



Karani v Burhani Foundation & 5 others (Environment & Land Case E100 of 2022) [2024] KEELC 13853 (KLR) (9 December 2024) (Judgment)

Neutral citation: [2024] KEELC 13853 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E100 OF 2022**

**AA OMOLLO, J
DECEMBER 9, 2024**

BETWEEN

JOSEPH NGACHA KARANI PLAINTIFF

AND

BURHANI FOUNDATION 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

CABINET SECRETARY FOR LANDS 3RD DEFENDANT

REGISTRAR OF LANDS NAIROBI 4TH DEFENDANT

INSPECTOR GENERAL OF POLICE 5TH DEFENDANT

NATIONAL LAND COMMISSION 6TH DEFENDANT

JUDGMENT

Background

1. Before the Court for determination is a plaint dated 14th March 2022. The Plaintiff is seeking orders that:
 - a. The Court be pleased to grant a mandatory order restraining the 1st Defendant by themselves, their agents and/or employees or whomsoever is acting on their behalf from transferring, selling, leasing and/or otherwise dealing in any manner whatsoever or interfering with the Plaintiff's 246 parcels of land that are listed in the schedule provided (hereinafter the suit properties).
 - b. A declaration that the beneficial and proprietary interest in the parcels of land as contained in the schedule of land provided, vests in the Plaintiff and his family as their ancestral land and cultural heritage.



- c. The Court does revoke the titles registered in favour of the 1st Defendant, its partners and/or subsidiaries.
 - d. The Court does order that the 4th and 6th Defendant do effect the title transfer changes in favour of the Plaintiff after the appropriate documents have been lodged by the Plaintiff herein.
 - e. The 1st Defendant does render vacant possession of the suit properties to the Plaintiff.
 - f. Mesne profits for the rent collected by the 1st Defendant, its partners and subsidiaries since they took possession of the suit properties.
 - g. Compensation and/or mesne profits for rent collected from 1952 to date from the suit properties.
 - h. The 5th Defendant to aid in the implementation of orders (a) to (e) above.
 - i. The Court be pleased to issue such further orders as it may deem just and expedient for the ends of justice.
 - j. Costs of the suit.
2. The Plaintiff averred that he is a former Mau Mau freedom fighter and chairman of the Mau Mau Original Trust and a member and leader of the Mau Mau Governing Council as well as other organized groups for freedom fighters. He gave the history of land ownership in Kenya as follows: In 1897, the Commissioner for the Protectorate used the Land Acquisition Act of India to appropriate all lands situated within one mile on either side of the Kenya-Uganda Railway. In 1902, the Crowns Lands Ordinance vested power in the Commissioner to sell freeholds in crown land to any purchaser in lots not exceeding 400 hectares. Any empty land or land vacated by natives could therefore be sold or rented to Europeans with no regard to customary tenure systems. Consequently, by 1914 nearly 2 million hectares of land had been taken away from Kenyan Africans; mostly from the Kikuyus, Maasais and Nandis.
 3. That the 1902 Ordinance was repealed by the 1915 ordinance which declared all land within the Protectorate as crown land. This meant that Africans became tenants of the crown with no more than temporary occupation rights to land. Additionally, they could be removed from their land at any time and the land alienated to settlers on 999 year leases or on freehold leases. In 1953, the Forfeiture of Lands *Ordinance Act of 1953* and a 1955 amendment thereto empowered the Governor of the Kenya Colony to order the forfeiture and penal setting apart of lands/interests in lands of persons participating in the violent resistance against the colonial government.
 4. It was during this period that the Plaintiff pleaded he was dispossessed of his ancestral land for participating in the fight against the colonial government. Additionally, he stated that the women and children in his family were forced into the native reserves where they were tortured. When the colonial government was eventually ousted, the Kenyatta government (independence government) asked all the freedom fighters to return to their homes amid assurances that they would be handed back their lands and be given compensation for their role in making Kenya independent.
 5. The Plaintiff averred that upon returning home, he and his family found that their land had been subdivided and was being occupied by unknown persons. He further averred that it has been more than 50 years of trying to seek legal redress for the wrongful appropriation of land. The Plaintiff stated that the lands have been subdivided into 246 parcels that now form part of the suit properties. He also noted the important position that land occupies in the Kenyan society not just as a source of livelihood but also as a subject of great emotional attachment.



6. The Plaintiff averred that as the clamour for independence was taking hold, the colonial government sought to impose the British land tenure system to the African land tenure system. This led to the subsequent subdivision of properties which were given to government supporters at throwaway prices. The Plaintiff averred that the 1st Defendant was a beneficiary of this move having acquired the suit properties in the early independence days despite knowing that they indigenous owners were clamouring for it.
7. The Plaintiff further averred that the 1st Defendant has continued to illegally occupy the suit properties while at the same time charging the Plaintiff and other tenants exorbitant rents.
8. The 2nd - 5th Defendants filed a defence dated 19th May 2022. They denied the Plaintiff's averments as contained in the plaint and put the Plaintiff to strict proof thereof.
9. The 1st Defendant filed a defence dated 7th March 2023. The 1st Defendant denied the Plaintiff's averments as set put in the plaint. It further stated that it is the bonafide owner of L.R No. 209/136/239 having bought the same in 1989 for good consideration and is not aware of the status of the other suit properties. The 1st Defendant averred that the rent being demanded from the Plaintiff is consequently being demanded in lawful manner. The 1st Defendant also challenged the Plaintiff to produce the latest official searches of the 246 suit properties. In conclusion the 1st Defendant asked that the Plaintiff's suit be dismissed with costs to the 1st Defendant.

Hearing

10. During the hearing the Plaintiff testified as PW1 and produced his bundle of documents as exhibits as well as adopting his witness statement, all of his evidence-in-chief. In the witness statement, he averred that in the 1950s he went into the bush alongside his brothers and sisters to fight against the illegal encroachment of their land by the colonial settlers. He further averred that during the Emergency he was identified as among those who were fighting the colonial government and administering the oath to fellow Kenyans. He was consequently dispossessed of his ancestral lands.
11. The witness stated that upon returning home after independence, he found that his ancestral lands had been occupied by unknown persons and sub-divided. He stated that he and his family had to seek alternative abode while also seeking legal redress. He further stated that the new legislation either treated customary land as government land or provided it for purchase to financially endowed Kenyans. He additionally stated that he and his family were assured that their lands would be given back but none of the post-independence governments has honoured that promise. He stated that the result of this is that the 246 parcels of land forming their ancestral land were subdivided and illegally sold to illegitimate owners like the 1st Defendant. In conclusion he averred that the 1st Defendant should relinquish the suit properties, stop demanding for rental income and compensate the Plaintiff for the benefit they have derived from the suit properties for decades.
12. On cross-examination by the 1st Defendant's advocate, PW1 maintained that he was born in 1943. He however conceded that his ID showed that he was born in 1952 in Mathira. He stated that though he was born in Mathira, the ancestral lands were in Nairobi as that is where his (unnamed) grandparents had settled before being expelled by the colonial government. He testified that he had evidence showing who the owners of the suit properties were. He however stated that he did not have a search proving the same as he could not conduct a search without paying rates and rent. He further stated that he did not have evidence that the suit properties were allocated to the 1st Defendant by the government as the government was covering for them. He acknowledged that there was a document on record showing that the 1st Defendant purchased land in 1989 for Kshs. 750,000.



13. He stated that he has been a tenant of the 1st Defendant since 2006 when he was paying a rent of Kshs. 6000-8000. He further stated that by 2018 he was paying Kshs. 20,000 but had stopped on the basis of a Court order. He conceded that he did not have the Court order. He also acknowledged that section 67 of the *National Land Commission Act* gives persons whose land had been taken by the colonial government the right to seek compensation.
14. On cross-examination by advocate for the 2nd Defendant, PW1 stated that he had brought the case on behalf of his family. He reiterated that he was born in 1943 though his ID showed that he was born in 1952 in Mathira. He stated that he came to Nairobi in the 1980s after the colonialists had left but maintained that his grandparents had been evicted in 1903 but had informed him about their customs and the 60 -80 acres of the suit properties before their deaths in the 1940s -1960s.
15. He acknowledged that while his claim was a historical injustice which should be dealt with by the National Land Commission, he did not file a claim with the Commission because it is riddled with corruption. He stated that the Court has jurisdiction in the matter as it deals with cases of theft.
16. On re-examination he maintained that he was born in 1943 but the registering clerk refused to enter the correct date. He further stated that though he was born in Nyeri he is claiming the ancestral lands in Nairobi because his grandparents had bought the same from the Ndorobo. Concerning the payment of rent he stated that he had stopped paying when he found out that the suit properties were his inheritance. In conclusion he stated that all the 246 suit properties are occupied by the 1st Defendant under different names.
17. Shabbi Husseinbhai Hebatullah, CEO of the 1st Defendant testified as DW1. He produced his bundle of documents as exhibits and adopted his witness statement as part of his evidence-in-chief. In his witness statement he averred that the 1st Defendant bought one of the 246 suit properties for Kshs. 750,000 from Hebatullah Investment and Hebatullah Properties Limited in 1989. The 1st Defendant has been in peaceful occupation of the said parcel since then and has been paying land rates and rents for the same.
18. During cross-examination by advocate for the Plaintiff, DW1 stated that he had no receipt for the Kshs. 750,000 paid for the one of the 246 suit properties. He acknowledged that the rates and rents receipts were for the year 2023. He had none for the year 2019 - 2022. Additionally, they identified Hebatullah and not the 1st Defendant as the owner of the impugned parcel. The witness also acknowledged that while the 1st Defendant was a trust there was no trust deed on record.
19. On re-examination, DW1 stated that Page 3 of his exhibits confirms that the Kshs. 750,000 was paid. He also acknowledged that ownership changes had not been effected at the City County Offices.

Submissions

20. The Plaintiff filed submissions on 23rd august 2024. The first issue for determination was stated as: Whether the Plaintiff's claim is merited. Relying on the cases of Chief Land Registrar, Registrar of Titles, Ministry of Lands, Director of Survey & Attorney General v Nathan Tirop Koech, Zacharia Kimutai Kosgei, Ezekiel Kiptoo, Ernest Kibet & National Land Commission [2018] KECA 27 (KLR) and Henry Wambega & 733 others v Attorney General, Kathini Spring Water Limited, Cooperative Bank Housing Society, Cannon Assurance Company Limited, Edge Farm Limited, Mohamed Bin Ali Mohamed (Gandi), Naaman Bin Ali Bin Muses, National Land Commission, Safepak Limited & Chief Land Registrar [2020] KEELC 824 (KLR) the Plaintiff submitted that while the National Land Commission has jurisdiction to handle historical injustices, that does not oust the jurisdiction



- of the Court in such matters. The instant suit is therefore rightfully before the Court. It was further submitted that the Plaintiff has suffered a historical injustice and should be compensated for it.
21. The Plaintiff faulted the 1st Defendant's account of how it came to own a parcel of the suit properties. Firstly, the Plaintiff submitted that while the 1st Defendant stated that rates and rent had been paid since 1989, no evidence of the same was produced. Secondly, the Plaintiff averred that the parcel was stated to be in the name of Hussein Ahmed Hebetullah and not the 1st Defendant. Thirdly, the Plaintiff submitted that the 1st Defendant produced a transfer document and deed plan but no title deed. Section 112 of the [Evidence Act](#) and the case of [Trust Bank Limited vs. Paramount Universal Bank Limited & 2 Others Nairobi \(Milimani\) HCCS No. 1243 of 2001](#) were relied upon.
 22. The second issue for determination was stated as: Who should bear the cost of the suit? Relying on Section 27 of the [Civil Procedure Act](#) and the case of Party of Independent Candidate of Kenya & another v Mutula Kilonzo & 2 others [2013] KEHC 5939 (KLR) it was submitted that the Plaintiff as the successful party should be awarded the costs.
 23. The 1st Defendant filed submissions on 2nd September 2024. The first issue for determination was stated as: Whether the Court has the mandate to deal with issues related to historical land injustices. It was submitted that while the jurisdiction of the Court is not ousted by the jurisdiction of the National Land Commission to deal with historical injustices, the National Land Commission remains the best avenue to investigate such issues and recommend appropriate remedies. Article 67(2) of [the Constitution](#) was relied upon.
 24. The second issue for determination was stated as: Whether the Plaintiff has locus to sue on behalf of deceased persons without letters of administration. It was submitted that as per the pleadings and the Plaintiff's own admission, he was bringing the case on behalf of his deceased grandparents. He however failed to produce any letters of administration. This in the 1st Defendant's view amounts to an illegality. The cases of Kamau v M'nchurai & another [2023] KEELC 22195 (KLR), In re Estate of M'muthamia Mwendwa (Deceased) [2016] KEHC 2599 (KLR) and In re Estate of John Gakunga Njoroge (Deceased) [2015] KEHC 927 (KLR) were relied upon.
 25. The third issue for determination was stated as: Whether the Plaintiff is entitled to the prayers sought. It was submitted that the Plaintiff is not entitled to the prayers sought as: The Plaintiff admitted to being a tenant of the 1st Defendant; the Plaintiff did not prove that the 1st Defendant owns the 246 parcels of land with the exception of the one the 1st Defendant admitted to owning; the Plaintiff did not demonstrate how, when and by who the historical injustices were committed; the Plaintiff failed to explain why he did not refer the issues to the National Land Commission; and, the Plaintiff failed to show that he has ever occupied the parcels of land outside of being a tenant of the 1st Defendant. Sections 112 and 121 of the [Evidence Act](#) and the cases of Michael Ogweno Mbogo, Jackton Kolo Muga, Alphonse Onyango Mbogo & Peter Otieno Mbogo v Peter Albert Oduor & Silas Onyango Odhiambo [2013] KEHC 1061 (KLR) were relied upon.
 26. It was further submitted that the Plaintiff was not entitled to mesne profits as the same had not been proved. The case of Karanja Mbugua & another v Marybin Holding Co. Ltd [2014] KEELC 378 (KLR) was relied upon. In conclusion the 1st Defendant stated that it should be awarded the costs for defending the Plaintiff's frivolous suit.
 27. The 2nd - 5th Defendants filed submissions on 23rd September 2024. The issue for determination was stated as: Whether the Court has jurisdiction to hear this matter. It was submitted that from the pleadings and by the Plaintiff's own admission the instant suit is a historical injustice matter. In the 2nd - 5th Defendants view it should therefore be dealt with by the National Land Commission and



not the Court. Section 15 of the [National Land Commission Act](#) and the cases of Owners Of The Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR), Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] KESC 8 (KLR) and Ledidi Ole Tauta & Others v Attorney General, Kenya Forest Service & Kenya Electricity Generating Company Limited [2015] KEHC 7241 (KLR) were relied upon.

Analysis And Determination:

28. Based on the foregoing, the following two issues arise for determination: Whether the Instant Suit is Rightfully Before the Court Whether the Plaintiff’s Suit Has Merit
29. Both parties agree that the instant suit touches on the issue of historical injustice. The point of departure is whether this Court is the right forum to address the issue. The Plaintiff has argued that while the National Land Commission has jurisdiction to deal with historical injustices, the same does not oust the jurisdiction of the Court. The 1st - 5th Defendants have argued that the Court has no jurisdiction to hear the case as historical injustices are a preserve of the National Land Commission.
30. The jurisdiction of the National Land Commission to deal with historical injustices is stated as follows at Article 67(2)(e) of [the Constitution](#):

The functions of the National Land Commission are to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.

31. The [National Land Commission Act](#) at Section 13 (2) defines a historical injustice as follows:

For the purposes of this section, a historical land injustice means a grievance which—

- (a) was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;
- (b) resulted in displacement from their habitual place of residence;
- (c) occurred between 15th June 1895 when Kenya became a protectorate under the British East African Protectorate and 27th August, 2010 when [the Constitution](#) of Kenya was promulgated;
- (d) has not been sufficiently resolved and subsists up to the period specified under paragraph (c); and
- (e) meets the criteria set out under subsection 3 of this section.

32. The Court in the Henry Wambega v Attorney General Case (Supra) stated that while the National Land Commission dealt with historical injustices, the Court also had jurisdiction. It stated as follows:

I think the issue of jurisdiction is settled. This court has jurisdiction to hear claims even those based on historical injustices. What we need to have in mind here is that just because a court is vested with jurisdiction, does not mean that in all cases the court will proceed to exercise that jurisdiction, especially where there is another body that also has capacity to hear that dispute. In other words, depending on the facts and circumstances surrounding the case, the court can defer jurisdiction to another body, or decline to take up the matter altogether, and this would not be because it has no jurisdiction, but because given the surrounding circumstances, it would be best for the court not to exercise its jurisdiction.



33. The question therefore now turns to whether this a case where the Court should exercise its jurisdiction or turn it to the National Land Commission. Section 13(3) of the [National Land Commission Act](#) expounds on the jurisdiction of the National Land Commission as follows:

A historical land claim may only be admitted, registered and processed by the Commission if it meets the following criteria—

- (a) it is verifiable that the act complained of resulted in displacement of the claimant or other form of historical land injustice;
- (b) the claim has not or is not capable of being addressed through the ordinary court system on the basis that—
 - (i) the claim contradicts a law that was in force at the time when the injustice began; or
 - (ii) the claim is debarred under section 7 of the [Limitation of Actions Act](#), (Cap. 22) or any other law;
- (c) the claimant was either a proprietor or occupant of the land upon which the claim is based;
- (d) no action or omission on the part of the claimant amounts to surrender or renouncement of the right to the land in question; and
- (e) it is brought within five years from the date of commencement of this Act.

34. In the case of Republic v National Land Commission; Thiru & another (Interested Parties) (Joined as Chairman and Secretary of Mbari ya Thiru Welfare Group) [2024] KEELC 379 (KLR), Justice Mbugua stated as follows concerning Section 13(e) of the [National Land Commission Act](#):

The provisions of Section 38 of the Land Laws Amendment Act brought about amendments to Section 15 of the [National Land Commission Act](#) in the following words;

“(1) Pursuant to Article 67 (3) of [the Constitution](#), the Commission shall receive, admit and investigate all historical land injustice complaints and recommend appropriate redress.

3. A historical land claim may only be admitted, registered and processed by the Commission if it meets the following criteria.....

it is brought within five years from the date of commencement of this Act”.

The Act in question is the Land Laws Amendment Act of 2016 which commenced on 21.9.2016. The lapse of 5 years would fall on 21.9.2021.

In the case of Republic v National Land Commission & 4 others Ex parte Mutuma Angaine & 4 others; Ontulili Mt. Kenya Forest Squatters & 3 others Interested Parties [2021] eKLR, I stated as follows on a similar issue;

“I find it necessary to point out that limitation on claims lodged before National Land Commission starts to run from 21st September 2016 going by the provisions of Section 38 of The Land Laws Amendment Act of 2016.”



15. In the above cited case, the court went ahead to cite the case of Chief Land Registrar & 4 Others vs. Nathan Tirop Koech & 4 Others, where the Court of Appeal stated that;

“*The Constitution* does not define what historical injustice is. However, Section 15 (2) of the *National Land Commission Act* as amended by Section 38 of the Land Laws (Amendment) *Act No. 28 of 2016* defines historical injustice. The commencement date of the Land Laws (Amendment) Act is 21st September 2016. Section 15 (3)(e) of the *National Land Commission Act* as amended introduces a limitation period of five years for claims relating to historical land injustice. A claim on historical injustice shall not be entertained after a period of five years from the date of commencement of the Land Laws (Amendment) Act. Emphasize added”.

35. The import of the above law is that going by the pleadings on record, the Plaintiff’s claim could meet the definition of a historical injustice to be dealt with by the National Land Commission. However, for historical injustices to be dealt with by the Commission they had to be instituted within the five years beginning on 21st September 2016. Those five years ended on 21st September 2021. The instant suit was filed on 17th March 2022. It could therefore not have been instituted at the National Land Commission as it could have been statute barred.
36. The import of the foregoing is that there was a period where the National Land Commission had the jurisdiction to deal with historical injustices. That period was fixed by statute and ended before the instant suit was filed. Having established that the Courts also have jurisdiction to deal with historical injustices, I find that the instant suit was rightfully filed in this Court.

Whether the Plaintiff’s Suit Has Merit

37. The Plaintiff has laid claim to the suit properties on two related grounds. The first is that his forefathers owned the land that is now the 246 suit properties but were removed therefrom by the colonialists in 1903. The Plaintiff is therefore claiming on their behalf. The second is that the Plaintiff was a MauMau freedom fighter who was removed from his ancestral land during the Emergency. When Kenya gained independence he returned to his ancestral land and found that the same had been subdivided into the 246 suit properties and sold. The Plaintiff claims that the 1st Defendant is the owner of all the suit properties. The 1st Defendant has stated that it owns only one of the 246 suit properties which it purchased for good consideration. It has further stated that the the Plaintiff is a tenant of the 1st Defendant.
38. Section 107 (1) of the *Evidence Act* provides:
- 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 that those facts exist.
39. The Plaintiff desired for the Court to order that the 246 suit properties should be transferred to him and his family as they are rightfully theirs. The Plaintiff was therefore under an obligation to prove that either he or his grandparents were on the suit properties. He was also under an obligation to prove that he or his grandparents were removed from their land as a result of a historical injustice whose definition has been set out above. The Plaintiff was under an obligation to prove that the Defendants, especially the 1st Defendant were party to the removal/historical injustice.



40. Justice Munyao Sila in the *Henry Wambega v Attorney General Case* (Supra) stated as follows concerning a similar claim about forefathers:

The argument of the petitioners is that because their forefathers lived on the suit lands, and were dispossessed during the colonial period, or shortly thereafter, then they have a right to these parcels of land. Straight from the blocks, the respondents have attacked this claim, asserting that there is no evidence to prove such allegations. On this point, I must agree with the respondents. I am afraid that there is absolutely no evidence that any of the forefathers of the petitioners ever resided on the suit lands and I say this after having carefully gone through the evidence tendered by the petitioners. One cannot tell with precision and finality, which forefather of which petitioner resided in which land, and what sort of occupation such person had. Indeed, as pointed out by the respondents, some of the petitioners appear to have roots in Kwale and not within the site of the disputed land. There is a claim of dispossession, but absolutely no evidence of who was dispossessed, by whom, and when exactly this occurred....The petitioners in this case needed to do more than just state that their forefathers were displaced and tortured. They ought to have provided cogent evidence of this, and there is none in this case, save for hearsays which cannot be proved... The petitioners have not given this court any generational tree to identify their ancestry and demonstrate that it is actually their forefathers who were occupying the suit lands. There is no evidence that any of the claims of torture occurred. Neither is there any evidence of imprisonment. It is indeed impossible to hold that any of the events that are claimed by the petitioners actually occurred. It is also impossible to connect the petitioners in any way to the suit lands...

41. The Plaintiff meticulously set out the history of land ownership in Kenya. He also meticulously attached various documents that detail the MauMau struggle before and after independence. He has however failed to situate the suit properties within that history and struggle. He has also failed to situate himself and his forefathers within the history and the struggle. In relation to his forefathers, he claimed that they had bought land in Nairobi from the Ndorobo but were removed from the said land by the colonialists. However, no evidence was tendered of the land that was bought nor that that land was the suit properties nor of the occupation by the forefathers nor of the existence of the forefathers. Like the petitioners in the case above, the Plaintiff did not provide any genealogy evidence. He only stated that his unnamed grandparents told him about the parcels of land before they died.
42. The Plaintiff also stated that he was displaced from his ancestral lands during the Emergency as he was a MauMau fighter. The Defendants brought to fore the fact that as per his ID the Plaintiff was born in 1952 - the year the Emergency started. He was therefore a child of tender years during the Emergency years and could not have been involved in the fighting. Even if the Court were to consider that the Plaintiff was born in 1943 as he claimed, he was still a child when the Emergency started. He has claimed that he was targeted for being MauMau. I have perused the documents on record some of which list those who were targeted by the colonial government for being Maumau. The name of the Plaintiff does not appear in any of them.
43. The Plaintiff has claimed that he was displaced from his ancestral lands which are the suit properties (located in Nairobi). He however conceded that he was born in Mathira, Nyeri. He came to Nairobi in the 1980s and only set foot on the suit properties as a tenant in 2006. There is no evidence that the Plaintiff was ever on the suit properties during the colonial era or soon thereafter. The Plaintiff also stated that he stopped paying rent on the suit properties after realizing that it was his inheritance. This



late realization casts doubt on the Plaintiff's previous 'knowledge', 'occupation' and 'forceful removal' of and from the suit properties.

44. The Plaintiff claimed that he knows all the owners of the 246 suit properties. Elsewhere he claimed that the 1st Defendant is the owner of the suit properties under different names. The Plaintiff however failed to produce any search or title documents proving his claim. The Plaintiff also stated that the 1st Defendant was allocated the 246 suit properties by the government but did not produce proof of that claim.
45. In failing to prove that either he or his grandparents were ever on the suit properties, the Plaintiff has failed to prove that the suit properties are his ancestral lands as claimed. In failing to prove that either he or his grandparents were forcefully removed from the said lands, the Plaintiff has failed to prove a historical injustice. In failing to prove that he was Maumau, the Plaintiff has failed in situating himself as a victim of a historical injustice.
46. During DW1's cross-examination and in the Plaintiff's submissions, the Plaintiff has faulted the process by which the 1st Defendant became the owner of one of the 246 suit properties. However, the faults relate to matters such as the name of the owner, the payment of rates and rents and the absence of a receipt evidencing the purchase. None relate even remotely to the issue of historical injustice.
47. The import of the foregoing is that the Plaintiff has failed to prove his claim of ownership of the suit properties based on a historical injustice. I therefore find that the suit lacks merit. It is consequently dismissed with costs to the 1st Defendant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF DECEMBER, 2024 VIA EMAIL TO PARTIES OR THEIR RESPECTIVE ADVOCATES.

A. OMOLLO

JUDGE

