



Bungu & 2 others (Suing as Legal Representatives of the Estate of Jackson Bungu Ongata - Deceased) v Kisii National Polytechnic (Formerly Known as Gusii Institute of Technology & 3 others (Environment & Land Case 21 of 2021) [2024] KEELC 7164 (KLR) (31 October 2024) (Judgment)

Neutral citation: [2024] KEELC 7164 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 21 OF 2021**

**M SILA, J
OCTOBER 31, 2024**

BETWEEN

**PAUL GERUMA BUNGU 1ST PLAINTIFF
IBRAHIM OMWENGA BUNGU 2ND PLAINTIFF
LOTI MANONO BUNGU 3RD PLAINTIFF
SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF JACKSON
BUNGU ONGATA - DECEASED**

AND

**KISII NATIONAL POLYTECHNIC (FORMERLY KNOWN AS GUSII
INSTITUTE OF TECHNOLOGY 1ST DEFENDANT
THE COUNTY GOVERNMENT OF KISII 2ND DEFENDANT
THE LAND REGISTRAR – KISII COUNTY 3RD DEFENDANT
THE NATIONAL LAND COMMISSION 4TH DEFENDANT**

JUDGMENT

(Plaintiffs filing suit claiming that the 1st defendant, a National Polytechnic, intends to wall part of their land which they identified as Plots Y and Z; plaintiffs alleging that the disputed land was allocated to their late father and is only awaiting issue of title; 1st defendant asserting that the disputed land falls within the boundaries of its land for which it has title; evidence showing that the Kisii National Polytechnic has title for land that was surveyed in 1977; the disputed land falling within the boundaries of the survey plan for the Polytechnic land; no evidence presented to suggest that the Plots Y and Z claimed by the plaintiffs actually exist; there being correspondences of intention



to allocate the disputed land to the plaintiffs but the process was not completed when it was realized that the land is already alienated for public use; plaintiffs cannot therefore claim any legitimate interest in the disputed land; plaintiffs' suit dismissed; plaintiffs given 3 months to give vacant possession)

A. Introduction And Pleadings

1. This suit was commenced through a plaint filed on 15 October 2021. The plaintiffs are the legal representatives of the estate of Jackson Bungu Ongata (deceased). They contend that the deceased is the allottee and legal owner of the Plots described as Uns Resd Plot – Kisii Municipality (inclusive Of Uns Resd Plots Nos. Z & Y) (the suit plots) which plots they aver are adjacent to land occupied by the 1st defendant (Kisii National Polytechnic). They state that the defendants have acknowledged and respected the plaintiffs' ownership of the suit plots. They claim to have been born and raised in the suit plots and that they have had their ancestral homes on the suit plots for more than 70 years. They plead that the suit plots were initially their ancestral lands and were later allotted to the deceased. They aver that they have been paying all rents, rates and outgoings concerning the suit plots. They plead that on 10 October 2021, the 1st defendant instructed persons to forcefully evict them from the suit plots on the basis that the 1st defendant has a certificate of lease being Kisii Municipality/Block III/252 which extends to the suit plots. They contend that the 1st defendant obtained the Certificate of Lease pursuant to a defective Part Development Plan (PDP) that was knowingly or mistakenly prepared to include the suit plots. They aver that the defective and unlawful PDP was wrongfully approved by the 2nd defendant (the County Government of Kisii). They claim that the 3rd and 4th defendants (respectively, the Land Registrar, Kisii and the National Land Commission), caused issuance of a defective Certificate of Lease to the 1st defendant based on the defective PDP. They aver that the 1st defendant began construction of a perimeter wall in the suit plots which act they contend is illegal. They plead that they risk losing their homes and property in the suit plots. In the suit, they ask for the following orders (slightly paraphrased for brevity) :
 - a. Cancellation of the 1st defendant's Certificate of Lease and rectification of the PDP to exclude the plots UNS Resd Plot – Kisii Municipality (inclusive Of Uns Resd Plots Nos. Z & Y).
 - b. Orders directing the defendants to prepare a new PDP to reflect the actual occupation of the plaintiffs and 1st defendant.
 - c. A permanent injunction to restrain the defendants from interfering with the plaintiffs' occupation of the suit plots.
 - d. General damages.
 - e. Costs of the suit and interest.
2. The 1st and 3rd defendants filed defence. They pleaded that the suit plots are imaginary and that they have no interest in them but their interest is in securing the boundary of the parcel Kisii Municipality/Block III/252. They pleaded that the 1st defendant has a right to secure public land from encroachers and that the plaintiffs are illegally claiming land belonging to the 1st defendant. It was denied that they had deliberated on ownership of the plaintiffs' land which they claimed to lay on a road reserve and they did not have the authority of the Kenya National Highways Authority to discuss the same. They averred that the Government issued a directive to all public institutions to fence off their land to ward of encroachers which is what the 1st defendant was doing, i.e secure public land that the plaintiffs have grabbed. They pleaded that the plaintiffs sole purpose of coming to court was to delay a Government



- project and there will be loss of public funds. They asked that the plaintiffs' suit be dismissed and an eviction order to issue to allow construction of the perimeter wall by the 1st defendant.
3. The plaintiffs filed a reply to defence which more or less reiterates the contents of the plaint and joins issue.
 4. The 2nd defendant (County Government of Kisii) filed a defence refuting the claims of the plaintiffs. She averred that payment of rent and rates alone is not proof of ownership. She pleaded to be a stranger to the dispute between the plaintiffs and the 1st defendant and averred that the two parties should resolve their dispute without involving the 2nd defendant. She denied wrongfully approving the PDP to the 1st defendant and averred that it acted professionally and within the parameters of the law in approving the said PDP.
 5. Nothing was filed on behalf of the 4th defendant, the National Land Commission.
 6. In a ruling delivered on 24 February 2022 by my predecessor Onyango J, the court issued orders of injunction to stop construction of the wall by the 1st defendant, and also issued orders for the Land Registrar and County Surveyor to ascertain the boundaries of the disputed parcels of land. The officers did visit the site and made a report dated 21 May 2022. From the report, it was apparent to me (after taking over the matter upon Onyango J, being transferred) that there was a dispute to be heard and I directed the matter to proceed for hearing.

B. Evidence of the Parties

7. PW -1 was Ibrahim Omwenga Bungu. His evidence was that the whole land (where they live and the land of the 1st defendant) was the ancestral land of his father and that his family has been here for over 70 years. He stated that at some point one Mr. Onyonka who was a Member of Parliament approached his father and asked for land to put up a school, on the promise that his father would be given other land elsewhere in Sotik, or he will be paid. He stated that his father did what he was requested but he never got any land in Sotik but he was subsequently given an allotment letter to the disputed portion as Plots Y and Z. In October 2021 some people came to fence this land claiming that it is part of the 1st defendant's land. He testified that he was on the land when the school started around 1980 and that the school land and their land was demarcated. He testified that they were not involved in the rectification of the boundary when the school got a lease and were not involved when the PDP was prepared. He averred that they pay rates to the plots allotted to them.
8. Cross-examined he acknowledged that the land falls within the Municipality and there is a process to be followed to obtain such land. He did not have a letter by his father applying to be allotted the land. He stated that this was burnt in a fire in 1990. He acknowledged that the allotment letter produced is of 1999. He affirmed that this letter of allotment was for an unsurveyed residential plot-Kisii Municipality and nowhere does it identify Plot Y and Z being allotted. He had no documents to indicate any Plot Y and/or Z. He stated that it was the County which identified these Plots as Y and Z, and he makes payment to the County based on that. He could see that the allotment letter required payment of Kshs. 56,000/= by way of banker's cheque. He did not have any banker's cheque or any receipt indicating such payment. His father never got a title in his name. He could see that survey for the Polytechnic land was done on 23 August 1977 and they (plaintiffs) had no allotment letter to the land at this time. His father never sued the Polytechnic prior to his death in 2013.
9. Re-examined, he stated that the Polytechnic found them on the land and they ought to have seen that they were in possession when survey was done. He claimed that his wife, his father and his brothers are buried here and that there are more than 300 people on the land.



10. PW – 2 was Paul Getuba Bungu. He operates a car wash and a hotel on the land. He aligned himself with the evidence of PW-1.
11. PW- 3 was Loti Manono Bungu. He operates a garage on the suit land and stated that he built a house in 1982 on the land. He also aligned himself with the evidence of PW-1 and PW -2.
12. PW – 4 was Nyamache Muma Harun, the Director Land Administration, County Government of Kisii. His evidence was to affirm various letters produced by the plaintiff which emanated from the now defunct Kisii Municipal Council. In cross-examination, he agreed that there was no mention of Plot Y and/or Z in the various letters. He also did not come with his records and he stated that he was handicapped in giving all the evidence.
13. PW – 5 was Peter Bogonku Onundu. He testified that he used to work as the bodyguard of Minister Zachary Onyonka. He testified that in 1970 he accompanied Mr. Onyonka to visit the deceased to request him to give land to the School and he would be relocated to Sotik. He testified that the deceased gave out the land to the school as requested but he was never taken to Sotik and that Mr. Onyonka died before he could relocate him. He testified that the deceased was buried on the land that he lived in. Cross-examined he affirmed that he was Mr. Onyonka’s bodyguard. He stated that he saw the deceased give Mr. Onyonka some documents but he did not know what they were for. They (Mr. Onyonka and Mr. Jackson Bungu) would meet in the court building and he did not know what they discussed as he would remain outside. He was only told that the discussion was for land in Daraja Moja (supposedly the suit land). He did not know the size of the land of the deceased nor the size of land that he was to donate. He however testified that the school took a larger portion and the family of the deceased remained with a smaller portion where they put up their structures.
14. With the above evidence, the plaintiffs closed their case.
15. DW – 1 was Benard Ogechi, the National Government surveyor for Kisi County. He is the surveyor who visited the site upon orders of the court and prepared the survey report dated 21 May 2022. He testified that survey for the Polytechnic land, that is Kisii Municipality/Block III/252, was authenticated on 23 August 1977. The total acreage of the school is 16.96 Ha. On the ground, there is disparity of 0.22 Ha, which is the portion occupied by the plaintiffs. He testified that the plaintiffs have trees and structures on the land which appear old. On Plots Y and Z, he testified that they are not surveyed and there is no document showing their delineation. He testified that he identified the Plots Y and Z based on what the plaintiffs pointed out, and even then, they (plaintiffs) could not distinctly say where one Plot starts and where it ends. They simply pointed out a general area that they occupied. He testified that he measured that general area and it came to 0.36 Ha. This partly falls within the parcel Kisii Municipality/Block III/ 252 and the road reserve. He testified that the plaintiffs’ allotment letter is dated 15 August 1999 by which time the land was already surveyed. A PDP No. KSI/37/93/13 was prepared. He never saw any PDP attached to the allotment letter of the plaintiffs. He testified that there was a PDP and a survey of the 1st defendant’s land and he saw nothing wrong the said documentation.
16. In cross-examination, he elaborated that the 1st defendant’s land emanated from a fixed boundary survey done in 1977 and he found it remote that the plaintiffs’ family (the Bungu family) would have a claim on the land. He testified that it can only be contended that the 1st defendant has encroached if the plaintiffs had a lease. He testified that the allotment letter that the plaintiffs have overlaps the land of the 1st defendant. Questioned by the court, he testified that if the plaintiffs’ allotment letter was well prepared it should have shown Plots Y and Z and he could not tell what land was being allotted in the allotment letter of 15 August 1999 as he had not seen its PDP. He elaborated that a PDP would have an approval number.



17. The court did visit the disputed site and saw for itself the land in dispute. There are some structures on the land used for various businesses and also some houses. There are also old mature trees on the disputed land. It was clear that the disputed land is occupied by the plaintiffs.
18. With the hearing closed, I invited counsel to file submissions which they did and I have taken these into account before arriving at my decision.

C. Analysis and Disposition

19. The plaintiffs claim that the land of the 1st defendant, which is Kisii Municipality/Block III/252, was improperly surveyed and that the PDP thereof included their land. They also assert ownership of the Plots they identify as Y and Z and they allege that the 1st defendant's land has wrongfully encroached into these plots.
20. From the documentation presented, it is clear that what the plaintiffs occupy and what they allege to be Plots Y and Z actually partly fall within the 1st defendant's land parcel Kisii Municipality/Block III/252 and partly on the road reserve of the Kisii-Nyamira road. It is also discernible that the 1st defendant's land parcel Kisii Municipality/Block III/252 was surveyed in 1977 through survey plan F/R No.135/51. This is land that is under a fixed survey with distinct coordinates. The plaintiffs of course did mention that it is their father who donated this land to the school but there is no tangible evidence of such donation. You would imagine that there would be some sort of documentation when land is requested by the Government but there is none in this case. I am afraid that the evidence of PW-5 regarding the donation of the land is insufficient to affirm any donation of land by the deceased. I cannot therefore tell from where the 1st defendant got its land and under what arrangement. What is clear is that the 1st defendant has land that was surveyed in 1977 and she has a title to it. It goes without saying that this is public land. The Plots that the plaintiffs assert ownership of are actually falling within this public land belonging to the Kisii National Polytechnic, the 1st defendant.
21. I have seen documentation depicting an intention to allocate the deceased this portion of land that the plaintiffs now occupy. However, from my assessment, there was no conclusive decision made by the relevant authorities, which is in accordance with the law, that actually hives off part of the public land under the Polytechnic so as to allocate it to the deceased or indeed to anyone else. The oldest of the documents produced is a letter dated 22 August 1991 from Hon. Prof. S.K. Onger, Minister for Technical Training and Applied Technology and Member of Parliament for Nyaribari Masaba. That letter is addressed to the District Commissioner, Kisii. The reference is Mr. Jackson Bungu – Jogoo Area. In that letter, Prof. Onger mentions a meeting where he brought it to the attention of the addressee a request by Mr. Bungu to be permanently allocated the plot where he has stayed for very many years and has built structures. In that letter there is complaint that on 21 August 1991, the Municipal Council sent a demolition squad which demolished the structures including Mr. Bungu's house. The letter asks for the intervention of the District Commissioner. I take it that in this letter, Prof. Onger was pushing for the disputed land to be allocated to Mr. Bungu and was concerned that Mr. Bungu's structures had been demolished. I have seen no letter in reply to this one.
22. The next correspondence exhibited is a letter dated 9 October 1991 from Alexander Mutuku, Town Clerk, addressed to the District Commissioner, Kisii. The subject is the area occupied by Mr. Jackson Bungu. In that letter, Mr. Mutuku states that Mr. Bungu applied for the plot which he was using to store firewood, and that in a meeting of the Town Planning, Housing and Works Committee held on 28 January 1983, the Committee unanimously resolved that he could continue occupying it on a temporary basis until the matter is fully investigated. He mentions that through a letter dated 16 February 1984, the then Mayor asked the Acting Town Clerk to allocate the plot to Mr. Bungu in



accordance with the decision of the Town Planning Committee despite the fact that the Committee had decided that Mr. Bungu be allocated the plot on temporary basis. He states that his investigations show that Mr. Bungu had lived in the area for an unknown period. He continues that on 21 August 1991, council Askaris went to demolish the permanent structures on the plot but were stopped by the Administration Police after demolishing one structure and the matter was brought to the District Commissioner's attention by Prof. Ongeru. He thought that if the land belongs to Mr. Bungu then there would be no reason for the Government not to compensate him and if not, then he can be considered for allocation of another plot not exceeding one acre which should not be in a road reserve. That letter also mentions that the land had been reserved for a remand home or a lorry park.

23. The next letter is one dated 16 September 1992 written by the District Commissioner to the Clerk, Kisii Municipal Council. The reference is Plot Allocation at Daraja Moja - Jackson Bungu. In that letter the District Commissioner inter alia mentions that they had visited the plot with the Municipal Engineer to assess its suitability for a parking site for tankers and trailers. He continues to state that during discussion, it was clear that there is ministerial recommendation that the plot be allotted to Jackson Bungu due to the fact that he has occupied it for a long time. He thought it futile to try and snatch the plot from Jackson Bungu for any other use and in his capacity as Chairman of plot allocation, he recommended that the addressee asks the District Physical Planner to prepare a PDP of the plot so that it is formally allocated to Jackson Bungu.
24. The next is a letter dated 26 November 1992 and the subject again is Plot Allocation, Daraja Moja, Jackson Bungu. The letter is from Mr. Mutuku the Town Clerk, Kisii Municipal Council, to the Physical Planning Officer, Kisii. He makes reference to the letter dated 16 September 1992 above. He states that the Council has discussed the matter and despite his advise that the Council should recommend the plot for allocation to Mr. Bungu it resolved that the plot be subdivided and Mr. Bungu be allocated one of the resultant plots. He adds that however, due to Ministerial directive, the matter appears to be beyond the Council's normal planning authority. He states that it is a Government decision for direct allocation. He states that the addressee can proceed with the preparation of the Part Development Plan of the plot so that it is finally allocated to Mr. Bungu.
25. The next is a letter dated 16 August 1993 from the District Physical Planning Officer to the Commissioner of Lands through the Director of Physical Planning to the Commissioner of Lands forwarding a PDP for approval. Pursuant thereto the Commissioner of Lands wrote a letter dated 22 February 199 to the District Land Officer, Kisii. The subject is Proposed Residential Plot Part Development Plan No. KSI/3793/13. That letter is important and I will set it out in full. It states as follows :

I have been informed by the District Physical Planning Officer that the site planned as per the above quoted PDP is developed.

The portion shown shaded red falls on Gusii Institute of Technology land which is surveyed land parcel No. III/252. You are requested to liaise with the District Surveyor and check with their records to see if there is any encroachment to enable me take further action.

J.M.M Gikuri

For Commissioner of Lands.

26. It is clear from the tenor of the above letter, that the Commissioner of Lands, upon seeing the proposed PDP, was concerned that it appeared to him that the land proposed to be allocated fell within land already surveyed and designated for Gusii Institute of Technology, the predecessor of the 1st defendant. He was not, on account of that, ready to approve the PDP and issue an allotment letter to Mr. Bungu.



I think he was conscious that he had no power to take away public land that had already been alienated to a public educational institution and have it converted to private ownership.

27. I am aware that the plaintiffs exhibited a photocopy of an allotment letter and a PDP. There is nothing before this court to demonstrate that the said PDP was approved. Even then, that purported PDP does not show any Plot Y and Z but only one plot measuring 0.29 Ha which was an unsurveyed residential plot. It is the same depiction in the allotment letter; it is for an unsurveyed residential plot that is not identified as Plot Y or Z. I do not know where the plaintiffs got this description of Plot Y and Z. There is also nothing exhibited before this court to demonstrate that the purported allotment letter was followed through by any payment of stand premium or the monies indicated therein to the Commissioner of Lands. Payment could not be made to the Municipal Council for stand premium because this was not land belonging to the Municipal Council of Kisii. If there had been payment of the monies in the allotment letter, there would have followed a survey of the land purportedly allocated, then amendment of the Registry Index Map (RIM) and issuance of a lease to Mr. Bungu. Nothing of the sort ever happened.
28. Whatever the case, the Commissioner of Lands had no power to issue such allotment letter given that he would be giving out land that was alienated public land. It is also immaterial that the Municipal Council of Kisii had no problem with allocation of the disputed land to Mr. Bungu. The land was not one that was trust land belonging to the Municipal Council of Kisii and therefore the Municipal Council could not be the allocating authority. Where the Municipal Council came in was on planning and I appreciate that they had no issue with the replanning of the site for residential purposes and issuance of a lease to Mr. Bungu as shown in their letter dated 27 August 2007 to the Commissioner of Lands ; but that was of course subject to the land being properly alienated in accordance with the Government *Land Act*, Cap 280 (repealed in 2012) that was operational at that time. Despite the no objection letter dated 27 August 2007, the Commissioner of Lands was not moved to issue a lease to Mr. Bungu, which was the correct thing to do.
29. When it came to allocation of public land, it was necessary to follow the dictate of Section 3 of the Government *Land Act* which was drawn as follows :
3. The President, in addition to, but without limiting, any other right, power or authority vested in him under this Act, may—
- (a) * subject to any other written law, make grants or dispositions of any estates, interests or rights in or over unalienated government land;
 - (b) * with the consent of the purchaser, lessee or licensee, vary or remit, either wholly or partially, all or any of the covenants, agreements or conditions contained in any agreement, lease or licence, as he may think fit, or, with the like consent, vary any rent reserved thereby;
 - (c) extend, except as otherwise provided, the time to the purchaser, lessee or licensee for performing the conditions contained in any agreement, lease or licence liable to revocation for such period, and upon such terms and conditions, as he may think fit, and the period so extended, and the terms and conditions so imposed, shall be deemed to be inserted in the agreement, lease or licence and shall be binding on the purchaser, lessee or licensee, and on all transferees, mortgagees, assignees and other persons claiming through him;
 - (d) * accept the surrender of any lease or licence under this Act;



- (e) † accept the surrender of any certificate granted under the East Africa Land Regulations, 1897, or of any lease granted under the Crown Lands Ordinance, 1902, and grant to the lessee a lease under this Act of the area the subject of the surrendered certificate or lease, provided such surrender is made within such period as the President may by notice in the Gazette direct, such period to be not less than twelve months from the commencement of this Act;

Provided that this paragraph shall not apply to land granted under the East Africa Land Regulations, 1897, or leased under the Crown Lands Ordinance, 1902, upon terms which differ from the ordinary terms in force at the time at which such land was granted or leased; and

- (f) accept the surrender of any freehold conveyance under the Crown Lands Ordinance, 1902, or freehold grant under this Act.

The powers of the President under these paragraphs were delegated to the Commissioner of Lands (Cap. 155 (1948), Sub. Leg.) and for † The powers of the President under the said paragraphs to accept the surrender of a lease granted under the Crown Lands Ordinance, 1902, and to grant the lessee a lease of the same land under this Act were delegated to the Commissioner (Cap. 155 (1948), Sub. Leg)

* The powers of the President under this paragraph are delegated to the Commissioner in the following cases only (Cap. 155 (1948), Sub. Leg.)—

- (a) for religious, charitable, educational or sports purposes on terms and conditions in accordance with the general policy of the Government and the terms prescribed for such purpose by the President;
- (b) for town planning exchanges on the recommendation of the Town Planning Authority, Nairobi, within the total value, and subject to the conditions, laid down by the President;
- (c) the sale of small remnants of land in the City of Nairobi and Mombasa Municipality acquired for town planning purposes and left over after those town planning needs have been met;
- (d) for the use of local authorities for municipal or district purposes, viz. office accommodation, town halls, public parks, native locations, fire stations, slaughter-houses, pounds, incinerators, mortuaries, crematoria, stock sale yards, libraries, hospitals, child welfare institutions, garages, housing schemes, markets and public cemeteries;
- (e) the extension of existing township leases on the fulfilment of the conditions specified therein as being precedent to such extensions;
- (f) the temporary occupation of farm lands on grazing licences terminable at short notice;
- (g) the sale of farms and plots which have been offered for auction and remain unsold, such grants being subject to the general terms and conditions of the advertised auction sale and the application therefor being submitted within six months of the date of the auction in the case of township plots and within twelve months in the case of farms, except that in the case of godown plots the power to sell shall not be limited to a period of six months from the date of sale.



30. From the foregoing, it is discernible that the office that had power to allocate unalienated Government land was the President. The Commissioner of Lands could exercise some delegated powers on behalf of the President but the delegated power was limited to grants for religious or charitable purposes, or such other uses as defined above. There was no delegation of the powers of the President to the Commissioner of Lands to allocate to a private individual, in his discretion, any unalienated Government land. Thus, even assuming that there was an allotment letter issued by the Commissioner of Lands, and for the avoidance of doubt, I am not persuaded that any has been exhibited, the Commissioner of Lands could not allocate the disputed property, as it was already alienated Government land for a public purpose.
31. The fact of the matter is that there has been no allocation of the land to the plaintiffs, and if there was any, then it would be illegal as the land was already alienated to the 1st defendant.
32. In his submissions, counsel for the plaintiffs did submit that the plaintiffs were not involved in any resurvey activity altering the boundaries of the land belonging to the plaintiff and that belonging to the 1st defendant. There is no evidence of any resurvey. There was only one survey of 1977. I have also demonstrated that there was never any Plot Y and Z as alleged by the plaintiffs. I also agree with the submissions of counsel for the 1st defendant that if ever there was any claim for the land of the 1st defendant, such claim is time barred given that the survey of the land was done in 1977. This was a fixed boundary survey complete with coordinates and must have been done on the ground. If Mr. Bungu was in occupation and had any issue he had 12 years to present his claim, which he failed to do. It cannot be, that the cause of action arose in 2021 when fencing started as submitted by counsel for the plaintiffs.
33. The long and short of it is that I am not persuaded that the plaintiffs have proved their case to the required standard. I have no option but to dismiss their suit with costs.
34. The 1st and 3rd defendants asked for an order of eviction so that they can proceed to wall the land of the 1st defendant. They are entitled to the order. It is indeed in the public interest that public land be protected, and one of the forms of protection is fencing public property, so as to avoid encroachment and trespass. I will grant this order. The 1st defendant is at liberty to proceed to put up its wall in line with the survey plan depicting the boundaries of her land. I will however give the plaintiffs three (3) months to organise themselves and find an alternative. The order of eviction is thus stayed for the next 3 months. However within those three months the plaintiffs are barred from undertaking any developments or wasting the land in a way that would be detrimental to the interests of the 1st defenant. After lapse of the three (3) months the plaintiffs and/or any person in occupation on the basis of their title will be permanently restrained from being upon, entering, occupying, or in any other way interfering with the quiet possession of the 1st defendant of the land parcel Kisii Municipality/Block III/252.
35. Judgment accordingly.

DATED AND DELIVERED THIS 31 DAY OF OCTOBER 2024

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Oremo instructed by M/s Ben K. Gichana & Co. Advocates for the plaintiffs



Mr. Wabwire for the 1st & 3rd defendants

Mr. Mokaya for the 2nd defendant

N/A for the National Land Commission – 4th defendant

Court Assistant – David Ochieng'

