



**Godad v Ahmed & 6 others (Environment & Land Case 4 of 2019)
[2024] KEELC 955 (KLR) (28 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 955 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT GARISSA
ENVIRONMENT & LAND CASE 4 OF 2019
JM MUTUNGI, J
FEBRUARY 28, 2024**

BETWEEN

DUBEY MOHAMED GODAD PLAINTIFF

AND

MOHAMED OMAR AHMED 1ST DEFENDANT

AHMED G. GABOW 2ND DEFENDANT

KUSOW HASSAN KHALIB 3RD DEFENDANT

IBRAHIM MOHAMED ABDULLAHI 4TH DEFENDANT

NOOR KASAY 5TH DEFENDANT

ADEN MOHAMED MOHAMUD 6TH DEFENDANT

NASIB FARM LTD 7TH DEFENDANT

JUDGMENT

1. The Plaintiff instituted the present suit on her own behalf and pursuant to a special power of Attorney donated to her on behalf of Abdirahman Mohamed Godad and Yaros Ismail Hussein, vide a plaint dated 29th April 2019. The Plaintiff subsequently amended the Plaint on 27th October 2021 and prayed for judgment against the Defendants jointly and severally for:-
 - a. A permanent injunction restraining the Defendants whether by themselves, their workers, servants, agents, or anybody claiming through them from entering, remaining on, cultivating or in any other manner howsoever using or interfering with the Plaintiff's quiet possession and use of all that parcel of land known as Almurkarim Farm identified by PDP Ref: TRD/231/2004/40 which measures approximately 90 hectares and situated at Madogo area of Tana River County and which lies within Garissa County Geographically.



- b. A declaration that the farms known as Almukarim Farm and Nasibu Farm border each other and no other farm known as Sulder Farm exists between Almukarim Farm and Nasibu Farm.
 - c. Damages for trespass to agricultural land.
 - d. Costs of this suit and interest on (c).
2. The 1st to the 6th Defendants who were the initial Defendants filed a joint statement of defence dated 6th June 2019. The said Defendants admitted the Plaintiff's farm was Almukarim Farm but averred that a portion of the same had been sold to one Eng. Ali Hassan who later sold the portion to the 4th Defendant who in turn allegedly surrendered the portion to Sulder Women Group who took possession of the same and started utilizing it. The said Defendants additionally stated they were members of Nasibu Farm and that it was the Sulder Women Group Farm that bordered Nasibu Farm and not Almukarim Farm.
 3. The 7th Defendant Nasibu Farm Limited was joined in the proceedings following an application for joinder that was allowed by the Court. The 7th Defendant filed a defence and Counterclaim dated 30th November 2021. In its defence the 7th Defendant denied the Plaintiff's claim that the 1st to 6th Defendant had trespassed onto the Plaintiff's land asserting that the 1st to 6th Defendants were its members and as shareholders of the 7th Defendant had been allocated parcels of land in the title of land comprised in Nasibu Farm.
 4. In the Counterclaim the 7th Defendant averred it was the registered owner of Nasibu Farm under Title Number CR 7352 measuring approximately 215.3 Hectares and situated within Tana River County. The 7th Defendant averred that it was the Plaintiff who had since 2018 wrongfully entered the edge and frontage of Nasibu Farm and thereby prevented the 7th Defendant shareholders from utilizing their lands. The 7th Defendant asserts they have suffered loss and claims damages for trespass. The 7th Defendant inter alia prays for a declaration that the Plaintiff is not entitled to enter and/or use any part of Nasibu Farm, title number CR 7352; Permanent injunction; general damages and the costs of the suit and the Counterclaim.
 5. The Plaintiff filed a reply to amended defence and defence to Counterclaim dated 6th May 2022. The Plaintiff denied that the 7th Defendant had acquired the certificate of Title No CR 7352 lawfully and reiterated that the Defendants were unlawfully trespassing onto her parcel of land. The Plaintiff denied being in trespass on the land belonging to the 7th Defendant and prayed for the dismissal of the 7th Defendant's Counterclaim.
 6. The suit was part heard before Cherono, J before whom the Plaintiff testified and following the transfer of the Judge, the matter was heard and completed before me. A part from the Plaintiff two more witnesses testified in support of the Plaintiff's case. The County Surveyor, Dulluh John Komoro who essentially was a neutral witness testified as DW1. The 1st and 4th Defendant testified as DW2 and DW3 respectively in support of the Defendants case.

Evidence by the Parties.

7. The Plaintiff in her evidence testified that she purchased Almukarim Farm in 1997 and that was the time she came to know the 1st to 6th Defendants who owned Nasibu Farm which bordered her land. The Plaintiff in her evidence relied on her witness statement and the bundle of documents she had filed as per the list dated 20/4/2019. The Plaintiff further relied on Supplementary documents filed as per the list dated 26/5/2021. It was the Plaintiff's evidence that she purchased her land in 1997 and commenced utilizing the land by way of carrying out farming activities. The Plaintiff stated she had



not known the Defendants until they started trespassing onto her land from about the beginning of 2018 which prompted her to make a report respecting the trespass to the Area Chief and to both the National and County Government Officials.

8. In support of her ownership claim to the suit land, the Plaintiff testified that the Almurkarim Farm was originally allocated to one Gulumaliyo by the Tana River County Council vide PDP Ref No TRD/231/2004/40 and measured approximately 90 Hectares. She explained that the said Dulumaliyo sold the land situated within Madogo area of Tana River County to Abdirahman Mohamed Godad and Yuroi Ismael Hussein who are the Plaintiff's brother and mother respectively. The Plaintiff explained that following the purchase and with the Consent of Gulu Maliyo (the original allottee) an allotment Letter was issued to Abdirahman Mohamed Godad and Yuroi Ismail Hussein dated 31st March 2011 and the requisite Allotment fees and land rates for the land were duly paid. She further testified that she and her brother and mother have since the time of purchase of the suit property been in possession and occupation of the land and have been utilizing it for commercial farming activities and have been cultivating mangoes, oranges, bananas, tomatoes, spinach and watermelon.
9. The Plaintiff testified that the Defendants since 2018 have been trespassing and utilizing part of the suit land and that efforts to have the dispute resolved through the Local Administration has not yielded any fruit. The Plaintiff stated that during a period that she was unwell, the Defendants who own Nasibu Farm which bordered their farm chased her workers and prevented them from ploughing her land claiming the land to be theirs (the Defendants). She stated the Defendants further claimed there was another farm known as Sulder Farm between the Plaintiff's farm and Nasibu Farm which the Plaintiff disputed.
10. Under cross-examination by Mr. Nyandieka Advocate for the Defendants, the Plaintiff maintained that their farm bordered Nasibu Farm and that there was no other farm between the two farms (Almurkarim Farm and Nasibu Farm). The Plaintiff admitted the sale agreement dated 3rd April 1997 ("PEX 1") did not indicate the acreage of the land the subject of the sale. The Plaintiff affirmed that the County Council of Tana River as per the Plaintiff exhibits 3 and 4 in 2001 passed a resolution for the land to be allocated to the Plaintiffs and that a letter of allotment was issued on 31st May 2011. The Plaintiff explained that the County Council had recommended allocation of 250 acres. She stated that a Surveyor was supposed to delineate the land to be allocated. She stated the allotment letter that was issued by the Tana River County Council was for 90 Hectares.
11. The Plaintiff denied that his brother and her mother sold any portion of the land allocated to them to Eng. Ali Ibrahim Hassan as per the documents exhibited in the Defendants bundle of documents. The Plaintiff denied that the 4th Defendant had any land that he could have given to the members of Sulder Farm. The Plaintiff denied the existence of any agreement of sale between her brother and mother to Eng. Ali Ibrahim Hassan as alleged by the 4th Defendant.
12. In concluding her evidence the Plaintiff reiterated that when they purchased the Farm they were shown the boundaries. She stated the sale agreement exhibited by the Defendants at pages 37 and 38 of the Defendants bundle of documents purporting there was a sale agreement between her and Eng. Ali Hassan Ibrahim was not genuine. She stated her brother and her mother had donated a Power of Attorney to her to represent them in these proceedings. She maintained that Eng Ali Ibrahim Hassan had no authority to sell any part of the Plaintiffs land to anybody.
13. PW2 Yuroi Ismail Hussein mother of PW1 in her evidence relied on her witness statement and was emphatic that she did not know the 1st to the 6th Defendants. She affirmed that her daughter (PW) bought the suit land. On her part she stated she did not know Hassan Ali and denied that she sold any land to him.



14. In Cross examination PW2 denied she ever sold any land to the 4th Defendant as claimed by him. PW2 affirmed that Abudirahman Mohammed Godad was her son. She stated she had no knowledge of any encroachment by the Defendants onto her daughter's land. She denied any knowledge of Nasibu Farm.
15. The County Surveyor, Dulluh John Komora, who had prepared a surveyor's report at the instance of the Court and who had been summoned by the Defendants testified as DWI and the Court indicated he would be treated as a neutral witness given that the report he had prepared had been made pursuant to an order of the Court. The witness testified that pursuant to the Court's order/directions, he together with the Tana North Sub County Surveyor implemented the Court order and prepared a joint report dated 3/9/2019 which they filed in Court. The witness confirmed that Nasibu Farm LR No 32234 had been surveyed but there were no beacons on the ground. He indicated that they traced the survey beacons using the survey map for the Nasibu Farm. He produced the survey map and explained the boundary in question was the one indicated as NS3, NS4 and NS5 on the survey map.
16. The County Surveyor stated that Nasibu Farm stretches from Garissa Road to the Tana River. He stated Sulder Farm was allocated in 2009 under PDP No TRD 232/2009/75 while Almukarim Farm was allocated in 2004 under PDP No TRD/232/2004/40. He stated that one Opiyo carried out the survey for Nasibu Farm and he equally prepared the PDP for Almukarim Farm. He stated that the distance on the PDP for Almukarim Farm TRD/232/2004/40 were not corresponding with measurements on the ground which explained the variance in the acreage of the land. By way of illustration he indicated that from the road to Tana River the PDP showed it was 4.10 Kms while the actual measurement indicated it was 2.88 Kms. He indicated the PDP for Almukarim Farm and the PDP for Sulder Farm were on the same piece of land but with each having different acreage.
17. The County Surveyor testified that Almukarim Farm bordered Sulder Farm and there was a buffer area before Nasibu Farm. It was his further evidence that Nasib Farm and Almikarim Farm did not overlap and that Almukarim Farm and Sulder Farm as per their measurements measured 41.88 Hectares and 15.0 Hectares respectively. The County Surveyor produced the report and the annexures thereto as DEX1 (a) &(b).
18. In Cross examination by Mr. Amuga Advocate for the Plaintiff the surveyor affirmed that the PDP for Nasib Farm was prepared in 2009. He further confirmed that as per the report Sulder Farm was hived off from Almukarim Farm. He further stated that Almukarim Farm originally was 56.88 Hectares. He verified that the PDP for Almukarim Farm was prepared in 2004 while that of Sulder Farm was prepared in 2009. He stated the allotment made to Almukarim was for 90 Hectares and that the allotment had been approved by the Council vide Letter dated 26/7/2001. The County Surveyor on re-examination by Mr. Nyandieka Advocate for the Defendant agreed that the acreage shown on the allotment could vary when actual survey is carried out. He maintained that on the ground there were three (3) Farms as illustrated in the sketch plan attached to their report.
19. PW3 PC No 99501 George Karanja was called by the Plaintiff but his evidence was limited to the effect that the DCIO Garissa had received directions from the ODPP to investigate allegations of fraudulent, acquisition of land involving Nasibu Farm and Almikarim Farm. He stated he was mandated to carry out the investigations but the investigations were stopped through an order issued by the High Court in Garissa JR No 2 of 2021. The Officer stated the investigations were not completed and he did not know whether the J/R matter before the High Court was finalized.
20. The 1st Defendant Mohamed Omar Ahmed testified as DW2. He stated he was a Director of Nasibu Farm Ltd and in his evidence he adopted the contents of his filed witness statement as his evidence. In his evidence he stated they acquired their land in 1972 as attested by the bundle of documents they had



exhibited. He stated their farm, Nasibu Farm, initially bordered the Plaintiff's farm but the Plaintiff sold a portion of her land to Eng. Ali Hassan whose farm now borders theirs.

21. In Cross examination the witness reiterated that in 1997 the Plaintiffs farm was bordering their land. It was his further evidence that the Plaintiff was for a long time not utilizing her land and that she only started farming recently. The 1st Defendant stated he was aware the Plaintiff had a tragedy where her children were burnt in a house fire. He stated Eng. Ali Hassan bought the land from the Plaintiff though the Plaintiff never signed the agreement of sale exhibited by the Defendants. The witness affirmed he was not a witness to the agreement between Eng. Ali Hassan and the Plaintiff but he was a witness when Eng. Ali Hassan sold the same land to the 4th Defendant who was a member of Nasibu Farm.
22. The 1st Defendant responding to the survey report and the sketch plan stated that when the 4th Defendant purchased the land from Eng. Ali Hassan they created an access road on their land which now borders the land purchased by the 4th Defendant from Eng. Ali Hassan. The witness in conclusion stated they got their letters of Allotment dated 12/9/2012 from the Commissioner of Lands which they accepted and paid the allotment charges in 2018. The 1st Defendant denied that they were in trespass of the Plaintiff's land.
23. The Defendant's other witness was Ibrahim Mohamed Abdullahi, the 4th Defendant who testified as DW3. He testified that he was a member of Nasibu Farm and Chairman of Sulder Farm. The witness testified that he purchased the land vide the sale agreement dated 15th December 2009 exhibited at page 24 of the Defendants bundle of documents from Ali Hassan Ibrahim. He did not sign the agreement but the same was signed by his witnesses. He stated after the purchase he took possession of the land and started utilizing the same. The witness stated that Eng. Ali Hassan passed to him the ownership documents he held which included the sale agreement dated 25th November 2007 exhibited at page 23 of the Defendants bundle of documents which was made between him and the previous owners. The witness relied on his witness statement and the documents filed in support of the Defendants case dated 27/2/2020 to buttress his evidence.
24. In cross examination the 4th Defendant affirmed the Plaintiff got her land in 1997. He stated the land is known as Almukarim Farm. He stated that when he bought the land from Eng. Ali Hassan he gave half of the land to Sulder Women Group which was a Self Help Group of his family members. He affirmed he was a member of the group. He stated the Self Help Group did not pay for the land. He admitted he never signed the sale agreement with Eng. Ali Hassan dated 15th December 2009 and further that the agreement did not identify the land the subject of the sale. He stated the sale agreement was witnessed by the 1st Defendant who was a member of Nasibu Farm Ltd while the other witnesses were Eng. Ali Hassan's relatives. The 4th Defendant in concluding his evidence denied they had trespassed onto the Plaintiff's land and/or that they had forcibly encroached onto her land.
25. Following closure of the trial the parties filed their written submissions as per the Courts directly.

Analysis and Determination.

26. I have reviewed the pleadings and the evidence and I have considered the submissions made by the parties and the following issues arise for determination:-
 - i. Whether the Plaintiff was the lawful owner and/or beneficially of Almikarim Farm delineated vide PDP TRD/232/2004/40 and allocated by the Tana River County Council on 31/5/2011 jointly to Abdirahman M. Godad and Yarroy Ismail?



- ii. Whether Almukarim Farm initially shared a common boundary with Nasib Farm now registered as LR. No 32234 and if so whether the Plaintiff sold a portion of Almukarim Farm presently comprising Sulder Farm measuring approximately 15 Hectares?
 - iii. Whether the Defendants have trespassed onto the Plaintiffs Almukarim Farm and whether they are entitled to an award of damages.
27. On the evidence presented by the parties it is not disputed that indeed the Plaintiffs family through Abdirahman M. Godad and Yarrow Ismail were allocated the land described as Almukarim Farm delineated in PDP/TRD/232/2004/40. The Plaintiff has in her bundle of documents exhibited extracts of the minutes of the County Council of Tana River that show the allotment to the Plaintiff's was approved by the County Council. The County Council formalized the allotment vide a letter of allotment dated 31/5/2011 which indicated the land to be approximately 90 Hectares. The Plaintiff as per the evidence had been in occupation of the land from 1997 when they purchased Amulkarim Farm. The Plaintiff's farm as per the evidence, initially bordered Nasibu Farm owned by the 7th Defendant and there was no other farm between the Plaintiff's farm and Nasibu Farm.
28. The Plaintiff in her evidence denied that the Plaintiff's at any time sold a portion of their land to any person. The 1st to 6th Defendant who were all members of the 7th Defendant when they filed their defences admitted that the Plaintiff owned Amukarim Farm but averred that the Plaintiff had sold a portion of their farm to Eng. Ali Hassan who later sold the portion to the 4th Defendant. The 4th Defendant when he gave evidence stated that it was this portion that he purchased from Eng. Ali Hassan that he gave to Sulder Women Group who comprised members of his family. The 4th Defendant relied on an alleged agreement that Eng. Ali Hassan purportedly entered with the Plaintiff for sale of the portion of land dated 25th November 2007. On his part the 4th Defendant stated he purchased the land from Eng. Ali Hassan through the agreement of sale dated 15th December 2009.
29. The Plaintiff denied there was any agreement entered with Eng. Ali Hassan where the Plaintiffs agreed to sell a portion of their land to him. The alleged agreement of sale dated 25th November 2007 was not signed by either the seller or the buyer. The 1st Defendant who testified as DW2 admitted the Plaintiff never signed the agreement with Eng. Ali Hassan. He affirmed that he only signed the agreement dated 15th December 2009 as a witness. He did not witness the agreement between the Plaintiff and Eng. Ali Hassan.
30. The alleged agreement of sale dated 25th November 2007 between the Plaintiff and the said Eng. Ali Hassan quite clearly offended the provisions of Section 3(3) of the Law of Contract Act Cap 23 Laws of Kenya as it was not signed by the principal parties to it and their signatures attested as required. Section 3(3) of the Law of Contract Act, provides as follows:-

3(3) No suit shall be brought upon a contract for the disposition of an interest in land unless:-

 - a. The contract upon which the suit is founded:-
 - i. Is in writing
 - ii. Is signed by all the parties thereto,And
 - b. The signature of each party signing has been attested by a witness who is present when the contract was signed by such party.



31. The Plaintiff denies the agreement and it is not disputed that she/he did not sign the agreement dated 25th November 2007. If there was no agreement between the Plaintiff and Eng. Ali Hassan Ibrahim, and the Court holds there was no valid agreement, then the said Eng. Ali Hasan Ibrahim did not acquire any land that he could sell to the 4th Defendant. The Plaintiff having denied selling any land to Eng. Ali Hassan Ibrahim it was incumbent on the 4th Defendant to prove there was such an agreement as his agreement with Eng. Ali Hassan Ibrahim was dependent upon the said Eng. Ali Hassan Ibrahim having had a valid and enforceable agreement with the Plaintiff.
32. It is also noteworthy that the sale agreements referred to did not define and/or identify the particulars of the land the subject of the sale and as such were contracts that were not capable of being enforced. The agreements did not give particulars of the land or the location of the land the subject of the sale. How then could they have been enforced? What is clear however, is that there was Almukarim Farm owned by the Plaintiffs and Nasibu Farm Ltd owned by the 7th Defendant and that the 1st to 6th Defendants were members of the 7th Defendant. The two farms bordered each other until 2009 when the 4th Defendant allegedly purchased from one Eng. Ali Hassan Ibrahim a portion of land that the latter had purportedly purchased from the Plaintiff. I have found and held that the alleged purchase by the said Eng. Ali Hassan Ibrahim of land from the Plaintiff was not proved. The said Eng. Ali Hassan Ibrahim was not called to testify and had not recorded a witness statement. The validity of the agreement, it was claimed he had entered with the Plaintiffs was in issue and could not be proved through the faulty copy of the agreement for sale dated 25th November 2007 that was exhibited which at any rate was not signed by the Plaintiff.
33. The evidence adduced by the County Surveyor who testified as DWI and was for all intent and purposes a neutral witness was clear, that both Amulkarim Farm and Nasibu Farm had been allocated their parcels of land. Nasibi Farm Ltd land as per the report prepared by the surveyor and admitted in evidence had been surveyed and a deed plan No 433480 for LR No 32234 measuring 215.3 Ha approximately issued. The surveyor tendered in evidence a copy of the survey plan No 463/35, Deed Plan No 43380 and sketch Plan delineating the layout of the three farms, namely Nasibu Farm, Almukarim Farm and Sulder Farm.
34. According to the Surveyor the boundaries of Nasibu Farm were identified as per the Survey Plan but he stated that the PDP for Almukarim Farm TRD/232/2004/40 and PDP for Sulder Farm TRD/232/2009/75 were overlapping such that the ground position of PDP TRD/232/2009/75 was sharing part of PDP TRD/232/2004/40. The witness indeed confirmed what is presently Sulder Farm was curved out of what comprised Almukarim Farm. The evidence of the Surveyor was corroborated by the evidence of the 4th Defendant who was emphatic that the land he purchased from Eng. Ali Hassan Ibrahim formed part of Almukarim Farm as the said Eng. Ali Hassan had purchased the portion of land from the Plaintiffs. The PDP for Almukarim Farm was prepared in 2004 while that of Sulder Farm was prepared in 2009. Having regard to the evidence, there can be no doubt that what was described as Sulder Farm was hived out of Almukarim Farm, a fact that the evidence of the Surveyor affirms. Indeed, even the 4th Defendant acknowledged the land he bought from Eng. Ali Hassan Ibrahim was land that initially formed part of Amukarim Farm. I therefore make a finding that the land described as Sulder Farm measuring 15 Hectares approximately was hived out of land that belonged to Almukarim Farm owned by the Plaintiffs.
35. I have earlier in the Judgment made a finding that there was no evidence that the Plaintiff(s) sold any part of Almukarim Farm to any one including Eng. Ali Hassan Ibrahim from whom the 4th Defendant claimed to have purchased land from. The exhibited Agreement of sale dated 25th November 2007 which the 4th Defendant relied on as proof of sale to the said Eng. Ali Hassan Ibrahim was invalid



as it was neither signed by the seller or the buyer. The Plaintiff denied any such agreement. On the basis of the evidence I hold and find there was no proof that the Plaintiff(s) had sold any portion of Almukarim Farm to anybody and therefore the Plaintiff's land remained as allocated as per PDP No TRD/232/2004/40. In my view the County Council of Tana River unlawfully allocated part of the land that had already been allocated to Almukarim Farm to Sulder Farm undoubtedly on the basis of the invalid agreement. Notably there were no minutes from the County Council approving allocation of the land to Sulder Farm. Land that had already been allocated could not be available to be allocated to another person unless the earlier allotment had been revoked and/or cancelled by the allocating authority.

36. The 4th Defendant, Ibrahim Mohamed Abdullahi in his evidence confirmed he was the one who bought the land from Eng. Ali Hassan Ibrahim and that was the land the latter claimed to have bought from the Plaintiff. I have held the agreement between the said Eng. Ali Hassan Ibrahim and the Plaintiffs was invalid and could not be enforced. He therefore did not acquire any interest in the land that he could pass to the 4th Defendant. The 4th Defendant stated he donated the land to Sulder Women Group comprising his family members. He had acquired nothing that he could pass to the group. The land remains the property of Almukarim Farm. The 4th Defendant and the members of Sulder Farm Group who stake ownership claim of the land through the 4th Defendant are trespassers and should yield vacant possession of the land they unlawfully occupy to the Plaintiffs.
37. The Plaintiff has urged the Court to award general damages for trespass. The Plaintiff acknowledges the 1st to 6th Defendants are members of Nasibu Farm, the 7th Defendant herein. Other than the 4th Defendant who participated in the unlawful purchase of the disputed land from Eng. Ali Hassan Ibrahim and thereafter took occupation and possession of the land, the other Defendants cannot be held to be trespassers since it has not been proved that they were in occupation or possession of the 15 Hectares that were hived off from the Plaintiff's land. From the evidence it was persons that the 4th Defendant had authorized who took possession and were utilizing the land. Trespass once established is actionable per se and a party need not prove any damage. The Plaintiff in submissions has urged the Court to be guided by the decision in the Case of *Patricia Bini v Mehiria Investments Ltd & 3 others* (2015) where Angote, J awarded damages of Kshs 7 Million in a somewhat similar case of trespass. The Plaintiff has also referred the Court to the Case of *Adrian Gilbert Muteshi v Hon. William Samoe Ruto & 4 others* [2013] eKLR where Ougo, J awarded damages of Kshs 5 Million.
38. In the instant case, it is evident that the Plaintiff has been denied the use of the portion of the land for over 10 years since 2009. However, I take cognizance of the fact that, the Plaintiff has not demonstrated that she was at any time productively utilizing the land. For that reason, I will award the Plaintiff nominal damages of Kshs 1,000,000/- for trespass.
39. The Plaintiff acknowledged the 7th Defendant owned Nasibu Farm. There was no proof of any trespass by the Plaintiff onto Nasibu Farm and I hold and find that 7th Defendants Counter Claim was not proved and I dismiss the same with costs to the Plaintiff.
40. After a careful analysis and evaluation of the evidence I am satisfied the Plaintiff has proved her case on a balance of probabilities and I accordingly enter Judgment in favour of the Plaintiff in the following terms:-
 - a. A permanent injunction be and is hereby issued restraining the Defendants whether by themselves, their workers, servants, agents or anybody claiming through them from entering, remaining or, cultivating or in any other manner howsoever using or interfering with the Plaintiff's quiet possession and use of all that parcel of land known as Almukarim Farm



identified by PDP Ref. TRD/231/2004/40 which measures approximately 90 Hectares and situated at Madogo area of Tana River County.

- b. A declaration be and is hereby issued that the farms known as Almukarim Farm and Nasibu Farm border each other and no other farm known as Sulder Farm exists between them.
- c. The Plaintiff is awarded general damages of Kshs 1,000,000/- as against the 4th Defendant for trespass with interest at Court rates from the date of Judgment until payment in full.
- d. The Plaintiff is awarded the costs of the suit and of the Counterclaim as against the 4th and 7th Defendant respectively.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY VIA VIDEO LINK AT GARISSA THIS 28TH DAY OF FEBRUARY 2024.

J. M. MUTUNGI

ELC - JUDGE

