



REPUBLIC OF KENYA



Murungi & 6 others v Kaminchi & 14 others (Environment & Land Case E002 of 2021) [2025] KEELC 4143 (KLR) (27 February 2025) (Judgment)

Neutral citation: [2025] KEELC 4143 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT & LAND CASE E002 OF 2021
CK YANO, J
FEBRUARY 27, 2025**

BETWEEN

**PHINEAS NGAKU MURUNGI 1ST PLAINTIFF
EDWIN KABURU THUURA 2ND PLAINTIFF
KAMUNDI THUURA 3RD PLAINTIFF
KITHINJI BARINE 4TH PLAINTIFF
ASHFORD MUTEGI MURUNGI 5TH PLAINTIFF
JASPER KIRIRA 6TH PLAINTIFF
EPHANTUS KINYUA KIRIA 7TH PLAINTIFF**

AND

**RIUNGU KAMINCHI 1ST DEFENDANT
M'MURUNGI KUNGANIA 2ND DEFENDANT
KINYUA KAGOZI 3RD DEFENDANT
KAWIRA M'NDAKAT 4TH DEFENDANT
MURITHI BURURIA 5TH DEFENDANT
KITHINJI BURURIA 6TH DEFENDANT
KIRAMA CHABARI 7TH DEFENDANT
VIRGINIA MURITHI 8TH DEFENDANT
DAMARIS MUKWANDEGI 9TH DEFENDANT
KARIUKI BURURIA 10TH DEFENDANT
CATHERINE MUKWAMUGO 11TH DEFENDANT**



MICHAEL NDUBI 12TH DEFENDANT
THE DISTRICT LANDS ADJUDICATION OFFICER, MARA SUB
COUNTY 13TH DEFENDANT
DISTRICT SURVEYOR, MERU SOUTH/MARA SUB COUNTY 14TH
DEFENDANT
LANDS REGISTRAR, MERU SOUTH 15TH DEFENDANT

JUDGMENT

1. The Plaintiffs instituted this suit vide a Plaint dated 8th February, 2021 seeking judgment against the Defendants for:-
 - a. An order of this Honourable Court directing the Lands Registrar and the District Surveyor to undertake a survey of PLOT No. 1480 and PLOT No. 1977 LOWER EAST MAGUTUNI REGISTRATION SECTION for the purpose of proper identification and clear definition of parcels of land recorded on the REGISTRY INDEX MAP for the LOWER EAST MAGUTUNI as L.R. No. MWIMBI/L.E. MAGUTUNI/3712, 3713, 3714, 3715, 3716, 3613, 3614, 3615, 3616, 3617, 3618, 3619, 3620, 3621, 3622, 3623, 3624, 2381 and 1977.
 - b. An order to issue directing the Defendants herein and all persons illegally occupying the parcels of land identified on the REGISTRY INDEX MAP for the LOWER EAST MAGUTUNI as L.R. No. MWIMBI/L.E. MAFUTUNI/3712, 3713, 3714, 3715, 3716, 3613, 3614, 3615, 3616, 3617, 3618, 3619, 3620, 3621, 3622, 3623, 3624, 2381 and 1977 to forthwith vacate from the said properties and in default an order for eviction do issue against the Defendants and all other illegal occupants thereof.
 - c. An order of this court directing the OCS, Magutuni Police Station and/or the County Police Commander, Tharaka Nithi County to offer security for the purpose of undertaking the survey works and to ensure compliance with the Orders of the Court.
 - d. Costs of this suit be provided.
2. The Plaintiffs' case is that they are the registered proprietors of all those parcels of land registered as L.R. No. MWIMBI/L.E. MAFUTUNI/3712, 3713, 3714, 3715, 3716, 3613, 3614, 3615, 3616, 3617, 3618, 3619, 3620, 3621, 3622, 3623, 3624, 2381 and 1977 (the suit properties herein). The Plaintiffs aver that the said parcels emanate from subdivision of Plot Nos. 1480 and 1977 Lower East Magutuni Registration Section, which was clan and/or ancestral land held in trust by the Late Wilfred Murungi Mboroki for the family of M^oThuura Njuri. The Late Wilfred Murungi wrote to the Land Adjudication Officer to be allowed to sub-divide and distribute the land among the beneficiaries. That the family members were allocated parcels pursuant to the list of beneficiaries of Plot No. 1977 and as per a family meeting held on 20th October, 2015.
3. The Plaintiffs aver that they became registered owners of the suit properties, with the only dispute in respect of thereof determined in their favour on 1st October, 2015 and no appeal was lodged. They claimed that Registry Index Map Sheet 5A for the Lower East Magutuni Section clearly identifies the said parcels but the boundaries on the ground remain unascertained. They claimed that they have since 2017 tried to have the land surveyed, but their efforts were thwarted by the Defendants who are in illegal occupation of the suit properties. A complaint was made at Magutuni Police Station vide



OB/7/4/11/15, and a meeting held by the Deputy County Commissioner on 2nd January, 2019 but the Defendants have still blocked all efforts to survey and demarcate the land.

4. The Plaintiffs averred that the Defendants were interfering with their property rights by illegally occupying and blocking their access to the land in breach of Article 40 of *the Constitution*, occasioning them immense prejudice, loss and damage. The Plaintiffs set out the particulars of the alleged illegalities, particulars of threats and particulars of loss and damage. The Plaintiffs sought an order for the District Surveyor to survey Plot Nos. 1480 and 1977 and give effect to the allocations and define the Plaintiffs' entitlement thereon.
5. The 1st to 12th Defendants entered appearance through the firm of Mwenda Mwarania, Akalu Advocates and filed a Defence and Claim against 13th - 15th Defendants. In their Defence, they denied each and every allegation contained in the Plaint. They instead averred that they were given the land they occupy by Kirigia s/o Ntare, the father of M'Mboroki and Wilfred Murungi's grandfather long before the land was transmitted to him. That they have lived on and cultivated the land without being evicted by Kirigia Ntare's family, and it was never available for re-distribution by Wilfred Murungi to any other person.
6. The 1st - 12th Defendants faulted the alleged application for subdivision for among other reasons, not including Wilfred Murungi's Plot No. 1480, and further, that it did not specify the individual acreages. They averred that the registration of the Plaintiffs over the suit parcels was unlawful, fraudulent and thus not protected by *the Constitution*, and they set out the particulars of the alleged fraud. They denied any illegality, claiming that they were legal occupants of their portions having been allocated and put in possession by the previous owner.
7. They alleged that being the earlier allottees, their equity of allotment and entitlement takes precedence over the Plaintiffs' which came on 8/7/2012, after 40 years. The Defendants averred that the Surveyor and Land Registrar refused to allocate the Plaintiffs the balance of their donor's land and instead intended to survey their land to the Plaintiffs' without any authority. They claimed that they only denied the Plaintiffs' and the whole world entry into their respective portions that they have occupied for over 40 years. They specified that they never denied the Plaintiff and the said Officers the right to survey the land owned and occupied by Wilfred Murungi, who they claimed did not purport to evict them in his letter of 8/7/2012. The 1st - 12th Defendants averred that the surveyors should first demarcate the Defendants' portions then survey the remainder amongst the Plaintiffs. They prayed for dismissal of the suit with costs.
8. In their Notice of Claim against their Co-Defendants dated 19th July, 2024, the 1st - 12th Defendants are seeking a determination of the following issues: -
 - i. Whether the 1st - 12th Defendants occupy, use, have built on and have fenced using live fence definite portions of land within the larger pre-registration land parcel numbers 1977 and 1480 within the then Lower Magutuni East Adjudication Section.
 - ii. Whether the 1st - 12th Defendants were lawfully allocated the fenced parcels of land by the previous owners, the predecessors in title of Wilfred Murungi, including but not limited to his grandfather Kirigia s/o Ntare.
 - iii. Whether such allocation has ever been revoked or the 1st - 12th Defendants evicted by their donors or their successors in title.
 - iv. Whether the application letter duly handwritten and signed by Wilfred Murungi dated 8/7/2012 specified the acreage any of the 23 named beneficiaries was to get.



- v. Whether the said letter of 8/7/2012 included parcel No. 1480 in the allocation.
 - vi. Whether the said letter of 8/7/2012 requested for eviction of the persons already in occupation to pave way for the 23 new named beneficiaries.
 - vii. Whether the purported acreage ascertainment list dated 20/10/2015 is signed by the said Wilfred Murungi.
 - viii. Whether that list of 20/10/2015 provided for all the 23 beneficiaries named in the application letter of 8/7/2012.
 - ix. Whether the purported implementation of the application dated 8/7/2012 affected the portions of land fenced, occupied and actively used by the 1st - 12th Defendants prior thereto.
 - x. Whether there were other prior allottees and occupants of the original pre-registration parcel numbers 1977 and 1480 other than the 1st - 12th Defendants including but not limited to a school, a church and a cattle dip plus other individual allottees.
 - xi. What factors were considered to demarcate the allottees/beneficiaries in the application dated 8/7/2012 on the portions of land occupied by the 1st - 12th Defendants instead of the portion in actual occupation and user of the donor, Wilfred Murungi?
 - xii. Whether the total acreage purportedly owned by each of the Plaintiffs comprised in various suit parcels now registered in their names exceeds the acreage, albeit unilaterally ascertained, reflected in the disputed list dated 20/10/2015.
 - xiii. Whether in some sections the registered area exceeds the map and even actual ground area.
 - xiv. Whether some registered suit parcels of land overlap other registered parcels of land; though not subject matter hereof.
 - xv. Whether the ascertainment of acreage and the demarcation on the map and/or ground of the suit parcels of land was erroneous,; if not unlawful;
 - xvi. Whether the whole area should be re-surveyed with existing boundaries picked and mapped and registered in the respective names of the 1st - 12th Defendants with the balance if any being shared out between the Plaintiffs and the other named beneficiaries in the application letter dated 8/7/2012.
9. The 13th, 14th and 15th Defendants filed a Statement of Defence on 6th April, 2021 denying every allegation in the Plaint. The 13th - 15th Defendants stated that the claim of ownership by the Plaintiffs are not within their knowledge. They put the Plaintiffs on strict proof with regards to the allegation of request for subdivision to the Land Adjudication Officer. On the allegation of issuance of numbers, they denied that there was any allocation of land by the 13th Defendant, and stated that they were not parties to the meeting held on 20th October, 2015. They denied knowledge of any attempt to survey and demarcate the land as alleged. They denied the claim for constitutional rights, stating that any claim of breach/infringement requires precise proof. They denied knowledge of the alleged illegal occupation by the Defendants, as well as the alleged prejudice, loss and damage. The 13th, 14th and 15th Defendants averred that the suit is frivolous, vexatious and an abuse of court process and prayed that it be dismissed with costs.



Hearing and Evidence ;

Plaintiffs' Case;

10. Hearing of the suit commenced on 23rd July, 2024 with Kamundi M'Thuura, the 3rd Plaintiff, testifying under oath as PW1. He adopted his statement dated 8th February, 2021 as his evidence in-chief. He produced the documents in his list of documents as exhibits marked as follows; the Certificates of Official Search for L.R. No. MWIMBI/L.E. MAFUTUNI/3712, 3713, 3715, 3716, 3613, 3615, 3616, 3617, 3618, 3619, 3620, 3621, 3622, 3623, 3624 and 3711 as PEXb1(a)-(p), letter dated 8/7/2012 as PEXb2, list of beneficiaries as PEXb3, copy of extract from RIM as PEXb4, letter dated 31/10/2019 from P. Muturi as PEXb5 and the DCC's letter dated 2/1/2019 as PEXb6. He testified that they were in court because of the land which belonged to the family of M'Thuura Njuri.
11. PW1 was cross-examined by Ms. Kendi and testified that they were using the land but they were evicted and it is now used by people who are not members of their family. He testified that it is the Defendants who are staying on and using Plot No. 1977 not the Land Registrar or Surveyor, but he accused them of taking too long to survey the land. PW1 testified that two surveyors had visited the land but none of them resolved the dispute. He testified that the Surveyor's report on the meeting held on 7/10/2022 did not say that they had included other parcels. He however admitted that he had included the parcels mentioned in the report dated 11/10/2022. He testified that the boundary dispute was resolved and each person should be shown their boundary.
12. PW1 was also cross-examined by Mr. Mwarania and testified that the land belonged to his father, M'Thuura Njuri. He testified that his cousin Wilfred Murungi the son of Mborogi, was their family's trustee over the suit land. PW1 never heard that Wilfred Wilfred sued or was sued as trustee over the land, but admitted that Wilfred Murungi had a case during adjudication over the land. PW1 testified that their fathers had a right over the land having inherited from their forefathers, and they also do. He said he did not know that Wilfred Murungi's father had given land to some people. PW1 testified that Bururia was not listed in the letter dated 8/7/2012, but admitted that Bururia M'Mbutu was named in the decision of the Adjudication Review (AR) proceedings as one of the people to be given land.
13. On further cross-examination, PW1 testified that the list in the AR proceedings is 35 who were to get land from parcel No. 1977. That they had sued the children of Bururia in this case who are on the land given to their father as well as M'Murungi M'Kungania who is also on the AR list. PW1 testified that there is a school that was given land in the same parcel, as well as a church and a cattle dip who they had not sued. He admitted that when they were given the land in 2015, the Defendants were on the land. He further testified that neither the list of 35 people nor that of 23 specify how much each was to get. He conceded that he had not been to the land and could not tell the boundary.
14. PW1 testified that when Wilfred Murungi gave land to the school, church and cattle dip in 1989, a portion of about 65 Acres remained, which is what was shared out to the people in the list of 16 persons. He further testified that they are only entitled to 24 Acres, thus the acreages in the list of 16 people is wrong. He had no list to show how Plot No. 1480 was subdivided. PW1 further testified that his cousin Kirigia Ntare gave land to people to live on, but he did not know who these people were and Wilfred Murungi never told him about it. PW1 further admitted that they wanted to survey the Defendant's land but they refused. He admitted that surveyors never went to the land but titles had been issued in 2019. He said that he did not know that the Defendants live on the land.
15. PW1 testified that the 1st Defendant was evicted vide AR Proceedings dated 1st October, 2015 whereas all the others were awarded land. PW1 testified that the Defendants were minors in 1990 living with



- their parents on the suit properties. He did not dispute that Wilfred Murungi is the one who shared the land and retained a portion of it for himself. He also admitted that they had appealed against the AR objection decision. PW1 confirmed that the Defendants are the children of the people who were awarded some parcels of land.
16. PW1 was re-examined and he testified that he had come to court over plot no. 1977. He added that the 1st Defendant had no right over the land. He however testified that according to the AR decision, the 1st Defendant ought to go to his father's land. He stated that he could not tell who the homesteads shown on Sheet 5A belonged to, and that they were constructed during the pendency of the case. PW1 testified that Plot No. 1977 measures about 65 Acres and that everyone in their family had gotten a title therefrom. He added that numbers came out after subdivision of plot no. 1977 and that all 35 people have their own titles. PW1 said that he wanted the Defendants evicted from their land although they had occupied it for long. PW1 added that they had title to the land.
 17. PW2 was Phineas Ngaku Murungi, who also gave a sworn testimony and adopted his Affidavit dated 20th August, 2024 as his evidence-in-chief and the documents annexed thereto being PNM4 as PEXb7, PNM 5(a)&(b), 8(a) & (b), PNM6 as PEXb9(a)&(b) and the search for parcel no. 3711 as PEXb10. He also referred to the documents in the Plaintiffs' further list of documents dated 20th August, 2024 as PMFI1-10.
 18. On cross-examination by Mr. Mwarania, PW2 testified that this suit concerns plot no. 1480 which was 19 Acres before subdivision, Plot No. 1977 which measures 65 Acres or more, being the balances after the donations. He testified that the mode of sharing in his documents is per the proposal of Wilfred Murungi and what was ordered by the DLASO. He had no document showing how Plot. No. 1480 was sub-divided because it is not in dispute. PW2 testified that the AR Objection decision came before the letter dated 8/7/2012. He testified that the decision of 1/10/2015 is final and should be used to subdivide the land. He testified that the DLASO (AR Board) ordered that the 35 people to benefit and that they left no one out, but admitted that the 2nd Defendant was not given land but there was a provision. He also admitted that he had sued the Defendants because they refused to move out of the land.
 19. PW2 testified that the 1st, 5th, 6th and 10th Defendants are sons of Bururia M'Mbutu who was allocated 1 Acre from the family land. He testified that in the decision, the demarcation officer was to go to the ground to measure and prepare a scheme on how to share. He however said that the said officer had no right to demarcate as that right lay with the family. He explained that the Adjudication Officer authorised them to proceed as a family and decide with all the stakeholders. He did not know when the Defendants started living on the land. He conceded that the Defendants are dependents of the beneficiaries in the DLASO list. That the DLASO decision was not appealed, but that it was implemented per the family & stakeholders meeting.
 20. PW2 was cross-examined by Ms. Kendi and testified that they subdivided pursuant to the family's agreement and had the subdivision approved. He admitted that some of the Defendants are on the land, not the Surveyor, DLASO or the Land Registrar. On re-examination, PW2 testified that there is no issue regarding Plot No. 1480. That the 16 people to whom they shared the land are the larger family entitled to plot no. 1977. He stated that they have titles over the land, and some of the Defendants have title over the land they bought. He stated that Bururia M'Mbutu is also known as Buria, and together with M'Murigi M'Kungania are entitled to portions of Plot No. 1977. He added that the 2nd Defendant is not entitled to the land. He explained that an adjudication officer went to the land but people became violent.



21. Magdalene Wanjagi Njuki, a surveyor Tharaka Nithi County testified as PW3. She testified that she visited the suit property pursuant to summons by the court and prepared a report dated 16/11/2023 for both Plot Nos. 1480 and 1977. She explained that for both plots, the acreages on the ground and those registered could not match as the ground was smaller. She also explained that some parcels registered on the map were also registered elsewhere. Further, that there were no boundaries on the ground and she recommended a re-survey so that each is placed as per their ground occupation and the map be amended. She testified that most of the parcels were overlapping and did not reflect the positions on the map and that all the parcels have issues and that several homesteads are occupied by people with no documents. She produced the report as PEXb11. She testified that the family had proposed that the land be shared equally and those on the land be given something. She said that there is room for rectification of the map as per the law. She added that there is no one on plot no. 1480.
22. She was cross-examined by Mr. Mwarania and testified that the consent order at No. 2 required establishment of occupation, preoccupation and the boundaries of each occupant. She explained that most occupants have no boundaries, while some have live fence boundaries and terraces. She further testified that she sketched where each family occupied but the sketch does not provide the acreages. She testified that she did not pick the boundaries of those in occupation, and neither did she mention that she met any hostilities. PW3 could not tell how many acres the Defendants occupy. She added that the demarcation was done by a Demarcation Officer but the work was not done properly. She reiterated that the ground did not match the map they had, and clarified that the ground is supposed to direct the way the map was to be.
23. On re-examination, PW3 testified that she was not aware of the DLASO direction when she was doing her report. This marked the end of the Plaintiffs' case.

1st - 12th Defendants' Case;

24. Frederick Riungu Bururia testified on oath on behalf of the Defendants as DW1 and adopted his witness statement dated 6th September, 2024 as his evidence. He produced the documents in his list of documents filed on 19th July, 2024 as DEXb1-6 respectively and those in the further list dated 6th September, 2024 as DEXb7. He testified that they all live together on the land as neighbours. DW1 testified that the AR Decision directed the demarcation officer to measure the land and give them titles but the officer did not do so. That they filed a claim against the 13th - 15th Defendants for not abiding by that decision, asking the court to direct the 13th - 15th Defendants to survey the land.
25. DW1 testified that Murungi has his own land and none of them live there. He also testified that in ARB Case No. 83 of 1999 and 87 of 1999, Murungi confirmed that they had been given land by his father and uncle. That when the Defendants were already on the land, the church, the school and the cattle dip were also given land 1989 that was different from the one they had. He testified that after the donations, a vast portion still remained that Murungi can give to the Plaintiffs.
26. DW1 was cross-examined by Ms. Kendi and he testified that he wrote to the Surveyor and the Land Registrar but they did not visit the property. He testified that he was asking for them to visit the land and subdivide the land.
27. When he was cross-examined by Mr. Kirimi, he testified that he lives on his land that is under plot no. 1977, where he occupied 4 Acres without a title. He testified that he was born on the suit land in 1957 and has occupied it for 50 years. That they tried to have the land registered in their names and were informed that a surveyor would come to demarcate the land as it had never been demarcated. He was one of the objectors in AR Objection 5 which was over plot no. 1977. He testified that he wanted the Court's assistance in getting a title over his land. He told the court that they were given the land by



M'Mboroki and Kirigia but he had no proof that the land belonged to them before Murungi. He said that they had extensively developed the land and that it had piped water and electricity. DW1 explained that he is a son of the original allottees and that he stays on the land that was occupied by his father Bururia Mbobua, and his grandfather. He stated that there was collusion between the Plaintiffs and the 13th - 15th Defendants to allocate the land, although he had no evidence of the same. Further, that the Plaintiffs' titles were not lawfully obtained as the Defendants are staying on the land. He concluded that they have a right to be on the land.

28. On re-examination, DW1 clarified that the Land Registrar and Surveyor did not go to the land during demarcation. He testified that his father was one of the original allottees and was objector No. 5 in the dismissed objections. He testified that at page 2 of DEXb1, Wilfred Murungi enumerated the names of the people who inherited land from Bururia M'Mbutu.

Submissions :

Plaintiffs' Submissions;

29. At the close of the hearing, the parties were directed to file written submissions. In the Plaintiffs' submissions dated 27th November, 2024 Counsel started by giving a background of the dispute and an analysis of the evidence. Counsel cited Section 24(a) and Section 26(1) of the [Land Registration Act](#), and submitted that the Plaintiffs had demonstrated the basis of their titles and that their acquisition was legal, formal and free from any encumbrance. He then submitted that there is nothing to show that the Defendants are not illegal occupants forcefully occupying the land and they do not deserve to be entertained by this court.
30. Counsel submitted that the Defendants had not tendered satisfactory evidence to prove their claim and ought to be ordered out of the Plaintiffs land. Counsel prayed for orders in the Plaint and any other orders this court may deem fit. Counsel relied on Dr. Joseph Arap Ngok vs Justice Moiji Ole Keiwa & 5 Others, Civil Appeal No. [CA 60 of 1997](#), Supreme Court Presidential Petition No. 1 of 2017, Raila Amolo Odinga & Another vs IEBC & 2 Others (2017) eKLR, Morris Ngundo vs Lucy Joan Nyaki & Another (2016) eKLR and Rutongot Farm Ltd vs Kenya Forest Service & 3 Others (2018) eKLR.

Defendants' Submissions;

31. The Defendants' submissions dated 16th December, 2024 are mainly a summary of the pleadings and hearing herein. In summary however, Counsel submitted that the Land Settlement and Adjudication Office in its decision of 1st October, 2015 gave a list of 35 persons to benefit from the land. Counsel submitted that the decision ordered the listed beneficiaries to meet at the land in the presence of the Demarcation Officer to prepare a scheme plan on how subdivision would be done. That the failure to obey this order was unlawful and is what led to the instant suit. Further that the theoretical subdivision of the land without considering the people in occupation and whether they were in the list was equally unlawful, as were the titles obtained from such an unlawful process.
32. Counsel submitted that under Article 40(6) and Section 26(1)(b) of the [Land Registration Act](#), the said titles do not qualify to be protected by any law. Counsel urged the court to revoke all titles held by the Plaintiffs and the 13th - 15th Defendants be sent to pick the boundaries of the Defendants parcels, ascertain acreages, prepare a scheme plan and RIM showing the boundaries, allocate them their individual parcels and issue them with titles. Counsel urged the court to dismiss the Plaintiffs' suit with costs and allow the 1st - 12th Defendants' claim against the 13th - 15th Defendants.



Analysis and Determination;

33. I have analysed and considered the pleadings, testimony, evidence and the written submissions filed by the parties herein. The issues for determination are as follows:-
- i. What should guide the sub-division and distribution of Plot No. 1977?
 - ii. Whether the Plaintiffs hold valid title over the suit properties?
 - iii. What orders should issue with regards to the 1st to 12th Defendants' Notice of Claim against the 13th to 15th Defendants?
 - iv. Who shall bear the costs of the suit?

a. What should guide the sub-division and distribution of Plot No. 1977?

34. Since the Plaintiffs' witnesses PW1 and PW2 admitted that Plot No. 1480 had not been distributed, there can be no dispute that the mother title to the suit properties is Plot No. 1977, which was held in the name of Wilfred Murungi. In the proceedings of ARB/Board Case Nos. 83 & 87 of 1999 over Parcel Nos. 1977 and 2366 between Wilfred Murungi and Elias Mati, Wilfred Murungi testified that:- "There are people whom were given land by my father like Bururia M'Mbutu, M'Murungi Kungania, Gatiroria, Kinyua, Kirimi, Kirua Ngaruni, Reth Kiraitu, Mugendi, Ujenzia and all these people have their things there."
35. The board in the above decision ordered that Plot No. 1977 would remain with Wilfred Murungi. Then came Objection No. 5 over Plot No. 1977. I have read the proceedings, findings and decision of the DLASO in AR Objection No. 5 which concerned Plot no. 1977.
- Wilfred Murungi admitted that among other individuals, Bururia M'Mbutu was entitled to land on Plot. No. 1977. The decision of the AR board was that the family members and the beneficiaries were to sit in the presence of the Demarcation Officer, indicate the portion that each is entitled to and prepare a scheme plan on how the subdivision shall be done. The Board then gave a list of 35 beneficiaries of the land. Yet in the list of allocations prepared by the family, the name Bururia M'Mbutu as well as the names of some the other beneficiaries were missing. Notably, if the names in that list are anything to go by, their descendants are some of the Defendants in this suit.
36. Moreover, the AR Proceedings mentioned above did not evict the 1st Defendant, save that his claim over an individual parcel he was claiming was dismissed. He has however explained that what he is claiming in this suit is a portion of what his father was to be allocated as a descendant of his father Bururia M'Mbutu. I note also that PW1 admitted that the children of Bururia are on their father's land.
37. There is no indication that demarcation ordered under the decision of the Board rendered on 1st October, 2015 is yet to be conducted, however, it appears that the Plaintiffs already have documents over some parcels that they claim arose out of Plot No. 1977. It is trite that once a court makes a decision, it remains in effect and is binding unless it is overturned on appeal, or unless the trial court itself reviews or sets aside that decision as by law allowed. The case of Econet Wireless Kenya Limited vs Minister for Information and Communication of Kenya Authority (2005) eKLR, though on contempt of court, explained aptly the unyielding nature of judicial decisions. Hon Justice Ibrahim (as he then was) stated as follows: -

"The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent



jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.”

38. If the Plaintiffs were not satisfied with the decision of the AR Board in Objection No. 5, they ought to have triggered the Appeal mechanisms set out under the relevant Act. As matters stand, neither Wilfred Murungi nor the Plaintiffs herein appealed the decision of that tribunal, whose jurisdiction to determine the matter has not been challenged. The Plaintiffs have admitted in their Complaint that the decision of the AR Board of 1st October, 2015 has not been appealed. That decision stands and they ought to abide by it in the subdivision and distribution of Plot No. 1977. Any subdivision plan or scheme that does not adhere to the said decision is not lawful.
39. To dispel the Plaintiffs’ arguments, in the letter dated 8th July, 2012 Wilfred Murungi sought to be allowed to subdivide Plot No. 1977, and distribute it to a total of 23 people. The Plaintiffs herein have been adamant that they want to subdivide the land pursuant to the intentions of the trustee in the aforesaid letter. I have looked at the Searches produced by the Plaintiffs and I note that they are for 17 plots only, which from close scrutiny show that the entire plot No. 1977 was distributed to only 6 people, being the 1st to 6 Plaintiffs herein. There is no explanation on what happened to the remaining 17 individuals who Wilfred Murungi intended to transfer the land to. In addition, the said letter made no mention or allegation that the land was exclusively being divided to the family of M’Mboroki, or that the people living on the land were to vacate the land.
40. The Plaintiffs have also contended that the division and allocation of the land was pursuant to the resolutions reached at the family meeting held on 20th October, 2015. Under minute 8 of that meeting, the family resolved to distribute Plot No. 1977 to 17 individuals and leave 1 Acre for roads. It appears that the Plaintiffs also did not abide by the resolutions made by the family and only seek to get the land for themselves as opposed to the agreement made by the family or the intentions of the trustee, Wilfred Murungi.
41. The conclusion herein is that the decision of the AR Board in Objection No. 5 still stands. It is binding as it is yet to be discharged, and unless or until such an event occurs, the Plaintiffs are bound to abide by it in the subdivision of Plot No. 1977 to the beneficiaries named therein.

b. Whether the Plaintiffs hold valid title over the suit properties;

42. Although I have seen no title deed for the initial Plot Nos. 1480 and 1977, the land is clearly in an area that was already adjudicated. There have in fact been various adjudication proceedings with respect thereof as can be seen from the record of this suit. The dispute herein did not therefore arise out of a failed adjudication, but the disputed subdivision of plot no. 1977 into L.R. Nos. MWIMBI/L.E. MAFUTUNI/3712, 3713, 3714, 3715, 3716, 3613, 3614, 3615, 3616, 3617, 3618, 3619, 3620, 3621, 3622, 3623, 3624, 2381 and 1977.
43. I find fault with the manner in which the land was subdivided by the Plaintiffs. My understanding of the subdivision process is that it commences with a registered surveyor preparing a sub-division scheme per the *Physical And Land Use Planning Act*. The scheme is then signed by a duly registered physical planner with a valid license from the Physical Planners’ Registration Board. Thereafter, the Physical planner then gives a FORM PLUPA/DC/1A, formerly known as PPA 1 Form, which is an application for sub-division.
44. At this point, the Surveyor submits the subdivision scheme to county government offices for review and approval, considering zoning compliance, road alignment, water reserves, environmental



considerations, and social amenities. Once this is done, the County Government approves land subdivision based on surveyed plots after approving the subdivision report. This is done through the FORM PLUPA/DC/8 (formerly PPA2), approving the subdivision of the land as per the surveyed plots.

45. Where applicable, the approved survey plan is submitted to the Central Registry for further approval by the Land Administrator, after approval by County Government offices. The next step is for the Director of Surveys to check the survey plan for accuracy, ensuring it complies with the Land Control Regulations. Also where applicable, after issuance of the PP2 forms, the Land Control Board (LCB) Consent may need to be obtained for the intended approval, and the Surveyor presents the Subdivision scheme details, Title Search, PPA1 and PPA2 forms to the LCB for review and approval. The Applicant and surveyor then sign the Mutation Form, which along with the search document, LCB consent, PPA1 and PPA2 forms, are deposited at Survey offices for subdivided plot allocation. Once subdivision is approved, the Land Registrar prepares new title deeds for each subdivision plot and registers the same at the County registry.
46. I have seen no subdivision scheme relating to the subdivision undertaken over Plot No. 1977. PW3 also confirmed that a survey ought to be done before demarcation and also clarified that the ground is supposed to direct the way the map was to be prepared. Owing to the many issues flagged in the Surveyor's (PW3's) report, one can only come to the conclusion that no sub-division scheme or survey was done before the subdivision was done. It is therefore not clear how the Plaintiffs could have obtained registration numbers if the lands were not surveyed for demarcation/subdivision in the first place.
47. The Plaintiffs sought to rely on Section 26(1) of the [Land Registration Act](#) No.3 of 2012 which provides as follows;

“The certificate of Title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor 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, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except:-

- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

48. The above provision of the law is clear that a certificate of title is the end result of a process. It is jealously guarded and the law provides only two ways of impeaching the same. The first is where the title is obtained by fraud and misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. In *Munyu Maina vs Hiram Gathiha Maina* (2013) eKLR, the Court of Appeal held that:

“It is our considered view that the respondent did not discharge the evidential burden to rebut the testimony of the appellant that it was their deceased father who put both of them into possession of the suit property and to occupy the same in equal share. We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge



and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”

49. In this suit, the Plaintiffs needed to show that they acquired their titles legally and procedurally. However, the Plaintiffs herein seem to be waving their titles without justifying the process through which the same were obtained. PW2 testified that the subdivision was approved, yet no approval was tabled before this court. Additionally, this court has seen no PPA1, PPA2 or mutation form with regards to the alleged subdivision by Wilfred Murungi or his descendants being the Plaintiffs. No subdivision scheme or in fact any government form relating to subdivision was laid before this court. That aside, the Plaintiffs claim to be the registered owners of the land, but truth be told, aside from the Certificates of Official Searches for 17 out of the total of 19 parcels that form the suit properties herein, no Title Deed was tabled before this court.
50. Moreover, the Plaintiffs have been adamant that the land was held by Wycliffe Murungi as trustee for the entire family. The Plaintiffs did not however produce copies of the duly filled transfer forms from the said trustee in their favour, the stamp duty payment receipt and the consent from the LCB. These are crucial statutory documents without which the process of subdivision and transfer becomes marred by fraud, illegalities and irregularities and all documents of Title issued thereafter become null and void ab initio.
51. In the case of *Daudi Kiptugen vs Commissioner of Lands & 4 Others (2015) eKLR*, the court stated that: -
- “...the acquisition of title cannot be construed only in the end result; the process of acquisition is material. It follows that if a document of title was not acquired through a proper process, the title itself cannot be a good title.”
52. In the absence of any evidence to the contrary, the only conclusion to be made is that the acquisition of titles by the Plaintiffs over the suit properties did not follow the laid down procedure. That being the case, the Plaintiffs cannot be held to have good title over the property and whatever titles they hold are a nullity.

C What orders should issue with regards to the 1st to 12th Defendants’ Notice of Claim against the 13th to 15th Defendants;

53. The 1st - 12th Defendants’ notice of claim against their co-defendants was never responded to by the 13th - 15th Defendants. I note that the 13th to 15th Defendants also did not adduce any evidence in court regarding the said claim against them. However, most of the questions therein have conclusively been answered in the Findings/Observations Sections and the Conclusion of the Surveyor’s report dated 16th November, 2023. This court will adopt the said Findings/Observations and Conclusions in response to the said Claim.
54. As to the questions on the implementation of the letter dated 8th July, 2012 by Wilfred Murungi, and the Resolutions made at the meeting of the family of M’Mboroki of 20/10/2015, this court has already determined that the said documents cannot overrule the decision of the AR Board in Objection 5 rendered on 1st October, 2015.
55. The final issue raised in the claim is: whether the whole area should be re-surveyed with existing boundaries picked and mapped and registered in the respective names of the 1st - 12th Defendants with the balance if any being shared out between the Plaintiffs and the other named beneficiaries in the



application letter dated 8/7/2012. I note that whereas the 1st Defendant testified that he was claiming about 4 Acres, it did not come out clearly what areas the 2nd - 12th Defendants are claiming from the land. PW1 testified that not even the AR Board in its decision in Objection 5 dated 1st October, 2015 specified how much land was to be given to the individual beneficiaries. PW3, the Surveyor, could also not tell how much acres the Defendants occupy. In light of these circumstances, it is impossible for this court to issue an order blindly regarding the sizes or locations of the parcels of land that should be allocated to the Defendants.

56. This court has found that Plot No. 1977 that the Defendants claim to be staying on should be distributed to the beneficiaries listed in the decision of the AR Board of 1st October, 2015. Therefore, it is only prudent that the objectors named in that decision, the family and the beneficiaries sit with the appropriate officer and agree on a scheme plan for sharing as earlier directed by the Board.
57. The 1st - 12th Defendants in their Notice of Claim did not make any prayers against the 13th and 14th Defendants, although they sought for determination of various issues, including whether the whole area should be re-surveyed with existing boundaries picked and mapped and registered in the respective names of the 1st - 12th Defendants with the balance, if any, being shared out between the Plaintiffs and other beneficiaries named in the application letter dated 8/7/2012. In the circumstances, no orders shall issue therefrom.

d. Who shall bear the costs of the two application?

58. The law has always been and remains that costs follow the events. It is the successful party therefore that is entitled to costs. The power to award costs is discretionary donated to this Court by Section 27, of the *Civil Procedure Act*, which provides that:-

“Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

59. It is trite that such discretion must be judiciously exercised and the reasons thereof given. The Defendants have emerged successful in this venture. They are therefore entitled to the costs of the thus suit.

Orders:

60. The upshot is that this court finds no merit in the Plaintiffs’ suit. the same is dismissed with costs to the Defendants. Instead, the court directs that the objectors named in the decision of the AR Board of 1st October, 2015, the family and the beneficiaries sit with the Demarcation Officer and agree on a scheme plan for sharing the land as directed by the Board. The Officer Commanding Police Station (OCS), Magutuni Police Station and the County Police Commander, Tharaka Nithi County to offer security during the exercise.
61. Orders accordingly.



DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 27TH DAY OF FEBRUARY, 2025 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

ELC, JUDGE

In the presence of;

Mr. Mwenda Mwaramia for 1st -12th Defendants.

No appearance for Kirimi for Plaintiffs.

No appearance for Attorney General for 13th -15th Defendants.

Court Assistant – Laban.

