



Mamboleo Women Group Co-operative Society Limited v Ngeno & 9 others; District Land Registrar, Nakuru (Interested Party) (Interested party in the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants counterclaim dated 11th May, 2022) (Environment & Land Case E010 of 2021) [2024] KEELC 5666 (KLR) (1 August 2024) (Judgment)

Neutral citation: [2024] KEELC 5666 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE E010 OF 2021**

**CG MBOGO, J
AUGUST 1, 2024**

BETWEEN

**MAMBOLEO WOMEN GROUP CO-OPERATIVE SOCIETY
LIMITED PLAINTIFF**

AND

**JOSEPH NGENO 1ST DEFENDANT
JOSEPH MARINDANY 2ND DEFENDANT
JOSEPH NGETICH 3RD DEFENDANT
DAVID KERINGET 4TH DEFENDANT
PHILEMON LANGAT 5TH DEFENDANT
PAUL KIMETO 6TH DEFENDANT
AUGUSTINE SIGEI 7TH DEFENDANT
WILLISON KIPSANG KITUR 8TH DEFENDANT
STEPHEN LANGAT 9TH DEFENDANT
GEOFFREY TUNUI 10TH DEFENDANT**

AND

**DISTRICT LAND REGISTRAR, NAKURU INTERESTED PARTY
INTERESTED PARTY IN THE 1ST, 2ND, 3RD, 4TH, 5TH, 7TH, 8TH AND
9TH DEFENDANTS COUNTERCLAIM DATED 11TH MAY, 2022**



JUDGMENT

1. The plaintiff filed the amended plaint dated 18th October, 2021, seeking judgment against the defendants both jointly and severally for: -
 1. A declaration that the plaintiff is the lawful registered owner of the suit property land parcel no. Narok/Cis-Mara/Ololunga/182.
 2. A declaration that the invasion, use, construction, grazing and cultivation of the suit property LR. No. Narok/Cis-Mara/Ololunga/182 by the defendants without the consent and or authority of the plaintiff is unlawful null and void and amounts to trespass.
 3. An order or permanent injunction restraining the defendants by their agents, servants and or families from trespassing, cultivating, grazing, occupying and or dealing with the suit property LR. Narok/Cis-Mara/Ololunga/182 in any manner.
 4. An order of eviction of the defendants, agents, servants, families and any other persons from the suit property LR. No. Narok/Cis-Mara/Ololunga/182.
 5. Mesne profits.
 6. General damages for trespass.
 7. Costs of the suit.
2. The plaintiff in the amended plaint averred that it is the registered owner of the suit property known as Narok/Cis-Mara/Ololunga/182 which the members of the plaintiff acquired from one Mary Naini Eliud in 1992, and which they have since developed extensively.
3. The plaintiffs further averred that during the period, it was necessary to determine the boundary between the suit property and the neighbouring parcels of land owned by the respective group ranches. It was further averred that upon determination of the boundaries, the plaintiff discovered that the defendants had trespassed upon the same and occupied without their consent.
4. The plaintiffs further averred that through the local administration, a meeting was called, and that the defendants were given notice to vacate from the suit property. The plaintiff pleaded particulars of trespass, and particulars of loss and damage arising from the unlawful trespass by way of invasion of the suit property.
5. The plaintiff averred that its registration and ownership of the suit property is indefeasible and protected by law, and that the defendants have no valid claim over the same.
6. The 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants filed their amended statement of defence and counter claim dated 11th May, 2022. The 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants while denying the contents of the amended plaint averred that they do not claim the suit property, and that if the suit property is within their land, the same was issued illegally, and without justification as their parcels of land are within Enakishomi Group Ranch, which the plaintiff has never been a member.
7. The aforementioned defendants further averred that they are in occupation of the suit property since the time of entry to date, and that the plaintiff has been using the local administration to harass, intimidate, destroy and displace them and other residents, yet it has no jurisdiction to deal with land



matters whatsoever. Further, they averred that the plaintiff has no legal right in their parcels of land, and that it does not know the boundaries of its land.

8. The aforementioned defendants further averred that the issuance and registration of the plaintiff as the legal owner of the suit property which is superimposed over parcel Narok/Cis-Mara/Ololulunga/115, is illegal ab initio, and not protected by law, and that the orders sought in the amended plaint are baseless, scandalous, premised on unsubstantiated grounds and intent on abusing the process of the court.
9. In their counter claim, the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants averred that they are the legal owners of land parcels Narok/Cis-Mara/Ololulunga/7133, 6901, 6868, 6386 and 7095 which they acquired through purchase from the initial land owners of the said parcels, and that they have lived therein to date. Further, they averred that their parcels of land are a result of an adjudication process of Enakishomi Group Ranch in respect of parcel Narok/Cis-Mara/Ololulunga/115 measuring approximately 1748.54 hectares.
10. The aforementioned defendants further averred that the representatives of Enakishomi Group Ranch applied for consent to subdivide their land on 10th June, 1997, which was granted and that subdivision took place resulting to the issuance of individual titles. They averred that the initial owner Mary Naini Eliud who sold Narok/Cis-Mara/Ololulunga/182 to the plaintiff was not a member of Enakishomi Group Ranch, and hence could not benefit from its subdivision. Further, they averred that the plaintiff's parcel of land is separated by many parcels of land from Narok/Cis-Mara/Ololulunga/115 which was subdivided, and that the plaintiff does not know the extent of its land, but it has chosen to sue persons who are not in occupation of its parcel of land.
11. The 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants further averred that they have lived on their parcels of land for more than 12 years, and that they are entitled to be declared as owners by operation of the law. Further, they averred that the plaintiff has been harassing them by using the local administration, thereby interfering with the possession and occupation of their parcels of land without their express authority and notice. Further, they averred that unless the plaintiff is restrained from perpetuating its fraudulent and illegal acts, they will not be able to enjoy peaceful and quiet possession of their land. They also averred, that their right to own property has been threatened, and the plaintiff's actions amount to trespass which has placed them on the verge of losing their properties.
12. The aforementioned defendants pleaded particulars of fraud/ illegality on the part of the plaintiff as follows: -
 - a. Threatening to trespass unto the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants' land parcels.
 - b. Using proxies to trespass unto the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants' land parcels.
 - c. Purporting to have better title to the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants' land parcels.
 - d. Threatening the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants' right to property.
 - e. Threatening the defendants with eviction from their land parcel.
 - f. Putting the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants' ownership interests on the suit property at risk and in doubt.
 - g. Traumatizing the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants.
 - h. Engaging in fraudulent underhand dealings to deprive the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants of their land parcels.



- i. Colluding with strangers to obtain title to the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants' land parcels illegally.
13. The aforementioned defendants pleaded particulars of loss and damage as a result of the actions of the plaintiff, which they averred that has subjected the ownership of their parcels of land to uncertainty.
14. The 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants therefore pray for judgment against the plaintiff for the following: -
 - a. A declaration that the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants are the lawful owners and proprietors of the parcels Narok/ Cis-Mara/ Ololulunga/ 7133, 6901, 6868, 6386 & 7095.
 - b. A declaration that the plaintiff is trespasser to the parcels Narok/ Cis-Mara/ Ololulunga/ 7133, 6901, 6868, 6386 and 7095.
 - c. An order of permanent and temporary injunction against the plaintiff herein by itself, agents and/or servants from trespassing, entering into, surveying, resurveying, sub-dividing, putting up beacons, transferring beacons, selling, invading, disposing, reallocating, fencing, demolishing fences, ploughing, charging or in any manner whatsoever dealing with the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants parcels Narok/ Cis-Mara/ Ololulunga/7133, 6901, 6868, 6386 and 7095.
 - d. Costs of this suit with interest till payment in full.
15. The plaintiff filed its reply to defence and counter claim dated 6th June, 2024. In reply to the defence, the plaintiff reiterated the contents of its amended plaint and averred that if the aforementioned defendants own any parcel of land, the said parcels of land do not share a common boundary with the suit property, and that they are mere trespassers. The plaintiff further stated that Narok Petition No. E005 of 2021 is a different matter and they have never been served with the pleadings.
16. In reply to the counter claim, the plaintiff reiterated the contents of its reply to defence and further averred that it has nothing to do with the listed parcels land, and that it has never occupied or trespassed on the defendants' land since they do not border on their parcel of land. Further, that the aforementioned defendants listed parcels of land exist separately from its parcel on the ground, but the defendants have occupied it purporting to be their parcels of land. The plaintiff went on to aver that pursuant to the report dated 12th November, 2020 issued by the court in PMCC No. 17 of 2006, the defendants were not in occupation of the suit property, and that a claim for adverse possession cannot issue.
17. The plaintiff further averred that the claim that it used the local administration to harass and intimidate them is unfounded, and aimed at discrediting the local authorities merely because their decision in the dispute was made in its favour. The plaintiff denied the particulars of fraud/illegality and the particulars of loss and damages, and further averred that the counterclaim is a sham and a mere afterthought of its suit hence its vexatious, oppressive, and an abuse of the court process. It was also averred that if the claim by the defendants over the listed properties were to go by, they ought to have filed a report to confirm the position of their properties on the ground.
18. The plaintiff's case proceeded for hearing on 20th May, 2024. James Nyagoti Makori (PW1), the chairperson of the plaintiff adopted his witness statement dated 15th June, 2021 as his evidence in chief and he produced P. Ex. Nos. 1 to 8 as evidence before this court. PW1 testified that the suit property was registered in the plaintiff's name and he a title deed was issued. Further, he testified that they approached the Land Registrar and paid the surveyor who moved to the ground and prepared a



- boundary implementation report dated 12th November, 2020. He testified that the government officers organized for a meeting on the ground, and that those who had trespassed into other people's parcels of land were ordered to vacate. He went on to testify that the defendants requested for a second ground report which was prepared and according to the defendants, their parcel of land is 115 and between parcel 115 and the suit property, they do not have a common boundary as the plaintiff's neighbor is 180,181, and 183.
19. PW1 further testified that the defendants did not have its consent to enter into their land, and that the current state is that trees have been cut, houses have been built and livestock grazed on the suit property. He testified that the plaintiff used to make use of the land before the trespass by cultivating maize which they would sell for Kshs. 500,000/-, but that they no longer make use of the same.
 20. PW1 further testified that the defendants became hostile to them when they entered into the suit property, and that they further he testified sued them, but the same matter was dismissed. He testified that it was not true that the plaintiff acquired the suit property fraudulently as they bought the same from Mary Naini Eliud vide a sale agreement.
 21. On cross examination, PW1 testified that the suit property does not border parcel no. 115, but that there are two parcels of land between the two. Further, he testified that the distance between the two parcels is between 2 to 4 kilometres. PW1 informed the court that the plaintiff is among 16 groups in the suit property, including Enakishomi Group Ranch. He also testified that they were shown the boundary of the land that the plaintiff had purchased, and that that is when they found people within the suit property. It was his testimony that they cultivated on the land before they purchased it, and the defendants chased them out of the land, and that is when they realized that the part of land they had cultivated on was within their boundary. PW1 agreed not to have provided evidence of the pictures of the defendants who have built and cultivated on the land. Further, he testified that the implementation of the report dated 12th November, 2020 was a result of the tribunal decree, and that the plaintiff and other groups were among the parties that filed the matter at the Tribunal.
 22. PW1 further testified that about 6 to 7 groups approached the tribunal where they sought an order to survey all the boundaries of the parcels of land in the area. He testified that the plaintiff stated its acreage, and Enakishomi also confirmed its acreage. He agreed that the suit property is separate from parcel 115 and stated that the report contains 11 parcels of land whose final analysis indicated that the same is not complete in view of the 21 groups that were to be covered. PW1 further testified that the report does not show that Enakishomi and its members entered into the suit property. With regard to the map, PW1 testified that the map shows that parcels nos. 177 and 196 owned by Michael S. Pertet fall between the suit property and parcel no.115. Further, he informed the court that he does not know the acreage of parcel no. 177 as he does not see it in the report. He further stated that they utilized the land, and harvested maize worth Kshs. 500,000/- but he does not have any report showing the amount of money made from the said sale. He admitted that the ground was hostile but he did not produce evidence of any report to the police. He also agreed that Joseph Ng'eno resides in the suit property.
 23. On re-examination, PW1 testified that the suit property is covered in the report which shows the registered area and the ground area. He went on to testify that the plaintiff's land is 128 hectares and that according to the report, the acreage of Enakishomi Group Ranch is 2708.33 hectares, whose mutation has produced 1748.54 hectares, and that the two figures do not tally. Further, he testified that Enakishomi Group Ranch occupies a bigger portion than what they hold as registered owners. It was his testimony that the plaintiff sued the individuals who were on their land, and that the report shows that the suit property is occupied by squatters. He also testified that he has not been shown any document that the defendants are members of Enakishomi Group Ranch, where they reside. Further, he testified that it has not sued Mbokishi Group as it does not claim the suit property.



24. By consent, the adjudication record issued on 7th March, 1973, and the transfer of the property executed on 28th January, 1982, the application to the Land Control Board and the Consent were produced as P. Ex No. 9 to 11 respectively. Thereafter, the plaintiff closed its case.
25. The 1st, 2nd, 3rd, 4th, 5th, 7th, 8th, 9th defendants called one witness. Joseph Kibii Arap Ngeno (DW1) adopted his written statement dated 15th May, 2023 as his evidence in chief and he also produced D. Exhibits Nos. 1 to 16 respectively as their evidence before this court. DW1 proceeded to inform the court that it is not true that himself and the co-defendants trespassed onto the plaintiff's suit property since he occupies parcel no. 7133 which he bought from Jack Maimoto. He admitted that he did not know how Jack Maimoto acquired his land, but that he conducted a search before purchasing the same. Further, he testified that it was later said that the land was at the boundary of the forest and the issuance of the title deeds was halted.
26. DW1 further testified that the members register in D. Ex. No. 13 shows that Jack Maimoto was a member of Enakishomi Group Ranch. It was his evidence that he occupied his land which is 2 hectares in July, 1997 and that the surveyors found him on the ground when they began subdividing Enakishomi Group Ranch parcel of land (parcel no. 115). He went on to testify that the surveyors carried out the subdivision on the ground in 1998, and that his parcel of land does not border that of the plaintiff. DW1 further testified that Paul Kimeto lives far from him, and that there are 5 parcels of land between his parcel of land and that of Paul Kimeto. He also testified that he does know the acreage of his co-defendants parcels of land and neither does he know the size of the plaintiff's property.
27. DW1 further testified that together with his co-defendants, they have title deeds and that he knows where they reside within parcel no. 115. With regard to D. Ex. No. 16, DW1 testified that the same indicates that there are members of the group ranch who are squatters in parcels of land belonging to other people.
28. On cross-examination, DW1 testified that he is neither a member of Enakishomi Group Ranch nor is he a member of the plaintiff, and that he has not produced any authority to speak on behalf of Enakishomi Group Ranch. He admitted that he knows where his co-defendants reside but that he does not know the parcel number of Joseph Ngetich's parcel of land, but that he usually meets him. He went on to testify that he has come to court as the 1st defendant, and that none of his co-defendants asked him to testify on their behalf. He said that he entered into his land in 1996, and that his parcel of land came from the subdivision of parcel no. 115. He further testified that the mutation form was registered in the year 2019, whereas his title deed was issued in the year 1998. He added that he did not know how parcel no. 7133 came about but that he had carried out a search before he bought the same, and that he occupied his portion before parcel no. 115 was subdivided.
29. DW1 further testified that they did not file a survey report as they had requested. He also testified that he testified that the plaintiff's report shows that the size of its land is 2708.33 hectares on the ground while the registered acreage is 1748.54 hectares, and that all that he knows is that he bought his land. He went on to testify that he does not occupy the plaintiff's parcel of land, and that the person who sold the land to him is not a witness in this case. He maintained that his parcel of land is far away from the plaintiff's, and that he did not send his sons to chase away the officials of the plaintiff's with bows and arrows. Further, he testified that he knows about the County Commissioner's meeting but he did not attend the said meeting and that he disagrees with the resolution.
30. DW1 further testified that the chief has never visited him and that he has never been summoned by the OCS Ololulunga. He also testified that he came to know about a pending dispute when he was sued, and that he does not know of ELC Petition No. 5 of 2021 where the plaintiff was sued. He testified



that his parcel of land is in the judgment shown to him, and that the original owner of the parcel no. 115 recorded their statements.

31. On re-examination, DW1 testified that he is giving his testimony on behalf of his co-defendants as indicated in his statement. He testified that the mutation form of Enakishomi Group Ranch shows that there were many parcels of land and not four as alleged. He also testified that he does not know how many members were in Enakishomi Group Ranch, and that he was already in occupation of his land when the title deeds were issued. It was his testimony that he has developed his parcel of land, and that the mutation form bears a stamp of 2019, while the form is dated 1979. With the evidence of DW1, the defendants' closed their case.
32. The plaintiff filed its written submissions dated 31st May, 2024. The plaintiff submitted that the evidence and testimony of PW1 was not controverted since on cross-examination, PW1 confirmed to this court that the location of the suit property, and the land claimed by the defendants are far apart indicating that the defendants trespassed on the suit property. That it is trite law that where the evidence is not controverted, the same will be admitted by the court, and relied upon in dispensing with the burden of proof. The plaintiff relied on the cases of Interchemie EA Limited versus Nakuru Veterinary Centre Limited, Nairobi (Milimani) HCCC No. 165B of 2000, CMC Aviation Limited versus Cruisair Ltd. (No.1) [1978] KLR 103; [1976-80] 1KLR 835, Janet Kaphiphe Ouma & Another versus Marie Stoppes International (Kenya) Kisumu HCCC No. 68 of 2007, Karuru Munyororo versus Josphe Ndumia Murage & Another HCCC No. 95 of 1988 and Kenya Power and Lighting Company Limited versus Nathan Karanja Gachoka & Another [2016] eKLR.
33. The plaintiff raised five issues for determination as listed below: -
 1. Whether the plaintiff proved its case on a balance of probabilities.
 2. Whether the plaintiff has established grant of the orders of injunction.
 3. Whether an order of eviction shall issue.
 4. Whether the plaintiffs are entitled to orders of mesne profits and general damages.
 5. Whether the defendant's counter claim had abated.
34. On the first issue, the plaintiff submitted that its ownership of the suit property is not disputed, and that it therefore enjoys total protection of the law, and it is also entitled to all the benefits and privileges that come with ownership of the same, hence deserving of the orders sought against the trespassers. It was also submitted that the plaintiff bought the suit property from Mary Naini Eliud who was the first registered proprietor after the adjudication process, who later transferred the same to the plaintiff vide the transfer form dated 28th January, 1992.
35. The plaintiff further submitted that the cadastral map is clear that it is the defendants who have occupied the suit property without any justification, which was also confirmed by the boundary report dated 12th November, 2020 from the department of Lands Narok District.
36. On the second issue, the plaintiff submitted that they have established the threshold for grant of the orders of injunction to preserve, and conserve the suit property against any manner of trespass by the defendants or any persons acting on their behalf. Reliance was placed in the case of Kenya Electricity Transmission Company Limited versus Kibotu Limited [2019] eKLR.
37. On the third issue, the plaintiff submitted that it is the registered owner of the suit property which is an indefeasible title by law and therefore protected as such by dint of Section 24-26 of the [Land Registration Act](#).



38. On the fourth issue, the plaintiff's submitted that the reliefs sought in the amended plaint are intended to compensate it against the defendants for the unlawful use of their land, which the defendants have taken advantage of and enjoyed its use to the prejudice of the plaintiff.
39. On the fifth issue, the plaintiff's submitted that Order 5 Rule 1 (5) of the Civil Procedure Rules is couched in mandatory terms and the defendants have not complied with the same. In conclusion, the plaintiff submitted that it has established that on a balance of probabilities, it is entitled to the orders sought.
40. The 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants filed their written submissions dated 4th June, 2024, where they raised two issues for determination as follows: -
- i. Whether the plaintiff proved trespass against the defendants.
 - ii. Whether the plaintiff's is entitled to the reliefs sought.
41. On the first issue, the aforementioned defendants submitted that trespass must be proved, and the plaintiff did not lead evidence to prove any trespass, and that on cross examination, PW1 confirmed that he had not produced any evidence of invasion, construction of houses, and interference with natural resources or occupation by any of the defendants. They submitted that PW1 produced documents of ownership of the suit property which is uncontested. They also submitted that the boundary implementation report does not establish the issue of trespass, and that there is nothing to show that the aforementioned defendants are trespassers on the suit property. They relied on the cases of Telkom Kenya Limited versus County Government of Muranga [2019] eKLR, Anne Wambui Ndiritu versus Joseph Kiprono Ropkoi & Another [2005] 1EA 334, and CMC Aviation Limited versus Kenya Airways Limited (Crusair Ltd) [1978] eKLR.
42. The defendants further submitted that the genesis of ownership of their land has been shown to have arisen from purchase from the members of Enakishomi Group Ranch who have valid titles.
43. On the second issue, the aforementioned defendants submitted that the plaintiff has failed to prove its case on a balance of probabilities, and they have failed to show any ill will by the defendants in the perceived trespass and for that reason, there was no prima facie case proved for trespass. On mesne profits, the aforementioned defendants submitted that the plaintiff did not furnish the court with any evidence on the period the defendants had been on the land, the extent of trespass and the loss it had suffered. Reliance was placed in the case of Peter Mwangi Mbutia & Another versus Samow Edin Osman [2014] eKLR.
44. On eviction, the defendants submitted that one can only evict one who is in possession of another's property. That in this case, the aforementioned defendants have lived on their properties with their families from the date they purchased the said properties and continue to live to date. They maintained that they have been wrongly sued, as they do not occupy the plaintiff's parcel of land.
45. I have considered the pleadings, the evidence on record, the testimonies of the witnesses and the written submissions filed by the parties herein. I am of the considered opinion that the issues for determination are as follows: -
1. Whether the plaintiff is entitled to the orders sought.
 2. Who is to bear the costs.
46. It is not disputed that the plaintiff is the registered owner of the suit property, and neither is it disputed that the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 9th defendants are the owners of parcels no. Narok/



Cis-Mara/Ololulunga/7133, 6901, 6868, 6386 and 7095. What is disputed is the claim for trespass where the plaintiff contended that the defendants have trespassed on its land without its consent which is unlawful and illegal. On the other hand, the aforementioned defendants excluding the 6th and 10th defendants denied the claims of trespass and argued that if at all the plaintiff's claim trespass, the said plaintiff has superimposed its land on their respective parcels of land. It is trite law that he who alleges must prove and the proof in civil matters should be on a balance of probability. Sections 107, 108 and 109 of the Evidence Act provides as follows:

“Section 107

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on 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.

Section 108

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Section 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.”

47. It is necessary for a party claiming that an action has been done or omitted to prove to the extent that in deed such an act said to be done or omitted exists. In this case, it was incumbent upon both the plaintiff and aforementioned defendants (owing to the counter claim) to prove the allegations levelled against each other at least to the extent required in civil cases.
48. Black's Law Dictionary 8th Edition, defines trespass as:
“An entry on another's ground, without a lawful authority, and doing some damage, however inconsiderable, to his real property”
49. Section 3 (1) of the Trespass Act, Cap 294 provides that
“Any person who without reasonable excuse enters, is or remains upon or erects any structure on, or cultivates or tills or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.”
50. PW1 testified that the defendants encroached on its property and have dealt with the suit property by grazing cows, constructing houses and even cutting trees. PW1 argued that the occupation of the aforementioned defendants on its land amounts to trespass, and that it has suffered loss as a result of damages. PW1 in his evidence admitted that between its parcel of land and that which is claimed by the defendants is far apart. It was also his testimony that the parcel of land owned by the defendants arose from Enakishomi Group Ranch whose size is bigger on the ground than what is registered. That from the boundary implementation report, there is evidence that there are squatters on its land. PW1 did not provide evidence to substantiate the claim for trespass either through photographs, or any actual activity said to be conducted on the land to invasion of the land. Equally, the defendants have also not



provided evidence of invasion of their land by the plaintiff to prove trespass. The claim for trespass has thus not been proved.

51. The parties also made mention of the report dated 12th November, 2020 which according to the plaintiff, refers to the existence of squatters on its land. I have looked at the said report dated 12th November, 2020 where the Land Registrar and Surveyor were directed to resurvey Mbokishi Group Ranch and put all beacons around the corner. Further, the two officers were required to extend survey/boundary re-establishment to all land bordering Mbokishi Group Ranch which is Chepchapas Farmers Co-operative Society, Mamboleo Women Group, John Karunye, Sarune Ole Sena, Letian Leboo Group Ranch and others. In this report it was noted that the plaintiff is not in occupation of its land, and the land is occupied by squatters/strangers. The question then is, who are the squatters on the plaintiff's land?
52. Ex. no. 6 is a map showing that parcel nos. 182 and 115 appear to be far apart with other parcels of land in between. The plaintiff's argument that Enakishomi Group Ranch where the aforementioned defendants derived their land is bigger in size on the ground than its registered size is not persuasive. The two parcels being far apart, it is not possible that those residing in parcel 115 to extend their land the suit property. From the above, I find that the plaintiff has not discharged its burden of proving the acts of trespass said to have been done by the defendants. In addition, the defendants have equally not substantiated their claims contained in their counterclaim. For this reason, this court is not persuaded that the plaintiff is deserving of the orders sought.
53. It follows therefore, that the amended plaint dated 18th October, 2021, and the counterclaim dated 11th May, 2022 are hereby dismissed. Each party shall bear its own costs. Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL this 1ST day of AUGUST, 2024.

HON. MBOGO C.G.

JUDGE

01/08/2024.

In the presence of: -

Mr Meyoki Pere – C. A

