



Auta (Suing As Legal Representative of Estate Christopher Auta Moruri alias Christopher Ahuda Moruri - Deceased) & another v Ondigo & 3 others (Environment & Land Case 6 of 2021) [2024] KEELC 14113 (KLR) (11 December 2024) (Judgment)

Neutral citation: [2024] KEELC 14113 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 6 OF 2021
JM KAMAU, J
DECEMBER 11, 2024**

BETWEEN

ALEX NYARIBO AUTA (SUING AS LEGAL REPRESENTATIVE OF ESTATE CHRISTOPHER AUTA MORURI ALIAS CHRISTOPHER AHUDA MORURI - DECEASED) 1ST PLAINTIFF

JOSHUA NYAKANGI OMASIRE 2ND PLAINTIFF

AND

JOHN ONDIEKI ONDIGO 1ST DEFENDANT

JAMES ATEI OBAIGWA 2ND DEFENDANT

EVANS ONGERA OMOTE 3RD DEFENDANT

THE COUNTY LAND REGISTRAR, NYAMIRA 4TH DEFENDANT

JUDGMENT

1. In this matter commenced by way of a Plaint dated 14/4/2021 and amended on 15/11/2021 the Plaintiff's claim to be the occupants of West Mugirango/Nyamaiya/519 for a period of over 21 years and that the personal representatives of the registered owner tried to remove them therefrom vide Kisii HCCC No. 68 of 1995 but that the Court found that they had resided on the land for over 15 years before the said suit was filed and had therefore acquired adverse possession.
2. Similarly, the 2nd Plaintiff had purchased the land from the 1st Plaintiff's father in 1992 but then during the succession matter the 1st and 2nd Defendant conspired with the Land Registrar, Nyamira to obtain the Title Deeds. Therefore, the Plaintiffs' prayers are for:
 1. Cancellation of the Title Deed and all entries 3-7 made on 10th and 15th March 2014 in respect to parcel No. West Mugirango/Nyamaiya/1519.



2. Reinstatement of entry No. 1 in the names of the deceased names Obaigwa Onsoti And Nyambane Onsoti and transfer of the land in the Plaintiffs names by way of adverse possession.
 3. Eviction of the 1st, 2nd and 3rd Defendants from the suit land.
 4. Specific performance as recognized by so Kisii HCCC No.68 of 1995 and CMCC No.728 of 2006 in favour of the Plaintiffs.
 5. Losses incurred by the Plaintiffs for the losses incurred to their cash crops, trees, coffee and tea, pain and General Damages, banana bushes, napier grass and fencing issue.
 6. Costs of the suit.
3. In their first Defence dated 15/7/2021 and amended on 3/2/2021 the 1st and 2nd Defendants denied all the averments in the Plaint and pleaded that they would raise a preliminary objection during the Hearing.
 4. The 3rd Defendant vide Defence filed on 22/7/2021 denied the claim and averred that L.R. NO. West Mugirango/Nyamaiya/1519 has never been registered in the names of the 1st Plaintiff's father who therefore has never had a clean Title to pass over to anyone. He also filed a counter-claim attached to the said Defence for a permanent injunction against the Plaintiffs for encroaching onto the parcel of land West Mugirango/ Nyamaiya/1519 which he bought from the 1st and 2nd defendants and took possession of the same upon purchase. He is therefore a bona fide purchaser of West Mugirango/ Nyamaiya/ 1519 and accordingly has rights over the same and seeks for a Declaration to that effect.
 5. The Plaintiffs filed their Reply to the amended Defence dated 27/5/222 on 2/6/2022 as well as that of the 3rd Defendant in which they reiterated the contents of their amended Plaint as follows:
 6. At all material times to this suit, 1st Plaintiffs grandfather Moruri Auda alias MARURI AUDA(Deceased) occupied and utilized and/or developed the parcels of land known as West Mugirango/Nyamaiya/1430 as well as land parcel no.West Mugirango/Nyamaiya/1519.
 7. That West Mugirango/Nyamaiya/1519 was registered in the joint names of Obaigwa Onsoti And Nyambane Onsoti on the 20th day of July, 1976.
 8. That despite the said registration; Obaigwa Onsoti And Nyambane Onsoti had never lived upon, developed and/or utilized the suit land in any manner and the 1st and 2nd Plaintiffs aver that for over fifteen (15) years the suit land remained in physical and/or actual possession and use of Moruri Auda alias MARURI AUDA (deceased) and his family including the 1st Plaintiff herein and subsequently Moruri Auda alias MARURI AUDA (deceased) become entitled to the said land by dint of being an adverse possessor which right was established by the Honourable Court in Kisii HCCC No.68 of 1995.
 9. That the 2nd Plaintiff herein had purchased part of the suit land measuring approximately one (1) acre from 1st Plaintiff's grandfather Moruri Auda (deceased) and had equally purchased approximately one(1) acre from the 1st Plaintiff's late father Christopher Auta Moruri alias Christopher Ahuda Moruri(deceased) by dint of various agreements beginning the year 1992 the 2nd Plaintiff took possession of the said portions of suit land West Mugirango/Nyamaiya/1519 and developed the same thereof by carrying out farming activities including planting cereals and horticultural crops, dairy farming and erecting structure on the suit parcel including a farm house, a well and other structures thereon.
 10. That the said Moruri Auda alias Maruri Auda (deceased) passed away in the year 1994 however 1st Plaintiff herein and his father Christopher Auta Moruri alias Christopher Ahuda Moruri (deceased)



- remained in physical and/or actual possession and use of the suit land and had developed the said parcel of land thereon by planting tea, coffee, trees and cereal crops.
11. That in 1995, the father of the 2nd Defendant herein Obaigwa Onsoti and the 1st Defendant herein filed cases no.Kisii CMCC No.68 of 1995 where they sought to have the 1st Plaintiff's father Christopher Auta Moruri alias Christopher Ahuda Moruri evicted from the suit land.
 12. That the Honourable Court in the aforementioned decision found 1st Plaintiff's father to be in lawful occupation of the suit land and rightly sanctioned him to be in continued stay on the suit land thereof.
 13. That in 2006, the 1st and 2nd Defendant herein filed Kisii CMCC NO.728 of 2006 seeking eviction orders against the 2nd Plaintiff herein the suit land however the same was dismissed at the preliminary stage.
 14. That the 1st Plaintiff's father Christopher Auta Moruri alias Christopher Ahuda Moruri and his family including the 1st Plaintiff herein and the 2nd Plaintiff who had purchased part of the suit land and developed the same; continued residing on the suit land peacefully and in order to fortify his rights in relation to the suit parcel Christopher Auta Moruri alias Christopher Ahuda Moruri filed a citation in Kisii Succession Cause No.96 of 2005 which gave rise to Kisii Succession No.84 of 2006 filed by the 1st and 2nd Defendants herein James Ondieki Ondigo & James Atei Obaigwa to which the 1st Plaintiff's late father and the 2nd Plaintiff herein filed against.
 15. That on the 1st Day of April, 2014 during the pendency of the said Succession cause the 1st and 2nd Defendants had themselves unlawfully registered as proprietors without a confirmed grant. They thereafter subsequently transferred title to the 3rd Defendant and without any colour of right the 1st, 2nd and 3rd Defendants forcefully and unlawfully evicted the 1st and 2nd Plaintiffs from the suit land without lawful cause and deliberately occasioned damage on the suit parcel by causing wanton destruction and/or utter obliteration of the 1st and 2nd plaintiffs properties thereon on the strength of improper and/or illegal title and a further contrary to the injunctive orders in Succession Cause no. 84 of 2006.
 16. That the 1st Plaintiff's father and 2nd Plaintiff reported the incidents to Nyamira Police Station vide OB 20/8/4/2024 whereupon investigations were carried out and the 1st and 2nd Defendants herein were charged in Nyamira CMCC CR NO.803 of 2014 having been found guilty of the offences of fraudulently altering an entry in the Land Register and fraudulently procuring the issuance of a certificate of title therefore un-procedurally obtaining title deeds in respect the suit land without a grant of Administration.
 17. That the 1st, 2nd, 3rd and 4th Defendants actions amount to fraud.
 1. That 1st and 2nd Defendant filed succession cause no.84/20006 1st and 2nd Plaintiffs objected and as the succession was scheduled of direction in March 2014, 1st and 2nd defendants herein conspired with the land Register Nyamira and obtained title deed without a grant.
 2. Despite demand and notice of intention to sue having been duly issued, the Defendants have failed, refused, ignored and/or neglected to make good the claim herein rendering this suit perforce.
 3. The 1st and 2nd Plaintiffs aver there is no pending suit between the parties herein over the same sect matter and the cause of action.
 4. That plaintiffs reported the offences the police, who investigated and found the defendants herein were culpable of offences of obtaining title fraudulently and arrested them arraigned them in court and they were found guilty as charged and convicted to one year jail.



18. They prayed for:
- a. A declaration that the 1st and 2nd Plaintiffs are the rightful owners of all that land parcel No. West Mugirango/Nyamaiya/1519 by virtue that they are adverse possessors.
 - b. A declaration that the transfer of the Land Parcel West Mugirango/Nyamaiya/1519 and its registration in the names of the 1st, 2nd and 3rd Defendants was irregular, unlawful and fraudulent and therefore null and void ab initio.
 - c. An order for cancellation all entries relating to registration of the 3rd Defendant as registered proprietor particularly made between the 10th and 18th March, 2014 from the register of title of Land Parcel Number West Mugirango/ Nyamaiya/1519.
 - d. An order for rectification of the Land Register by the 4th Defendant in respect of the suit property West Mugirango/Nyamaiya/1519.
 - e. An order compelling the Defendants to pay damages for loss of use of the land since 2014 till the instant case is heard and determined and damages for the demolished properties and other developments on the suit land .
 - f. A permanent injunction restraining the Defendants either by themselves, agents, servants and/ or employee's from trespassing, encroaching, and or dealing in any manner with the Suit Property.
 - g. An order of eviction of the Defendants either by themselves, their agents, servants and/or any other person acting on their behalf from land parcel No. West Mugirango/Nyamaiya/1519.
 - h. Costs and interest incidental to this suit.
 - i. Such other further relief this Honourable court may deem fit to grant.
10. The Hearing of the suit commenced on 13/2/2023 when Joshua Nyakagi Ondingo the 2nd Plaintiff took to the witness stand adopting his recorded statement of 14/12/2022.
20. He said that he bought a portion of the parcel of land known as West Mugirango/Nyamaiya/2619 and 1519 measuring 2 Acres with no boundary between the 2 parcels in January 1992 from Mururi Audha at Kshs.40,000/= per Acre. He made a down payment of Kshs. 20,000/= and then took immediate possession and started cultivating the same uninterrupted until 1st April 2014 when unknown people – the Defendants, came to the ground with goons and kicked him out of the land and destroyed all the crops thereon. He admitted that it was the 3rd Defendant who is on the suit land and is also holding a fraudulent Title. The witness equally testified that the 1st and 2nd Defendants sued him in Kisii Chief Magistrate's Court in Civil Suit No. 728 of 2006 which case was dismissed for want of prosecution and which Court had made an observation that he had been on the land for a period of over 12 years. Mr. Ondingo testified that he also bought West Mugirango/Nyamaiya/5210 from Thomas Nyairo Marita on 1/4/2012. He produced the following documents to buttress his case.
1. Copy of Death Certificate Moruri Auda -NO.26xxxx
 2. Copy of Death Certificate Christopher Ahuda Moruri No.087xxxx
 3. Copy of Letters of Administration ad litem issued 22nd July, 2021
 4. Copy of Order rectifying Grant dated 12th May 2022
 5. Copy of Application for Consent 4th February, 1993



6. Copy of Letter of Consent dated 14th January, 1993
7. Copy of Agreement for sale of Land dated 8th March, 1993
8. Copy of Agreement for sale of Land dated 9th November, 2003
9. Copy of Agreement for sale of land dated 14th January, 1998
10. Copy of Agreement for sale land (extension of land)
11. Copy of Summons dated 19th May, 2003
12. Copy of Summons dated 11th August, 1993
13. Copy of Notice of Caution West Mugirango/Nyamaiya 1519 dated 21st September, 2993
14. Copy of Letter from the District Survey Office Nyamira dated 12th February, 1994
15. Copy of Letter from the District Survey Office dated 3rd March, 1994
16. Copy of Summons from the District Survey office dated 6th April, 1994
17. Copy of Plaint – Kisii High Court Civil Case No.52 of 1994 dated 27th January, 1994
18. Copy of written statement of Defence dated 28th February, 1994
19. Copy of Court Order dated 13th April, 1994
20. Copy of Plaint – Kisii Civil Case No.68 of 1995 dated 20th February, 1995
21. Copy of Consent Order for Kisii Civil Case No. 68 of 1995 – dated 13th March, 1995
22. Copy of Mutation form West Mugirango/Nyamaiya/2552
23. Copy of Sketch Map
24. Copy of Registry Index Map(a)
25. Copy of Registry Index Map (b)
26. Copy of Official Search L.R West Mugirango/Nyamaiya/1302
27. Copy of Official Search LR. West Mugirango/Nyamaiya/1807
28. Copy of Proceedings -Kisii High Court Civil Suit No.68 of 1995
29. Copy of Judgment – Kisii High Court Civil Suit No. 68 of 1995
30. Copy of Notice of Appeal Kisii High Court Civil Case No. 68 of 1995 dated 4th April, 2003
31. Copy of Death Certificate No.930965 – Obaigwa Onsoti
32. Copy of Death Certificate No.930966 – Nyambane Onsoti
33. Copy of Notice of Appointment of Advocates Kisii High Court Succession No. 96 of 2005 dated 28th June, 2005
34. Copy of Entry of Appearance to Citation Kisii high Court Succession Cause No. 96 of 2005 dated 28th June 2005
35. Copy of Citation Kisii High Court Succession Cause No. 96 of 2005 dated 30th May of 2005



36. Copy of Affidavit in Support – Kisii Succession Cause No. 96 of 2005
37. Copy of Defence to Citation Kisii High Court Succession Cause No. 96 of 2005
38. Copy of Letter from Assistant Chief dated 2nd June 2006
39. Copy of Affidavit in Support of Petition for Letters of Administration dated the 31st May, 2006
40. Copy of Objection to making of grant dated 17th August, 2006
41. Copy of Objection to making of grant dated 5th February, 2012
42. Copy of Hearing Notice – Kisii High Court Succession Cause No. 96 of 2005 dated 6th October 2005
43. Copy of Hearing Notice – Kisii High Court Succession Cause No. 84 of 2006 dated 3rd June 2009
44. Copy of Hearing Notice -Kisii High Court Succession Cause No. 84 of 2006 dated 7th February 2013
45. Copy of Notice of Change of Advocates dated the 8th March, 2013
46. Copy of Notice of Change of Advocates dated 25th June, 2013
47. Copy of Notice of Change of Advocates dated 29th February, 2016
48. Copy of Certificate of Official Search dated 1st April 2014
49. Copy of Extract of Investigation Report dated 6th April, 2014
50. Copy of Extract of Investigation Report dated 8th April 2014
51. Copy of Extract of Investigation Report dated 14th April 2014
52. Copy of Court Order dated 11th April 2014
53. Copy of Ruling – Kisii High Court Succession Cause No. 84 of 2006
54. Copy of Court Order dated 19th Day of December 2014
55. Copy of Affidavit of Service for Kisii High Court Succession Cause No. 84 of 2006 dated 30th January, 2015
56. Copy of Agreement for sale dated 11th day of March, 2014
57. Copy of Undertaking agreement
58. Copy of Ruling Kisii High Court Succession no. 84 of 2006 dated 29th day of September 2015
59. Copy of Ruling Kisii High Court Succession no. 84 of 2006 dated 6th December 2016
60. Copy of Letter from Chief dated 16th January 2015
61. Copy of Ruling chief Magistrate’s Court Civil suit No. 728 of 2006 dated 24th November 2006
62. Copy of Aerial Photographs (a) and (b)
63. Copy of Letter from Assistant County Commissioner dated the 3rd January 2015
64. Copy of Sale of Land Agreement dated 1st April 2012



65. Copy of Title Deed for West Mugirango/Nyamaiya/5210 – dated 24th Day of March 2016
 66. Copy of Passbook for Gusii Corporative Society Coffee
 67. Copy of KTDA Membership Advice Slip -January 2006
 68. Copy of Photographs (a) and (b)
 69. Copy of forwarding letter from Assistant Chief Nyamaiya division – dated the 12th October 2018
 70. Copy of Minutes of Nyamaiya Land Control Board dated 20th March 2014
 71. Copy of Crop Assessment Report Dated 8TH April 2014
 72. Copy of DCIO letter dated 10th April 2014
 73. Copy of Letter for Kisii Law Courts to DCIO – Nyamira dated the 21st July 2014
 74. Copy of DCIO letter Dated 13th January 2015
 75. Copy of DCIO letter dated 14th July 2015
 76. Copy of Green Card West Mugirango Nyamaiya/1519
 77. Copy of Judgment Nyamira Criminal Case no. 803 of 20914
 78. Copy of Judgments Kisumu Civil Appeal no. 103 of 2017
 79. Copy of Adjudication Letter from Land Adjudication & Settlement Department – Nairobi dated 25th February 2022
 80. Copy of Adjudication Record no.325530
 81. Copy of Adjudication Record no.325619
 82. Any other document as may be required at the hearing with the leave of this Honorable Court.
21. On cross-examination by Mr. Ochoki, the witness said that he purchased the land in 1992 from Mururi Ahunda, the grandfather to the 1st Plaintiff. He bought West Mugirango/Nyamaiya/2693 but that when he went to the surveyor, it turned out to be 1519 which belonged to the late Obaigwa Onsoti And Nyambane Onsoti father to the 1st and 2nd defendants respectively. But in the Green Card it belonged to Evans Ongeru Omote – the 2nd Defendant.
 22. On cross-examination by Mr. Nyamwange for the 3rd Defendant, the witness said that Kisii CMCC No. 728 of 2006 was never determined and that the 3rd Defendant is currently in occupation of West Mugirango/Nyamaiya/1519.
 23. The 1st Plaintiff Christopher Auta Moturi also testified that he is the son of the late Christopher Auta Moruri. He testified that the 1st, 2nd and 3rd Defendants took away their land by force in 2014 – L.R.NO. West Mugirango/Nyamaiya/1519 and that his late grandfather Moturi Auta sub-divided the land thinking it was West Mugirango/Nyamaiya/1430. On cross-examination by Mr. Ochoki for the 1st Defendant the 1st Plaintiff said that he is interested in West Mugirango/ Nyamaiya/1519 which belonged to his grandfather and later his father in succession.
 24. The Acreage is 1.3 Hectares. Both 1430 and 1519 were registered on 20/7/1976. He said that they were laying a claim of adverse possession over the land. When cross-examined by Mr. Nyambega for the 2nd



- Defendant, the 1st Plaintiff said that the 2nd Plaintiff is not related to him and that he bought the first parcel of land from the witness' grandfather and that 1519 has never been sub-divided. It is still intact. He admitted that the 3rd Defendant has been living thereon since 2014. He also responded that 1519 has never been sub-divided since it is part of 1430.
25. PW3 – Jane Ayuma Auta who recorded a statement on 1/4/2012. She testified that she is mother to the 1st Plaintiff and the wife to the late Christopher Ahuda Moruri. She testified that she got married to the Deceased in 1986 on West Mugirango/Nyamaiya/1519 which was originally West Mugirango/1430 which earlier on belonged to her late father in law Moruri Auda till he passed on in 1994. She remember that her late father in law sold a piece of the land in 1992 measuring 1 Acre to the 2nd Plaintiff Joshua Omasire and that they came to discover later that Obwaigwa Onsoti and Nyambane Onsoti had unlawfully registered themselves in 1976 as the proprietors of West Mugirango / Nyamaiya/1519. She also confirmed that the 3rd Defendant forced them out 'on the basis of an illegal title.' On cross-examination by the Mr. Ochoki for the 1st and 2nd Defendants, the witness admitted that West Mugirango/Nyamaiya/1519 has never been registered in their family's name and that her father was the owner of West Mugirango/Nyamaiya/1430. But that both numbers belong to the same parcel of land and that 1430 has never been sold to anyone else save the 2nd Plaintiff. Nor has it ever been sub-divided. The witness on cross-examination from Mr. Nyambega for the 3rd Defendant repeated that they were chased out of the suit land by the 3rd Defendant. On re-examination by Mr. Migiro the witness said that the land is the same but with 2 different titles.
26. The last Plaintiffs' witness Mr. Tacharia Nyanganobino relied on his statement dated 1/4/2022. He said that he is a neighbour to the Plaintiffs and that the 2nd Plaintiff bought land form the 1st Plaintiff's father and grandfather. He also said that he also purchased land from the late Moruri Aunda, grandfather to the 1st Plaintiff. He also recalls the 3rd Defendant evicting the Plaintiffs from the suit land. On cross-examination by Mr. Ochoki for the 1st and 2nd Defendant the witness who had earlier testified in examination in chief that he witnessed the sale to the 2nd Plaintiff said he did not know the Parcel Number. He also said that he has never seen the Map for the land. And in response to questions from Mr. Nyambega for the 3rd Defendant, the witness said that he later sold the land he bought from Mr. Moruri but cannot remember the name of the person he sold it to.
27. Having closed the Plaintiff's case, DW1 John Ondieki Ondigo, the 1st Defendant testified that the suit property was jointly owned by late father Nyambane Obaigwa and his brother Obaigwa Onsoti who is also deceased and none of the Plaintiffs falls within the ambit of Section 66 of the [Law of Succession Act](#) in respect to the aforesaid Deceased persons and therefore their locus has not been established. The 2 bought neighbouring land and not the suit land. He then produced the following documents to buttress his case;
1. Green Cards of West Mugirango/Nyamaiya/1430 and its offshoots
 2. Official Searches
 3. Sale Agreements dated 8th March, 1993
 4. Plaint dated 27th January, 1994
 5. Title Deed West Mugirango/Nyamaiya/1519
 6. Green Card of West Mugirango/Nyamaiya/1519
 7. Objection to Making of Grant
 8. Ruling delivered on 6th December, 2016



9. Letters of Administration
 10. Certificate of Confirmation of Grant
 11. Ruling delivered on 8th October, 2021
28. On cross-examination by Mr. Omwoyo for the 1st and 2nd Defendants, the 1st Defendant said that he lives on the land to date since the 1960s – LR. NO. West Mugirango/ Nyamaiya/1519. On cross-examination by Mr. Nyambega for the 2nd Defendant, the witness said that 1519 belonged to his late father and has never been sub-divided. He also said that he has no claim against the 3rd Defendant and that even his late father’s house built in 1975 is still on the land.
 29. The 2nd Defendant, Evans Ongera Omote said that he bought the land. He also relied on the documents produced by the 1st and 2nd Defendants. On cross-examination he said he bought the land in question at Kshs. 4,000,000/= from John Ondieki. Ondingo and James Atei Obwaiwa – the registered owners of the same and the 1st and 2nd Defendants herein.
 30. On re-examination from Mr. Ochoki the witness said that his relationship with the 1st and 2nd Defendants is cordial. The last witness in the cases, Mr. George Kariuki Maina, Land Registrar Nyamira testified that a caution was placed against West Mugirango/ Nyamaiya/1519. He confirmed that the land was registered in the joint names of the James Atei and John Ondieki ONdigo on 10/3/2014 as a result of Kisii SUCCESSION Cause No. 84 of 2006. The Title Deed was issued on the same date. And on the same date 18/3/2014 the land was transferred to Evans Ongera Omote – the 3rd Defendant. Mr. Maina also told the Court that there is land neighbouring the suit property being L.R. NO. West Mugirango/Nyamaiya/1430. He admitted that registering the land in the names of the first 2 Defendants when a caveat had not been removed was not the Defendants’ fault.
 31. The case having been closed, I invited the parties to exchange written submissions which I have considered before retiring to write this Judgment.
 32. The Title under challenge is L.R No.West Mugirango/Nyamaiya/1519. From the Green Card in respect to the same, the land measuring 1.3 Hectares was registered on 20/7/1976 in the joint name of Obaigwa Onsoti And Nyambane Onsoti before a Caution was registered on 2/9/1993 in favour of Maruri Aunda claiming a licensee’s interest. There was a copy of Death Certificate registered on 15/10/2013 dated 26/08/1994. On 10/3/2014 the property changed hands and was registered in the joint names of James Atgei Obaigwa of Identity Card Number 8055561 and John Ondieki Ondigo of Identity card number 9403589. This was by way of transmission vide Kisii High Court Succession Cause no. 84 of 2006.
 33. I was not shown any order that superseded this transmission and even the plaintiffs admit that they applied to object to the succession cause and indeed there is an undated Ruling to the Application by her ladyship Lady Justice Ruth Sitati which I am unable to ascertain and which I cannot rely upon for the aforesaid reasons.
 34. I have also been shown a copy of Ruling dated 24/11/2006 by Honourable E. Olwande, Resident Magistrate in which her Honour observes that:

“.....Be that as it may, I also find that since the Respondent has been on the suit land since 1992 then the balance of convenience tilts towards allowing him to continue staying therein until the issues are determined after full Hearing”



35. Unfortunately, all the parties in the agreement testified that the Plaintiffs herein were evicted from the suit land in 2014 and any adverse possession they would have hanged on was interrupted and in fact discontinued. All the parties are also in agreement that after that the 3rd Respondent took possession of the suit property. On 18/3/2014 the suit land was transferred to Evans Ongera Omote Identity card number 14452868 by way of a transfer and he continues to take possession to date. The title deed to the same was issued on the same date. Title number West Mugirango/Nyamaiya/1430 has been variously mentioned and related to the suit land. The same was opened on 20/7/1976 and first registered in the name of Kerubo Mogondo, Nyariba Auta and Moruri Auta. Then on 11/8/1988 changed to the name of Maruri Aunda, Kerubo Mogumbo and Nyaribo Auta and the title was closed on 4/10/1988 on Partition of the same to create New parcels number 2417 and 2418. They are not related to the suit land and the Plaintiffs' evidence that the 2 are one and the same parcel of land has no documentary proof. The custodian of the land documents in Nyamira Mr. Maina said that the land only neighbours the suit land. Having said so, I have not been given sufficient reasons on a balance of probabilities as to why the 3rd Defendant's Title should be cancelled and I decline to grant the prayers in the amended Plaint dated 15/11/2021. The same are hereby disallowed with costs.
36. On the counter-claim by the 3rd Defendant a Title Deed is a sacrosanct document and the same can only be cancelled or annulled if there is proof of fraud which has not been proved and accordingly the Counter-claim succeeds with costs.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 11TH DAY OF DECEMBER, 2024.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Brenda

Plaintiff's Counsel: Mr. Omwoyo

Defendants' Counsel: Mr. Nyambega Mose for the 3rd defendant

Mr. Ochoki for the 1st and 2nd defendant.

