



**Mbaru (Deceased) & 111 others v Nchoe & 84 others (Environment & Land
Case 520 of 2017) [2024] KEELC 13575 (KLR) (5 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13575 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 520 OF 2017
CG MBOGO, J
DECEMBER 5, 2024**

BETWEEN

HENRY MWANGI MBARU (DECEASED)) 1ST PLAINTIFF
MARY WAITHERA MUCHERU 2ND PLAINTIFF
JAMES NGUGI KANGETE 3RD PLAINTIFF
JULIANA CHERONO SOO 4TH PLAINTIFF
DAVID STANLEY SOO 5TH PLAINTIFF
RICHARD NYAMWEYA 6TH PLAINTIFF
PETER NDUGU KAIGWA 7TH PLAINTIFF
HARRISON GITAU NGUIYAI 8TH PLAINTIFF
HELLEN W. NGERU 9TH PLAINTIFF
ALICE WAMBUI 10TH PLAINTIFF
NJUNGAN NJOROGE 11TH PLAINTIFF
WALTER KOMBO POREKA 12TH PLAINTIFF
EMMUEL SILOMA POREKA 13TH PLAINTIFF
PETER KAMUIRU THUO 14TH PLAINTIFF
LEAH WANJIRU MBUGUA 15TH PLAINTIFF
GRACE WANGARI 16TH PLAINTIFF
JOHN KOSEN,SAMSON MUTURI 17TH PLAINTIFF
UMUKA OLE MULINKA 18TH PLAINTIFF
MARY NJERI MBURU 19TH PLAINTIFF



ESTHER MARY SEENOI	20 TH PLAINTIFF
PETER K. KINGORI	21 ST PLAINTIFF
AGAPE P.C.E.A CHURCH	22 ND PLAINTIFF
PAUL NDUNGU MAHUI	23 RD PLAINTIFF
DISCIPLES OF CHRIST FOUNDATION FELLOWSHIP	24 TH PLAINTIFF
MARY NJERI NJENGA	25 TH PLAINTIFF
JANE GATHONI KAMAU	26 TH PLAINTIFF
JOSEPH N. OLE POREKA	27 TH PLAINTIFF
MOSES MUGWANJA KINUTHIA	28 TH PLAINTIFF
JOHN NJOROGE KINATHA	29 TH PLAINTIFF
ELIZABETH WANJIRU NHUGI	30 TH PLAINTIFF
SIMON SANG RERIMOI	31 ST PLAINTIFF
MARGARET WAMBUI KARANJA	32 ND PLAINTIFF
BENEDICT MUTUNGI MATHEKA	33 RD PLAINTIFF
GRACE MUTHONI MWANGI	34 TH PLAINTIFF
SAMWEL TOWETH KIPKEMOI	35 TH PLAINTIFF
STEPHEN N. GAKARURI	36 TH PLAINTIFF
JOSEPH KINYANJUI NJAU	37 TH PLAINTIFF
PETER NDISHO NDAUWA	38 TH PLAINTIFF
PETER OLEKEDIENYE OLE KOIKAI	39 TH PLAINTIFF
JOSEPH NJONJO	40 TH PLAINTIFF
JOHN MAINA NJUGUNA	41 ST PLAINTIFF
MUNORU GAKANYA	42 ND PLAINTIFF
STEPHEN MBURU	43 RD PLAINTIFF
SIMON KIMENDERO KABARI	44 TH PLAINTIFF
ESTHER WANJIKU KAWONGO	45 TH PLAINTIFF
BETTY TIMONI KOIKA	46 TH PLAINTIFF
JENNIFER KAKENYA PHILIMONA	47 TH PLAINTIFF
JOHN MAUSA KIHORIA	48 TH PLAINTIFF
JOHN M. ANGWENYI	49 TH PLAINTIFF
PENTECOSTAL EVANGELISTIC FELLOWSHIP OF AFRICA ...	50 TH PLAINTIFF
JAMES NJUGUNA NGUGI	51 ST PLAINTIFF



JOHN MOKIA	52 ND PLAINTIFF
CLEMENT KAMAU KIMANI	53 RD PLAINTIFF
PETER M. MUSYIMI	54 TH PLAINTIFF
RODAH NAILANTEI JESSE	55 TH PLAINTIFF
AMINA SAID AWEDH	56 TH PLAINTIFF
DINAH MAGANGA	57 TH PLAINTIFF
PETER NDEGWA WANGAI	58 TH PLAINTIFF
PETER NDEWA WANGAI	59 TH PLAINTIFF
PETER NGEDWA	60 TH PLAINTIFF
SYMON NDERITU MAINA	61 ST PLAINTIFF
STEPHEN KIMANI NGUGI	62 ND PLAINTIFF
REBEKAH NABOSHI LANGAS	63 RD PLAINTIFF
FRANCIS MACHARIA	64 TH PLAINTIFF
SAMSON MANALE MULUJI	65 TH PLAINTIFF
LUCY WAHITO MWANGI	66 TH PLAINTIFF
SCOLAR WAMBUI	67 TH PLAINTIFF
JUSTUS NYABUTO	68 TH PLAINTIFF
STEPHEN NJOROGE NJUGUNA	69 TH PLAINTIFF
TUMUKA OLE MULINKA	70 TH PLAINTIFF
ALICE WAMBUI	71 ST PLAINTIFF
ROSE WANJIRU KIMANI	72 ND PLAINTIFF
JOHN MWAURA KIHORIA	73 RD PLAINTIFF
PAULINE GESARE	74 TH PLAINTIFF
GRACE WACHEKE RUGAITA	75 TH PLAINTIFF
MARTHA KERUBO	76 TH PLAINTIFF
STEPHENE GETHAE KAGWARA	77 TH PLAINTIFF
JEMIMA KEMUNTO MBASA	78 TH PLAINTIFF
DOMINIC GEKUNO	79 TH PLAINTIFF
TERESIA KWAMBOKA MOKAU	80 TH PLAINTIFF
SAMSON MUTURI	81 ST PLAINTIFF
PAULINE GESARE	82 ND PLAINTIFF
HARRISON GITHEGI GICHUNGU	83 RD PLAINTIFF



MARY NANYU NGURUNA	84 TH PLAINTIFF
CHARLES ONTITA NYANGURU	85 TH PLAINTIFF
ANN MORAA	86 TH PLAINTIFF
CECILIA WANGARI KIHORIA	87 TH PLAINTIFF
ANN KERUBO MOKUA	88 TH PLAINTIFF
ROBERT NYANGAU AYUKAH	89 TH PLAINTIFF
SYLVERSTER DOMINIC OKARI	90 TH PLAINTIFF
JOSEPH KAHONOKI NYAGA	91 ST PLAINTIFF
MAGOMA OYUGI	92 ND PLAINTIFF
SAMWEL ONSARIGO OMBATI	93 RD PLAINTIFF
ROSE NYABATE	94 TH PLAINTIFF
SAMSON MONAE MULUJI	95 TH PLAINTIFF
HENRY NYANARO GITAU	96 TH PLAINTIFF
ALPHONCE MULWA KALANI	97 TH PLAINTIFF
JAMES MURIGI MBURU	98 TH PLAINTIFF
PENINAH MOIGE NYAKERI	99 TH PLAINTIFF
ST MARK ACK CHURCH	100 TH PLAINTIFF
DELIVERANCE CHURCH	101 ST PLAINTIFF
LUCY WAMBUI NJENGA	102 ND PLAINTIFF
ELIJAH M. KAMBOGUA	103 RD PLAINTIFF
ROBERT N. OKIRO	104 TH PLAINTIFF
BENARD MACHARIA NGANGA	105 TH PLAINTIFF
SIMON K. KABARI	106 TH PLAINTIFF
EDWARD THANJU NGUIYAI	107 TH PLAINTIFF
LYDIA W. KANYI	108 TH PLAINTIFF
HANDSON MESESI OMAMBIA	109 TH PLAINTIFF
PETER M. NGERU	110 TH PLAINTIFF
JENNIFER W. NGERU	111 TH PLAINTIFF
SAMSON MUTURI	112 TH PLAINTIFF

AND

JOHN OLE NCHOE	1 ST DEFENDANT
JOSEPH SAHAYA	2 ND DEFENDANT



TOMAKA OLE LAPARAKUO	3 RD DEFENDANT
LEBASO OLE SADERA	4 TH DEFENDANT
EDWARD KISIO	5 TH DEFENDANT
OLOPITO GROUP RANCH	6 TH DEFENDANT
IBAI MBUGUA	7 TH DEFENDANT
DAVID MURIU	8 TH DEFENDANT
MARGARET WANJA NTAUWA	9 TH DEFENDANT
NUTILIA OLE SADERA	10 TH DEFENDANT
TILAKAE OLE SANKOK	11 TH DEFENDANT
NAKATO ENE SADERA	12 TH DEFENDANT
KHADIJA YUNIS ABDI	13 TH DEFENDANT
GEORGE NAJUI OLE YENKO	14 TH DEFENDANT
ESTHER WANWANGUI LARUME	15 TH DEFENDANT
JULIUS KARIUKI NJENGA	16 TH DEFENDANT
TERESIA ENE NKUITOI	17 TH DEFENDANT
PERSIMEI OLE SINATI	18 TH DEFENDANT
KANGI OLE SINATI	19 TH DEFENDANT
SARUNI SADERA	20 TH DEFENDANT
NJENGA NJOROGE	21 ST DEFENDANT
JANET WANJIKU	22 ND DEFENDANT
KOTOINE OLE KISIO	23 RD DEFENDANT
JOHNSON K. OLE SADERA	24 TH DEFENDANT
WILLIAM SADERA	25 TH DEFENDANT
JOHNSON K. OLE ADERA	26 TH DEFENDANT
J.K. SADERA	27 TH DEFENDANT
SIMON MUIGAI GITAU	28 TH DEFENDANT
PARSIMEI SADERA	29 TH DEFENDANT
MWAURA COMMERCIAL AGENCIES	30 TH DEFENDANT
JOYCE WAMBUI MBUGUA	31 ST DEFENDANT
WILLIAM SADERA	32 ND DEFENDANT
JAMES KIMANI NJUGUNA	33 RD DEFENDANT
PARSITAU OLE KISIO	34 TH DEFENDANT



NJOKI NDEKERE	35 TH DEFENDANT
MURKET OLE NTETE	36 TH DEFENDANT
JOHN MWANGI KAMURI	37 TH DEFENDANT
MBOYA OLE SADERA	38 TH DEFENDANT
LAKISHOE OLE NAGOL	39 TH DEFENDANT
NJENGA NJOROGI	40 TH DEFENDANT
GEORGE NAJUI YENKO	41 ST DEFENDANT
HARRISON GITAU NGUIYAI	42 ND DEFENDANT
SANKAIRE OLE ENGOK	43 RD DEFENDANT
PARSIMEI OLE SIMAT	44 TH DEFENDANT
JAMES ONKOBA KOMBO	45 TH DEFENDANT
SIMION ONTOMWA GEKUNO	46 TH DEFENDANT
LEBOSO SADERA	47 TH DEFENDANT
LEBOSO OLE SADERA	48 TH DEFENDANT
LEPOSO OLE SADERA	49 TH DEFENDANT
JOEL MUTUA KANYOLO	50 TH DEFENDANT
ALFRED SADERA	51 ST DEFENDANT
LEBOI OLE YENKP	52 ND DEFENDANT
PAUL GICHINI KAHUGU	53 RD DEFENDANT
SITUYA OLE YENKO	54 TH DEFENDANT
DAVID OKETCH	55 TH DEFENDANT
SWAKEI OLE KISIO	56 TH DEFENDANT
KIRANTO OLE SADERA	57 TH DEFENDANT
PARSITAU OLE KISIO	58 TH DEFENDANT
P.M. DICK	59 TH DEFENDANT
LETASONA OLE YENKO	60 TH DEFENDANT
J.K. SADERA	61 ST DEFENDANT
JOHN NYUTI MJIHIA	62 ND DEFENDANT
LETASON OLE YENKO	63 RD DEFENDANT
JOSEPH OLE NCHOE	64 TH DEFENDANT
PASAE OLE KAREMA	65 TH DEFENDANT
MUTERIAN OLE PARTOIP	66 TH DEFENDANT



OREU OLE SIMAT	67 TH DEFENDANT
KENYATTA OLOCHIKE	68 TH DEFENDANT
KISHANTO OLE MAYEMPE	69 TH DEFENDANT
KASAINI OLE NKURUNAH	70 TH DEFENDANT
TUMALEL PARTOIP	71 ST DEFENDANT
WILSON OLE TURERE	72 ND DEFENDANT
BARUBARUNYE OLE ONKOYO	73 RD DEFENDANT
JOSIAH NAKOLA	74 TH DEFENDANT
OLOPITO GROUP RANCH	75 TH DEFENDANT
SIMON OLE NCHOE	76 TH DEFENDANT
PARTOIP OLE KIRIMA	77 TH DEFENDANT
JULIUS NKOYO	78 TH DEFENDANT
LAND REGISTRAR NAROK DISTRICT	79 TH DEFENDANT
LAND SURVEYOR NAROK DISTRICT	80 TH DEFENDANT
DISTRICT LAND ADJUDICATION OFFICER NAROK	81 ST DEFENDANT
OFFICER COMMANDING POLICE DIVISION NAROK DISTRICT	82 ND DEFENDANT
DISTRICT COMMISSIONER NAROK DISTRICT	83 RD DEFENDANT
COMMISSIONER OF LANDS	84 TH DEFENDANT
THE HONOURABLE ATTORNEY GENERAL	85 TH DEFENDANT

JUDGMENT

1. By a plaint dated 2nd July, 2012 the plaintiffs pray for judgment against the defendants jointly and severally for: -
 - a. A permanent injunction be issued as against the defendants, their agents, servants, employees and or any other person(s) claiming through them from re-surveying, subdividing, evicting interfering, alienating, entering allocating, offering for sale or dealing in any way whatever and whatsoever of plaintiffs' plots measuring 100 x 100 feet situated on land parcel No. Cis-Mara/ Olopiti/ 788.
 - b. A declaration that the plaintiffs are the bonafide and lawful owners/ proprietors of plots measuring 100x100 feet on parcel of land no. Cis-Mara/ Olopito/ 788.
 - c. An order directing the defendants to immediately transfer to the plaintiffs' parcels of land measuring approximately 100 x 100 feet as per the various land sale agreements between the plaintiffs and defendants.



- d. An order that in case the defendants fail to transfer the land as (c) above, then the Deputy Registrar of this honourable court do execute transfer forms on behalf of the defendants.
 - e. That an order directing the 79th, 80th, 81st and 84th defendants issued beacon certificates to the plaintiffs upon payment of the requisite fees.
 - f. An order directing the 79th and 84th defendants to issue title deeds to the plaintiffs upon presentation of duly signed transfer forms and upon payment of the requisite fees.
 - g. Costs and interest of this suit.
 - h. Any other relief the court may deem fit and just to grant.
2. In their plaint, the plaintiffs averred that they are the bonafide purchasers of individual plots measuring 100 x 100 feet on the parcel of land known as Cis-Mara/ Olopito/ 788, (the suit land), having bought the same from bonafide members of Olopito Group Ranch for valuable consideration. The plaintiffs averred that on 20th and 23rd of June, 2012 the 1st to 74th defendants illegally and unlawfully issued a notice through the 79th to 83rd defendants to vacate the respective parcels of land with the intention to re-survey and re subdivide the suit land into smaller units measuring 50 x 50 feet as against individual agreements entered into between them and the defendants.
 3. The plaintiffs further pleaded that on 26th and 29th June, 2012 the 1st to 67th defendants accompanied by the 79th to 83rd defendants held a meeting at the Narok District Offices where the 83rd defendant ordered the plaintiffs to comply with the notice dated 20th and 23rd June, 2012 or forcefully be evicted. They averred that on diverse dates preceding the crystallization of the cause of action, the plaintiffs had purchased defined plots of 100 x 100 feet, and were issued with individual plot numbers awaiting title deeds.
 4. The plaintiffs contended that the intended reduced subdivisions is unlawful and illegal since they have occupied and developed their portions of land for over 22 years. They also averred that the defendants have commenced extensive plans of re survey, re division and eviction of the plaintiffs which amounts to breach of various agreements for sale and a breach of trust on the part of the defendants.
 5. The 51st, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 74th, 75th and 76th defendants filed their statement of defence dated 2nd August, 2012. The aforementioned defendants averred that they are the officials of the 75th defendant who is the owner of the suit land, and that no portion has been given to any person for sale to a third party. They averred that they are the only persons authorized to transact on behalf of the 75th defendant including seeking and obtaining consent for subdivision of the land which has not been done to date, and hence any purported sale of 100 x 100 feet plots is null and void in law. They also averred the aforementioned defendants contended that the plaintiffs invaded the suit land, and the notice given to them by the registered owner is valid in law.
 6. The aforementioned defendants further averred that there can be no sale of 100x100 feet plot since no consent has been sought for and obtained and no titles can be pending issuance. They averred that some of the defendants alleged to have sold parcels of land to the plaintiffs are not members of the 75th defendants, and that no valid titles can pass to the plaintiffs. They went on to aver that the plaintiffs are mere trespassers whose occupation is illegal, and none of them has been on the suit land for over 22 years.
 7. They averred that since the 75th defendant is the registered owner, it is clothed with legal rights to deal with the land as it deems necessary in the interest of members who do not include the plaintiffs, and that a claim for injunction against them is not merited. The aforementioned defendants contended



that there have never been any agreements for sale with the plaintiffs over the suit land, and that no trust relationship has ever existed between them and the plaintiffs.

8. They averred that the current suit is res judicata owing to Nakuru HCCC No. 31 of 2001 and No. 13 of 2000.
9. The 79th, 80th, 81st, 82nd, 83rd, 84th and 85th defendants filed their statement of defence dated 14th June, 2016. The aforementioned defendants while denying the contents of the plaint averred that the suit land was at all times registered in the name of Olopito group ranch in its undivided form, and that it had never been surveyed or divided. Further, they averred that the suit land remained 100 x100 feet upto the time the members of the group ranch agreed to have it plus other 4 parcels, surveyed and divided into 50x100 feet parcels of land.
10. They further averred that at the time the group ranch was still registered in the name of Olopito group ranch, it was not possible for any individual to make the alleged transactions, and that the averments raised in the plaint are baseless and meant to mislead this court. They denied ever being served with the statutory notice of intention to sue and as such, they averred that the plaint is defective.
11. The plaintiffs' case proceeded for hearing on 23rd February, 2021. John Allan Kamau (PW1), a retired public servant testified that he worked as a District Officer in Narok between February 1980 and July 1982, and that he came to know about Olopito group ranch from 1981 when the officials of the said group ranch sought for consultation on their land being Narok Cis Mara Olopito/1. PW1 further stated that he had prior knowledge of the issue at hand and which concerned being assisted to a portion the land between the group ranch and Narok Town at that time, he didn't know but he later learnt that the group ranch owned about 6,000 hectares. That by then the District Commissioner was a nominated councilor, and that it was discussed by the Narok County Council for purposes of expanding the town but the officials refused.
12. PW1 testified that the matter was referred to him so as to connect the officials with the relevant land officials, and among those who visited were Sanchwa Ole Nchoe, the chairman, Daniel Olekiso, the secretary and Munket Ole Ntete the treasurer, and a few committee members. It was his testimony that the said officials are defendants in this matter, and that they had a 4 days' meeting with officials from the Ministry of Lands where it was explained to them the procedure to get the approval of members to apportion 47 hectares of land for the Narok County Council. That at the time they were advised, they left the office in the year 1982, and that he was transferred but the matter reappeared in the year 1985 while he was working in Kitui.
13. PW1 testified that in the year 1985, Sanduka Ole Nchoe who was the chairman went to him concerning a letter from the District Land Adjudication Officer, and that it was at this time that he learnt that there was sub-division. He also stated that he was later asked if he had an interest and he got plot No. 163 which he was shown in the year 1988, which he occupied and constructed. PW1 stated that the officials of the group ranch had a register of the members, and the plots which they had been allocated. He paid for the survey fees of Kshs. 800 and he was issued with a receipt, and that he also paid the chairman of the group ranch 3 goats valued at Kshs. 9,500. He went on to state that in the years 1992 and 1997 his house was vandalized and he decided not to renovate the same. PW1 informed the court that he does not have a title to the plot but a receipt that was issued by the Ministry of Lands, which was for survey services. According to him, the survey was done and beacons were placed and that he was shown the plot and the beacons by the officials from the Ministry of lands.
14. He testified that the transaction was ascertained at the District Commissioner's office after ascertainment by the District Land Adjudication and Settlement Officer, and after checking the register of members which was in the custody of District Commissioner's office. He added that Olopito



group ranch was registered but he has not seen their register, and that he had also not seen other certificates. He knew of various notices that were issued on 20th June, 2012 and 23rd June, 2012. It was his evidence that they were registered and after his house was vandalized, they resolved to file a suit-No. 233/2012 at the Nakuru High Court, the present suit which he is not a party. He testified that he does not have a title to the land and neither do the plaintiffs.

15. On cross examination, PW1 testified that he owns plot 163, which was sold to him by Sanduka Ole Nchoe, and that he knows there was a register, but that he has not sued him as they are in good terms. On further cross examination, PW1 testified that there are about 4 parcels of land that are owned by Olopito group ranch, and that the sub divisions were done in 1984 and 1985 which involved parcel 788.
16. On re-examination, PW1 testified that the various parcels were initially one and parcel no. 788 (the suit land), and other blocks emerged as sub-divisions of the old title.
17. On 24th February, 2021, Charles Ngare (PW2), a retired civil servant employed as a District Commissioner since the year 1971 stated that his duty was to collect all government revenue and appropriation in aid. He testified that the suit land was surveyed in the year 1984 by a government surveyor, and that the revenue that he collected was for survey fees for the said plot. Further, it was his testimony that the fees were collected from individual members and buyers after confirmation that they owned a plot and the District Land Adjudication and Settlement Officer would write the amount that he was to collect, and the name of the person who owned the land after he found buyers for their land. PW2 testified that the District Land Adjudication and Settlement Officer was the custodian of the members' record and he knew who owned the land when they came to pay for the survey fees, and that it was possible to pay for the fees without survey, and that the money was placed in a ledger for use later as survey fees. He bought 3 plots in the area in the years 1985 and 1986, and developed the said plots in the year 1989. He went on to say that he has been on his portion of land since the year 1985 to date. However, he stated that there were a lot of problems especially in the year 1997 when people were chased out, and that in the year 2000, they got threats from members, and they have been living in fear since then.
18. PW2 testified that they don't have titles to the land as they were refused by the members, and that in the year 2015, the defendants resurveyed the suit land giving rise to parcel numbers 5556 to 6350 while there were court orders in place. He stated that the defendants continued to sell the parcels of land, and continued to chase them out. He testified that there were 3 officials namely Sanchura Stephen who was the chairman, Daniel Ole Kisian secretary and Munati Ole Ntate who was the treasurer. He further testified that the 2nd re-survey was done by other new members whom he did not know. PW2 produced his letter of employment as P. Ex. no. 5, mutation plan dated 28th April, 1986 as P Ex. no. 6 and the 2nd mutation dated 3rd March, 2015 as P. Ex. no. 7, a copy of the extract general ledger for February 1987 to May 1985 (sic) as P. Ex. no. 8, consent for the sub division dated 10th March, 1986 as P. Ex. no. 9, and a certificate of incorporation of Olopito group ranch for 2010 as P. Ex. No. 10. He stated that the survey fees were collected by the District Commissioner, and that he had the survey map that indicated the plot numbers.
19. On cross examination, PW2 testified that they used the numbers on the survey map to identify the owners which numbers were on the physical plan from no. 1 to 244. He purchased 3 parcels being 168, 160, 107 which were from parcel 788, and further stated that there were two mutations for the year 1986 and 2015 for the suit land, and that mutation for the year 2015 was done by a private surveyor and the district surveyor. He also informed the court that the survey fees were paid to the government. It was his testimony that he purchased the plots from Daniel Purko Kisio, John Ole Nchoe and Karaie



- Sadera. He said that he did not know Alfred Sadera Ole Nchoe, Samuel Nchoe and Josiah Nabola. However, he stated that they are the ones who prepared a second mutation as they were the officials as shown on the certificate of incorporation issued and produced as P. Ex. No.10. He reiterated that he purchased his plots from the members of the group ranch.
20. On re-examination, PW2 testified that the group ranch had existed for 20 years before the certificate of incorporation was issued, and that they had officials who facilitated the sub-division of the land.
 21. Robert Nyanga Auka (PW3), a retired film officer with the Ministry of Information, and the 89th plaintiff, stated that he purchased a parcel of land in the year 1987 from John Nchoe of Olopito group ranch and that he does not have title to the said land. It was his testimony that the seller went to his office and informed him that the plot was adjacent to town, and that when they went, they found the plot was marked and it had 4 beacons. He stated that they went back to his office where they negotiated and he paid John Nchoe Kshs. 20,000 in two instalments of kshs. 12,000 and 8,000. He went on to state that they had a sale agreement and that John Nchoe took him to Dr. Aroka who was the District Land Adjudication and Settlement Officer where he was given a piece of paper to take to the District Cashier for payment of Kshs. 830 which he paid. PW3 produced the sale agreement P. Exhibit No. 11 and the payment receipt as P. Ex. No. 12.
 22. On cross-examination, PW3 stated that the plot was sold to him by the Assistant Chief John Ole Nchoe whom he has not sued him.
 23. On re-examination, PW3 stated that he sued the officials of the group in which John Nchoe is one of them.
 24. Rebecca Nabosh Langas (PW4) stated that she purchased plot no. 135 measuring 100x100 feet within the suit land which was sold to her by one Ole Nkolo at Kshs. 17,000 in the year 1990. She said that she fenced the plot but the same was removed, and that she has buried 2 of her children on the said plot. It was her testimony that she has not been given title to the said parcel to date and that when she asked for it, she was told to wait. She produced a copy of the sale agreement as P. Ex. No. 13.
 25. On cross-examination, PW4 testified that the plot was sold to her by Ole Nkoyo, and that he has not refused her to live on the plot.
 26. On 10th March 2021, Simon Nderitu Maina (PW5) testified that he resides in plot No. 161 at Olopito. He however said that there was another person who is claiming his plot even though he is in occupation of the same. He relied on his witness statement as his evidence and he went ahead to produce a copy of the sale agreement and payment receipt as P. Ex. no. 14 and 15 respectively.
 27. On cross-examination, PW5 testified that he bought plot no. 161 from J.K. Sadera who showed him the register at the Ministry of Land, and that his name was replaced with J.K. Sadera's name. It was his testimony that J.K Sadera did not have a title deed. He stated that J.K Sadera never took him to the offices of the 75th defendant, and that he never spoke with any officer from the group ranch. He added that he did not know who prepared the register at the Ministry of lands.
 28. Mary Njeri Mburu (PW6) testified that she bought a plot in the year 1982 from Kangi Ole Sinati, the 19th defendant, who showed her the plot and its 4 beacons. She testified that she purchased the plot for kshs.15,000 which she paid in 3 instalments of Kshs. 8,000 and 2,330. She went on to testify that she had an agreement which was signed before the magistrate court Narok, and that she was given a payment receipt to help her get title to the land. It was her testimony that she has developed her plot and that her daughter is also buried on her plot. She produced a copy of the sale agreement, payment receipt and photographs as evidence as P. Ex. Nos. 16,17 and 18 (a) (b) (c) (d).



29. On cross examination, PW6 informed the court that the agreement was between her and Kangi Ole Sinati who took her to the parcel of land and confirmed to her that the plot was his. She stated that she bought the land in the year 1992, and that she did not speak to the officials of the 75th defendant, and neither does she know them.
30. Stephen Githae (PW7) relied on witness statement as his evidence. He testified that he was sold a plot by Rokonga Ole Kisiyo in the year 1985, and that he went to the lands office where he was shown the register of Olopito group ranch. He testified that he was shown that he owned plot 169, and that he paid surveyor fees at the District Commissioner's Office at Kshs. 830. He produced the official receipt and a letter from the Surveyor as P. Ex. Nos. 19, 20 and 21 respectively. It was his testimony that after he was sold the land, he cleared the plot and fenced it and that since the year 2018, he has been living on the plot. However, he informed the court that there are people who have been coming to place beacons on the land and claiming the plot as theirs'. He also testified that these people whom he does not know their identity started planting in the year 2016. He testified that the person who sold him the land is alive.
31. On cross-examination, PW7 testified that he bought the land from Rokonga Ole Kusia and it was plot No.159. He stated that they went to the land's office and that he was shown his name and the plot number. He also stated that he bought the parcel from member No. 46 even though there was no number against it.
32. On re-examination, PW7 testified that none of the parcel numbers are shown on the register.
33. Francis Macharia (PW8) relied on his witness statement as his evidence in chief. He testified that he has lived on his portion of land for 30 years, which was sold to him by Leboi Ole Yenko who was a member of the Olopito group ranch. He testified that Leboi Ole Yenko showed him a receipt after which they went to the Ministry of Lands. He said that recently a man went to his plot and wanted his daughter to move out. He testified that he owns the entire plot and that he has a person who built on the corner of the plot called Gideon Kisio who is not a member of Olopito group ranch. He further testified that he had no problems with the officials of Olopito group ranch. He produced a copy of the sale agreement and payment receipt as P. Ex. Nos. 22 and 23 respectively.
34. On cross-examination, PW8 informed the court that the land was sold to him by Leboi Ole Yenko whom he has not sued him in the present case. He wants the group ranch to issue him with title. It was also his testimony that he did not go to the office of Olopito group ranch, and that he has never spoken to them about the land.
35. On 3rd February, 2022, Handson Mesi Omambia (PW9) relied on his witness statement as his evidence in chief. He testified that on 5th November, 1999 he together with his colleague, Peter Boyero, they purchased a plot measuring 100 x 100 feet at Olopito from one Samuel Kingoina Nyairo through a sale agreement dated 3rd December 1999. He testified that Samuel was the owner of the plot no.96 even though he did not have a title. It was his testimony that Samuel Kingoina Nyairo acquired the land from one Leboi Ole Yenko vide the sale agreement dated 5th November, 1991. He also testified that they paid Kshs. 70,000/- for the plot which they shared equally. He testified that he was made to understand that Leboi Ole Yenko was a member of Olopito group ranch. PW9 testified that he started residing on the plot in the year 2006 which he has developed. He testified that he is still in possession of the land. He produced a copy of the sale agreement as P. Ex Nos. 24 (a) and (b) respectively.
36. On cross-examination, PW9 testified that he does not know one Alfred Sadera, and neither has he ever met or dealt with him over the parcel of land. He said that he has also never met or dealt with Joseph Ole Nchoe and Parsai Ole Kerema. He testified that he dealt with the defendant number 66. He added that



- he has never had any dealing with defendant number 67, 68, 69, 70, 74, 75 and 76 when purchasing the land. He agreed that the defendants mentioned do not feature in the agreement. With regard to the second agreement, PW9 testified that it was given to him by Mr. Kingoina, and that he never met one Leboi Ole Yenke. It was also his testimony that he has never dealt with Olopito group ranch ever since he purchased plot number 96.
37. On re-examination, PW9 testified that he does not know if the defendants mentioned are members of the group ranch, but that Leboi Ole Yenke is the one who sold the plot to Mr. Samuel Kingoina Nyairo who in turn sold it to them. He went on to say that he was made to understand that Mr. Ole Yenke was a member of Olopito group ranch, and that he has never met the officials of the said group ranch.
 38. On 24th March, 2022 Justus Nyabuto Auta (PW10) adopted his witness statement dated 14th November, 2019 as his evidence in chief. He testified that he has lived on his plot for the last 23 years, and that ever since he bought the land in September 1998, he has tried to obtain a title deed from the lands office but he was referred to Olopito group ranch. He also said that he is aware that some title deeds were issued on the land between the years 2015 and 2016.
 39. On cross-examination, PW10 testified that he bought 100x100 feet plot from Lolari Ole Sadera who did not have a title deed. He testified that Lolari Ole Sadera showed him the adjudication record in the surveyor's office which indicated that he was the owner of the land in question. He informed the court that he met the officials of the group ranch after he had entered into an agreement. He admitted that he was aware that the entire parcel of land was in the name of Olopito group ranch, and that he did not meet, and neither does he know Alfred Sadera, Joseph Ole Nchoe, Parsal Mutsian Olo, Enyatta Ole Chike Kishanto Kasaine Ole Nkurunah and Josiah Nakala. The only person he knows is Simon Ole Nchoe whom he has dealt with him on another issue. It was also his testimony that he has not sued Lolari Ole Sadera.
 40. On re-examination, PW10 testified that he met the officials of the group ranch, and there was a list in the surveyor's office.
 41. On the same day, Mary Naanyu Ngurunah (PW11), adopted her witness statement dated 14th November, 2019 as her evidence in chief. She produced a sale agreement dated 17th June, 1991 and receipts as P. Ex. Nos. 25 (a) and (b) respectively.
 42. On cross-examination, PW11 testified that she bought the land in 1991 from Kipetuan Ole Sadera who did not have a title deed. According to her, she believed that the land was his because when they visited the lands office, she saw his name in the record, and that Ole Sadera and others had sub divided the land that belonged to a group amongst themselves. She also said that she met the officials of the group ranch in their office in Majengo as she entered into an agreement with Ole Sadera and that the chairman's name was Ole Kirima.
 43. On 20th June 2022, Paul Ndungu Mahui (PW12) adopted his witness statement dated 31st April, 2012 as his evidence in chief. He testified that he purchased plot no. 162 measuring 100x 100 feet from Kotoine Ole Kisio at Kshs.15,000/-.
 44. On cross-examination, PW12 testified that he purchased the plot in the year 1992, and that he has never been issued with a title deed for the said plot. According to him, it is Mzee Kotoine Ole Kisio who was to issue him with a title deed.
 45. On re-examination, PW12 maintained that he bought the plot from Kotoine Ole Kisio.
 46. Samuel Waithaka Munyambu (PW13) testified that he is an elder a church and that their plot was gifted to the church by one Peter Kamuiru. He said that at the time of recording his statement, he was the



- chairperson of the church and that he entered into an agreement with Mr. Peter Kamuiru. He testified that there is a church building on the parcel of land that was gifted to them. He adopted his undated witness statement as his evidence in chief, and produced the undated sale agreement between Janet Wanjiku Macharia, Edwin Mbugua Macharia and Agape Church as P. Exhibit No. 26.
47. On cross examination, PW13 testified that the agreement produced was between Janet Wanjiku Macharia, Edwin Mbugua Macharia and Agape Church. He testified that there was also their son Erick Njuguna Macharia, and that the agreement shows that the sellers are beneficiaries of plot No. Cis Mara/ Olopito/157 which was not titled at the time of the purchase. PW13 testified that they believed that the plot was owned by the 3 sellers, and he also admitted that they did not know the first allottee of the said plot when they purchased it.
48. On re-examination, PW13 testified that they were not shown any title at the time of sale, and neither did the sellers have a title deed.
49. On 27th March, 2023 Benjamin Mwangi Ngahu (PW14), the Land Adjudication Officer Narok, testified that they started keeping the records of land adjudication in Narok from the 1970's, and that Olopito group ranch exists. He testified that the 75th defendant was incorporated on 11th November, 1970 and that it had 10 officials. He said that as per the register in their office, the group ranch has 470 members as at 1993. It was his testimony that sometimes the register indicates when one becomes a member, and that in this case, the first page of the register shows that it was prepared on 21st March, 1980 and according to him, there ought to have been another register before the one he has in court. PW14 testified that the earliest minutes that he could trace are for 1982, and that there is no item regarding the number of members. He agreed that he is the secretary of the group ranches that fall under his purview. With regard to the letter dated 1984 from the Ministry of Lands and Settlement, PW14 testified that it approves or gives consent to what the group ranch wanted to do subdivision of their land. With regard to the second letter which is from the Ministry of Lands and Settlement, it was his testimony that it is for dissolution of the group ranch which was a response to an application that the group ranch had made.
50. PW14 testified that the group ranch was granted consent on condition that they transfer all the parcels to the members, and that they were advised to obtain the Land Control Board consent. He also testified that there was a letter from the Narok Land Control Board which gives consent on sub division of 205 plots of 0.1012 hectares and 4 plots of 0.4047 hectares, 2 plots of 0.2023 hectares, one (1) plot of 0.739 hectares and one (1) plot of 6.250 hectares. He did not know if he has the copies of the letter in his record, but he stated that the total number of plots would come to 216 parcels. He testified he could not tell if the sub division was carried out as directed.
51. PW14 also identified the consent for sub division from the Director of Land Adjudication but he does not know if that was done as directed. According to him, the summons that he was served with refers to parcel number 788 Olopito group ranch which was a subsequent sub division from the mother title of the group ranch which he did not have. According to him the information he received from the land registrar is that plot No. 788 was hived off from Olopito group ranch in 1998, and that it was for 47.49 hectares. He also testified he did not have the consent in his record permitting the suit land to be hived off from the group ranch. He added that the consent is with the land registrar, and that from what he has seen, Olopito group ranch was dissolved on 28th July, 1989 and as per the records, the group ranch does not exist. He stated that once dissolved, a group ranch cannot be incorporated again. It was PW14's testimony that the certificate of incorporation of the group ranch in 2010 was issued out of error with new officials, which is the same group ranch that was incorporated in 1970. He also did not have a record of the members of the group ranch incorporated in 2010, and that the one shown to the court deals with allocation of plots of Olopito group ranch in 2015.



52. PW14 further testified that the officials of the group ranch as at 1970, and according to the certificate of incorporation, were Senchula Ole Nchoe, Lenkai Ole Nkoyo, Eliud M. Ole Kisiyo, Morket Ole Ntete, Sena Ole Sadera, Tinana Ole Sayaya, Lilai Ole Partuip, Sintoiya Ole Nyongo, Kentuyo Ole Sankok and Parasye Ole Kerena. He stated that the chairman, treasurer and the secretary are the ones who sign transfer documents from the group ranch to the members. It was his testimony that Parsai Ole Kerera was the chairman in 2001, and 1995, while Simon Ole Nchoe was the secretary and Lesinko Oloikumosoru the treasurer. He stated that these were not the officials in 1970. Further, he informed the court that the officials of the group ranch have a register which ought to be progressively updated. It was his testimony that he noticed discrepancies between the certified copy of the register that is before the court and the one in his office. He also said that there are various registers, one for the year 1990 and one for the year 1970 which got certified in the year 1976 when there were 311 members.
53. He stated that the officials of the group ranch are the ones who can explain the discrepancy. He acknowledged the letter dated 7th April, 2015 from his office, and stated that the officials had forwarded a list of allottees and members to the land adjudication officer, and that he could not tell if the 33 allottees were members of the group ranch. Further, he stated that the members of the group ranch ought to be the beneficiaries of the same, and that the minutes, if available, will show the membership. Regarding the minutes shown to him, it was his position that it is for vetting of genuine buyers of the plots, and that he does not know who the buyers purchased from. PW14 produced the supplementary list of documents filed in court on 23rd March, 2023 as P. Ex Nos. 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36.
54. On cross-examination, PW14 stated that the summons issued to him were in respect of the suit land which was a sub division of the mother title in 1998, and which was further sub divided into individual plots in 2017 giving rise to parcels numbers 556 to 6350. It was his testimony that he does not know the record of the persons and the plots were to be allocated, and that the letter dated 12th September, 1989 was a conditional approval for the dissolution of the group ranch upon fulfilment of the stipulation in the letter. He could not be able to tell when the conditions were fulfilled and when the group ranch was dissolved as it could still be in existence. He admitted that the certificate of incorporation 2010 was from his office, and that whether there is an error or not, it is a genuine document.
55. On 10th June, 2024, Joseph Oloishoro Ole Nchoe (DW1) testified that he is a member of Olopito group ranch, and that he became the chairman of the group ranch in the year 2018. He said that he became a member of the same in the year 1983. For this reason, he is well versed with the affairs of Olopito group ranch. He adopted his witness statement dated 20th December, 2023 as part of his evidence in chief. DW1 began by informing the court that the group ranch had 16000 acres of land, and that the whole parcel of land still exists. According to him, the group ranch did not have any dealing with the plaintiffs, and that it did not authorize any person to sell land to the plaintiffs since it had not allocated land to its members. He stated that the group ranch is not supposed to process any titles to the plaintiffs.
56. DW1 produced three documents contained in the list of documents dated 20th December, 2003 as D. Ex. Nos. 1,2, and 3 and revealed that they are a mutation and green cards for various parcels of land i.e. 780, 785, 788, 803 and 804. He informed the court that the parcels had been set aside for purposes of allocation to their members for commercial plots of 50 by 100 feet which they did for completion for parcels 780, 785, 803 and 804 except the suit land.
57. It was his testimony that they subdivided all the parcels into commercial plots of 50 by 100 feet which they were to allocate the plots to their members. He agreed that some of the persons the plaintiffs claim to have bought the parcels from, were their members. He also agreed that they had given titles to some of the members. He testified that the members could not sell the parcels that they had not issued title deeds, and that the unallocated parcels remain the property of the group ranch. DW1 testified that



the plaintiffs have no claim against the group ranch since they were only supposed to allocate land to their members upon which they would have no dealing with them. He stated that the plaintiffs should claim against members whom they allocated land. It was his testimony that the first subdivision of the parcels of plots was in the year 2014, and that they obtained consent to subdivide in the year 2013. He said that prior to that, there was allocation of 50 by 100 feet parcels of land to their members.

58. On cross-examination, DW1 stated that he became the chairman of the group ranch in the year 2018, and that before then one Parsat Ole Kerema used to be the chairman. He said that he was a committee member from the year 1989, and thus he was familiar with the matters of the group ranch. He admitted that there was an application to subdivide the group ranch before 2018 which was for the entire group ranch, and that was in the year 1989. He stated that the group ranch was not allowed to have 205 parcels and one large sub-division. He also said that the group ranch was allowed to carry out sub-division of about 400 parcels in the year 1995, and that he was not aware of minute number 6 of 1982 which allowed the group ranch to set aside a large parcel of land for commercial purposes. That apart from the consent of 2013, he was also aware of other consents.
59. DW1 testified that it was not true that minute number 6 of 1985 allowed the subdivision of 205 parcels and one large parcel for commercial purpose. He agreed that he is aware that the group ranch applied for its dissolution in the year 1985, and that the group ranch was dissolved. It was his testimony that the committee was to remain in the office until they transferred the parcels to the members, and that the allocation has not been completed. He agreed that there was no other Olopito group ranch that was formed in the year 2010. He also stated that it is not true that there were 2 parallel group ranches running the affairs, and he denied that what was considered to be commercial was never sub-divided into 205 sub plots as there were no commercial plots before the year 2013. He further stated that he was not aware that the group ranch allocated to members plots that were 100x100 feet. He stated that he knew what was happening even before, since they have kept the records up to date which he has access to. He was certain that in the year 1989, there was no application for subdivision, and that he was not aware of 9 plots that were allocated to various entities such as schools.
60. DW1 said that he was also not aware that their members sold whatever had been allocated to them. He stated that he knows where the plots are on the ground and which plots have developments. According to him, the people who have developed the plots are strangers since they did not find any of their members on the ground. He also admitted to know when the strangers went to the suit land which was over the years. He also admitted to be aware that the provincial administration issued notices asking the strangers to move out of their land, which notices were issued in the year 2013. He admitted that they had allocated the plots in question to their members before the matter came to court, and that he was not aware of the sale of the said plots. He testified that he had allocated titles to around 200 of their members in the year 2014, and that the titles were for the suit land. He also agreed that the 2010 group ranch had no power to allocate land. He stated that in the year 2010, a correction was done in the list of the directors. He also agreed that they got permission from the Land Control Board to do whatever they wished to do, and that there are records of what they intended to do. According to DW1, the transactions of 1989 concerned the entire group ranch as a whole, and that there were no transactions concerning commercial plots.
61. On re-examination, DW1 testified that he is aware that the plaintiffs case revolved around the suit land, whose subdivision started at the end of the year 2013. He also testified that the land concerned commercial plots, and that there were no commercial plots set aside before 2013. He maintained that no one can claim to have purchased a commercial plot before the year 2013. He testified that the events of the year 1989 related to the subdivision of agricultural parcels to the members, and that the suit land was not in existence at that time. He went on to testify that he was aware of what was happening in the



year 1989 as that was the time that he was elected into the committee. DW1 further stated that in the year 2010, they replaced the directors who passed on after they received complaints from the members, and that they did not incorporate another group ranch. He added that dissolution of the group ranch was conditional upon completion of the disposal of the assets of the group, which has not taken place, and the committee is still in operation.

62. DW1 reiterated that they had issued 200 titles deed in the suit land between the years 2013 and 2015 which was after the consent to subdivide was granted in September 2013, and that the titles were in reference to commercial plots. He maintained that there were no commercial plots of 50 feet by 100 feet, and further, that there was no commercial plots in the suit land in the year 1991. He stated that if there was minute number 6 of 1982, it could not have related to this land, and that the parcel number emanated from the subdivision that they did in the year 1998.
63. The plaintiffs filed their written submissions dated 1st October, 2024 where they raised fourteen issues for determination as listed below: -
 - i. Whether or not Olopito was the legal owner of property Title No. Narok/CisMara/Olopito/1 which it held in trust for all the members registered by the said Olopito and if by virtue of the said membership each member was entitled to a share in specie of the said property.
 - ii. Whether or not the members having been allocated their individual plots had legal right to sell/transfer their entitlement to third parties.
 - iii. What was the legal status of Olopito which was originally registered and the Olopito Group Ranch (hereinafter referred to as “Olopito 2010” registered on the 12th October 2010.
 - iv. Whether Olopito Group Ranch 2010 had any proprietary interest in the land title Narok/ CisMara/ Olopito/ 1 capable of creating subdivisions or of dealing in the property which was originally registered as Narok/ CisMara/ Olopito/ 1.
 - v. Whether or not the plots or the area that had been set aside for purposes of allocating to members was agricultural land within the meaning of Section 6 (1) a of the *Land Control Act*.
 - vi. Whether the plaintiffs by reason of having possession of the individual plots and done various developments thereon for a period in excess of twenty-two years (up to the time of filing suit) had acquired legal rights on the same against the members allottees of Olopito or Olopito itself by dint of the provisions of Section 7 of the *Limitation of Actions Act* Cap. 22 Laws of Kenya.
 - vii. Are the plaintiffs entitled to be issued with title deeds to the plots they are in occupation?
 - viii. Whether permanent orders of injunction may issue restraining the defendants from interfering with the ownership and possession of the plots occupied by them.
 - ix. What is the position of the subdivisions and consequent titles created by Olopito Group Ranch 2010.
 - x. Whether the case of adverse possession can only be brought by way of originating summons or what if it is commenced by way of plaint.
 - xi. Whether a claim by adverse possession must embrace the whole title. How about if the claim is on parts of land the subject of the claim.
 - xii. Whether there was privity of contract between defendant no. 75 and/or between several defendants and the several plaintiffs.



- xiii. Whether or not the plaintiffs have a cause of action against all or any of the defendants who have been enjoined in this suit.
- xiv. Are the plaintiffs entitled to the costs of the suit.
64. On the first issue, the plaintiffs submitted that the group ranch as trustees had legal capacity and it passed the rights of ownership of parts of Narok/Cismara/Olopito/1 to its members who then parted with physical possession of the same either voluntarily or simply by negligence or default. They submitted that the group ranch saw the plaintiffs openly occupy portions of the land for a period of over twenty two years undisturbed, before the attempted illegal evictions which sparked the filing of the suit. They also submitted that the group ranch lost its rights to recover the portions of land occupied by each of the plaintiffs by the doctrine of adverse possession. To buttress on this submission, the plaintiffs relied on the case of *Mwangi & Another v Mwangi* [1986] KLR 328.
65. On the second issue, the plaintiffs submitted that the members of the group ranch who had been allocated the plots could go into possession, sell or deal with their allocations as deemed appropriate, and that the group ranch on applying for approval, had showed clear intentions to give and put in possession its members who were on the register on a date to be agreed and thereafter dissolve. Further, they submitted that the membership of Olopito was about 205 hence the number of subdivisions for which approval was sought and given. They submitted that from the evidence tendered, the size of the plots created was 100x100 feet that were to be allocated to individual members for commercial purposes.
66. On the third issue, the plaintiffs submitted that the group ranch incorporated in the year 2010 is a fraud, and that although approval was given to dissolve the group ranch, the process could not be completed until all the members were given titles to their individual plots. They submitted that no other group ranch could be incorporated and purport to deal with the land owned by the group ranch.
67. On the fourth issue, the plaintiffs submitted that Olopito group ranch 2010 being an illegal outfit, had absolutely no capacity to deal in the property registered in the name of Olopito as the initial Olopito had already set aside an area close to Narok town.
68. On the fifth and sixth issues, the plaintiffs submitted that the whole of Olopito was agricultural land and any dealing was subject to the *Land Control Act*, and that the group ranch had obtained approval from the registrar of group ranches and the relevant divisional Land Control Board to subdivide large shambas and small commercial plots. They submitted that in the absence of a clear directive through a gazette notice, they are not sure whether or not the plots could be considered agricultural. While relying on the cases of *Gatimu Kunguru v Muya Gathangi* [1976] KLR and *Kimani v Kabogoro* [1990] KLR 49, the plaintiffs submitted that the group ranch and any of its members claiming through it, is barred from bringing an action for repossession of the occupied area because their rights have been extinguished by virtue of Section 7 of the Limitations of Actions Act.
69. On the seventh issue, the plaintiffs submitted that they are individually entitled to be issued with title deeds for the portions occupied having been occupation of their plots for more than twenty-two years. They submitted that they have acquired prescriptive rights in the nature of overriding interests and that their claim cannot be defeated even if the suit land had subsequently been divided and new registration numbers issued. They relied on the case of *Wasui v Musumba* [2002] KLR.
70. On the eighth issue, the plaintiffs submitted that the defendants right of ownership over the various portions of the group ranch have been extinguished by operation of law, and that they are entitled to permanent orders of injunction against the defendants. Reliance was placed in the case of *Gatimu Kinguru vs Muya Gathangi* [1976] KLR 253.



71. On the ninth issue, the plaintiffs submitted that the members who purported to be officials of the group ranch incorporated in the year 2010 were a sham as the group never existed legally and thus, it did not have legal capacity to do anything. They submitted that the plaintiffs' claims based on adverse possession cannot be defeated irrespective of the actual holder of title.
72. On the tenth issue, the plaintiffs submitted that although the cases of adverse possession are provided for as being by way of originating summons, there are issues which are contested and can only be properly determined by a court. To buttress on this submission, the plaintiffs relied on the cases of *Kairu vs Gacheru* [1988] KLR 297, and *Wakf Commissioners vs Mohamed Bin Umeya Bin Abdulmajid Bin Mwijabu* [1984] KLR 346. They further submitted that in the instant case, and taking into consideration the provisions of Article 159 (2)(d) of *the Constitution*, this case is appropriate to apply the principles of determining adverse possession through a court.
73. On the eleventh issue, the plaintiffs submitted that a claim of adverse possession may either be for the whole title or parts of it as it is in the instant case. They also submitted that each of the plaintiffs has laid claim on plots with specific dimensions and officially unregistered plot numbers as established by the group ranch.
74. On the twelfth issue, the plaintiffs submitted that there was privity of contract between several specifically named defendants save for the defendants who were joined by reason of their roles as administrative officers of the government.
75. On the thirteenth and fourteenth issues, the plaintiffs submitted that they have a cause of action against the defendants, and they are entitled to costs of the suit.
76. The 23rd, 34th, 55th, 64th and 68th plaintiffs filed their written submissions dated 14th October, 2024 where they raised five issues for determination as listed below: -
 1. Whether plot number Narok Cis/Mara-Olopito/1 was the property of Olopito Group Ranch.
 2. The legality of Olopito Group Ranch 2010.
 3. Whether the plaintiffs have been in open continuous and uninterrupted occupation of the plot they claim (in Narok Cis/Mara-Olopito/788) for more than 12 years.
 4. Whether the 75th, 76th, 77th and 78th defendants are bound by the contract for sale between the original beneficiaries and or the 2nd parties and the plaintiffs.
 5. Whether the prayers sought should be granted.
77. On the first issue, the aforementioned plaintiffs submitted that this fact has not been disputed and it was also admitted by the defendants' witness. They submitted that the plaintiffs bought portions from the members or individuals who had purchased from original members and settlement was immediate after the subdivision. They also submitted that the 75th defendant has not filed a suit to have them evicted from the land, and neither has it filed a counter claim in this suit, if at all the plaintiffs settled on the land illegally. They submitted that the group ranch passes on the proprietary rights to its members and they cannot now claim the same land and that some members have buried their kin on the said portions of land.
78. The aforementioned plaintiffs submitted that after the consent for subdivision was given, transfer of the plots to the purchasers was done with the full knowledge of the 75th defendant. They submitted that this could not have been done without the express authority of the 75th defendants, and the officials at the time and they questioned where else could the revenue clerks and treasury have obtained the list.



79. On the second issue, the aforementioned plaintiffs submitted that the group ranch was dissolved way back in the year 1985, and that the work of the officials ended at the time of subdivisions even though the officials remained in office to ensure all transfers have been done. Further, they submitted that the duty of the officials who may replace the deceased ones is to complete the work left by the deceased officials and that they cannot do anything that is contrary to the minutes for dissolution. They submitted that there was no such group as Olopito group ranch 2010 and that the officials could not purport to dissolve the same as it legally never existed in the first place. Further, that Olopito group ranch 2010 was created to enable the officials disengage themselves from the minutes of dissolution of Olopito group ranch and the issue of the plots so that they could illegally subdivide them further under the pretext of accommodating increased number of members.
80. On the third issue, the aforementioned plaintiffs submitted that the plaintiffs have been in occupation for 26 years with no interruption, having developed their respective, and as such they have adverse possession against the defendants over the suit land.
81. On the fourth and fifth issues, the aforementioned plaintiffs submitted that the defendants are bound by the agreements entered into with the plaintiffs and that the moment they forwarded a list of the original allottees of the 100x100 feet plots to the treasury to be used by the revenue clerk, on payment of survey fees, they in fact recognized the agreements. They also submitted that the period of occupation with the knowledge of the officials is enough testimony that the sale agreements were recognized by the officials, and that the Attorney General did not deny the existence of the receipts or any other documents produced by the plaintiffs touching on the process of subdivision or acquisition of the said plots. The aforementioned plaintiffs submitted that the prayers sought in the plaint, should be granted as prayed.
82. The 51st, 64th, 65th, 67th, 68th, 69th, 70th, 74th, 75th, and 76th defendants filed their written submissions dated 22nd August, 2024 where they raised six issues for determination as listed hereunder: -
- a. Whether the plaintiffs are entitled to claim portions of Cis Mara/Olopito/788.
 - b. Whether the defendants were privy to the contract with the plaintiffs and whether they can be bound by those contracts.
 - c. Whether there is misjoinder of parties.
 - d. Whether the plaintiffs have established a case against the defendants herein.
 - e. Whether the plaintiffs are entitled to the remedies sought.
 - f. Who pays cost of the suit.
83. On the first issue, the 51st, 64th, 65th, 67th, 68th, 69th, 70th, 74th, 75th and 76th defendants submitted that the plaintiffs are not entitled to any portion of the suit land as the defendants are in possession of the title of the land which was rightfully issued by the land registrar and any claim is unlawful and unwarranted. To support their submission, the aforementioned defendants relied on the cases of Samwel Ambasa & 3 Others v Stella Ingasia [2022] eKLR and Dr. [*Joseph Arap Ngok vs Justice Moiwo Ole Keiuwa & 5 Others, Civil Appeal No. Ca 60 of 1997.*](#)
84. On the second issue, the aforementioned defendants submitted that despite the claim by 112 plaintiffs, only 14 testified concerning their contracts and that since this was not a test suit, the remaining plaintiffs did not provide any proof that there was indeed any contract which they were parties to. While relying on the cases of Agriculture Finance Corporation v Lengetia Limited [1972] KLR 765, Mark Otanga Otiende v Dennis Oduor Aduol [2021] eKLR and Kenya Women Finance Trust v



- Benard Oyugi Jaoko & 2 others [2018] eKLR, the aforementioned defendants submitted that the obligations inferred by the contract cannot be enforced by them since they remain strangers to it.
85. On the third issue, the aforementioned defendants submitted that the plaintiffs entered into agreements with persons who were not the rightful owners of the land and had no capacity to effect any transfer, and that as the land owners, they were not party to the sale agreements by the plaintiffs. Further, they submitted that they are strangers to any contract with regards to the transfer of the land. They relied on the cases of Osman Abdullahi Sheikh v County Government of Garissa [2020] eKLR and Maureen Onsongo v EOH Limited and EOH/Copy Cat Limited Company [2021] eKLR.
86. On the fourth issue, the aforementioned defendants submitted that the plaintiffs have not established a case against them, and that there has been no transfer of the land since no consent had been granted for subdivision at least at the times alleged by the plaintiffs. To buttress on their submission, reliance was further placed in the cases of Kariuki v Kariuki [1983] KLR 225, Simiyu v Watambala [1985] KLR 852 and Kimani v Njeri & 3 others (Environment & Land Case 10 of 2022) [2023] KEELC 17771 (KLR) (8 June 2023) (Judgment).
87. On the fifth issue, the aforementioned defendants submitted that the plaintiffs are not entitled to the remedies sought since they have not proved their claim against the defendants. They submitted that the plaintiffs are trespassers and they should comply with the issued notice to vacate the suit property. They relied on the case of Peter Oluoch v Thomas Okoth [2014] eKLR.
88. I have considered the pleadings, the evidence and the written submissions filed by the respective parties. In my view, there are three issues for determination as follows:-
1. Whether the plaintiffs are entitled to the orders sought in the plaint.
 2. The incorporation and effect of Olopito Group Ranch 2010.
 3. Who is to bear the costs of the suit.
89. This suit was brought forth by the plaintiffs with respect to the dealings of the suit land known as Csi-Mara/ Olopito/ 788. The plaintiffs contended that they are bona fide owners of plots measuring 100x100 feet having purchase their respective portions from members of the group ranch or from individuals who had purchased from the original members of the group ranch for valuable consideration. That on diverse dates in the month of June 2012, notices to them were issued to vacate the suit land to pave way for re-survey and re-subdivision or be evicted forcefully from the suit land.
90. The 51st, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 74th, 75th and 76th defendants in their defence, contended that the 75th defendant is the owner of the suit land, and that no portion has been given to any person for sale to a third party. Further they submitted that they are the only persons authorized to transact on behalf of the 75th defendant including seeking and obtaining consent for subdivision of the land which has not been done to date, and hence any purported sale of 100 x 100 feet plots is null and void in law. They termed the plaintiffs as mere trespassers who have invaded the suit land.
91. The 79th, 80th, 81st, 82nd, 83rd, 84th and 85th defendants stated that the suit land was at all times registered in the name of Olopito group ranch in its undivided form, and that it had never been surveyed or divided. In paragraph 5 of their defence, they averred that the suit land remained 100 x100 feet upto the time the members of the group ranch agreed to have it plus other 4 parcels, surveyed and divided into 50 x100 feet parcels of land.
92. The plaintiffs called fourteen witnesses. PW1, PW2 and PW3 were at one time civil servants and in their evidence, they identified the officials of the group ranch at the time who were Sanchwa Ole Nchoe, the



- chairman, Daniel Olekiso, the secretary and Munket Ole Ntete the treasurer. In addition, they all stated that the records were kept at the District Commissioner's offices by the District Land Adjudication and Settlement officer, and that they paid survey fees of Kshs. 830. The evidence of PW1 to PW12 also shows that the plaintiffs entered into various agreements between the years 1985 to 1998. A common denominator in all the plaintiffs' witness testimonies was that they entered into agreements for sale of 100x100 feet portions of land, they paid the purchase price, and receipts were issued. They produced the relevant documents in support thereof which this court has considered.
93. The evidence of PW14 is critical to this case. He testified that the 75th defendant was incorporated on 11th November 1970, and that it had 10 officials. That as per the register in their office, the group ranch had 470 members as at 1993. He admitted that there ought to have been another register besides the one he has produced in court. Perhaps this explains why there are at least two registers produced. Whereas he mentioned that the group ranch was incorporated in the year 1970, and that the earliest minutes he could trace were for the year 1982, no evidence was produced to confirm this position. However, and without turning a blind eye to the documents produced by PW14, it is clear that there was activity regarding the group ranch that can be said to have taken place in the year 1970. The register of members indicates the date of one becoming a member, and from the entries, the earliest date was 20th April, 1970.
94. PW14 stated that the group ranch was granted consent on condition that they transfer all the parcels to the members, and that that they were advised to obtain the Land Control Board Consent as per the letter dated 12th September, 1989. He acknowledged that there was a letter from the Narok Land Control Board which gave consent on sub division of 205 plots of 0.1012 hectares and 4 plots of 0.4047 hectares, 2 plots of 0.2023 hectares, one (1) plot of 0.739 hectares and one (1) plot of 6.250 hectares, as per the letter of consent dated 10th March, 1986. He could not tell if the sub division was carried out as directed.
95. Whether the subdivision was done, PW2 produced the copies of the mutation plan dated 28th April, 1986 and 3rd March, 2015. DW1 admitted during cross-examination that there was an application to subdivide the group ranch before 2018 which was for the entire group ranch, and that was in the year 1989. In re-examination, DW1 contended that if there was minute number 6 of 1982, it could not have related to the suit land as the parcel number emanated from the subdivision that was carried out in the year 1998. The notification of the proposed exercise of powers approved by the registrar, group representatives on 17th April, 1984 is clear that the group representatives who appended their signatures set aside a place for individual plots as per the committee meeting minute no. 6/82. This means that this notification paved way for the group ranch to deal in the manner such as setting aside land for individual plots. Most notable was that DW1 did not rebut the documents produced by PW14 which emanated from the office of the Land Adjudication and Settlement and the mutation form dated 28th April, 1986 produced by PW2.
96. Further, and according to the testimony of DW1, he became a member of the group ranch in the year 1983, and the said group ranch did not authorize any person to sell land to the plaintiffs, since it had not allocated land to its members. DW1 produced a copy of the mutation and green cards for various parcels of land i.e. 780, 785, 788, 803 and 804. It was his testimony that the parcels had been set aside for purposes of allocation to their members for commercial plots of 50 by 100 feet which they did for completion for parcels 780, 785, 803 and 804 except the suit land. As the chairman of the group ranch, he did not provide evidence of the minutes of the meeting which resolved the different sizes of allocation of the land owned by the group ranch. Even as he claimed that some of the plaintiffs bought land from persons who were not members of the group, he did not provide evidence indicating the said members. He nonetheless agreed that some plaintiffs bought from persons were their members, and



had already issued title deeds. Having analysed the evidence of DW1, there was no material evidence of any notices issued to its members and there were no minutes to refer to the resolutions of the members as concerns the affairs of the same.

97. This brings me to the second issue, on incorporation of Olopito group ranch, 2010. PW14 admitted that the certificate of incorporation 2010 was from his office, and that whether there it is an error or not, he said it was a genuine document. The plaintiffs in their submissions argued that members who purported to be officials of the group ranch incorporated in the year 2010 were a sham as the group never existed legally and thus, it did not have legal capacity to do anything, as it was an illegal outfit.
98. Section 9 (1) and (2) of the Land (Group Representatives) Act (repealed) provided: -
1. Where a group representative dies, becomes incapable or wishes to retire, he shall be replaced in accordance with *the constitution* of the group: Provided that, if no appointment is made within two months of the event occurring, the minister may in writing replace him with another member of the group if he considers that the exigency of the situation so demands, and if he does so he shall inform the registrar thereof.
 2. A group representative may be replaced by resolution of the group.”
99. The Land (Group Representatives) Act, (repealed) provided the procedure to follow when a group representative dies. The Act contemplated replacement of the deceased group representative in accordance with *the constitution* of the group or by resolution of the group. Instead, the defendants went ahead and obtained a certificate of incorporation dated 12th November, 2010. As I have read and understood the repealed Act which was in force at the time when the group ranch was incorporated, the law makers did not contemplate a subsequent incorporation of a group ranch. It thus follows that the certificate of incorporation dated 12th November, 2010 and the subsequent actions of the group representatives said to be incorporated on this date are a nullity. All that was needed to be done was to call the members to a meeting, discuss replacement of the deceased group representatives and detail the resolutions passed in a minute. On this, I agree with the plaintiffs that Olopito group ranch 2010 was a sham and an unlawful entity.
100. While DW1 admitted that he was aware of what was happening in the year 1989 as that was the time that he was elected into the committee. He stated that in the year 2010, they replaced the directors who passed on after they received complaints from the members, and that they did not incorporate another group ranch. It was his position that dissolution of the group ranch was conditional upon completion of the disposal of the assets of the group, which has not taken place, and that the committee is still in operation.
101. There is also need to mention the letter dated 19th September, 2019 which I reproduce as hereunder: -
- “With reference to your application dated 28th July, 1989 wishing to dissolve the incorporated group representatives and sub-divide the group land among the registered members of the group, I hereby grant consent but the group representatives will finally be dissolved after they will have signed all the necessary documents transferring the created sub-division parcels to every individual member of the group.
- In the meantime you should obtain a Land Control Board consent as required by Section 6 of Cap 302 Laws of Kenya for the sub-division.



When you will have fulfilled all the aforesaid and every member of the group has obtained his/her title deed, inform this office and I will finally dissolve the incorporated group representatives as provided under Section 13(3) of Cap 287 Laws of Kenya.”

102. The maker of the above letter noted that the parcel of land had already been subdivided, and in granting the consent, the group representatives were to remain in office to sign transfer documents of the subdivided parcels of land. This letter was addressed to the chairman of the group ranch, and it did not specify the portions subdivided. My understanding is that the group ranch had already allocated land to its members, and to a great extent, completed its work including obtaining the relevant consent as per the letter of consent dated 10th March, 1986. It is my view that the group ranch was dissolved at this time, and the officials remained in office to execute transfer documents.
103. Having stated the above, I find that the plaintiffs have proved their case against the defendants on a balance of probabilities and they are deserving of the orders in the plaint dated 2nd July, 2012 as hereby granted: -
- i. A permanent injunction is hereby issued as against the defendants, their agents, servants, employees and or any other person(s) claiming through them from re-surveying, subdividing, evicting interfering, alienating, entering allocating, offering for sale or dealing in any way whatever and whatsoever of plaintiffs’ plots measuring 100 x 100 feet situated on land parcel No. Cis-Mara/ Olopiti/ 788.
 - ii. The plaintiffs are awarded the costs of the suit.

Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 5TH DAY OF DECEMBER, 2024.

HON. MBOGO C.G.

JUDGE

05/12/2024.

In the presence of: -

Mr. Meyoki Pere – C. A

