Nairobi Civil suit no 1994 of 1979 as PF Exhibit 1.

12. That from there they had started thinking of how to effect the judgment but had been advised by the DO to wait. A decree was issued to them on the 24th June 1979 two months after the judgment which decree was produced as Pf exh 2.

13. That armed with the said decree they had visited the District Officer's office for assistance but when Munyao had been summoned, to facilitate the transfer he had refused and did so three times. The Plaintiff was then advised to seek assistance from the High Court where the judgment and decree were issued.

14. On April 2001 they had made another application to the High Court to be assisted with the transfer of the 30 acres as per the decree and judgment wherein in the month of May of the said year, Hon Justice Kasanga Mulwa had ordered the Deputy registrar to sign all the documents to facilitate the transfer of the 30 acres to them. The Deputy registrar signed the transfer papers as per Pf exh 3, after which they had gone back to the District Officer to obtain consent through the Land Board since he was the chairman.

15. They then went to acquire their title deed but the Land Registrar declined to issue it on condition that they surrender the old copy to Plot No. 174. He also sought time to consult the Chairman of the Land Control Board. Later on the Land Registrar confirmed that Munyao had refused to surrender the old title deed for the Plot No. 174.

16. Through the publication of Kenya Gazette Notice No. 6371 of 21st September, 2001, which he produced as Pf exh 4, wherein the Land Registrar issued a Notice of 30 days to any one in Kenya in possession of the title deed to parcel No. 174 to surrender it to his office. This never happened. Upon the expiration of the 30 days, the old title deed was cancelled and it became invalid. Thereafter new title deeds were issued being No. 1628 measuring 2.5 acres registered to the name of Munyao Kakuria and Plot No. 1627 comprising of 30 acres were registered in the names of John Muraya and Peter Ngugi as per the judgment of the court. The green card was produced as Pf exh 5.

17. The Plaintiffs then proceeded to fence off the said land but the Defendants' family kept on encroaching and interfering with the beacon and the boundaries. The Defendants attempted to intimidate them using the police who upon production of the legal documents proving ownership, had left the Plaintiffs alone. The Plaintiffs had then moved and occupied their land being plot no 1627, where their father, stepmother, brother and sister in law are still buried. That the Defendants' family members are buried on Plot No. 1628 where they own.

18. That in the year 2002, Munyao went back to the High Court Nairobi and filed an application on Appeal to stop the Plaintiffs from effecting the decree and the Judgment. By this time, the Plaintiffs had already sold off 5 acres apportioned from the suit land in order to offset the outstanding expenses being legal fees, fencing expenses, building of a new house and so forth.

19. That the title deed for Plot No. 1627 had now been sub - divided into two equal portions being Plots No. 1698 and 1699 respectively. Plot No. 1698 which was the Suit land and plot No. 1699 which belonged to one Samuel Kainamia Joshua. He produced the Map that had shown the subdivisions as Pf exh 6 and that which depicted the status on the ground without the inclusion of plot No. 174 as Pf exh 7.

20. That the Appeal which had been filed in high court by Munyao did not proceed on as it had already been overtaken by events.

21. That between the years of 2002 and 2012 the Plaintiffs and Defendants lived cordially on their

respective parcels of land, cultivating, and grazing.

22. That for reasons not clear, in January 2012, hell broke loose when the family of Munyao Kakuria decided to invade and encroach onto the Plaintiffs' land destroying their properties, homes and cattle shed, they removed all the beacons, destroyed fences, cut down trees and burnt charcoal and used the rafters and posts to build their own houses on the Plaintiffs' land and evicted the Plaintiff with the use of the police. All these atrocities were carried out by the use of the old title deed that had been canceled

23. Their actions compelled the Plaintiffs to institute a civil suit before the Nyahururu Senior Principal Magistrate Court Civil Suit no. 45 of 2012 where they had sought for the temporary Injunction and eviction orders against the Defendants. They also prayed for mesne profits.

24. On the 5th March, 2012 the case was heard wherein in January, 2014 injunctive orders were granted as sought. Arising from this ruling the Munyaos' were dissatisfied and filed an Appeal being Nakuru High Court Civil Appeal No. 13 of 2014 seeking for stay orders. On the 11th July 2014 the said application was heard and dismissed as per Pf exh 8, wherein the Defendants had been ordered to pay costs after the court noted that they had gone to court with unclean hands.

25. That Munyao's family appealed against Hon J. Waithaka's ruling and went before Hon J. Munyao who upon hearing the matter in the absence of the Plaintiffs as it was an ex parte application, ruled that on the basis of jurisdiction, the lower court had no jurisdiction to hear the case whose subject value was more than Ksh 10,0000,0000/=The Plaintiffs were advised to go before a High Court wherein the matter was heard and determined, a High court had been opened in Nyahururu where this matter was transferred. The Plaintiff produced a copy of the title deed to parcel of land No. Nyandarua/Ol Kalaou South/1698 as Pf exh 9.

26. The Plaintiff sought that the Defendants be evicted from their land and that they be compelled to pay damages and for mesne profits for the time they had been out of the suit land. They also sought for a permanent injunction to issue against the Defendants as well as for costs for the suit.

27. That the court declares the land as theirs. That they had been out of the land wherein as farmers they would have kept cattle grown, potatoes, maize and animals feed. That they had not benefitted from the land as the Defendants had rented the land to other people.

28. That it was not true that the Defendants had been on the land for more than 12 years but that they had been on the same for 7 years having entered on the land by force and without permission and without secrecy. That they did not qualify to be given the land as they had their land given by the High Court. The witness further testified that his brother Peter Ngugi and his family still lived on parcel No. 1698 but under very harsh conditions where he was not allowed to graze or cultivate on the land by the Defendants.

29. In cross-examination, PW 1 confirmed that Munyao Kakuria was his brother in law who had purchased plot no 90 jointly with PW1's father and thereafter plot no 90 had been registered in the name of Munyao Kakuria. He reiterated the evidence he had adduced in chief only adding that while filling civil suit No. 1994 of 1974 they had been aware that Munyao had the title deed for plot No. 174. He also added that Munyao Kakuria died around the year 2009 and was buried in plot 1628 which was a sub division of plot 174 and which measured about 25 acres. That plot No. 174 was sub divided in the year 2001.

30. That his brother just occupied a small acreage that is occupied by his house while the rest of the land was illegally utilized by the Defendants. That plot No. 1699 measuring 5 acres was not theirs but was also being illegally occupied by the Defendants and that he did not know if the owner had filed suit against the Defendants.

31. That in the year 1979 when they had filed our case, they had only claimed for their portion of land which was 32.5 acres but did not seek to have the Defendants evicted. That they had been awarded 30 acres leaving 2.5 acres to Munyao. That before the pronouncement of the judgment, they had occupied

70% of the land which they had utilized and the other 30% was used and occupied by the Defendants who grazed and cultivated on the same.

32. That they did not file for an eviction order because the Defendants portion of land plot fell on what they were they had occupied and some of the land had been given to them.

33. That he had built three houses on plot 1698, Benson Gabu his brother had built 2 houses while their mother had built 2 houses. That his brother's widow Racheal had built 2 houses, while his other brother Peter Ngugi had built 4 houses. That his houses which were permanent, had were destroyed. All houses that were semi-permanent had all been destroyed apart from his brother Peter's houses because Peter, the 1st plaintiff had a large family and they have resisted the threats. That whenever his brother did any farming, their crops are destroyed by Defendant's.

34. That they had lived on plot No. 90 from the year 1965 – 1978, on plot No. 174, from the year 1978 – 2001 after the sub division, on plot No. 1627, from the year 2001 – 2002 whereas on plot No. 1698, from the year 2002 up to May 2012 wherein he had left in May 2012 after he had been threatened and his houses and cattle bomas destroyed.

35. That although they had reported the matter to the police, they had been asked to claim through the court and had not been issued with a police abstract. That the Defendants had then moved their old houses to the Plaintiffs land in the year 2012 and 2013 where construction was still going on to date.

36. That the Plaintiffs had moved the high court in Nakuru to have the Succession Cause revoked which matter was ongoing because the Defendants had used the cancelled title deed to plot 174 to cheat the judge for succession purposes at the time when she knew that the title had been cancelled as per the Kenya Gazette Notice. The chief and the DO had also informed her.

37. That it is not true that Munyao did not know that they had sub divided the land or had a judgment because his family went and reported the matter at Olkalou police station wherein the police had driven to the suit land in a convoy of over 30 officers. When they arrived on the land, they found the Plaintiff sub dividing the same wherein the Plaintiffs had given them documents to prove that they were sub dividing the land legally. That it was not true that the Defendants had remained on the land even after sub division.

38. When he was referred to the plaint dated 10th February 2016, the witness testified that at that time when Counsel Nderitu was writing the letter, some houses were under construction on their plot. That when they filed case No. 34 of 2012, some houses were already constructed. That the issue started in January 2012 when they had already been issued with the threat of the destruction of their houses and buildings.

39. That it was not true that the Defendants had been in occupation for more than 12 years because they had been living on the Plaintiff's plot for 7 years because they had invaded the Plaintiffs land in the year 2012 after obtaining the succession grant in 2011. That when the judgment was delivered, the Plaintiffs had been living on plot No. 1628 and Plot no 1627 was still occupied by themselves.

40. When referred to mutation form for plot No. 174, PW 1 confirmed that the 1st page was not signed, page 2 was signed by Muritu and Associates and had a signature by the Deputy Registrar the surveyors, page 3 had no date, but that the mutation was signed on all pages. Page 4 however it had no date and did not show that it was registered by the Land Registrar.

41. When referred Pf exh 3(a), being the transfer of parcel No. 1627, the witness confirmed that the transfer had no date of booking. That the presentation book was issued by the Land Board to which they had photocopies. He also confirmed that the land control board had no jurisdiction to enter those details.

42. When referred to Pf exh No. 9, the witness confirmed that they had paid rates fee and were issued with a receipt which receipt they did not have. That the process of obtaining the title and everything else was done in broad light. That the original title of parcel No. 1627 was given to two people. That by the

time the judgment was delivered Peter Muraya Kainamia his step brother was alive but by the time they acquired the title, he had passed away.

43. That the information on his death was submitted to the relevant officers, the Deputy Registrar was informed, and the Land Board and the Land Registrar were all informed by his family members.

44. That the land belonged to the family wherein he had a share of the 25 acres which was to be subdivided amongst the 3 families. That he represented the whole family because he was one of the proprietors of the land and a trustee of the family.

45. The next witness PW2, Peter Kigotho Kainamia, testified that Peter Ngigi and John Kainamia were his step brothers and that he had recorded his statement with the counsel on the 24th May 2018 which statement wished to produce as Pf exh 10.

46. That he also knew the contents in the statement of John Muraya Kainamia. PW 2 and that what he had testified was the truth. That they had gone to the District Officer when the fracas started between the family of Munyao Kakuria and Kainamia Murema. That Plot No. 1698 was registered in the name for Peter and John, to hold the same in trust for the family.

47. On cross examination, he testified that the suit land was initially plot no 90. After the case in Nairobi in 1978 -1979, Munyao sold 32. 5 acres of the land. That the land had been sub divided into two being plot No. 173 and 174 and that they had lived on plot 174 after Munyao sold plot No. 173.

48. That the case had been finalized in the year 1998, wherein they were given their piece of land and had moved thereon in the year 2012. That the 1st Defendant had never left plot 174. That both the Defendants and the 1st Plaintiff were on the suit land, whereas the PW1 had been evicted from the land. He confirmed that the 1st Plaintiff doesn't use the land because of threats. That Defendants knew that plot 174 had been sub divided as they had been in court when judgment was delivered. The DO's office had also informed them to go and sub divide the land wherein they had refused.

49. That when Munyao had been summoned to transfer the land, he had refused to go. That the Defendants used to live on the 2.5 acres of land but had now moved and were living on the Plaintiff's portion. That before sub dividing the land, they all used to cultivate the whole land, about 30 acres.

50. That the Defendants had invaded the whole farm from the year 2012 where they had started ploughing the Plaintiff's side, and had also demolished houses and evicted people. PW1 left the suit land in the year 2012 after he had been evicted. The Plaintiff closed its case.

The Defendants' Case

51. On 29th May, 2019, DW 1 Tabitha Wambui Munyao and DW 2 John Murage Munyao testified wherein DW1 testified that she was the mother to all the Defendants and the wife to Munyao Kakuria. That Munyao Kakuria died on 20th September, 2008 and was buried on the suit land. She denied that the Plaintiffs were the absolute and legal proprietors to the suit land. She claimed that it was the Defendants who had been in occupation and possession of the suit land from the year 1966 to date. She confirmed that the land had previously been registered as Land Reference No. Nyandarua/ Olkalou South/174. She denied being aware of the Judgment in Nairobi HCCC No. 1994 of 1979 nor the civil suit filed in PMCC (Nyahururu) No. 34 of 2012 against them. She denied that the Plot No. 174 was ever divided into two (2). It still measured 32 1/2 acres and she utilized the whole of it.

52. That the people of Kamae had bought the land in Mwireri. After they bought that land, Kainamia knew her husband because they used to sell to them food. After her husband bought land in Olklaou South, Kainamia had asked him whether he could clear the bush on the land. That her husband had allowed him to clear the bush and also build a small house. That year he farmed on the land. Kainamia was also given land in Mwireri which had a lot of water that was when he came and started claiming her husband's land and even filed a suit against her husband.

53. She denied knowledge of the case of 1979. That she had come to know about it when her husband had been asked to leave the land. That she did not even know if there had been a judgment delivered in that case. That her husband died in the year 2008 and she had never been given any document in regard to that case.
54. She testified that she had been there when the land was being paid for and at the time it was known as Olkaou South Scheme. That her husband was to pay Kshs. 5,000/- and later he was to pay land rates. That her husband paid for the land for which receipts she had not carried to court, but that she had the title to the land. That after she got the Grant, she had conducted a search at the lands registry but again she did not have the search certificate with her in court.
55. That as pertaining the case filed in Nakuru where she had been sued, that the same was dismissed, she had won the case and had been given the judgment although she could not tell what the judgment was all about. Once again, she did not have copies of the judgment with her.
56. She testified that her husband Munyao was buried on the suit land having passed away on the 25th September 2008. That there had been no dispute during his burial on that piece of land. That thereafter she had filed Succession Cause No. 330 of 2009 wherein she had been granted letters of Administration wherein the Grant was confirmed after which she had subdivided the suit land to her children. Nobody objected to the subdivision.
57. That the Plaintiffs had filed a case at the Chief Magistrate's court in Nyahururu where they had sought for her eviction despite the fact that she had not received any demand letter from their Counsel.
58. After her husband died, the Plaintiffs did not inform her about that case. That since she got into the suit land in the year 1965, she had never left. That it was not true that on the 26th January 2012, she had threatened to get into plot No. 1698. Plot No. 174 was her parcel of land. The grant issued to her vide Succession Case No. 330/2009 has not been cancelled. She sought that the title that the Plaintiffs had in regard to parcel No. 1698 should be cancelled because she had her title to which she was paying her land rent where she had built the houses. She sought that the Plaintiffs let her remain on her land.
59. In cross-examination the 1st Defendant confirmed her evidence in chief and added that Munyao Kakuria was her husband. She got married to him in February 1964 as a first wife. When they got onto the land, it was Plot No. 90. Munyao Kakuria had bought the plot in September 1965 from the Settlement. That he had subdivided the Plot 90 to offset the loan wherein he had sold one piece and remained with plot No. 174.
60. That there was no other family on that land that is not true that the land was bought by Kainamia and her husband and that Plot 90 was to be subdivided between her husband and Kainamia. That she did not see that judgment of 1979 but that her husband would have informed her of the same.
61. That she did not receive any order from the court in No. 1994 of 1974. That all she knew was that the land was still No. 174 measuring 32 ½ acres. That she wanted the case dismissed because the subsequent titles were fraudulent that she had her title, a copy which was in court. That when she filed the Succession Cause in Nakuru, the court should have informed her that Plot No. 174 did not exist.
62. The next defence witness DW 2, John Muruga Munyao testified that DW 1 was his mother and that he was 5th Defendant. That the other Defendants were his siblings and that he knew the Plaintiffs.
63. He testified that he wrote his witness statement on the 16th May 2017 and would like the court to consider it as his evidence. That Plot No. 174 belongs to his father Munyao Kakuria who had been allotted the same by the settlement. That the land measured 32 ½ acres and his family members had been using it. That since its allotment, 9 family members have since passed away and had been buried thereon and there had been no dispute when these people were buried on that land.
64. He confirmed DW1's evidence that after his father died, DW1 had been issued with the letters of

Administration and a confirmation of grant wherein surveyor had subdivided the land. That the people who were given the subdivided land used to live on Plot. No. 174. That all the 8 Defendants had their own houses.

65. When referred to proceedings in Nyahururu CMCC No. 34 of 2012, he had confirmed that he had been the 5th Defendant and that the suit had been filed by Peter and John wherein they had sought for their eviction from land parcel No. 1698. That he did not know about the subdivision of Plot 174. That he not seen any surveyors on that land and that he only saw that title here in court.

66. That DW1 had filed her verifying affidavit and defence to CMCC No. 34 of 2012 on the 29th March 2012 to which he produced as Df exh 2 and 3 respectively. That subsequently, they had received a letter dated 14th February 2012 from a Counsel called Nderitu Komu herein produced as Df exh 4 that there had been a judgment delivered in the case where they had been directed not to use the land.

67. That they had been dissatisfied with that case and filed an appeal being No. 13 of 2014, the Memorandum of appeal dated 28th January 2014 which he produced as Df exh 5 and the Judgment as Df exh 6.

68. That after the judgment in the Appeal, the Plaintiffs filed the present case. That they did not threaten to take the land on 26th January 2012 because they had been living on the said land since he was a child and had never known the suit land to belong to the Plaintiffs.

69. That the Plaintiffs had never fenced the land nor planted trees. That he did not know anything about case No. 1994 of 1979. The Plaintiffs had never told him of the outcome of that case to which he was not a party. He sought that since land reference No. 1698 was his father's land, that the title to the same be cancelled.

70. In cross-examination, he confirmed that he was 42 years old and a farmer on parcel No. 174 which he had been ploughing since 1998. That he was not there when his father was given the land. That he did not know that there was a grudge between his father and somebody else. That it was only at the time when his mother was sharing the land to them in the year 2006 that they had started hearing about the differences to the land. That the Plaintiffs were their neighbors, there is a road separating them and they had been living as their neighbors for a long time.

71. That the person who used to accompany his father to court passed away and that he did not understand why his father used to go to Nairobi. That he did not know the outcome of that case but when he visited the lands registry, he had found that the parcel No. 174 had been subdivided. That all he knew was that after the subdivision, the Plaintiffs had been given land.

72. At the time they all ploughed about 25 acres the land, the rest of the land they kept animals. That they had built on about 2 acres. He confirmed that in case No. 34 they had been ordered not to plough the land. The court had stated that the land was not theirs and that it belonged to the Plaintiff. That although their Appeal had succeeded, yet he did not understand its judgment. That he did not know the outcome of the case of 1979. That after the surveyor subdivided the land for them they were yet to receive the titles.

73. In re-examination, DW2 responded that they had the original title to the land. That he did not know that somebody had bought 5 acres because nobody else used the land apart from themselves.

74. When referred to Df exh 4, he responded that by the time they got the letter dated 14th February 2012 which required them to vacate from the land, they were living on Plot No. 174. That they did not leave the land.

75. The defence thus closed its case and parties filed their respective submissions.

The Plaintiffs Submission.

76. Upon the closure of the case by both the Plaintiffs and the Defendants, the Plaintiffs filed their Written Submissions dated 17th July, 2019 wherein they framed three (3) issues for determination namely:-

(a) Whether the Plaintiffs acquired valid title to all that parcel known as Land Reference No. Nyandarua/Olkalou South/1698.

(b) How the Defendants acquired their title and whether it is valid.

(c) Whether the Plaintiffs are entitled to Mesne profits.

77. Under the 1st issue for determination, the Plaintiffs have referred to the Provision of Section 26 (1) of The Land Registration Act No. 3 of 2012. To buttress their case, they have noted that the Deputy Registrar through a Court decree dated 29th April, 1999 in HCCC No. 1994 of 1979, transferred 30 acres of land to them from all that parcel of land known as Land Reference No. **Nyandarua/Olkalou South/174**. Despite this court order, the Defendants refused to surrender the original title and through the **Kenya Gazette Notice No. 6371**, the said title deed was cancelled. Later on, the Sub-division of this land No. 174 was carried out whereby two (2) parcels of land were created namely:-

(a) Nyandarua/Olkalou South/1627.

(b) Nyandarua/Olkalou South/1628.

78..... That No. Nyandarua/Olkalou South/1627 was registered in the name of Munyao Kakuria and which land was entitled to the Defendants; and No. Nyandarua/Olkalou South/1628 was registered in favour of the Plaintiffs.

79. The portion of Land Reference No. Nyandarua/Olkalou South/1628 belonging to the Plaintiffs was further sub-divided creating two portions namely: - (i) Nyandarua/Olkalou South/1698 and (ii) Nyandarua/Olkalou South/1699 both parcels which were registered in the Plaintiffs' names.

80. That the Plaintiffs had sold off parcel Land Reference No. Nyandarua/Olkalou South/1699 and that was how they acquired their proprietary rights of parcel Land Reference No. Nyandarua/Olkalou South/1698 which was the same portion of land that the Defendants had encroached, trespassed and invaded. That the Defendants had blatantly ignored the proprietary rights of the Plaintiffs conferred to them through the Provisions of Section 24 (a) of The Land Registration Act.

81. The Plaintiffs argue that being the registered owners to the suit land, they are entitled to vacant possession, quiet enjoyment and all rights accompanying ownership of the property Land Reference No. Nyandarua/Olkalou South/1698.

82. The Plaintiffs contend that on the contrary, the Defendants had been acting as if they were not aware of the proceedings and judgment of HCCC No. 1999 of 1979, yet they had an Advocate representing them during the proceedings. That they had ignored the decree which recalled title to parcel No. Nyandarua/Olkalou South/174 that was registered in the names of Munyao Kakuria and the Gazette Notice No. 6371 that had cancelled the said title.

83. That upon the death of Munyao Kakuria, the Defendants had filed a Succession Cause and obtained Letters of Administration wherein they later obtained Confirmation of Grant and listed the said land as one of the assets of the deceased's estate for distribution among the deceased's beneficiaries which was in total disregard of the Plaintiffs' right of ownership.

84. As a result of the said purported distribution, the Defendants invaded the Plaintiffs' land and destroyed trees, demolished houses and issued death threats whereupon the Plaintiffs, for fear of their lives fled and rented houses elsewhere. In order to back up their argument under this ground the Plaintiffs cited the case of **Rachel Okaro vs Alice Muhunja Musonye (2018) eKLR** and **Arcadius Chege vs**

Geoffrey Muchiri (2018) eKLR to submit that they had a right to protections of private property under the Provision of Article 40 of the Constitution of Kenya.

85. In regard to the 2nd issue for determination as framed by the Plaintiffs, they sought refuge from the Provision of Section 80 (1) of The Land Registration Act where they sought for the cancellation of the title and/or rectification of the register. It was their contention that from a decree issued on 29th April, 1999 in HCCC No. 1994 of 1979, Munyao Kakuria was held parcel Land reference No. Nyandarua/Olkalou South/174 in trust for the Plaintiffs and therefore the Defendants could not purport to have any ownership rights over it. The Plaintiffs hold that at no time could the beneficial interest override the proprietary rights of the Plaintiffs.

86. The Plaintiffs aver that the cancellation of the title to parcel No. 174 through the Kenya Gazette No. 6371 rendered the said title deed invalid and all the subsequent action such as obtaining a Succession Grant was null and void *ab-initio*. In the given circumstances for the Defendants to invade into the Plaintiffs land amounted to trespass. Having sought and having been granted the Injunctive orders, the Plaintiffs relied on the case of **Martha Cherugut Rutoh vs Rutoh & 2 others (2018) eKLR**.

87. On the 3rd issue for determination as submitted by the Plaintiffs, they referred to the Provision of Section 2 of The Civil Procedure Act on definition of the term Mesne Profit in relation to property. They argued that the Plaintiffs who are subsistence farmers have had their farming activities interfered with by the actions of the Defendants who have illegally and unlawfully displaced them and by destroying their planted trees, encroaching their cultivation land since the year 2012, hence denying them the exclusive enjoyment of the same or putting the land to meaningful or profitable use. The Plaintiffs estimated a loss and requested the court to consider awarding them a sum of Ksh Six Million (Kshs. 6,000,000/=) as compensation for the utilization that the Plaintiffs would have put on that land from the time the Defendants took possession to date. They relied on the decision of **Rajan Shah T/A Rajan S. Shah & Parties –Vs- Bipin P. Shah (2016) eKLR** to buttress their submission.

88. Finally, the Plaintiffs submitted on the principle or defence of Land Adverse possession that the Defendants had advanced in their pleadings. The Plaintiffs held that the Defendants, after having obtained the Grant in the year 2012, they had invaded the Plaintiffs' land Parcel no. No. Nyandarua/Olkalou South/1698 where they had destroyed the Plaintiffs fences and homestead and even threatened to kill them thereby forcing them to leave their houses and seek safer places elsewhere. Hence the Defendants entered into the Plaintiffs land without the consent of the Plaintiffs.

89. They denied that there has been any continuous occupation of land, peaceful, uninterrupted and open enjoyment of the land for a period of 12 years by the Defendants. That they had been on and off the corridors of justices since the years of 1970s to date seeking for rightful share of the suit land. Besides, time stopped running from the day the suit land was registered. The Plaintiffs opined that in this case they were the registered owners of all that parcel of land known as No. Nyandarua/Olkalou South/1698 as from the year 2002. Accordingly, it was their case that they had gone to Court in the year 2012 and therefore there had never been any time that the Defendants continuously were in occupation of the suit land a period of 12 years as alleged. On this issue pertaining to the defence or claim of land by adverse possession, the Plaintiffs relied on the case of **Celina Muthoni Kithinji versus Sofiwe Binti Swaleh and 8 others (2018) eKLR**.

90. In conclusion, the Plaintiffs submitted that they were entitled to the prayers sought in the Plaint, costs of the suit, mesne profits and vacant possession to the exclusion of the others. They urged the honorable court to grant them as prayed.

The Defendants' Submissions

91. The Defendants' written submissions dated 19th July, 2019 and filed in Court on 22nd July, 2013 acknowledged the existence of the decree from the Judgment in the High Court's decision of Nairobi HCCC No. 1994 of 1979. They appreciate that the said decision held that Munyao Kakuria was allegedly declared (a) to have all along held the Land reference No. Nyandarua/Olkalou South/174 in trust for the

then Plaintiffs, namely Peter Ngengi Kainamia, Peter Muraya Kainamia and John Muraya Kainamia; (b) To do all acts to facilitate the transfer of the 30 acres to the Plaintiffs.

92. The Defendants hold that despite the aforesaid Court Order, Mr. Munyao Kakuria decided to willfully disobey it. He failed to comply with the said Court Order. However, as fate would have it, he died before that could have happened. He was buried on the suit land.

93. It is the Defendants' case that although they were aware of this Court Order they continued being in occupation and possession of the said land continuously for the 12 years from the year 1966 after the said judgment and before the Plaintiffs could reclaim the land. As such they contend that such proprietary rights of the Plaintiffs were a subject to the overriding interests of the Defendants. That their father and husband to the 1st Defendant died and was buried on the suit land. In other words, the Defendants claimed title vide the right of adverse possession accordingly whereby they filed a counter claim.

94. The Defendants also aver that the Plaintiffs claim was statute barred under the provisions of Limitation of Actions Act Cap 22 of the Laws of Kenya. The Defendants emphasized having remained on the suit land for more than 12 years from the date when the alleged cause of action occurred. It was the Defendants' contention that despite the Plaintiffs making a claim for an order for vacant possession, demolition of illegal structures erected on the suit land and eviction, they did not provide any tangible explicit evidence to prove their claim. Simply put, the Plaintiffs bear no tangible justification to the prayers sought. That the Plaintiffs had failed to give particulars of important facts. For instance, the time upon when the Defendants entered into the suit land and when the encroachment by the Defendants took place. To support their case on this issue, the Defendants cited and relied on the provisions of Sections 107 and 108 of the Evidence Act Cap 80 of Laws of Kenya.

95. The Defendants strongly hold that the action by the Plaintiffs was statute barred and sought refuge from various provisions of law to wit: - Section 4 (4) of the Limitation of Actions Act, Section 3 of the Interpretation General Provisions Act which defined the meaning of "action," and Section 2 of the Civil Procedure Act.

96. Further, to buttress their case, the Defendants also relied on the Court of Appeal decisions in the case of **Malakwen Arap Maswai Vs, Paul Koskei (2004) eKLR** on the interpretation of Section 4(4) and 7 of the Limitation of Actions Act and **M'ikiara M'rinkanya & another Vs. Gilbert Kabeere M'mbijwe (2007) eKLR**. In a nutshell, the Defendants hold that the execution of the judgment made by the High court on 29th April, 1999 and the Plaintiffs claim were time barred for having not been acted upon within the stipulated time.

97. To advance their case further, the Defendants also relied on the publications of **Meggy Wade; The law of Real Property 6th Edition**, in which the authors of the book addressed the issue regarding the enforcement of a judgment for possession of land under Order 46 Rule 2 (1) of the Civil Procedure Code. The authors held conversely, that if the enforcement of the judgment did not take place within six (6) years, the true owner may begin new proceedings for possession provided that at the time of commencement, his right of action has not been barred by 12 years adverse possession.

98. Therefore, it is the Defendants' contention that a judgment for possession of land should be enforced before the expiry of the 12 years limitation period stipulated in Section 7 of the Limitation of Actions Act. They held that if the judgment is not enforced within the stipulated period, the rights of the decree holder are extinguished. That under Section 17 of the Act the Judgment debtor acquires possessory title by adverse possession which he can enforce in appropriate proceedings.

99. From the foregoing submissions by the Defendants they urged the Court to enter judgment in their favour as prayed in their defence and the Counterclaim.

The Analysis and Determination

100. Having heard the Parties in this matter during a full-fledged hearing, read their pleadings, the cited

authorities and the applicable laws, the following salient issues are critical for determination of this case:-

- i. Whether the Plaintiffs are legally and rightfully entitled to the proprietorship to all the suit land being L.R. No. Nyandarua/Olkalau South/1698;
- ii. Whether the Plaintiffs actions are statute barred by provisions of the Limitation of Actions Act;
- iii. Whether the Defendants are entitled to the possession and ownership of land vide the principle of overriding interest, and land adverse possession;
- iv. What reliefs are the Parties entitled to from the suit.

101. On the first issue as to whether the Plaintiffs are legally and rightfully entitled to the proprietorship to all the suit land being L. R. No. Nyandarua/Olkalau South/1698, I find that upon analyzing the detailed contents of the pleadings and the submissions tendered by the parties hereof, it is not in dispute that Kainamia Muriame and Kakuria Munyao were the original co-joint owners respectively to all that property originally known as Plot No 90, land which they had been allocated the land by the Settlement Fund Trustee herein referred to as SFT, in the year 1966. Unfortunately, when it came to the formal registration of the parcel, the Settlement Fund Trustees stated it had no policy for a co-joint ownership and that the registration would only take place for one person.

102. Now this happens to be the main root cause, the undoing and genesis of the protracted dispute in this matter. For this reason parties agreed for Munyao Kakuria to be the one to be registered alone as the 'owner' of the land but on understanding that he was to hold it in trust for both of them. The suit land was thus registered as LR No. Nyandarua/Olkalau South/174. Indeed, SFT give both of them materials such as livestock- sheep, cows and iron sheet to enable the land owner easily start off and settle smoothly on the land. They lived well and cordially.

103. In the course of time there arose some untold differences between the two, culminating into the filing of several suits in High Court over the ownership of the suit land. Although the Defendants want to feign ignorance of the fact that there was a judgment in Nairobi HCCA No. 1994 of 1979, yet I find that indeed such judgment was delivered wherein a decree was issued on the 29th April, 1999 which it was held inter alia:-

'The Munyao Kakuria who had all along held the land i.e. Title Number Nyandarua/Olkalau South/174 in trust for the Plaintiffs, namely Peter Ngunyi, Kainamia, Peter Muraya Kainamia and John Muraya Kainamia and he must now do all the acts to facilitate the transfer of the 30 acres to the Plaintiffs in terms of the prayers in this Plaint dated 21st June, 1979.

104. The Plaintiffs extracted this decree and took it to the District Officer, Olkalou, hereinafter referred to as the DO, for his appropriate action and assistance in the enforcement of the decree. From the evidence on record, although the DO attempted to summon Munyao Kakuria on several occasions to appear and facilitate in the enforcement of the decree, it was without success wherein he advised the Plaintiffs to seek legal redress from the Court. The Plaintiffs filed an application in Court wherein they were granted the orders sought to wit the Deputy Registrar signed all the transfer documents as directed by the court.

105. In the month of May, 2001 the Plaintiffs approached the Land Registrar Nyahururu to enforce the orders but he insisted on the production of the old title deed to Plot Number 90, being No. 174 to be surrendered first as a condition to enable him issue new title deeds so as to factor the sub-division of the land into two (2) portions.

106. Munyao was compelled to surrender the old title deed but he declined to do so. This fact compelled the Land Registrar to cause a notice to be published in the Kenya Gazette being notice No. 6371. The notice informed all persons in possession of the old title to surrender it within 30 days otherwise it would be deemed to have got lost.

107. Upon the expiry of the 30 days, the two title deeds, namely LR No. 1627 for 30 acres and LR No. 1628 for 30 acres were issued accordingly. Based on this title deeds, the Plaintiffs acquired legal and absolute proprietorship to the suit land.

108. Section 24 of the Land Registration Act provides as follows

Subject to this Act—

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

109. Section 25 of the Land Registration Act provides as follows

The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever.....

110. From the evidence adduced in court, parties had continued to live in cordial relationship and harmony, cultivating the land and grazing their livestock on the land wherein the Plaintiffs had already put their portion of land into use. They also caused a sub-division of their share of said land and sold 5 acres to one Stephen in order to attain financial resources to meet their pressing obligations such as legal fees, construction of new houses, fencing and so forth.

111. It is quite evident from the evidence adduced that at no time were the Defendants willing to obey Court Orders. And they cunningly did this by feigning ignorance of the existence of same as proved by the evidence of DW 1 and DW – 2. Their ignorance was a sham keeping in mind that there was the existence of the Court proceedings and they had been represented by Counsel during this proceedings. Fundamentally, there is wanton need to emphasis that Court orders must be obeyed and executed. Their disobedience would lead to contempt of Court orders which have very serious ramifications and consequences bordering on criminal liability.

112. On second issue as to Whether the Plaintiffs actions are statue barred by provisions of the Limitation of Actions Act; I find that although the Defendants have so ably argued on the issue of law as regards the statute time limitation basing their arguments from the provisions of the Limitations Act and have also cited precedents extracts from useful publications, yet suffice to say that having applied my mind to the facts and the evidence adduced, I am not convinced that the Plaintiffs failed to enforce the execution of the judgment made by the High court on 29th April, 1999 within the stipulated period for reasons that;

113. I observed that the Plaintiffs followed this matter in a chronological sequence from the time the court order was issued. There was no time lost as alleged by the Defendants. Immediately upon attaining the decree, the Plaintiffs presented it to the DO for assistance. The DO tried to enforce it but was unsuccessful as Munyao Kakuria was not cooperative. In April, 2010 the Plaintiffs sought court assistance. On 21st September, 2001 a notice was published in the Kenya Gazette and thereafter a Certificate of Title deed to the suit land was issued.

114. The Plaintiffs then proceeded to sub-divide the same and even sold part of it to a third party. Clearly, from these brief facts, the enforcement of the judgment took place within the stipulated six (6) years from the date of issue. The Defendants cannot commence new proceedings for possession for the suit land as 12 years to justify adverse possession had not elapsed. The rights of the Plaintiffs as the decree holders has not been extinguished and therefore pursuant to the provisions of Section 17 of the Limitation of Actions Act, the Defendants as the Judgment debtors cannot acquire possessory title by adverse possession.

115. On the fourth issue for determination as to whether the Defendants are entitled to the possession and

ownership of the suit land vide the principle of overriding interest, and land adverse possession; I find that the Defendants, now as the Plaintiffs in their counter-claim have pleaded to be entitled to be registered as the owners of all that parcel of land known as LR No. Nyandarua/Olkalau South/1698, the suit land, by adverse possession.

116. The law is settled as anchored under Sections 7, 13, 17 and 38 of the Limitation of Actions Act.

117. Section 7 provides inter alia:

“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 is first accrued to some person through whom he claims, to that person”.

118. Section 13 is in these terms:

“(1) A right of action to recover land does not accrue unless the land is in possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession.....”

119. Section 17 is to the effect that upon the expiry of the period (12 years) prescribed by the Act for a person to bring an action to recover land, the title of that person to the land stands extinguished.

120. Finally Section 38 states:

(1) where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

121. As was stated by the Court of Appeal in the case of **Benjamin Kamau Murma & Others vs Gladys Njeri, C A No. 213 of 1996:**

“The combined effect of the relevant provisions of sections 7, 13 and 17 of the Limitation of Actions Act, Chapter 22 of the Laws of Kenya is to extinguish the title of the proprietor of land in favour of an adverse possessor of the same at the expiry of 12 years of adverse possession of that land.”

122. The onus is on the person or persons claiming adverse possession:

“.. to prove that they have used this land which they claim as of right: Nec vi, nec clam, nec precario (No force, no secrecy, no evasion). So the plaintiffs must show that the company had knowledge (or the means of knowing, actual or constructive) of the possession or occupation. The possession must be continuous. It must not be broken for any temporary purpose or by any endeavors to interrupt it or by any recurrent consideration”

123. The main the elements of adverse possession that a claimant has to prove include :

- i. actual,
- ii. open,
- iii. exclusive
- iv. and hostile possession of the land claimed.

Have the Defendants herein demonstrated the said elements?

124. As the facts of this case will clearly speak for themselves the Plaintiffs and Defendants have been engaged in long gruesome and protracted court battle from the year 1966 to date, over ownership and occupation of the suit land. It is not in dispute that the Defendants have and are currently in occupation of the land. However, I have taken judicial notice that the occupation of the land has **not been without secrecy, without force nor without permission**” of the Plaintiffs. Indeed, vide the Judgment and decree of the High Court, which found their title to be defective ordered that the same be cancelled through a very rigorous process of signing of the transfer, sub-division of the land and other documents relevant to the land transaction by the Deputy Registrar of High Court, the publication of the notice in the Kenya gazette by the land Registrar and a new certificate of title deed being Land reference numbers Nyandarua/Olkalaou South/1698 issued.

125. In the case of **Haro Yonda Juaje vs. Sadaka Dzenzo Mbauro (2014) eKLR** court held that adverse possession cannot be claimed against a title that is claimed to be defective.

One cannot succeed in a claim for adverse possession before conceding that indeed the registered proprietor of the land is the true owner of the said land. It does not lie in the mouth of a claimant to aver that the title held by the registered proprietor was fraudulently acquired and then claim the same parcel of land under the doctrine of adverse possession. If the Plaintiff's averment is that the title which was issued to the Defendant was fraudulently acquired, then his cause of action would be for the rectification of title by cancellation pursuant to the provisions of Section 143 of the Registered Land Act and not adverse possession. He cannot use the doctrine of adverse possession to go around the decision of the Minister.

126. It is well noted that, upon the demise of Munyao Kakuria, the Defendants proceeded to file Succession (Nakuru) cause No. 33 of 2009. During the confirmation of the grant, the suit land was listed as one of the assets for distribution to the beneficiaries. It is based on this order, that again hell broke loose wherein they stormed into the suit land, caused wanton destruction of property and threatened the life of the Plaintiffs in the year 2012. In the given circumstances, the Plaintiffs sought for alternative settlement elsewhere for the sake of peace, tranquility and their safety from eminent danger. Such interruption which was caused deliberately by the Defendants acting in bad faith, ill intention and mischievous circumstances cannot be deemed to have been subject to natural consideration.

127. Thus, in my considered opinion that the defence and counter claim by the Defendants of having acquired the suit land title through adverse possession automatically collapses as it is null and void ab initio.

128. In my considered view, the fact that there existed a protracted litigation between the Plaintiffs and the Defendants which led to the cancellation of the old title deed vide a gazette notice published by the land Registrar in the Kenya Gazette, the Plaintiffs having acquired a title deed, entered onto the suit land, used it for cultivation and grazing of their livestock and even caused a sub division of it and even sold off five (5) acres to a third party caused was a clear indication that the Defendants though in possession of the land but subject to the hearing and final determination of the Court case, there were so much interference on the rights, title and interest on the land. Thus, there could not be any overriding interest in existence to justify the defence of Land Adverse possession.

129. On the fourth issue as to what reliefs are the Parties entitled to, I find that from the evidence adduced, it is clear that the Plaintiffs are the Prima facie registered owners of the suit land known as L.R. No. Nyandarua/Olkalaou South/1698. Secondly, on the issue of eviction orders, I find that legal evictions are enforced where there exists an illegal, unlawful, wrongful and unauthorized occupation of a person on another's parcel of land. As per the statutes, legal eviction should be lawful as provided for in the provisions of Section 152 E of the Land (Amended) Act and in the decided case of **Satrose Ayuma & Others Vs. The Registered Trustees of the Kenya Railways Staff retirement benefits Scheme & Others Cons. Pet. No. 65 of 2010.**

130. Thirdly, it is on the issue of Mesne Profits. In accordance with - **“The Black Law Dictionary 9th edition** defines it as *“The profits of an estate received by a tenant in wrongful possession between two*

dates”.

According to the evidence adduced herein, the Plaintiffs had been in occupation of the suit land for a long while. But at some point, particularly after the Defendants obtained the grant from the Succession court, they stormed into the land threatening the life of the Plaintiffs and indiscriminately destroying of their properties and vegetation with glee. The apparent mayhem inevitably compelled the Plaintiffs to flee and seek for their dear life. As a result, the Plaintiffs were so inconvenienced and have continued to substantially incur a colossal sum for being absent from occupation and use of the land. On the contrary, the Defendants have been enjoying illegal income intended for the Plaintiffs.

131. The Plaintiffs sought for a sum of KSh 6,000,000/= unfortunately, they not provided the facts and prove on how they arrived at this figure. For that reason, this court will find it difficult to grant them the amount as prayed. By and large, and equitably they will need to be put to a place where they were before the infliction of the harm, dispossessed of their land.

132. The acts by the Defendants tantamount to one of trespassing and encroachment. Trespass is actionable at the instance of the person in possession of another. Proof of ownership is prima facie proof of possession. They are entitled to compensation to damages for the trespass. The principles of equity, conscience and natural justice dictates that the Plaintiffs ought to be fairly, adequately and promptly compensated for these loss knowingly meted upon them by the Defendants.

133. The main issue that arises is as to the measure of damages. In the case of **Esther Wanjugu Maina Vs. Zipporah Nduta Karanja [2018] eKLR** this court held that:

“I agree with the learned Judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded damages. The court in such circumstances is under a duty to assess the damage awardable depending on the unique facts and circumstances of each case...”

134. In conclusion, as mentioned at the beginning of judgment, this case is a culmination of a very protracted land dispute over the suit land ownership. I wish to wisely urge the parties herein who I perceive to be somehow related persons, to now put this matter to rest. As the adage goes, litigation must to come to end.

135. The net result is that I find and hold the Plaintiff’s suit against the Defendants has been proved on a balance of probabilities. I accordingly enter judgment in favor of the Plaintiff as against the Defendant and proceed to dismiss the Defendants’ defence and counter claim. I award the Plaintiff the following reliefs:

- i. An order for the 1st to 8th Defendants do deliver vacant possession of all that parcel of land known as Land reference numbers. Nyandarua/Olkalou South/1698 to the Plaintiffs being the absolute registered proprietors and demolish all the illegal structures thereof.
- ii. An order of permanent injunction granted against the 1st to 8th Defendants by themselves, their servants, employees, agents and/or proxies restraining them from sub – dividing, fencing, removing beacons, cutting trees, entering, encroaching, remaining, using, cultivating or in any manner interfering with all that parcel of land known as Land reference numbers. Nyandarua/Olkalou South/1698.
- iii. An order of eviction from the suit land by the Defendants within the next 60 days from this date hereof. In default forceful eviction to be made at the Defendants costs
- iv. The OCPD and OCS in charge of Olkalou Police Station to ensure that these orders are complied with without failure.
- v. Mesne Profits of a sum of Kshs. 1,000,000/= to the Plaintiffs for the period the Defendants have

used and been in occupation of the suit land.

vi. I award an amount of Kshs 100,000/= to the Plaintiff as compensation for the infringement of their right to use and enjoy their suit properties occasioned by the Defendant's trespass.

vii. The costs of the suit is awarded to the Plaintiffs.

It is ordered

Dated and delivered at Nyahururu this 10th day of December 2019.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE