



REPUBLIC OF KENYA



**Angado v Bodi & 12 others (Environment and Land Case Civil Suit  
E001 of 2021) [2025] KEELC 917 (KLR) (26 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 917 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT AND LAND CASE CIVIL SUIT E001 OF 2021**

**EM WASHE, J**

**FEBRUARY 26, 2025**

**BETWEEN**

**JOSHUA OUKO ANGADO ..... PLAINTIFF**

**AND**

**SILPA ANYANGO BODI ..... 1<sup>ST</sup> DEFENDANT**

**MONICA ATIENO OTIENO (1<sup>ST</sup> AND 2<sup>ND</sup> DEFENDANTS ALSO BEING  
SUED AS LEGAL REPRESENTATIVES OF THE ESTATE OF ANDREW KAMUSI  
BODI - DECEASED) ..... 2<sup>ND</sup> DEFENDANT**

**ABEL MORANGA ONGWACHO ..... 3<sup>RD</sup> DEFENDANT**

**KONCHORI TELEW SAMUEL ..... 4<sup>TH</sup> DEFENDANT**

**LEONARD TAMPUSHI LESWAM ..... 5<sup>TH</sup> DEFENDANT**

**MOSES OLOISIRIRI KIMEEI ..... 6<sup>TH</sup> DEFENDANT**

**JONATHAN NTORROR ..... 7<sup>TH</sup> DEFENDANT**

**PARSIAT OLE SAMURIA ..... 8<sup>TH</sup> DEFENDANT**

**SEMEYIOI OLE KISULU ..... 9<sup>TH</sup> DEFENDANT**

**DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER,  
TRANSMARA ..... 10<sup>TH</sup> DEFENDANT**

**DISTRICT SURVEYOR, KILGORIS ..... 11<sup>TH</sup> DEFENDANT**

**REGISTRAR OF LANDS, KILGORIS REGISTRY ..... 12<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 13<sup>TH</sup> DEFENDANT**



## JUDGMENT

1. The Plaintiff herein through the Amended Plaint dated 30.06.2022 (hereinafter referred to as “the present suit”) sought the following Orders against the Defendants; -
  - a. A declaration that a portion of land parcel LR. No. Transmara/Sikawa/616 measuring approximately Eighty (80) acres belongs to the Plaintiff and that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants were holding the same in trust for the Plaintiff.
  - b. A declaration that the sub-division of land parcel No. Transmara/Sikawa/616 is illegal and fraudulent given the finding and the decision of the Land Adjudication Objection No. 27 of 2002 on land parcel 144 Sikawa Adjudication Section.
  - c. An Order compelling the 11<sup>th</sup> Defendant to rectify the Sketch Plan/Map of the land parcel number LR. No. Transmara/Sikawa/616 to be in tandem with the findings and the decision of the Land Adjudication Objection No. 27 of 2002 on the land Parcel No. 144 Sikawa Adjudication Section.
  - d. In the alternative, an Order directing the 12<sup>th</sup> Defendant to revert the records of land parcel number LR. No. Transmara/Sikawa/616 to be in tandem with the original adjudication records.
  - e. In the alternative, an Order compelling the 1<sup>st</sup> and 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants to transfer land to the Plaintiff measuring approximately 80 acres.
  - f. Costs of this suit and interest thereon as from the date of filing the suit until payment in full.
  - g. Any other relief the Honourable Court deems just and expedient to grant.
2. The present suit was duly served on the Defendants who responded to the same.
3. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a Joint Statement of Defence and Counter-Claim dated 27.09.2021 of the following grounds; -
  - a. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant who are the legal wives of one Andrew Kamusi Bodi (deceased) denied that their husband ever sold any portion of land and specifically 73 acres in the year 1998 and a further 7 acres on a later date from their property known as LR. No. Transmara/Sikawa/144 which measures 90.1 Hectares.
  - b. The Late Andrew Kamusi Bodi who was the registered owner of the property known as LR. No. Transmara/Sikawa/144 died in the year 2003 and at the time of his death, there was no application for sub-division and transfer of any portion from the property known as LR. No. Transmara/Sikawa/144 which was pending before the Land Control Board in favour of the Plaintiff.
  - c. Consequently therefore, the Plaintiff’s claim against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was pre-mature, bad in law and should be struck out forthwith.
4. In addition to the Defence dated 27.09.2021, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants raised a Counter-Claim against the Plaintiff on the following grounds; -



- a. The Agreements For Sale if any purported to have been executed between the late Andrew Kamusi Bodi and the Plaintiff over a portion of 80 acres on the property known as LR. No. Transmara/Sikawa/144 measuring 90.1 Hectares are illegal, null and void.
  - b. Consequently, if there was any sub-division and/or alteration of the property known as LR. No. Transmara/Sikawa/144, then such sub-division and/or alteration should be declared fraudulent and cancelled forthwith to retain the original portion of the said property as it was during adjudication.
5. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants also filed a Statement of Defence dated 19.10.2021 on the following grounds; -
- a. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants first pleaded that the Objection that was lodged against the Adjudication Record of Plot. No. 144 within Sikawa Adjudication Section was not in the name of the Plaintiff herein.
  - b. Nevertheless, in the decision by the 10<sup>th</sup> Defendant, a portion of Twenty (20) Acres within the property Plot. No. 144 within Sikawa Adjudication Section was allocated to the Plaintiff and not 80 acres as alleged by the Plaintiff.
  - c. The 3<sup>rd</sup> and 4<sup>th</sup> Defendant further pleaded that although the 10<sup>th</sup> Defendant allocated the Plaintiff 20 acres thereof within the property known as Plot. No. 144 within Sikawa Adjudication Section, the same had been acquired through misrepresentation and concealment of material facts.
  - d. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants averred that the Agreements for Sale which had been used by the Plaintiff in support of the Objection over the property known as Plot. No. 144 within Sikawa Adjudication Section were invalid and did not match with the decision arrived at by the 10<sup>th</sup> Defendant in the Objection proceedings.
  - e. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants stated that they are no longer the registered owners of the property known as LR. No. Transmara/Sikawa/616 having sub-divided the same.
  - f. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants finally pleaded that the property known as LR. No. Transmara/Sikawa/616 was lawfully acquired by them and any cause of action raised by the Plaintiff should be dismissed.
6. The 10<sup>th</sup> to 13<sup>th</sup> Defendant also filed a Statement of Defence dated 16.08.2022 which they opposed the present suit on the following grounds; -
- a. The 10<sup>th</sup> to 13<sup>th</sup> Defendant alleged to be complete strangers to the allegations pleaded by the Plaintiff against them.
  - b. The 12<sup>th</sup> Defendant in particular denied the fact that he made entries and/or recorded wrong information relating to the property known as LR. No. Transmara/Sikawa/616 which were contrary to the information contained in the Adjudication Record issued by the 10<sup>th</sup> Defendant.
  - c. In essence, the 10<sup>th</sup> to 13<sup>th</sup> Defendants denied any wrong doing and in particular the particulars of fraud, bad faith and deceit enumerated by the Plaintiff.
  - d. The 10<sup>th</sup> to 13<sup>th</sup> Defendants therefore sought this Court to dismiss the present suit with costs.



7. In response to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants Statement of Defence and Counter-Claim, the Plaintiff filed a Reply to the Joint Written Statement of Defence and Counter-Claim dated 06.09.2021 to which he stated as follows; -
  - a. The Plaintiff pleaded that at the time of Andrew Kamusi Bodi's death, the property known as Plot. No. 144 within Sikawa Adjudication Section was still undergoing adjudication and therefore there was no possibility of an Application For consent before the Land Control Board being done.
  - b. The Plaintiff further pleaded that the property known as Plot. No. 144 within Sikawa Adjudication Section had not been issued with a registrable Title Deed capable of being subjected before the District and/or Sub-County Land Control Board by the late Andrew Kamosi Bodi.
  - c. The Plaintiff stated that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were fully aware of the Agreement of Sale between the late Andrew Kamosi Bodi and himself hence the sub-division which created LR. No. Transmara/Sikawa/616 which was sold to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants herein.
  - d. The Plaintiff pleaded that the 12<sup>th</sup> Defendant recorded the registration of the property known as LR. No. Transmara/Sikawa/616 in the names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants in a manner as if the same was allocated to them directly yet it was from an allocation from the property known as Plot. No. 144 within Sikawa Adjudication Section.
  - e. The Plaintiff further pleaded that the actions of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants together with the 12<sup>th</sup> Defendant resulted to him being defrauded of his asset which he had purchased with his hard-earned money.
  - f. The Plaintiff was categorical that during the Objection proceedings, the late Andrew Kamosi Bodi sub-divided the property known as Plot. No. 144 within Sikawa Adjudication Section and clearly apportioned the portions that were for purchasers and his wives.
8. In reply to the Counter-Claim filed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, denied all the allegations contained therein.
9. Further to that, the Plaintiff sought to rely on the findings of the 10<sup>th</sup> Defendant contained in the Objection proceedings dated 04.06.2003.
10. In conclusion, the Plaintiff sought the Court to dismiss the Counter-claim filed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein.
11. The pleadings subsequently closed and the matter was certified ready for hearing.

#### **Plaintiff's Case\*\***

12. The Plaintiff's case began with the testimony of the Plaintiff who was marked as PW 1.
13. The Plaintiff introduced himself as an engineer by profession and a farmer as well.
14. The Plaintiff informed the Court that he had prepared a witness statement dated 17.03.2021 which he adopted the same as his evidence in chief.
15. In support of the evidence in chief, the Plaintiff also produced the following documents; -
  - PW 1 Exhibit 1- Copy of an Official search of the property known as LR. No. Transmara/Sikawa/616 dated 01.12.2020.



- PW 1 Exhibit 2- Copy of an Official search of the property known as LR. No. Transmara/Sikawa/144 dated 30.11.2020.
- PW 1 Exhibit 3- Copy of an Official Search of the property known as LR. No. Transmara/Sikawa/683.
- PW 1 Exhibit 4- Copy of an Official Search of the property known as LR. No. Transmara/Sikawa/684.
- PW 1 Exhibit 5- Copy of an Agreement for Sale dated 10.03.1995 between the late Andrew Kamusi Bodi and the Plaintiff.
- PW 1 Exhibit 6- Copy of an undated Agreement for Sale in 1998 between the late Andrew Kamusi Bodi and the Plaintiff.
- PW 1 Exhibit 7- Copy of Green Card relating to the property LR. No. Transmara/Sikawa/616.
- PW 1 Exhibit 8- Copy of a letter dated 04.09.2020 from the Land Adjudication Departments to various people.
- PW 1 Exhibit 9- Copy of a letter dated 17.03.1998 from the Land Adjudication Office to the Plaintiff.
- PW 1 Exhibit 10- Copy of the Objection proceedings dated 16.12.2020 relating to the Plot. No. 144 within Sikawa Adjudication Section.
- PW 1 Exhibit 11- Copy of the Green Card for the property known as LR. No. Transmara/Sikawa/144.
- PW 1 Exhibit 12- A copy of the Agreement for Sale dated 23.04.2019 between one Monica Atieno and Silva Bodi with the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.
16. The Plaintiff therefore sought the Court to grant the prayers sought for in the present suit together with costs.
  17. On cross-examination by Counsel for the 10<sup>th</sup> to 13<sup>th</sup> Defendant, the Plaintiff informed the Court that he had purchased a portion measuring 73 acres of the property known as Plot. No. 144 within Sikawa Adjudication Section through an Agreement for Sale dated 05.03.1995.
  18. However, the Plaintiff could not recollect when the Agreement for Sale relating to the extra 7 acres was signed.
  19. On reference to PW 1 Exhibit 5, the Plaintiff stated that the Agreement for Sale was prepared by a lawyer who witnessed it by affixing his stamp on it.
  20. On being referred to PW 1 Exhibit 6, the Plaintiff admitted that the said Agreement was not signed and/or stamped.
  21. The Plaintiff informed the Court that after acquiring the two portions of land measuring 80 acres from the late Andrew Kamusi Bodi, he did not take possession immediately.
  22. As regards PW 1 Exhibit 9, the Plaintiff testified that this was a response to a letter he had done to the 10<sup>th</sup> Defendant.
  23. The Plaintiff's request to the 10<sup>th</sup> Defendant was that the intentions of the two Agreements for Sale between the late Andrew Kamusi Bodi and him be implemented but the Adjudication process was not yet complete.
  24. The Plaintiff stated that the Adjudication process of Sikawa Section was concluded around the year 2000.



25. The Plaintiff could not remember if there was any letter he had written to either the 10<sup>th</sup> and/or 12<sup>th</sup> Defendants to implement the two Agreements For Sale.
26. The Plaintiff informed the Court that he did not have the Adjudication Record of the original property known as Plot. No. 144 within Sikawa Adjudication Section.
27. On being referred to PW 1 Exhibit 10, the Plaintiff confirmed that the late Andrew Kamosi Bodi was still alive during the hearing and only passed away in the year 2003.
28. However, in the proceedings, it shows that the recorded owner Andrew Kamosi Bodi who had been recorded as the owner of Plot. No. 144 within Sikawa Adjudication Section had already died.
29. Nevertheless, the Plaintiff confirmed that in the decision emanating from the Objection proceedings, he was allocated a portion measuring 20 acres only.
30. The Plaintiff informed the Court that he did not appeal against the decision rendered through the Objection proceedings.
31. The Plaintiff denied knowledge of any other objections that related to the original property known as Plot. No. 144 within Sikawa Adjudication Section.
32. The Plaintiff reiterated that he had never filed any other suit regarding the implementation of the Agreements between the late Andrew Kamosi Bodi and himself.
33. On re-examination, the Plaintiff informed the Court that he did not file any Appeal because his objection was over the property known as Plot. No. 144 within Sikawa Adjudication Section which belonged to the late Andrew Kamusi Bodi.
34. The Plaintiff testified that his objection was filed in the year 2000 and related to alienation of 80 acres within the late Andrew Kamosi Bodi's property known as Plot. No. 144 within Sikawa Adjudication Section measuring 223 acres.
35. At the end of the hearing of the Plaintiff's Objection proceeding in the year 2002, the determination was that a portion of 80 acres within the property known as Plot. No. 144 within Sikawa Adjudication Section was hived off and recorded as Plot. No. 616 currently registered as LR. No. Transmara/Sikawa/616.
36. The Plaintiff confirmed that his objection was Objection No. 29 OF 2002.
37. Nevertheless, in the outcome of the Objection No. 27 OF 2002, the Plaintiff was awarded only 20 acres.
38. The Plaintiff admitted that the 2<sup>nd</sup> Agreement For Sale relating the 7 acres was not signed because the late Andrew Kamosi Bodi was in financial challenges and needed the funds urgently.
39. The Plaintiff therefore confirmed that the full purchase price for the 7 acres had been paid to the late Andrew Kamosi Bodi.
40. The Plaintiff stated that the property known as Plot. No. 144 within Sikawa Adjudication Section had two Objections.
41. However, only one Objection has been produced before the Court and that Objection is not the one that related to his claim.
42. At the end of this re-examination, the Plaintiff was discharged from the witness box and the Plaintiff's case was closed.



## Defence Case\*\*

43. The Defence hearing commenced with the testimony of one KONCHORY TELEN SAMUEL who is the 4<sup>th</sup> Defendant in the present suit.
44. The 4<sup>th</sup> Defendant introduced himself as a resident of Isoko location who does farming as an occupation.
45. The 4<sup>th</sup> Defendant informed the Court that he was a stranger to the Plaintiff herein.
46. Nevertheless, the 4<sup>th</sup> Defendant confirmed being served with the present suit to which he prepared and signed a witness statement dated 09.12.2023 hence adopted the same as his evidence in chief.
47. According to the 4<sup>th</sup> Defendant, the Plaintiff herein had never been registered as the owner of the suit property.
48. The 4<sup>th</sup> Defendant further clarified that the Plaintiff's ownership rights over the suit property were never recognised during adjudication which resulted to the issuance of a title deed.
49. The 4<sup>th</sup> Defendant confirmed that he was well known to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and at no given time had they told him that that the suit property belonged to the Plaintiff.
50. The 4<sup>th</sup> Defendant averred that the Plaintiff has never been in occupation and/or possession of the suit property.
51. The 4<sup>th</sup> Defendant denied knowledge of the Agreements For Sale referred to by the Plaintiff herein.
52. The 4<sup>th</sup> Defendant testified that the portion of land which resulted to the suit property was adjudicated by the Land Adjudication Officer and issued with a title by the Land Registrar.
53. According to the Adjudication process, there was no claim by any other owner.
54. Consequently, the 4<sup>th</sup> Defendant produced the following documents in support of his testimony; -  
DW 1 Exhibit 1- Copy of the Adjudication Record No. B 644977 relating to Plot. No. 616 within Sikawa Adjudication Section.  
DW 1 Exhibit 2- Copy of the Green Card of the property known as LR. No. Transmara/Sikawa/616.  
DW 1 Exhibit 3- Copy of the Mutation Form dated 29.01.2021 entailing the property known as Plot. No. 616 within Sikawa Adjudication Section.
55. The 4<sup>th</sup> Defendant therefore sought this Court to dismiss the present suit with costs.
56. On cross-examination by the Plaintiff, the 4<sup>th</sup> Defendant indicated that he had purchased the suit property from the persons that had been allocated the portion during adjudication.
57. The 4<sup>th</sup> Defendant testified that originally, the parcel of land was adjudicated as Plot. No. 144 within Sikawa Adjudication Section in the name of the late Andrew Kamusi Bodi.
58. After the death of the late Andrew Kamusi Bodi, the two wives sold a portion totalling about 125 acres out of Parcel No. 144 within Sikawa Adjudication Section to the 4<sup>th</sup> Defendant.
59. The 4<sup>th</sup> Defendant then filed an Objection against the Adjudication Record of Plot. No. 144 within Sikawa Adjudication Section recorded in the name of the late Andrew Kamusi Bodi so that the same would be sub-divided into two portions.



60. The 4<sup>th</sup> Defendant stated that it was upon determination of the said Objection that the portion known as Plot. No. 616 within Sikawa Adjudication Section was created.
61. At the time of filing the said Objection by the 4<sup>th</sup> Defendants, the two wives of the late Andrew Kamusi Bodi had not done succession.
62. However, the Adjudication Record for Plot. No. 616 within Sikawa Adjudication Section indicates the acreage to be 85 acres (34.27 Hectares).
63. Based on this information contained in the Adjudication Record relating to Plot. No. 616 within Sikawa Adjudication Section, a title deed was subsequently issued on 08.01.2019.
64. The 4<sup>th</sup> Defendants promptly complained to the 12<sup>th</sup> Defendant about the disparity in the acreage and he was advised to liaise with the offices of the 11<sup>th</sup> Defendant to ascertain the actual acreage of the suit property.
65. The 11<sup>th</sup> Defendant proceeded to visit the suit property and upon inspection discovered that the total acreage on the ground was 159 acres and not 85 acres as indicated in the title deed.
66. It is on this basis that the 12<sup>th</sup> Defendant rectified the acreage of the suit property from the original 85 acres to 159 acres in line with the rectified mutation by the 11<sup>th</sup> Defendant.
67. The 4<sup>th</sup> Defendant therefore confirmed that both Green Cards showing the 85 acres and 159 acres belong to the suit property.
68. The 4<sup>th</sup> Defendant indicated that the Green Card with the correct information about the suit property was the one produced as DW 1 Exhibit 2 and not PW 1 Exhibit 7.
69. The 4<sup>th</sup> Defendant could not recollect the number of the Objection he filed unless he purchased the proceedings.
70. The 4<sup>th</sup> Defendant admitted that he was well aware of the manner in which objection proceedings were undertaken before the 10<sup>th</sup> Defendant.
71. The 4<sup>th</sup> Defendant stated that if land is sub-divided, you measure the remaining land and not the entire land.
72. On further cross-examination by the 10<sup>th</sup> to 13<sup>th</sup> Defendant, the 4<sup>th</sup> Defendant insisted that he purchased a portion of Plot. No. 144 within Sikawa Adjudication Section upon which he filed an Objection and upon determination of the same, Plot. No. 616 within Sikawa Adjudication Section was created.
73. The 4<sup>th</sup> Defendant could not however recollect when the adjudication of Sikawa Adjudication Section took place.
74. The 4<sup>th</sup> Defendant informed the Court that during the purchase of his portion, there was another Objection relating to the original Plot. No. 144 within Sikawa Adjudication Section.
75. However, they waited for the same to be concluded before they purchased their portion thereof.
76. After the determination of the earlier Objection, the 4<sup>th</sup> Defendants approached the 10<sup>th</sup> Defendant who verified their Agreement for Sale and consequently, a sub-division of Plot. No. 144 within Sikawa Adjudication Section was done and Plot. No. 616 within Sikawa Adjudication Section was created.
77. The 4<sup>th</sup> Defendant confirmed that the sub-division of the original Plot. No. 144 within Sikawa Adjudication Section created Plot. No.684, 683 AND 616 within Sikawa Adjudication Section.



78. The 4<sup>th</sup> Defendant stated that the title deed of the suit property was issued in the year 2019.
79. However, in the Green Card, the name of the 4<sup>th</sup> Defendant was recorded in January 2019 while the evidence adduced was that it was bought in March 2019.
80. On the other hand, the Objection proceedings that created Plot. No. 616 within Sikawa Adjudication Section were determined in February 2019 when the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were given an opportunity to confirm the transaction.
81. On re-examination, the 4<sup>th</sup> Defendant was referred to DW 1 Exhibit 2 and PW 1 Exhibit 7.
82. In both Exhibits, the 4<sup>th</sup> Defendant indicated that the acreage was 64.75 Hectares.
83. The 4<sup>th</sup> Defendant confirmed that there has never been a dispute on the acreage which he purchased.
84. The 4<sup>th</sup> Defendant averred that the original Adjudication Record of Plot. No. 144 within Sikawa Adjudication Section was in the name of the late Andrew Kamusi Bodi.
85. Consequently, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who were wives of the late Andrew Kamusi Bodi did not have to undertake any succession proceedings before selling the land to the 4<sup>th</sup> Defendant.
86. The 4<sup>th</sup> Defendant insisted that the 11<sup>th</sup> Defendant found the portion of land sold to him to be more than what had been indicated in the title deed.
87. After this re-examination, the 4<sup>th</sup> Defendant was discharged from the witness box and the 3<sup>rd</sup> and 4<sup>th</sup> Defendants closed their case.
88. The second Defence witness was George Ocholla Aburili who was called on behalf of the 10<sup>th</sup> to 13<sup>th</sup> Defendants and was marked as DW 2.
89. DW 2 introduced himself as a Land Adjudication officer currently stationed in Transmara as the Land Adjudication Assistant II.
90. DW 2 informed the Court that he was well aware of the issues in the present suit and was ready to testify on the same.
91. According to DW 2, the property known as LR. No. Transmara/Sikawa/144 was originally demarcated and recorded to one Andrew Kamusi Bodi.
92. The Adjudication Record of Plot. No. 144 within Sikawa Adjudication Section confirms that it was recorded in the name of the late Andrew Kamusi Bodi.
93. After the issuance of the Adjudication Record of Plot. No. 144 within Sikawa Adjudication Section, there were three objections that were filed.
94. The 1<sup>st</sup> Objection was filed on the 08.02.2002 by one Nenirole Kima but was dismissed on the 05.09.2014.
95. The 2<sup>nd</sup> Objection was recorded as Objection No. 42 of 2002 by one KINANGARE KARRI and was similarly dismissed on the 05.09.2014.
96. The 3<sup>rd</sup> Objection was recorded as Objection No. 43 OF 2002 by one Oyari Ole Kima and which was finally dismissed on 05.09.2014.
97. The 4<sup>th</sup> Objection recorded by the late Andrew Kamusi Bodi as Objection No. 27 OF 2002 seeking a sub-division of the original Plot. No. 144 within Sikawa Adjudication Section.



98. This Objection No. 27 of 2002 by the late Andrew Kamusi Bodi was allowed and created Plot. No.615 and Plot. No. 616 within Sikawa Adjudication Section.
99. Plot. No. 616 in the Demarcation Book was recorded in the name of Joshua Ouko Ongado and the subsequent Adjudication Record registered in the same name.
100. After the Adjudication Record of Plot. No. 616 within Sikawa Adjudication Section was issued in the name of Joshua Ouko Angado, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who are the wives of the late Andrew Kamusi Bodi wrote a letter dated 09.04.2015 to the 10<sup>th</sup> Defendant herein.
101. In the letter dated 09.04.2015 by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to the 10<sup>th</sup> Defendant, they acknowledged that the late Joshua Ouko Angado had purchased a portion of land measuring 20 acres from the late Andrew Kamusi Bodi but failed to pay the purchase price.
102. Consequently, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants request to the 10<sup>th</sup> Defendant was that the name of the late Joshua Ouko Angado be cancelled from the Adjudication Register of Plot. No. 616 within Sikawa Adjudication Section.
103. It is based on this letter dated 09.04.2015 authored by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that the name of the late Joshua Ouko Angado was cancelled by the 10<sup>th</sup> Defendant and that of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants recorded as the owners of the Plot. No. 616 within Sikawa Adjudication Section.
104. DW 2 confirmed that the names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants were recorded on the Adjudication Register of Plot. No. 616 within Sikawa Adjudication Section based on an Agreement For Sale dated 23.04.2019 with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
105. Subsequently thereafter, the title deed of Plot. No. 616 within Sikawa Adjudication Section known as LR. No. Transmara/Sikawa/616 was issued in the names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.
106. DW 2 stated that the offices of the 11<sup>th</sup> Defendants have never received any complaints from the late Joshua Ouko Angado about the manner in which his name was cancelled.
107. In essence, DW 2 testified that the suit property according to their records belongs to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.
108. In support of the above testimony, DW 2 produced the following Exhibits; -  
DW 2 Exhibit 4- Copy of a Dermacation Book of Sikawa Adjudication Section.  
DW 2 Exhibit 5- Certified Copy of an Objection register of Sikawa Adjudication Section.  
DW 2 Exhibit 6- Copy of a letter dated 19.04.2015 by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.  
DW 2 Exhibit 7- Certified copy of the Agreement for Sale dated 23.04.2019 between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.
109. On cross-examination by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, DW 2 confirmed that the original Plot. No. 144 within Sikawa Adjudication Section is what created Plot. No.615 and Plot. No. 616 within Sikawa Adjudication Section.
110. DW 2 informed the Court that based on the letter dated 19.04.2015, the late Andrew Kamusi Bodi had two wives who are the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
111. DW 2 stated that at this time, there was no letter or evidence to show that the Plaintiff herein had an interest over the suit property.



112. DW 2 further averred that there was no letter or evidence to show that the Plaintiff had challenged the contents of the letter dated 19.04.2015 by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
113. DW 2 confirmed that indeed, the suit property is now registered in the name of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.
114. DW 2 averred that so far, the ownership of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants had not been challenged by the 1<sup>st</sup> and 2<sup>nd</sup> Defendant.
115. On cross-examination by the Plaintiff, DW 2 admitted that all documents received in the offices of the 11<sup>th</sup> Defendant should be stamped.
116. As to regards the letter dated 19.04.2015 by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, DW 2 indicated that the same do not bear a receiving stamp from the offices of the 11<sup>th</sup> Defendant.
117. DW 2 stated that according to the document produced as DW 2 Exhibit 7, the Agreement For Sale between the 1<sup>st</sup> and 2<sup>nd</sup> Defendant with the 3<sup>rd</sup> and 4<sup>th</sup> Defendants over the suit property was done on the 23.04.2019.
118. Referring to PW 1 Exhibit 1, the Green Card and/or Register of the suit property was opened on the 18.01.2019.
119. DW 2 confirmed that a comparison of these two documents shows that the Green Card and/or Register of the suit property was opened before the Agreement for Sale was executed.
120. DW 2 testified that once the Green Card and/or Register of the suit property was opened on the 18.01.2019, the 11<sup>th</sup> Defendant did not have the powers to make any amendments of the Adjudication Record of Plot. No. 616 within Sikawa Adjudication Section.
121. DW 2 admitted that the amendment of the Adjudication Record of Plot. No. 616 within Sikawa Adjudication Section could only be done after the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had presented the Agreement For Sale with the 3<sup>rd</sup> and 4<sup>th</sup> Defendants before the offices of the 11<sup>th</sup> Defendant.
122. On being referred to PW 1 Exhibit 9, DW 2 confirmed that it was a letter dated 07.03.1998.
123. The letter dated 07.03.1998 was addressed to the offices of the 11<sup>th</sup> Defendant which is the same office DW 2 comes from.
124. DW 2 informed the Court that the letter dated 07.03.1998 disclosed that the Plaintiff herein had purchased 80 acres through two Agreements For Sale.
125. However, due to the fact that adjudication was still on going, the sub-division would only happen after the Adjudication was complete and the late Andrew Kamusi Bodi issued with an Adjudication Record.
126. Consequently, based on the letter dated 07.03.1998, DW 2 confirmed that the Plaintiff should get 80 acres from the original Plot. No. 144 within Sikawa Adjudication Section.
127. DW 2 testified that later on, Plot. No. 144 within Sikawa Adjudication Section was sub-divided and created Plot. No.615 and Plot. No. 616 within Sikawa Adjudication Section.
128. According to the Adjudication Register, the Adjudication Register of Plot. No. 616 within Sikawa Adjudication Section was issued in the name of the Plaintiff.



129. If the Agreements between the late Andrew Kamusi Bodi and the Plaintiff were to be implemented, then the Plaintiff was to get 80 acres from the original Plot. No. 144 within Sikawa Adjudication Section.
130. DW 2 admitted that if the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had issues and/or wanted to challenge the registration of the Plaintiff as the owner of Plot. No. 616 within Sikawa Adjudication Section, everyone should be called and given a fair hearing.
131. Unfortunately, the Plaintiff herein was never called by the 11<sup>th</sup> Defendant and notified about the letter by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants before cancellation of this Adjudication Record.
132. DW 2 confirmed that once a person is issued with an Adjudication Record, the next document he expects to receive is the Title Deed.
133. Consequently, the Plaintiff had a legitimate expectation that he would be the one to be issued with the title deed based on the Adjudication Record of Plot. No. 616 within Sikawa Adjudication Section.
134. On re-examination, DW 2 was referred to DW 2 Exhibit 6 which he confirmed was contained in the records of the 11<sup>th</sup> Defendant.
135. DW 2 confirmed to the Court that he had carried all the documents relating to the suit property within the 11<sup>th</sup> Defendant's office.
136. DW 2 stated that PW 1 Exhibit 9 is an Agreement for Sale dated 07.03.1998 between the late Andrew Kamusi Bodi and the Plaintiff herein.
137. DW 2 testified that the Agreement for Sale dated 07.03.1998 showed that the Plaintiff had purchased a portion of Plot. No. 144 within Sikawa Adjudication Section and hence the sub-division known as Plot. No.615 and Plot. No. 616 within Sikawa Adjudication Section.
138. However, DW 2 stated that the suit property currently belongs to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants herein.
139. At the end of this re-examination, DW 2 was discharged from the witness box and the 10<sup>th</sup> to 13<sup>th</sup> Defendants closed their case thereafter.
140. Parties were then directed to prepare, file and exchange their final written submissions.
141. The Plaintiff duly filed his submissions dated 20.08.2024, while the 3<sup>rd</sup> and 4<sup>th</sup> Defendants filed theirs dated 22.07.2024 while the 10<sup>th</sup> to 13<sup>th</sup> Defendants did not file any written submissions.
142. The Court has indeed perused the pleadings herein, the testimonies of the parties, the evidence presented before it and the submissions thereof and identifies the issues for determination as follows;-  
Issue No. 1- Who was the lawful and legitimate owner of the original Plot. No. 144 within Sikawa Adjudication Section?  
Issue No. 2- How was the property known as Plot. No. 616 within Sikawa Adjudication Section created?  
Issue No. 3- Who was recorded as the lawful and legitimate owner of Plot. No. 616 within Sikawa Adjudication Section upon its creation?  
Issue No. 4- Did the 1<sup>st</sup> and 2<sup>nd</sup> defendants herein have any legal right and/or ownership to enter the agreement for sale dated 23.04.2019 with the 3<sup>rd</sup> & 4<sup>th</sup> defendant?



Issue No. 5- Was the cancellation and/or alteration of the adjudication record issued to the Plaintiff herein over Plot. No. 616 Within Sikawa Adjudication Section Lawfully and/or legal?

Issue No.6- Was the issuance of the adjudication record of Plot. No. 616 within Sikawa Adjudication Section in the names of the 3<sup>rd</sup> & 4<sup>th</sup> defendant proper & legitimate?

Issue No. 7- Is The Plaintiff entitled to the prayers sought for in the present suit?

Issue No. 8 Who bears the costs of the present suit?

143. The Court having duly identified the issues for resolution, the same will now be discussed as herein below; -

**Issue No. 1- Who was the lawful and legitimate owner of the original Plot. No. 144 within Sikawa Adjudication Section?**

144. The first issue for determination is who was the legitimate and/or lawfully recorded owner of the original Plot. No. 144 within Sikawa Adjudication Section.

145. According to the pleadings and evidence by the Plaintiff herein, the original Plot. No. 144 within Sikawa Adjudication Section was recorded in the name of the late Andrew Kamusi Bodi during Adjudication.

146. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants who are the wives of the late Andrew Kamusi Bodi also confirmed that the original property known as Plot. No. 144 within Sikawa Adjudication Section was indeed allocated and recorded in the name of their late husband.

147. DW 2 who was the Land Adjudication Assistant II testified before the Court and verified that Plot. No. 144 within Sikawa Adjudication Section was recorded in the name of the late Andrew Kamusi Bodi and produced the relevant Demarcation Book to confirm the same.

148. In essence, this Court therefore makes a finding that indeed the original property known as Plot. No. 144 within Sikawa Adjudication Section was allocated and recorded in the name of the late Andrew Kamusi Bodi who is the lawful and legitimate owner in accordance to the [Land Adjudication Act](#), Cap 284.

**Issue No. 2- How was the property known as plot. no. 616 within sikawa adjudication section created?**

149. The second issue for determination is how the suit property known as Plot. No. 616 within Sikawa Adjudication Section was created.

150. According to the Plaintiff, the late Andrew Kamusi Bodi entered into two Agreements for Sale disposing of about 80 Acres to him.

151. The first Agreement for Sale was executed on the 10.03.1995 between the Plaintiff and the late Andrew Kamusi Bodi and related to about 73 acres (PRODUCED AS PW 1 Exhibit 5).

152. The second Agreement for Sale unfortunately was not executed but was through mutual agreement and it was for about 7 acres thereof.

153. The Plaintiff testified that due to the fact that Adjudication had not been completed and a title deed issued to the late Andrew Kamusi Bodi, it was then decided that the Vendor who is Andrew Kamusi Bodi would file an Objection proceeding before the Land Adjudication Officer so that the original



- Plot. No. 144 would be sub-divided to create individual portions that would then be recorded in the Purchasers' names.
154. The Plaintiff stated that after the determination of the Objection proceedings instituted by the late Andrew Kamusi Bodi, the suit property Plot. No. 616 within Sikawa Adjudication Section was duly created and recorded in the name of the Plaintiff.
  155. During cross-examination, the Plaintiff confirmed that the Objection proceedings that created the suit property known as Plot. No. 616 within Sikawa Adjudication Section was Objection No. 27 OF 2002.
  156. According to the determination in Objection No. 27 OF 2002, the Plaintiff was awarded a portion of 20 acres which was then recorded as Plot. No. 616 within Sikawa Adjudication Section.
  157. The Plaintiff admitted that after the determination in Objection No. 27 OF 2002 awarding him 20 acres within Plot. No. 144 in Sikawa Adjudication Section, he did not appeal such an award to the Minister.
  158. Nevertheless, the Plaintiff insisted that he had acquired a total of 80 acres from the late Andrew Kamusi Bodi and not the 20 acres indicated in the determination of the proceedings known as Objection No. 29 OF 2002.
  159. The 4<sup>th</sup> Defendant on the other hand testified as DW 1 and informed the Court that he was also allocated Plot. No. 616 within Sikawa Adjudication Section during Adjudication.
  160. The 4<sup>th</sup> Defendant produced an Adjudication Record No. B 644977 for a property known as Plot. No. 616 within Sikawa Adjudication Section as DW 1 Exhibit 1.
  161. The 4<sup>th</sup> Defendant stated that based on the Adjudication Record No. B644977 relating to Plot. No. 616 within Sikawa Adjudication Section, a Green Card was duly opened in the names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants and a Title Deed issued thereof.
  162. On cross-examination, the 4<sup>th</sup> Defendant disclosed that they purchased a portion of 125 acres from the original Plot. No. 144 within Sikawa Adjudication Section from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who are the wives of the late Andrew Kamusi Bodi.
  163. However, due to the fact that Adjudication was ongoing, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed an Objection against the late Andrew Kamusi Bodi who was already deceased and that is how Plot. No. 616 within Sikawa Adjudication Section was created and recorded in their name.
  164. The 4<sup>th</sup> Defendant testified that although the 3<sup>rd</sup> and 4<sup>th</sup> Defendants had purchased 125 acres from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the Adjudication Record indicates 85 acres (34.27 Hectares).
  165. The 4<sup>th</sup> Defendant however did not produce the Objection proceedings that created the Adjudication Record No. B644977 or even remember the Objection Number that determined their Objection.
  166. DW 2 who is the Land Adjudication Officer II also testified into the manner of how the suit property known as Plot. No. 616 within Sikawa Adjudication Section was created.
  167. According to the records held by the Land Adjudication Office, the property known as Plot. No. 144 recorded in the name of the late Andrew Kamusi Bodi had 3 Objections filed against it.
  168. However, all these Objections were dismissed by the Land Adjudication Officer thereof.
  169. After the determination of the 3 Objections filed against the late Andrew Kamusi Bodi as the recorded owner of Plot. No. 144 within Sikawa Adjudication Section, the recorded owner filed an Objection



- seeking to sub-divide the original Plot. No. 144 into two portions namely Plot. No. 616 and Plot. No.615 within Sikawa Adjudication Section.
170. According to the Demarcation Book for Sikawa Adjudication Section which was produced as DW 2 Exhibit 4, the Plot. No. 616 was recorded in the name of the Plaintiff measuring approximately 20 acres only and issued with an Adjudication Record thereof.
  171. After the issuance of the Adjudication Record of Plot. No. 616 within Sikawa Adjudication Section, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants wrote a letter dated to the offices of the Land Adjudication Section stating that the Plaintiff had intended to purchase 20 acres from the late Andrew Kamusi Bodi but was unable to pay for the same.
  172. Consequently, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants sought the Land Adjudication Officer to cancel the Plaintiff's Adjudication Record and instead issue one in the names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants who had bought about 125 acres from them directly.
  173. It was on the basis of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' letter to the Land Adjudication Officer that the Adjudication Record of Plot. No. 616 within Sikawa Adjudication Section in the name of the Plaintiff was cancelled and a new Adjudication Record issued in favour of the 3<sup>rd</sup> and 4<sup>th</sup> Defendant was issued.
  174. The Court has carefully considered the evidence of the parties herein and the DW 2 who is the Land Adjudication Assistant II and is satisfied that indeed, Plot. No. 616 within Sikawa Adjudication Section was created from the property known as Plot. No. 144 within Sikawa Adjudication Section which belonged to the late Andrew Kamusi Bodi.

**Issue No. 3- Who was recorded as the lawful and legitimate owner of Plot. No. 616 within sikawa adjudication section upon its creation?**

175. The third issue is who was recorded as the lawful and legitimate owner of the property known as Plot. No. 616 within Sikawa Adjudication Section upon its creation.
176. According to the Plaintiff, the determination in the Objections No. 27 of 2002 directed that Plot. No. 616 within Sikawa Adjudication Section was to be recorded in the name of the Plaintiff herein.
177. The 4<sup>th</sup> Defendant on the other hand had two versions of how the 3<sup>rd</sup> and 4<sup>th</sup> Defendants had their names recorded in the Adjudication Record of Plot. No. 616 within Sikawa Adjudication Section.
178. The first version is that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants were adjudicated Plot. No. 616 within Sikawa Adjudication Section directly by the Adjudication Committee and thereafter issued with an Adjudication Record.
179. The second version came up during cross-examination of the 4<sup>th</sup> Defendant wherein he stated that they purchased a total of 125 acres from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants within Plot. No. 144 within Sikawa Adjudication Section.
180. After the purchase of the 125 acres within Plot. No. 144 within Sikawa Adjudication Section from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, an Objection proceeding was lodged before the Land Adjudication Officer by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to facilitate the sub-division thereby creating Plot. No. 616 within Sikawa Adjudication Section.
181. However, the 4<sup>th</sup> Defendant did not produce the Objection proceedings lodged by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and/or could not even recollect the Objection Number issued by the Land Adjudication Officer.



182. DW 2 testified and confirmed that according to the Objection filed by the late Andrew Kamusi Bodi, the property known as Plot. No. 144 within Sikawa Adjudication Section was sub-divided into two portions namely Plot. No. 616 and Plot. No.615 within Sikawa Adjudication Section the year 2003 in the proceedings known as Objection No. 27 of 2002.
183. According to DW 2, the first Adjudication Record of Plot. No. 616 within Sikawa Adjudication Section was issued in the name of the Plaintiff for a portion of land measuring 20 acres.
184. The evidence of DW 2 was that the Plaintiffs Adjudication Record subsisted until 19.04.2015 when the 1<sup>st</sup> and 2<sup>nd</sup> Defendants wrote a letter seeking the Land Adjudication Officer to cancel the same as the Plaintiff had not settled the purchase price therein.
185. On the same date 19.04.2015, the Plaintiff's Adjudication Record was cancelled and the names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants were recorded as the legitimate owners of Plot. No. 616 within Sikawa Adjudication Section.
186. DW 2 produced the Demarcation Book of Sikawa Adjudication Section which demonstrated the entry of the Plaintiff as the first recorded owner of Plot. No. 616 within Sikawa Adjudication Section, the Letter dated 19.04.2015 by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to the Land Adjudication Officer and the Demarcation Book again with the cancellation of the Plaintiff's name as owner of Plot. No. 616 within Sikawa Adjudication Section and entry of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants as owners of the said property.
187. The Court has indeed looked at the entries contained in the Demarcation Book of Sikawa Adjudication Section and admits that indeed the original property known as Plot. No. 144 was sub-divided into two main properties known as Plot. No. 616 and 615 within Sikawa Adjudication Section.
188. Further to that, the Land Adjudication Officer decreed that Plot. No. 616 within Sikawa Adjudication Section measuring approximately 20 acres should be recorded in the name of the Plaintiff.
189. This decision was in fact implemented in the Demarcation Book on Entry No. 78 and an Adjudication Record issued to the Plaintiff as the legal owner of Plot. No. 616 within Sikawa Adjudication Section.
190. In the Letter dated 19.04.2015 by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein, the same reads in part as follows; -
 

“However up to now he has not paid them a single cent. It is our request that his name be cancelled in the register”
191. The plain reading of the above paragraph is that indeed the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were well aware of the Plaintiff's registration as the owner of Plot. No. 616 within Sikawa Adjudication Section in the Register of Sikawa Adjudication Section.
192. Clearly therefore, the first person to be issued with the Adjudication Record of Plot. No. 616 within Sikawa Adjudication Section was the Plaintiff herein in accordance with the determination of Objection No. 27 of 2002 and the Demarcation Book of Sikawa Adjudication Section.

**Issue No. 4- Did the 1<sup>st</sup> and 2<sup>nd</sup> defendants herein have any legal right and/or ownership to enter the agreement for sale dated 23.04.2019 with the 3<sup>rd</sup> & 4<sup>th</sup> defendant?**

193. The fourth issue is whether or not the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had any legal rights to alienate and/or sell the property known as Plot. No. 616 within Sikawa Adjudication Section to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.



194. According to the Demarcation Book of Sikawa Adjudication Section, the Plot. No. 616 within Sikawa Adjudication Section was recorded in the name of the Plaintiff based on the Objection No. 27 OF 2002 which was determined on 04.06.2003.
195. The Demarcation Book Entry 78 clearly provides that Plot. No. 616 within Sikawa Adjudication Section was recorded in the name of the Plaintiff and from the letter dated 19.04.2015 by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as well as the testimony of DW 2, an Adjudication Record was subsequently issued in his name.
196. This being the case, the legal ownership and/or rights of the Plot. No. 616 within Sikawa Adjudication Section from the 04.06.2003 as determined in the Objection No. 27 OF 2002 were for the sole and exclusive use of the Plaintiff.
197. Notwithstanding the foregoing, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants seem to have entered into an Agreement For Sale with the 3<sup>rd</sup> and 4<sup>th</sup> Defendants for a portion of 50.7 Hectares on the property known as property known as LR. No. Transmara/Sikawa/144 which is in the name of the late Andrew Kamusi Bodi sometime in April 2019.
198. However, this Agreement for Sale executed in the year 2019 was never produced by the 4<sup>th</sup> Defendant who instead produced an Adjudication Record No. B 644977 relating to Plot. No. 616 within Sikawa Adjudication Section.
199. DW 2 in his testimony stated that in fact, the reason the 3<sup>rd</sup> and 4<sup>th</sup> Defendants were issued with the Adjudication Record No. B 644977 relating to Plot. No. 616 within Sikawa Adjudication Section was because of the letter dated 19.04.2015 done by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to the Land Adjudication Officer of Sikawa Adjudication Section.
200. DW 2 relied of DW 2 Exhibit 6 which contains the information that the Adjudication Record of Plot. No. 616 within SIKAWA in the name of the Plaintiff was cancelled based on the letter dated 19.04.2015 and the names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants recorded therein on the same date.
201. To begin with, this Court has already made an observation that neither 1<sup>st</sup> and 2<sup>nd</sup> Defendants nor the 3<sup>rd</sup> and 4<sup>th</sup> Defendants did not produce any Agreement for Sale of Plot. No. 616 within Sikawa Adjudication Section executed on or before the 19.04.2015.
202. In fact, it is the Court's considered view that the contents of the letter dated 19.04.2015 only requested for a Cancellation of the Plaintiff's name in the Register of Plot. No. 616 within Sikawa Adjudication Section but did not request for the same to be recorded in the names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.
203. As such, if the Land Adjudication Officer had the powers to actually cancel the Plaintiff's Adjudication Record of Plot. No. 616 within Sikawa Adjudication Section as requested in the letter dated 19.04.2015, the lawful resultant action would be to revert the said property into the name of the late Andrew Kamusi Bodi and not issue another Adjudication Record in the name of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.
204. However, even if there was an Agreement for Sale executed on or before the 19.04.2015 between the 1<sup>st</sup> and 2<sup>nd</sup> Defendant with the 3<sup>rd</sup> and 4<sup>th</sup> Defendants herein over the property known as Plot. No. 616 within Sikawa Adjudication Section, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not have any legal authority to alienate, sell and/or dispose of such a property as had was an Adjudication Record in the name of the Plaintiff.



205. The only time the 1<sup>st</sup> and 2<sup>nd</sup> Defendants would have created any legal right and/or interest over Plot. No. 616 within Sikawa Adjudication Section would be after their letter dated 19.04.2015 was accepted by the Land Adjudication Officer, the name of the Plaintiff cancelled thereupon, their names recorded as the owners of Plot. No. 616 within Sikawa Adjudication Section on behalf of the late Andrew Kamusi Bodi then now sell to the 3<sup>rd</sup> and 4<sup>th</sup> Defendant.
206. The intentional rush and/or effort take a short cut the procedure as undertaken by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in disposing and/or selling off the property known as Plot. No. 616 within Sikawa Adjudication Section to the 3<sup>rd</sup> and 4<sup>th</sup> Defendant was therefore without any legal foundation and/or ownership rights and therefore illegitimate and a nullity from the very beginning.

**Issue No. 5- Was the cancellation and/or alteration of the adjudication record issued to the Plaintiff herein over Plot. No. 616 within sikawa adjudication section lawfully and/or legal?**

207. According to the evidence of the 4<sup>th</sup> Defendant as well as DW 2, the name of the Plaintiff was cancelled from the Demarcation Book and the Adjudication Register through a letter dated 19.04.2015.
208. The letter dated 19.04.2015 was done by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to the Land Adjudication Officer on the basis that the Plaintiff had not paid the purchase price of the 20 acres provided for in the Adjudication Record.
209. The Court having duly made a finding that indeed the Plaintiff had been recorded as the owner of Plot. No. 616 within Sikawa Adjudication Section as provided for Under Section 23 (6) of the Land Adjudication Officer, then the Adjudication Register can only be altered through the provisions of Section 27(1) or Section 29(3) of the said Act.
210. Section 27 (1) of the *Land Adjudication Act*, Cap 284 provides for alteration on the basis of a determination by the Land Adjudication Officer handling an Objection proceeding while Section 29 (3) provides for a determination in an Appeal before the Minister.
211. In this instance, the alteration of the Plaintiff's Adjudication Record over the property known as Plot. No. 616 within Sikawa Adjudication Section was on the basis of a letter dated 19.04.2015 which can neither be deemed to be an Objection under Section 27 (1) of the *Land Adjudication Act* (Cap 284) or an Appeal to the Minister under Section 29 (3) of the *Land Adjudication Act* (Cap 284).
212. The alteration of the Adjudication Record of Plot. No. 616 within Sikawa Adjudication Section in the name of the Plaintiff by the Land Adjudication Officer on the 19.04.2015 was illegal, null and void for lack of jurisdiction under the *Land Adjudication Act*, Cap 284.
213. Be extension thereof, the issuance of the Adjudication Record No. B644977 relating to Plot. No. 616 within Sikawa Adjudication Section in favour of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants by the Land Adjudication Officer is illegal, null and void incapable of giving any proprietary rights over the said property to the persons named therein.

**Issue No. 7- Is the Plaintiff entitled to the prayers sought for in the present suit?**

214. The Plaintiff herein has outlined a number of prayers in this Amended Plaintiff.
215. In summary, the Plaintiff is seeking to be registered as the owner of the property known as LR. No. Transmara/Sikawa/616 measuring approximately 80 acres and the names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to be cancelled therein.



216. The Plaintiff is also seeking this Court to direct the 12<sup>th</sup> Defendant to proceed and cancel the 3<sup>rd</sup> and 4<sup>th</sup> Defendants title over the property known as LR. No. Transmara/Sikawa/616 and issue the same in his name.
217. It is important to first determine what acreage this property initially known as Plot. No. 616 within Sikawa Adjudication Section now known as LR. No. Transmara/Sikawa/616 actually is.
218. The Plaintiff alleges that the he purchased a total of 80 acres from the late Andrew Kamusi Bodi from the property known as Plot. No. 144 within Sikawa Adjudication Section.
219. It was based on this purchase that the late Andrew Kamusi Bodi proceeded to lodge an Objection to facilitate the sub-division of the said property known as Plot. No. 144 within Sikawa Adjudication Section.
220. The Plaintiff confirmed in his testimony and in his prayers that indeed the proceeding that awarded him the sub-divisions known as Plot. No. 616 within Sikawa Adjudication Section now known as LR. No. Transmara/Sikawa/616 was the Objection No. 27 OF 2002.
221. In this Objection No. 27 OF 2002, the finding of the Land Adjudication Officer was that the Plaintiff had been awarded 20 acres which would be recorded as Plot. No. 616 within Sikawa Adjudication Section.
222. The Plaintiff in cross-examination by the 4<sup>th</sup> Defendant's Counsel admitted that he did not file any Appeal against the decision made in Objection No. 27 OF 2002.
223. As such, it is clear that the Adjudication Record issued in favour of the Plaintiff over the property known as Plot. No. 616 within Sikawa Adjudication Section was only for 20 acres.
224. This fact has been verified and confirmed by the letter dated 19.04.2015 by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who specifically sought the Land Adjudication Officer to cancel the Plaintiff's 20 acres which had been provided for in the Adjudication Register of PLOT.616 within Sikawa Adjudication Section.
225. In essence, this Court is of the considered view that Plot. No. 616 within Sikawa Adjudication Section recorded in the name of the Plaintiff was only 20 acres and not 80 acres as pleaded.
226. This being the case, the Plaintiff herein is entitled to the prayers sought for in the Amended Plaint save that Plot. No. 616 within Sikawa Adjudication Section will be only 20 acres as contained in determination of Objection No. 27 OF 2002 and the original Adjudication Record thereof.
227. If indeed the Plaintiff had purchased more than 20 acres contained in Plot. No. 616 within Sikawa Adjudication Section, then he is at liberty to file suit for specific performance against the Estate of Andrew Kamusi Bodi (deceased) to enforce his rights over any land that is over and above the 20 acres awarded to him in the proceedings known as Objection No. 27 OF 2002.

#### **Issue No. 8 Who bears the costs of the present suit?**

228. It is settled law that Costs usually follow the outcome.
229. In this matter, the Plaintiff has been successful in prosecuting his case and the Defendants are jointly and/or severally condemned to pay the costs herein.

#### **Conclusion**

230. In conclusion, this Court hereby makes the following Orders appertaining the Amended Plaint dated 30.06.2022; -



- a. The amended plaint dated 30.06.2022 is merited.
- b. The adjudication record no. B644977 over Plot. No. 616 within Sikawa Adjudication Section measuring 34.27 hectares in the names of Abel Moranga Ongwacho & Konchori Telew Samuel be and is hereby declared illegal, null & void.
- c. The sub-county land adjudication officer, Transmara East, West & South be and is hereby directed to cancel the adjudication record No. B 644977 over Plot. No. 616 within Sikawa Adjudication Section measuring approximately 34.27 hectares in the names of Abel Moranga Ongwacho & Konchori Telew Samuel forthwith.
- d. The sub-county land registrar, Transmara East, West & South be and is hereby directed to cancel the title deed of the property known as LR. No. Transmara/Sikawa/616 in the names of Abel Moranga Ongwacho & Konchori Telew Samuel in the title deed issued on 01.11.2019 as well as the resultant properties known as LR. No. Transmara/Sikawa/825-833 5th to 9th defendants herein together with the mutations creating the said properties.
- e. The Plaintiff herein be and is declared the lawful and legitimate owner of Plot. No. 616 within Sikawa Adjudication Section measuring approximately 20 acres as contained in the decision of Objection No. 27 of 2002.
- f. The land adjudication officer, Transmara East, West & South be and is hereby directed and/or ordered to reinstate the Plaintiff herein as the lawful owner of the plot. no. 616 within Sikawa Adjudication Section as was provided in the demarcation book and adjudication register of Sikawa Adjudication Section prior to 19.04.2015.
- g. The land adjudication officer, Transmara East, West & South be and is hereby directed and/or ordered to issue the Plaintiff with the appropriate adjudication record over the property known as Plot. No. 616 within Sikawa Adjudication Section and facilitate the registration & issuance of the title deed in line with the provisions of the land adjudication act, cap 284.
- h. The Plaintiff is awarded costs to be paid by the defendants jointly and severally herein.

**DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC ON DAY THIS 26<sup>TH</sup> OF FEBRUARY 2025.**

**EMMANUEL.M. WASHE**

**JUDGE**

In the presence of:

Court Assistant: Laban

Advocates for the Plaintiff: Ms. Ochieng holding brief Mr. Obach

Advocates for the Defendant: Ms. Nyaenya holding brief Mr. Ochwangi

