



Mugwika (Suing through his Next Friend- Mwitaiti Misheck Kimathi) v Mbuihi & 3 others (Environment and Land Case E006 of 2023) [2025] KEELC 5357 (KLR) (15 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5357 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND CASE E006 OF 2023**

**BM EBOSO, J
JULY 15, 2025**

BETWEEN

**MWITAITI MUGWIKA PLAINTIFF
SUING THROUGH HIS NEXT FRIEND- MWITAITI MISHECK KIMATHI**

AND

**CARLO MICHENI MBUIHI 1ST DEFENDANT
ELIZABETH WAKONYO MAGIRI 2ND DEFENDANT
ALEX MURIUKI M'MBIJIWE 3RD DEFENDANT
THE LAND REGISTRAR - MERU 4TH DEFENDANT**

JUDGMENT

Introduction

1. Vide an amended plaint dated 31/1/2024, the plaintiff Mwitaiti Mugwika, seeks a declaration that the excision of parcel numbers Abothuguchi/Makandune/527 (which subsequently mutated to Abothuguchi/Makandune/ 1674-1676] and the excision of Abothuguchi/Makandune/610 out of parcel number Lower-Abothuguchi/107 [sic] was fraudulent and thus wrongful/unlawful, hence the said titles are null and void. Secondly, he prays for an order cancelling the said titles and decreeing re-issuance of a new title relating to Lower-Abothuguchi/ 107 [sic] bearing the correct acreage of approximately 26.70 acres. He further seeks damages/ mesne profits for loss of use. Lastly, he prays for costs of the suit.
2. Some of the key issues which this court is expected to determine are: (i) Whether, on finalization of the land adjudication exercise in the area, the plaintiff was adjudicated to be registered as proprietor of 26.70 acres; and (ii) Whether parcel number Abothuguchi/Makandune/527 and Abothuguchi/



Makandune/ 610 were illegally excised from parcel number Lower-Abothuguchi/Makandune /107 through collusion and fraud after the finalization of the adjudication process. Before I analyse and dispose the issues that fall for determination, I will briefly outline the parties' respective cases, evidence and submissions.

Plaintiff's Case and Evidence

3. The plaintiff initiated the suit through a plaint dated 3/4/2023. The three initial defendants were: (i) Carlo Michei Mbuihi; (ii) M'Mbijiwe M'Kura; and (iii) the Land Registrar – Meru. The plaint was amended on 31/1/2024. Through the amendments, M'Mbijiwe M'Kura was removed from the suit. Secondly, Elizabeth Wakonyo Magiri and Alex Muriuki M'Mbijiwe were joined as defendants. The plea for joinder was made by the duo.
4. At the commencement of trial, the plaintiff disowned his written statement. This prompted his counsel to apply for an adjournment. An application dated 19/9/2024 was subsequently filed, through which leave for substitution of the plaintiff was sought. By consent, the plea for substitution was granted by the Court [Yano J] on 23/10/2024 on the ground that the plaintiff had lost mental capacity. This brought on board the plaintiff's son, Mwitaiti Misheck Kimathi, as a next friend of the plaintiff.
5. The plaintiff's case is that, during demarcation his land measured approximately 44.10 acres but reduced gradually when some portions were ceded by him and given out. He identifies the ceded portions as: (i) 11.80 acres ceded to Kanywee Primary School; (ii) 0.97 acres ceded as easements/road; and (iii) 3 acres ceded to the Salvation Army Church, together making a total of 15.77 acres. He contends that upon ceding the above portions, he remained with 26.70 acres.
6. The plaintiff contends that without his knowledge and consent, parcel number Abothuguchi/Makandune/610 was unlawfully excised out of his land and was allocated to the 3rd defendant [sic]. He adds that, while this suit was pending disposal, the 3rd defendant acquired ownership of land parcel number Abothuguchi/Makandune/610 which initially was in the name of one M'Mbijiwe M'Kura and a title relating to the said parcel was issued to the 3rd defendant by the 4th defendant on 13/4/2023. The plaintiff contends that there was collusion between the 3rd and the 4th defendants, adding that the transfer from M'Mbijiwe M'Kura to the 3rd defendant was aimed at defeating the ends of justice.
7. The plaintiff adds that in 2005, Meru Central Land Disputes Tribunal Case No. 98 of 2005 involving him and Margaret Marete was lodged and the Land Disputes Tribunal made an award for subdivision of Abothuguchi/Makandune/107 [sic] into four (4) portions namely, Abothuguchi/Makandune /1674, 1675, 1676 and 1677. The said award was subsequently set aside by this Court [Cherono J] on 14/6/2018 in Meru ELC JR Case No. 163 of 2006. The plaintiff contends that, for the above reason, the 3rd defendant cannot be said to have lawfully acquired title to Abothuguchi/Makandune/1674 – 1676 as a result of the subdivision of Abothuguchi/Makandune/527. He adds that the 1st, 3rd and 4th defendants colluded and ignored the above court judgment and procured titles relating to Abothuguchi/Makandune/1674 – 1676 in the name of the 3rd defendant through collusion and fraud. He has itemized various particulars of fraud and collusion.
8. Mwitaiti Misheck Kimathi [the plaintiff's next friend] was the only witness who testified in support of the plaintiff's case. He testified as PW1. He described himself as a son to the plaintiff, adding that he was brought on board after his father lost mental capacity. He adopted his father's witness statements dated 3/4/2023 and 31/1/2024. He produced the 10 documents contained in the plaintiff's two bundles.
9. In summary, PW1's evidence was that, land demarcation took place in Abothuguchi Area in the 1970s. The plaintiff was allocated parcel number Lower-Abothuguchi/Makandune/ 107 which measured approximately 44.10 acres but some portions were given out for: (i) a school; (ii) a church; and (iii)



a road. The plaintiff remained with about 26.7 acres. He added that, without the knowledge of the plaintiff, two parcels, Abothuguchi/Makandune/527 and 610 were excised out of the suit land and were allocated to and registered in the names of Carlo Micheni Mbuihi [1st defendant] and M'Mbijiwe M'Kura in 1993 and 2001 respectively. He contended that the said allocations and registrations were unlawful/illegal because they were "actuated by fraud" between the duo and the Land Registrar.

10. PW1 added that he could not confirm whether M'Mbijiwe M'Kura was dead, adding that all they knew was that on excision of parcel number Abothuguchi/Makandune/610, the said parcel was registered in the name of M'Mbijiwe M'Kura and was subsequently transferred to Alex Muriuki M'Mbijiwe in April 2023. PW1 added that the award in Meru Central LDT Case No 98 of 2005 which had ordered subdivision of Abothuguchi/Makandune/107 was set aside, hence Elizabeth Wakonyo Magiri cannot allege that she bought parcel number Abothuguchi/Makandune/1674-1676 from the 1st defendant.
11. During cross-examination, PW1 testified that none of the defendants in this suit was a party to Meru Central LDT Case No. 98 of 2005, adding that none of the defendants was a party to the subsequent judicial review case, Meru JR Case No. 163 of 2006. He added that the plaintiff lost mental capacity in 1987. PW1 further testified that the plaintiff had not collected his title to the suit land, adding that the plaintiff was in occupation of only 7 acres. Towards the tail end of his testimony, he stated that the plaintiff was in occupation of 9 acres.
12. PW1 further testified in cross-examination that during land adjudication, the plaintiff occupied 44 acres, adding that on conclusion of the adjudication process, he was left with 26 acres because part of the 44 acres was ceded for establishment of a public school, a church and a public road. He stated that the plaintiff did not lodge any dispute under the [Land Adjudication Act](#). He added that he had not examined the land registers relating to the titles held by the defendants

Case and Evidence of the 1st Defendant

13. The 1st defendant [Carlo Micheni Mbuihi] filed a statement of defence dated 3/5/2023. He averred that M'Mbijiwe M'Kura having died in 2015, the plaintiff's suit against him [M'Kura] was fatally defective and incompetent. He added that his interest in parcel number Abothuguchi/Makandune/527 ceased in 2003. He denied the allegation that parcel number Lower-Abothuguchi/Makandune/107 measured 44.10 acres. He added that parcel number Abothuguchi/Makandune/527 previously belonged to Jeremiah Mburugu M'Rintaugu who charged the land to Kenya Commercial Bank Limited and the Bank subsequently sold the land in a public auction and transferred it to him in 1983. He denied the allegation that the said land belonged to the plaintiff. He denied the allegations of fraud. He contended that the plaintiff's suit was statute-barred under the [Limitation of Actions Act](#). He urged the court to dismiss the plaintiff's suit.
14. The 1st defendant subsequently testified as DW1. He adopted his witness statement dated 20/3/2024. He produced a total of 8 exhibits. His testimony was that the original owner of parcel number Abothuguchi/Makandune/527 was Jeremiah Mburugu M'Rintaugu who charged the land to Kenya Commercial Bank Limited [the Bank]. He added that the said chargor failed to service the loan and the Bank sold the land through public auction. He purchased the land in in a public auction in 1983. In 2003, he subdivided the land into three (3) portions; Abothuguchi/Makandune/1674, 1675 and 1676. He transferred parcel numbers 1674 and 1675 to Ashford Donald Michemi and Alex R. Njeru who subsequently sold the two parcels to Elizabeth Wakonyo Magiri. He also sold parcel number 1676 to Elizabeth Wakonyo Magiri. It was his evidence that Elizabeth Wakonyo Magiri and her husband, Julius Kirimi Magiri, had extensively developed the three parcels. He added that the plaintiff had never sued him in any other litigation in relation to the land.

Case and Evidence of the 2nd Defendant



15. The 2nd defendant filed a statement of defence and counterclaim dated 4/3/2024. Her case was that she purchased land parcel numbers Abothuguchi/ Makandune/ 1674, 1676 and 1676 for valuable consideration and she was subsequently registered as proprietor of the three parcels. She denied the contention that parcel number Abothuguchi/Makandune/107 previously measured 44.10 acres, adding that parcel number Abothuguchi/Makandune/527 previously belonged to Jeremiah Mburugu M'Rintaugu who charged the land to Kenya Commercial Bank Limited and the Bank subsequently sold the land in a public auction and transferred it to the 1st defendant. It was the 2nd defendant's case that at no time did the three parcels belong to the plaintiff.
16. The 2nd defendant added that she was not privy to Meru ELC JR Case No. 163 of 2006, adding that her parcels were not affected by Meru ELC JR Case No. 163 of 2006. The 2nd defendant added that demarcation of Lower-Abothuguchi/ Makandune/107 was done under the provisions of the [Land Adjudication Act](#) and the [Land Consolidation Act](#), adding that the plaintiff was obligated to follow the dispute resolution mechanism set out under the said statutes. She stated that the plaintiff's claim was statute-barred under the [Limitation of Actions Act](#).
17. By way of counterclaim, the 2nd defendant averred that the plaintiff was seeking to trespass on her three parcels. She prayed for an order of permanent injunction restraining the plaintiff and his agents/ servants against trespassing on or interfering with the three parcels. She urged the court to dismiss the plaintiff's suit and allow her counterclaim. She prayed for costs of the primary suit and the counterclaim.
18. The 2nd defendant testified as DW2. She adopted the contents of her written witness statement dated 20/3/2024. She relied on the documents produced by the 1st defendant. She stated that she was the registered proprietor of Abothuguchi/Makandune/1674, 1675, and 1676, adding that due process was followed before she bought the three parcels. She added that she took possession of the three parcels in 2003 and 2005 and had developed them. She stated that she had never been a party to any other case involving the plaintiff or involving parcel number Lower-Abothuguchi/Makandune/107.

Case and Evidence of the 3rd Defendant

19. The 3rd defendant filed a statement of defence and counterclaim dated 4/3/2024. He denied the allegation that parcel number Lower-Abothuguchi/Makandune/107 measured 44.10 acres. He added that the plaintiff's claim was statute barred under the [Limitation of Actions Act](#). He averred that his late father, M'Mbijiwe M'Kura, purchased parcel number Abothuguchi/Makandune/610 from one Fredrick Kimathi M'Aritho in 2001, adding that the said seller was the first registered proprietor of parcel number Abothuguchi/Makandune/610. He stated that Fredrick Kimathi M'Aritho was registered as proprietor of parcel number Abothuguchi/Makandune/610 upon finalization of the land adjudication process in the area.
20. The 3rd defendant testified as DW3. He adopted his witness statement dated 20/3/2024. He stated that he was a son to the late M'Mbijiwe M'Kura who was initially sued as the 2nd defendant. He added that he was the administrator of his late father's estate and that he was registered as proprietor of parcel number Abothuguchi/Makandune/610 through transmission.
21. DW3 stated that the late M'Mbijiwe M'Kura purchased parcel number Abothuguchi/Makandune 610 in 2001 from one Fredrick Kimathi who was the first registered proprietor of the land, adding that Fredrick Kimathi was registered as proprietor of the land upon finalization of the land adjudication process.

Plaintiff's Submissions



22. The plaintiff filed written submissions dated 1/4/2025, through M/s Gori Ombongi & Company Advocates. Counsel submitted that the plaintiff was allocated parcel number Lower-Abothuguchi/Makandune/107 during demarcation in the 1970s, adding that the parcel measured approximately 44.10 acres. Counsel added that some portions of the land were given out for a school, a church and a road easement, leaving 26.7 acres. Counsel submitted that through the collusion of the defendants and the Land Registrar, parcel numbers Abothuguchi/Makandune/527 and 610 were excised out of the 26.7 acres in 1993 and 2001. Counsel termed this as fraud.
23. Making reference to Plaintiff Exhibit No. 5 which he described as an authenticated Sketch Plan of Lower -Abothuguchi/Makandune/107, counsel submitted that the plaintiff's land was 44.10 acres but was unlawfully or irregularly reduced to 10.33 acres without his knowledge or consent. Making reference to Plaintiff Exhibit 6, counsel argued that the plaintiff's land was reduced from 26.7 acres to 9.78 acres when parcel numbers Abothuguchi/ Makandune/527 and 610 were excised out of the land.
24. Counsel added that parcel number Abothuguchi/ Makandune/1674, 1675 and 1676 were surveyed as a result of the award in Meru Central Land Dispute Tribunal Case No. 98 of 2005, adding that the said award was annulled by the ELC in Meru High Court JR Case No. 163 of 2006.

1st, 2nd and 3rd Defendants' Submissions.

25. The 1st - 3rd defendants filed written submissions dated 16/4/2025 through M/s Kiogora Arithi & Associates. Counsel for the three defendants submitted that the 1st defendant bought Abothuguchi/Makandune/527 from Kenya Commercial Bank Ltd in 1983, adding that the said parcel was registered in the name of one Jeremiah Mburugu M'Rintaru who used the land as a collateral and subsequently failed to service the loan granted to him by the Bank. Counsel submitted that as per the exhibited extract of the relevant land register, the land was registered in the name of Jeremiah Mburugu M'Rintaru on 24/9/1977.
26. Counsel further submitted that in 2003, the 1st defendant subdivided the land into three parcels, Abothuguchi/ Makandune/ 1674,1675, and 1673. Counsel added that in 2003, the 1st defendant sold Abothuguchi/Makandune/ 1676 to the 2nd defendant. He submitted that the 1st defendant sold Abothuguchi/Makandune/1674 and 1675 to one Ashford Donald Micheni and one Alex R. Njeru, respectively, who later sold the said two parcels to the 2nd defendant.
27. Counsel argued that the 2nd defendant had been in occupation of the said parcels since 2003 without interruption. Counsel further submitted that the 3rd defendant became a party to this suit in place of his deceased father, M'Mbijiwe M'Kuura. Counsel added that M'Mbijiwe M'Kuura bought land parcel number Abothuguchi/ Makandune/610 from Fredrick Kimathi M'Aritho. Counsel further submitted that after the death of M'Mbijiwe M'Kuura, the 3rd defendant filed Nkubu Succession Cause No. E147 of 2018 and after confirmation of the grant in the said cause, Abothuguchi/Makandune/610 was registered in his name.
28. On whether the 1st-3rd defendants acted fraudulently in obtaining the parcels, counsel argued that all the parcels claimed by the plaintiff were registered on the same date, 24/9/1977. Counsel questioned why the plaintiff did not sue

the original owners earlier or at all. Counsel added that no evidence had been adduced by the plaintiff in support of the allegation of fraud by the defendants. Counsel relied on the pronouncement in the case of Simon Kyunguti vs Kryshali Enterprises Ltd (2019) eKLR in which the court adopted the pronouncement made in the case of Anne Wambui Ndiritu vs Joseph Kiprono Ropkoi & another (2004) 1EA 334.



29. On whether the threshold for proving fraud was met, counsel relied on the case of Orieny & another v National Bank of Kenya (Civil Appeal E016 of 2023 (2024) and argued that the plaintiff had not met the threshold. Counsel contended that the plaintiff had not adduced any evidence to demonstrate fraud on part of the defendants. Counsel added that the 1st defendant owned parcel number Abothuguchi/ Makandune/527 from 1983 to 2003 without any interruption or contestation. Counsel further submitted that the 2nd defendant was in continuous occupation of Abothuguchi/ Makandune /1674, 1677 and 1676 from 2003. Counsel observed that the 3rd defendant's father enjoyed peaceful possession of Abothuguchi/Makandune/ 610 from 2001, adding that if the plaintiff was affected by the registrations he should not have waited for over 40 years to institute the suit.
30. Counsel further submitted that during the 1st session of trial hearing, the plaintiff was unable to testify and his advocate applied for substitution of the plaintiff on the ground of mental incapacity, adding that the plaintiff was subsequently substituted with his son, Misheck Mugwika. Counsel observed that in the previous cases instituted by the plaintiff, such as ELC JR No. 163 of 2006 and Land Tribunal Case No.98 of 2006, the plaintiff acted in person without claiming mental incapacity. Counsel argued that there was doubt about the plaintiff's truthfulness.
31. Counsel further argued that land parcel numbers Lower-Abothuguchi/Makandune/107, 527 and 610 were separate and distinct properties which were registered in the names of three different individuals. Counsel urged the court to dismiss the plaintiff's suit with costs.

Analysis and Determination

32. The court has considered the parties' pleadings, evidence and submissions. The court has also considered the relevant legal frameworks and the jurisprudence relevant to the issues that fall for determination in the suit. The key issues that fall for determination in the suit are: (i) Whether, on finalization of the land adjudication exercise in the area, the plaintiff was adjudicated to be registered as proprietor of 26.70 acres; (ii) Whether parcel numbers Abothuguchi/Makandune/527 and 610 were illegally excised from parcel number Lower -Abothuguchi/Makandune/107 through collusion and fraud post-adjudication; (iii) Whether any of the defendants was privy to the collusion and fraud alleged by the plaintiff; (iv) Whether the plaintiff's claims are statute-barred under the Limitation of Actions Act; (v) Whether the plaintiff is entitled to the reliefs sought in the primary suit; (vi) Whether the 2nd defendant is entitled to the reliefs sought in her counter claim; (vii) Whether the 3rd defendant is entitled to the reliefs sought in his counterclaim; and (viii) What orders should be made in relation to costs of this suit. The court will be brief and will analyse and dispose the eight issues sequentially in the above order.
33. As a general principle of the law of evidence, he who alleges bears the burden of proof. This principle has been codified into statute law under Sections 107 and 109 of the Evidence Act. The two sections provide as follows:
 - “ 107 (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

109 The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”



34. Was the plaintiff adjudicated to be registered as proprietor of 26.7 acres on finalization of the land adjudication exercise in the area? The [Land Adjudication Act](#) is a special legislation enacted to provide a framework for ascertainment and recording of rights and interests in trust land and for purposes connected with and incidental to the process of land adjudication. It contains elaborate frameworks on how rights and interests in land are to be ventilated and ascertained. It also provides an elaborate dispute resolution mechanisms, including appeal mechanisms. At the tail end of the adjudication exercise is the statutory process of preparing the adjudication register under Section 24 of the Act. The adjudication register contains the demarcation map and the adjudication records and bears the parcel number, the acreage and the ascertained proprietor.
35. Under Section 25 of the Act, when the adjudication register has been completed, the adjudication officer is required to certify on the adjudication record and on the adjudication map and deliver the record to the Director of Land Adjudication. He is also required to display the original adjudication register for inspection by the public. Thirdly, he is required to give notice that the adjudication register has been completed and may be inspected.
36. Any land owner who is aggrieved by the adjudication register is required to lodge an objection to the adjudication officer under Section 26 of the Act. The adjudication officer is required to hear the parties involved, consider the objection and render a determination on the objection. Any party aggrieved by the decision of the adjudication officer is required to lodge an appeal to the Minister under Section 29 of the Act within 60 days.
37. On expiry of the time for lodging objections, the Director of Land Adjudication forwards the adjudication register to the Chief Land Registrar for the purpose of registration and issuance of titles. Where a parcel is affected by a pending appeal, a restriction is entered in the register and the registration is made subject to the determination in the pending appeal.
38. There was common ground that land adjudication in Abothuguchi Area took place in the 1970s. Secondly, the extracts of the land registers relating to Lower- Abothuguchi/Makandune/107, Abothuguchi/Makandune /527 and Abothuguchi/Makandune 610 all indicate that the three land registers were all opened on 24/9/1977 and the three parcels were registered on the same day, 24/9/1997.
39. Thirdly, the plaintiff elected not to join as parties to the suit the relevant Adjudication Officer, the Director of Land Adjudication, and the Chief Land Registrar. These are the parties who would have availed the adjudication registers that culminated in the relevant titles. The only land adjudication document which the plaintiff exhibited is what he described as “Schedule of Acreage”. The said exhibit is expressed as having been certified by the Sub County Land Adjudication and Settlement Officer for Imenti North/Imenti South/ Meru Central/ Buuri. The said exhibit produced by PW1 indicates that the plaintiff was adjudged to be entitled to 10.33 acres.
40. The plaintiff did not tender evidence of any objection or any appeal which he lodged to challenge the land adjudication decision which awarded him 10.33 acres. Indeed, PW1 confirmed in his testimony that the plaintiff did not raise any objection or lodge any appeal to the Minister.
41. No evidence was tendered by the plaintiff to demonstrate that upon finalization of the adjudication exercise relating to the 44 acres that he alleged to have gathered, he was adjudged to be registered as proprietor of the 26.70 acres that he claims. It is clear from the testimony of PW1 that the plaintiff did not pay much attention to the adjudication exercise. He did not appreciate the importance of the land adjudication exercise and the need to pursue the statutory dispute resolution mechanisms within the



framework of the *Land Adjudication Act*. Indeed, PW1 confirmed that up to the time of trial in this suit, the plaintiff had not challenged the adjudication decisions and had not bothered to collect his title.

42. The totality of the foregoing is that, the plaintiff failed to prove that, on finalization of the land adjudication exercise in Abothuguchi Area, he was adjudicated to be registered as proprietor of 26.70 acres of land as claimed in this suit. I now turn to the next two issues which revolve around the allegation of fraud on part of the defendants.

43. Were parcel numbers Abothuguchi/Makandune/527 and 610 illegally excised out of parcel Lower-Abothuguchi/ Makandune/107 through collusion and fraud of the defendants post-adjudication? The prevailing jurisprudence on the threshold for proof of fraud was aptly outlined in the case of *Vijay Marjaria v Nansingh Madhusingh Darbar & another* [2000] eKLR as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleadings. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

44. In *Koinange & 13 Others v Charles Karuga Koinange* [1986] KLR the court held that:

“When fraud is alleged by the plaintiffs, the onus is on the plaintiffs to discharge the burden of proof. Allegations of fraud must be strictly proved, although the standard of proof may not be so heavy as to require proof beyond a reasonable doubt, something more than a balance of probabilities is required.”

45. In *Ndolo v Ndolo* [2008] 1KLR (G & F) 742 the court outlined the relevant principle as follows:

“Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely; proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases...”

46. All the above three parcels were products of the land adjudication process. Their respective land registers were opened on the same day, 24/9/1977, following finalization of the land adjudication exercise. The only land adjudication document which the plaintiff exhibited shows that the plaintiff was adjudicated to be entitled to 10.33 acres. No evidence of subsequent post-registration excision was tendered by the plaintiff.

47. If the plaintiff was aggrieved by the land adjudication process that gave rise to parcel numbers Abothuguchi/ Makandune/527 and 610, there were statutory redress remedies available to him. He elected to ignore those remedies. He came to this court alleging collusion and fraud. He elected to omit key parties to the impugned registrations [the first registered proprietors, namely, Jeremiah Mburugu M'Rintaugu and Fredrick Kimathi]. He was not able to prove collusion and fraud on part of those he sued. For the above reason, the finding of the court on the second issue is that no evidence was tendered to prove that parcel numbers Abothuguchi/Makandune/527 and 610 were illegally excised from lower-Abothuguchi/Makandune/107 after finalization of the land adjudication exercise.

48. Were the defendants or any of them privy to the collusion and fraud alleged by the plaintiff? The court has made a finding to the effect that the three parcels at the centre of this dispute were all



products of the land adjudication exercise. Secondly, evidence was tendered demonstrating that on finalization of the land adjudication exercise, the person adjudicated to be registered as proprietor of Abothuguchi/Makandune/527 was Jeremiah Mburugu M'Rintaugu. He was registered as the first registered proprietor of the said parcel on 24/9/1977.

49. The exhibited extract of the relevant land register reveals that Jeremiah Mburugu M'Rintaugu charged parcel number Abothuguchi/Makandune/527 to Kenya Commercial Bank to secure a loan of Kshs. 15,000/=. The exhibited extract of the relevant land register reveals that the chargee subsequently transferred the said parcel to Carlo Micheni Mbuihi. For reasons only known to the plaintiff, he elected not to join Jeremiah Mburugu M'Rintaugu and the Bank as defendants in this suit. He did not lead any iota of evidence demonstrating collusion or fraud on part of the 1st defendant.
50. Similarly, the exhibited extract of the land register relating to Abothuguchi/Makandune/610 reveals that the said parcel was a product of the land adjudication exercise and was opened on 24/9/1977. The first registered proprietor of the parcel was Fredrick Kimathi. M'Mbijiwe M'Kuura acquired the land in 2001 through purchase. Again, the plaintiff elected not to join Fredrick Kimathi as a defendant in this suit. Clearly, having failed to join, as defendants, the two respective first registered proprietors of the two parcels, the plaintiff cannot be said to have made any serious attempt at impeaching the titles held by 2nd and 3rd defendants.
51. Elizabeth Wakonyo Magiri was a purchaser of the subdivisions that were surveyed out of parcel number Abothuguchi/Makandune/527. There was no evidence of fraud or collusion on her part.
52. The plaintiff relied on the judgment in Meru ELC JR Case No. 163 of 2006 in which this Court [Cherono JJ] issued an order of certiorari quashing the award of the Land Disputes Tribunal. None of the defendants was a party to the said judicial review application. Secondly, the question of ownership of the suit lands by the defendants was not the subject of determination in the said case. Consequently, the cited Judgment does not prove fraud on part of the defendants.
53. The totality of the foregoing is that the plaintiff did not prove collusion and fraud on part of the defendants.
54. Are the plaintiff's claims statute-barred under the *Limitation of Actions Act*? The plaintiff's suit is an action for recovery of land. Under Section 7 of the *Limitation of Actions Act*, the limitation period for an action for recovery of land is 12 years. The land adjudication exercise in Abothuguchi Area was done in 1970s. The statutory processes, including the publishing of the adjudication register were done in the 1970s. The three parcels at the centre of the dispute were subsequently registered on 24/9/1977. The plaintiff did not bother to challenge the registrations through action. This suit was brought 46 years after the impugned registrations had been effected. The 12 years limitation period for challenging the registrations lapsed in 1989. Consequently, the plaintiff's suit was clearly statute-barred. That is the finding of the court on this issue.
55. Having come to the above findings on the four issues, it follows that the plaintiff failed to prove his case to the required standard. Consequently, the reliefs sought by the plaintiff against the defendants are unavailable.
56. The two issues on whether the 2nd and 3rd defendants are entitled to the reliefs sought in their respective counterclaims are related. They will be analysed and disposed contemporaneously. The two defendants sought orders of permanent injunction restraining the plaintiff against trespassing on or interfering with their respective parcels of land. They also sought costs.
57. The two defendants are registered proprietors of their respective parcels. The 2nd defendant purchased her three parcels from Carlo Micheni Mbuihi, Ashford Micheni and Alex Njeru. She tendered evidence



of purchase. On his part, the 3rd defendant led evidence proving that his parcel was purchased by his late father in 2001 from Fredrick Kimathi. He was registered as proprietor of the land after obtaining a confirmed grant relating to the estate of his late father, M'Mbijiwe M'Kura.

58. Through the primary suit, the plaintiff laid claim to the parcels that are owned by the two defendants. The court has made a finding to the effect that the plaintiff failed to impeach the titles held by the two defendants.
59. Article 40 of *the Constitution* and Sections 25 and 26 of the *Land Registration Act* protect registered title to land. The plaintiff having laid what has been found to be an unmerited claim of ownership over parcels that belong to the two defendants, the court is satisfied that the plaintiffs are justified in seeking permanent injunctive orders against the plaintiff. For the above reasons, the court finds that the two defendants are entitled to prayer (b) of their respective counterclaims.
60. On costs of the suit, it has emerged that the plaintiff does not have mental capacity. Indeed, PW1 testified that the plaintiff lost mental capacity in 1987. What is not clear is why this suit was filed in the name of the plaintiff in 2023 in the first place. If indeed the plaintiff lost mental capacity in 1987, there is doubt that he knew about this suit and appreciated its tenor and import at the time of its institution in 2023 and at the time of substitution. Taking into account the fact that substitution was by consent and no plea was made to condemn the next friend to bear costs of the suit, no award of costs will be made.

Disposal Orders

61. In the end, the primary suit and the counterclaims by the 2nd and 3rd defendants are disposed as follows:
- a. The suit by the plaintiff is dismissed for lack of merit.
 - b. The counterclaim by the 2nd defendant is allowed in terms of prayer (b).
 - c. The counterclaim by the 3rd defendant is allowed in terms of prayer (b).
 - d. In light of the fact that the plaintiff was confirmed to have lost mental capacity and was, by consent, substituted by a next friend in the course of trial, there will be no award of costs.

DATED SIGNED AND DELIVERED AT MERU THIS 15TH DAY OF JULY, 2025

B M EBOSO [MR]

JUDGE

In the Presence of

Mr. Makura for the Plaintiff

Mr. Kithure for the 1st, 2nd and 3rd Defendants

Court Assistant – Tupet

