



REPUBLIC OF KENYA



**Marima & 6 others v Njapit & 5 others (Environment & Land Case
E018 of 2021) [2024] KEELC 4038 (KLR) (21 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4038 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE E018 OF 2021**

CG MBOGO, J

MAY 21, 2024

BETWEEN

MOSES TENG'A OLE MARIMA 1ST PLAINTIFF
MARTINE OLE MARIMA 2ND PLAINTIFF
SIATABAL OLE MARIMA 3RD PLAINTIFF
NICHOLAS KURASH OLE MEITAYA 4TH PLAINTIFF
**MOIPEI OLE MARIMA (SUING ON BEHALF OF THE ESTATE OF KIRINKAI
OLE MARIMA, DECEASED) 5TH PLAINTIFF**
**NTIMAMA OLE MARIMA (SUING ON BEHALF OF THE ESTATE OF
LOOLBARISHO OLE MARIMA, DECEASED) 6TH PLAINTIFF**
**SIMINTEI OLE MARIMA (SUING ON BEHALF OF THE ESTATE OF TEKETI
OLE MARIMA, DECEASED) 7TH PLAINTIFF**

AND

MARASWA OLE NJAPIT 1ST DEFENDANT
NDERI OLE NAMPOSA 2ND DEFENDANT
NDERITU MICHAEL KIMENDERO 3RD DEFENDANT
DISTRICT LAND REGISTRAR, NAROK 4TH DEFENDANT
DISTRICT SURVEYOR 5TH DEFENDANT
THE HON. ATTORNEY GENERAL 6TH DEFENDANT



JUDGMENT

1. On 3rd September, 2021 the plaintiffs filed the plaint dated 1st September, 2021 seeking judgment against the defendants for: -
 1. A declaration that the defendants' intention to subdivide the plaintiffs' parcel of land known as Cis Mara/ Oldonyo Rasha/ 181, Cis Mara/ Oldonyo Rasha/ 182, Cis Mara/ Oldonyo Rasha/ 183, Cis Mara/ Oldonyo Rasha/ 184, Cis Mara/ Oldonyo Rasha/ 185, Cis Mara/ Oldonyo Rasha/ 186, Cis Mara/ Oldonyo Rasha/ 1294 as per the mutation form herein is illegal and null and void ab initio and the mutation form be nullified.
 2. A declaration that the title numbers Cis Mara/Oldonyo Rasha/1310, Cis Mara/Oldonyo Rasha/1311 and Cis Mara/Oldonyo Rasha/1312 were fraudulently registered and the same be nullified and cancelled.
 3. A permanent injunction restraining the defendants either by themselves, their agents, servants and/or employees from trespassing, subdividing, registering any subdivisions, selling, transferring, charging and/or from any other manner of interference with the parcels of land known as Cis Mara/ Oldonyo Rasha/ 181, Cis Mara/ Oldonyo Rasha/ 182, Cis Mara/ Oldonyo Rasha/ 183, Cis Mara/ Oldonyo Rasha/ 184, Cis Mara/ Oldonyo Rasha/ 185, Cis Mara/ Oldonyo Rasha/ 186, Cis Mara/ Oldonyo Rasha/ 1294.
 4. Cost of the suit with interest.
 5. Any other relief this court may deem proper to grant.
2. The plaintiffs averred that they are the lawful owners of the parcels of land known as Cis Mara/ Oldonyo Rasha/ 181, Cis Mara/ Oldonyo Rasha/ 182, Cis Mara/ Oldonyo Rasha/ 183, Cis Mara/ Oldonyo Rasha/ 184, Cis Mara/ Oldonyo Rasha/ 185, Cis Mara/ Oldonyo Rasha/ 186, Cis Mara/ Oldonyo Rasha/ 1294 and that they were the legitimate members of Oldonyo Rasha Group Ranch, the initial owner of CisMara/Oldonyo Rasha/1 measuring approximately 1403.0 Hectares.
3. The plaintiffs further averred that during the annual general meeting held on 9th July, 1996, the majority of members passed a resolution to dissolve the group ranch, which was subsequently followed by subdivision of the land that created 321 portions. That around the month of June, 2021, they learnt that the defendants were making efforts to register illegal titles purported to be subdivisions of their parcels of land and upon conducting due diligence, they realized that the 1st and 2nd defendants had instructed the 3rd and 5th defendants to create and register a fraudulent mutation form.
4. The plaintiffs pleaded particulars of fraud on the part of the 1st, 2nd, 3rd and 5th defendants as follows: -
 - a. Creating and registering an illegal mutation form for a parcel of land known as CisMara/OldonyoRasha/1300 with a fraudulent intention of creating a development on the plaintiff's land.
 - b. Purporting to subdivide the plaintiffs land and hive out approximately 118 Ha without a lawful cause and/or plaintiffs' consent.
 - c. Purporting to register an illegal and defective mutation form with the intention of defeating the plaintiffs' proprietary rights on their parcel of land.



- d. Purporting to carry out a subdivision on the plaintiffs' land without firstly obtaining Land Control Board consents.
 - e. Purporting to deliver the illegal documents to the 4th defendants with the intention of creating illegal titles and defraud the plaintiffs.
5. The plaintiffs further pleaded that the mutation form they(defendants) obtained is defective in form and want, and the same could not be supported in law. They also averred that the defendants fraudulently and illegally created registers for Cis Mara/Oldonyo Rasha/ 1310, Cis Mara/ Oldonyo Rasha/ 1311 and Cis Mara/ Oldonyo Rasha/ 1312 in the name of a defunct and non- existent group measuring approximately 118 Hectares.
6. The plaintiff pleaded further particulars of fraud as follows: -
- a. Purporting to create and register titles from an inexistent land but to be hived off from the plaintiffs' land.
 - b. Allocating to a non-existent, defunct and/or amorphous group with the sole intention of defrauding the plaintiffs.
 - c. Fraudulently dispossessing the plaintiffs' 118 Hectares.
7. The plaintiffs averred that there is apparent danger of interference with the illegal titles by way of sale, and further subdivisions since independent registers have been created for the new subdivisions.
8. On the 15th September, 2021 the 4th, 5th and 6th defendants filed their statement of defence dated 13th September, 2021. The 4th, 5th and 6th defendants denied the contents of the plaint, more particularly on fraud and averred that on a without prejudice, that if at all there was any mutation registered, the same was done within the 5th defendants' statutory mandate.
9. The 4th, 5th and 6th defendants averred that the suit offends the mandatory provisions of Section 13A of the Government Proceedings Act, and shall raise a preliminary objection to have the suit struck out as no notice of intention to sue the government was ever issued.
10. On the 24th March, 2024 the 1st, 2nd and 3rd defendants filed their statement of defence and counter claim dated 21st March, 2023. The 1st, 2nd and 3rd defendants admitted the contents of paragraph 7 of the plaint to the extent that the plaintiffs' claim should be within the boundaries of their subject properties, since the boundaries of land allocated to them are well defined, which they decided to unlawfully extend or grab from the group ranch.
11. The 1st, 2nd and 3rd defendants further averred that the parcel of land Cis Mara/Oldonyo Rasha/1300, was part of the unregistered group ranch, and subdivisions were later carried out by the District Surveyor's office and relevant green cards were opened for the resultant portions. Further, they averred that the group ranch officials have no claim on the plaintiffs' land and in fact, the plaintiffs seek to unlawfully extend their boundaries in an attempt to annex the land belonging to the group ranch. They denied the particulars of the allegations of fraud, and averred that Cis Mara/Oldonyo Rasha/1300 does exist and that the mutation form was created by the District Land Surveyor under the law.
12. In their counter claim, the 1st, 2nd and 3rd defendants sought the following orders: -
- a. An order of eviction against the plaintiffs/defendants to the counter claim, agents and/or servants from land parcel Cis Mara/Oldonyo Rasha/1300.



- b. Permanent injunction restraining the plaintiffs/ defendants to the counter claim, either by themselves, agents, servants and/ or agents from encroaching, entering upon, trespassing onto, alienating, selling, transferring and/or otherwise interfering with land parcel Cis Mara/ Oldonyo Rasha/1300.
 - c. General damages for encroachment and trespass, together with interests thereon at court rates from the date of judgment.
 - d. Costs of the cross suit be borne by the plaintiffs/defendants to the counter-claim.
 - e. Any other relied as the honourable court may deem fit and expedient.
13. In their counter claim, the 1st-3rd defendants (now plaintiffs) averred that on or about the year 2016, the defendants to the counter claim irregularly, and fraudulently encroached onto a better portion of land parcel Cis Mara/ Oldonyo Rasha/ 1300 with the pretense that the said portion is part of land parcels Cis Mara/ Oldonyo Rasha/ 181, Cis Mara/ Oldonyo Rasha/ 182, Cis Mara/ Oldonyo Rasha/ 183, Cis Mara/ Oldonyo Rasha/ 184, Cis Mara/ Oldonyo Rasha/ 185, Cis Mara/ Oldonyo Rasha/ 186, Cis Mara/ Oldonyo Rasha/ 1294, and went on ahead to fence off a better part of the said land.
 14. That despite the defendants to the counter claim being aware of the size of their parcels of land, they have forcefully encroached onto parcel Cis Mara/Oldonyo Rasha/1300 without the plaintiffs' permission, and as a result, they have been deprived of their rights over the suit property which they hold as trustees of the members of the group ranch.
 15. On the 25th May, 2023 the plaintiffs filed their reply to defence and defence to counter claim dated 19th May, 2023. The plaintiffs averred that the 1st, 2nd and 3rd defendants have been sued in their individual capacity, and they do not have lawful authority to represent a defunct body, or even an authority from the legitimate members to conduct any of their alleged action. Further, they averred that upon subdivision of the group ranch to the legitimate members, titles for the respective portions of land were issued, without any issues of boundary, and without leaving any block unregistered, and the parcel of land Cis Mara/Oldonyo Rasha/1300 was unlawfully created as it does not exist on the ground.
 16. In their defence to the counter claim, the plaintiffs averred that the 321 portions created by the Surveyor in 1997 to 1998 were lawfully done, and that the boundaries were accordingly created as per individual acreage allocated by the committee. Further, that there was never a parcel of land available to be registered as Cis-Mara/Oldonyo Rasha/1300 and the purported encroachment is illusional. They also averred that the purported exercise by the 4th and 5th defendants was unlawful, and not sanctioned by the legitimate members of the group. The plaintiffs denied any acts of trespass and the authority of the 1st, 2nd and 3rd plaintiffs' in the counter claim as they are not officials or registered trustees of a defunct group.
 17. The plaintiffs case proceeded for hearing on 12th June, 2023. The 1st plaintiff adopted his witness statement dated 11th March, 2023 as his evidence in chief, and he produced the documents contained in the list of documents dated 1st September, 2021 as P. Exhibit nos. 1 to 7 respectively, and P. exhibits nos. 8-16 respectively, as contained in the list of documents dated 19th May, 2023.
 18. The 1st plaintiff testified that he knows the 1st and 2nd defendants as official members of Oldonyo Rasha Group Ranch. He pointed out and that the 1st defendant was the Secretary while the 2nd defendant was the Treasurer. He went on to testify that the Chairman was Kalemaet Ole Meingati, who is now deceased, having passed on in the year 2021, before the defendants started carrying out illegal sub division on their land. He also testified that he does not know the 3rd defendant, and that the 1st and 2nd defendants are not officials of the Group Ranch because the committee was dissolved in the year 1996.



- The 1st plaintiff testified that there has never been any boundary disputes amongst the legitimate land owners since the sub division was done in the year 1997. He said that he is not aware that there was an unmarked land that was left and which affects his land. He testified that the 3rd defendant did not involve him while he conducted the survey, and that he was not aware of the survey exercise, nor was he called to a meeting by the defendants to address the alleged issue of the unmarked land. It was also his evidence that the other plaintiffs were not called either and he went on to inform the court that the defendants conducted illegal sub division of his land.
19. With regard to P. Exhibit No. 3 for parcel number block number 1300 Oldonyo Rasha Group Ranch, the 1st plaintiff testified that the land does not exist on the ground. He testified that the first registration was done on 4th May, 2021 in the name of Oldonyo Rasha Group Ranch, and it was transferred to one Tobiko Ole Lemporien whom he has never seen on the ground. It was his testimony that he cannot be evicted from the land which he has a title to and that the beacons are still on the ground. He said that he was a member of the Group Ranch when it was sub divided.
 20. On cross-examination, the 1st plaintiff testified that the 1st and 2nd defendants used to be officials of the Group Ranch, and that the members of the said Group Ranch are the ones who elected them. He agreed that the members of the Group Ranch are the ones who can dissolve the Group Ranch, and that there is need for the members to meet and dissolve the Group Ranch, of which he has presented the minutes in court to show that the Group Ranch was dissolved. He testified that there has never been a sub division of his land, and that his title deed shows that its acreage is 19.80 hectares. It was also his evidence that his land has not been sub-divided even though there is an imposition on his land. He agreed that not all the members of the Group Ranch used to attend meetings, and that he is aware that there has been a dispute in Oldonyo Rasha and Maji Moto Group Ranches.
 21. The 1st plaintiff testified that he engaged a Surveyor to ascertain his beacons and the surveyor who visited his land in the year 2021, but that he has not brought any report. He testified that his parcel of land is fenced, and that he fenced it 2 years ago. He also testified that he went to complain to the District Surveyor since the Surveyor did not issue any summons to indicate when he was going to visit his land.
 22. On further cross examination, the 1st plaintiff testified that he reported the issue of fraud against the 5th defendant, and that he filed the complaint with the Directorate of Criminal Investigations. He also said that he reported to the Surveyor on the change of his parcel of land but he was not issued with any report. He said that he came up with the conclusion that there was fraud because he knew the acreage of his land and the area was subsequently sub divided into 300 parcels. He admitted that the 1st and 2nd defendants came to his land to sub divide it yet he still holds the title to his land. It was his evidence that he has filed maps to show his land and that he fenced 19.80 hectares.
 23. On re-examination, the 1st plaintiff testified that he does not have the minutes confirming dissolution of the Group Ranch but he has an application to dissolve the Group Ranch as contained on page 64 in their list of documents which shows that minutes were received seeking for the dissolution of the Group Ranch. He testified that there was an Annual General Meeting that was held to dissolve the Group Ranch, and that the officials of the Group Ranch ceased to hold office. He pointed out that he engaged a Surveyor in the year 2021, after some people alleged to have bought portions of his land, and he believes that the Surveyor prepared a report. He also testified that he was also not aware of any eviction against the defendants and that the 3rd defendant was charged in court. He also said even though that the defendants have a survey plan, there was no physical sub division conducted on the land.
 24. With the evidence of the 1st plaintiff, the plaintiffs closed their case.



25. The defendants case proceeded for hearing on 26th July, 2023. The 3rd defendant testified that he is a private Surveyor and an approved assistant of Juliko Geo Spatial Consultant. He testified that he was selected to be an approved assistant in the year 2005 by Mr. Julius Orwa Kobado. The 3rd defendant adopted his witness statement dated 21st March, 2023 as his evidence in chief. With regard to Oldonyo Rasha Group Ranch, the 3rd defendant testified that his role was to survey and he visited the ground in the presence of the 1st and 2nd defendants where he noticed some space of land between the said Group Ranch and Maji Moto Group Ranch. It was his testimony that he advised them to write to the Land Registrar in order to have the land drawn in a map. He testified that the land in question was not in the RIM kept by the lands' office and that the Land Registrar asked them to visit the area. He informed the court that he did so in the presence of the District Surveyor and the District Land Registrar, and that the latter requested him to compute the area which was not in the map and facilitate them with the drawing of the area.
26. The 3rd defendant testified that he picked the maps of Maji Moto and Oldonyo Rasha Group Ranches and proceeded to the area to pick the area that was not in the map. That after completing his work, he drew a map which he presented to the District Surveyor. The 3rd defendant produced D. Exhibit Nos. 1 to 9 respectively contained in their list of documents dated 21st March, 2023.
27. On cross examination, the 3rd defendant testified that he has lawful authority to produce documents in court. He admitted that the 1st and 2nd defendants visited him in his office since they wanted to show him an area that was not covered in the map. It was his testimony that the visit was not meant for the entire land and that his task was confined to the area that was not in the map. That once they visited the land, the 1st and 2nd defendants showed him the end of Oldonyo Rasha Group Ranch. He testified that he had the map of Maji Moto Group Ranch which led him to the beacons. He also said that he used Global Position System (GPS) and that the coordinates are in the map which he presented.
28. The 3rd defendant agreed that he prepared a report after he visited the ground, and that apart from the mutation, he did not prepare any report. He testified that he did not have instructions from the 1st and 2nd defendant but he went ahead to charge them for the exercise. He testified that he did not conduct any search of the affected area and that there were no parcels of land affected by his survey. He also said that he could be able to identify the unmapped land between Maji Moto Group Ranch and Oldonyo Rasha Group Ranch, as there were beacons for the two Group Ranches. He went on to say that there were fences erected on the ground and that he enquired to know who the owners of the fences were. It was his evidence that he never got to meet those people but he conducted the exercise in the presence of the 1st and 2nd defendants as well as the Land Registrar and the District surveyor.
29. The 3rd defendant informed the court that he advised the 1st and 2nd defendants to write to the Land Registrar to request for mapping of the area. It was his evidence that he saw the letter to the Land Registrar even although the same was not been brought to court. According to him, it was as a result of the said letter that the Land Registrar and the District Surveyor decided to do the mapping of the area. He further testified that he was asked to carry out the sub division of the area by the Land Registrar. He agreed that there was a mutation form marked as D. Exhibit No.1 but he was not sure of the date on the said D. exhibit no. 1. He testified that the mutation that he was asked to draw is D. Exhibit No. 1. On being shown his witness statement, the 3rd defendant informed the court that the mutation form is dated 14th June 2020. He further testified that the District Surveyor issued him with the said mutation form and that he was also requested to draw another mutation form for Oldonyorasha block 1300. He testified that he does not have the other mutation form that he prepared and that he had not sub divided the land at the time when he was preparing the mutation form.



30. The 3rd defendant went on testify that the officials of Oldonyo Rasha Group Ranch asked him to prepare 15 parcels of land as per the consent from the Land Control Board and that he did not see the consent in court. He testified that the consent was dated 1st April, 2021. He further testified that as per paragraph 14 of his statement shows that on 28th July, 2020 he went to the District Surveyor to pick another mutation form in order to draw the sub division plan on it and that one mutation form was for block 1300. He testified that the 15 parcels of land were informed by the acreage on the ground, and he agreed that he did not have the consent then, and that he relied on the coordinates which he obtained on the ground. He further testified that the numbers in the mutation form were issued by the District Surveyor and that he could not be able to tell when the District Surveyor issued the numbers in the mutation form.
31. The 3rd defendant further testified that on 4th August, 2020 he sold Cis Mara/Oldonyorasha/block 1312 to one Stephen Kayioni Koseru, and that he was issued the number by the District Surveyor. He said that as of 4th August, 2020 the partitions had already been created. He admitted that he sold the land as the proprietor of the land, and that he later cancelled the agreement for sale, after he was charged in court for obtaining money by false pretense. He disagreed with the counsel's suggestion that there was no land on the ground and stated that one cannot sell land which has not been registered. According to him, he had a title deed in August, 2020 but he did not bring a copy to the court. He agreed that he has not produced title deeds for the sub division.
32. The 3rd defendant testified that it was not a scheme to defraud the plaintiffs off their land, and that as per the consent (D. Exhibit No. 3), the application for consent was done on 30th March, 2021. He testified that he was not aware that Kelemet Ole Meingati had since passed on as at that time, and he would not be surprised to learn that he died on 12th July, 2020. He agreed that professionally, the letter (D. Exhibit No. 3) was issued in the absence of Kelemet Ole Meingati.
33. On further cross examination, the 3rd defendant testified that his instructing clients for the mapping and surveying were the officials of Oldonyo Rasha Group Ranch and that he took their word for it. He said that he relied on the letter from the Land Registrar to conduct the survey and that he used the maps from the District Surveyor. He agreed that he did not conduct a search to confirm that the land was not registered and that the letter from the Land Registrar directed that they visit the ground. He testified that the acreage of the property that he was surveying was 454.03 hectares which forms part of the unsurveyed land. He also said that the unsurveyed land borders the plaintiffs' parcel of land and that there is a road between the plaintiffs' land and the unsurveyed land. He admitted that he was aware of a boundary dispute between the Maji Moto and Oldonyo Rasha Group Ranches, but, he did not hive off part of the plaintiff's land. According to him, there are 2 roads bordering the unsurveyed land and that he consulted the District Land Registrar and the District Surveyor and the two visited the land.
34. The 3rd defendant testified that there were beacons on Maji Moto Group Ranch and beacons on Oldonyo Rasha Group Ranch and that 15 parcels resulted from the sub division. He said that he is not an official of Oldonyo Rasha Group Ranch and that he was paid with land parcel 1312. He testified that the criminal case is still ongoing in court. He also testified that the District Surveyor had the role of registering the mutation and that he was the one who presented the mutation form to the District Surveyor. It was also his testimony that the initial form was for the area that he had picked on the ground which was issued number 1300. He testified that the second mutation form was for sub division and that two forms appeared in his office. It was his testimony that he did not meet Mr Kelemet, and that the officials who went to instruct him were the 1st and 2nd defendants, who were the secretary and treasurer respectively.



35. On re-examination, the 3rd defendant testified that the criminal case against him is pending in court and that he cancelled the sale agreement because of the criminal case. It was his testimony that his work did not include ascertaining the sizes of the parcels that had already been sub divided and that his limit was confined to the area not included in the map. He said that it was not necessary for him to carry out official search of the registered parcels before carrying out his work, and that it was not necessary to carry out his work beyond the area that he had been shown. He testified that he relied on the Registry Index Maps (RIMs) to guide him, and that he ascertained that what he was shown corresponded to the scope of his work. It was also his testimony that he could not identify the unsurveyed land on the map as it had been left out, and that it was not necessary to find out if there were other disputes over the unmapped land. He testified that he did not hide while carrying out the survey, and that there was nothing to inform him of a dispute beyond what he knew. He testified that the plaintiffs are not the complainants in the criminal case against him, and that the dispute between Oldonyo Rasha and Maji Moto Group Ranches is no longer in existence. It was his testimony that it was suitable for him to do the sub division, and that the District Land Registrar and the District Surveyor accompanied him to the ground. He further testified that the 1st and 2nd defendants gave him a mutation form after they visited the ground, and that he did not go to the Land Control Board, as his presence before the Board was not necessary. He reiterated that the scope of his instructions was to draw the unmapped land, and to sub divide it, and that the mutation form shows how the land is on the ground. He testified that the unmapped place was marked 1300, and that he did not go beyond the scope of his instructions. He testified that he presented his findings to the District Surveyor, and that he went to the ground upon the instructions of the Land Registrar.
36. On 16th October, 2023 the 1st defendant adopted his witness statement dated 21st March, 2023 as his evidence in chief. He testified that he is the secretary of Oldonyo Rasha Group Ranch and also a member of the said Group Ranch. It was his testimony that the Group Ranch was formed by members who included him and that the Group Ranch can only be dissolved by the members. He went on to testify that he has never been summoned to a meeting with a view to dissolving the Group Ranch, and that he has never heard of any meeting that was held to dissolve the Group Ranch. He said that for the Group Ranch to be dissolved, there must be a resolution which is minuted and that he has never seen such minutes to dissolve the said Group Ranch.
37. The 1st defendant testified that the offices of the Land Registrar and the Surveyor were guiding them on how to sub divide the Group Ranch, and that the two officers went to the ground and told them that they were at liberty to sub divide the group's land amongst its members. He testified that the Group Ranch neighbours other group ranches such as Maji Moto, and that during the sub division of Oldonyo Rasha's land, dispute arose between them and Maji Moto Group Ranch, and they were forced to leave a parcel of land unsurveyed in order to avoid further disputes with Maji Moto Group Ranch. That after some time, they resolved to further sub divide the area that they had left unsurveyed after ascertaining its presence with the Land Registrar and the Surveyor. It was his testimony that when they commenced sub division amongst the children of the members of the Group Ranch, some members whom they had allocated land alleged that what they were subdividing was their property.
38. On cross examination, the 1st defendant testified that the Group Ranch was registered around the year 1976, and that he later became its secretary. He testified that the members of the Group Ranch were entitled to be allocated land and that they had the intention of allocating land to the members of the Group Ranch. He said that previously, it was used as a grazing ground. He testified that sub-division of the land began in the year 1997, and that its registration number is Cis Mara/4, with the total acreage being about 36,000 acres. According to him, Cis Mara/Oldonyo Rasha/1 was taken by the County Council, and that they had authority from the Ministry of Lands to sub divide the Group Ranch.



It was his testimony that they did not dissolve the Group after they sub divided the land amongst members, and that it was not mandatory for the members to get equal parcels of land. On his part, he owns a parcel of land which he got from the Group Ranch, and that they did not finish sub dividing the Group Ranch's land, and that some members were issued with title deeds. He went on to say that since the year 1997, they have never held any meetings as a Group Ranch, and that the Group Ranch does not have an office, and neither does it have a bank account. He also said that they do not send any returns to the office of the Land Registrar.

39. The 1st defendant testified that they knew they had unsurveyed land belonging to the Group Ranch which they started to sub divide in the year 2021. He testified that there could be minutes where it was resolved that the land not sub-divided be surveyed and distributed. He said that in the year 1997, they got authority from the Ministry of Lands to commence the adjudication process of the land, and that the chairman of the Group Ranch was known as Meingati who is now deceased. He testified that they replaced the deceased chairman, in a meeting that they held on 20th July, 2020 with a new Chairman by the name of Koonyi and that there were 27 members in attendance. He disagreed with the counsel that out of the 27 people present, only 4 were members. He testified that they appointed Nderitu as their Surveyor but he could not remember if they recorded minutes which resolved to appoint the Surveyor. It was his testimony that they paid the Surveyor in instalment, and whereas he was not in court when the Surveyor testified, he lied if he told the court that he was not paid in cash. He further said that they appointed the Surveyor in the year 2020, and that he is aware that he started his work in August, 2020. He said that he is not a member of the Group Ranch.
40. According to the 1st defendant, the Surveyor commenced work while the deceased chairman was alive, and that they did not allocate any land to the Surveyor, and that the latter lied in court if he said that he was indeed allocated land. He also testified that he does not know if the Surveyor has been criminally charged for selling land that does not belong to him. He agreed that the Chairman was deceased in April, 2021 when they obtained the consent from the Land Control Board but he did not know how the deceased chairman signed the application for consent before the Board in August, 2021. He agreed that they involved the owners of the parcels of the land that border the unsurveyed land that they were sub dividing and that they erected beacons.
41. The 1st defendant testified that they issued title deeds in the names of the persons that they allocated the land, and that he is the one who is retaining the title deeds which are over 10, and which title deeds belong to the various persons. It was his testimony that the title deeds were initially registered in the name of Oldonyo Rasha Group Ranch before they were transferred to the new members and he agreed that there were minutes where it was resolved that the parcels of land be transferred to new members. He admitted that it is true that the new owners are not members of the Group Ranch but they are children of the members. He disagreed with the counsel that they did not erect beacons on the ground, and that as an official of the Group Ranch, he did not allocate any land to the Surveyor.
42. He testified that the dispute between Oldonyo Rasha Group Ranch and Maji Moto Group ranch was resolved in 1997. He also denied that they have conspired to defraud people off their land. He informed the court that he is aware that he was sued for selling a non-existence parcel of land, and that he won the case because those who sued him were not members. He further testified that the court that acquitted him did not find that there was no land to allocate to those who had sued. It was also his evidence that he does not know if the Land Registrar testified that there was no land to allocate to the people who had sued him, but that they have a counter claim, which he would like the court to order that they allocate land to the new owners. He also testified that they do not have an amended register of members.
43. On further cross examination, the 1st defendant testified that he has been the secretary of the Group Ranch for a long period, and that as a secretary, he signs many documents. He testified that since the



year 1997 up to the year 2021, they knew that there was a parcel of land that was unmarked, and that they stayed for long because of the numerous suits. According to him, the plaintiffs were allocated their own parcels of land, which they (defendants) have not trespassed into. He testified that they asked the Government Surveyors to confirm if there was unmarked land on the ground before they could sub divide it, and that most of the plaintiffs were involved in the new exercise. He further testified that the District Land Registrar and the Surveyor gave them a go ahead to sub divide the land and gave them power to appear before the Land Control Board for consent. It was his testimony that they sub divided about 21 parcels, and that the unmarked land was not being put into any activity other than grazing animals. He went on to testify that he knows that the Surveyor who sub divided the land was paid in cash for the work that he carried out, and that they did not allocate him land.

44. The 1st defendant further testified that he knew Meingati, but he could remember the exact year when he passed on. According to him, the said Meingati was alive when they signed the appropriate documents placed before the Land Control Board. He further testified that they recorded minutes after they resolved to allocate land to the children of the officials of the Group Ranch, and that the children are members of the Group Ranch. It was also his evidence that all the parcels apart from 2 were transferred to the children of the members, and that they had reserved an area that was for public utility, which remains unallocated.
45. On re-examination, the 1st defendant testified that the treasurer of the Group Ranch deals with money on behalf of the Group Ranch, and that the Group Ranch held several meetings to resolve whatever issues that emerged during sub divisions. He further testified that not all meetings elicited the preparation of minutes and he maintained that they could not sub divide land without members. He further said that there were minutes when they elected one Koonyi as the chairman, and that the plaintiffs have their own parcels of land that have title deeds. He testified that there has never been any dispute as to the existence of the Group Ranch, and that the dispute revolves around the unmarked land since he knows that there was unmarked land and which is why they sought the assistance from the office of the Surveyors. He said that there was nothing to bar their children from being allocated land.
46. The 4th, 5th and 6th defendants did not call their witnesses, which marked the close of the defendants' case.
47. The plaintiffs filed their written submissions dated 26th March, 2024 where they raised the following issues for determination: -
 - a. Are the plaintiffs the legitimate proprietors of the land in question?
 - b. Was the procedure adopted by the defendants fraudulent?
 - c. Legitimacy of the group ranch.
 - d. Should the court aid an illegality?
 - e. Does the case have merits?
48. On the first issue, the plaintiffs submitted that a keen perusal of the Registry Index Map (RIMs) establishes that the plaintiffs' parcels of land are running on an edge along the boundary between the defunct Oldonyo Rasha Group and Maji Moto Group Ranches and that it was not proven that the plaintiffs land contained measurements that were beyond what is contained in their respective title deeds and as contained in the registered cadastral map. They submitted that there is no material on record to support the defendants' contention that there exists land beyond the boundaries of the plaintiffs' parcels of land. They went on to submit that there is no proof of an application to the office of the Survey to rectify the boundaries and that there is no approved subdivision plan in the prescribed



- form supplied to the office of the 4th and 5th defendants attempting to make any corrections to the cadastral map. The plaintiffs also submitted that the exhibit 7 is a public document prepared and published by the Survey of Kenya and the same is accurate. They added that there is no law in Kenya that provides for unmapped land purportedly left out in an adjudication section and after registration of the RIM.
49. The plaintiffs further submitted that the allegation that the 3rd, 4th and 5th defendants visited the land and identified the unmapped land was equally not supported by any evidence of any drawings, plan and sketches to show how the exercise was conducted. They submitted that there was no beaconing and no beacon certificates were produced to confirm that demarcation had actually been done. They submitted that they have proven that they are the legitimate proprietors of the subject parcels of land containing measurements equivalent to the acreage provided for in their respective title deeds to the exclusion of any other purported claimant.
 50. On the second issue, the plaintiffs submitted that the defendants claim that they have encroached into a section of land belonging to the defunct group ranch has been made about 26 years since the dissolution of the group ranch and the distribution of 321 parcels of land to the registered members. They further submitted that it is inconceivable that about 1121.93 acres could have been left out without mapping, registration and without being noticed by the Land Surveyors and without being in the RIM. It was also submitted that it is not believable that it took the 1st and 2nd defendants 26 years to realize that a huge parcel of land had been left out unmapped. They submitted that the defendants allegedly prepared a mutation form and created Cis Mara/ Oldonyo Rasha/ 1300 which created 14 other subdivisions from block 1300 and that legally, if there ever existed land as alleged, then the same would fall under the category provided for by the law. They further submitted that it follows therefore that the defendants having registered Block 1300, its management was under the provisions of the Constitution, Land Registration Act and the Community Land Act. That in this case, the requirements under Sections 8 and 23 of the Community Land Act and Sections 16 to 20 of the Land Registration Act were left out and not complied with.
 51. On the third issue, the plaintiffs submitted that the Group Ranch mandate had been concluded upon distribution of the land and it was therefore dissolved and there are no further records in court as evidence that it continued to exist thereafter. They submitted that the letter by the Director of Land Adjudication and Settlement confirms that the Group Ranch was dissolved after an application was made with the fact that there were minutes of an Annual General Meeting submitted with the application. They submitted that the dissolved Group Ranch cannot be given life after a period of 26 years of inactivity and the same having been dissolved, the 1st and 2nd defendants misrepresented themselves as officials of a defunct group. They relied on the case of Dennis Olooligero & 2 Others versus The Art of Ventures Limited & 2 Others [2006] eKLR.
 52. On the fourth issue, the plaintiffs while relying on the cases of Wambui versus Mwangi & 3 Others (Civil Appeal No. 465 of 2019) 2021 KESA 144 (KLR) (19 November, 2021) and Kawaljeet Singh Rekhi versus Peter Wainaina Kamau & 2 Others [2016] eKLR submitted that the 1st, 2nd and 3rd defendants cannot purport to create a parcel of land within the plaintiffs' land by way of voidable mechanism and then urge this court to validate the same.
 53. On the fifth issue, the plaintiffs submitted that there were no documents filed by the 4th and 5th defendants and if at all there were any activities conducted by them as allegedly claimed by the 1st, 2nd and 3rd defendants, then the same ought to have been available, being custodians of government documents. The plaintiffs submitted that they have established a prima facie case within the ambits of the required standard of proof and are thus entitled to the orders sought.



54. The 1st, 2nd and 3rd defendants filed their statement of defence dated 10th April, 2024 where they raised three issues for determination: -
1. Whether the defendants have proved encroachment onto their suit parcels as alleged?
 2. Whether the disputed group was indeed dissolved?
 3. Who should bear the costs?
55. On the first issue, the 1st, 2nd and 3rd defendants submitted that the issue before this court is one of mere speculation since there is no report showing the extent of any real encroachment of the suit parcels by the said defendants. They further submitted that the approximate acreage of the suit parcels belonging to the plaintiffs is well described and the size can easily be ascertained and a report filed in court. They went on to submit that there is no evidence that the 1st, 2nd and 3rd defendants have denied the plaintiffs quiet and peaceful possession of their parcels of land. It was also their submission that it is worth noting that the 2nd to 8th plaintiffs did not testify or give any evidence as against the counter claim. Reliance was placed in the case of Trust Bank Limited versus Paramount Universal Bank Limited & 20 Others [2009] eKLR.
56. On the second issue, the 1st, 2nd and 3rd defendants submitted that there were no minutes of any meeting produced in court to dissolve the Group Ranch which would show that its cause had come to an end. While relying on the case of CMC Aviation Limited versus Crusair Limited No. 1 1987 KLR, the 1st, 2nd and 3rd defendants submitted that the 1st and 2nd defendants were acting in their capacity as officials of the group ranch since the Group Ranch had not been dissolved.
57. On the third issue, the 1st, 2nd and 3rd defendants submitted that they have proved their case on a balance of probability and pray that the suit be dismissed with costs and the counter claim be allowed.
58. I have considered the pleadings filed, the oral testimony by the 1st plaintiff, the 1st and 3rd defendants and the written submissions filed by the plaintiffs and the 1st-3rd defendants.
59. In my view, issues for determination are listed as hereunder: -
- i. Whether Oldonyo Rasha Group Ranch was dissolved?
 - ii. Whether the plaintiffs are entitled to the orders of permanent injunction and declaration as prayed in the plaint?
 - iii. Whether the 1st-3rd defendants are entitled to the orders sought in the counter claim?
 - iv. Who should bear the costs of the suit?
60. The plaintiffs in the plaint pleaded that they are the lawful owners of the parcels of land known as Cis Mara/ Oldonyo Rasha/ 181, Cis Mara/ Oldonyo Rasha/ 182, Cis Mara/ Oldonyo Rasha/ 183, Cis Mara/ Oldonyo Rasha/ 184, Cis Mara/ Oldonyo Rasha/ 185, Cis Mara/ Oldonyo Rasha/ 186, Cis Mara/ Oldonyo Rasha/ 1294 and they produced copies of their respective titles deeds to confirm the same. The dispute as to ownership of their respective parcels of land has not been challenged. However, and as it can be seen from the evidence tendered during trial, it was that the defendants created and registered an illegal mutation form for a parcel of land known as CisMara/Oldonyo Rasha/1300 that was not in existence before and which affects their portions of land by way of trespass. From the pleadings on record, the interest in land was as a result of an adjudication process carried out in the area and this brings me to address the first issue on whether Oldonyo Rasha Group Ranch was dissolved.



61. According to the plaintiffs, pursuant to the Annual General Meeting held on 9th July, 1996, the majority of members passed a resolution to dissolve the Group Ranch, which was subsequently followed by subdivision of the land that created 321 portions. I have perused the exhibits produced by the plaintiffs and there is an application for consent to the Chairman of the Land Control Board dated 17th July, 1997 seeking subdivision of Cis-Mara/ Oldonyo Rasha/1 into 321 portions. The plaintiffs relied on the strength of a letter dated 26th July, 1996 to argue that the Group Ranch was dissolved. I have looked at the letter keenly, and I note that the Director of Land Adjudication and Settlement granted consent to dissolve the incorporated group representatives.
62. However, there were conditions which were to be fulfilled before the dissolution takes place. The letter reads in part as follows: -

“You will remain in the office to sign all necessary documents during the ranch sub-division process, you will make sure the exercise is fair to all registered members, you will make sure each member has been allocated with an individual plot with a title deed. After you will have fulfilled the above conditions, you will inform this office and I will finally dissolve your group representatives.”
63. From the contents of this letter, it can be discerned that the Group Ranch was dissolved and what remained to be considered was the dissolution of group representatives meeting the conditions set therein. In a nutshell, the Group Ranch cannot be said to be in existence. If indeed the Group Ranch was in existence, there was no reason why an Annual General Meeting could not be held to give the greenlight for the unsurveyed land to be sub-divided.
64. On the second issue, the plaintiff pleaded particulars of fraud with an alleged creation of a parcel of land known as Cis Mara/ Oldonyo Rasha/1300 which was subdivided and it created other portions of land which were to be hived off from their parcels of land. They also alleged that the portion said to be hived off from their land was approximately 118 Hectares.
65. On the other hand, the 1st, 2nd and 3rd defendants argued that the parcel of land Cis Mara/Oldonyo Rasha/1300 was part of the unregistered Group Ranch, and subdivisions were later carried out by the District Surveyor’s office and relevant green cards were opened for the resultant portions. They maintained that the Group Ranch officials have no claim on the plaintiffs’ land and in fact, the plaintiffs seek to unlawfully extend their boundaries in an attempt to annex the land belonging to the Group Ranch. The 1st, 2nd and 3rd defendants denied the particulars of the allegations of fraud, and stated that Cis Mara/Oldonyo Rasha/1300 does exist and that the mutation form was created by the District Land Surveyor under the law.
66. Black’s Law Dictionary, 9th Edition at page 131 defines fraud as: “a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.”
67. In the case of *Kuria Kiarie & 2 Others versus Sammy Magera* [2018] eKLR the Court of Appeal stated that:

“It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo vs Ndolo* (2008) 1 KLR (G & F) 742 wherein the court stated that: “... We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof



on the respondent was certainly not one beyond a reasonable doubt as in criminal cases..
"..In cases where fraud is alleged, it is not enough to simply infer fraud from the facts."

68. As a rule, he who alleges must prove. This is provided for under Sections 107, 109 and 112 of the Evidence Act, Cap 80. Sections 109 and 112 of the Evidence Act provide that:
109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
- ...
112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him."
69. In establishing whether there was fraud, the plaintiffs itemized the particulars of fraud as contained in the plaint. I have considered the evidence of the 1st plaintiff, the 1st and the 2nd defendants. On cross-examination, the 1st plaintiff testified that there has never been a sub division of his land, and his title deed shows that its acreage is 19.80 hectares. It was his evidence that he engaged a Surveyor to ascertain his beacons, who visited his land in the year 2021, and that he later fenced his land. On further cross examination, the 1st plaintiff informed the court that he reported the issue of fraud against the 5th defendant, and he filed the complaint with the Directorate of Criminal Investigations. He further stated that he reported to the Surveyor about the change of his parcel of land but he was not issued with any report. He said that he came up with the conclusion that there was fraud because he knew the acreage of his land and the area was subsequently sub divided into 300 parcels. He admitted that the 1st and 2nd defendants came to his land to sub divide it yet he still holds the title to his land. It was his evidence that he has filed maps to show his land and that he fenced 19.80 hectares.
70. The 3rd defendant, a private Surveyor agreed that he prepared a report after he visited the ground, and that apart from the mutation, he did not prepare any report. He testified that he did not have instructions from the 1st and 2nd defendant yet he charged them for the exercise, although not at the time when he visited the ground. He testified that he could be able to identify the unmapped land between Maji Moto Group and Oldonyo Rasha Group Ranches as there were beacons for the two Group Ranches. He further testified that there were fences erected on the ground, and that he enquired to know who the owners of the fences were. It was his evidence that he never got to meet those people, but he conducted the exercise in the presence of the 1st and 2nd defendants as well as the Land Registrar and the District surveyor. The 3rd defendant had difficulty explaining the discrepancies in the mutation forms which he said were issued to him by the District Surveyor. On being shown his witness statement, the 3rd defendant informed the court that the mutation form is dated 14th June 2020. He also testified that the District Surveyor sought to draw another mutation form for Oldonyorasha block 1300.
71. It was also his evidence that on 4th August, 2020, he sold Cis Mara/Oldonyorasha/block 1312 to one Stephen Kayioni Kosero and that he was issued the number by the District Surveyor. He said that as of 4th August, 2020, the partitions had already been created. He admitted that he sold the land as the proprietor of the land, and that he later cancelled the agreement for sale, after he was charged in court for obtaining money by false pretense. According to him, he had a title deed in August, 2020, which copy he did not have in court.
72. The 3rd defendant testified that the acreage of the property that he was surveying was 454.03 hectares which forms part of the unsurveyed land. He said that the unsurveyed land borders the plaintiffs' parcel of land and that there is a road between the plaintiffs' land and the unsurveyed land. He admitted



- that he was aware of a boundary dispute between the Maji Moto and Oldonyo Rasha Group Ranches, but, he did not hive off part of the plaintiffs' land. According to him, there are 2 roads bordering the unsurveyed land and that he consulted the District Land Registrar and the District Surveyor and the two visited the land.
73. From the evidence of the 3rd defendant, it appears that he was tasked to come with an unidentified piece of land whose mutation form had initially been prepared and his work was to make it appear as though there was due process. As I have understood, the 3rd defendant found beacons and the land was fenced. He again seems to contradict himself by stating that there was a road bordering Oldonyo Rasha Group Ranch and Maji Moto Group Ranch.
 74. The 1st defendant in his evidence stated that there was a dispute between the Group Ranch and Maji Moto Group Ranch and that they left out a portion of land due to the dispute. He went on to say that this land was used as a grazing ground. He maintained that the registration of the Group Ranch was Cis Mara/4 but I have not come across any document showing that the initial parcel of land was referred to as Cis Mara/ 4. According to him, Cis Mara/Oldonyo Rasha/1 was taken by the County Council, and that they had authority from the Ministry of Lands to sub divide the Group Ranch. He testified that they did not finish sub dividing the Group Ranch's land and he pointed out that some members were issued with title deeds. That since the year 1997, they have never held any meetings as a Group Ranch, and the Group Ranch does not have an office, and neither does it have a bank account. He also said that they do not send any returns to the office of the Land Registrar.
 75. The 1st defendant testified that they knew they had unsurveyed land belonging to the Group Ranch which they started to sub divide in the year 2021. It was his testimony that they paid the Surveyor in instalment, and whereas he was not in court when the Surveyor testified, he maintained that the surveyor lied if he told the court that he was not paid in cash. The evidence of the 1st defendant contradicted the evidence of the 3rd defendant which brings doubt as to the correctness of the information relayed by the 1st defendant. It was his testimony that they sub divided about 21 parcels and that the unmarked land was not being put into any activity other than grazing animals.
 76. The 1st defendant could not also explain how the deceased chairman who passed on sometime in July 2020 could have signed the mutation forms and the application for consent from the Land Control Board in the year 2021. The 1st and 3rd defendants could not also tell the genesis of the existence of parcel number Cis Mara/Oldonyo Rasha/1300.
 77. In my analysis, the defendants failed to adduce evidence showing the existence of a parcel of land said to have been unmarked. If at all such land existed, the same belonged to the Group Ranch and it would only have been prudent if the defendants involved all the members of the group ranch to find a way forward. The evidence of the 3rd defendant further sheds light as to the fraudulent activities that took place at the office of the Land Registrar and District Surveyor which can only be termed as shameful and unfortunate. If at all the dispute between Oldonyo Group Ranch and Maji Moto Group Ranch ceased in the year 1997, it is thus unbelievable how officials of a Group Ranch can unceremoniously wake up one day in the year 2021 and decide to survey an area which is occupied by other people in the guise that it had not been marked without involving the owners of the said portions of land.
 78. Having carefully analysed the evidence placed before the court, I find that the plaintiffs have discharged the burden of proof and demonstrated to the required standard of proof that the creation of Cis Mara/Oldonyo Rasha/ 1300, the sub-division thereof and subsequent transfer of the resultant portions was fraudulent.



79. The 1st, 2nd and 3rd defendants filed a counter claim dated 21st March, 2023. Order 4 Rule (1) (2) of the Civil Procedure Rules provides that: -

“(2)The plaint shall be accompanied by an affidavit sworn by the plaintiff verifying the correctness of the averments contained in rule 1(1) (f) above.

- (3) Where there are several plaintiffs, one of them, with written authority filed with the verifying affidavit on behalf of the others.
- (4) Where the plaintiff is a corporation the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.
- (5) The provisions of sub-rule (3) and (4) shall apply mutatis mudandis to counter-claims.
- (6) the court may of its own motion or on the application by the plaintiff or the defendant order to be struck out any plaint or counterclaim which does not comply with sub-rule (2) (3), (4) and (5) of this rule”

80. Order 7 rule 5(a) of the Civil Procedure Rules provides as follows:

“ 5. The defence and counter-claim filed under rule 1 and 2 shall be accompanied by –

- a) An affidavit under order 4 rule 1 (2) where there is a counter-claim.”

81. The counterclaim herein was filed without a verifying affidavit which renders the counterclaim as being defective. However, it is my view, that the counter claim cannot be considered at this stage as no party raised this issue during the pre-trial stage and during the hearing. I will say no more.

82. Arising from the above, I find that the plaintiffs have discharged the burden of proof on a balance of probabilities. I enter judgment in favour of the plaintiffs against the defendants as follows: -

- i. A declaration is hereby issued that the defendants’ intention to subdivide the plaintiffs’ parcel of land known as Cis Mara/ Oldonyo Rasha/ 181, Cis Mara/ Oldonyo Rasha/ 182, Cis Mara/ Oldonyo Rasha/ 183, Cis Mara/ Oldonyo Rasha/ 184, Cis Mara/ Oldonyo Rasha/ 185, Cis Mara/ Oldonyo Rasha/ 186, Cis Mara/ Oldonyo Rasha/ 1294 as per the mutation form herein is illegal and null and void ab initio and the mutation form is hereby nullified.
- ii. A declaration is hereby issued that the title numbers Cis Mara/Oldonyo Rasha/1310, Cis Mara/Oldonyo Rasha/1311 and Cis Mara/Oldonyo Rasha/1312 were fraudulently registered and the same are hereby nullified and cancelled.
- iii. A permanent injunction is hereby issued restraining the defendants either by themselves, their agents, servants and/or employees from trespassing, subdividing, registering any subdivisions, selling, transferring, charging and/or from any other manner of interference with the parcels of land known as Cis Mara/ Oldonyo Rasha/ 181, Cis Mara/ Oldonyo Rasha/ 182, Cis Mara/ Oldonyo Rasha/ 183, Cis Mara/ Oldonyo Rasha/ 184, Cis Mara/ Oldonyo Rasha/ 185, Cis Mara/ Oldonyo Rasha/ 186, Cis Mara/ Oldonyo Rasha/ 1294.
- iv. The counter claim dated 21st March, 2023 is hereby struck out with costs to the Plaintiffs.
- v. The plaintiffs are awarded the costs of the suit.

DATED, SIGNED & DELIVERED VIA EMAIL THIS 21ST DAY OF MAY, 2024.

HON. MBOGO C.G.



JUDGE

21/05/2024.

In the presence of: -

Mr. Meyoki Pere – C. A

