



**Ngare v Ogamba (Environment & Land Case E001 of 2022)
[2024] KEELC 1075 (KLR) (15 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 1075 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE E001 OF 2022**

JM KAMAU, J

FEBRUARY 15, 2024

BETWEEN

ESTHER NYABATE NGARE PLAINTIFF

AND

ARNOLD RASUGU OGAMBA DEFENDANT

JUDGMENT

1. This case was commenced by way of a Plaint dated 1/4/2022 with the Plaintiff seeking for and as the legal representative of the Estate of Stephen Ngare Ogamba, her late husband who died on 10/6/2021 aged 68 years old. She is in possession of Letters of Administration Ad Litem the same issued by the Chief Magistrate's Court Kisii on 21/3/2022. She has brought the suit against the Defendant who she avers has invaded the Deceased's parcel of land known as Matutu Settlement Scheme/641 which she also developed together with her husband wherein stands a permanent home. The Defendant's atrocities include sending his agents/servants/employees on 25/1/2022 to cut down the Plaintiff's maize crop valued at Kshs. 177,300/= and that he further intends to take over the land which acts constitute of her proprietary rights. She admits that due to the urgency of the matter she did not issue a Demand Notice nor Notice of Intention to file this suit. She accordingly prays for the following orders: -
 - (a) A declaration that the Defendant has no proprietary rights over the suit land Matutu Settlement Scheme/641 or any part thereof and that he has no right whatsoever to occupy and/or to interfere with the Plaintiff's quiet use and possession of the suit land.
 - (b) A declaration that Matutu Settlement Scheme/641 lawfully belongs to the Deceased.
 - (c) An order of injunction restraining the Defendant either by himself, his agents, servants or anyone claiming under him from entering upon, trespassing onto, taking possession of,



destroying crops or in any other way whatsoever interfering with the Plaintiff's rights over the suit land known as Matutu Settlement Scheme/641.

- (d) Costs of the suit.
 - (e) Such orders as the court may deem fit and/or expedient to grant.
2. On his part, the Defendant vide a statement dated 13/6/2022 denied the Plaintiff's entire claim including the Plaintiff having the legal administration of the estate of the late Stephen Ngare Ogamba. He claims that he has been in occupation of the suit land since time immemorial to wit 1989. In addition to the Statement of Defence, the Defendant filed a Counterclaim averring that the late Stephen Ngare Ogamba was his brother and that both agreed to exchange their parcels of land in 2002 with the Deceased giving the Defendant West Kitutu/Mwakibagendi/1638 and Wanjare/bogiakumu/1908 in exchange for the Defendant 8 Acres of his share in Matutu Settlement Scheme/178, a family (ancestral) land inherited from their father which land has been sub-divided into Matutu Settlement Scheme/640 and 641 respectively.
 3. He further avers that the late Stephen Ngare Ogamba refused to transfer his portion i.e. Matutu Settlement Scheme/641 which in any case, the Defendant claims that he has acquired adverse possession.
 5. The Defendant avers that Matutu Settlement Scheme/178 first resulted in Matutu Settlement Scheme/591 before being sub-divided into Matutu Settlement Scheme/640 and 641. The Deceased has 2 wives and Matutu Settlement Scheme/591 went to the Defendant's mother of which the Plaintiff's late husband was a member. They shared the same as follows: -
 - (i) Arnold Ogamba – 8 Acres
 - (ii) Stephen Ogamba – 16 Acres
 - (iii) Ombati Ogamba – 16 Acres
 - (iv) Bogambo Ogamba – 16 Acres
 - (v) Ariga Ogamba – 16 Acres
 6. Both agreed that the 8 Acres belonging to the Defendant be annexed to the Deceased's 16 Acres. Matutu Settlement Scheme/641 measures 24 Acres, the Deceased's 16 Acres and the Defendant's 8 Acres. But the Agreement did not last due to family disagreements and the agreement was rescinded.
 7. The Defendant accordingly seeks for: -
 - (a) An order of permanent injunction restraining the Plaintiff by himself, agent, servant and/or anybody claiming under him from in any way trespassing onto, denying, wasting, cultivating and/or dealing with the Defendant's portion of land in Matutu Settlement Scheme/641.
 - (b) A declaration that the Defendant is entitled to a share of 8 Acres in Matutu Settlement Scheme/641 by virtue of his quiet and uninterrupted possession of the portion within the suit land for a period of more than 12 years.
 8. The court did visit the suit premises on theto ascertain who occupies what on the ground as between the Plaintiff and the Defendant and the observations on the ground will form part of the for the Judgment herein.
 9. The hearing of the suit then commenced on the 17/11/2022 when the Plaintiff, the wife of the late Stephen Ngare Ogamba who died on 5/6/2021 testified that she got the Letters of Administration Ad



Litem in respect of Ogamba's Estate vide Kisii Chief Magistrate's Court in Succession Cause No. 10 of 2022 on 21/3/2022, a copy of which she produced in court together with her late husband's Death Certificate. She as well produced a copy of the Green Card showing that LR No. Matutu Settlement Scheme/641 is a sub-division of Matutu Settlement Scheme/591. The same measures 9.76 Hectares and is in the name of the Deceased. The same is charged in favour of the Co-operative Bank of Kenya Ltd, to secure a loan Kshs. 2,000,000/= and that the same is pending maturity. The Plaintiff also produced a copy of charge sheet showing that Rasugu Ogamga (the Defendant) was charged with the offence of cutting down crops of cultivated produce contrary to Section 334 (a) of the Penal Code. The particulars of the charge showed that the alleged offence was committed on 25/1/2022 at about 8.30 at Riamokogoti village in Borabu Sub-county. The crop was valued at Kshs. 177,300/= and was the property of the Plaintiff. The accused was arraigned in Keroka Law Courts on 2/3/2021 and the case is still ongoing in court. She testified that until her husband's death both have been using the suit land for farming which she continued doing after his demise until the Defendant entered upon the suit land and denied her access. She further testified that there is a permanent house on the land. She further told the court that after her husband's death, the Defendant sub-divided the land and backdated the sub-divisions to 2017. She also told the court that the Defendant has been living on a separate piece of land with the permission of his mother and that the Defendant's entitlement on 641 was exchanged with 2 other parcels of land elsewhere belonging to the Deceased.

10. On cross examination by Mr. Bonuke for the Defendant, the Plaintiff said that the suit land was family land which was initially Matutu Settlement Scheme/178 then sub-divided between the 2 widows of her father-in-law into Matutu Settlement Scheme/590 and 591 respectively. Her husband ended up getting 641 which was an amalgamation of the Deceased's portion and the Defendant's entitlement. The Defendant parted with his 8 Acres in Matutu Settlement Scheme/641 in exchange from the Plaintiff's West Kitutu/mwakibagendi/1638 – 2.6 Acres and Wanjare/bogiakumu/1908 measuring 0.21 Hectares but that she could not remember when the exchange took place. She testified that in her Affidavit sworn on 7/5/2022 she did admit that the reversal of the Agreement requested for by the Defendant had taken place but now she is not for the idea because the Defendant had not returned the building materials he had taken from the Deceased's land. She responded to the cross examination that she had cautioned the suit land on 27/9/2004 but removed the caution on 4/10/2004 so that her husband could change the property. She said that she didn't know who sold West Kitutu/mwakibagendi/1638 but certainly her husband. But the signature on the sale Agreement purportedly between the Deceased and the Lawyer resembled his. Matutu Settlement Scheme/641 is not demarcated and the tea therein was planted by their mother (her mother-in-law).
11. On re-examination by her Advocate Mr. Ochoki, Mrs. Ngare said that the consent to sub-divide Matutu Settlement Scheme/641 is dated 8/10/2004 when the property was already changed on 4/10/2004. She said that she changed the suit land because she had not agreed with her late husband that the same should be transferred to anybody and to bar the exchange with the Defendant before the latter compensated her for her materials. She finally said that she is not aware of the reversal of the Agreement to exchange.
12. DW}}2 Zebedee Nyaramba Ngare, son to the Plaintiff testified that he was aware of the Agreement between his late father and his paternal uncle, the Defendant. His father was to take 6 Acres out of Matutu Settlement Scheme/641 in exchange of 2 parcels belonging to the Defendant i.e. Mwakibagendi/1638 and Wanjare/Bogiakumu/1908. The exchange took place in 2002.
13. On cross examination by Mr. Bonuke, Mr. Ngare, 39 said he was in school in 2001 and was 18 years old. Matutu Settlement Scheme/591 was divided into 4 portions with Matutu Settlement Scheme/641 being one of them which was to be taken by the Deceased and the Defendant. The exchange took place



in 2002 and the suit land was registered in the name of the Deceased the same year. He said that the Defendant had at one time wanted a revocation of the exchange but this never took place. He went on to say that the Title Deed to Matutu Settlement Scheme/641 disappeared in 2011 and the Deceased caused a gazette of the Notice of the loss. By this time the land had already been used as a collateral for the loan. He admitted that it was true that his late father claimed back his 2 parcels of land and that there was no exchange of land. The Defendant had leased 2 Acres of the land.

14. On re-examination, the witness said that he came to know of the Gazette Notice in 2018. The Mutation Forms for the transfer of the suit land were registered on 6/10/2024 creating Matutu Settlement Scheme/701 and 702 respectively – was after the land had been charged.
15. DW3 Joel Ochwari Nyang'au, a former employee of the Deceased said that he knew both the Deceased as well as his brother the Defendant having worked on the suit land for the Deceased since 1992 to 2015 and that he never saw the Defendant on the suit land.
16. DW4 – George Joseph Mogaka Masese, a Senior Advocate of the High Court of Kenya since 1975 having acted for the Deceased, took to the witness box and testified that in Kisii ELC No. 169 of 2014, the Defendant herein Mr. Arnold Rasugu Ngare Ogamba sued the late Stephen Ngare Ogamba alongside the Co-operative Bank of Kenya in respect of Matutu Settlement Scheme/641 which the Deceased had charged with the aforesaid bank without the knowledge of the Defendant herein yet the same was jointly owned. But that before he filed Defence, Stephen fell sick and died.
17. On cross examination, Mr. Masese said that the Plaintiff is his cousin who he has known for years. The orders sought by Arnold were that since he had an interest in Matutu Settlement Scheme/641, the Bank and the Deceased should not interfere with the suit land nor dispose it off and Stephen not divulged any information on any exchange before he did. Mr. Masese said that he had only been served with a Notice of Motion and never ever received the directions for the main suit.
18. Having closed her case, the Plaintiff paved way for the Defendant's case with DW1, Arnold Rasugu Ogamba, the Defendant being the first one to testify. He said that the Plaintiff is his sister-in-law (his late brother's wife). Matutu Settlement Scheme/591 was given to his father's first house. The same was to be shared between him and his 4 brothers with each taking 16 Acres. As for him he was to take 8 Acres because he had actually been given 8 Acres elsewhere.
19. His brother Stephen and himself agreed that he takes 2 other parcels of land i.e..... and belonging to the Deceased in exchange for his 8 Acres on Matutu Settlement Scheme/641. This did not materialize. Transfers to this effect was carried out in all the 3 parcels of land with Matutu Settlement Scheme/641 being wholly registered in the name of the Deceased and and..... In the name of the Defendant. But since the extended family was not for the idea, the Defendant re-transferred the 2 parcels of land back to the Deceased but the latter did not reciprocate albeit the 2 signed the re-transfer forms at the lands office in Nyamira. This was because the Deceased had already charged the land never to re-pay the loan. Stephen was a Director of Co-operative Bank of Kenya, which advanced him the loan of Kshs. 2,000,000/= with the suit land as a collateral. The charge was advanced even after the Deceased's wife; the Plaintiff had already cautioned the land. The Defendant has been cultivating the land and his son has even built a home on the upper side of the suit land.
20. Mr. Rasugu testified that since 2019 he has been leasing 2 Acres on the lower side therein for Kshs. 40,000/= per Acre for 2 years. To buttress his case, the Defendant produced the following documents:-
 1. Copies of green cards for West Kitutu/mwakibagendi1638 and Wanjare/bogiakumu/1908.
 2. Copy of transfer documents for LR No. Wanjare/bogiakumu/1908.



3. Copies of sale of land documents and transfer for West Kitutu/mwakibagendi/1638.
 4. A copy of grant of letters of administration and a certificate of confirmation of the grant for the estate of Japhet Ogamba Bogonko.
 5. A copy of green card for Matutu Settlement Scheme/641.
 6. A copy of the mutation for Matutu Settlement Scheme/641.
 7. A copy of Gazette Notice No. 2117 dated 7th February 2011.
 8. A copy of statement showing money received from the Plaintiff for as payment of lease for 2 acres.
 9. A copy of the chief's letter confirming that Defendant is a resident of Nyaronde, Ibere village in Matutu sub location where the suit land is situated.
 10. Copies of photos of Matutu Settlement Scheme/641.
 11. A copy of minutes dated 16th February 2022.
 12. Copies of lease agreements between Defendant and Lessors on his portion of land on Matutu Settlement Scheme/641.
21. The Defendant, on cross examination by the Plaintiff's Counsel said his father, who died in 1975, was known as Japheth Ogamba and the Administrators of his Estate were himself and his step-brother James Orina Ogamba. He said he took possession of the suit land before 2002 and that the agreement of exchange was verbal. She said that in 2004 the Plaintiff owned his mud house which was on the 8 Acres. No Agreement to annul the first one was also reduced in writing nor was the lease one. Arnold said that had he not intervened the suit land would have been sold through the Bank exercising its statutory power of sale. He finally said that it is mainly his uncles who are now all dead who dissuaded the two from proceeding with the arrangement for exchange.
 22. On re-examination by his Advocate, the Defendant said that before he intervened, the suit property had been advertised for sale in 2014.
 23. DW2 – Thomas Ochieng Bosire, a village elder testified that the two parties had appeared before thea dispute of “invasion” in respect of the suit land.
 24. DW3 Stephen Kinanga Bwoyaro testified that the Defendant who is married to his sister had given him 2 Acres on the 8 Acres to farm but in November 2022 the Plaintiff's son denied him away. He never leased the land but used to take care of it. He also said that the building materials the Plaintiff calmed had been stolen belonged to him. He got into the land in 2008 and did construct a house therein in 2017.
 25. DW4 Patrick Onchaya Ogamba, a brother to the Defendant and brother in-law to the Plaintiff corroborated the Defendant's evidence by testifying that there was an Agreement of exchange of land between the two brothers but that Stephen's family later objected and Arnold returned what he had received from Stephen but the latter did not meet his part of the bargain.
 26. DW5, another villager elder echoed the words of DW2. On cross examination, he said he knew that the Defendant used to lease out part of the suit land to different people but that he was not aware of the exchange and that his purpose of coming to court was to testify that the Plaintiff refused to attend to summonsby the area Chief over the dispute.



27. James Orina Ogamba, DW6, another brother to the Defendant, also said there was some exchange of parcels of land between the two brothers but that the Defendant's family was not happy with it and the exchange was to be rescinded. On cross Examination he admitted that he knew of the loan that the land was charged for.
28. DW7, William Asuma Bogwango, an uncle to the Defendant and the Deceased testified that he knew there was an exchange but was not there when the same took place. However, when the family of the Defendant objected to the exchange he participated in the Agreement to revoke the earlier one and that the Defendant went back to the 8 Acre portion of Matutu Settlement Scheme/641. On cross examination he said that it is the Defendant who told him of the exchange of the Agreement but that he knows there are 2 houses on the suit land, the 8 Acres. He said he knew nothing about the loan. On re-examination he said he was present when the nullifying of the exchange Agreement took place and that each party agreed to go back to his land.
29. DW8, another paternal step-uncle to the Defendant testified that the 8 Acre portion is being used by the Defendant. Arnold has 3 houses on the 8 Acre portion.
30. Land Registrar Kisii, Ms. Oswera Cecilia Haliot produced records in respect of West Kitutu/mwakibagendi/1638 and Wanjare/bogiakumu/1908. West Kitutu/mwakibagendi/1638 came from Charles Ngare Onsembe was transferred to Onguti Omwenga Patrice on 4/10/1982 then on 5/10/1982 to Charles Ngare Onsembe to Stephen Ngare Ogamba and on 6/2/2011 to Arnold Rasugu Ogamba on 28/10/2002. A new edition was opened on 24/6/2003 whichwith the name of Stephen Ngare Ogamba who later sold the land to Harun Ariga Bwoma on 9/6/2005 and the Title Deed was issued. It was not indicated the amount of Stamp Duty paid.
31. As for Wanjare/bogiakumu/1908 also followed a similar pattern. Mr. Martin Osano, Land Registrar, Nyamira was the last to testify. He said that Matutu Settlement Scheme/641 was a creation of Matutu Settlement Scheme/591 which was registered in the joint names of James Orina Ogamba and Arnold Rasugu Ogamba then it was transferred to Stephen Ngare Ogamba, was cautioned by the Plaintiff Esther Nyabate Ngare charged to the Co-operative Bank. 641 was never closed yet there are Green Cards for 701 and 702, resultant therefore which are suspect as to thebeing issued with Matutu Settlement Scheme/702 but with no documents in the suit file to support this. No one was issued with Title for Matutu Settlement Scheme/701 – 701 measures 6.53 Hectares while Matutu Settlement Scheme/702 measures 3.23 Hectares, 8 Acres. These were issued before the Mutation was registered and to date the same has never been registered. The same could not have been registered due to the caution and the charge. Maybe the documents were backdated after Stephen had died.
32. From the evidence on record through oral testimonies and documents and also from the visit to the locus in quo it is now my obligatory duty to summarize the facts of the case and from the same give a determination.
33. The Plaintiff's late husband Stephen Ngare Ogamba who died on 10/6/2021 at the age of 68 was brother to the Defendant herein. Their late father,..... had two wives. James Orina Ogamba represented one house while the Defendant represented the other as the Administrators. The father to the Defendant was the registered owner of Matutu Settlement Scheme/178 resulted into Matutu Settlement Scheme/591 which was then registered in the joint names of Orina and the Defendant after sub-division.
34. Matutu Settlement Scheme/591 was further subdivided between the 2 houses and of concern Matutu Settlement Scheme/640 and Matutu Settlement Scheme/641 went to the parties herein with Matutu Settlement Scheme/641 given to the Deceased (Stephen) measuring 24 Acres on the understanding



between the Defendant and the Deceased that 8 Acres belonged to the Defendant while 16 Acres were the Deceased's entitled.

35. Matutu Settlement Scheme/640 went to their 3 other brothers Ombati, Bogonko and Ariga each getting 16 Acres. The Defendant got 8 Acres since he had been given another portion of land at Ikuruma Sub-location. All the 5 brothers were in agreement as to their respective entitlements. For Matutu Settlement Scheme/641 to be registered in the name of Stephen Ngare Ogamba it was as a result of an agreement between the two that the Defendant exchanges his 8 Acres in Matutu Settlement Scheme/641 in return for the Deceased's West Kitutu/mwakibagendi/1638 measuring 2.6 Hectares and Wanjare/bogiakumu/1708 which is commercial. The exchange was verbal but no one disputes that the same existed. It took place in 2002. In the strength of this Matutu Settlement Scheme/641 was wholly registered in the Deceased's name on 25/11/2002 and a Title Deed issued the following day. On 4/10/2004 the Deceased registered a charge in favour of the Co-operative Bank of Kenya Limited to secure Kshs. 2,000,000/=. Evidence adduced in court is to the effect that not a single cent has ever been paid to the Bank about 20 years later. the interest accrued must be astronomical.
36. According to the Land Registrar Kisii, Ms. Oswera as to West Kitutu/ Mwakibagendi/1638 was first registered in the name of Ong'uti Omwenga Patrick on 4/10/1982. It was then transferred to Charles Ngare Osebe on 5/10/1982 and a Land Certificate issued and then on 6/2/2001 to the Deceased. The Deceased then transferred it to the Defendant on 28/10/2002 and Title Deed is indicated to have been issued the same day. These last two entries were indicated in the register to have been issued in error. The same were closed in Edition 1 and a new Edition of Green Card was opened on 24/6/2003 with the ownership section reading Stephen Ngare Ogamba who later sold it to one Harun Ariga Bwoma on 9/6/2005 and a Title Deed issued the same day. In as far as the second Title in respect of Wanjare/bogiakumu/1908 went through the same pattern.
37. On 19/12/1984 the land was first registered in the name of Patrick Otwere Gisemba who was not issued with a Title Deed. On 25/6/1986 the same was transferred to Job Olowaku Lukuiru and a Title Deed issued to him the same day before he transferred it to Mary Bosibori Mukwabo on 29/7/1986 and a Title Deed issued to her. It was then transferred to Stephen Ngare Ogamba on 11/3/1987 and a Title Deed issued to him the same day.
38. On 28/10/2002 the Deceased transferred the land to the Defendant his and a Title Deed issued to him the same day. Then the lands office indicated that the 2 last entries were made in error and a second edition of the Green Card was opened showing the land to be registered in the name of Stephen Ngare Ogamba on 24/6/2003 and a Title Deed was issued on the same day. Then it was transferred by the Deceased to one Zablon Rashid Minyonga on 31/6/2005 and a Title Deed issued.
39. Finally, it was transferred to Haron Kamau Munda on 2/5/2013 and a Title Deed issued the same day. From the above the original Green Cards for the two parcels were cancelled the same day and a new edition opened on the same day i.e. on 24/6/2003
40. In the meantime, disagreements had started occurring and with advise from close family members, the two brothers decided to rescind their earlier contract of exchanges and get back to their original portions. There were Mutation forms prepared and Matutu Settlement Scheme/641 was sub-divided into Matutu Settlement Scheme/701 measuring 6.53 Hectares to be retained by the Deceased and Matutu Settlement Scheme/702 – 3.23 Hectares which was allegedly transferred in the name of the Defendant and a Title Deed allegedly issued. This was not possible since the Mutation had not been registered and the land had a caution registered against it.
41. The whole process of registration over the 3 parcels of land Matutu Settlement Scheme/641, West Kitutu/mwakibagendi/1638 and Wanjare/bogiakumu/1908 are well choreographed acts of fraud



perpetrated by the Deceased with connivance with people at the lands office who I would refer to as his partners in crime. In as far as Mwakibagendi and Wanjare, I cannot understand how multiple Editions of the Green Card can be opened. I thought that each page of the Green Card is a continuation of the previous one. The Defendant in good faith exchanged his ancestral 8 Acres inherited from his father with the two mentioned parcels of land above only to have the two sold and his inheritance charged with the Bank and with the charger using his influence and might as a Director of the charge in order not to service the loan. It was not until he fell sick that the charged property was advertised for sale and the Defendant was quick to ensure that the sale never took place by going to court.

42. The Deceased appears to me to be a schemer and a swindler to say the least. It is unfortunate that we have to use these words against a Deceased person. When the court visited the suit premises it was quite clear that the suit land Matutu Settlement Scheme/641 had a clear boundary with the larger portion on the smoother side and therein lying a big permanent house. The southern side has a dilapidated mud house and this is the portion that the Defendant lays claim over. A maize plantation had just been harvested. The same is all registered in the name of the Deceased and with a charge over it. It is also curious to note that when the Deceased wanted to change the property, the Plaintiff removed the caution which she must have placed against the suit land to ensure that the same is not sub-divided and transferred in the name of the Defendant. It is not in dispute that before the exchange the land belonged to the two brothers in the ratio of 2:1 tilting in favour of the Deceased. The Plaintiff has denied that the Deceased ever sold the two parcels of land Mwakibagendi and Wanjare but the evidence on the documents from the land office say otherwise. It is the Deceased who corruptly had them transferred to other people against the interests of the Defendant. How do we then tell the Defendant to stick to the earlier agreement? Likewise, how do we order that the Defendant takes his 8 Acres from the ancestral land Matutu Settlement Scheme/641 which is already charged with the Bank and with nobody servicing the loan? How can this be done without the Bank which has an interest being heard? Does this then mean that the Defendant, having been deceived and defrauded has no remedy? No, there iswithout a remedy and I will give the following judgement: -

1. The Plaintiff's suit and prayers engraved in the Plaint dated 1/4/2022 is hereby and wholly dismissed with costs to the Defendant.
2. The Defendant's Counter-claim dated 13/6/2022 is hereby allowed in terms of prayers number (b) and prayer number (a) the latter being restricted to the 8 Acres he has been occupying.
3. The Co-operative Bank of Kenya Limited is hereby ordered to discharge the entire parcel of land Matutu Settlement Scheme/641, to facilitate the same to be sub-divided into two in the ratio of 2:1 between the Deceased Stephan Ngare Ogamba and the Defendant Arnold Rasugu Ogamba respectively.
4. Immediately after the aforesaid sub-division the two portions shall be registered with the Defendant being registered the absolute owner of 8 Acres thereof which shall be where he has built a mud house and the Deceased being the proprietor of the 16 Acres on the other side which has the permanent house.
5. The Co-operative Bank of Kenya Limited shall be at liberty to charge the Plaintiff's (Deceased's) portion and if not enough then she will look for other collaterals belonging to the Deceased.
6. For the avoidance of doubt, the Defendant shall have the costs of the suit and that of the Counter-claim.



44. These are the orders of the court.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 15TH DAY OF FEBRUARY 2024.

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MUGO KAMAU

JUDGE

In the presence of: -

Court Assistant - Brenda

Mr. Ochoki for the Plaintiff

Mr. Bonuke for the Defendant:

