



**REPUBLIC OF KENYA**  
**ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**LAND CASE NO. 171 OF 2013**

**VROS PRODUCE LIMITED.....1<sup>ST</sup> PLAINTIFF**

**DEW REALITY LIMITED.....2<sup>ND</sup> PLAINTIFF**

**=VERSUS=**

**THE CHIEF LANDS REGISTRAR.....1<sup>ST</sup>  
DEFENDANT**

**THE HON. ATTORNEY GENERAL .....2<sup>ND</sup>  
DEFENDANT**

**OFFICER IN CHARGE**

**KIJIPWA POLICE STATION .....3<sup>RD</sup>  
DEFENDANT**

**POLICE COUNTY COMMISSIONER**

**KILIFI COUNTY.....4<sup>TH</sup> DEFENDANT**

**THE INSPECTOR GENERAL**

**NATIONAL POLICE SERVICE.....5<sup>TH</sup>  
DEFENDANT**

**VROS PRODUCE LTD.....6<sup>TH</sup> DEFENDANT**

**LUCAS OWITI.....7<sup>TH</sup> DEFENDANT**

**LEWIS GOGO.....8<sup>TH</sup> DEFENDANT**

**JOSEPH MZUNGU NYOKA.....9<sup>TH</sup> DEFENDANT**

**ABDALLA MOHAMED KAREMA.....10<sup>TH</sup> DEFENDANT**

ABDILAH BADI.....	11 <sup>TH</sup> DEFENDANT
ABUBAKAR ZUBEYR RAJAB.....	12 <sup>TH</sup> DEFENDANT
AGNES SIDI RUWA.....	13 <sup>TH</sup> DEFENDANT
AGNES TUSMA CHIBINDO.....	14 <sup>TH</sup> DEFENDANT
AGRIPINA WACHENJE.....	15 <sup>TH</sup> DEFENDANT
AISHA JUMA HAMIS.....	16 <sup>TH</sup> DEFENDANT
AISHA MOHAMMED ABDULRAHMAN.....	17 <sup>TH</sup> DEFENDANT
ALEX KARISA KATOI.....	18 <sup>TH</sup> DEFENDANT
ALFRED KADZITU SHUNGU.....	19 <sup>TH</sup> DEFENDANT
ALI MOHAMMED MWINYI.....	20 <sup>TH</sup> DEFENDANT
ALI MWANYAE ZIA.....	21 <sup>ST</sup> DEFENDANT
ALI RUNYA KUDUNDA.....	22 <sup>ND</sup> DEFENDANT
ALI YUSUF MOHAMED.....	23 <sup>RD</sup> DEFENDANT
ALOIS KAZUNGU FONDO.....	24 <sup>TH</sup> DEFENDANT
AMAS KI MWARO.....	25 <sup>TH</sup> DEFENDANT
AMBROS BADA.....	26 <sup>TH</sup> DEFENDANT
AMIDA	
MAKARANI.....	27 <sup>TH</sup> DEFENDANT
AMINA JELA.....	28 <sup>TH</sup> DEFENDANT
AMINA MOHAMED OMAR.....	29 <sup>TH</sup> DEFENDANT
AMINA MOSE MINZANGU.....	30 <sup>TH</sup> DEFENDANT

ANDERSON TUNE SHINDO.....	31 <sup>ST</sup>
DEFENDANT	
ANDREW JACKSON KUKA .....	32 <sup>ND</sup>
DEFENDANT	
ANN MBULA KAMEMBA.....	33 <sup>RD</sup>
DEFENDANT	
ANN OSCAR GOBWERO.....	34 <sup>TH</sup>
DEFENDANT	
ANTHONI LEWA JILANI.....	35 <sup>TH</sup>
DEFENDANT	
ANTHONY TUNJE KALAMA.....	36 <sup>TH</sup>
DEFENDANT	
ARNOLD MVONYI	
NASORO.....	37 <sup>TH</sup>
DEFENDANT	
ASHA ATHMAN ALI.....	38 <sup>TH</sup>
DEFENDANT	
ASHA MOHAMED	
OMAR.....	39 <sup>TH</sup>
DEFENDANT	
ASHA ROPHAS KANDERI.....	40 <sup>TH</sup>
DEFENDANT	
ASHA SALIM NDORO.....	41 <sup>ST</sup>
DEFENDANT	
AUGUSTINE MWANGO KAI.....	42 <sup>ND</sup>
DEFENDANT	
BAKARI WADIGO IDD .....	43 <sup>RD</sup>
DEFENDANT	
BANDA KITSAO BEJA.....	44 <sup>TH</sup>
DEFENDANT	
BARNABAS KARISA MWAVUO.....	45 <sup>TH</sup>
DEFENDANT	
BEATRICE DZIDZA SHERA.....	46 <sup>TH</sup>
DEFENDANT	
BENJAMIN ROGITO.....	47 <sup>TH</sup>
DEFENDANT	
BENSON KATANA FOLENI.....	48 <sup>TH</sup>
DEFENDANT	
BENSON ONGERO ROGITO.....	49 <sup>TH</sup>

**DEFENDANT**

<b>BIADY JUMA KHAMISI.....</b>	<b>50<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>BIGAIL KINA SHADRACK.....</b>	<b>51<sup>ST</sup></b>
<b>DEFENDANT</b>	
<b>BISHUU MOHAMED SHEE.....</b>	<b>52<sup>ND</sup></b>
<b>DEFENDANT</b>	
<b>BONFACE AUYE AREGE.....</b>	<b>53<sup>RD</sup></b>
<b>DEFENDANT</b>	
<b>BONFACE MONGO MADZAYO.....</b>	<b>54<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>BONFACE SARO NGOWA.....</b>	<b>55<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>BONFACE TUNDE SHINDO.....</b>	<b>56<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>BONSTONE KADENGE KARISA.....</b>	<b>57<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>BRYSON MWAITA.....</b>	<b>58<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>CAROLINE GARAMA MVOI.....</b>	<b>59<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>CAROLYNE CHAGA.....</b>	<b>60<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>CELLINA KWAMBOKA ONGORO.....</b>	<b>61<sup>ST</sup></b>
<b>DEFENDANT</b>	
<b>CHAI STEVEN MUNGA.....</b>	<b>62<sup>ND</sup></b>
<b>DEFENDANT</b>	
<b>CHANDI KAHINDI MTENGO.....</b>	<b>63<sup>ND</sup></b>
<b>DEFENDANT</b>	
<b>CHANGAWA KAINGU NDORO.....</b>	<b>64<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>CHARLES CHAI JEFWA.....</b>	<b>65<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>CHARLES CHIRO.....</b>	<b>66<sup>TH</sup></b>
<b>DEFENDANT</b>	
<b>CHARLES GITARI.....</b>	<b>67<sup>TH</sup></b>
<b>DEFENDANT</b>	

<b>CHARLES KITITI.....</b>	<b>68TH</b>
<b>DEFENDANT</b>	
<b>CHARLES LWANGA.....</b>	<b>69TH</b>
<b>DEFENDANT</b>	
<b>CHARLES MKOMA MKALI.....</b>	<b>70TH</b>
<b>DEFENDANT</b>	
<b>CHARLES MUPE CHAI .....</b>	<b>71ST</b>
<b>DEFENDANT</b>	
<b>CHARLOTTE MAKU CHINYEI.....</b>	<b>72ND</b>
<b>DEFENDANT</b>	
<b>CHARO KARISA CHENGO.....</b>	<b>73RD</b>
<b>DEFENDANT</b>	
<b>CHENGO BIRYA .....</b>	<b>74TH</b>
<b>DEFENDANT</b>	
<b>CHENGO KALUMA MENZA.....</b>	<b>5TH</b>
<b>DEFENDANT</b>	
<b>CHIGIRI NYALLE CHONGA.....</b>	<b>76TH</b>
<b>DEFENDANT</b>	
<b>CHILANGO JAMBO MWARINGA.....</b>	<b>7TH</b>
<b>DEFENDANT</b>	
<b>CHIRO CHISHENGA.....</b>	<b>78TH</b>
<b>DEFENDANT</b>	
<b>CHIRO DUNGA MWALOGO.....</b>	<b>79TH</b>
<b>DEFENDANT</b>	
<b>CHVATSI JONATHAN MWANGIRI.....</b>	<b>80TH</b>
<b>DEFENDANT</b>	
<b>CHIVATSI KATAMA CHIVATSI.....</b>	<b>81ST</b>
<b>DEFENDANT</b>	
<b>CHIVATSI SIMBA MWANGIRI.....</b>	<b>82TH DEFENDANT</b>
<b>CHRISPAS KAZUNGU CHARO.....</b>	<b>83RD DEFENDANT</b>
<b>CHRISTINE CHARO SAHA.....</b>	<b>84TH DEFENDANT</b>
<b>CHRISTINE MKASI MKARE.....</b>	<b>85TH DEFENDANT</b>
<b>CHRISTINE MWALEWA MKIRI.....</b>	<b>86TH DEFENDANT</b>
<b>CHRISTOPHER MONGO MADZAYO.....</b>	<b>87TH DEFENDANT</b>
<b>CLARIS JUMBALE.....</b>	<b>88TH DEFENDANT</b>

<b>CLARIS MKAMBE MNGAMO.....</b>	<b>89TH DEFENDANT</b>
<b>CLEMENT SHERA.....</b>	<b>90TH DEFENDANT</b>
<b>COLLINS CHIRU BANDARI.....</b>	<b>91ST DEFENDANT</b>
<b>COLLINS MWADENDE KAZUNGU.....</b>	<b>92ND DEFENDANT</b>
<b>COSMAS MWANGOME MASHAKA.....</b>	<b>93RD DEFENDANT</b>
<b>DHAHABU MZUNGU.....</b>	<b>94TH DEFENDANT</b>
<b>DAKTARI MRUSIN.....</b>	<b>95TH DEFENDANT</b>
<b>DAMA DECHE GUNI.....</b>	<b>96TH DEFENDANT</b>
<b>DAMA HARRISON CHAI.....</b>	<b>97TH DEFENDANT</b>
<b>DAMA KATANA MTHENGO.....</b>	<b>98TH DEFENDANT</b>
<b>DANCAN CHIRO TUNJE.....</b>	<b>99TH DEFENDANT</b>
<b>DANIEL MAREFU KONDE.....</b>	<b>100TH DEFENDANT</b>
<b>DANIEL KAROTICH TANGALAS.....</b>	<b>101TH DEFENDANT</b>
<b>DANIS MRITHE MWANU.....</b>	<b>102TH DEFENDANT</b>
<b>DANNY MWAJANJI KABAYA.....</b>	<b>103TH DEFENDANT</b>
<b>DARIUS BENGI SODA.....</b>	<b>104TH DEFENDANT</b>
<b>DALMUS KARISA WANJE.....</b>	<b>105TH DEFENDANT</b>
<b>DAUDI CHARO DUNDA.....</b>	<b>106TH DEFENDANT</b>
<b>DAVID GAMBO ZOE.....</b>	<b>107TH DEFENDANT</b>
<b>DAVID KARISA CHARO.....</b>	<b>108TH DEFENDANT</b>
<b>DAVIS MBELA CHARO.....</b>	<b>109TH DEFENDANT</b>
<b>DENIS NYAMAWI MWAMUYE.....</b>	<b>110TH DEFENDANT</b>
<b>DENNIS MWANGALA MRIMA.....</b>	<b>111TH DEFENDANT</b>
<b>DENNIS CHAMOTO SHERA.....</b>	<b>112ND DEFENDANT</b>
<b>DICKSON OKWA YUMBA.....</b>	<b>113RD DEFENDANT</b>
<b>DINYCE MAGOMBE SHERA.....</b>	<b>114THDEFENDANT</b>
<b>DOMINQUE LEWA MRABU .....</b>	<b>115TH DEFENDANT</b>
<b>DORAH IDZA PUPU.....</b>	<b>116TH DEFENDANT</b>

DORCAS TUNU.....	117TH DEFENDANT
ESTHER KANYEVU KALAMA.....	118TH DEFENDANT
ESTHER MBEYU MDANDANDO.....	119TH DEFENDANT
ESTHER MWAMBEGU NGALA.....	120TH DEFENDANT
ESTHER TABU SEIF .....	121ST DEFENDANT
EUNIC OTIENO ARAN.....	122ND DEFENDANT
EUSTINA MOSE KONDE.....	123RD DEFENDANT
EVALYN WILLIAM CHARO .....	124TH DEFENDANT
EVANS KAI.....	125TH DEFENDANT
EZEKIEL CHIRUME.....	126TH DEFENDANT
FANO POLA KARISA.....	127TH DEFENDANT
FATAH MOHAMED HAFIDH.....	.....128TH DEFENDANT
FATUMA ALI AMANI.....	129TH DEFENDANT
FATUMA HASSAN FUNDI.....	131TH DEFENDANT
FATUMA SAID SALIM.....	131ST DEFENDANT
FATUMA SULEIMAN KAI.....	132ND DEFENDANT
FATUMA YUSUF JUMA.....	133RD .DEFENDANT
FEDIS MWAMUYE.....	134TH DEFENDANT
FEISAL JILANI SHAIRI.....	135TH DEFENDANT
FELIX MWARINGA MAE.....	136TH DEFENDANT
FESTUS MASHA KITSAO.....	137TH DEFENDANT
FILOMENA SHUNGU.....	138TH DEFENDANT
FLORENCE KASICHANA MBAVU.....	139TH DEFENDANT
FLORENCE MBENI MWARUSI.....	140THDEFENDANT
FLORENCE MITCHEL CHIMWENE.....	141ST DEFENDANT
FLORENCE MWIKALI KATHENGE.....	142ND DEFENDANT
FRANCIS KARISA CHARO.....	143RD DEFENDANT
FRANCIS MATATA MKAMBE.....	144TH DEFENDANT

FRANCIS RICHARD.....	145TH DEFENDANT
FRANCIS SAHA DUME .....	146TH DEFENDANT
FRANKLIN NYALLE MWATUA.....	147TH DEFENDANT
FRANKLIN NYOKA.....	148TH DEFENDANT
FREDRICK KALENGA WANJE.....	149TH DEFENDANT
FURAHA KALUME MENZA.....	150TH DEFENDANT
FURAHA KAZUNGU.....	151ST DEFENDANT
GARAMA CHANGAWA BOKOLE.....	152ND DEFENDANT
GARAMA KADZOMBA.....	153RD DEFENDANT
GEORGE DYEKA JEFWA.....	154THDEFENDANT
GEORGE MWACHIZI.....	155TH DEFENDANT
GERALD MAINA.....	156TH DEFENDANT
GETRUD MWANGIRI.....	157TH DEFENDANT
GILANIX KAZUNGU MRANJA.....	158TH DEFENDANT
GINBERT MITSANZE IHA .....	159TH DEFENDANT
GLADYS SODA JUMBALE.....	160TH DEFENDANT
GRACE SAMBA KALACHU.....	161ST DEFENDANT
HALIMA HASSAN.....	162ND DEFENDANT
HAMISI KAMBI KAINGU.....	163RD DEFENDANT
HAMISI SULEIMAN MANGI.....	164TH DEFENDANT
HAMPHREY K. MWACHIRU.....	165TH DEFENDANT
HARO GEJI ZOSI.....	166TH DEFENDANT
HARRISON NYALE CHARO.....	167TH DEFENDANT
HASSAN CHARO.....	168TH DEFENDANT
HELLEN ASWANI ANALO.....	169TH DEFENDANT
HELLEN JUMBALE KITI.....	170TH DEFENDANT
HENRY KATANA KAZUNGU.....	171ST DEFENDANT
HENRY KIRINGI MATU.....	172ND DEFENDANT

HENRY MMEONA SALANO .....	173RD DEFENDANT
HUSNA RAI GONZI.....	174TH DEFENDANT
IDD ALI.....	175TH DEFENDANT
JACINTA W. TUNJE.....	176TH DEFENDANT
JACKLINE KUVUTA TEI.....	177TH DEFENDANT
JACKLINE WAKIO MWAMBEGE.....	178TH DEFENDANT
JACKSON LEWA KAGUNYA.....	179TH DEFENDANT
JACKSON MWATANA GATERE.....	180TH DEFENDANT
JACOB AMBROZ BADA.....	181ST DEFENDANT
JAMES KARISA KATOI.....	182ND DEFENDANT
JAMES KIFALU.....	183RD DEFENDANT
JAMES MAGUNDA DENA.....	184TH DEFENDANT
JAMES MWAGAMBO.....	185TH DEFENDANT
JAME MWAJINJE.....	186TH DEFENDANT
JAMES SULEIMAN.....	187TH DEFENDANT
JAMES WANGOMBE.....	188TH DEFENDANT
JANDO DAVID MAMJOMBA.....	189TH DEFENDANT
JANDO DAVID MWANYALE.....	190TH .DEFENDANT
JANE NJERI CHEGE.....	191ST DEFENDANT
JANE WANJE JUMWA.....	192ND DEFENDANT
JANET DAMA KAHINDI.....	193RD DEFENDANT
JANET HADIJA TEMBO.....	194TH DEFENDANT
JANET HADIJA TEMBO.....	195TH DEFENDANT
JANET KABIBI NGOWA.....	196TH DEFENDANT
JAVAN GIRI DZITSO.....	197TH DEFENDANT
JEFRY MZEE WANA KISOMBE.....	198TH DEFENDANT
JEMIMA MUENI MUTISYA.....	199TH DEFENDANT
JERUSHA NGONYO.....	200TH DEFENDANT

<b>JEZZY MUTUA KAMANZA.....</b>	<b>201ST DEFENDANT</b>
<b>JILANI CHIKO MWADZOYA.....</b>	<b>202ND DEFENDANT</b>
<b>JILANI CHIKO MWADZOYA .....</b>	<b>203RD DEFENDANT</b>
<b>JOB MOKIRE NYAMONGE.....</b>	<b>204TH DEFENDANT</b>
<b>JOHN CHARO NYOKO.....</b>	<b>205TH DEFENDANT</b>
<b>JOHN KAHINDI KARISA.....</b>	<b>206TH DEFENDANT</b>
<b>JOHN KATORE KOMBE.....</b>	<b>207TH DEFENDANT</b>
<b>JOHN KENGO CHOME .....</b>	<b>208TH DEFENDANT</b>
<b>JOHN LECHIANDENYI KIFOTO.....</b>	<b>209TH DEFENDANT</b>
<b>JOHNSON CHARO MALIDZO.....</b>	<b>210TH DEFENDANT</b>
<b>JOHNSON CHENGO KALUME.....</b>	<b>211TH DEFENDANT</b>
<b>JONATHAN KOMBE HARE.....</b>	<b>212TH DEFENDANT</b>
<b>JONATHAN MWANGOVYA LANGI.....</b>	<b>213TH DEFENDANT</b>
<b>JONES JABIR.....</b>	<b>214TH DEFENDANT</b>
<b>JONES MWACHUMBO MWAKAWI.....</b>	<b>215TH DEFENDANT</b>
<b>JOSEPH KHAMIS OMAR.....</b>	<b>216TH DEFENDANT</b>
<b>JOSEPH M. KICHUNDA.....</b>	<b>217TH DEFENDANT</b>
<b>JOSEPH MWAMBEO NGALAMA.....</b>	<b>218TH DEFENDANT</b>
<b>JOSHU SALANO MGANGAI.....</b>	<b>219TH DEFENDANT</b>
<b>JOSLINE NYAMVUA SAID.....</b>	<b>220TH DEFENDANT</b>
<b>JOSPHAT NYAKORA.....</b>	<b>221ST DEFENDANT</b>
<b>JOSPHAT OMARE ORANGE.....</b>	<b>222ND DEFENDANT</b>
<b>JOSEPHINE KADZO MVOYI.....</b>	<b>223RD DEFENDANT</b>
<b>JOSPHINE NJOKI.....</b>	<b>224TH DEFENDANT</b>
<b>JOYCE CHIKI BENGO.....</b>	<b>225TH DEFENDANT</b>
<b>JUDITH CLEMENCE BAHATI.....</b>	<b>226TH DEFENDANT</b>
<b>JUDITH FAIDA SHUNGU.....</b>	<b>227TH DEFENDANT</b>
<b>JUDITH WANJE DUMA.....</b>	<b>228TH DEFENDANT</b>

JULIANA NDUKU MULI.....	229TH DEFENDANT
JULIUS KARISA KATANA.....	230TH DEFENDANT
JULIUS NGALA SEFU.....	231ST .DEFENDANT
JULIAS OBARE.....	232ND DEFENDANT
JULIUS IHA KAHATI.....	233RD DEFENDANT
JUMA MAHENDO MWAMUJIMBO.....	234TH DEFENDANT
JUMA MBUTO NYAWA.....	235TH DEFENDANT
JUMA MUYESI KAPOMBE.....	236TH DEFENDANT
JUMA NGALA TSUMA.....	237TH DEFENDANT
JUSTIN TSUMA CHIBINDO.....	238TH DEFENDANT
KABIBI NGOA SARO.....	239TH DEFENDANT
KACHE JOHN .....	240TH DEFENDANT
KACHE KALAME CHARO.....	241ST DEFENDANT
KACHE KENGA.....	242ND DEFENDANT
KACHE MOLE.....	243RD DEFENDANT
KADENGE KAHINDI KENGA.....	244TH DEFENDANT
KADII JAPHET MRAMBA.....	245TH DEFENDANT
KADZO HARE RUWA.....	246TH DEFENDANT
KADZO MWANGALLA.....	247TH DEFENDANT
KAASO BINDO MWARABI .....	248TH DEFENDANT
KAHINDI CHARO MUMBA.....	249TH DEFENDANT
KAHINDI KARISA MWARANDU .....	250TH DEFENDANT
KAHINDI KAZUNGU NDULI.....	251ST DEFENDANT
KAHONZI MWAMUYE KATANA.....	252ND DEFENDANT
KAHUTSU KAINGU FUNGO.....	253RD DEFENDANT
KAINGU MDZOMBA NGALA.....	254TH DEFENDANT
KALUME CHARO MASHA.....	255TH DEFENDANT
KANG'OMBE BAYA THOYA.....	256TH DEFENDANT

KANZE JOHNSTONE KALAMA.....	257TH DEFENDANT
KANZE KAZUNGU.....	258TH DEFENDANT
KANZE SAMUEL.....	259TH DEFENDANT
KARISA CHARO CHENGO.....	260TH DEFENDANT
KARISA KITSAO KAPOMBE.....	261ST DEFENDANT
KARISA MANGI.....	262ND DEFENDANT
KARISA MGANDI BEJA.....	263TH DEFENDANT
KASENO CHARO JEFA.....	264TH DEFENDANT
KASHUTU SIRYA.....	265TH DEFENDANT
KASICHANA KAHINDI.....	266TH DEFENDANT
KATANA CHIFU KITI.....	267TH DEFENDANT
KATANA MRAYANI.....	268 TH DEFENDANT
KAUTHAR JUMA BAKARI.....	269TH DEFENDANT
KAZUNGU CHENGO POMBE .....	270TH DEFENDANT
KAZUNGU FOLO.....	271ST DEFENDANT
KENNEDY KINZI MUYE.....	272ND DEFENDANT
KENNEDY OTIENO NYALLAH.....	273TH DEFENDANT
KENNEDY S. MWAGONA.....	274TH DEFENDANT
KEVIN MULEWA KALAMA.....	275TH DEFENDANT
KHADIJA FAMAU YUSUF.....	276TH DEFENDANT
KHAMISA M. MWANGUYA .....	277TH DEFENDANT
KHAMIS MAMBO.....	278 TH DEFENDANT
KHAMIS POLE.....	279TH DEFENDANT
KHWEJA KALONGO.....	280TH DEFENDANT
LAUZI PIRI MWATELA.....	281ST DEFENDANT
LAWRENCE NDZOMO CHIVADZI.....	282ND DEFENDANT
LEMMI MUGOMBA MWATUA.....	283 TH DEFENDANT
LENOX MATANO KADERE.....	284TH DEFENDANT
LENOX SHEHELE PIRI.....	285TH DEFENDANT

LICKY KANAZI KATANA.....	286TH DEFENDANT
LILIAN GONA KALUME.....	287TH DEFENDANT
LILIAN MUKAMBECHIKO.....	288TH DEFENDANT
LINET DAHABU.....	289TH DEFENDANT
LUCKY THOYA BAYA.....	290TH DEFENDANT
LYDIA KOMBO .....	291TH DEFENDANT
LYDIA MEDZA NYOKA.....	292TH DEFENDANT
LYDIA MUGHOI LEWA.....	293TH DEFENDANT
MACKLINE KATANA MTHENGO.....	294TH DEFENDANT
MACKMILAN KALAMA WASHE.....	295TH DEFENDANT
MAGADALINE KUVUNA NYINGE.....	296TH DEFENDANT
MAIMUNA YAKUB MAGHANGA.....	297TH DEFENDANT
MWAKUMACHIMUYE WASHE.....	298TH DEFENDANT
MALANGA BICHIZI NZINGA.....	299TH DEFENDANT
MALAMBE KAMEMBA.....	300TH DEFENDANT
MAPENZI GOBWERO.....	301ST DEFENDANT
MAPENZI KALAMA JEFWA.....	302NDDEFENDANT
MARGARET ROGERS NYAMAWI.....	303TH DEFENDANT
MARGRET CHARO NYALE.....	304TH DEFENDANT
MARGRET MASHA .....	305TH DEFENDANT
MARGRET MWAKOYE MUNGA.....	306TH DEFENDANT
MARIAM LUVUO MWATSUMA.....	307TH DEFENDANT
MARIAM MOHAMED STADI.....	308TH DEFENDANT
MARAIM MWASAMBU POLE.....	309TH DEFENDANT
MARIAM SULEIMAN.....	310TH DEFENDANT
MARAIAM ZUBERI RAJAB.....	311ST DEFENDANT
MARTIN BURU MWADZAHU.....	312ND DEFENDANT
MARTINA MWAKA MKIRI.....	313TH DEFENDANT
MARY ADHIAMBO ADELI.....	314TH DEFENDANT

MARY CHIDSAKA MUGALL.....	315TH DEFENDANT
MARY MADZYO.....	316TH DEFENDANT
MARY MALOMBO MURAMBA.....	317TH DEFENDANT
MARY MBUMCHE KOMBE.....	318TH DEFENDANT
MARY MEOWA SALONO.....	319TH DEFENDANT
MARY OKUTOYI AWALO.....	320TH DEFENDANT
MARY RUWANGE MOHAMED.....	321ST DEFENDANT
MARY UCHI MWAMUYE.....	322ND DEFENDANT
MASHA KARISA MASHA.....	323RD DEFENDANT
MASIKA MWATSUMA MAKUPE.....	235TH DEFENDANT
MATANO MWAMUDZU MWANGATA.....	326TH DEFENDANT
MATANO SALIM MWATANO.....	327TH DEFENDANT
MATHEW KATANA IHA.....	328TH DEFENDANT
MAULIDI BAKARI MWARILAE.....	329TH DEFENDANT
MAXWELL RUNYA KAMBO.....	330TH DEFENDANT
BARAKA KAZUNGU RUNYA.....	331ST DEFENDANT
MELA GERALD MBAGHA.....	332NDDEFENDANT
MBOBZA PATRICK KAZUNGU.....	333RD DEFENDANT
MBODZE MUNGA NGALLA.....	334TH DEFENDANT
MBUCHE MWAGUNDA.....	335TH DEFENDANT
MELON WITO NDORE.....	336TH DEFENDANT
MERCY MBESTA MADZAYO.....	337TH DEFENDANT
MERCY MNAZI.....	338TH DEFENDANT
MGANGA CHARO.....	339TH DEFENDANT
MICHAEL GARI KAI.....	340TH DEFENDANT
MICHAEL M KATURI.....	341ST DEFENDANT
MICHAEL NGALLA NDZANO.....	342ND DEFENDANT
MICHELLE SIAN NYARIYO.....	343RD DEFENDANT

MIRIAM ACHIENG FRANCIS.....	344TH DEFENDANT
MKALA DZENZA MKALA.....	345TH DEFENDANT
NYANZI RUNYA.....	346TH DEFENDANT
MOFAT JEFWA MWANGO.....	347THDEFENDANT
MOHAMED IBRAHIM OMAR.....	348TH DEFENDANT
MOHAMED JUMA OMAR.....	349TH DEFENDANT
MOHAMED KATANA MASHA.....	350TH DEFENDANT
MOHAMED MBAYI CHARO.....	351ST DEFENDANT
MOHAMED MUMBA TSUMA.....	352TH DEFENDANT
MOKINDO HAMIS HAZARA.....	353RD DEFENDANT
MONENE ATHONY CHIBUMI.....	354TH DEFENDANT
MONICA MNYAZI LEWA... ..	355TH DEFENDANT
MORIS K KAZUNGU.....	356TH DEFENDANT
MORRIS KARISA NGOVUNI.....	357THDEFENDANT
MORRIS N NZAI.....	358TH DEFENDANT
MORRIS TANGAI NDIRE.....	359TH DEFENDANT
MOSES NDARO KIRONGO.....	360TH DEFENDANT
MOSES NICHOLAS ONONO.....	361ST DEFENDANT
MOSES RIMBA NGALA.....	362ND DEFENDANT
MTWANA NDEGE KADILI.....	363RD DEFENDANT
MWAGANDA M MWANGALA.....	364TH DEFENDANT
MWAGANDI ALBERT NJAMA.....	365TH DEFENDANT
MWAKA MGOMA NTSENGA .....	366TH DEFENDANT
MWAKWEKWE NYOKA MWAMAU .....	367TH DEFENDANT
MWAMUYE KATANA KATOYA.....	368TH DEFENDANT
MWAMUYE MWABONJE.....	369TH DEFENDANT
MWAMUYE NYAMAWI MWAMUYE.....	370TH DEFENDANT
MWANAHAMIS KAZUNGU.....	371ST DEFENDANT

MWANAHARUSI HAMIS SALIM.....	372ND DEFENDANT
MWANAKOMBO RASHID.....	373RD DEFENDANT
MWANAMVUA BAKARI SALIM.....	374TH DEFENDANT
MWASAMBU MWATELA NDORE.....	375TH DEFENDANT
NAIMA MNYAZI CHULA.....	376TH DEFENDANT
NAJMA ZUBERI RAJAB... ..	377TH DEFENDANT
NANCY M KARISA.....	378TH DEFENDANT
NASOR MAULID TABWARA.....	379TH DEFENDANT
NASORO MRICHE JENJEW A.....	380TH DEFENDANT
NDUNE MASKATI.....	381ST DEFENDANT
NEEMA MKAMBE CHARO.....	382ND DEFENDANT
NELLY MKAMBE CHARO.....	383RD DEFENDANT
NELLY CHIZI MUMBO.....	384TH DEFENDANT
NGALA MWADZOYA.....	385TH DEFENDANT
NGALA MWADZOYA.....	386TH DEFENDANT
NGALLA JUMA.....	387TH DEFENDANT
NICHOLAS MNEMBA CHIKO.....	388TH DEFENDANT
NICHOLAS MWABONJE SHERA.....	389TH DEFENDANT
NICHOLUS MKOMA.....	390TH DEFENDANT
NICODEMUS KAZUNGU KOMBE.....	391ST DEFENDANT
NICODEMUS MASHA KAINGU.....	392ND DEFENDANT
NICOLAS MWACHIRO... ..	393RD DEFENDANT
NIXON MWATSUMS NYALE.....	394TH DEFENDANT
NORAH MORAA ORANGI.....	395TH DEFENDANT
NURU MWASEMU TSEMBERERE.....	396TH DEFENDANT
MURULAIN CHASHUDIN MITHOONANI.....	397TH DEFENDANT
NYADZUA GAMBO ZOE.....	398TH DEFENDANT
NYEVU KADALU NZAI.....	399TH DEFENDANT

<b>NYINGE CHIRO NYINGE.....</b>	<b>4.00TH DEFENDANT</b>
<b>NZOVU ME.....</b>	<b>401ST DEFENDANT</b>
<b>OMAR BAKARI OMAR.....</b>	<b>402ND DEFENDANT</b>
<b>OMAR TUNZA HASSAN.....</b>	<b>403RD DEFENDANT</b>
<b>OSCAR KAI SHUME.....</b>	<b>404TH DEFENDANT</b>
<b>PAMELA MORAGE SIRINGI.....</b>	<b>405TH DEFENDANT</b>
<b>PANDE CHIVATSI NYOKA.....</b>	<b>406TH DEFENDANT</b>
<b>PASCAL CHARO KARISA.....</b>	<b>407TH DEFENDANT</b>
<b>PASCAL J. FONDO.....</b>	<b>409TH DEFENDANT</b>
<b>PASCO GOBWERO.....</b>	<b>410TH DEFENDANT</b>
<b>PATIENCE MWAKA MWANGOVI.....</b>	<b>411TH DEFENDANT</b>
<b>PATIENCE MWAMUYE.....</b>	<b>412TH DEFENDANT</b>
<b>PATRICK NDUNGU MAINA.....</b>	<b>413THDEFENDANT</b>
<b>PATRICK RASHID KAZUNGU.....</b>	<b>414TH DEFENDANT</b>
<b>PATRICK RIA KAVIHA.....</b>	<b>415TH DEFENDANT</b>
<b>PAUL MWANYANJE MWANGIRI.....</b>	<b>416TH DEFENDANT</b>
<b>PAUL NGALLA SAMUEL.....</b>	<b>417TH DEFENDANT</b>
<b>PAULINE MWASAMBU.....</b>	<b>418TH DEFENDANT</b>
<b>PETER MUYE RIMBA.....</b>	<b>419TH DEFENDANT</b>
<b>PHILLEMOM RAMADHAN.....</b>	<b>420TH DEFENDANT</b>
<b>PRICILLA MASHA NGUMBA.....</b>	<b>421ST DEFENDANT</b>
<b>PRISCA KILIFI RINGA.....</b>	<b>422ND DEFENDANT</b>
<b>PURITY JUMWA KAHATI.....</b>	<b>423RD DEFENDANT</b>
<b>RACHEL MBODZE GARI.....</b>	<b>424TH DEFENDANT</b>
<b>RACHEL MUYE.....</b>	<b>425TH DEFENDANT</b>
<b>RACHEL MWAMONGO.....</b>	<b>426TH DEFENDANT</b>
<b>RAHELI DANIEL TETE.....</b>	<b>427TH DEFENDANT</b>
<b>RAJAB KADZENGA DUME.....</b>	<b>428TH DEFENDANT</b>

<b>RASHID A MAKARANI.....</b>	<b>429TH DEFENDANT</b>
<b>RAYMOND KAHINI MWANYAMBA.....</b>	<b>430TH DEFENDANT</b>
<b>RAYMOND MWACHUPA.....</b>	<b>431ST DEFENDANT</b>
<b>REHEMA HAJI HAMIS.....</b>	<b>432ND DEFENDANT</b>
<b>REHEMA SALIM NDORO.....</b>	<b>433RD DEFENDANT</b>
<b>RICHARD NYAMAWI MWANGALA.....</b>	<b>434TH DEFENDANT</b>
<b>RIMBA MTSANGO TAMBALE.....</b>	<b>435TH DEFENDANT</b>
<b>RISPER ANYANGO ADOL...4.....</b>	<b>436TH DEFENDANT</b>
<b>ROBERT MWANGEMI MUNGA.....</b>	<b>437THDEFENDANT</b>
<b>ROCKY GAMBO ZOE... ..</b>	<b>438TH DEFENDANT</b>
<b>RODA MALEMBA LEWA.....</b>	<b>439TH DEFENDANT</b>
<b>ROGERS NGALA CHOME.....</b>	<b>440TH DEFENDANT</b>
<b>ROMAN KITSAO CHANGWA.....</b>	<b>441ST DEFENDANT</b>
<b>ROMAN M SHERA.....</b>	<b>452TH DEFENDANT</b>
<b>RONNY TEI KABAYA.....</b>	<b>442ND DEFENDANT</b>
<b>ROSE D. LAZARO.....</b>	<b>444TH DEFENDANT</b>
<b>ROSE NGACHE KEYA.....</b>	<b>445TH DEFENDANT</b>
<b>ROSEMARY ADHIAMBO ADALE.....</b>	<b>446TH DEFENDANT</b>
<b>RUHUSA KATANA GONA.....</b>	<b>447TH DEFENDANT</b>
<b>RUKIA NZARO KARISA.....</b>	<b>448TH DEFENDANT</b>
<b>RUTH KANINI KYALO.....</b>	<b>449TH DEFENDANT</b>
<b>RUTH KIVATSI NYOKA.....</b>	<b>450THDEFENDANT</b>
<b>RUTH NGOKA FUNNY ... ..</b>	<b>451ST DEFENDANT</b>
<b>SAFARI CHANZER ANGORE.....</b>	<b>452ND DEFENDANT</b>
<b>SAFARI ROFAS KAINGU ... ..</b>	<b>453RD DEFENDANT</b>
<b>SAID KHAMIS M.....</b>	<b>454TH DEFENDANT</b>
<b>SAIDA MORRIS JUMAA.....</b>	<b>455TH DEFENDANT</b>
<b>SALIM BADI MUNYI ... ..</b>	<b>456TH DEFENDANT</b>

<b>SALIM KADZOGAMBA.....</b>	<b>457TH DEFENDANT</b>
<b>SALMA LOZI MWATSUMA.....</b>	<b>458TH DEFENDANT</b>
<b>SALOME MAGOMBE MUYESI .....</b>	<b>459TH DEFENDANT</b>
<b>SALOME MWAKA ZUMA.....</b>	<b>460TH DEFENDANT</b>
<b>SALOME SAMUEL GALO.....</b>	<b>461ST DEFENDANT</b>
<b>SAMIA ANTHONY KIVWENGE.....</b>	<b>462ND DEFENDANT</b>
<b>SAMMY CHENGO KARISA.....</b>	<b>463RD DEFENDANT</b>
<b>SAMMY CHENGO YAA.....</b>	<b>464TH DEFENDANT</b>
<b>SAMSON CHARO MWARABU.....</b>	<b>465TH DEFENDANT</b>
<b>SAMSON MGAMGE MWEMBONI .....</b>	<b>466TH DEFENDANT</b>
<b>SAMSON MSHONO.....</b>	<b>467TH DEFENDANT</b>
<b>SAMSON MWATSUMA MUSHU.....</b>	<b>468TH DEFENDANT</b>
<b>SAMSON NDIROMKARE.....</b>	<b>469TH DEFENDANT</b>
<b>SAMSON ZIRO MUNGA .....</b>	<b>470TH DEFENDANT</b>
<b>SAMUEL LEWA KAZUNGU.....</b>	<b>471STDEFENDANT</b>
<b>SAMUEL LEWA PEPO.....</b>	<b>472ND DEFENDANT</b>
<b>SAMUEL M MWANGEMI.....</b>	<b>473RD DEFENDANT</b>
<b>SAMUEL MATATA SHUNGU.....</b>	<b>474TH DEFENDANT</b>
<b>SAMUEL MBOGO KATANA.....</b>	<b>475TH DEFENDANT</b>
<b>SAMUEL MBURU.....</b>	<b>476TH DEFENDANT</b>
<b>SAMUEL MLEWA KAZUNGU.....</b>	<b>477TH DEFENDANT</b>
<b>SAMUEL MWANGO SHUME.....</b>	<b>478TH DEFENDANT</b>
<b>SAMUEL N. MWANGEMI.....</b>	<b>479TH DEFENDANT</b>
<b>SAMUEL NYUNDO KMALA.....</b>	<b>480TH DEFENDANT</b>
<b>SANTA MULONGO LAZORO.....</b>	<b>481ST DEFENDANT</b>
<b>SARAH KACHE KARISA.....</b>	<b>482ND DEFENDANT</b>
<b>SAUMUU MWAKALAMA PAUL.....</b>	<b>483RD DEFENDANT</b>
<b>SCOLLA LOZI KARISA.....</b>	<b>484TH DEFENDANT</b>

SELINA NAZI JULIUS.....	485TH DEFENDANT
SERA EVA KIVULA.....	486TH DEFENDANT
SERAH KAMENE MULI.....	487TH DEFENDANT
SHADRACK SHAGI MAJUTO.....	488TH DEFENDANT
SHAMSA ALI NASOR.....	489TH DEFENDANT
SHEHELE GULANI SHEHELE.....	490TH DEFENDANT
SHEILA SODA MWACHIRU.....	491TH DEFENDANT
SHUKURU KALAMA FONDO.....	492ND DEFENDANT
SHUME ROMBOMA WASHE.....	493RD DEFENDANT
SIDI MASHA.....	494TH DEFENDANT
SIDI SALMAN TSUMA.....	495TH DEFENDANT
SIMONE IHA KALAMA.....	496TH DEFENDANT
PATRICK KALAMA.....	497TH DEFENDANT
DENNIS CHAMOTO SHERA.....	498THDEFENDANT
MZUNGU NYOKA.....	499THDEFENDANT
ALI BADI.....	500 <sup>TH</sup> DEFENDANT
ABIDHALI BADI.....	501ST DEFENDANT
AMBROSE BADA.....	502ND DEFENDANT
ALI JUMA.....	503RD DEFENDANT
MOHAMED JUMA.....	504TH DEFENDANT
SAID BADA.....	505TH DEFENDANT
JAMES KASHOMBO .....	506TH DEFENDANT
STEPHEN BADA .....	507TH DEFENDANT
KAMLESH MOLE.....	508TH DEFENDANT
MGANGA MOLE.....	509TH DEFENDANT
KARISA KALAMA.....	510TH DEFENDANT
KAZUNGU.....	511TH DEFENDANT
ABUBAKAR.....	512TH DEFENDANT

JAMES MWAJINJE.....	513TH DEFENDANT
SIMBA BEZIRO .....	514TH DEFENDANT
CLEMENT CHAMOTO SHELA.....	515TH DEFENDANT
ANNISA HASSAN.....	516TH DEFENDANT
REHEMA NDOLO.....	517TH DEFENDANT
DANIEL KARISA MFULO.....	518TH DEFENDANT
THIME HASSAN .....	519TH DEFENDANT
CHIRUME KALAMA KARISA.....	520TH DEFENDANT
CHARO MSHIPA.....	521ST DEFENDANT
JACOB AMBROSE.....	522ND DEFENDANT
LEWA SAID.....	523RD DEFENDANT
FURAHA OSCAR.....	524TH DEFENDANT
NYAKORA.....	525THDEFENDANT
SAIDIA GOBWERO.....	526TH DEFENDANT

## JUDGMENT

### **Introduction:**

1. This matter was consolidated with Petition number 9 of 2013 vide my Ruling of 20<sup>th</sup> December 2013.
2. All the 509 Petitioners in Petition number 9 of 2013 are all also Defendants in this suit. The 1<sup>st</sup> Respondent in Petition number 9 of 2013, the Chief Land Registrar, is the 1<sup>st</sup> Defendant in this suit. The 2<sup>nd</sup> Respondent in Petition No. 9 of 2013, **Vros Produce Limited**, has the same name as the 1<sup>st</sup> Plaintiff in this suit. However, the directors of **Vros Produce Limited** in Petition number 1 of 2013, who are Defendants numbers 8 and 9 herein, are different from the directors of **Vros Produce Limited** herein (the 1<sup>st</sup> Plaintiff).

### **Petition No. 9 of 2013**

3. The 509 Petitioners in Petition No.9 of 2013 filed a Petition on 22<sup>nd</sup> May 2013 alleging that the title that was obtained by the 2<sup>nd</sup> Respondent, **Vros Produce Limited**, was obtained through fraud, misrepresentation, illegality, undue regard to procedure or through a corrupt scheme.
4. The Petitioners further alleged that the process of acquisition of Land Reference number 150/section IV/Mainland North (the suit property) was in full breach of the law because at the time of registration of the suit property in favour of the 2<sup>nd</sup> Respondent, Vros Produce Ltd, the Petitioners had occupied and lived on the suit property for many years. The Petitioners particularized the alleged illegality and fraud on the part of the two Respondents, the **Chief Land Registrar** and **Vros Produce Limited**. Vros Produce Limited, the 2<sup>nd</sup> Respondent, was said to be the registered owner of the suit property.
5. The Petitioners prayed for several declaratory orders which included a declaration that the title

issued to the 2<sup>nd</sup> Respondent, **Vros Produce Limited**, by the 1<sup>st</sup> Respondent, **the Chief Land Registrar**, is null and void; an order for cancellation of the title issued to Vros Produce Limited and in the alternative, an order for compensation in favour of the Petitioners by the Respondents at the prevailing market rates.

6. The Petition was drawn by the firm of Mogaka Omwenga & Mabeya advocates on 22<sup>nd</sup> May, 2013 for all the 509 Petitioners and filed in this court on the same day. The firm of Nabwana Nabwana & Company Advocates entered appearance for the 2<sup>nd</sup> Respondent, **Vros Produce Limited**, on 5<sup>th</sup> July, 2013.
7. On 5<sup>th</sup> July 2013, a consent order, drafted on the letter head of the Petitioners' advocates, was filed in this court. The said consent was signed on the same day by Mogaka Omwenga & Mabeya Advocates for the Petitioners, Nabwana Nabwana & Co. Advocates for Vros Produce Limited, the 2<sup>nd</sup> Respondent and Richard Ngari, the State counsel for the 1<sup>st</sup> Respondent. I have not come across the Notice of Appointment or a Memorandum of Appearance of Richard Ngari, the said State counsel, in Petition number 9 of 2013.
8. The consent order that was signed by the parties was adopted by the Deputy Registrar of this court as an order of the court on 15<sup>th</sup> July 2013 and it was in the following terms:
  - a. **A declaration order do and is hereby issued that the acquisition of plot number 150 Section IV Mainland North CR13180 by the 2<sup>nd</sup> Respondent (Vros Produce Limited) was null and void.**
  - b. **A declaration do and is hereby issued that the process of acquisition of plot no. 150 section IV Mainland North CR 13180 by the 2<sup>nd</sup> Respondent (Vros Produce Limited) was unconstitutional.**
  - c. **A declaration do issue that the Title Deed issued to the 2<sup>nd</sup> Respondent (Vros Produce Limited) by the 1<sup>st</sup> Respondent (the Chief Land Registrar) is null and void.**
  - d. **That an order do issue to cancel the title issued to the 2<sup>nd</sup> Respondent (Vros Produce Limited) by the 1<sup>st</sup> Respondent.**
  - e. **An order do issue directed at the 1<sup>st</sup> Respondent for rectification in respect to CR Nos 29323 to 29361 (39 parcels of land) and an order to cancel the name of the 2<sup>nd</sup> Respondent (Vros Produce Limited) and replace it with that of Joseph Mzungu Nyoka (1<sup>st</sup> Petitioner) on his own behalf and on behalf of 508 other Petitioners.**
  - f. **That the Land Registrar Mombasa do issue Provisional Title Deeds forthwith for the above mentioned parcels of land.**
9. A decree was subsequently issued by the Deputy Registrar on 15<sup>th</sup> July 2013 and registered against the 39 subdivisions of the suit property, that is, CR Nos. 29323 to 29361 as the second entry. The third entry that was registered against the 39 sub-divisions was the issuance of provisional certificates in respect to the 39 sub-divisions in the name of Joseph Mzungu Nyoka on behalf of himself and the other 508 petitioners.
10. The said Joseph Mzungu Nyoka was the 1<sup>st</sup> Petitioner in Petition Number 9 of 2013. In the current suit, Joseph Mzungu Nyoka is the 9<sup>th</sup> Defendant and is represented by Mr. Paul O. Buti advocate. However, as I have stated above, the 9<sup>th</sup> Defendant was represented by the firm of Mogaka Omwenga & Mabeya Advocates in Petition number 9 of 2013.
11. This court allowed the Plaintiffs' application in this suit and set aside the consent that was entered into in Petition number 9 of 2013. The court also directed that the Petition be consolidated with this suit (Land case No. 171 of 2013).

#### **Land case No. 171 of 2013 (this suit)**

12. It has been averred in the Plaint that Vros Produce Limited, the 1<sup>st</sup> Plaintiff, was incorporated as a limited liability company in Kenya on 16<sup>th</sup> August, 1984 under a certificate of incorporation number C. 27992; that the 2<sup>nd</sup> Plaintiff is a director and the majority shareholder of the 1<sup>st</sup>

- Plaintiff and that the 1<sup>st</sup> Plaintiff is the registered proprietor of all those parcels of land described as Land Reference Nos. 271 – 309, formerly known as subdivision No. 150/Section IV/Mainland North under Certificate of Title number CR 13180 (the suit property).
13. It is the 1<sup>st</sup> Plaintiff's case that it purchased the suit property from its sister company, the 2<sup>nd</sup> Plaintiff, on 18<sup>th</sup> October, 1993.
  14. According to the Plaintiff, the 2<sup>nd</sup> Plaintiff, Dew Reality Limited, agreed to purchase the suit property from Mr. Francis Nguru Mutura, who had previously transacted with it, whereupon a consent of the Bahari Land Control Board was obtained on 27<sup>th</sup> September, 1990 to have the suit property transferred to the 2<sup>nd</sup> Plaintiff.
  15. Before the 2<sup>nd</sup> Plaintiff purchased the property from Francis Nguru Mutura, it was averred, the suit property had previously been charged to Barclays Bank of Kenya in 1973, Kenya Commercial Bank in 1983 and Development Finance Company of Kenya in 1985; that all the charges were registered after the banks had inspected the property and the consents of the Land Control Board given and that the only person who lived on the property was one Margaret Gathoni Ngugi Mutura who was managing the land on behalf of Mr. Francis Mutura since 1976.
  16. It is the Plaintiffs' averments that the 7<sup>th</sup> and 8<sup>th</sup> Defendants have continued to deceptively engage the courts by falsely stating that they are directors of a company by the name Vros Produce Limited purportedly registered in 1996 under a certificate of incorporation number C.64998 while in fact there is no company registered as Vros Produce Limited under a certificate of incorporation number C 64998 and that that certificate of incorporation number belongs to a company known as Leisure Wash Limited.
  17. It is the Plaintiffs case that they have never offered the suit property for sale save for implementing the sub-division scheme into 39 plots of approximately 5 acres each which are under the name of the 1<sup>st</sup> Plaintiff and that even if the 7<sup>th</sup> and 8<sup>th</sup> Defendants registered a company by the name Vros Produce Limited, it cannot own land which was transferred to the 1<sup>st</sup> Plaintiff by the 2<sup>nd</sup> Plaintiff in 1993.
  18. The Plaintiffs set out several particulars of fraud in the Plaintiff as against the Defendants, which included forging documents to purport that the 7<sup>th</sup> and 8<sup>th</sup> Defendants are directors of a company known as Vros produce Limited; forging documents to purport that a company under certificate of incorporation number C.64998 belonged to Vros Produce Limited; knowing that at all material times the certificate of incorporation number C.64998 belonged to a company known as Leisure Wash Limited and fraudulently obtaining a Decree in Petition Number 9 of 2013 thus depriving the Plaintiffs of their property.
  19. In the Plaintiff, the Plaintiffs are seeking for several declaratory orders which include a declaration that the suit property was acquired free of any encumbrances by the 2<sup>nd</sup> Plaintiff from Francis Nguru Mutura; a declaration that the 2<sup>nd</sup> Plaintiff legally transferred the suit property to the 1<sup>st</sup> Plaintiff without encumbrances; a declaration that the 1<sup>st</sup> Plaintiff is the only genuinely incorporated company in that name under a certificate of incorporation number C 27992 and a declaration that the 7<sup>th</sup> and 8<sup>th</sup> Defendants are not directors of a company incorporated in the name of Vros Produce Ltd.
  20. The Plaintiffs are also seeking for a declaration that the consent dated 5<sup>th</sup> July, 2013 in Petition number 9 of 2013 and the decree that ensued therefrom is a forgery; a declaration that the Petitioners in Petition No. 9 of 2013 are not a legal entity with capacity to institute any proceedings; an order that any transfer of the suit property and any provisional certificate of title issued to the 9<sup>th</sup> Defendant on his own behalf and on behalf of the 508 Petitioners be set aside; a permanent injunction restraining the Defendants from interfering with the suit property amongst other orders.
  21. All the Defendants were served with the Summons to Enter Appearance and the Plaintiff by way of substituted service by advertisement in the Standard Newspaper of 7<sup>th</sup> October 2013. An Affidavit of Service was filed in court showing the said advertisement together with a receipt of Kshs. 1,165,800 being the payment that was made for the advertisement.
  22. The firm of Paul O. Buti advocated entered appearance for the 9<sup>th</sup> Defendant on 28<sup>th</sup> November, 2013 but did not file a Defence. Except the 1<sup>st</sup> to the 5<sup>th</sup> Defendants, all the other Defendants

neither entered appearance in this matter nor filed their Defences.

### **The Defence by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants**

23. The Attorney General, on behalf of the 1<sup>st</sup> to the 5<sup>th</sup> Defendants averred in his Defence that he was not a party in Petition number 9 of 2013 since the Petition was never served upon his office; that the Attorney General has neither entered appearance nor received instructions in Petition Number 9 of 2013 and that he is a stranger to the consent that was signed in Petition number 9 of 2013.
24. According to the Attorney General, if a State Counsel signed a consent in Petition number 9 of 2013, then he did so without any advice, consent or concurrence of the Attorney General
25. The Attorney General, finally averred that a complaint was received in respect to the unlawful trespass on the suit property against the 9<sup>th</sup> Defendant who was arrested and charged in Shanzu Law Court in Criminal Case Number 321/57/2012 alongside other people, namely, Rashid Ali Zuau Tunje, Ruth Nyoka Chivatsi and Margeret Nyoka Chivatsi. The Attorney General has prayed that the suit should be dismissed as against the 1<sup>st</sup> to the 5<sup>th</sup> Defendants.

### **Pre-trial directions**

26. When the two matters came up for pre-trial directions on 27<sup>th</sup> March, 2013, the court directed the Defendants to file their Defences, witness statements and documents within 21 days which they never did. The court also directed that the advocates who were representing the Petitioners and the Respondents in Petition number 9 of 2013 should be served with a hearing notice. The two matters were then fixed for hearing for 5<sup>th</sup> and 6<sup>th</sup> June, 2014.
27. On 5<sup>th</sup> June, 2014, the matter proceeded for hearing in the absence of the Defendants in this suit and the Petitioners and Respondents in Petition number 9 of 2013 pursuant to the provisions of Order 12 Rule 2 (a) of the Civil Procedure Rules, 2010.

### **The Plaintiffs' case**

28. PW 1, John Muriithi Ng'ang'a, informed the court that he shall rely on his statement dated 26<sup>th</sup> September 2013 and filed on 30<sup>th</sup> September 2013. Pw 1 informed the court that he is a director of the 1<sup>st</sup> Plaintiff.
29. According to the evidence of PW 1, Vros Produce Limited, the 1<sup>st</sup> Plaintiff, was incorporated in Kenya on 16<sup>th</sup> August 1994 under a certificate of registration number C 27992. It was his evidence that the 2<sup>nd</sup> Plaintiff is the majority shareholder of Vros Produce Limited, the 1<sup>st</sup> Plaintiff, with John Harun, Harun International, himself and Mark Ngatia (Pw 2) being the other directors in the said company.
30. It was the evidence of PW 1 that on 18<sup>th</sup> October 1993, the 2<sup>nd</sup> Plaintiff transferred to the 1<sup>st</sup> Plaintiff all those parcels of land described as CR Nos. 29323-29361, LR NO. MN/Section IV/271-MN/Section IV/309 formerly known as sub-division number 150/Section IV Mainland North. PW 1 stated that after the implementation of the sub-divisional scheme, new certificates of title were issued to the 1<sup>st</sup> Plaintiff vide an entry dated 30<sup>th</sup> January 1997.
31. It was the evidence of PW 1 that any claim of the suit property as being the Petitioners' ancestral land as claimed by the 9<sup>th</sup> to 526<sup>th</sup> Defendants in Petition number 9 of 2013 or at all is untrue because none of those Defendants was born on or lived on the suit property.
32. PW 1 gave a chronology of how the 2<sup>nd</sup> Plaintiff came to own the suit property. According to PW 1, the suit property was sold to Francis Nguru Mutura by the widow of the previous owner, the late Vaithalbhai Janarbhahi after she obtained letters of administration as the executrix of the deceased's estate. It was the evidence of PW 1 that during the probate cause, none of the 6<sup>th</sup> to the 526<sup>th</sup> Defendants filed any claim in that cause.
33. It was the evidence of PW 1 that as at the time the 2<sup>nd</sup> Plaintiff bought the suit property, none of the Defendants was staying on the land except the sister in law of Mr. Francis Nguru Mutura, the

- seller. The said sister in law of Mr. Francis Nguru Mutura continues living on the land until now with the permission of the Plaintiffs.
34. PW 1 informed the court that according to the evidence of the Registrar of Companies, there is no company that is registered as Vros Produce Limited under certificate of incorporation number C 64998 as alleged by the 7<sup>th</sup> and 8<sup>th</sup> Defendants in Mombasa HCCC No. 131 of 2010 and that the certificate of incorporation number C64998 belongs to a company known as Leisure Wash Limited.
35. PW 1 produced in evidence a letter dated 3<sup>rd</sup> June, 2013 addressed to the Land Registrar, Mombasa and signed by Mogaka Omwenga & Mabeya Advocates for the 509 Petitioners and Elizabeth for Vros Produce Limited, the 2<sup>nd</sup> Respondent in Petition number 9 of 2013 as P EXB 1. The letter state as follows:
- “On behalf of the Petitioners and the 2<sup>nd</sup> Respondent (Vros Produce Ltd), we wish to confirm that the parties have had extensive meetings and have agreed to settle the matter in terms of the proposed consent attached thereto...Kindly confirm if the same is acceptable to you to enable us finalize the matter.”**
36. The unsigned draft consent order that was sent to the Land Registrar, Mombasa was produced by Pw 1 as P EXB2. Pw 1 stated that the 1<sup>st</sup> Plaintiff is not aware of an advocate called Elizabeth who purported to sign the letter of 3<sup>rd</sup> June, 2013 on behalf of Vros Produce Limited.
37. It was the evidence of Pw 1 that the issue of the identity of a company known as Vros Produce Limited arose in Mombasa HCCC No. 131 of 2010 in which Vros Produce Limited had been sued over the same suit property. The Plaintiff in that suit was claiming the suit property as against Vros Produce Limited by way of adverse possession.
38. PW 1 stated that the court in Mombasa HCCC No.131 of 2010 ordered for an investigation to be carried out by the Registrar of Companies of the affairs of Vros Produce Limited (C 27992) and Vros Produce Limited (C64998). Pw 1 produced in evidence as P EXB 3 a copy of the order of Tuiyot J in Mombasa HCCC No. 131 of 2010. PW 1 also produced in evidence a letter by the Registrar of Companies dated 23<sup>rd</sup> October, 2013 which was in response to the order of the court as P EXB 4. In the said letter, the Registrar indicated that Vros Produce Limited (C 27992) was registered as a business name on 14<sup>th</sup> August 1984 and was later converted into a private limited company on 16<sup>th</sup> August 1984 with a registration number C.27992.
39. In the same exhibit, the Registrar of companies indicated that certificate of incorporation number C.64998 belongs to a company by the name of Leisure Wash Limited and that a certificate of incorporation bearing the same number in the name of Vros Produce Limited is not genuine.
40. PW 1 also produced in evidence the Replying Affidavit that was sworn by the 7<sup>th</sup> and 8<sup>th</sup> Defendants in Mombasa HCCC No. 131 of 2010 as P EXB 8. The 7<sup>th</sup> and 8<sup>th</sup> Defendants, who are said to be the directors of Vros Produce Limited (C.64998), exhibited on the said Replying Affidavit that was filed in Mombasa HCCC No. 131 of 2010 the Certificate of Incorporation for Vros Produce Limited (C.64998) in which they claimed to be directors. The Replying Affidavit also has a copy of an agreement of sale and cheques drawn in favour Vros Produce Limited for the sale of some portions of the suit property which were produced as P EXB 11 and 12 respectively.
41. The witness also produced a copy of the Notice of Appointment of advocates by the firm of Stephen Macharia Kimani Advocates & Co. Advocates for Vros Produce Limited (C 64998) in Mombasa HCCC No. 131 of 2010 as P EXB 7 PW 1 denied that the 1<sup>st</sup> Plaintiff (Vros Produce Ltd – C. 27992) has ever instructed the said advocate to represent it in any proceedings.
42. It was the evidence of Pw 1 that the consent that was entered into in Petition number 9 of 2013 was without the consent or instructions of the 1<sup>st</sup> Plaintiff. The witness denied any knowledge of the law firm of Nabwana Nabwana & Co advocates who signed the consent on behalf of a company with a similar name as the 1<sup>st</sup> Plaintiff's.
43. PW 1 referred the court to a copy of the certificate of title for Land Reference No. MN/Section IV/295 which is of one of the sub divisions that arose from the suit property. The said certificate of title shows the entry that was made pursuant to the consent that was entered into in Petition

- number 9 of 2013 and the Decree that was subsequently issued.
44. The Decree that was issued by the court pursuant to a consent order in Petition number 9 of 2013 was also produced in evidence by PW 1. PW 1 stated that the said decree was registered against the 39 certificates of title and provisional certificates were issued to the 9<sup>th</sup> Defendant thus denying the 1<sup>st</sup> Plaintiff the suit properties.
  45. PW 1 asked the court to grant to the Plaintiffs the orders that have been sought in the Plaintiff.
  46. Mark Ngatia Mwau, PW 2, informed the court that he was a director of both the 1<sup>st</sup> and the 2<sup>nd</sup> Plaintiff and an advocate of the High Court. PW 2 adopted his statement dated 27<sup>th</sup> September, 2013 and filed in this court on 30<sup>th</sup> September, 2013.
  47. PW2 referred the court to the affidavit of his co-director and the chairman of both the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs which shows the history of the suit property since 1963 up to 1997 when the 39 subdivisions were registered in the name of the 1<sup>st</sup> Plaintiff. The affidavit of John Harun Mwau together with the annexures were produced as P EXB 15.
  48. PW2 informed the court that he does not know Lucas Owiti and Lewis Gogo, the 7<sup>th</sup> and 8<sup>th</sup> Defendants and that the sale agreement which was produced as P EXB10 was not executed by the 1<sup>st</sup> Plaintiff. PW 2 stated that the two individuals are not directors of Vros Produce Limited as stated in the Replying Affidavit that was filed in Mombasa HCCC No. 131 of 2010 which was produced by PW 1 as P EXB 8.
  49. PW2 stated that when they challenged the authenticity of a company which had a similar name as the 1<sup>st</sup> Plaintiff's in Mombasa HCCC No. 131 of 2010, the matter was withdrawn as soon as the Registrar of Companies filed his report. It was the evidence of PW 1 that Mombasa HCCC No. 131 of 2010 was in respect to the current suit property.
  50. According to PW2, him, together with his co-directors were not aware of the consent that was recorded in Petition number 9 of 2013, neither was the 1<sup>st</sup> Plaintiff a party in that Petition.
  51. It was the evidence of PW2 that after the 2<sup>nd</sup> Defendant bought the suit property from Francis Nguru Mutura, they allowed her sister Margaret Nguru to occupy it and not anybody else. It was the evidence of PW2 that the Plaintiff in HCCC No. 131 of 2010, John Ngugi Mutura, is a son of Margaret Nguru Mutura who is a single mother.
  52. PW 2 stated that at some point, the suit property was charged to several banks and that nobody, other than Margeret Nguru Mutura who was allowed to take care of the property by the Plaintiffs, has ever occupied the suit property.
  53. PW 2 informed the court that he did not know the law firm of Nabwana Nabwana Advocates or Stephen Macharia Kimani Advocates.
  54. It was the evidence of PW 2 that the 1<sup>st</sup> Plaintiff has made several complaints about trespass on the 1<sup>st</sup> Plaintiff's land but no action has been taken. The witness stated that he was not aware of any criminal charges that have been preferred against the people trespassing on their land.
  55. PW2 finally testified that by the time Vros Produce Ltd (C.64998) was purportedly registered on 2<sup>nd</sup> May, 1996, the suit property had already been transferred to the 1<sup>st</sup> Plaintiff. The witness asked the court to allow the Plaintiff.

### **Oral application to amend the Plaintiff**

56. Before the Plaintiffs closed their case, counsel for the 1<sup>st</sup> Plaintiff made an oral application to amend the Plaintiff to include a prayer for eviction of the Defendants from the suit property. The court allowed the the oral Application for amendment and included the prayer for eviction in the Plaintiff.

### **Submissions**

57. The Plaintiffs' advocates filed their respective detailed submissions and highlighted them.
58. The 1<sup>st</sup> Plaintiff's counsel reiterated the evidence that was given by PW 1 and PW2 in detail which I have already summarised above.
59. The 1<sup>st</sup> Plaintiff's counsel submitted that the ownership and enjoyment of property is a

- constitutionally guaranteed right under Article 40 of the Constitution of Kenya. Counsel relied on the provisions of section 26 of the Land Registration Act which provides that a certificate of title shall be conclusive evidence of ownership of land except where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
60. The 1<sup>st</sup> Plaintiff's counsel submitted that the title that was issued to the Defendants pursuant to the consent order in Petition No. 9 of 2014 was issued through fraud, criminal acts and abuse of the court process with the intention of depriving the Plaintiffs the suit property.
61. The 1<sup>st</sup> Plaintiff's counsel submitted that the 6<sup>th</sup> to 536<sup>th</sup> Defendants are engaged in a conspiracy that has effectively defrauded and deprived the Plaintiffs of the suit property; that these acts have been perpetuated by or with the acquiescence of the 1<sup>st</sup> to 5<sup>th</sup> Defendants who are state officers and that there has been abuse of the court process.
62. According to counsel, the report by the Registrar of Companies confirms that the 7<sup>th</sup> and 8<sup>th</sup> Defendants were aware that there is no company incorporated in Kenya by the name of Vros Produce Limited under a certificate of incorporation number C.64998 and have knowingly passed themselves as the 1<sup>st</sup> Plaintiff with the sole purpose of committing criminal acts and of defrauding the 1<sup>st</sup> Plaintiff.
63. The 2<sup>nd</sup> Plaintiff's advocate submitted that the 2<sup>nd</sup> Plaintiff is the majority shareholder of the 1<sup>st</sup> Plaintiff having been incorporated on 16<sup>th</sup> August 1984. The 2<sup>nd</sup> Plaintiff, it was submitted, transferred L.R. No. 150/Section IV/Mainland North together with an approved sub-division scheme to the 1<sup>st</sup> Plaintiff.
64. Counsel finally submitted that although the 9<sup>th</sup> Defendant had purported to file Petition No. 9 of 2013 on behalf of the other 508 Petitioners, he never obtained the leave of the court before filing the Petition. Counsel relied on several authorities on that issue which I have considered.
65. To date, it was submitted, the 1<sup>st</sup> Plaintiff is still holding the original Certificates of Titles in respect to the suit property.
66. In the year 2010, it was submitted, the Plaintiffs became aware of Mombasa HCCC no. 131 of 2010 where one John Ngugi Mutura had instituted a suit against Vros Produce Limited claiming adverse possession; that it came as a surprise when the Plaintiffs herein were informed that another company also under the name of Vros Produce Limited with one Lucas Owiti and Lewis Gogo as directors had entered appearance in the suit and that the court directed the Registrar of Companies to file a report confirming the ownership status of the two companies with similar names.
67. However, it was submitted, after the Registrar of Companies declared the Certificate of Incorporation Number C 64998 that Lewis Gogo and Lucas Owiti were using belonged to a different company known as Leisure Wash Limited, the Plaintiff withdrew HCCC No. 131 of 2010 only for a similar suit to be filed in Malindi as Petition No. 9 of 2013 and Malindi ELC No. 12 of 2013.
68. Counsel reiterated the evidence of PW2, and how the 2<sup>nd</sup> Plaintiff acquired the suit property before transferring it to the 1<sup>st</sup> Plaintiff. Counsel took the court through the voluminous exhibits that were produced by both PW 1 and PW2 and submitted that the Plaintiffs have been deprived of their property arbitrarily through the criminal activities of the Defendants who are also parties in Petition No. 9 of 2013 and that the Plaintiffs suit should be allowed.
69. The Defendants did not file any submissions.

### **Analysis and findings**

70. The issues for determination in these two consolidated matters are as follows:
- a. **Whether the acquisition of plot number 150/Section IV/Mainland North and sub-divided into 39 plots by Vros Produce Limited was unconstitutional null and void.**
  - b. **Which of the two Vros Produce Limited, one under Certificate of Incorporation no. C.64998 (the 6<sup>th</sup> Defendant) and the other one under Certificate of Incorporation number C.27992 (the 1<sup>st</sup> Plaintiff) is the legitimate one.**
  - c. **Which of the two Vros Produce Limited is the legitimate owner of Plot number 150/Section**

**IV Mainland North which was sub-divided into 39 plots and registered as CR Nos 29323 up to 29361.**

- d. Whether the parties in Petition Number 9 of 2013, who are also Defendants in this suit were involved in criminal activities and whether the said Petition amounts to abuse of the court process.**
- e. Whether the Petitioners in Petition number 9 of 2013 are entitled to the suit property.**
- f. Who should pay the costs of the two suits.**

71. The history of how a company known as Vros Produce Limited acquired the suit property is captured in the evidence of PW 1, PW2 and the affidavit of John Harun Mwau, a director of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, which was produced as P EXB 15.
72. According to the evidence before this court, Francis Nguru Mutura, then the proprietor of the suit property, approached John Harun Mwau, a director in the 2<sup>nd</sup> Plaintiff's company to purchase the suit property for a consideration of Kshs.5,000,000.
73. According to the affidavit of the 2<sup>nd</sup> Plaintiff's director, he did due diligence before purchasing the suit property and discovered that the suit property was transferred from Mohamed bin Omar to Vithalbai Javerbhai Patel on 22<sup>nd</sup> August, 1963. The Memorandum of Registration of Transfer of land in respect of L.R No. 150/Section IV/Mainland North from Mohamed bin Omar to Vithalbai Javerbhai Patel dated 2<sup>nd</sup> September 1963 has been exhibited on P EXB 15.
74. The Certificate of Title for CR. No.13180 subdivision number 150 Section IV Mainland North (the suit property) exhibited on P EXB 15 shows that the property was registered in the name of Vithalbai Javerbhai Patel on 3<sup>rd</sup> September 1963.
75. When the Government found that the then proprietor, Mr. V. J. Patel, was not utilizing the suit property, it took over the management of the farm vide a management order and gazetted in gazette notice number 899 dated 18<sup>th</sup> February 1966. The said management order was issued by the then Minister for Agriculture pursuant to the provisions of section 187 of the Agriculture Act and was framed as follows:

**“Farm L.R No. 150 (200 acres), owned by Mr. Vithalbai Javerbhai and situated in the Kilifi area is being managed or supervised so inadequately that it is necessary for preventing or delaying the deterioration of the holding to make and serve this order...I hereby order and direct that as from 18<sup>th</sup> February 1966, the holding shall, subject to the provisions of section 187 of the Act, be occupied and managed by the Minister for Agriculture and Animal Husbandry to the exclusion of the owner.”**

76. The said gazette notice has been exhibited on P EXB 15 and it confirms that although the land was owned by Mr. Patel, there was nobody in actual occupation of the same as at 18<sup>th</sup> February, 1966 thus the taking over of the land by the Government.
77. It would appear that Mr. Patel convinced the government to lift the said management order. I say so because on 25<sup>th</sup> April, 1966, the same Minister published another gazette notice number 1614 in which he revoked the management order of 18<sup>th</sup> February, 1966 thus allowing Mr. Patel to deal with the suit property.
78. The evidence before this court shows that on 8<sup>th</sup> April 1975, the Kilifi Land Control Board gave its consent for the transfer of the suit property from the executrix of the Estate of Mr. V. J. Patel to Francis Nguru Mutura for Kshs. 140,000. The transfer of the suit property to Mr. Mutura was registered as entry number 5 against the title on 17<sup>th</sup> December 1976.
79. Entry number 6 on the certificate of title in respect of L.R.No. 150 Section IV Mainland North and attached on P EXB 15 shows that the suit property was then charged by Francis Mutura Nguru to Barclays Bank International Limited on 17<sup>th</sup> December 1976 after the Kilifi Land Control Board gave its consent. The Application for the consent of the Land Control Board to have the property charged has also been exhibited on P EXB 15.
80. The further entries in the Certificate of Title shows that Barclays Bank discharged the property on 9<sup>th</sup> December, 1983 whereafter the property was charged by Kenya Commercial Bank on the

- same day and then by Development Finance Company of Kenya on 13<sup>th</sup> April 1985.
81. Exhibited on PEXB 15 is the consent of the Bahari Land Control Board dated 27<sup>th</sup> September, 1990 consenting to the transfer of the suit property from Francis Nguru Mutura to Dew Reality Limited, the 2<sup>nd</sup> Plaintiff, for Kshs. 5,000,000. This sale was preceded by a threat from a Judgment Creditor in Mombasa H.C.C.C No. 331 of 1984 who had obtained an order of the court for attachment and sale of the suit property. The Terms of Sale dated 31<sup>st</sup> October, 1986 and the Notification of Sale dated 22<sup>nd</sup> July, 1986 and signed by the Deputy Registrar have been exhibited on PEXB 15.
  82. A vesting order in respect to the suit property was then issued by the court as shown in gazette notice number 4683 of 24<sup>th</sup> September 1993. According to the gazette notice number 6349 of 3<sup>rd</sup> December, 1993, the suit property was subsequently transferred to the 1<sup>st</sup> Plaintiff by the 2<sup>nd</sup> Plaintiff.
  83. Exhibited on P EXB 15 is a copy of a letter dated 18<sup>th</sup> November, 1992 by the 2<sup>nd</sup> Plaintiff addressed to Margaret Gathoni Ngugi allowing her to continue using the land with her family on condition that she will give up vacant possession whenever the Plaintiffs required the land.
  84. It is not in dispute that L. R. No. 150 Section IV Mainland North, CR. No. 13180 was registered in favour of a company known as Vros Produce Limited. It also not in dispute that the said land was sub-divided into 39 plots which were allocated CR numbers 29322 to 29361 whose Land Reference numbers are MN/Section IV/271 to 309. According to P EXB 12, the sub-divisions were registered by the Registrar of Title, Mombasa, on 30<sup>th</sup> January, 1997 and 39 certificates of titles were issued. The 1<sup>st</sup> Plaintiff, whose directors are John Harun, Harun International Limited, John Nganga, Mark Ngatia and Dew Reality Limited are the ones in possession of the original 39 certificates of titles for L.R No. MN/Section IV/271 to 309.
  85. The suit property is freehold land and the same was initially registered in the name of Mr. V.J. Patel who eventually transferred it to Mr. Mutura. Being agricultural land, the Land Control Board gave its consents every time the property was either transferred or charged. Indeed, at some point, and because the land was not being utilized by anybody, including the proprietor, the Government, pursuant to the provisions of section 187 of the Agriculture Act (repealed) took over the management of the farm from Mr. Patel on 18<sup>th</sup> February, 1966.
  86. The numerous consents of the Land Control Board for the charging and sale of the land, the last one being on 27<sup>th</sup> September, 1990, would not have been granted if the land was occupied by the Petitioners as alleged by the Petitioners in Malindi Petition Number 9 of 2013. Indeed, the three financial institutions would not have charged the suit property at different points in time if the land was occupied by the Petitioners
  87. The documents produced in court by the Plaintiffs shows how the property was purchased by the 2<sup>nd</sup> Plaintiff before the same was transferred to Vros Produce Limited in 1993. The contention by the Petitioners that the suit property was unlawfully and fraudulently acquired by Vros Produce Ltd is therefore unfounded. The Petitioners, who are also Defendants numbers 9 to 526 have never been in occupation or possession of the suit property.
  88. In any event, the Petitioners in Petition number 9 of 2013 and the Defendants herein did not adduce any evidence to prove that Vros Produce Limited acquired the suit property unlawfully to enable this court to cancel the certificates of Title in respect to the 39 sub-divisions as pleaded in the Petition or that they have been in possession of the suit property.
  89. This court is mandated, pursuant to the provisions of Article 40 of the Constitution, to protect the right of every person to own property unless it is shown that the property has been unlawfully acquired.
  90. In view of the fact that the 39 sub-divisions in respect to the suit property were lawfully registered in the name of Vros Produce Limited in 1997, after acquiring L.R. No. 150/ Section IV Mainland North in 1993, I find and hold that the said titles are protected, not by this court, but by the Constitution and the other laws of this country and the Petitioners in Petition number 9 of 2013, who are also Defendants numbers 9 to 526, have no claim whatsoever over the suit property.
  91. Having said so, the next issue that I am supposed to determine is which Vros Produce Limited is entitled to the suit property. Is it Vros Produce Limited registered under certificate of incorporation number C.27992 (the 1<sup>st</sup> Plaintiff) or Vros Produce Limited registered under

- certificate of incorporation number C.64998 (the 6<sup>th</sup> Defendant) and whose directors are Lucas Owiti and Lewis Gogo.
92. The issue as to which Vros Produce Limited is the genuine one *viz-a-viz* the suit property started in Mombasa H.C.C.C No. 131 of 2010.
  93. According to the pleadings in Mombasa HCCC No. 131 of 2010, the Plaintiff in that suit, John Ngugi Mutura, sued Vros Produce Limited claiming the suit property by way of adverse possession. The Plaintiffs in this suit became aware of the suit in Mombasa when the same was served by way of substituted service by advertisement in the daily newspaper.
  94. Lucas Owiti and Lewis Gogo, who are said to be the directors of Vros Produce Limited (C.64998) and who are the 7<sup>th</sup> and 8<sup>th</sup> Defendants in this suit instructed an advocate to enter appearance for the company in Mombasa H.C.C.C No. 131 of 2010. At the same time, John Harun, Harun International Limited, John Nganga, Mark Ngatia and Dew Reality Limited, who are said to be directors of Vros Produce Limited (C.27992), the 1<sup>st</sup> Plaintiff herein, also instructed their advocate to enter appearance in Mombasa H.C.C.C No. 131 of 2010.
  95. According to PEXB 7, the firm of Stephen Macharia Kimani had entered appearance for Vros Produce Ltd (C.64998) in Mombasa HCCC No.131 of 2010 pursuant to a resolution dated 11<sup>th</sup> July, 2012 by Mr. Lucas Owiti and Lewis Gogo as directors of Vros Produce Ltd. Indeed, Lucas Owiti and Lewis Gogo swore a Replying Affidavit and deponed that they are directors of Vros Produce Limited (C64998) while opposing the Plaintiff's suit in Mombasa H.C.C.C No. 131 of 2010.
  96. Faced with the issue as to which advocate should represent Vros Produce Limited, the court in Mombasa had to establish the genuine Vros Produce Limited and by extension the registered proprietor of the suit property. Indeed, an Application was filed pursuant to the provisions of Sections 164, 165 and 166 of the Companies Act by Mr. S. M. Kimani advocate for the examination of the representatives of the two sets of directors of Vros Produce Limited.
  97. The Plaintiffs produced P EXB 3 which is the order of Tuiyot J in Mombasa H.C.C.C NO. 131 of 2010. According to that order, the court ordered the Registrar of Companies to investigate the affairs of Vros Produce Limited (C.27992), the 1<sup>st</sup> Plaintiff herein and Vros Produce Limited (C 64998), the 6<sup>th</sup> Defendant herein and whose directors are the 7<sup>th</sup> and 8<sup>th</sup> Defendants herein.
  98. The Registrar of Companies complied with the order of Tuiyot J and produced the report in respect to the two companies. The report was filed in Mombasa H.C.C.C NO. 131 of 2010 on 25<sup>th</sup> October 2012 and produced in this court as PEXB4.
  99. In the report, the Registrar of companies gave the details of the directorship of Vros Produce Limited (C.27992), the Plaintiff herein, as John Harun, Harun International Limited, John Ng'ang'a, Mark Ngatia and Dew Reality Limited. In the same report, the Registrar of Companies confirmed that certificate number C.64998 belongs to a company by the name Leisure Wash Limited. The Registrar concluded that the certificate bearing the same number under the name Vros Produce Limited is not genuine.
  100. The Certificate of Incorporation that the Registrar of Companies held to be a forgery is the one that was annexed on the Replying Affidavit of Lucas Owiti and Lewis Gogo in Mombasa H.C.C.C No. 131 of 2010 and filed in court on 18<sup>th</sup> July 2012.
  101. After the filing of the Registrar's report, Tuiyot J went further and ordered that the Registrar of Companies should be cross examined on the contents of his report. That order was produced as PEXB 5. However, before the said cross examination of the Registrar could be conducted, the suit in Mombasa was withdrawn under unclear circumstances and the court in Mombasa never had the opportunity of dealing with the issue of the directorship of Vros Produce Limited conclusively.
  102. The contents of the Report of the Registrar of Companies were however never challenged by Luca Owiti and Lewis Gogo, the 7<sup>th</sup> and 8<sup>th</sup> Defendants, either in Mombasa H.C.C.C No.131 of 2010 or in this suit. In fact, Petition number 9 of 2013 and this suit offered the 7<sup>th</sup> and 8<sup>th</sup> Defendants an opportunity to challenge the Report of the Registrar of Companies and show that they are the genuine directors of Vros Produce Limited. They have failed to take up the challenge.
  103. From the evidence placed before me, I find and hold that the legitimate Vros Produce Limited for the purpose of this suit *viz-a-viz* the suit property is the one registered as C. 27992 and whose directors are John Harun, Harun International Limited, John Nganga, Mark Ngatia and Dew Reality Limited and not the one registered as C. 64998 and whose purported directors are said to

- be Lucas Owiti and Lewis Gogo. Indeed, Certificate Number C 64998 belongs to a company known as Leisure Wash and not Vros Produce Limited.
104. The above holding is fortified not only by the report of the Registrar of Companies but also by the fact that by the time the second Vros Produce Limited ( C. 64998) was purportedly registered, that is in 1996, the suit property had already been transferred to the first Vros Produce Limited ( C. 27992) in 1993 as indicated in gazette notice number 6349 of 31<sup>st</sup> December, 1993 exhibited on P EXB 15. The second Vros Produce Limited (C. 64998) must have been fraudulently created by the 7<sup>th</sup> and 8<sup>th</sup> Defendants later on to make it appear as if it is the genuine proprietor of the suit property.
105. It would appear that after the withdrawal of Mombasa H.C.C.C No. 131 of 2010, the fake Vros Produce Limited started disposing of the suit property. I say “fake” because the 1<sup>st</sup> Plaintiff's directors have denied that they have ever sold any part of the suit property notwithstanding the agreement of sale that was produced in this court. The Sale Agreement that was produced as PEXB 10 and dated 20<sup>th</sup> July, 2011 shows that it was signed by Lewis Thorzelius Gogo as a director of Vros Produce Limited which, as I have held above, is not the position. The said Lewis Thorzelius Gogo is not a director of Vros Produce Limited.
106. On 22<sup>nd</sup> May 2013, 509 Petitioners filed Petition number 9 of 2013 against the Chief Land Registrar and Vros Produce Ltd claiming that Vros Produce Limited obtained the title to the suit property fraudulently, illegally, by misrepresentation and through a corrupt scheme. The Petitioners sought for an order to rectify the Register by canceling the name of Vros Produce Limited and replacing it with that of the Petitioners.
107. On 5<sup>th</sup> July 2013, the Petitioners advocates, Mogaka Omwenga & Mabeya, the 2<sup>nd</sup> Respondent's Advocates, Nabwana Nabwana and the 1<sup>st</sup> Respondent's advocate, Mr. Richard Ngari from the Attorney General's office, purported to enter into a consent declaring that indeed the acquisition of the suit property by Vros Produce Limited (the 2<sup>nd</sup> Respondent) was unconstitutional, null and void.
108. The consent further provided that the register should be rectified in respect of the 39 subdivisions by canceling the name of Vros Produce Limited and replace it with that of Joseph Mzungu Nyoka, the 1<sup>st</sup> Petitioner (9<sup>th</sup> Defendant herein), on his behalf and on behalf of 508 other Petitioners. The consent further provided that the provisional certificates be issued in the name of the said Joseph Mzungu Nyoka in respect to the 39 subdivisions.
109. No reason was given as to why the provisional certificates for the 39 sub plots should be issued to Mr. Nyoka if indeed the said Vros Produce Limited was in possession of the original certificates of titles and was willing to relinquish them to the Petitioners having conceded that it acquired them “unconstitutionally” as per the consent. This limp of the consent, in my view, was important to the parties because the purported Vros Produce Limited the 2<sup>nd</sup> Respondent represented by Lucas Owiti and Lewis Gogo never owned the suit property in the first place and did not have the certificates of title for either the original parcel of land or the 39 sub divisions. That limp of the consent was meant to complete the acquisition of the property by the issuance of provisional titles.
110. Having been signed by the advocates of all the three parties, the consent of 5<sup>th</sup> June, 2013 was adopted by the Deputy Registrar of this court and a decree was extracted. The said decree was registered as entry number two on the 39 certificates of titles. Entry number 3 on the said titles shows that Provisional Certificates of Titles were issued to Joseph Mzungu Nyoka on behalf of himself and other 508 Petitioners on 30<sup>th</sup> July, 2013.
111. The consent that was entered into in Petition number 9 of 2013 was entered into with the sole intention of dispossessing the genuine Vros Produce Limited the suit property.
112. I say so because the directors of the genuine Vros Produce Limited, which is the 1<sup>st</sup> Plaintiff herein, were never served with the Petition. Indeed, the genuine Vros Produce Limited never appointed the firm of Nabwana Nabwana advocates to act for it in the Petition or a lady by the name of Elizabeth who signed the letter of 3<sup>rd</sup> June, 2013 and produced as PEXB 1. The Attorney General has also denied in his Defence that it instructed Mr. Richard Ngari to sign the consent in Petition number 9 of 2013. Indeed, the Attorney General has denied that he was ever served with the Petition and never sought for instructions from the Chief Land Registrar, the 1<sup>st</sup> Respondent, in respect to Petition number 9 of 2013.

113. The advocates who signed the consent in Petition number 9 of 2013 have also gone quiet even after being served with the hearing notices in the two matters lending credence to my conclusion that the consent in Petition number 9 of 2013 was signed with the sole purpose of fraudulently dispossessing the genuine Vros Produce Limited of the suit property.
114. What is even more intriguing about the consent that was entered into in Petition number 9 of 2013 is that one of the purported directors of the company that I have found not to be genuine, Mr. Lucas Owiti, filed an Application in the Petition seeking to set aside the consent on account of fraud and misrepresentation.
115. The said director sought to have the consent set aside for the following reasons: that the consent was signed without the authority to bind Vros Produce Limited; that there was no authority of Vros Produce Limited under seal to appoint an advocate; that the Attorney General cannot legally consent to sign away title to land vested in Vros Produce Limited and that the consent letter was a fraud on Vros Produce Limited because the advocate purporting to act for Vros Produce Limited had no authority to appear and act for the said company. The said Application was overtaken by events when I delivered my Ruling in this matter setting aside the consent.
116. As if that was not enough, another suit was filed in this court by Vros Produce Limited through the firm of Stephen Macharia Kimani in Malindi H.C.C.C No. 12 of 2013 against 28 people who were said to have invaded part of the suit land. The Affidavit in support of the Application for injunction was sworn by Mr. Lucas Owiti, the 7<sup>th</sup> Defendant herein, who claimed to be a director of Vros Produce Limited.
117. While Mr. Kimani was waiting to prosecute his Application for injunction, one of the purported directors of Vros Produce Limited, whose name is not shown, filed a Notice to act in person. Thereafter, the firm of Nabwana Nabwana Advocates filed a Notice of Appointment to act for Vros Produce Limited and on 13<sup>th</sup> September, 2013 the said firm withdrew the whole suit. Mr. Kimani was left without a suit to prosecute.
118. The criminality of the parties who were involved in the signing of the consent in Petition number 9 of 2013 or who instructed advocates, if at all, to sign the said consent can be discerned from the conflicting affidavits sworn by the purported directors of the second Vros Produce Limited (C. 64998) in Petition number 9 of 2013 and the denial by the Attorney General that he instructed Mr. Richard Ngari to sign the consent on his behalf or on behalf of the Chief Land Registrar who is the 1<sup>st</sup> Respondent in the Petition. Indeed, the said State counsel never entered appearance in the Petition before the said consent was signed presumably signed by himself.
119. To bring the circus of the directorship of Vros Produce Limited to an end, and to determine the people who were behind the signing of the consent in Petition number 9 of 2013, which consent is a nullity, the police should investigate the people who were involved in the signing of the consent in Petition Number 9 of 2013 and the uttering of false documents in that Petition and in Mombasa H.C.C.C No. 131 of 2010 with a view of prosecuting them. The genesis of a company known as Vros Produce Limited purportedly registered as C.64998 on 2<sup>nd</sup> May, 1996 should also be investigated by the police.
120. In the circumstances and on the basis of the evidence placed before me, I find and hold that Vros Produce Limited registered under Certificate of Incorporation Number C. 27992, the 1<sup>st</sup> Plaintiff, is the registered proprietor of the suit property and not Vros Produce Limited purportedly registered under Certificate of Incorporation number C.64998.
121. Any purported dealings in the suit property by Lucas Owiti and Lewis Gogo or anyone else on behalf of Vros Produce Limited registered under Certificate of Incorporation number C.64998 is a fraud that cannot be countenanced by this court.
122. For the reasons I have given above, I dismiss the Petition dated 22<sup>nd</sup> May, 2013 and filed as Petition Number 9 of 2013 with costs payable to the 1<sup>st</sup> Plaintiff herein.
123. The Plaintiffs' Complaint dated 30<sup>th</sup> September 2013 and orally amended on 5<sup>th</sup> June 2014 is hereby allowed in the following terms:
- a. **A declaration be and is hereby issued that the 1<sup>st</sup> Plaintiff is the only genuinely incorporated company under certificate of incorporation number C.27992, incorporated on 16<sup>th</sup> August 1984.**

- b. A declaration be and is hereby issued that the 7<sup>th</sup> and 8<sup>th</sup> Defendants are not Directors of a company incorporated in the name of Vros Produce Limited.
- c. A declaration be and is hereby issued that the certificate of incorporation number C. 64998 belongs to a company known as Leisure Wash Limited and not Vros Produce Limited.
- d. A declaration be and is hereby issued that the consent dated 5<sup>th</sup> July 2013 in Malindi Petition No. 9 of 2013 is null and void and is hereby set aside.
- e. A declaration be and is hereby issued that the decree dated 5<sup>th</sup> July 2013 and issued by this court on 15<sup>th</sup> July 2013 was obtained fraudulently and is hereby set aside.
- f. A declaration be and is hereby issued that any transaction as a result of or caused by the decree issued by the Deputy Registrar in Malindi Petition Number 9 of 2013 on 15<sup>th</sup> July, 2013 be and is hereby set aside.
- g. An order be and is hereby issued that any transaction as a result or caused by the decree issued by this court in Petition number 9 of 2013 be and is hereby set aside.
- h. An order be and is hereby issued that any transfer of the suit property and or any Provisional Certificates of Title issued in respect of MN/Section IV /271 to MN/Section IV/ 309 to Joseph Mzungu Nyoka, the 9<sup>th</sup> Defendant, on his own behalf and on behalf of 508 others, be and is hereby set aside and cancelled.
- i. The 1<sup>st</sup> Defendant do issue to the 1<sup>st</sup> Plaintiff fresh Certificates of Title in respect of the 39 parcels of land registered as L.R. Nos. MN/Section IV 271 to MN/Section IV/309.
- j. A permanent injunction be and is hereby issued restraining the 6<sup>th</sup> to 526<sup>th</sup> Defendants, their servants, associates, agents and or their legal representatives from interfering with the 39 parcels of land registered as MN/Section IV/271 to MN/Section IV/309 whatsoever in any way, manner and whatever.
- k. An order of eviction be and is hereby issued as against the 6<sup>th</sup> to the 526<sup>th</sup> Defendants, their servants, associates, agents and or their legal representatives from the 39 parcels of land registered as MN/Section IV/271 to MN/Section IV/309.
- l. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants do provide security and ensure that the suit property is not transferred, wasted, interfered with or trespassed on by any of the 6<sup>th</sup> to 526<sup>th</sup> Defendants, their agents servants or employees and during the eviction of the 6<sup>th</sup> to 526<sup>th</sup> Defendants, their agents servants or employees.
- m. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants be and hereby directed to carry out criminal investigations in respect of forgery, misrepresentation, trespass and other criminal activities in respect of the suit property as disclosed in this Judgment.
- n. The Defendants to pay the Plaintiffs the costs of the suit.

Dated and delivered in Malindi this 5<sup>th</sup> day of September, 2014

**O. A. Angote**

**Judge**