



REPUBLIC OF KENYA



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**Njoroge v Maina (Civil Appeal E042 of 2023)
[2024] KEELC 5849 (KLR) (20 August 2024) (Judgment)**

Neutral citation: [2024] KEELC 5849 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
CIVIL APPEAL E042 OF 2023**

**BM EBOSO, J
AUGUST 20, 2024**

BETWEEN

MONICA MUTHONI NJOROGE APPELLANT

AND

MARY NDUTA MAINA RESPONDENT

*(Being an Appeal against the Judgment of Hon M. Kinyanjui, Principal Magistrate,
delivered on 24/4/2023 in Kiambu Chief Magistrate Court Civil Case No. 316 of 2015)*

JUDGMENT

Introduction

1. This appeal challenges the Judgment rendered on 24/4/2023 by the Kiambu Chief Magistrate Court [Hon M. Kinyanjui, PM] in Kiambu CMC Civil Case No 316 of 2015. The appellant was the defendant in the trial court. The respondent was the plaintiff. Two of the key issues that fell for determination in the trial court were: (i) Whether the respondent’s claim was statute-barred under the *Limitation of Actions Act*; and (ii) Whether the appellant had acquired ownership of land parcel number Gatamaiyu/Kagwe/1910 through adverse possession. The two issues are some of the key issues that fall for determination in this first appeal. Before I analyse and dispose the key issues, I will briefly outline the following: (i) history of land parcel number Gatamaiyu/Kagwe/1910; (ii) background to the appeal; (iii) grounds of appeal; and (iv) parties’ submissions.
2. All the properties mentioned in this Judgment have a common block number, namely, Gatamaiyu/Kagwe. Consequently, I will in most instances, be identifying them by their parcel numbers only. In this regard, the suit property, Gatamaiyu/Kagwe/1910 will be identified simply as “parcel number 1910” or “the suit property” or “the suitland”. The preceding titles out of which the suit property was parceled will be identified by their parcel numbers only.



History of Gatamaiyu/Kagwe/1910

3. The origin of parcel number 1910 is Gatamaiyu/Kagwe/170 which was registered on 20/8/1958 in the name of Munyinyi Muhia. Parcel number 170 was registered as measuring 15.5 acres. The land was the subject matter of a succession dispute in Githunguri Resident Magistrate Court Succession Cause No 122 of 1997 in which the Resident Magistrate Court [Hon Lichuma] rendered a Judgment on 13/9/1997. The Judgment attracted an appeal to the High Court, filed by the children of Munyinyi Muhia, among them, Njoroge Munyinyi - the now deceased husband of the appellant. For clarity, the six appellants in the High Court Appeal were (i) Muhia Munyinyi - a son of Munyinyi Muhia; (ii) Njoroge Munyinyi; (iii) Njuguna Munyinyi; (iv) Nyokabi Karanja; (v) Njoki Karanja; and (vi) Mugure Njoroge.
4. The High Court [Aganyanya J – as he was then] disposed the appeal through a Judgment rendered on 13/3/2002. In summary, the High Court upheld the Judgment of the Githunguri Resident Magistrate Court rendered in the Succession Cause. The Githunguri Resident Magistrate Court had found that the objectors [the six appellants who included the deceased husband of the appellant in the present appeal] were only entitled to 3.8 acres on behalf of the estate of the late Munyinyi Muhia.
5. Through the Judgment of the Succession Court, Muhia Munyinyi and James Kinuthia Kairu were appointed as joint administrators of the estate of Munyinyi Muhia. What is not clear is the point at which substitution relating to the said administrators was effected to bring Samuel Muhia Kairu on bond. The land register shows that on 17/5/2007, James Kinuthia Kairu and Samuel Muhia Kairu were registered as proprietors of parcel number 170 in their capacity as administrators of the estate of the deceased proprietor, Munyinyi Muhia.
6. On 15/9/2010, the administrators carried out a mutation of title number 170 in terms of the Certificate of Confirmation of Grant. The mutation created parcel numbers Gatamaiyu/Kagwe/1895 measuring 4.73 hectares [11.7 acres] and Gatamaiyu/Kagwe/1896 measuring 1.54 hectares [3.8 acres]. The land register relating to parcel number 170 was closed on 15/9/2010. On the same day, subdivision registers relating to parcel numbers 1895 and 1896 were opened in the name of Munyinyi Muhia, [notwithstanding that registration of Form RL 19 had been effected in the mother register on 17/5/2007].
7. The land registers presented to the trial court reveal that on 15/9/2010, subdivision parcel number 1895 was registered in the names of James Kinuthia Kairu and Samuel Muhia Kairu pursuant to Succession Orders issued in Githunguri SRMC Succession Cause No 122 of 1997. On 31/3/2011, Mariam Mugure Njoroge caused a caution to be registered against title number 1895 claiming a beneficial interest in the land. The caution was subsequently removed on 11/10/2012 pursuant to an order issued on 27/10/2011 in Nairobi High Court in Succession Cause No 618 of 2011. On 10/12/2012, parcel number 1895 was subdivided into three parcels, namely, Gatamaiyu/Kagwe/1908; 1909; and 1910.
8. This court has not seen a certified copy of the land register relating to parcel number 1910. However, from the oral evidence presented before the trial court, David Koigi Njoroge [PW3] alleged that he bought parcel number 1910 from Samuel Muhia Kairu in 2008. He stated that he subsequently sold the land to the respondent.
9. The exhibited land register relating to parcel number Gatamaiyu/Kagwe/1896 reveals that it was opened on 15/9/2010 in the name of Munyinyi Muhia [notwithstanding the fact that the administrators of the estate of Munyinyi Muhia had been registered in the mother register - the register relating to parcel number 170 - as proprietors on 17/5/2007]. On 15/9/2010, James Kinuthia Kairu



and Samuel Muhia Kairu were registered as proprietors of parcel number 1896 in their capacity as administrators of the estate of the late Munyinyi Muhia pursuant to a succession order issued in Githunguri SRM Succession Cause No 122 of 1997. On 31/4/2011, Miriam Mugure Njoroge caused a caution to be registered against title number 1896, claiming a beneficial interest in the land.

Primary Claim

10. The respondent initiated the suit at the trial court through a plaint dated 13/11/2015. She sought the following reliefs: (i) an eviction order against the appellant decreeing her to vacate the suit land, and alternatively, an order for injunction restraining the appellant against occupying and/or interfering with the suit land in any manner whatsoever; (ii) an order of permanent injunction restraining the appellant either by herself, her agents or servants from trespassing on, altering, developing or otherwise dealing with the suit land; (iii) a declaration that the respondent was entitled to exclusive and unimpeded right of possession and occupation of the suitland; (iv) general damages and mesne profits for trespass; (v) costs of the suit together with interest at such rates and for such period of time as the trial court deemed fit to grant;

Defence & Counterclaim

11. The appellant opposed the suit through a defence and counter-claim dated 25/5/2018. The appellant's case was that the respondent was not the lawful proprietor of the suit land. Through the counterclaim, the appellant contended that she had an overriding interest in the suit land because she had been in occupation of the suit land for over 40 years and she had built a permanent home on it. The appellant denied being a trespasser on the suit land, adding that she was entitled to the exclusive and unimpeded right of possession over the land. The appellant contended that registration of the respondent as proprietor of the suit land was obtained by fraud, misrepresentation and mistake which the respondent was aware of. By way of counterclaim, the appellant sought the following reliefs: (i) the respondent's suit against the appellant be dismissed with costs; (ii) a declaration that the appellant was the lawful owner of the suitland; (iii) an order directing the Land Registrar Kiambu to register the suit land in the name of the appellant; (iv) costs of the counter-claim.

Judgment of the Trial Court

12. Much of the trial proceedings took place before Hon S. Atambo. The case was placed before Hon Kinyanjui towards the tail-end. The Learned Magistrate took oral submissions and rendered the impugned Judgment on 24/4/2023 in the following terms:

“Therefore, the defendant's defence is bereft of merit. The plaintiff's rights as a proprietor are protected under the law as provided under Sections 24 and 25 of the [Land Registration Act](#) and no evidence has been proffered by the defence to have those rights stripped from him as such the prayer of a permanent injunction succeeds. I am persuaded that the plaintiff has proved her case against the defendant on a balance of probabilities. In conclusion, I enter judgment for the plaintiff in the following terms:

- i. The defendant is ordered to surrender vacant possession of the suit parcel number Gatamaiyu/Kagwe/1910 within one hundred and twenty (120) days of the delivery of this Judgment.
- ii. In default of (a) above, eviction to issue.
- iii. On recovery of vacant possession, an order of permanent injunction be and is hereby issued against the defendant, by himself, his servants, family, agents



or otherwise from entering, remaining on, cultivating, planting any crops, removing boundary features or in any manner whatsoever interfering with the plaintiff's use and occupation of land parcel number Gatamaiyu/Kagwe/1910

iv. The plaintiff is awarded the costs of this suit.”

Appeal

13. Aggrieved by the Judgment of the trial court, the appellant brought this appeal, advancing the following sixteen [16] verbatim grounds of appeal:

- i. That the learned trial magistrate erred in law and fact in determining that the respondent's suit was well founded and that the respondent's suit was not time-barred under the *Limitation of Actions Act*.
- ii. That the learned trial magistrate erred in law and fact in holding that the respondent had proved that the appellant had trespassed on the respondent's suit land.
- iii. That the learned trial magistrate erred in law and fact in holding that the appellant did not prove the claim for adverse possession and yet stated that time was running for adverse possession in favour of the appellant between the years of 2002 and 2014 a period of 12 years.
- iv. That the learned trial magistrate erred in law and fact in holding that the appellant had not offered any plausible explanation as to why she did not sign the alleged notice to vacate the suit land.
- v. That the learned trial magistrate wholly misapprehended the defence and counterclaim by the appellant and failed to give any orders on the counterclaim.
- vi. That the learned trial magistrate erred in law and fact by failing to appreciate the import of statutory provisions and judicial precedents on adverse possession that were cited before her in opposition to the claim which statutory provisions and judicial precedents are binding upon the learned trial court.
- vii. That the learned trial magistrate erred in law and fact in failing to consider the written submissions and arguments of counsel for the appellant on the land law and the law of limitation of actions.
- viii. That the decision of the learned trial magistrate was against the weight of evidence adduced by the appellant.
- ix. That the learned trial magistrate erred in law by allowing the respondent evidence filed in court after the close of the respondent case.
- x. That the learned trial magistrate erred in law and fact by hearing a claim that was statute barred under the limitations of Actions Act Cap 22 Laws of Kenya.
- xi. That the learned trial magistrate erred in law and fact by failing to evaluate and determine and give orders on the appellant's counterclaim.
- xii. That the learned trial magistrate erred in law and fact by shifting the burden of proof from the respondent to the appellant.
- xiii. That the learned trial magistrate erred in law and fact by failing to find that the respondent did not prove the specific and particular claims on a balance of probabilities.



- xiv. That the learned trial magistrate erred in law and fact by failing to find that the respondent did not prove that the title to the suit land was lawfully, legally and procedurally obtained in light of the lack of evidence of a written sale agreement and consent from the land board.
 - xv. That the learned trial magistrate erred in law and fact by failing to fully consider the documentary evidence presented by the appellant for their full import and true purpose.
 - xvi. The learned trial magistrate erred in law and fact in giving the orders given that were fully unsupported by the evidence, pleadings and the law.
14. The appellant urged this Court to: (i) allow the appeal; (ii) set aside the Judgment of the trial court; (iii) allow the appellant's counterclaim in Kiambu CMC Civil Case No. 316 of 2015; and (iv) award her costs of the appeal.

Appellant's Submissions

15. The appeal was canvassed through written submissions dated 8/1/2024 and supplementary submissions dated 20/3/2024, filed by M/s Gatitu Wang'oo & Company Advocates. Counsel contended that the trial magistrate erred in determining that the respondent's suit was well founded and that the suit was not time-barred under Section 7 of the [Limitation of Actions Act](#). Counsel faulted the trial magistrate for finding that the appellant had failed to prove adverse possession yet it had observed that time started running for the purpose of adverse possession from March 2002. Counsel submitted that the respondent's suit was filed on 13/11/2015 which was 13 years from the time adverse possession commenced. Counsel relied on the pronouncements in the following decisions: (i) *Seventh Day Adventist Church (E.A) Ltd v Salome Wamutira Mukuria* [2018] eKLR; and (ii) *Merironi Nyakinyua Multi-Purpose Co-operative Society Ltd v Gituamba Holding Limited* [2020] eKLR.
16. Counsel further submitted that the trial magistrate erred in holding that the respondent had proved that the appellant had trespassed on the suit land, adding that the respondent's suit was time-barred. Counsel contended that the trial magistrate misapprehended the defence and counterclaim filed by the appellant. Counsel added that the trial magistrate failed to give any orders on the counterclaim.
17. Counsel faulted the trial court, contending that it failed to appreciate the import of statutory provisions and the cited judicial precedents on adverse possession. Counsel added that the decision of the trial magistrate went against the weight of the evidence adduced by the appellant, especially the evidence that she was in possession of the suit land for a very long time; she had built on the land; she had buried some family members on it; and that the respondent purchased the land with full knowledge of the above facts. Counsel faulted the trial court for allowing the respondent to file additional evidence after the close of their case.
18. Counsel further submitted that the trial magistrate erroneously shifted the burden of proof from the respondent to the appellant, adding that the trial magistrate erred in law and in fact in failing to find that the respondent did not prove her claim on a balance of probabilities. Counsel urged the Court to re-evaluate the evidence tendered in the case.
19. Counsel argued that the learned trial magistrate erred in law by failing to find that the respondent did not prove that the title to the suit land was not lawfully, legally and procedurally obtained in light of the lack of evidence of a written sale agreement and consent from the land control board. Counsel relied on the decision in the case of *Abednego Otundo Ayuku v Laban Masinjira* [2021] eKLR. Counsel argued that the respondent purchased the suit land with full knowledge that the defendant was in occupation and had made several developments on it, adding that the respondent did not carry out due diligence



before purchasing the suit land. Counsel contended that the respondent failed to adduce evidence of a sale agreement contrary to the provisions of the law of contract, adding that the respondent failed to meet the statutory requirement for purchase of the suit land, hence the court ought not to have upheld her title. Lastly, counsel submitted that the trial magistrate erred in giving orders that were not supported by evidence, pleadings and the law. Counsel urged the court to allow the appeal.

Respondent's Submissions

20. The appeal was opposed through written submissions dated 14/11/2023, filed by M/s Moses N. Siagi & Company Advocates. Counsel for the respondent outlined a brief history of the origin of the suit land. Counsel submitted that the suit property had its roots in land parcel number Gatamaiyu/Kagwe/1895 which was parcelled from Gatamaiyu/Kagwe/170. Counsel added that the Judgment annexed to the record of appeal rendered in Githunguri Succession Cause No. 122 of 1997 related to land parcel number Gatamaiyu/Kagwe/170. Counsel added that parties in the matter were litigating over the extent of their actual ownership interest in parcel number 170. Counsel submitted that the said succession cause involved the family of Muhia Munyinyi in which the appellant and the husband of the respondent belonged to. Counsel added that the matter had been adjudicated at the Tribunal and, being displeased with the portion they had gotten at the Tribunal, the family of Muhia Munyinyi pursued their claim which culminated in High Court Civil Appeal No. 425 of 1999. The High Court affirmed the lower court's Judgment on the respective parties' entitlements in respect of the land that was in dispute and directed how parties would be registered by the Land Registrar. Counsel submitted that the original parties to the dispute did not raise questions of adverse possession. Counsel added that given that the appellant was an offshoot of her husband who was a party to the aforementioned proceedings, her rights were legally pegged on her husband's rights. Counsel added that her husband having surrendered his rights to be determined by the court process in the cases aforementioned, the appellant's position must be so tied.
21. Counsel submitted that pursuant to the decree in High Court Civil Appeal No. 425 of 1999, land parcel number Gatamaiyu/Kagwe/170 was subdivided into two portions namely, Gatamaiyu/Kagwe/1895 and 1896. Land parcel number Gatamaiyu/Kagwe/1896 was given to the family of the appellant's husband [the family of Munyinyi Muhia] while Gatamaiyu/Kagwe/1895 was given to Kairu's family. Counsel added that Gatamaiyu/Kagwe/1895 was subdivided into three parcels, namely, Gatamaiyu/Kagwe/1908; 1909; and 1910. Counsel contended that the suit land was parceled as a consequence of the implementation of the decree of the High Court. Counsel faulted the appellant for seeking to vary the decision of the High Court through this appeal. Counsel added that while prosecuting the application for an order of stay of execution filed in this appeal, the appellant through her advocates, stated that her claim was derived from succession in respect of land parcel number Gatamaiyu/Kagwe/170 by virtue of her husband's rights over the said property.

Analysis and Determination

22. I have read and considered the original record of the trial court; the record filed in this appeal; the grounds of appeal; and the parties' respective submissions. I have also considered the legal frameworks and the jurisprudence relevant to the key issues that fall for determination in the appeal. The appellant itemized 16 grounds of appeal. She did not, however, frame concise issues that this court is required to determine. She submitted only on some of the itemized grounds of appeal.
23. Taking into account the grounds of appeal and the submissions that were tendered, the following are the key issues that fall for determination in this appeal: (i) Whether the respondent's claim was statute-barred under the *Limitation of Actions Act*; (ii) Whether the appellant acquired ownership of land parcel number Gatamaiyu/Kagwe/1910 under the doctrine of adverse possession; (iii) Whether



- the respondent proved her claim to the required standard; and (iv) Whether the appellant proved her counterclaim to the required standard. Before I analyse and dispose the issues, I will briefly outline the principle that guides this court when exercising appellate jurisdiction.
24. This is a first appeal. The principle upon which a first appellate court exercises jurisdiction is well settled. The task of a first appellate court was summarized by the Court of Appeal in the case of *Susan Munyi v Keshar Shiani* (2013) eKLR as follows:
- “As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusions.”
25. The principle was similarly outlined in *Abok James Odera t/a A. J Odera & Associates v John Patrick Machira t/a Machira & Co Advocates* [2013] eKLR as follows:
- “This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way.”
26. The first two issues in this appeal are intertwined. I say so because limitation period in a claim for recovery of land and the doctrine of adverse possession are related doctrines. Consequently, I will analyse and dispose the first two issues contemporaneously.
27. The gist of the respondent’s claim was that the appellant’s occupation of land parcel number Gatamaiyu/Kagwe/1910 [the suit property] constituted trespass. Her case was that, upon conducting due diligence, she purchased the suit property and she was subsequently registered as proprietor and issued with a title on 18/2/2013. She added that through a written and signed agreement dated 15/2/2015, the appellant agreed to voluntarily vacate the land within 21 days. It was her case that the appellant subsequently reneged on the written agreement, prompting her to institute the suit seeking an eviction order and a permanent injunction.
28. On her part, the appellant through her defence and counterclaim, contended that the respondent’s suit was statute-barred under the *Limitation of Actions Act*. She further contended that she was a beneficiary of the land, adding that she had occupied the land for over 40 years.
29. It subsequently emerged during trial that, the suit property had been sold by Samuel Muhia Kairu who was a beneficiary of the estate of the late Kairu Muhia. It also emerged that sale of the land followed conclusion of a succession dispute relating to parcel number 170 which was registered in the name of the late Munyinyi Muhia – a brother to the late Kairu Muhia. Evidence was also tendered showing that the Succession Court at Githunguri (Hon. Lichuma) had rendered a Judgment in 1997 in which it found that the estate of the late Kairu Muhia was entitled to 11.7 acres while the estate of the late Munyinyi Muhia was entitled to 3.8 acres out of parcel number 170, having established that the late Munyinyi Muhia held the land in trust for himself and for his sibling. Evidence was also tendered showing that the High Court [Aganyanya J], exercising appellate jurisdiction, upheld the Judgment of the lower court through its Judgment rendered on 13/3/2002.
30. Of key significance to the two issues is the fact that one of the key litigants in the succession cause and in the appeal was Njoroge Munyinyi - the appellant’s late husband. Also of key significance is the fact that the appellant lived on parcel number 170 by virtue of her being a wife to the late Njoroge Munyinyi and a daughter-in-law to the late Munyinyi Muhia.



31. The High Court having disposed the appeal in 2002, the parties went back to the succession court and continued with the administration of the estate of Munyinyi Muhia and the implementation of the succession order. The succession order vesting the land in the administrators was registered on the parcel register relating to parcel number 170 on 17/5/2007. The subdivision implementing the succession order which subdivided parcel number 170 was implemented on 15/9/2010 through registration of the mutation that created parcel numbers 1895 and 1896. Parcel number 1910 was subsequently created as a subdivision out of parcel number 1895 on 15/2/2013.
32. When did the respondent's cause of action accrue? The respondent was registered as proprietor of parcel number 1910 on 18/2/2013. Prior to that she had no crystallized interest in the suit land. Put differently, she had no cause of action prior to 18/2/2013.
33. Secondly, up to May 2007, parcel number 170 was trust property registered in the name of the appellant's father-in-law, the late Munyinyi Muhia. Between May 2007 and September 2010, the land was trust property registered in the names of the administrators of the estate of the late Munyinyi Muhia. Indeed, the said administrators still hold the 3.8 acre portion that vests in the estate of Munyinyi Muhia.
34. Clearly, the respondent's predecessors in title did not have a cause of action against the appellant during the period of succession and administration of the estate of late Munyinyi Muhia. Most important, by dint of being a wife to Njoroge Munyinyi who was one of the beneficiaries of the estate of the late Munyinyi Muhia, the appellant was entitled to be on the land. Up to 15/9/2010, the appellant was neither a trespasser nor an adverse possessor. She occupied part of parcel number 170 by dint of her late husband's interest as a beneficiary of the estate of Munyinyi Muhia. That is not all that emerged from the evidence.
35. The respondent tendered, as evidence, a formal written agreement dated 15/2/2015, through which the appellant voluntarily acknowledged the respondent's right to have possession of the suit land and undertook to vacate the land within 21 days. The undertaking in the agreement dated 15/2/2015 is clearly inconsistent with the essential elements of adverse possession.
36. From the above analysis, it is clear that prior to the mutation of parcel number 170 into parcel number 1895 measuring 11.7 acres and parcel number 1896 measuring 3.8 acres, the appellant lived on the land as a spouse to the late Njoroge Munyinyi who was a beneficiary of the estate of the late Munyinyi Muhia. The appellant was not an adverse possessor of any portion of the said land. It is also clear that prior to the said mutation of 2010, neither the late Munyinyi Muhia nor the administrators of his estate had a cause of action against the appellant who lived on part of the land as a daughter-in-law to Munyinyi Muhia and a spouse to Munyinyi Muhia's son, Njoroge Munyinyi. Thirdly, the respondent's cause of action accrued in 2013 when her interest in the suit land crystallized. Consequently, the primary claim in the suit giving rise to this appeal was not statute-barred under the *Limitation of Actions Act*.
37. Did the respondent prove the primary claim? Did the appellant prove the counterclaim? The two issues will be disposed contemporaneously.
38. I have looked at the pleadings and the evidence that was tendered before the trial court. The suit land is a second generation subdivision out of parcel number 170. The question of ownership and occupation of parcel number 170 was adjudicated prior to the promulgation of the current Constitution which redefined the jurisdiction of our courts. It was conclusively settled through a binding Judgment of the High Court. What followed was the administration of the estate of the deceased registered proprietor in tandem with the succession order. Administration of the estate involved mutation of the title into two.



This was done in September 2010. The resultant subdivisions required the respective administrators of the estate of Munyinyi Muhia and the estate of Kairu Muhia to undertake and complete further administration of the two estates within reasonable time.

39. It does emerge from the evidence on record that the respondent got her title from Samuel Muhia Kairu through David Koigi Njoroge. None of the administrators of the two estates has challenged the title held by the respondent. It does also emerge from the evidence on record that the estate of Njoroge Munyinyi [the late husband of the appellant] is a beneficiary of part of the 3.8 acres that were parceled out of parcel number 170. The beneficiaries of the said estate are expected to further pursue administration of the estate to its logical conclusion.
40. From the above analysis, there is no reason why the appellant should not vacate land that belongs to the respondent. If the estate of the late Njoroge Munyinyi had reservations about the mutation that was done in September 2010, they were entitled to challenge it at the time of mutation. Regrettably, they appear to have elected to do nothing about it. They instead elected to illegally and irrationally erect structures post-mutation on land that vested in the estate of Kairu Muhia.
41. For the above reasons, the Court is satisfied that the title held by the respondent deserved protection as dictated by Article 40 of *the Constitution* and Sections 24 and 25 of the *Land Registration Act*. Put differently, the Court is satisfied that the respondent proved her primary claim. Secondly, this Court finds that the appellant did not prove her counterclaim.
42. The result is that this appeal is rejected and dismissed for lack of merit.
43. On costs, no proper basis has been laid to warrant a departure from the general principle in Section 27 of the *Civil Procedure Act*. Consequently, the appellant will bear costs of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 20TH DAY OF AUGUST 2024

B M EBOSO

JUDGE

In the Presence of: -

Moses Siagi for the Respondent

Court Assistant: Melita

