



**Tajeuo (Suing on Behalf and or a Representative of Joseph Tajeuo Murenka
(Deceased)) v Sapunyu & 2 others (Environment and Land Appeal
E003 of 2024) [2024] KEELC 7155 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 7155 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL E003 OF 2024
EM WASHE, J
SEPTEMBER 26, 2024**

BETWEEN

**NAREYIO TAJEUO APPELLANT
SUING ON BEHALF AND OR A REPRESENTATIVE OF JOSEPH TAJEUO
MURENKA (DECEASED)**

AND

**NGETO GIDEON SAPUNYU 1ST RESPONDENT
THE LAND REGISTRAR TRANSMARA 2ND RESPONDENT
THE HON ATTORNEY GENERAL 3RD RESPONDENT**

JUDGMENT

1. The Appellant herein filed the Memorandum of Appeal dated 15.02.2024 (hereinafter referred to as “the present Appeal”) against the Judgement and Decree dated 31.01.2024 (hereinafter referred to as “the Trial Court Judgement”) delivered in the proceedings known as Kilgoris Senior Principal Magistrate’s Court ELCCase No. 143 of2018 (hereinafter referred to as “the Trial Court”) on the following grounds; -
 - a. The Hon. Magistrate erred in law and fact when he awarded the 1st Respondent the land LR.No.Transmara/Shartuka/375 when the evidence on the record was pointing to the land being given to the Appellant who has been living on the said land ever since the group ranch was created.
 - b. That the Learned Magistrate erred in law and fact when he ordered that the Land Registrar and surveyor to confirm whether the Plaintiff lives on the plot LR.No.transmara/shartuka/391 or LR.No.Transmara/Shartuka/375 after having given a judgement against her.



- c. That the Learned Magistrate erred in law and fact when he accepted the distorted and sketchy evidence of the 1st Respondent and that the 1st Respondent never called any witnesses to collaborate his evidence.
- d. That the Learned Magistrate erred in law and fact when he shifted from his finding that the 1st Respondent was only dangling a title whose root chain could not be traced and he could not explain how he got a title deed in his name when he was not the registered of the land even on the list of membership relied upon by the Hon. Magistrate.
- e. That the Learned Magistrate erred in law and fact when he gave orders that the registered owner of the land parcel number LR.No.Transmara/Shartuka/375 was one Bii Sunkuli when he was not a party to the suit and was never called by the 1st Respondent as a witness nor did he get enjoined as an interested party to the suit.
- f. That the Learned Magistrate erred in law and fact when he relied on a list produced by the Land Registrar without any stamp authenticating the same to have originated from the Registrar of Group Ranches as is trite law occasioning an injustice on the part of the Appellant.
- g. That the Learned Magistrate erred in law and fact when he allocated land parcel to the 1st Respondent without considering that the Shartuka Group Ranch members allocated land according to where each member was staying and that the Appellant's husband was allocated the land whose list was made in 1992 and 1998 containing 335 members and the list produced by the Land Registrar is not an authenticated list by having the signature of the Registrar of Group Ranches and thus relying on irrelevant information leading to wrong conclusion.
- h. That the Learned Magistrate erred in law and fact when he ignored the evidence that all acceptees were allocated less than 20.64 Hectares yet the Appellant's husband Joseph Taju was not an acceptee but an original member allocated the said plot where they were caught staying at the time of allocation.
- i. That the Learned Magistrate erred in law and fact when he ignored the evidence of the 1st Respondent that he just got registered as owner on 27.08.1998 the same day the list of members was being prepared and did not find it unusual but proceeded to wrongly award him the title LR.No.Transmara/Shartuka/375 where the Appellant was allocated as they were found living there.
- j. That the Learned Magistrate erred in law and fact when he ignored the pleadings of the 1st Respondent and awarded him somebody's land contrary to known law and procedure.
- k. That the Learned Magistrate erred in law and fact when he ignored the known principle of law that no orders shall be given against a party not before the Court but proceeded to deal with Bii Sunkuli's land in his absence and without giving Bii Sunkuli the registered owner of all that parcel of land known as LR.No.Transmara/Shartuka/375 a chance to be heard.
- l. That the Learned Magistrate erred in law and fact when he made the correct finding that the 1st Respondent was only dangling a title deed whose origin could not be traced without a break but erroneously proceeded to award the wrong doer Ngeto, BII'S title deed.
- m. That the Learned Magistrate erred in law and fact when he failed to take judicial notice that the 1st Respondent was not in the 1992 and 1997 Shartuka Membership list but emerges in a list only known to the Land Registrar and unknown to the Registrar of Group Representatives and he did not explain how he got registered on a land he did not occupy and without saying



to whom his title deed numbers LR.No.Transmara/shartuka/800 and LR.No.transmara/shartuka/786 respectively and further did not have him explain under what circumstances 1st Respondent.

- n. That the Learned Magistrate erred in law and fact when he ordered that the Appellant be relocated to parcel number LR.No.transmara/Shartuka/391 but ignored to order what would happen of the said LR.No.transmara/shartuka/391 was found non-existent on the ground as on the top of the list he relied on some parcels were combined and others removed altogether.
 - o. That the learned Magistrate erred in law and fact when he relied on a list of Shartuka Members that did not have the stamp of the Registrar of Group Representatives and had therefore been manipulated to accommodate friends, relatives and close confidants some land swelling the list from 335 to 907 without any procedure.
 - p. That the Learned Magistrate erred in law and fact when he accepted the evidence of the 1st Respondent a liar and a former chief, ward administrator and therefore got registered in more than one parcel contrary to law and now court awards him title deed LR.No.Transmara/Shartuka/375 illegally and irregularly and contrary to any known law and procedure.
 - q. That the Learned Magistrate erred in law and fact when he did not realize he was arbitrarily taking away the property of the Appellant contrary to Article 27 and 40 of *the Constitution* of Kenya 2010.
 - r. That the Learned Magistrate erred in law and fact when he apportioned costs to the Appellant.
2. The Appellant therefore sought the following Orders in present Appeal; -
- A. The appeal be allowed.
 - B. The Judgement & decree of Hon.C Waswa(SRM) dated 31st january 2024 be set-aside in its entirety, the subsequent orders be vacated dismissing the 1st respondent's defence in the lower court and cancel the title deed awarded to the 1st respondent and revert same to the member Bii Sunkuli who is the member allocated the said land.
 - C. The costs of both the appeal and the suit in the lower court be borne by the 1st respondent.
3. The present Appeal was duly served on the Respondents and the Court directed that it be canvassed by way of written submissions.
4. The Appellant proceeded to file her submissions dated 27.05.2024 while the 1st Respondent file his submissions dated 15.07.2024.
5. The 2nd and 3rd Respondents elected not to file any written submissions regarding the present Appeal.
- 1. In the case of *Selle & Another-versus- Associated Motor Boat Co.ltd & Others(1968) EA 123* the Court of Appeal expounded on the jurisdiction of a first appellate Court as follows; -

“ A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand.”



2. The Court therefore has a duty and/or mandate to relook at the pleadings, evidence and/or issues raised before the Trial Court and make its own determination keeping in mind that it did not have the opportunity of seeing and/or hearing the witnesses first hand.
6. Based on the above guidance, this Court will now proceed to relook at the pleadings, evidence and issues before the Trial Court herein below.

Pleadings by the Appellant.

7. The Appellant instituted the Trial Court proceedings through a Plaint dated 28.12.2018 to which he sought for the following orders; -
 - a. That a permanent injunction be issued against the Defendants restraining the Defendant himself, his agents and or servants from trespassing and or cultivating on the Plaintiff's land parcel on LR.No.Transmata/Shartuka/375 measuring approximately 20.64 Hectares and cancellation of LR.No.Transmara/Shartuka/375 by deleting the names Ngeto Gideon Sapunyua and issue new title to the Plaintiff bearing the names of Nareyio Tajeuo.
 - b. Costs of the suit be granted.
 - c. Any other relief Court deems fit to grant.
8. The 1st Respondent was duly served with the Plaint dated 28.12.2008 and opposed it by filing a Statement of Defence and Counter-Claim dated 22.02.20219.
9. The 1st Respondent denied the averments contained in the Plaint dated 28.12.2018 and pleaded that he is the lawful and registered owner of the property known as LR.No.Transmara/Shartuka/375.
10. The 1st Respondent further pleaded that the Appellant herein was never in occupation of the property known as LR.No.Transmara/Shartuka/375 during the sub-division and dissolution of Shartuka Group Ranch as alleged.
11. The 1st Respondent stated that he was one of the registered members of Shartuka Group Ranch who were duly allocated land and the same lawfully transferred to his name after the dissolution of the said Group Ranch.
12. In essence therefore, the 1st Respondent pleaded that there was no collusion and/or unlawful dealings with the 2nd Respondent as alleged by the Appellant and the title issued in his name was lawful and legitimate.
13. In addition to the above, the 1st Respondent also filed a Counter-Claim dated 22.02.2019 against the Appellant seeking for the following orders; -
 - a. A Declaration that the Counter-Claimer is the lawful, bona-fide and registered proprietor of LR.No.Transmara/Shartuka/375 and hence entitled to exclusive use and/or possession thereof as against the Appellant.
 - b. An Order of eviction against the Defendant (Appellant) to the Counter-Claim, her agents and/or servants from LR.No.Transmara/Shartuka/375.
 - c. A permanent injunction restraining the Defendant to the Counter-Claim either by herself, agents, servants and/or anyone claiming under the Defendant to the Counter-Claim from entering, re-entering, trespassing onto, laying a claim to, building and/or constructing thereon, fencing, cultivating, grazing on, interfering with and/or in any other manner, whatsoever



dealing with the suit property, that is , LR.No.Transmara/Shartuka/375 and/or any portion thereof, in any manner prejudicial and/or adverse to the rights and interests of the Counter-Claimer.

- d. General and aggravated damages for trespass/mesne profits.
 - e. Costs of the cross suit be borne by the Plaintiff/Defendant to the Counter-Claim.
 - f. Such further and/or other relief as the Honourable Court may deem fit and expedient.
14. The 2nd and 3rd Respondents opposed the Plaintiff dated 28.12.2018 by filing a Statement of Defence dated 25.07.2023.
 15. The 2nd and 3rd Respondents specifically denied the Appellants allegations contained in the Plaintiff dated 28.02.2018 and pleaded that the proper procedures were duly followed in the registration of the property known as LR.No.Transmara/Shartuka/375 in the name of the 1st Respondent.
 16. The 2nd and 3rd Respondents further pleaded that the Appellant's Plaintiff dated 28.02.2018 was fatally defective as it was time barred and therefore bad in law.
 17. The 2nd and 3rd Respondents therefore sought to have the Plaintiff dated 28.02.2018 dismissed with costs.
 18. In reply to the 1st Respondent's Counter-Claim dated 22.02.2019, the Appellant filed a Reply to the Counter-Claim dated 05.08.2019.
 19. First, the Appellant reiterated that the sub-division, alienation and registration of the 1st Respondent as the owner of the property known as LR.No.Transmara/Shartuka/375 was fraudulent, devoid of procedure and therefore illegal.
 20. The Appellant further pleaded that the 1st and 2nd Respondents unlawfully altered and/or tempered with the membership register of Shartuka Group Ranch by removing the name of the deceased Joseph Tajeuo Murrenka and instead recording the name of the 1st Respondent yet he was not a member of Shartuka Group Ranch and/or in occupation of the property known as LR.No.Transmara/Shartuka/375.
 21. The Appellant's position was that the property known as LR.No.Transmara/Shartuka/375 was in her occupation for over 30 years and therefore they had not trespassed on the 1st Respondent's land as alleged in the Counter-Claim.
 22. In essence, the Appellant sought the Court to dismiss the Counter-Claim with costs.
 23. At the end of the pleadings, the matter was listed for hearing.

Evidence produced at the hearing.

24. The Appellants case before the Trial Court commenced on the 24.10.2023 with the testimony of the Appellant who was marked as PW 1.
25. The Appellant informed the Trial Court that she had prepared a witness statement dated 31.12.2018 of which he then adopted as his evidence in chief.
26. The Appellant confirmed before the Trial Court that she was the one in occupation of the property known as LR.No.Transmara/Shartuka/375.
27. In support of her case, the Appellant proceeded to produce the following documents as her Exhibits; -



PW 1 Exhibit 1- Copy of an official search dated 28.11.2018 for the property known as LR.No.Transmara/Shartuka/375.

PW 1 Exhibit 2- A copy of Letters of Administration Ad-Litem issued on the 20.12.2018.

PW 1 Exhibit 3- List of Members of Shartuka Group Ranch.

PW 1 Exhibit 4- A register of all members of Shartuka Group Ranch.

PW 1 Exhibit 5- A List of Combination of Parcels issued by Shartuka Group Ranch.

PW 1 Exhibit 6- A copy of an Order issued in the proceedings known as Nakuru Constitution Petition No. 38 of 2013.

28. The Appellant thereafter stated that the title to the property known as LR.No.Transmara/Shartuka/375 was unlawfully issued to the 1st Defendant and should therefore be cancelled.
29. On cross-examination by the 1st Respondent's Counsel, the Appellant admitted that she does not have any Title Deed to the property known as LR.No.Transmara/Shartuka/375.
30. The Appellant stated that she had instituted the Trial Court proceedings based on the Letters of Administration Ad-Litem.
31. The Appellant confirmed to the Trial Court that her husband was known as Joseph Tajeuo Murenka.
32. On being referred to the Exhibits produced, the Appellant stated that the Parcel no. 375 within Shartuka Group Ranch had been alienated to one Bii Cheruiyot Ole Sunkuli.
33. The Appellant stated that the person known as Bii Cheruiyot Ole Sunkuli was unknown to her.
34. Nevertheless, the Appellant insisted that she was the one in occupation and use of the property known as Parcel No. 375 within Shartuka Group Ranch which is now titled as LR.No.Transmara/Shartuka/375.
35. The Appellant confirmed that her late husband Joseph Tajeuo Murenka was never recorded as the owner of Parcel No. 375 within Shartuka Group Ranch.
36. Later on, the Appellant discovered that the property which she occupies known as LR.No.Trasmara/Shartuka/375 had been registered in the name of the 1st Respondent.
37. The Appellant admitted being familiar with the 1st Respondent but had not asked him how he had been registered as the owner of the property known as LR.No.Trasmara/Shartuka/375.
38. The Appellant further admitted that she had no evidence to show that the 2nd Respondent had engaged in fraudulent and/or forgery activities to deny the Appellant of ownership to the property known as LR.No.Transmara/Shartuka/375.
39. The Appellant did not have any letter or communication sent to any of the Respondents challenging the registration of the 1st Respondent as the owner of the property known as LR.No.Transmara/Shartuka/375.
40. The Appellant stated that she did not have any evidence that the 1st Respondent had undertaken any unlawful actions to register himself as the owner of the property known as LR.No.Transmara/Shartuka/375 in the year 1998 when the Title Deed was issued.
41. The Appellant informed the Trial Court that she was born in the year 1969.



42. The Appellant averred that she was not a trespasser on the property known as LR.No.Transmara/Shartuka/375.
43. The Appellant testified that she knew one Moses Koringo as the Chairman of Shartuka Group Ranch who was involved in the sub-division of the group ranch.
44. The Appellant informed the Court that it was the said Moses Koringo that allocated them the property known as LR.No.Transmara/Shartuka/375.
45. On re-examination, the Appellant confirmed that she obtained the Letters of Administration Ad-Litem before filing of the Trial Court proceedings.
46. The Appellant further averred that at the time of her husband's demise, they were already in occupation of the property known as LR.No.Transmara/Shartuka/375.
47. The Appellant stated that the person known as Bii Sunkuli was not her husband.
48. Lastly, the Appellant insisted that the 1st Respondent has never been in occupation of the property known as LR.No.Transmara/Shartuka/375.
49. At the end of this re-examination, the Appellant was discharged from the witness stand.
50. The 2nd Appellant's witness at the Trial Court was one Mose Karia Kopasar who was marked as PW 2.
51. PW 2 adopted his witness statement dated 17.06.2020 as his evidence in chief.
52. According to PW 2, the property known as LR.No.Transmara/Shartuka/375 did not belong to the 1st Respondent.
53. On cross-examination, PW 2 informed the Trial Court that he was a Committee member of Shartuka Group Ranch under the Chairmanship of one Joel Tasur.
54. PW 2 further stated that at the moment, this Committee of Shartuka Group Ranch no longer exist having been dissolved in 1997.
55. According to PW 2 recollection, the Committee had written to the Land Registrar to register the late Joseph Tajeuo as the owner of the property known as LR.No.Transmara/Shartuka/375.
56. However, in the year 1998, another Committee of Shartuka Group Ranch was formed and headed by Moses Korinko.
57. The second Committee by Moses Korinko insisted that people would be given land according to how they resided in the ranch.
58. Based on this direction, PW 2 was issued a title deed to his property known as Transmara/Shartuka/158 in the year 1998.
59. Unfortunately, PW 2 could not confirm if the late Joseph Tajeuo was ever issued with a title deed to the property known as LR.No.Transmara/Shartuka/375 although he had been allocated land by the Committee of Joel Tasur.
60. PW 2 admitted that there was no evidence to show that a complaint had been lodged with the 2nd Respondent challenging the registration of the 1st Respondent as the owner of LR.No.Transmara/Shartuka/375.



61. PW 2 averred that there is no police complaint that has been made against the 2nd Respondent for forging and/or fraudulently registering the property known as LR.No.Transmara/Shartuka/375 in the name of the 1st Respondent.
62. PW 2 informed the Trial Court that if the name of the late Joseph Tajeou was not in the Register of Shartuka Group Ranch, then the Register was wrong.
63. PW 2 confirmed that the Register before the Trial Court was wrong because it did not have the name of Joseph Tajeou.
64. On re-examination, PW 2 clarified that the Register before the Trial Court was the one for the year 1998.
65. PW 2 confirmed that according to the Register before the Trial Court, the property known as LR.No.Transmara/Shartuka/375 is recorded in the name of Bii Sunkuli.
66. In the same Register, PW 2 had been recorded as the owner of the property known as LR.No.Transmara/Shartuka/158.
67. PW 2 informed the Trial Court that their Committee sub-divided the Shartuka Group Ranch in 1992 and the total members were 334.
68. At the end of this re-examination, PW 2 was discharged from the witness stand.
69. The 3rd Appellant's witness before the Trial Court was one Damaris Nashipai who was marked as PW 3.
70. PW 3 duly adopted her witness statement dated 04.10.2023 as her evidence in chief.
71. On cross-examination, PW 3 stated that her father was the beneficial owner of the property known as LR.No.Transmara/Shartuka/375.
72. However, the Register indicates that LR.No.Transmara/Shartuka/375 was recorded in the name of Bii Sunkuli who is not PW 3's father.
73. PW 3 informed the Trial Court that PW 2 was their neighbour at home.
74. PW 3 confirmed that the Appellant had never been registered as the owner of the property known as LR.No.Transmara/Shartuka/375.
75. However, according to PW 3, her late father had been recorded as the owner of LR.No.Transmara/Shartuka/375 although the property has never been subjected to succession as required by law.
76. On re-examination, PW 3 confirmed that the Register produced was the one for 1998.
77. PW 3 admitted that according to the 1998 Register of Shartuka Group Ranch, the property known as LR.No.Transmara/Shartuka/375 had been recorded in the name of Bii Sunkuli and not her father Joseph Tajeou.
78. However, PW 3 stated that the 1st Respondent has never been in occupation of the property known as LR.No.Transmara/Shartuka/375.
79. PW 3 further admitted that the Appellant had undertaken a succession of all the assets of the late Joseph Tajeou.
80. At the end of this re-examination, PW 3 was discharged from the witness box thereof.
81. The Appellant's 4th witness was John Momposhi Talala who was marked as PW4.



82. PW 4 stated that he had prepared and filed a witness statement dated 05.08.2019 which he adopted as his evidence in chief.
83. On cross-examination, PW 4 could not produce any documentary evidence to show that the property known as LR.No.Transmara/Shartuka/375 belonged to Joseph Tajeou.
84. Similarly, PW 4 did not have any documents to confirm that the late Joseph Tajeou had been buried in the property known as LR.No.Transmara/Shartuka/375.
85. PW 4 sought the Trial Court to remove the name of the 1st Respondent as the owner of LR.No.Transmara/Shartuka/375 and instead register the name of the Appellant as she was the person in occupation of the said property.
86. PW 4 admitted that the Register presented before the Trial Court indicates the name of Bii Sunkuli as the lawful owner of LR.No.Transmara/Shartuka/375 which is actually a surprise.
87. On cross-examination, PW 4 reiterated that according to him, the property known as LR.No.Transmara/Shartuka/375 belongs to the Appellant as she had been in occupation for the last 30 years.
88. PW 4 stated that he was not familiar with Bii Sunkuli because he does not reside on the property known as LR.No.Transmara/Shartuka/375.
89. At the end of this re-examination, PW 4 was discharged from the witness box thereof.
90. The Appellant's 5th Respondent was Godwin Lekishow who was marked as PW 5.
91. PW 5 informed the Court that he had prepared and filed a witness statement dated 04.10.2023 of which he adopted as his evidence in chief.
92. On cross-examination, PW 5 stated that the purpose of the Register is to show the recorded owners of the various properties within Shartuka Group Ranch.
93. However, PW 5 was surprised that according to the Register produced before the Trial Court, the property known as LR.No.Transmara/Shartuka/375 was recorded in the name of Bii Sunkuli.
94. Nevertheless, PW 5 did not have any documents to show that the Appellant was the beneficial owner of the property known as LR.No.Transmara/Shartuka/375.
95. PW 5 further confirmed to the Trial Court that the property known as LR.No.Transmara/Shartuka/375 had not been declared in the Succession proceedings of Joseph Tajeou.
96. PW 5 testified that his mother the Appellant had never been recorded and/or registered as the owner of the property known as LR.No.Transmara/Shartuka/375.
97. PW 5 informed the Trial Court that he was aware of the prayers sought in the Plaint dated 28.12.2018 which includes a prayer for the cancellation of the 1st Respondent's name as the owner of LR.No.Transmara/Shartuka/375.
98. Unfortunately, PW 5 did not have any evidence that the title deed to the property known as LR.No.Transmara/Shartuka/375 had been fraudulently and/or through forgery been issued to the 1st Respondent.
99. PW 5 confirmed to the Trial Court that since the title deed to the property known as LR.No.Transmara/Shartuka/375 was issued, the Appellant had never written a letter to the 1st and 2nd Respondents to challenge and/or dispute the issuance of the said title deed.



100. Similarly, there was no report made before the Police for any fraud and/or forgery against the 1st and 2nd Respondent before any police station.
101. On re-examination, PW 5 reiterated that according to him, the property known as LR.No.Transmara/Shartuka/375 belongs to their late father Joseph Tajeou.
102. Consequently, PW 5 was surprised that the Register indicates the name Bii Sunkuli as the owner of the property known as LR.No.Transmara/Shartuka/375 and had been issued with a title deed.
103. Nevertheless, PW 5 confirmed that it was the Appellant and her children that reside on the property known as LR.No.Transmara/Shartuka/375.
104. At the end of this re-examination PW 5 was discharged from the witness box.
105. The Appellant then closed her case before the Trial Court after the testimony of PW 5.
106. The Defence hearing began on the 15.11.2023 with the testimony of the 1st Respondent who was marked as DW 1.
107. DW 1 informed the Trial Court that he had prepared a witness statement dated 22.02.2019 of which he adopted as his evidence in chief.
108. DW 1 testified that he does not know the person known as Joseph Tajeou who is the Plaintiff in the Trial Court and the Appellant in this Appeal.
109. In support of his ownership, the 1st Respondent produced the following documents in support of his evidence; -
 - DW 1 Exhibit 1- A copy of the Title Deed of LR.No.Transmara/Shartuka/375 issued in the name of the 1st Respondent on the 24.08.1998.
 - DW 1 Exhibit 2- A copy of an Official Search of the property known as LR.No.Transmara/Shartuka/375 issued on the 28.11.2018.
110. DW 1 stated that he only came to know the Appellant through the proceedings before the Trial Court.
111. DW 1 further confirmed to the Trial Court that the Appellant had entered into the property known as LR.No.Transmara/Shartuka/375 without his permission as she had not bought the same.
112. DW 1 testified that the property which that had been registered in the name of Murenka Tajeou who is the husband of the Appellant according to the Register was Parcel No. 391 within Shartuka Group Ranch.
113. Consequently, DW 1 averred that the Appellant had no ownership rights over the property known as LR.No.Transmara/Shartuka/375.
114. DW 1 stated that based on his ownership documents, he had filed a Counter-Claim seeking for an order of eviction and a permanent injunction against the Appellant.
115. DW 1 insisted that the Appellant have no documentary evidence to proof any ownership rights over the property known as LR.No.Transmara/Shartuka/375.
116. On cross-examination, DW 1 stated that he was currently engaged in farming.
117. However, previous he had been a Ward Administrator and a Senior Chief of the location the property known as LR.No.Transmara/Shartuka/375 is located.



118. DW 1 informed the Trial Court that he became a member of Shartuka Group Ranch in 1997 and not in the year 1992.
119. DW 1 stated that there were no Share Certificates issued by Shartuka Group Ranch to any of its members.
120. DW 1 admitted that his name was not in the Register made in the year 1997.
121. DW 1 averred that according to the membership list of 1992, the number of members of Shartuka Group Ranch was 334.
122. On the other hand, the number of members of Shartuka Group Ranch published in 1997 was 853 as opposed to 334.
123. DW 1 denied knowledge on the person known as Bii Ole Sunkuli but admitted that Parcel No. 375 was recorded in the name of Bii Ole Sunkuli.
124. The name of Bii Ole Sunkuli was contained in the Shartuka Group Ranch register of 1992.
125. However, in 1997 and 1998, other members were added to the Shartuka Group Ranch which raised the number to 853.
126. In the list of 1997, the name of DW 1 appears on No. 800 and 786.
127. DW 1 testified that the List of 1998 was doctored and was not genuine.
128. Nevertheless, DW 1 admitted that the List of 1998 had been certified by the District Land Registrar.
129. DW 1 testified before the Trial Court that he was the one in occupation of LR.No.Transmara/Shartuka/375 which he uses for farming.
130. DW 1 confirmed that he had not built any house on the said property known as LR.No.Transmara/Shartuka/375.
131. DW 1 informed the Trial Court that the Appellant had forcefully entered into the property known as LR.No.Transmara/Shartuka/375 although he had not filed any suit against her.
132. DW 1 denied any participation in the doctoring of the Register of members of Shartuka Group Ranch.
133. DW 1 reiterated that the Appellant was still on his property known as LR.No.Transmara/Shartuka/375 and therefore is seeking for an order of eviction.
134. DW 1 stated that there are no houses developed by the Appellant on the property known as LR.No.Transmara/Shartuka/375.
135. DW 1 confirmed that he was registered and issued with a title deed to the property known as LR.No.Transmara/Shartuka/375 in the year 1998.
136. DW 1 insisted that three quarters of the property known as LR.No.Transmara/Shartuka/375 is used by his agents while the Appellant is in occupation of the other quarter.
137. Lastly, DW 1 denied the allegation that the Appellant's husband was buried on the property known as LR.No.Transmara/Shartuka/375.
138. On re-examination, DW 1 insisted that the Appellant's husband was never buried on the property known as LR.No.Transmara/Shartuka/375.



139. DW 1 stated that he has never been informed to return the title deed to the property known as LR.No.Transmara/Shartuka/375.
140. According to DW 1, the Appellant forcefully entered into the property known as LR.No.Transmara/Shartuka/375 in the year 2018.
141. DW 1 testified that he reported the Appellant's entry before the Area Chief but before the matter was dealt with, the Appellant filed the present suit.
142. DW 1 informed the Trial Court that he could not evict the Appellant without an eviction order issued by the Court.
143. DW 1 averred that although the Appellant claimed to be the owner of the property known as LR.No.Transmara/Shartuka/375, she had not produced any documentary evidence to that effect.
144. DW 1 pointed out that the list of members produced before the Trial Court had names but does not show the year it was compiled.
145. DW 1 concluded his re-examination by stating that the Appellant was indeed a trespasser on the property known as LR.No.Transmara/Shartuka/375.
146. At the end of this re-examination, DW 1 was discharged from the witness box and the Defence case was closed.
147. The Appellant then proceeded to file her final submissions on the 16.01.2024 while the 1st Respondent filed his final submissions on the 24.11.2024.
148. The Court has carefully perused the pleadings before the Trial Court, the testimony of the witnesses, the documentary evidence produced therein and the submissions of the parties and identify the following issues for determination; -
 - Issue No. 1- is the appellant's plaint dated 28.12.2018 time barred as alleged by the 2nd & 3rd respondents?
 - Issue No. 2- is the appellant entitled to be registered as the lawful owner of the property known as LR.No.Transmara/Shartuka/375?
 - Issue No. 3- is the appellant entitled to an order of permanent injunction against the 1st respondent over the property known as LR.No.Transmara/Shartuka/375?
 - Issue No. 4- is the 1st respondent under the counter-claim entitled to a declaration that he is the lawful owner of the property known as LR.No.Transmara/Shartuka/375?
 - Issue No. 5- is the 1st respondent under the counter-claim entitled to an order of eviction against the appellant over the property known as LR.No.Transmara/Shartuka/375?
 - Issue No. 6- is the 1st respondent under the counter-claim entitled to an order of permanent injunction against the appellant over the property known as LR.No.Transmara/Shartuka/375?
 - Issue No. 7- is the appellant entitled to the prayers sought in the present appeal?
 - Issue No. 8- who bears the costs of this appeal?
149. The Court having duly identified the issues for determination as hereinabove, the same will now be discussed as hereinbelow.



Issue No. 1- is the appellant's plaint dated 28.12.2018 time barred as alleged by the 2nd & 3rd respondents?

150. The Appellant filed a Plaint dated 28.12.2018 against the 1st to 3rd Respondents seeking for two main prayers.
151. First, the Appellant sought to have the name of the 1st Respondent cancelled from the property known as LR.No.Transmara/Shartuka/375 and in its place her name be registered as the lawful owner of the said property.
152. Secondly, the Appellant sought to be issued with a permanent injunction restraining the 1st Respondent from dealing, occupying and/or interfering with the property known as LR.No.Transmara/Shartuka/375.
153. The main ground in support of these two prayers is that the property known as LR.No.Transmara/Shartuka/375 has been in occupation of the Appellant and her late husband Joseph Tajeou for the last 30 years to 40 years.
154. The Appellant is therefore claiming that the 1st Respondent through fraud and/or forgery and/or altered the Register of Shartuka Group Ranch with the collaboration of the 2nd Respondent and unlawfully registered the property known as LR.No.Transmara/Shartuka/375 in the name of the 1st Respondent.
155. According to the Appellant's Exhibit 1, the registration of the 1st Respondent as the owner of the property known as LR.No.Transmara/Shartuka/375 was done on the 24.08.1998 with the issuance of the Title Deed to his name.
156. The 2nd and 3rd Respondents through their Defence dated 25.07.2023 raised an issue of law to the effect that the Appellant's Plaint dated 28.12.2018 was time barred.
157. The Appellant did not however make any response to this point of law raised by the 2nd and 3rd Respondents in their Defence dated 25.07.2023.
158. Nevertheless, the issue raised by the 2nd and 3rd Respondents is one that touches on the jurisdiction of the Trial Court to hear and determine the Plaint dated 28.12.2018 and cannot be ignored.
159. In the celebrated case of Owners of Motor Vessel "Lillian S"-Versus- Caltex Oil (Kenya) Ltd (1989) KLR 1, the Court made the following observation; -
- ...Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.
160. Turning back to the Plaint dated 28.12.2018 filed before the Trial Court, the Appellant is seeking to recover the property known as LR.No.Transmara/Shartuka/375 which has been registered in the name of the 1st Respondent.
161. According to the Appellant's Exhibit 1 produced before the Trial Court as well as the Defence Exhibits 1 & 2, there is no dispute that the property known as LR.No.Transmara/Shartuka/375 was registered in the name of the 1st Respondent on the 24.08.1998.



162. PW 2 who is a registered owner of the property known as LR.No.Transmara/Shartuka/158 and a neighbour to the Appellant collaborated the fact that title deeds were issued in the year 1998 by stating that his own title was issued in the year 1998.
163. To begin with, Section 7 of the *Limitation of Actions Act* provides as follows;
- “An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”
164. The plain and simply interpretation of Section 7 of the *Limitation of Actions Act* is that where one has a claim to recover land, such a claim must be filed in a Court of law before the lapse of 12 years from when the claim arose.
165. The Court of Appeal in the case of *Gathoni v Kenya Co-operative Creameries Ltd* [1982] KLR 104 stated as follows; -
- “...The Law of Limitation of Actions is intended to protect Defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending Plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”
166. In another case of *Iga -Versus- Makerere University* (1972) EA, the Court made the following observation; -
- “A Plaint which is barred by limitation is a Plaint barred by law. Reading these Provisions together it seems clear that unless the Applicant in this case had put himself within the limitation period by showing grounds upon which he could claim exemption, the Court shall reject his claim. The Limitations Act does not extinguish a suit or action itself, but operates to bar the claim or remedy sought for and when a suit is time barred the Court cannot grant the remedy or relief sought.”
167. The Appellant who is also the Plaintiff before the Trial Court filed a Plaint dated 28.12.2018 on the 31.12.2018.
168. The Plaint dated 28.12.2018 was seeking to recover a property known as LR.No.Transmara/Shartuka/375 registered in the name of the 1st Respondent on the 24.08.1998.
169. The time when the cause of action arose against the Appellant was on the 24.08.1998 when the Green Card and title deed to the property known as LR.No.Transmara/Shartuka/375 were issued by the 2nd Respondent.
170. The 12 years within which the Appellant would institute legal proceedings to recover the property known as LR.No.Transmara/Shartuka/375 from the 1st Respondent began on the 24.08.1998 and lapsed around 24.08.2010.
171. Consequently therefore, any proceedings instituted by the Appellant to recover the property known as LR.No.Transmara/Shartuka/375 became time barred on the 25.08.2010.
172. It is therefore this Court’s finding that the Plaint dated 28.12.2018 and filed on the 31.12.2018 was time barred and the Trial Court was barred from granting any orders and/or reliefs based on the said Plaint.



Issue No. 2- is the appellant entitled to be registered as the lawful owner of the property known as LR.No.Transmara/Shartuka/375?

173. Based on the finding above that the Appellant’s Complaint dated 28.12.2018 is time barred, the Trial Court was barred by operation of law to entertain and/or issue any determination on whether or not the Appellant was entitled to be registered as the owner of the property known as LR.No.Transmara/Shartuka/375.

Issue No. 3-is the appellant entitled to an order of permanent injunction against the 1st respondent over the property known as LR.No.Transmara/Shartuka/375?

174. Similarly, based on the finding that the Appellant’s Complaint dated 28.12.2018 is time barred, the Trial Court was barred by operation of law from entertaining and/or making any determination on the issue of whether the Appellant was entitled to an order of permanent injunction against the 1st Respondent over the property known as LR.No.Transmara/Shartuka/375.

Issue No. 4- is the 1st respondent under the counter-claim entitled to a declaration that he is the lawful owner of the property known as LR.No.Transmara/Shartuka/375?

175. The 4th issue is one raised by the 1st Respondent through the Counter-Claim dated 22.02.2019.

176. The 1st Respondent is seeking the Court to declare him as the lawful owner of the property known as LR.No.Transmara/Shartuka/375.

177. The main reason the 1st Respondent is seeking this Order is because he is the registered owner of the property known as LR.No.Transmara/Shartuka/375 based on the Title Deed issued on 28.08.1998 (Defence Exhibit 1) and the Copy of Official Search of the same property dated 28.11.2018 (Defence Exhibit 2).

178. The Appellant’s order under their Reply to Defence dated 05.08.2019 challenged the ownership of the 1st Respondent on the basis that she is the one in occupation and use of the same for over a period of 30 years.

179. The Appellant further pleaded that the 1st and 2nd Respondents had colluded to have the title deed of the property known as LR.No.Transmara/Shartuka/375 issued to the 1st Respondent yet the same had been allocated to her husband the late Joseph Tajeou.

180. The provisions of Section 107 of the *Evidence Act*, Cap 80 provides as follows; -

“(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove those facts exist.”

181. Based on the above provision, the 1st Respondent has produced a Title Deed of the property known as LR.No.Transmara/Shartuka/375 issued on the 24.08.1998 and collaborated his ownership with a Copy of an Official Search of the same property issued on the 28.11.2018.

182. On the other hand, the Appellant has not produced any document that recognises either the late Joseph Tajeou or herself as the bona-fide owner of the property known as LR.No.Transmara/Shartuka/375.

183. The documents produced by the Appellant at the Trial Court as Appellant’s Exhibits 1-6 purport to allege that the 1st Respondent was neither a member of Shartuka Group Ranch nor allocated the property known as LR.No.Transmara/Shartuka/375.



184. Unfortunately, the same documents do not show any evidence that the late Joseph Tajeuo and/or the Appellant herein were ever recorded as the owners of the property known as LR.No.Transmara/Shartuka/375.
185. In other words, the Appellant's Exhibits 1 to 6 do not in any way assist her in claiming ownership of the property known as LR.No.Transmara/Shartuka/375.
186. Section 24 (1) of the [Land Registration Act](#), No. 3 of 2012 provides as follows; -
- “(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of the land together with all rights and privileges belonging or appurtenant thereto.....”

187. The 1st Respondent having been registered as the owner of the property known as LR.No.Transmara/Shartuka/375 and issued with a title deed on the 24.08.1998, it goes without saying that he is entitled to a declaration that he is the lawful owner of the property known as LR.No.Transmara/Shartuka/375.

Issue No. 5- is the 1st respondent under the counter-claim entitled to an order of eviction against the appellant over the property known as LR.No.Transmara/Shartuka/375?

188. The Court having decided that the property known as LR.No.Transmara/Shartuka/375 belongs to the 1st Respondent, then the occupation of the Appellant without his consent and/or permission amounts to trespass thereon.
189. Once again, Section 24 (a) of the [Land Registration Act](#), No. 3 of 2012 grants the registered owner of a property all the rights and privileges therein which includes exclusive possession and use of the said property.
190. The testimony of the Appellant and her witnesses as well as the 1st Respondent confirm that either a portion and/or the entire property known as LR.No.Transmara/Shartuka/375 is occupied by the Appellant.
191. Unfortunately, the finding that the property known as LR.No.Transmara/Shartuka/375 lawfully belongs to the 1st Respondent renders their occupation unlawful and amounts to trespass.
192. To remedy the 1st Respondent and grant him the rights and privileges envisaged under Section 24 (a) of the [Land Registration Act](#), No. 3 of 2012, this Court hereby makes a finding that an order of eviction is merited and should be granted as prayed.

Issue No. 7- is the appellant entitled to the prayers sought in the present appeal?

193. Based on the determinations in Issues No. 4, 5 & 6 hereinabove, this Court is of the considered view and/or finding that the present Appeal is not merited.

Issue No. 8- Who bears the costs of this appeal?

194. The last issue for determination is who should bear the costs of this Appeal.
195. Costs usually follow the event and, in this instance, the Appeal has not been successful and Appellant will meet the costs of the said Appeal.



Conclusion

196. In conclusion therefore, this Court hereby makes the following orders as regards the Memorandum of Appeal dated 15.02.2024; -
- a. The memorandum of appeal dated 15.02.2024 is not merited and is therefore dismissed forthwith.
 - b. The Judgment & Decree of the Hon C. Waswa, SRM pronounced 31.01.2024 be and is hereby set-aside and substituted with the following orders; -
 - i. The plaint dated 28.12.2018 be and is hereby declared time-baared and the reliefs sought therein cannot be granted.
 - ii. The 1st respondent be and is hereby declared to the lawful registered owner of the property known as LR.No.Transmara/Shartuka/375.
 - iii. The appellant, her agents, servants, employees and/or any other person deriving his or her occupation from the appellant is granted 60 days from the date of this judgement & decree to relocate, vacate and/or hand over possession of any portion and/or the entire property known as LR.No.Transmara/Shartuka/375 to the 1st respondent.
 - iv. In default of order no. b (iii) hereinabove, an eviction order shall automatically and be issued by the deputy registrar of the environment & land court, kilgoris.
 - v. A permanent injunction be and is hereby issued against the appellant, her agents, servants and/or any other person purporting to derive any rights from the defendant from occupying, using and/or interfering with the 1st respondent's property known as LR.No.Transmara/Shartuka/375 henceforth.
 - vi. The appellant shall bear the costs of the trial court suit, the counter-claim and the appeal before this court.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 26TH SEPTEMBER 2024.

EMMANUEL.M.WASHE

JUDGE

In the presence of:

Court Assistant: Mr. Ngeno

Advocate for the Appellant: Ms. Mercy (N/A)

Advocate for the Respondents: Mr. Maete h/b

Ochwangi

A.G for 2nd and 3rd

Respondent (N/A)

