



Tuwei & 2 others v Tanui & 5 others (Environment & Land Case 1 of 2022) [2024] KEELC 886 (KLR) (22 February 2024) (Judgment)

Neutral citation: [2024] KEELC 886 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 1 OF 2022
MN MWANYALE, J
FEBRUARY 22, 2024**

BETWEEN

**DAVID KIPLIMO TUWEI 1ST PLAINTIFF
HENRY KIPKOSGEI TALAM (SUING AS LEGAL REPRESENTATIVE OF THE
ESTATE OF KIMUTAI ARAP TOO) 2ND PLAINTIFF
JULIUS KIPLETING SINGOEI (SUING AS LEGAL REPRESENTATIVE OF
THE ESTATE OF MALAKWEN TUWEI KAPTUEI ALIAS MALAKWEN MITEI
KAPTUWEI) 3RD PLAINTIFF**

AND

**KIPTABUT A. TANUI 1ST DEFENDANT
HOSEA TABUT 2ND DEFENDANT
PHILIP TABUT 3RD DEFENDANT
THE LAND REGISTRAR NANDI COUNTY 4TH DEFENDANT
THE LAND ADJUDICATION AND SETTLEMENT OFFICER, NANDI
COUNTY 5TH DEFENDANT
THE ATTORNEY GENERAL 6TH DEFENDANT**

JUDGMENT

1. This suit was instituted at Eldoret ELC Court, being Eldoret ELC No. 2 of 2017 vide a plaint dated 4th January 2017 and filed on the same day alongside an application seeking injunctive orders. The plaint was subsequently amended on 6th February 2017 vide an amended Plaint filed on 13th February 2017.
2. Subsequently, the Original claim was transferred to Kapsabet Chief Magistrate’s Court where it was registered as Kapsabet CM-ELC No. 58 of 2018 retaining the same parties as the Eldoret one.



3. In the meantime, the 1st, 2nd and 3rd Defendants herein took out an Originating Summons dated 14th January 2022 seeking Adverse possession and simultaneously with filing of the OS, the said Defendants vide their Notice of Motion of even date sought for the transfer of Kapsabet CM E and L 58 of 2018 from the CM's Court to this court for hearing and determination. which Application was allowed by consent of the Parties and the Originating summons in this matter was converted to a Defence and Counterclaim to the suit filed in the Chief Magistrate's court. Pursuant to the said Transfer and Consolidation, the Plaint filed in the Chief Magistrates Court was thus Amended on 11th November 2020 and by their Amended Defence and Counterclaim dated 15th February 2021 the 1st, 2nd and 3rd Defendants sued the 4th, 5th and 6th Defendant's alleging fraud against them.

Plaintiff's Case and Evidence.

4. In their Amended Plaint dated 11th November 2020, the Plaintiff's seek for the following orders;
 - a) That the Court to issue a permanent injunction restraining the 1st, 2nd and 3rd Defendants whether by themselves their servants and /or agents from trespassing further constructing changing, transferring or carrying out any development on the land parcels known as Songhor/songhor Block 9(soy Sitet) 157, Songhor/songhor Block 9(soy Sitet) 162 and Songhor/songhor Block 9(soy Sitet) 160.
 - b) Eviction orders against the 1st, 2nd and 3rd Defendants plus all their agents, assigns, children and households from Songhor/songhor Block 9(soy Sitet) 157, Songhor/songhor Block 9(soy Sitet) 162 And Songhor/songhor Block 9(soy Sitet) 160.
 - d) Permanent injunction restraining the Defendants jointly and severally or their agents or their servants from trespassing into the plaintiff's parcels of land Songhor/songhor Block 9(soy Sitet) 157, Songhor/songhor Block 9(soy Sitet) 162 And Songhor/songhor Block 9(soy Sitet) 160.
 - e) Any other or further relief that the Court could deem fit and just to grant.
 - f) OCPD Maraba Police Division to provide security during the implementation of this order.
 - g) Costs of this suit in the cause.
5. The Plaintiff called 4 witnesses who relied on their written statements and were cross examined.
6. PW1, David Kiplimo Tuwei stated that he is the registered owner of plot No. Songhor/songhor Block 9 (soysitet/157 measuring 2.67 Ha. having acquired title on 14/10/2016 where the land was adjudicated having previously been government land surrendered by settler.
7. PW1, adopted his statement dated 11th November, 2020 as part of his evidence in chief. In the statement he stated that the 1st and 2nd Defendants started encroaching into his land after adjudication and demarcation, and had refused to move out even after the titles were issued. That the 1st and 2nd Defendants had sold their parcels within the same locality and invaded his parcels. He sought for the prayers, set out in the Amended Plaint.
8. PW2, Henry Kipkosgei Tallam the 2nd Plaintiff herein suing as the administrator/personal representative of the Estate of Kimutai Arap Too (deceased) for parcel No. Songhor/songhor Block 9 (soy Sitet)/162 measuring 0.92 Ha.
9. PW2 stated that the whole block of land before surrender and subdivision was initially owned by a white settler who has surrendered it to Government of Kenya for allocation to squatters and his late



father had purchased shares in the cooperative society (that was allocated the property) equivalent to 0.92 Ha and was issued with title after adjudication.

10. PW2 avers that the 3rd Defendant herein Philip Tabut encroached into his late father's parcel No. Songhor/songhor Block 9(soysitet)/162 and started cultivating the same and the 1st, 2nd and 3rd Defendants encroached the parcel under the leadership of Philip Tabut. He had reported the incident to the area chief and elders but the Defendants decline to attend the meeting.
11. PW3, Julius Kipleting Singoei suing as the administrator and/or personal representative of the estate of Malakwen Tuwei Kaptuweï alias Malakwen Mitei (Deceased who is his late father). He told the Court that after demarcation and issuance of title, the 3rd Defendant encroached, trespassed and occupied his father's land being Songhor/songhor (soysitet) Block 9/160 measuring 1.73 Ha and constructed temporary houses and cultivated the same with his children and family to date. He added that the efforts to evict the Defendants had proved futile hence this suit.

1st, 2nd and 3rd Defendants Case and Evidence -

12. 1st, 2nd and 3rd Defendants in their amended defence and counterclaim aver that orders sought by the Plaintiff cannot obtain since they have been in occupation and use of the property for a period of exceeding 52 years and issuance of title documents to the Plaintiffs was irregular, illegal null and void.
13. The 1st, 2nd and 3rd Defendants avers that the alienation of the suit property to David Kiplimo Tuwei, Malakwen Tuwei and Kimutai Arap Too and its intended transmissions to the 2nd and 3rd Plaintiffs was illegal, null and void. They added that there are no previous proceedings in any Court between the Plaintiffs and the Defendants over the same subject matter.
14. The 1st, 2nd and 3rd Defendants avers that in the year 2015 the Plaintiffs jointly and severally caused the subdivision of the suit property and caused a new list of members of Soy Sitet Co-operative Society to be prepared, which new list excluded then.
15. 1st, 2nd and 3rd Defendants on further pleaded and particularized fraud in that;
 - i) the Plaintiff acquired title to land parcel No. Songhor/songhor Block 9 (soy Sitet) 157, 162 and 160 illegally without due regards to the Defendants right of occupation.
 - ii) the Plaintiffs altered the original list of Soy Sitet Co-operative Society so as to delete the name of the 1st Defendant.
 - iii) That the Plaintiff colluded with lands officials being 4th, 5th and 6th Defendants in order to deny the 1st Defendant title to land parcels numbers Songhor/songhor Block 9 (soy Sitet) 157, 162 and 160 by secretly subdividing the Defendants piece of land into three portions were issued and obtained titles.

4th, 5th and 6th Defendants Case: -

16. The 4th, 5th and 6th in the defence statement avers that they are strangers to the contents of paragraph 1 of the plaint in as far as the occupation of land parcels Songhor/songhor Block 9 (soy Siter) 157, Songhor/songhor Block 9 (soy Sitet) 162 and Songhor/songhor Block 9 (soy Sitet) 160 by the Plaintiffs concerned and stated that indeed the said parcels are a cumulative of 5.32Ha.
17. In the response to paragraph 2 of the counterclaim the 3rd, 4th and 5th Defendants averred that the 1st Defendant in the counterclaim is the registered owner of SOnghor/songhor Block 9 (soysitet)157 while Soghor/songhor Block 9 (soy Sitet) 160 is registered to Malakwen Arap Kaptuweï, represented



by the 3rd Defendant in the counterclaim herein while Kimutai Arap Too is the registered owner of Songhor/songhor Block 9 (soy Sitet) 162 and represented by the 2nd Defendant in the counterclaim herein.

18. They aver that they are strangers to the contents of paragraph 3, 4 and 5 of the plaint; and that they performed their mandate in accordance to the law as and further that the Defendant/ Plaintiff's in the counterclaim suit disclosed no cause of action against them.

Plaintiff's Submissions: -

19. The Plaintiffs framed the following as their list of issues for determination;
- i. whether the 1st Plaintiff is the legal registered owner of parcel of land parcel No. Songhor/songhor Block 9 (soy Sitet) 157 having acquired the title as first registered owner on 14th October 2016.
 - ii. Whether Kimutai Arap Too now deceased but suing through the 2nd Plaintiff being the Legal represented/Administrator of his Estate is the legal owner of parcel No. Songhor/songhor/Block 9 (soy Sitet) 162 having acquired the title as the first registered owner on 14th October 2016.
 - iii. Whether Malakwen Tuwei Kaptuwei (deceased) is the legal registered owner of parcel No. Songhor/songhor Block 9(soy Sitet) 162.
 - iv. Whether the 1st, 2nd and 3rd Defendants have been in possession of the parcels of land known as Songhor/songhor Block 9 (soy Sitet) 157, 160 and 162 since 1968 to date and whether the said open peaceful continuous, possession and occupation has granted the 1st, 2nd and 3rd Defendants adverse possession interests over the subject parcels of land.
 - v. Whether the doctrine of adverse possession applies to the parcels of land Known as Songhor/songhor Block 9 (soy Sitet) 157, 160 and 162, and whether the 2nd and 3rd Defendants' occupation and or possession aforesaid has extinguished the plaintiffs' proprietary rights by operations of the *Limitation of Actions Act*.
 - vi. Whether the Plaintiff's titles were acquired through legal, regular, Irregular and or fraudulent means.
 - vii. Whether the 4th and 5th Defendants legally or illegally alienated and or allocated to the plaintiff the parcels of land known as Songhor/songhor Block 9 (soy Sitet)157, 160 and 162 by following elaborate procedure provided by the Land Adjudication and Registration Acts in ascertaining the proprietary rights.
 - viii. Whether the 1st, 2nd and 3rd Ddefendant's have therefore illegally entered and taken possession of the plaintiffs' parcels of land known as Songhor/songhor Block 9 (soy Sitet) 157, 160 and 162.
 - ix) Whether the 1st, 2nd and 3rd Ddefendant's counter-claim has merit and entitles them to the prayers sought in the counterclaim particularly the prayers for orders of Declaration that the Plaintiffs titles over Songhor/songhor Block 9 (soy Sitet) 157, 160 and 162 have been extinguished by *Limitation of Actions Act* and the Doctrine of adverse possession and whether the 1st, 2nd and 3rd Defendants have therefore acquired title over the said properties.
 - x) Whether the Plaintiffs are entitled to the prayers sought in their Further Amended Plaint particularly the prayers for orders of eviction of the 1st, 2nd and 3rd Ddefendant's and permanent injunction restraining the 1st 2nd and 3rd defendants by themselves, their servants



and/or agents from trespassing, Constructing or carrying out any development on the plots Known as: Songhor/songhor Block 9(soysitet) 157,songhor/songhor Block 9(soy Sitet) 162 And Songhor/songhor Block 9(soy Sitet) 160 and the OCPD Maraba Police Division to provide security during the implementation of this order plus.

- xi) Who should have the Costs of this suit.
20. Plaintiffs submits that adverse possession can only be invoked against a known title holder as was held in the case of *Wambugu vs Niuguna* (1983) KLR as since titles were registered in 2016, the Defendants cannot plead adverse possession and Plaintiffs further submit on the sanctity of their titles as conferred by Section 25 and 26 of the *Land Registration Act* and buttress this legal principal, the Plaintiff relied on the case of *Ali Wanje Ziro vs Abudlbasit Abeid Said & Another* (2022) eKLR where it was held that;

“ The law is clear that the Certificate of title issued by the Registrar upon registration shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner and the tile of that proprietor shall not be subject to change except on the ground of fraud or misrepresentation to which the person is proved to be a party; where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

They submit that they have proven their case and the same ought to be allowed.

1st ,2nd and 3rd Defendants Submission:

21. 1st, 2nd and 3rd Defendants have framed the following as the issues for determination in their submissions;
- i) Whether the registration of the 1st, 2nd and 3rd Plaintiffs as the owners of land reference numbers Songhor / Songhor Block 9(soy Sitet) 157, Songhor /songhor Block 9(soy Sitet)162 and Songhor/ Songhor Block 9(soy Sitet)160 respectively was carried out legally, irregularly and or fraudulently.
 - ii) Were the 1st, 2nd and 3rd Defendants in possession of the suit properties L. R No. Songhor/ Songhor Block 9 (soy Sitet)157, Songhor/songhor Block 9(soy Sitet) 162 And Songhor/ Songhor Block 9(soy Sitet)160 at the time of the sub -division and transfer and or registration to the 1st, 2nd and 3rd Plaintiffs.
 - iii) Whether the occupation by the 1st, 2nd and 3rd Defendants create an overriding interest in their favour.
 - iv) Whether or not the 1st, 2nd and 3rd Defendants therefore have acquired title to the suit parcels by virtue of adverse possession.
 - v) Whether the 4th, 5th and 6th Defendants had any basis in law, equity or at all to issue titles over land that was in possession and use by the 1st, 2nd and 3rd Defendants
 - vi) What declaratory orders ought to issue?
22. On the first issue for determination the Defendants submit that Section 26 of the *Land Registration Act* cannot aid fraud and place reliance on the case of *Elijah Makeri Nyangwira -vs-Stephen Mungai*



Njuguna & Another [2013] eKLR where Munyao J, answered the question as to whether title is impeachable under section 26(1)(b) of the said *Act* as follows;

“First, it needs to be appreciated that for Section 26 (1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, unprocedurally or through a corrupt scheme. The heavy import of section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors.

The purpose of section 26 (1) (b) in my view is to protect the real title...”

23. They further place reliance in the decision in the case in *Republic vs Minister for Transport and Communication & 5 others* wherein Maraga J (as he then was) stated:

“Court should nullify titles by land grabbers who stare at your face and wave to you a title of the land grabbed and loudly plead the principle of the indefeasibility of title deed.”

24. The 1st, 2nd and 3rd Defendants submit that since the Plaintiffs title were procured irregularly and fraudulently and also was held in the case they have cited, the titles ought to be cancelled.
25. The 1st, 2nd and 3rd Defendants further submit of entitlement to the suit parcels by adverse possession.

4th, 5th, and 6th Defendants Submission:

26. 4th, 5th and 6th Defendants on 2/11/2023 closed their case without calling any witness. They were to file their submissions by 21st December 2023, however by 23rd January 2024 they had not filed their submissions thus Judgement were differed to 22nd February, 2024 and the same was wri8tten without the benefit of their submissions.

Issues for Determination: -

27. Before framing the issues for the Courts determination, a number of issues were settled in the course of the proceedings notably that;
- a) The 1st Plaintiff is the registered owner of Songhor/songhor Block 9/soysitet/157, while the 2nd Plaintiff has sued as the legal representative of the Estate of Kimutai Arap Too who was the registered owner of Songhor/songhor Block 9/soysitet/162 and the 3rd Plaintiff has sued as the legal representative of the Estate of Malakwen Tuwei Kaptunei the registered Songhor/songhor Block 9/soysitet/160.
 - b) It is common ground that the 1st, 2nd and 3rd Defendants, are om occupation of the suit parcels.
 - c) It is common ground that the suit properties are subdivisions of the parcel of land which belonged to the Soy Sitet Farmers’ Co-Operative Society. Which parcel had been surrendered to the Government of Kenya and was subdivided to the members of the co-operative society and adjudication and settlement was conducted. That whole block was Songhor/songhor 41218/3.
 - d) Pursuant to the adjudication and settlement, the members of Soy Sitet Farmers’ Co-operative Society, were issued with titles and the Plaintiffs were registered as proprietors and issued with titles on 14th October of 2016.



28. The Court has considered and analyzed the pleadings, evidence on record, the issues for determination as framed separately by the parties and the submissions by the parties and frames the following as issues for determination: -
- i) What was the mode of acquisition of the titles by the Registered Owners/Plaintiffs?
 - a) Was it regular and through legal means as claimed by the Plaintiffs?
 - b) Was it through fraud and/or corrupt means as with the assistance of the 4th, 5th and 6th Defendant as claimed by the 1st, 2nd and 3rd Defendants?
 - ii) Whether adverse possession has proven by the 1st, 2nd and 3rd Defendants/Plaintiffs in the counterclaim against the Plaintiff's parcels/Suit properties
 - iii) What reliefs ought to issue?
 - iv) Who Bears the costs of the case?

Analysis and Determination: -

29. It was the first Plaintiffs case as well as his co-plaintiffs as stated in their witness statements and documents produced as Exhibit that; they acquired the property on 14/10/2016 as the first registered owner, pursuant to adjudication of the surrendered block 41218/3 by a white settler to the Government.
30. In support of this the Plaintiffs produced copies of the titles as P Exhibit 1 to 3 together with their respective searches as P Exhibit 4 to 6.
31. PW4 Mr. Thomas Birgen in his testimony in support of the Plaintiff's case and their respective ownership, the witness stated the suit property before subdivision belonged to Siret Tea Company Limited and had surrendered it to the Central Agricultural Board a Government parastatal, the condition for surrender was for allocation of the squatters who ere living on the property.
32. The witness as a secretary wrote a letter to CAB on behalf of the squatters seeking allocation.
33. The squatters thereafter formed and registered Soysitet Farmers' Co-Operative Society in 1969 where members were listed. The members of the society were to pay to CAB Kshs 128,000/= but negotiated and paid Kshs 400,000, they then paid Kshs 54,500 to the Commissioner of Lands for previous survey. The funds were raised and paid by members. Each member was to pay Kshs 1000 for 10 acres but the 1st Defendant could not raise the 10000, but paid Kshs 700 and was allotted 7 acres. A private surveyor was engaged to allocate each person where he was living.
34. When the Government Surveyor came each person had already been allocated where they lived, and allocation was done in accordance with the area list. This was done in 1992, the 1st Defendant had already sold to a Mr. Arap Tororei who bought and transferred it to his son David Koech who thus appeared as number 169 on the list. The 1st Defendant had also sold to Mr. Andrea Koech who resold to Philip Kipketer Rugut appeared on number 167.
35. The 1st Defendant was however allocated plot number 81 as an exgracious allotment. The area list (P Exhibit 12) was thus amended pursuant to minutes dated 2/12/1992, which (P Exhibit 13) showed the members list were displayed on a public notice board. At time of preparation of the area list, the 1st Defendant had sold his interests. The area list was then sent to Nairobi on 5/9/2016 so as to be used for issuance of the titles.



36. There were no complaints over the list. The title surrendered by Siret Tea Factory was 1475/3 comprising of 1819 acres. The witness stated that the occupation by the squatters was done 1975, and allocation was done depending on the monies paid.
37. The 1st Defendant was entitled to 7 acres, list final list P Exhibit 12 was prepared in 2012 with 551 members while the original list had 150 members, so the inclusion of other members was because some member could not raise the payments. The 1st Defendant was only entitled to 7 acres having paid 700 shillings, which 7 acres he sold in any event. The titles were issued based on list P Exhibit 12. No other subdivision was done. After the 1st Defendant sold his shares, his property was subdivided to the new purchasers who become members of the society.
38. The Defendant's version of events leading to the Plaintiffs acquisition is per their testimony.
39. DW1, a son of the 1st Defendant stated that the suit properties belonged to his father and he claimed ownership by virtue of having been born on the suit property in 1965. He stated that his father was shown his property in 1975 and the property was surveyed according to where each person was staying.
40. The original members were 150 and the acreage reduced as members kept increasing. The Government surveyor had declined to take money from the 1st Defendant and their property was not surveyed in their favour.
41. From the two versions of evidence on how the acquisition was made, both the Plaintiffs and the 1st, 2nd and 3rd Defendants agree that the acquisition was by way of adjudication under the [Land Adjudication Act](#).
42. The area list (P Exhibit 12) was thus adjudication register. In the minutes presented as P Exhibit 13-minute 291 (matters arising) indicated that the 1st Defendant was occupying other members as he had sold all his 7 acres and was occupying area belonging to Kimutai Too and David Kiplimo.
43. The said minutes further read the members list, and the 1st Defendant was granted 2 acres for his services to the society. This evidence corroborates the testimony of PW4.
44. The minutes of 24/7/1995 indicated the survey of the disputed area by Kiptabut Tanui to the person he had sold to. Thus at compilation of the area list on 5/9/2016, the 1st Defendant did not have any interest in the original allocated 7 acres in the suit property, having sold his shares as captured in minutes 2/12/92, and 24/7/1995 and the area list which was the final register, captured Kiptabut Tanui at plot No. 81, while plot number 157 was allocated to David Kiplimo Tuwei, plot number 162, to Kimutai arap Too, and plot number 160 to Malakwen Kiptue Kaptuwei.
45. PW4 did thus explain the omission of the 1st Defendants name of the final list with respect to the area he was occupying since he had sold his shares, but explained that the 1st Defendant had he had been exgraciously been allocated another plot to wit plot No. 81. In view of the documentary evidence which collaborate the Plaintiffs and PW4'S testimony, the role of the 4th and 5th Defendants in registration of the Plaintiffs must deemed to have been purely based on the area list/adjudication register and the Plaintiff have demonstrated procedural acquisition of their parcels of land, free from any of the fraudulent particulars and or corrupt schemes attributed to them by the 1st, 2nd and 3rd Defendants.
46. Thus, in answer to issue number the Court returns a finding that the Plaintiffs did acquire good title of the suit parcels.



47. On issue number 2, the 1st, 2nd and 3rd Defendants claim to the suit property / claim of adverse possession as pleaded in the Originating Summons now tuned defence and counterclaim.
48. In the evidence of both, parties, they agree that the suit property was surrender to become government from 1964 to 2016 when titles were issued to the owners after adjudication. During the said time the 1st Defendant 2nd and 3rd Defendants, were residing on the suit property. Could adverse possession in their favour arise in circumstance?
49. Various dicta, confirm the requirements of adverse possession to be met. In summary, the adverse “*nec vi, cec clam nec precario*” for 12 years.
50. From the period of 1974 to 2016 the whole of the block 4128/3 was government land and as was thus excepted under Section 41 of [Limitation Act](#) as it was public land.
51. Section 41 provides as follows
- “ This [Act](#) does not
- a) enable a person to acquire any title or any easement over government land or land others enjoyed by the Government.”
- b)
52. The whole block was Government Land before adjudication subdivision and reigstration of the new proprietors hence from 1964 to 2016, the Defendants lived on the suit property, but time for purposes of adverse possession could not run in their favour in view of Section 41 of the [Limitation of Action Act](#) aforementioned.
53. In the decision of case of [Francis Gitonga Macharia vs Muiruri Waitbaka](#) Civil Appeal no. 110/1997 the Court held that.....
- " time started running from time of registration”
54. All the Plaintiffs herein were registered on 14th October 2016 and hence time started running from the said date. The originating summons was filed in January 2022, only 6 years after time had started running, hence the claim of adverse possession by the 1st, 2nd and 3rd Defendants had not crystallized and certainly not proven.
55. The 1st, 2nd and 3rd Defendants have placed reliance on the decision on [Mitubell Welfare Society vs Kenya Airports Authority](#) and on the decision in [Law Society of Kenya and Joseph Kinyua vs Shem Mogot Adholla](#), and submitted that a right to housing has accrued to them.
56. However, the above decisions are distinguishable and not applicable in this case as they related to squatters on public property while in the case the suit properties upon registrations of the Plaintiffs as proprietors became private properties.
57. Thus, in answer to issue 2, the Courts finds that the 1st, 2nd and 3rd Defendants claim of adverse possession fails and it is dismissed.
58. On what reliefs ought to issue having found the Plaintiffs to have acquired their titles procedurally through adjudication and legally without proof of a corrupt scheme, their titles ought to be protected as they are indefeasible under the provisions of Section 25 and 26 of the [Land Registration Act](#).



59. The Court has not found any wrong doing or fault on the part of 4th, 5th and 6th Defendants and case against them is hereby dismissed.
60. The Court finds that the plaintiffs are entitled to the reliefs set out in the disposition.

Disposition: -

61. Judgment be is hereby entered in favour of the Plaintiffs for;
- a) permanent injunction issues restraining the 1st, 2nd and 3rd Defendants jointly and severally by themselves, their agents or servants from trespassing into Plaintiffs parcel of land Songhor/songhor Block 9 (soysitet) 157, Songhor/songhor Block 9/soysitet) 162 and Songhor/songhor Block 9 (soysitet) 160 after the lapse of the notice to be issued under Section 152 (E) of the [Land Act](#).
 - b) The 1st, 2nd and 3rd Defendants to be evicted from Songhor/songhor Block 9 (soysitet) 157, Songhor/songhor Block 9/soysitet 162 And Songhor/songhor Block 9/soysitet 160 after the lapse of the notice to be issued under Section 152 (E) of the [Land Act](#).
 - c) Costs of the suit and counterclaim are awarded to the Plaintiffs while the 4th, 5th and 6th Defendants are awarded costs of counterclaim.
 - d) Judgment accordingly.

JUDGMENT, DELIVERED AND DATED AT KAPSABET THIS 22ND DAY OF FEBRUARY, 2024.

HON. M. N. MWANYALE,

JUDGE

In the presence of;

Mr. Murgor for 1st, 2nd and 3rd Defendant

Mr. Rotich for 1st, 2nd and 3rd Plaintiff

Ms. Odeyo for 4th, 5th and 6th Defendants

