



REPUBLIC OF KENYA



KENYA LAW
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**Kimaai v Kirindon Secondary School & another (Environment & Land
Case 302 of 2013) [2025] KEELC 378 (KLR) (3 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 378 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE 302 OF 2013**

EM WASHE, J

JANUARY 3, 2025

BETWEEN

PAUL KOIYANTO KIMAAI PLAINTIFF

AND

KIRINDON SECONDARY SCHOOL 1ST DEFENDANT

DISTRICT LANDS REGISTRAR, TRANSMARA 2ND DEFENDANT

JUDGMENT

1. The Plaintiff herein through the Amended Plaintiff dated 05.06.2023 sought the following Orders against the 1st and 2nd Defendants herein; -
 - a. A declaration that the Plaintiff is the only lawful and the beneficial owner of the suit property and is therefore entitled to have his name entered in the register.
 - b. A permanent injunction to restrain the 1st Defendant by itself, servants and/or agents from evicting the Plaintiff from the suit property or in any way interfering with possession, occupation and use of its suit property.
 - c. An Order directed to the 2nd Defendant to rectify the register by way of removing the 1st Defendant's name and replacing with the Plaintiff's name as the registered proprietor of the suit property.
 - d. Costs of the suit.
2. The facts in support of the Plaintiff's case can be summarised as follows; -
 - a. The Plaintiff was and is the legal occupant and owner of the property known as L.R No. Transmara/Kimintet "C"/34 (hereinafter referred to as "the suit property") located within Kirindon area of Transmara District.



- b. The Plaintiff's occupation and use of the suit property began in the year 1977 and is still ongoing over 40 years thereafter.
 - c. The Plaintiff further stated that the portion of land which constitutes the suit property was part of the Kimintet Ranch which he was a member based on the fact that this was their ancestral home having been passed down by his forefathers.
 - d. However, in the 1990's, the Kimintet Ranch was sub-divided and/or adjudicated unlawfully and without following laid down procedures under the [Land Adjudication Act](#) and the portion of land within which the Plaintiff occupies was allocated to the 1st Defendant.
 - e. The Plaintiff states that after this illegal and unlawful allocation of the suit property to the 1st Defendant, he raised his objection to the Government Departments but the said complaints were never addressed.
 - f. The 2nd Defendant on the other hand, dispute the illegal and unlawful allocation of the suit property to the 1st Defendant proceeded to secretly open a register and issue the Certificate of Title in the name of the 1st Defendant.
 - g. It was only in the year 2012 that the Plaintiff discovered that the 2nd Defendant had also unlawfully and illegally issued a Title Deed of the suit property in the name of the 1st Defendant which he now prays should be cancelled and/or rectified and recorded in his name.
 - h. The Plaintiff under Paragraph 15 pleaded various particulars of Fraud perpetrated by the 1st Defendant to unlawfully and illegally obtain the Title Deed of the suit property.
 - i. The Plaintiff further alleged that the 1st Defendant has not been established any structures on the ground and is just a name on paper.
 - j. In conclusion therefore, the Plaintiff sought this Court to grant the orders sought in the Amended Plaint.
3. The Amended Plaint was duly served on the 1st and 2nd Defendants who opposed it by filling a Statement of Defence and Counter-Claim dated 01.11.2023.
 4. The 1st and 2nd Defendants in their Statement of Defence and Counter-Claim pleaded as follows; -
 - a. The 1st and 2nd Defendants denied the allegation that the Plaintiff was the legal and/or lawful owner of the suit property herein.
 - b. The 1st and 2nd Defendants pleaded that during adjudication, the Plaintiff was allocated another property known as L.R No. Transmara/Kimintet "C"/75 on the 14.12.1990 and subsequently issued with a Title Deed on the 10.12.1993 on the understanding that he was to relocate from the suit property which had been earmarked for a public school.
 - c. However, the Plaintiff herein failed and/or refused to vacate and/or move out of the suit property despite the said understanding and indeed the development of the infrastructures to support the 1st Defendant have not been done due to the Plaintiff's occupation on the suit property.
 - d. The 1st and 2nd Defendants therefore pleaded that the Plaintiff's suit is incompetent, frivolous, vexatious and an abuse of the Court process hence should be dismissed forthwith.
 5. Further to the above, the 1st and 2nd Defendants through their Counter- Claim pleaded as follows; -



- a. The 1st Defendant herein was allocated the suit property by the Land Adjudication committee after a decision by the community was arrived at that a secondary school be established for the benefit of the community therein.
 - b. Based on this decision, all the community members that were residing within the portion of land earmarked for the secondary school were reallocated to other portions of land including the Plaintiff who was allocated the property known as L.R No. Transmara/Kimintet "C"/75 and issued with a Title Deed on the 14.12.1993.
 - c. The suit property was then recorded in the name of the 1st Defendant and a Title Deed subsequently issued on the 09.10.2007.
 - d. However, the Plaintiff despite being allocated the property known as L.R No. Transmara/Kimintet "C"/75 and a Title Deed issued in his name has refused to vacate and/or relocate from the suit property to the detriment of the 1st Defendant and the entire community.
 - e. Consequently, the 1st and 2nd Defendants sought for a declaration that the suit property is the property of the 1st Defendant and the Plaintiff should be ordered to vacate and/or be evicted from the said portion of land forthwith.
6. The 1st and 2nd Defendant's Statement of Defence and Counter-Claim was served on the Plaintiff who responded by filing a Response to the Defence and Counter-Claim dated 08.01.2024.
 7. In the Response to Defence and Counter-Claim dated 08.01.2024, the Plaintiff responded as follows; -
 - a. The Plaintiff denied that he was allocated the suit property in the year 1990 but rather had been in occupation of the said portion of land since 1977.
 - b. The Plaintiff further denied that there was any understanding and/or resolution that all the persons who were in occupation of the suit property would vacate the same to pave way for a school.
 - c. The Plaintiff therefore sought to have the 1st and 2nd Defendant's Defence dismissed with costs.
 - d. As regards the Counter-Claim, the Plaintiff denied all the allegations contained therein.
 - e. The Plaintiff further stated that he acquired the property known as L.R No. Transmara/Kimintet "C"/75 through his own enterprise and was never allocated the same by the Land Adjudication Committee as alleged.
 - f. The Plaintiff stated that the 2nd Defendant in particular had failed and/or declined to honour its statutory duties which is to register the suit property in his name thereby necessitating the current proceedings.
 - g. In conclusion the Plaintiff sought for the Counter-Claim to be dismissed with costs as well.
 8. The pleadings were duly closed after service of the Plaintiff's Response to the Defence and Counter-claim and the matter certified ready for hearing.

Plaintiff's Case

9. The hearing began with the testimony of the Plaintiff who was marked as PW 1.
10. The Plaintiff introduced himself as a retired teacher who had served for a period of about 24 years.



11. The Plaintiff informed the Court that he would like to rely on his witness statement dated 05.06.2023 and adopted the same as his evidence in chief.
12. In support of the facts contained in the Witness statement dated 05.06.2023, the Plaintiff further produced the following documents; -
 - PW 1 Exhibit 1- A copy of a Declaration for Kimintet Group Ranch dated 29.01.1986.
 - PW 1 Exhibit 2- A copy of a letter dated 13.03.1989 from the Land Adjudication Officer appointing the Land Adjudication Committee of Kimintet “B” Adjudication Section.
 - PW 1 Exhibit 3- Copy of a letter dated 18.03.1993 from the District Officer, Lolgorian Division to the Chief Kimintet Location.
 - PW 1 Exhibit 4- Copy of a letter dated 24.03.1993 from the Lands Department to the Demarcation Officer, Kimintet Adjudication Section.
 - PW 1 Exhibit 5- Copy of an Agreement dated 31.08.2007 between the Plaintiff and other members of the Group Ranch.
 - PW 1 Exhibit 6- A copy of an Official Search of the suit property dated 20.11.2012.
 - PW 1 Exhibit 7- Copy of a caution on the suit property dated 20.11.2012 registered by the Plaintiff.
 - PW 1 Exhibit 8- Copy of a letter dated 14.02.2013 from the Lands Department to the Plaintiff.
13. After the production of the above documents, the Plaintiff referred to PW 1 Exhibit 1 which was the notice creating the Adjudication Section known as KIMINTET “C”.
14. The Plaintiff informed the Court that he was a member of the Group Ranch that was to benefit from the sub-division of the Adjudication Section known as KIMINTET “C” and his membership No. was 166.
15. Unfortunately, the Plaintiff was not allocated any land within the Group Ranch and/or the Adjudication Section known as KIMINTET “C”.
16. According to the Plaintiff, the sub-division and/or adjudication of KIMINTET “C” began in the year 1986 when he was already in occupation and use of the suit property.
17. The Plaintiff informed the Court that he was one of the teachers that founded the 1st Defendant which was to be allocated 100 acres within the Adjudication Section although it was subsequently reduced.
18. The Plaintiff similarly stated that any person who was residing on the portion of land that would be allocated to the 1st Defendant was required to relocate and/or vacate their areas of occupation in favour of the school.
19. The Plaintiff nevertheless being a member of the Group Ranch expected to be allocated and/or sub-divided land.
20. At the time of this discussions, the Plaintiff was occupying a portion of land that was across the suit property which had been earmarked for the 1st Defendant.
21. The Plaintiff was however not allocated the portion of land he was in occupation of but a different one which later came to be known as L.R No. Transmara/Kimintet “C”/75.
22. The Plaintiff admitted that he is currently the registered owner of L.R No. Transmara/Kimintet “C”/75 and has the Title Deed in his possession.



23. Later on, the Plaintiff discovered that the portion of land earmarked for the school extended to across the road where he was residing on.
24. The Plaintiff was aggrieved by this inclusion of the portion of land which he resided on as part of the land earmarked for the 1st Defendant and complained to the local administration in the year 1989.
25. It was on the basis of this complaint that the letter dated PW 1 Exhibit 2 was written in an effort to get justice but the same was not acted upon.
26. The Plaintiff further visited the offices of the Land Adjudication Officer in charge of the Adjudication Section but still no favourable response was made.
27. The Plaintiff referred to PW 1 Exhibit 5 which was an Agreement between various members of the Community and himself for the establishment of a water pan within the portion of land that he occupied.
28. The Plaintiff's position was that this Agreement was a confirmation that the general public knew the said portion of land to belonged to him.
29. The Plaintiff averred that after discovery that the portion of land he was occupying had been registered in the name of the 1st Defendant, he registered a caution on the suit property which was still on record at the time of the hearing.
30. The Plaintiff reiterated that the property known as L.R No. Transmara/Kimintet "C"/75 was allocated to him during the adjudication of the Adjudication Section.
31. However, the 1st Defendant had not compensated him for the unlawful acquisition of the portion of land which he occupies across the 1st Defendant's portion of land.
32. In the alternative, the Plaintiff wanted the 1st Defendant to be relocated from the portion he occupies to the original portion of land across the road as earlier intended.
33. In conclusion of his evidence in chief, the Plaintiff confirmed that the Group Ranch was still in existence and is still sub-dividing and allocating land.
34. On cross-examination, the Plaintiff confirmed that he was one of the founding teachers of the 1st Defendant.
35. The Plaintiff averred that he started teaching in the year 1971 and was with the 1st Defendant from 1977 until 1987.
36. The Plaintiff indicated that the entity which had been operating was the primary school but the 1st Defendant is a secondary school is yet to start operations.
37. The Plaintiff reiterated that his claim was for the portion of land that was earmarked for the 1st Defendant which is the secondary school.
38. The Plaintiff informed the Court that during the preparation and execution of the Agreement produced as PW 1 Exhibit 5, members of the community were present as well as the officials of the Group Ranch.
39. The Plaintiff insisted that he had objected to the allocation of his portion of land to the 1st Defendant but he was ignored.
40. This is the main reason that he filed this suit and he is residing on the said portion of land up to now.



41. In re-examination, the Plaintiff confirmed that he had made complains about the allocation of his portion of land to the 1st Defendant.
42. However, there was no assistance from any of the Government offices.
43. The Plaintiff stated that he had never been referred to the Land Appeal Board to hear and determine the matter.
44. The Plaintiff stated that he had a letter which he had written to the Land Adjudication Board but the same was resolved.
45. After the end of this re-examination, PW 1 was discharged from the witness box and the Plaintiff closed his case.

Defence Case

46. The Defence case began with the testimony of Samuel L. Nganga who was marked as DW 1.
47. DW 1 introduced himself as the Headteacher of Kirindon Primary School.
48. DW 1 confirmed that he was aware of the dispute between the Plaintiff and the 1st Defendant.
49. DW 1 admitted that the 1st Defendant was yet to begin operations and therefore he was the one taking care of the portion of land earmarked for the development of the 1st Defendant.
50. DW 1 informed the Court that the portion of land earmarked for the 1st Defendant infrastructure was the suit property.
51. DW 1 then adopted his witness statement dated 01.11.2023 as his evidence in chief.
52. Further to that, DW 1 produced the following documents in support of his evidence in chief; -
DW 1 Exhibit 1- Copy of the Title Deed of the suit property known as L.R No. Transmara/Kimintet "C"/34.
DW 1 Exhibit 2- Certified copy of the Green Card of the suit property known as L.R No. Transmara/Kimintet "C"/34.
DW 1 Exhibit 3- Certified copy of Green Card of the property known as L.R No. Transmara/Kimintet "C"/75.
DW 1 Exhibit 4- Certified copy of the Adjudication Record No. 020475 for Plot.No. 75 within Kimintet "C" Adjudication Section in favour of the Plaintiff.
DW 1 Exhibit 5- Certified copy of the Adjudication Record No. 020434 for Plot.No.34 within Kimintet "C" Adjudication Section in favour of the 1st Defendant.
53. DW 1 prayer to the Court was that the suit property should be kept for the development of the 1st Defendant and the Plaintiff should relocate to his property known as L.R No. Transmara/Kimintet "C"/75.
54. DW 1 further sought the Court to grant the prayers in the Counter-Claim filed by the 1st Defendant.
55. On cross-examination, DW 1 stated that he had been the Head teacher of Kirindon Primary School for the last one year.
56. DW 1 informed that the Court that he was not born in Kirindon area and could not tell how long the Plaintiff had been in occupation of the suit property.



57. However, DW 1 confirmed that the Plaintiff occupied the suit property which the 1st Defendant is to be constructed.
58. DW 1 indicated that the primary school stated in 1970 and its acreage is about 100 acres.
59. DW 1 averred that the portions of land for the primary and secondary schools were demarcated by the Demarcation Committee.
60. However, the 1st Defendant is yet to be developed and operationalised.
61. DW 1 stated that the portion of land which the 1st Defendant is to be developed and/or operationalised is on the suit property.
62. DW 1 confirmed that the suit property was vacant although the Plaintiff had occupied a portion of it.
63. DW 1 informed the Court that the Plaintiff sought to be compensated before he could leave the suit property but that has not been done.
64. DW 1 reiterated that the Plaintiff has another property which he was allocated and registered hence he should move to the said property.
65. On re-examination, DW 1 clarified that the case before court related to the 1st Defendant and not the primary school.
66. DW 1 similarly indicated that he was not aware of any objection that had been filed against the Adjudication Record of Plot. No. 34 within Kimintet "C" Adjudication Section.
67. DW 1 concluded his testimony by confirming that the Plaintiff had been allocated Plot. No. 75 within Kimintet "C" Adjudication Section during the Adjudication process.
68. At the end of this re-examination, DW 1 was discharged from the witness box.
69. The second defence witness was Parmeet ole Kiseet who was marked as DW 2.
70. DW 2 introduced himself as a resident of Kirindon who shares a boundary with the 1st Defendant.
71. DW 2 informed the Court that he is well aware of the dispute between the Plaintiff and the 1st Defendant.
72. According to DW 2, the 1st Defendant was allocated the suit property around 1988.
73. During the Adjudication of Kimintet "C" Adjudication Section, there were two portions of land allocated to the primary school and the secondary school.
74. However, the secondary school is yet to be developed and currently, there is no building on the suit property.
75. DW 2 nevertheless stated that the Plaintiff has developed on a portion of the suit property that belongs to the 1st Defendant.
76. DW 2 reiterated that during the Adjudication process, the Plaintiff was allocated a different portion of land which is now registered in his name.
77. DW 2 confirmed that he prepared and executed a witness statement dated 01.11.2023 which he adopted as his evidence in chief.
78. DW 2 concluded his evidence in chief by seeking the Court to grant the prayers contained in the Counter-Claim.



79. On cross-examination, DW 2 reiterated that the 1st Defendant was allocated the suit property way back in 1986.
80. DW 2 informed the Court that the Plaintiff came into possession of the suit property while he was the headmaster of the Kirindon Primary School.
81. Nevertheless, DW 2 stated that the Plaintiff had been allocated his own piece of land which was just 200 meters from the suit property earmarked for the 1st Defendant.
82. DW 2 averred that during the Adjudication process, the Plaintiff did not complain or object to the process.
83. On being referred to PW 1 ExhibitS 3,4 and 5, DW 2 stated that these were old letters that were not brought to his attention.
84. On being referred to PW1 Exhibit 2, DW 2 admitted that the persons indicated therein were the Adjudication Committee members of Kimintet "C" Adjudication Section.
85. DW 2 clarified that each member was given only one portion or land and not two.
86. On re-examination, DW 2 was referred to PW 1 Exhibit 3,4 and 5 which confirm that the Plaintiff was allocated Plot. No. 75 within Kimintet "C" Adjudication Section way back in 1990.
87. At the end of this re-examination, DW 2 was discharged from the witness box.
88. The third Defence witness was MURMET OLE SIKORE who was marked as DW 3.
89. DW 3 introduced himself as a retired Assistant Chief of Esoibor Sub-Location.
90. DW 3 informed that Court that he was familiar with the dispute although the 1st Defendant was not in his jurisdiction.
91. DW 3 began his testimony by indicating that the suit property was demarcated to the 1st Defendant in the year 1986.
92. At this time, DW 3 was one of the residents within Kimintet "C" Adjudication Section.
93. DW 3 averred that during the adjudication of Kimintet "C" Adjudication Section, there was allocation of land for a primary school and a secondary school.
94. The secondary school was allocated the suit property herein and the same was registered in its name although developments have not started.
95. However, the Plaintiff fenced a portion of the suit property and resides on the same up to date.
96. Nevertheless, the Plaintiff was allocated his own portion of land about 200 meters from the suit property and it is not true he purchased the same.
97. DW 3 prayer was that the Plaintiff vacates the suit property which is owned by the 1st Defendant.
98. DW 3 informed the Court that he had prepared and executed a witness statement dated 01.11.2023 of which he adopted as his evidence in chief.
99. On cross-examination, DW 3 admitted that there were complains filed by the Plaintiff against the allocation of the suit property to the 1st Defendant but he was not sure if the same were resolved.



100. On re-examination, DW 3 stated that he is only aware of the Plaintiff as the person that opposed the allocation of the suit property to the 1st Defendant.
101. Nevertheless, DW 3 insisted that the Plaintiff was allocated land by the Adjudication Committee and that is the portion of land which he should utilise.
102. At the end of this re-examination, DW 3 was discharged from the witness box thereof.
103. The Defence fourth witness was Tom Chepkwesi who was marked as DW 4.
104. DW 4 introduced himself as the Sub-County Land Registrar currently stationed as Kilgoris and in charge of Transmara South, East and West Sub-Counties with effect from May 2023.
105. DW 4 confirmed to the Court that he was in possession of the records regarding the suit property held by the Ministry of Lands.
106. According to DW 4, the suit property was demarcated and allocated to the 1st Defendant through an Adjudication Record No. 020434 dated 13.04.1989.
107. The owner indicated on the Adjudication Record of the suit property was the defunct Narok County Council and the intended use was to develop a secondary school known as the 1st Defendant.
108. DW 4 informed the Court that there was no objection against the allocation of the suit property that was received during the inspection period provided by the [Land Adjudication Act](#), Cap 284.
109. Based on the information in the Adjudication Record No.020434 issued on the 13.04.1989, the Green Card was opened on the 14.12.1990 in favour the defunct Narok County Council.
110. The acreage of the suit property according to the Green Card is 10.5 Hectares.
111. Currently, the suit property is registered in the name of the 1st Defendant who was issued with a Title Deed on the 09.10.2007.
112. Similarly, the Green Card to the suit property has a caution registered on it since 27.11.2012.
113. The main reason given for recording of the caution is that the Plaintiff was granted a license to use the land by the 1st Defendant.
114. DW 4 also informed the Court that he had in his possession the documents of another property known as L.R No. Transmara/Kimintet “C”/75.
115. According to the records held by the Lands Department, the property known as L.R No. Transmara/Kimintet “C”/75 was created through an Adjudication Record No. 020475 issued on the 14.04.1989 and allocated to the Plaintiff herein.
116. Similarly, there was no Objection raised against the said Adjudication Record during inspection and a Green Card for the property known as L.R No. Transmara/Kimintet “C”/75 was opened on the 14.12.1990 with the name of the Plaintiff as the registered owner and a Title Deed duly issued on the 10.12.1993.
117. The acreage of the property known as L.R No. Transmara/Kimintet “C”/75 in the Green Card is indicated to be 6 Hectares.
118. DW 4 then produced the documents marked as DW 1 Exhibit 1-5 which were then marked as DW 1 Exhibit 1-5.



119. DW 4 testified that the suit property was actually public land earmarked for use by the 1st Defendant which is a public secondary school.
120. DW 4 indicated that if a private person wanted to acquire public land, then there was a process which needs to be followed.
121. DW 4 confirmed to the Court that the Plaintiff had his own portion on land known as L.R No. Transmara/Kimintet "C"/75 and had been issued with the relevant Title Deed.
122. DW 4 averred that the suit property and the Plaintiff's property known as L.R No. Transmara/Kimintet "C"/75 were separate and distinct parcels of land.
123. On cross-examination, DW 4 reiterated that the suit property and L.R No. Transmara/Kimintet "C"/75 were not the same but distinct and separate properties.
124. DW 4 could not however ascertain how far apart the two properties were from one another.
125. DW 4 admitted that both properties were created from community land through Adjudication.
126. DW 4 could not however tell how occupation of the suit property was before and/or during adjudication.
127. According to the DW 1 Exhibit 5, there was no Objection lodged against the Adjudication Record therein.
128. On being referred to DW 1 Exhibit 4, DW 4 stated that the acknowledgment of the Exhibits marked as DW 1 Exhibit 4 and 5 is contained in paragraph 9 which should have the signature of the Plaintiff.
129. On being referred to DW 1 Exhibit 2, DW 4 confirmed that there is a caution in existence.
130. The caution indicates that the Plaintiff has a claim on the suit property and is to be maintained until the issue is determined.
131. DW 4 however could not tell if the 1st Defendant had been built and/or not.
132. On being referred to DW 1 Exhibit 1, DW 4 stated that the said Title Deed was issued pursuant to the Adjudication Record therein and if there was a problem, then it would have been recorded in the Adjudication Record.
133. On re-examination, DW 4 confirmed that Narok County Council accepted the Adjudication Record allocating the suit property to it.
134. So far, there was no objection that was recorded against the Adjudication Record of the suit property or the Green Card thereafter.
135. DW 4 concluded his testimony by indicating that there is usually a time frame within which objections and/or disputes during the Adjudication process should be resolved.
136. At the end of this re-examination, DW 4 was discharged from the witness box and the Defence closed its case.
137. The Court at the end of the hearing directed parties to file their final written submissions in support of their cases.
138. The Plaintiff filed his submissions dated 20.09.2024 while the 1st and 2nd Defendants filed their submissions dated 16.09.2024.



139. The Court has indeed perused the pleadings, the testimonies and evidence of the witness and the final submissions by the parties and identified the following issues for determination; -
- Issue No. 1- which statute was applied in the adjudication of Kimintet "C" Adjudication Section?
- Issue No. 2- was the allocation of the suit property to the 1st defendant procedural and/or any fraud done to nullify its ownership?
- Issue No. 3- who is the lawful owner of the suit property herein?
- Issue No. 4- is the plaintiff entitled to the prayers sought in the amended plaint?
- Issue No. 5- is the 1st and 2nd defendants entitled to the prayers sought in the counter-claim?
- Issue No. 6 – who bears the costs of the amended plaint and/or counter-claim?
140. The Court having duly identified the above-mentioned issues, the same will now be discussed below.

Issue No. 1- which statute was applied in the adjudication of Kimintet "C" Adjudication Section?

141. The first issue for determination is to identify the Statute that was used to adjudicate the suit property.
142. According to the Plaintiff, the area within which the suit property is located was declared an Adjudication Section based on a Declaration of a Group Ranch known as Kimintet Group Ranch dated 29.01.1986 which is contained in the document produced as PW 1 Exhibit 1.
143. Thereafter, a group of persons known as Adjudication Committee members were appointed through a letter dated 13.03.1989 to undertake the adjudication process but failed to allocate him any parcel of land.
144. On the other hand, the Defence witnesses testified that the suit property was created from an Adjudication process under the Land Adjudication Act, Cap 284 and those entitled to land therein issued with the relevant Adjudication Records.
145. Based on these two conflicting positions, it is important that the Court decides on which statute was applicable at the time of adjudication of the suit property so that it is properly guided on the legal procedures applicable therein.
146. Ideally prior to the enactment of the Community Land Act (2016), Community land was administered through the Land Adjudication Act, Cap 284 and the Land (Group Representatives) Act, Cap 287.
147. Although both the Land Adjudication Act, Cap 284 and the Land (Group Representatives) Act, Cap 287 were used to administer Community Land, the procedure and methodology were substantively different.
148. In the Land Adjudication Act, Cap 284, the Land Adjudication Officer in charge of the Adjudication Section would oversee the demarcation and allocation of the different portions of land and thereafter record the interests of the bona-fide land owners on the Adjudication Record.
149. Any disputes arising out of the demarcation and/or adjudication within the Adjudication Section were to be resolved through the internal dispute mechanisms with the Minister's decision being the final determination.
150. On the other hand, the Land (Group Representatives) Act, Cap 287 intended for the creation of Group Ranches registered by the Registrar of Group Ranches.



151. The Group Ranches would ideally operate as private entities owned by the members contained in the Register of such a Group Ranch.
152. Keeping in mind that the Group Ranches were legal entities on their own, the Land Adjudication Officer would upon declaring an area as an adjudication section proceed to record the Group Ranch as the lawful and legal owner of the entire Adjudication Section.
153. Once this was done, it was the duty of the registered Legal Representatives to undertake the sub-division and transfer the portions of land emanating within the Adjudication Section to its members.
154. As such, the only Adjudication record issued by the Land Adjudication Officer would be the one alienating the entire Adjudication Section to the registered Group Ranch and the sub-divisions would be transferred to the membership through transfers executed by the registered Land Representatives of the Group Ranch.
155. In this proceeding, DW 4 who is the Sub-County Land Registrar informed the Court that the both the suit property and the Plaintiff's property known as L.R.No. Transmara/Kimintet "C"/75 were a creation of an Adjudication process.
156. DW 4 produced the two Adjudication Records C.020434 relating to the suit property and C.020475 relating to the Plaintiff's property known a L.R No. Transmara/Kimintet "C"/75.
157. Both Adjudication Records were not disputed by the Petitioner and they clearly indicate that the said land was being administered under the [Land Adjudication Act](#), Cap 284.
158. It is therefore this Court's considered finding that the suit property was a creation of the [Land Adjudication Act](#), Cap 284 and not the Land (Group Representatives) Act, Cap 287.

Issue No. 2- was the allocation of the suit property to the 1st defendant procedural?

159. The next issue for debate whether or not the suit property was properly and/or lawfully allocated to the 1st Defendant.
160. The Plaintiff's testimony was that his ancestral home is located on the suit property and therefore the same should be allocated to him.
161. The Plaintiff further testified that during the Adjudication process, the officials in charge of the Group Ranch failed and/or neglected to allocate him any land as required by law.
162. The Plaintiff on Oath stated that he purchased the property known as L.R No. Transmara/Kimintet "C"/75 through his own enterprises and was not allocated the same by the Group Ranch officials as alleged by the 1st and 2nd Defendant.
163. It was therefore the Plaintiff's prayer that the suit property be declared to be his lawful portion of land and the 2nd Defendant directed to rectify the Register by cancelling the 1st Defendant's name and recording his name as the legal owner thereof.
164. The Plaintiff under Paragraph 15 of the Amended Plaint outlined a number of fraudulent activities undertaken by the 1st and 2nd Defendants to dislodge his interest over the suit property.
165. On the other hand, the Defence witnesses testified that indeed the portion of land that constitutes the suit properties was occupied by various members of the community.



166. However, during adjudication, it was resolved that all members of the community that were in occupation of the suit property would be relocated to over portions of land so that both a primary school and a secondary school would be established to serve the community.
167. It is on this basis that all the members of the community that were residing on the suit property were allocated portions of land elsewhere and two portions of land earmarked for the primary and secondary school.
168. The Plaintiff who was a teacher at the primary school was also allocated a portion of land now registered as L.R No. Transmara/Kimintet "C"/75 which is just about 200 meters from the suit property.
169. All the Defence witnesses denied the allegation that the Plaintiff was not allocated any portion of land.
170. As earlier stated, the Adjudication of Kimintet "C" Adjudication Section was done through the [Land Adjudication Act](#), Cap 284.
171. According to Section 26 of the [Land Adjudication Act](#), Cap 284, the rights and interests in a portion of land which is within the Community Land is alienated through the Adjudication Register consisting of the Adjudication Record and the Demarcation Maps.
172. The Adjudication Record No. C. 020434 dated 13.04.1989 relates to Plot.No.34 within Kimintet "C" Adjudication Section which is the current suit property.
173. On the face of the Adjudication Record No. C 020434 dated 13.04.1989, it is clear that the portion of land was reserved for the establishment of the 1st Defendant.
174. The Plaintiff after the issuance of the Adjudication Record No. C 020434 dated 13.04.1989 is required by the [Land Adjudication Act](#), Cap 284 to lodge an Objection in the event he is aggrieved by the information contained in the said Adjudication Record.
175. Since 1989 when the Adjudication Record was issued, the Plaintiff did not file any Objection and/or Appeal to the Minister to challenge either the Adjudication Record and/or the Demarcation Maps that had been published for inspection.
176. The failure by the Plaintiff to challenge the Adjudication Record No. C 020434 dated 13.04.1989 within the prescribed time under the [Land Adjudication Act](#), Cap 284 rendered the information their to be true and the correct position hence the Adjudication Record was finalised after the expiry of 60 days from the date of publication of the Adjudication Register.
177. This being the case, the 2nd Defendant was under a duty to issue the Title Deed to the suit property based on the information contained in the Adjudication Record No. C 020434 to the exclusion of any other person and/or party.
178. The Title Deed issued on the 09.10.2007 in favour of the 1st Defendant then extinguished the provisions of the [Land Adjudication Act](#), Cap 284 and instead the provisions of the Registered [Land Act](#), Cap 300 (now Repealed) and subsequently the [Land Registration Act](#), No. 3 of 2012 came into effect.
179. The resultant effect of this transmission from the [Land Adjudication Act](#), Cap 284 to the [Land Registration Act](#), No. 3 of 2012 speaks to the fact that the Plaintiff can not challenge the ownership of the 1st Defendant based on the procedure and manner of adjudication after the issuance of a Title Deed.
180. The Plaintiff can only attack the ownership of the 1st Defendant over the suit property through the provisions of Section 26 of the [Land Registration Act](#), No. 3 of 2012.



181. The Plaintiff under Paragraph 15 of the Amended Plaintiff dated 05.06.2023 pleaded 4 grounds of Fraud undertaken by the 1st Defendant.
182. To begin with, the Plaintiff in his pleadings and testimony state that the 1st Defendant is not existent.
183. However, despite its none existent, the Plaintiff proceeded to sue the alleged none existence entity in its original Plaintiff dated 04.07.2013 and the Amended Plaintiff dated 05.06.2023.
184. If indeed the 1st Defendant was none existent, then the proper party to have been sued would be the defunct Narok County Council and/or the successor Narok County Government.
185. Be as it may, Sections 107 and 109 of the *Evidence Act*, Cap 21 places the burden of proof on the person that alleges an issue of fact.
186. The testimony and evidence of the Plaintiff did not provide any compelling evidence to show the manner in which the 1st Defendant who is alleged to be none existent undertook any of the fraudulent acts outlined under Paragraph 15 of the Amended Plaintiff dated 05.06.2023.
187. In the absence of any evidence to prove any acts of fraud on the part of the 1st Defendant, then this Court has no basis upon which to temper with the 1st Defendant's ownership over the suit property.
188. In essence, this Court hereby makes a finding that the suit property was properly alienated and registered in the name of the 1st Defendant herein.

Issue No. 3- who is the lawful owner of the suit property herein?

189. The issue for determination herein is who is the lawful owner of the suit property.
190. The Plaintiff pleaded and testified that the registration of the 1st Defendant as the lawful owner of the suit property was not procedural and/or involved fraud.
191. However, based on the finding in Issue No. 2, it is clear that the Plaintiff failed to prove both the procedural issues and/or fraud alleged to have been perpetuated by the 1st Defendant to acquire the suit property.
192. The provisions of Section 30 of the *Land Registration Act*, No.3 of 2012 and read with Section 35 of the same Statute recognised the person or entity recorded on the Title Deed and the Green Card to be the lawful registered owner of the property in issue.
193. On these provisions, the person who appears on both the Title Deed issued on 09.10.2007 and the Green Card both relating to the suit property is the 1st Defendant.
194. Consequently, this Court hereby makes a finding that the lawful owner of the suit property is the 1st Defendant as contained in the Title Deed and the copy of the Green Card held by the 2nd Defendant herein.

Issue No. 4- is the plaintiff entitled to the prayers sought in the amended plaintiff?

195. Based on the determination that the 1st Defendant is the legitimate and lawful owner of the suit property, the Plaintiff's claim herein fails and the prayers sought for in the Amended Plaintiff dated 05.06.2023 are not merited.

Issue No. 5- is the 1st and 2nd defendants entitled to the prayers sought in the counter-claim?

196. The 1st Defendant in its Counter-Claim dated 01.11.2023 sought for the following Orders; -



- a. Eviction Orders.
 - b. A declaration that the 1st Defendant (now Plaintiff) is the lawful owner of the parcel of land known as L.R No. Transmara/Kimintet “C”/34.
 - c. Costs of the suit and Interest thereon at Court’s rate.
 - d. Any other relief that this Honourable Court may deem fit and just to grant.
197. According to the testimony of DW 1 and DW 2, the Plaintiff is in occupation of a portion of land with the suit property.
 198. DW 1 who is the head teacher of Kirindon Primary School stated that any efforts to have the Plaintiff vacate the suit property has been met with resistance on the basis that there should be compensation.
 199. The resultant effect of this resistance by the Plaintiff is that the development of 1st Defendant has not taken off as the said land is under occupation by the Plaintiff.
 200. The Plaintiff in his pleadings and/or testimony confirmed that he is in occupation of the suit property which is his ancestral home.
 201. Clearly, it is not in dispute that the Plaintiff is either partially or fully occupying the suit property.
 202. The Court having made a finding that the suit property belongs to the 1st Defendant, Section 24 of the [Land Registration Act](#), No. 3 of 2012 vests the absolute ownership of such a property together with all rights and privileges belonging thereto upon the registered owner.
 203. Consequently, the Plaintiff herein has no rights and/or privileges to occupy and/or use the suit property that belongs to the 1st Defendant.
 204. The only available remedy to the 1st Defendant in such a scenario is an order of eviction against the Plaintiff over the suit property so that it can enjoy its property as provided by the [Land Registration Act](#), No. 3 of 2012 and the [Constitution](#), 2010.
 205. In conclusion, this Court hereby makes a finding that the 1st Defendant is entitled to the prayers sought in the Counter-Claim dated 01.11.2023.

Issue No. 6 – who bears the costs of the amended plaint and/or counter-claim?

206. On the issue of costs, the Plaintiff has not been successful in litigating the Amended Plaint and is therefore condemned to pay the costs to the 1st and 2nd Defendants.
207. As regards the Counter-Claim, the 1st Defendant has been successful in litigating the same and therefore the Plaintiff is condemned to pay costs to the Defendant.

Conclusion

208. In conclusion, this Court hereby makes the following Orders to determine the Amended Plaint dated 05.06.2023 and the Counter-Claim dated 01.11.2023; -
 - a. The amended plaint dated 05.06.2023 is not merited and therefore dismissed forthwith.
 - b. The counter-claim dated 01.11.2023 is allowed as follows; -
 - i. The 1st defendant is the legitimate and lawful owner of the property known as L.R No. Transmara/Kimintet “C”/75.



- ii. The plaintiff is directed to relocate, vacate and/or hand over possession of any portion or the entire property known as L.R No. Transmara/Kimintet “C”/75 to the 1st defendant within 90 days from the date of this judgement.
- iii. In the event of none-compliance with order no. ii hereinabove, an order of eviction shall automatically stand issued upon expiry of the 90 days period provided hereinabove and will be issued by the deputy registrar in line with this judgement.
- iv. The plaintiff will bear the costs of the amended plaint dated 05.06.2023 as well as the counter-claim dated 01.11.2023.

DATED, SIGNED & DELIVERED VIRTUALLY IN ELDORET ON 3RD DAY OF JANUARY 2025.

EMMANUEL M.WASHE

JUDGE

In the presence of:

Court Assistant: Brian

Counsel for the Plaintiff: Mr. Momanyi Holding Brief for Mr. Ogutu

Counsel for the Defendants: No Appearance

