



REPUBLIC OF KENYA



**Kisaka v Muyia & 3 others (Environment & Land Case E009 of 2022)
[2024] KEELC 4162 (KLR) (21 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4162 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE E009 OF 2022**

EM WASHE, J

MAY 21, 2024

BETWEEN

FRANCIS OLOISHAI KISAKA PLAINTIFF

AND

EVALINE ARAMI MUYIA 1ST DEFENDANT

SOYUA SAKANA MUYIA 2ND DEFENDANT

**THE LAND ADJUDICATION & SETTLEMENT OFFICER TRANSMARA EAST,
WEST & SOUTH 3RD DEFENDANT**

HON. ATTORNEY GENERAL 4TH DEFENDANT

JUDGMENT

1. The Plaintiff herein approached this Honourable Court by way of a Plaint dated 26.07.2022 seeking for the following orders; -
 - a. A declaration that the purported objection proceeding touching on and/or concerning Plot No. 751 Nkararo Adjudication Section now LR.NO.TRANSMARA/NKARARO/751 was fraudulent, illegal, null and void.
 - b. An Order cancelling and nullifying of the entries arising from and/or occasioned by the fraudulent objection proceedings carried out by the Defendants and re-instate the Plaintiff as the legitimate owner of Plot. No. 751 Nkararo Adjudication Section now LR.NO.TRANSMARA/NKARARO/751.
 - c. An Order of eviction against the 1st and 2nd Defendants, their agents and/or servants from Plot. No. 751 Nkararo Adjudication Section now known as LR.NO.TRANSMARA/NKARARO/751.



- d. Permanent injunction restraining the 1st and 2nd Defendants, their agents, servants and/or anyone claiming under the said Defendants from entering upon, re-entering, taking possession, trespassing unto, cultivating, grazing or, building houses and/or interfering with the Plot No. 751 Nkararo Adjudication Section now LR.NO.TRANSMARA/NKARARO/751.
 - e. General damages for trespass.
 - f. Costs and interest.
2. The facts as pleaded in the Plaintiff are as follows; -
- a. The Plaintiff was the person demarcated and allocated with the property known as PLOT.NO.751 within Nkararo Adjudication Section by the Land Adjudication Committee.
 - b. Based on the said allocation by the Land Adjudication Committee, the Plaintiff's legitimate expectation was that the property known Plot No. 751 within Nkararo Adjudication Section would be duly registered in his name thereafter the occupation and use would be his to the exclusion of anyone else.
 - c. However, the allocation of Plot.No. 751 within Nkararo Adjudication Section to the Plaintiff was fraudulently interfered with and/or altered through an Objection proceeding by one SOTUA SAKAJA MUYIA.
 - d. The Plaintiff states that the purported Objection proceeding by SOTUA SAKAJA MUYIA was fraudulent and has specifically pleaded the particulars of the fraud under Paragraph 9 of the Plaintiff.
 - e. In essence therefore, the Plaintiff is of the view that all the proceedings emanating from the Objection filed by the said SOTUA SAKAJA MUYIA and all other subsequent proceedings including the issuance of the Adjudication Record and Title in favour of SOTUA SAKAJA MUYIA are fraudulent and should therefore be forthwith nullified and/or cancelled.
 - f. In addition to the above, the Plaintiff sought for a declaration to be the bona-fide owner of the property known as Plot.No.751 within Nkararo Adjudication Section now LR.NO.TRANSMARA/NKARARO/751.
3. The Plaintiff was indeed duly served on the Defendants who responded by filing their respective Statements of Defence.
4. The 1st and 2nd Defendants filed a Statement of Defence dated 12.07.2023 of which they pleaded as follows; -
- a. The 2nd Defendant herein was the one living on the property known as Plot.No. 751 within Nkararo Adjudication Section before the demarcation and after adjudication of the same.
 - b. However, after demarcation, the 2nd Defendant came to learn that the land he occupied had been demarcated as Plot no. 751 Nkararo Adjudication Section and allocated to the Plaintiff herein.
 - c. Upon discovery of this allocation to the Plaintiff, the 2nd Defendant proceeded to lodge an objection which was assigned Objection No. 142 of 1990.
 - d. The 1st and 2nd Defendant aver and confirm that the Plaintiff herein was duly served with the said Objection and participated in the hearing and determination of the same without raising any issue of the same having been filed out of time and/or the fraudulent nature of the same.



- e. At the end of the Objection proceedings, the Plaintiff herein was declared the rightful owner of the property known as Plot.No. 751 within Nkararo Adjudication Section thereby necessitating the 2nd Defendant to lodge an Appeal to the Minister which Appeal was assigned Appeal No. 70 of 2021.
 - f. Again, the Plaintiff herein was served with the Appeal and he duly participated in the hearing and determination of the said proceedings.
 - g. The outcome of the Appeal proceedings was that the 2nd Defendant was the lawful owner of the property known as Plot.No. 751 within Nkararo Adjudication Section and as such, the Adjudication Record was issued in his name as well as the Title Deed.
 - h. The 1st and 2nd Defendants were of the view that the decision and/or finding of the Minister in the Appeal can only be challenged by way of Judicial Review and this suit seeks to nullify the said decision through an illegitimate procedure.
 - i. In conclusion therefore, the 1st and 2nd Defendants concluded their defence by reiterating that the registration of the 1st and 2nd Defendants was procedurally lawful and the registration of the title known as LR.NO.TRANSMARA/NKARARO/751 was legitimate and above board.
 - j. Consequently, the 1st and 2nd Defendant sought this Honourable Court to dismiss the present suit with costs.
5. The 3rd and 4th Defendants filed a Statement of Defence dated 26.11.2023 and opposed the Plaintiff on the following grounds; -
- a. The 3rd and 4th Defendant denied the allegations of fraud pleaded by the Plaintiff and specifically the fact that the 2nd Defendant's name was registered based on a fictitious objection.
 - b. The 3rd and 4th Defendant stated that the registration of the 2nd Defendant as the owner of the property known as Plot.No. 751 within Nkararo Adjudication Section now LR.NO.TRANSMARA/NKARARO/751 was lawful, regular and procedurally sound in accordance with the provisions of the [Land Adjudication Act](#) (Cap 284).
 - c. The 3rd Defendant thereafter outlined the Statutory duties assigned by the [Land Adjudication Act](#), Cap 284 in paragraph 5.
 - d. In the 3rd and 4th Defendants view, the Plaintiff's suit was therefore misconceived, untenable and an abuse of the court process.
 - e. Further to the above, the 3rd and 4th Defendant pleaded that the Plaintiff's suit was time-barred and therefore contrary to the legal provisions of the law.
6. After the filing of the Statement of Defences by the 1st -4th Defendants, the pleadings closed and the matter was certified ready for hearing.

Plaintiff's Case.

7. The first witness in the Plaintiff's case was the Plaintiff who was marked as PW 1.
8. The Plaintiff introduced himself as a resident of Nkararo and a farmer by occupation.
9. The Plaintiff confirmed that he is familiar with both the 1st and 2nd Defendants in this suit.



10. The Plaintiff informed the Honourable Court that during demarcation of Nkararo Adjudication Section, he was allocated the property known as Plot.No.751.
11. The property known as Plot.No. 751 within Nkararo Adjudication Section was measuring approximately 10 acres.
12. After the demarcation and allocation of Plot.No. 751 within Nkararo Adjudication Section to the Plaintiff, he took possession and started living on the same.
13. However, later on, the Plaintiff came to learn that the 2nd Defendant had lodged an Objection against the said allocation of Plot.no. 751 within Nkararo Adjudication Section.
14. The Plaintiff confirmed that he participated in the said Objection proceedings and on the 30.06.2016, the said objection proceedings were dismissed and the property known as Plot.no. 751 was declared to belong to the Plaintiff.
15. The Plaintiff however clarified that the Objection proceedings which he had participated were in relation of Plot.No. 873 within Nkararo Adjudication Section and not Plot.no. 751 within Nkararo Adjudication Section.
16. According to the Plaintiff, he had no interest whatsoever in the property known as Plot.No. 873 within Nkararo Adjudication Section although it is a neighbouring piece of land to Plot.No. 751 within Nkararo Adjudication Section.
17. The Plaintiff informed the Honourable Court that after the dismissal of the 2nd Defendant's objection, an Appeal was lodged to the Minister by the 2nd Defendant.
18. The said Appeal to the Minister was indeed heard on merit and with the participation of both the 2nd Defendant and the Plaintiff in the year 2021.
19. The determination of the Appeal to the Minister was however never communicated to the Plaintiff.
20. The Plaintiff insisted that the property known as Plot.No. 751 within Nkararo Adjudication Section was never allocated to the 2nd Defendant since he was not a resident of the Nkararo Adjudication Section.
21. The Plaintiff informed the Honourable Court that Plot.No. 873 within Nkararo Adjudication Section was created out of the property known as Plot.No.751 within Nkararo Adjudication Section.
22. The Plaintiff therefore was of the view that the Minister was wrong to allocate the property known as Plot.No. 751 within Nkararo Adjudication Section to the 2nd Defendant yet the 2nd Defendant had already been allocated Plot.No. 873 within the same Nkararo Adjudication Section.
23. The Plaintiff stated that the Objection proceedings were determined on the 30.06.2016 and the Minister's Appeal was recorded on the 22.06.2021.
24. Consequently therefore, the Minister's Appeal was outside the prescribed 60 days provided under the [*Land Adjudication Act*](#), Cap 284.
25. It is on the basis of this Minister's Appeal that the 2nd Defendant was allocated Plot.No. 751 within Nkararo Adjudication Section yet he had originally claimed Plot.No. 873 within Nkararo Adjudication Section.



26. The Plaintiff further blamed the 3rd Defendant for registering the 2nd Defendant as the lawful owner of the property known as Plot.No. 751 within Nkararo Adjudication Section now LR.NO.TRANSMARA/NKARARO/751.
27. The Plaintiff informed the Honourable Court that once the Title was issued to the 2nd Defendant, it was subsequently transferred to the 1st Defendant herein.
28. The Plaintiff also stated that he had visited the Land Adjudication Office and had been given a record as well as the letter to confirm that Plot.No. 751 within Nkararo Adjudication Section had been allocated to him while Plot.No. 873 within Nkararo Adjudication Section was allocated to the 2nd Defendant.
29. Consequently therefore, the allocation and subsequent registration of the 2nd Defendant as the owner of the property known as Plot.No. 751 within Nkararo Adjudication Section now LR.NO.TRANSMARA/NKARARO/751 was unlawful.
30. The Plaintiff in support of his testimony produced the following documents in relation to this case;-
Plaintiff's Exhibit 1- Copy of the Objection proceedings and determination made on the 30.06.2016.
Plaintiff's Exhibit 2- Copy of an Official Search in respect of LR.NO.TRANSMARA/NKARARO/751 dated 25.04.2022.
Plaintiff's Exhibit 3- Copy of a letter dated 15.05.2015 from the Land Adjudication officer to whom it may concern.
Plaintiff's Exhibit 4- Copy of the Letter dated 25.04.2022 from the Plaintiff's Counsel to the 3rd Defendant.
Plaintiff's Exhibit 5- A certified copy of the Registered Index Map dated 15.05.2015 for the property known as Nkararo Adjudication Section.
Plaintiff's Exhibit 6- Copy of the Adjudication Register in respect of Plot.No. 757 within Nkararo Adjudication Section.
Plaintiff's Exhibit 7- Copy of the Adjudication Register of the Plot.No. 751 within Nkararo Adjudication Section.
31. After production of the above-mentioned documents, the Plaintiff concluded his evidence in chief.
32. On cross-examination by the 1st and 2nd Defendants, the Plaintiff clarified that he stays within Nkararo Adjudication Section but not on the property known as Plot.No.751 within Nkararo Adjudication Section.
33. The Plaintiff confirmed to the Honourable Court that it was the 2nd Defendant and his family that live on the property known as Plot.No.751 within Nkararo Adjudication Section and now known as LR.NO.TRANSMARA/NKARARO/751.
34. The Plaintiff also reiterated that he was never informed of the outcome relating to the Appeal before the Minister and only learnt of it that it was in favour of the 2nd Defendant.
35. This is the reason that he filed the present case to challenge this decision.
36. The Plaintiff admitted that he was not aware that a party should file a Judicial Review if he/she wanted to challenge the decision of the Minister.
37. As regards the date of the Objection proceedings, the Plaintiff could not state with clarity when the same was filed.



38. On being referred to the Plaintiff's Exhibit 3, the Plaintiff stated that this was a letter done before the Appeal to the Minister was filed and it is dated 15.05.2015.
39. The Plaintiff stated that the property known as LR.NO.TRANSMARA/NKARARO/751 had first been registered in the name of the 2nd Defendant before it was transferred to the 1st Defendant.
40. The Plaintiff insisted that the 2nd Defendant was allocated Plot.No. 783 within Nkararo Adjudication Section and not Plot.No. 751 within Nkararo Adjudication Section.
41. On further cross-examination by the 3rd and 4th Defendants, the Plaintiff admitted to have been aware and even participated in the Appeal before the Minister.
42. However, the Plaintiff stated that the determination by the Minister was pronounced without his knowledge.
43. According to the Plaintiff, the determination of the Appeal by the Minister was in favour of the 2nd Defendant.
44. The Plaintiff admitted that this determination was to be implemented by the 3rd Defendant and therefore he/she is not fault to do so.
45. The Plaintiff stated that when he learnt about the decision of the Minister in determination of the Appeal, he decided to file the present suit and place a caution as well.
46. On re-examination, the Plaintiff testified that he should not be denied his piece of land even if he resides somewhere else.
47. The Plaintiff reiterated that the Objection was determined in the year 2016.
48. The Plaintiff stated that the Letter dated 15.05.2015 produced as Plaintiff's Exhibit 3 was obtained before the Objection proceedings were determined because his house had been burnt down during the tribal clashes.
49. The Plaintiff insisted that the decision of the Minister was not justified because the 2nd Defendant has his own land.
50. At the end of this re-examination, the Plaintiff was discharged from the witness box and the Plaintiff closed his case.

Defence Hearing

51. The Defence hearing proceeded on the 29.01.2024 with the 2nd Defendant being the first witness who was marked as DW 1.
52. The 2nd Defendant informed the Honourable Court that he appears on his own behalf and that of the 1st Defendant who is the daughter in law.
53. The 2nd Defendant also admitted being familiar with the Plaintiff herein.
54. According to the 2nd Defendant's testimony, he is the one who has been in occupation of the property known as Plot.No. 751 within Nkararo Adjudication Section way before Adjudication began.
55. Consequently therefore, when the demarcation and adjudication of the Nkararo Adjudication Section was on going, the 2nd Defendant was already in occupation of the property known as Plot.no. 751 which was later titled as LR.NO.TRANSMARA/NKARARO/751.



56. The 2nd Defendant clarified that the Plaintiff herein had never been in occupation of the property known as Plot.No. 751 within Nkararo Adjudication Section and now known as LR.NO.TRANSMARA/NKARARO/751.
57. However, during the demarcation and adjudication process, the Plot.No. 751 within Nkararo Adjudication Section was allocated to the Plaintiff thereby necessitating the filing of an Objection by the 2nd Defendant.
58. The Objection proceedings were heard on merit with the participation of both the Plaintiff and the 2nd Defendant but at the end of it, the Objection was dismissed and Plot.No. 751 within Nkararo Adjudication Section awarded to the Plaintiff.
59. On being aggrieved with this determination, the 2nd Defendant filed an Appeal to the Minister which was also heard on merit and with the participation of the Plaintiff.
60. At the end of this hearing of the Appeal before the Minister, the property known as Plot.No. 751 within Nkararo Adjudication Section was awarded to the 2nd Defendant herein.
61. It was on the basis of this determination by the Minister in the Appeal that the property known as Plot.No. 751 within Nkararo Adjudication Section now known as LR.NO.TRANSMARA/NKARARO/751 was registered in the name of the 2nd Defendant.
62. Thereafter, the property known as LR.NO.TRANSMARA/NKARARO/751 was transferred to the 1st Defendant.
63. The 2nd Defendant in support of his testimony produced the following documents in support of his case.
 - Defence Exhibit 1- Copy of the proceedings and determination of the Objection proceedings known as 142 of 1990 over the property known as Plot.No. 751 within Nkararo Adjudication Section.
 - Defence Exhibit 2- Copies of the proceedings and the decision of the Minister in the Appeal No. 70 of 2021 relating to the property known as Plot.No. 751 within Nkararo Adjudication Section.
 - Defence Exhibit 3- Copy of a letter dated 13.01.2022 from the 3rd Defendant confirming implementation of the decision by the minister.
 - Defence Exhibit 4- Copy of the official search of the property known as LR.NO.TRANSMARA/NKARARO/751.
64. The 2nd Defendant confirmed to the Honourable Court that the Appeal to the Minister against the determination of the Land Adjudication Officer was done within the prescribed time of 60 days thereof.
65. However, the 2nd Defendant could not tell the exact date when the Appeal was actually filed before the Minister.
66. The 2nd Defendant insisted that if the Appeal to the Minister had been filed out of time, the same could not be admitted and/or processed for hearing at all.
67. The 2nd Defendant further stated that the Plaintiff duly participated in both the Objection and Appeal proceedings and at no one time did he ever raise the issue that the Appeal had been filed out of time.



68. The 2nd Defendant therefore reiterated that the property known as LR.NO.TRANSMARA/NKARARO/751 was his lawful property and he is the one that is in occupation of the same with the 1st Defendant.
69. The 2nd Defendant therefore concluded his testimony in chief by stating that the Plaintiff had his own land and this suit should be dismissed with costs.
70. On cross-examination, the 2nd Defendant stated that he was only registered and issued with a title but the same has not been produced in Court.
71. The 2nd Defendant indicated that he placed an Objection against the Plaintiff's allocation of Plot.No. 751 within Nkararo Adjudication Section because he was the person on the ground and not the Plaintiff.
72. The 2nd Defendant admitted that in the Objection proceedings, he had stated that he was allocated the property known as Plot.No. 873 within Nkararo Adjudication Section.
73. On being referred to the Plaintiff's Exhibit 7, the 2nd Defendant confirmed that the property known as Plot.No. 751 within Nkararo Adjudication Section had been allocated to the Plaintiff.
74. The 2nd Defendant clarified that during the Objection proceedings, he was not yet sure of the property that he was in occupation thereof.
75. The 2nd Defendant indicated that the property known as Plot.No.751 within Nkararo Adjudication Section and now titled as LR.NO.TRANSMARA/NKARARO/751 was approximately 8 acres.
76. The 2nd Defendant confirmed to the Honourable Court that the decision of the Land Adjudication Officer regarding the Objection was pronounced on the 30.06.2016.
77. After the determination of the Land Adjudication Officer, the 2nd Defendant was granted 60 days to prepare and file his Appeal if need be.
78. The 2nd Defendant however could not recall when the Appeal was filed before the Minister.
79. The 2nd Defendant on referring to the Defence Exhibit 2 confirmed that the date indicated on the proceedings was 22/06/2021.
80. However, he insisted that the Appeal to the Minister was filed within the required 60 days after the determination of the Objection proceedings as provided by law.
81. On being referred to Defence Exhibit 3, the 2nd Defendant affirmed that the decision by the Minister was in his favour and therefore the property known as Plot.No. 751 within Nkararo Adjudication Section was to be registered in his name.
82. The 2nd Defendant confirmed that he is the one that voluntarily transferred the title known as LR.NO.TRANSMARA/NKARARO/751 to the 1st Defendant although he could not produce the relevant transfer documents including any Land Control Board Consent.
83. On further cross-examination by the 3rd and 4th Defendants, the 2nd Defendant reiterated that he was the person on the ground during the Adjudication process.
84. The 2nd Defendant also admitted that the Adjudication Committee had allocated him Plot.No. 873 within Nkararo Adjudication Section.
85. However, the 2nd Defendant clarified that his objection was on the Plot.No. 751 within Nkararo Adjudication Section.



86. According to the 2nd Defendant, the property known as Plot.No. 751 had been curved out of Plot.No. 873 which had been allocated to him.
87. It was only after the Appeal was heard and determined that the Plot.No. 751 within Nkararo Adjudication Section was returned to the 2nd Defendant and thereafter registered in his name.
88. On re-examination, the 2nd Defendant confirmed that Plot.No. 751 within Nkararo Adjudication Section was allocated to the Plaintiff while he was allocated Plot.No. 873 within Nkararo Adjudication Section.
89. However, during the inspection of the register, the 2nd Defendant discovered that the portion which created Plot.No.751 was actually supposed to be part of Plot.No. 873 within Nkararo Adjudication Section.
90. It was based on this discovery that the 2nd Defendant proceeded to file an Objection on the Plot.No. 751 within Nkararo Adjudication Section to claim back his land.
91. The 2nd Defendant reiterated that the Appeal to the Minister against the decision of the Land Adjudication Officer was done within 60 days and if there was any delay, then the Minister would have declined to register the same and/or proceed to hear the same.
92. In concluding his testimony, the 2nd Defendant confirmed that he was issued with the title to LR.NO.TRANSMARA/NKARARO/751 and the same is currently registered in the name of the 1st Defendant.
93. At the end of this re-examination, the 2nd Defendant was discharged from the witness box and the Defence closed its case.
94. The Plaintiffs were then directed to prepare, file and exchange their written submissions which orders were complied with by the filing of the Plaintiff's submissions on the 05.02.2024 and the 1st and 2nd Defendants submissions on the 14.03.2024.
95. Indeed, the Honourable Court has gone through the pleadings herein, the testimonies of the witnesses, the evidence produced in Court and the submissions filed by the parties and identify the issues for determination as follows; -
- Issue No.1- Whether Or Not The Objection Proceedings Filed By The 2Nd Defendant Over The Property Known As Plot.no.751 Within Nkararo Adjudication Section Now Known As Lr.no.transmara/nkararo/751 Was Fraudulent?
- Issue No. 2- Whether Or Not The Minister Appeal Filed By The 2Nd Defendant Over The Determination Of The Land Adjudication Officer Pronounced On The 30.06.2016 Was Filed Out Of Time?
- Issue No. 3- Is The Plaintiff Entitled To The Prayers Sought In The Plaint Dated 26.07.2022?
- Issue No.4- Who Bears The Costs Of This Suit?
96. The Honourable Court having duly identified the issues for determination as hereinabove, the same will now be discussed below.
- Issue No.1- Whether Or Not The Objection Proceedings Filed By The 2Nd Defendant Over The Property Known As Plot.no.751 Within Nkararo Adjudication Section Now Known As Lr.no.transmara/nkararo/751 Was Fraudulent?



97. The first issue for determination is the legality of the Objection proceedings by the 2nd Defendant against the allocation of Plot.No. 751 within Nkararo Adjudication Section to the Plaintiff.
98. The Plaintiff in particular Paragraph 7 of the Plaint specifically pleaded that the Objection proceedings known as Objection No. 142 of 1990 were never filed at all and therefore there was no lawful and/ or valid Objection lodged against the registration of the Plaintiff as the owner of Plot.No. 751 within Nkararo Adjudication Section.
99. The Plaintiff's position is that the Objection No. 142 of 1990 is a fictitious objection which was amounted over the property known as Plot.No. 751 within Nkararo Adjudication Section without notice to him.
100. In essence therefore, the Plaintiff pleaded that the Objection proceedings were fraudulent and further outlined various particulars of fraud in Paragraph 9 of the Plaint.
101. During the hearing of the matter, the Plaintiff testified that indeed an Objection was filed by the 2nd Defendant against his allocation of the property known as Plot.No. 751 within Nkararo Adjudication Section.
102. The Objection was recorded as Objection No. 142 of 1990 and the same was duly noticed to the Plaintiff who participated in its hearing and actually won the same by securing a dismissal of the same.
103. The Plaintiff on his own motion presented the proceedings and the determination by the Land Adjudication Officer on the 30.06.2016 relating to the Objection No. 142 of 1990 as Plaintiff's Exhibit 1.
104. The copy of the Objection proceedings and the subsequent determination issued on the 30.06.2016 was certified as a true copy of the record on the 01.07.2020 by the Land Adjudication officer.
105. The Plaintiff further in his testimony on Oath confirmed that after the pronouncement of the determination by the Land Adjudication Officer on the 30.06.2016 relating to the Objection No. 142 of 1990, the 2nd Defendant proceeded to file an Appeal to the Minister against the said determination.
106. The 2nd Defendant in his testimony also explained that after the demarcation of Nkararo Adjudication Section, he discovered that a portion of his property known as Plot.No. 873 within Nkararo Adjudication Section had been hived off and allocated another number known as Plot.No.751 within Nkararo Adjudication Section.
107. The property known as Plot No. 751 within Nkararo Adjudication Section was then recorded in the name of the Plaintiff herein.
108. Based on this discovery, the 2nd Defendant proceeded to lodge an objection with the Land Adjudication officer over the allocation of the property known as Plot.No. 751 within Nkararo Adjudication Section to the Plaintiff.
109. The 2nd Defendant confirmed that the Objection was recorded as number 142 of 1990 and was heard on its merit with the participation of the Plaintiff herein and even produced a certified copy of the proceedings and judgement pronounced on the 30.06.2016.
110. Clearly therefore, the presentation of the proceedings and the determination of the Land Adjudication Officer pronounced on the 30.06.2016 in the Objection No. 142 of 1990 confirms that indeed an objection was filed.



111. The issue therefore that there was no objection filed by the 2nd Defendant is in this Honourable Court's view a misrepresentation of facts by the Plaintiff.
112. The Plaintiff during cross-examination by the 1st and 2nd Defendant confirmed that actually an Appeal to the Minister was filed by the 2nd Defendant of which he participated in the hearing save for the date of the determination that was not communicated to him.
113. If the Plaintiff participated in the Appeal for the Minister, where was the Appeal emanating from if there was no Objection proceeding filed by the 2nd Defendant.
114. An Appeal to the Minister cannot arise if there was no Objection proceedings that were heard and determined by the Land Adjudication Officer.
115. The 2nd Defendant produced the proceedings and the determination of the Appeal to the Minister which were produced as Defence Exhibit 2.
116. The Plaintiff did not dispute the validity of the proceedings and determination by the Minister in Appeal No. 70 of 2021 either in his pleadings and/or testimony before the Honourable Court.
117. The proceedings of the Appeal No. 70 of 2021 confirm that indeed the Plaintiff participated in the hearing of the said Appeal which was emanating from the Objection proceedings known as 142 of 1990.
118. In essence therefore, looking at the totality of the testimonies of both the Plaintiff and the 2nd Defendant, this Honourable Court is of the finding that indeed the Objection No. 142 of 1990 was filed by the 2nd Defendant to challenge the ownership of the Plaintiff over the property known as Plot.No. 751 within Nkararo Adjudication Section and the said Objection is not fictitious as alleged by the Plaintiff.
119. This Honourable Court having made a finding that the Objection No. 142 of 1990 filed by the 2nd Defendant exists and is not fictitious as alleged by the Plaintiff, the such an action by the 2nd Defendant cannot be deemed to be fraudulent as it is provided for under Section 26 of the *Land Adjudication Act*, Cap 284 as an internal dispute resolution mechanism.
120. Similarly, the act of the Land Adjudication Officer to hear and determine an existing Objection Section 26 (2) of the *Land Adjudication Act*, Cap 284 is a Statutory duty and such acts cannot be deemed to be fraudulent as alleged by the Plaintiff.
121. If the Plaintiff was dissatisfied by either the manner and/or procedure in which the Objection was received, recorded, heard and/or determined, then the available remedy would have been to quash the said proceedings altogether but such proceedings can not be declared to be fraudulent when they exist in the Government records.
122. To this end therefore, this Honourable Court hereby makes a finding that the Objection proceeding known as 142 of 1990 is not fictitious and/or fraudulent as alleged by the Plaintiff herein.

Issue No. 2- Whether Or Not The Minister Appeal Filed By The 2Nd Defendant Over The Determination Of The Land Adjudication Officer Pronounced On The 30.06.2016 Was Filed Out Of Time?
123. The second issue for determination is whether or not the Minister's Appeal known as Appeal No. 70 of 2021 was filed out of time by the 2nd Defendant.



124. The Plaintiff states that the Appeal against the decision of the Land Adjudication officer was filed outside the prescribed time of 60 days as provided in law.
125. Section 29 of the *Land Adjudication Act*, Cap 284 expressly provides that an Appeal emanating from a determination pronounced under Section 26 (2) of the *Land Adjudication Act*, Cap 284 must file the same within 60 days from the date of pronouncement.
126. The 2nd Defendant testified that the Appeal was filed within the prescribed time of 60 days although he did not remember and/or provide the actual date to which the Appeal was filed.
127. However, the 2nd Defendant was of the strong view that if the Appeal was filed out of the prescribed time, then the Minister would not have admitted it leave along entertaining the same.
128. The issue of whether the Appeal was filed within time or not is a very crucial one.
129. However, Section 107 of the *Evidence Act*, Cap 80 provides as follows;-
- “ (1) Whoever desires any court to give judgement as to any legal right or liability dependent of the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person”
130. Clearly therefore, the Plaintiff is under a duty to prove that the Appeal filed by the 2nd Defendant was done outside the prescribed time of 60 days as provided by law.
131. A perusal of the Plaint does not provide the date of which the 60 days began running and the date of when the same should have stopped.
132. What the Plaintiff relied upon was the date indicated on the proceedings undertaken in the year 2021.
133. The Honourable Court has carefully perused the Defence Exhibit 2 which contains the Proceedings and determination of the Appeal No. 70 of 2021 by the Minister.
134. The dates on the Defence Exhibit 2 which are the proceedings and determination of the Appeal No. 70 of 2021 cannot be said to be the date when the Appeal against the determination made on the 30.06.2015 was lodged.
135. The date that appears on the proceedings of Appeal No. 70 of 2021 simply refer to the date when the Appeal was heard by the Minister and not when the same was lodged by the 2nd Defendant.
136. What was expected of the Plaintiff to prove the lateness in filing of the Appeal by the 2nd Defendant was the Register of Appeals held by the Minister confirming when the 2nd Defendant delivered his Grounds of Appeal under Section 29 (1) (a) of the *Land Adjudication Act*, Cap 284.
137. Unfortunately, the Plaintiff did not make any attempt to provide any evidence to show a possible date when the 2nd Defendant’s Appeal was filed and therefore failed to prove that indeed the Appeal No. 70 of 2021 was filed outside the prescribed 60 days as provided under Section 29 of the *Land Adjudication Act*, Cap 284.
138. In essence therefore, this Honourable Court is of the view that the Plaintiff has not provided any evidence to prove that the Appeal known as 70 of 2021 filed by the 2nd Defendant against the decision of



the Land Adjudication Officer pronounced on the 30.06.2016 was out of time and therefore unlawful and/or irregular.

139. Consequently, the proceedings undertaken by the Minister on the 22.06.2021 under Appeal No. 70 of 2021 relating to the property known as Plot.No. 751 within Nkararo Adjudication Section between the Plaintiff and the 2nd Defendant were lawful, valid in law and binding on the parties who participated in the same.

Issue No. 3- Is The Plaintiff Entitled To The Prayers Sought In The Plaint Dated 26.07.2022?

140. The third issue is whether or not the Plaintiff herein is entitled to the prayers sought in the Plaint.
141. The first prayer which is the foundation prayer is that this Honourable Court should declare the Plaintiff as the rightful owner of the property known as LR.NO.TRANSMARA/NKARARO/751.
142. Thereafter, the Plaintiff seeks for a cancellation of the 1st Defendants registration and/or title and thereafter an eviction from the property known as LR.NO.TRANSMARA/NKARARO/751.
143. Similarly, the Plaintiff is seeking for a permanent injunction against the 1st and 2nd Defendant from either occupying, using and/or dealing with the said property known as LR.NO.TRANSMARA/NKARARAO/751.
144. It is important to state that the registration of the 2nd Defendant as the lawful owner of the property known as LR.NO.TRANSMARA/NKARARO/751 was done through the determination of the Appeal No. 70 of 2021 on the 22.06.2021.
145. The implementation of the determination by the Minister in the proceedings known as Appeal No. 70 of 2021 was recognised and communicated to the Chief Land Registrar on the 13.01.2022 as contained in the Defence Exhibit 3.
146. The Honourable Court in Issue No. 2 has made a finding that the Appeal No. 70 of 2021 was undertaken in a lawful manner and therefore the determination by the Minister on the 22.06.2021 is binding on the parties that were involved.
147. Section 29 (1) of the [Land Adjudication Act](#), Cap 284 provides as follows:-

“(1) Any person who is aggrieved by the determination of an objection under Section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the minister by:-

- a. Delivering to the Minister an appeal in writing specifying the grounds of appeal; and
- b. Sending a copy of the appeal to the Director of Land Adjudication,

And the Minister shall determine the appeal and make such orders thereon as he thinks just and the order shall be final.”

148. The understanding of this Honourable Court from the above underlined part of Section 29 is that there is not other person that can alter the decision of the Minister upon a determination being made in an Appeal before him.



149. As such, this Honourable Court has no powers to alter the determination of the Minister pronounced on the 21.06.2021 in the proceedings known as Appeal No. 70 of 2021 relating to the property known as Plot.No. 751 within Nkararo Adjudication Section between the 2nd Defendant and the Plaintiff.

150. In essence therefore, this Honourable Court is of the considered view that the prayers sought in the Plaintiff cannot be granted in view of the determination by the Minister pronounced on the 21.06.2021 in the proceedings known as Appeal No. 70 of 2021 relating to the property known as Plot.No.751 within Nkararo Adjudication Section between the 2nd Defendant and the Plaintiff.

Issue No.4- Who Bears The Costs Of This Suit?

151. The last issue is that of costs relating to the suit before the Court.

152. It is settled law that costs usually follow the event unless otherwise justified.

153. In the present suit, the Plaintiff's case has not been successful and therefore costs follow him.

Conclusion.

In conclusion therefore, this Honourable Court hereby makes the following Orders in determination of the Plaintiff dated June 26, 2022;-

A. The plaintiff dated June 26, 2022 be and is hereby dismissed.

B. The plaintiff will bear the costs of the suit.

DATED, SIGNED & DELIVERED Virtually by the KILGORIS ELC on 21ST OF MAY 2024.

EMMANUEL.M.WASHE

JUDGE

In The Presence Of :

COURT ASSISTANT: MR. NGENO

ADVOCATES FOR THE PLAINTIFF: MR. OCHWANGI (N/A)

ADVOCATES FOR THE DEFENDANT: MS. PION

