Gaitho & 203 others v Utheri wa Lari Company Limited & another (Land Case 77 of 2016) [2023] KEELC 98 (KLR) (19 January 2023) (Judgment)

Neutral citation: [2023] KEELC 98 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

LAND CASE 77 OF 2016

FM NJOROGE, J

JANUARY 19, 2023

BETWEEN

MARY WAMBUI GAITHO ..... 1ST PLAINTIFF

JAMES NJENGA NJAHI ..... 2ND PLAINTIFF

STEPHEN NJOROGE MBURU ..... 3RD PLAINTIFF

MARY WANGUI MBURU ..... 4TH PLAINTIFF

KAMAU MWANGI KAMAU ..... 5TH PLAINTIFF

NJOROGE NJUGUNA KAGIMA ..... 6TH PLAINTIFF

PETER KARANJA MWAURA ..... 7TH PLAINTIFF

JOHN NJUGUNA NGURU ..... 8TH PLAINTIFF

WANJIRU MBIU ..... 9TH PLAINTIFF

M/S CHIRA "A" WOMEN GROUP ..... 10TH PLAINTIFF

MWANGI KWERI ..... 11TH PLAINTIFF

FLONICA WANJIRU KIMANI ..... 12TH PLAINTIFF

PETER KARIITHI MUTONGA ..... 13TH PLAINTIFF

ZEPHAN NGANGA MWANGI ..... 14TH PLAINTIFF

NJUGUNA GITAAIGA ..... 15TH PLAINTIFF

MUTHUI NGATIA ..... 16TH PLAINTIFF

DINA NJERI MBUGUA ..... 17TH PLAINTIFF

MONICA WAITHANGA MUCHOKI ..... 18TH PLAINTIFF

REBECCA MUTHONI ..... 19TH PLAINTIFF

LEAH WAITHERA NGUGI ..... 20TH PLAINTIFF

PATRICK KAMAU NJOROGE ..... 21ST PLAINTIFF

MICHAEL WAINAINA KAMANJA ..... 22ND PLAINTIFF

SERAH NJOKI NGANGA ..... 23RD PLAINTIFF

WAINAINA NGARUIYA WAMUTYUNE ..... 24TH PLAINTIFF

CHRISTOPHER MICHAEL CHEGE ..... 25TH PLAINTIFF

FRANCIS PETER KINUTHIA M ..... 26TH PLAINTIFF

WANGUI ESTHER MURATHA ..... 27TH PLAINTIFF

SALOME NJOKI KAMANU ..... 28TH PLAINTIFF

TERESIA MUNJIRU KARIUKI ..... 29TH PLAINTIFF

JOHN HAMAN MUCHIRI ..... 30TH PLAINTIFF

NGATHI GITAU ..... 31ST PLAINTIFF

GEOFFREY KIMANI NGUMBA ..... 32ND PLAINTIFF

GEORGE NGUNG'U NUTAU ..... 33RD PLAINTIFF

BEVANENTURA MAINGI ..... 34TH PLAINTIFF

MARGARET MUTHINI ..... 35TH PLAINTIFF

BENARD KUNGU MARARO ..... 36TH PLAINTIFF

JEREDSTONE NGUGI MWATHI ..... 37TH PLAINTIFF

OLIVE NJERI KURIA ..... 38TH PLAINTIFF

THAIRU NYAGA ..... 39TH PLAINTIFF

EDWARD NJUGUNA CHEGE ..... 40TH PLAINTIFF

EDWARD NGANGA IKENYE ..... 41ST PLAINTIFF

JOSEPH MITHIA MWAURA ..... 42ND PLAINTIFF

PETER GITHARA KIMANI ..... 43RD PLAINTIFF

STEPHEN GARUIYA KARIUKI ..... 44TH PLAINTIFF

DORCAS WAIRIMU MBUGUA ..... 45TH PLAINTIFF

MIRRIAM WANJIRU MAINA ..... 46TH PLAINTIFF

KIARIE MARE ..... 47TH PLAINTIFF

SOPHIA WANGARI MWAURA ..... 48TH PLAINTIFF

MARY NGUMBI KAMAU ..... 49TH PLAINTIFF

RAHAB WANJIKU MBUGUA ..... 50TH PLAINTIFF

MICHAEL MBUGUA NJOROGE ..... 51ST PLAINTIFF

GEOFFREY WAWERU GAKWA ..... 52ND PLAINTIFF

JOSEPH MUCHI KARIUKI ..... 53RD PLAINTIFF

GODFFREY KAHIU KARANJA ..... 54TH PLAINTIFF

NJUGUNA MUNGAI ..... 55TH PLAINTIFF

GEORGE NGUGI GATUNDU ..... 56TH PLAINTIFF

PAUL NJOGO KIHARA ..... 57TH PLAINTIFF

NGUBI WOMEN & MEN GROUP ..... 58TH PLAINTIFF

ROSE WAMBUI NGUMO ..... 59TH PLAINTIFF

BEDAN KIMANI WAMWIRI ..... 60TH PLAINTIFF

MARY NJERI KIMANI ..... 61ST PLAINTIFF

BURUGU KANYANJA ..... 62ND PLAINTIFF

GRACE NYAMBURA WAWERU ..... 63RD PLAINTIFF

RAHAB WAITHIRA MBURU ..... 64TH PLAINTIFF

JULIA WANGARI KARANJA ..... 65TH PLAINTIFF

JOHN NJORA KIARIE ..... 66TH PLAINTIFF

STEPHEN GACHUNGA KINUTHIA ..... 67TH PLAINTIFF

ISAAC GITUATI NJORA ..... 68TH PLAINTIFF

JOSEPH MUTURI NGANGA ..... 69TH PLAINTIFF

MARY WANJIKU WARUI ..... 70TH PLAINTIFF

WANJIKU KINYANJUI ..... 71ST PLAINTIFF

JACKSON GATUNE MWAURA ..... 72ND PLAINTIFF

WANJIKU KINYANJUI ..... 73RD PLAINTIFF

JOHN KIMANI KAHURI ..... 74TH PLAINTIFF

VIRGINIA WAITHERA ..... 75TH PLAINTIFF

JOHN MUIRURU KURIA ..... 76TH PLAINTIFF

BONIFACE MBUGUA MUCHIRI ..... 77TH PLAINTIFF

BILHA WAMBUI ..... 78TH PLAINTIFF

DAVID NJUGUNA MWAURA ..... 79TH PLAINTIFF

STEPHEN MBUGUA MUCHAI ..... 80TH PLAINTIFF

NDUNDU KIANDAI MEN & WOMEN GROUP ..... 81ST PLAINTIFF

GITHU MOTTO NJOROGE ..... 82ND PLAINTIFF

NGURA KINYANJUI ..... 83RD PLAINTIFF

M/S WANJIKU NJENDU WOMEN GROUP ..... 84TH PLAINTIFF

RUTH WANJIRU MWITHAGA ..... 85TH PLAINTIFF

ALICE WAMBUI GITAU ..... 86TH PLAINTIFF

PAUL GITHINJI KIRIRO ..... 87TH PLAINTIFF

JOHN THUO R. KAMAU ..... 88TH PLAINTIFF

LEAH WANJIRU WAIHENYA ..... 89TH PLAINTIFF

PETER NGUNYU MBOGO ..... 90TH PLAINTIFF

JOHN KIMANI NJOROGE ..... 91ST PLAINTIFF

BEATRICE NDUTA WANGUI ..... 92ND PLAINTIFF

JACINTA NJAMBE ..... 93RD PLAINTIFF

SIPHORA NJOKI MUKONO ..... 94TH PLAINTIFF

GACHOKI KIHOI ..... 95TH PLAINTIFF

FRANCIS NJUGUNA MBUGUA ..... 96TH PLAINTIFF

PETER KARANJA KAMAU ..... 97TH PLAINTIFF

LUCY WACEKE GITHURI ..... 98TH PLAINTIFF

JANE WANJIKU NGIO ..... 99TH PLAINTIFF

JOSEPH NDUNGU OLE KALAE ..... 100TH PLAINTIFF

WANYAGA NJUGUNA ..... 101ST PLAINTIFF

MARY NJOKI GIKONYO ..... 102ND PLAINTIFF

ELIUD KIARIE NJUGUNA ..... 103RD PLAINTIFF

MWAURA NJUGUNA ..... 104TH PLAINTIFF

ANN WAMBUI MUTHEE ..... 105TH PLAINTIFF

ELIZABETH GITIRI KAGO ..... 106TH PLAINTIFF

JAMES GICHUHI NDUNGU ..... 107TH PLAINTIFF

KAMAU KUNGU KINYANJUI ..... 108TH PLAINTIFF

STEPHEN KAHURA NJOROGE ..... 109TH PLAINTIFF

JANE WANGARI KURIA ..... 110TH PLAINTIFF

JOSEPH MUTURI MUNGAI ..... 111TH PLAINTIFF

MWANGI NGARUIYA ..... 112TH PLAINTIFF

ESTHER WANGARI KAMAU ..... 113TH PLAINTIFF

ELIUD WANYOIKE NJOROGE ..... 114TH PLAINTIFF

PETER MACHARIA GACHATHI ..... 115TH PLAINTIFF

MARGARE NYOKABI MICHINO ..... 116TH PLAINTIFF

JOHN KIMANI KARERA ..... 117TH PLAINTIFF

JOSEPH KARUGIA NJUGUNA ..... 118TH PLAINTIFF

PETER WANJEGA MUGO ..... 119TH PLAINTIFF

MARY WANJA MUBEA ..... 120TH PLAINTIFF

DAVID GATHOGA MUBEA ..... 121ST PLAINTIFF

GRACE WARINGA KENNETH ..... 122ND PLAINTIFF

KARIUKI GACHUIRU KENNETH ..... 123RD PLAINTIFF

JAMES MBURU KARIUKI ..... 124TH PLAINTIFF

PETER THUKU MARENYE ..... 125TH PLAINTIFF

RAHAB WANJIKU KARANJA ..... 126TH PLAINTIFF

NGANGA MUIGARU ..... 127TH PLAINTIFF

DAVID MUCHIRI WANYOIKE ..... 128TH PLAINTIFF

ELIJAH MWANIKI GITAU ..... 129TH PLAINTIFF

BENSON CHEGE GICHEHA ..... 130TH PLAINTIFF

KAMAU MACHARIA MURIU ..... 131ST PLAINTIFF

GACEMBE GAKOE WOMEN GROUP ..... 132ND PLAINTIFF

HUMPHREY MWANGI KIMANI ..... 133RD PLAINTIFF

DAVID NJENGA NDIANGUI ..... 134TH PLAINTIFF

PETER NDUNGU NJOROGE ..... 135TH PLAINTIFF

ALICE WAIRIMU NDUNGU ..... 136TH PLAINTIFF

JOHN NGUGI KITHIGE ..... 137TH PLAINTIFF

JOHN WATHARI NGOTHO ..... 138TH PLAINTIFF

JAMES KIBE MUNYUA ..... 139TH PLAINTIFF

NAOMI NJERI KIARIE ..... 140TH PLAINTIFF

JAMES KABERIA KIARIE ..... 141ST PLAINTIFF

ELIUD MURATHA BORO ..... 142ND PLAINTIFF

MOSES KURIA MUGATHA ..... 143RD PLAINTIFF

PETER NGANGA MWANGI ..... 144TH PLAINTIFF

FILEMONA WANJIRU NGANGA ..... 145TH PLAINTIFF

EDWARD NJOROGE GITHAIGA ..... 146TH PLAINTIFF

LUCY NYOKABI MBUGUA ..... 147TH PLAINTIFF

FRANCIS MWAURA MUNANU ..... 148TH PLAINTIFF

RAPHAEL GATURU & CO ..... 149TH PLAINTIFF

RUTH NDUTA KARANJA ..... 150TH PLAINTIFF

JOHN MWANGI GICHUMU ..... 151ST PLAINTIFF

MWANGI MAHUGU ..... 152ND PLAINTIFF

JOHN NDUNGU KANYUTU ..... 153RD PLAINTIFF

EUNICE NJERI KINUTHUNIA ..... 154TH PLAINTIFF

JOHN KURUA MBIU ..... 155TH PLAINTIFF

KARIUKI MURIRIA ..... 156TH PLAINTIFF

SIMON J. K. WATHUKU ..... 157TH PLAINTIFF

WINNIE WARUGURU NJURU ..... 158TH PLAINTIFF

NDUNGU WAWERU ..... 159TH PLAINTIFF

ROBINSON KINUTHIA ..... 160TH PLAINTIFF

EVAN MWAURA KINYANJUI ..... 161ST PLAINTIFF

PHILIS NJOKI GACHOYA ..... 162ND PLAINTIFF

NJOROGE NJAU KABATI ..... 163RD PLAINTIFF

FLORENCE LEAH WANJIRU KIARIE ..... 164TH PLAINTIFF

SAMSON MWANGI MUGURE ..... 165TH PLAINTIFF

GRACE WANJIKU WANJUI ..... 166TH PLAINTIFF

ESTHER WANJIKU GACHIRI ..... 167TH PLAINTIFF

GEOFFREY NGUYAI NDEGWA ..... 168TH PLAINTIFF

MARGARET NJOKI MWANGI ..... 169TH PLAINTIFF

MARY NJOKI MWANGI ..... 170TH PLAINTIFF

DAVID KURIA GITUNDU ..... 171ST PLAINTIFF

BENJAMIN MWANGI NJOROGE ..... 172ND PLAINTIFF

MARGARET WANJIRU MWANGI ..... 173RD PLAINTIFF

GEORGE GATHURU GITHINJI ..... 174TH PLAINTIFF

MARTHA WANJIKU MWANGI ..... 175TH PLAINTIFF

SAMUEL GITHAE MBUGA ..... 176TH PLAINTIFF

FRANCIS GICHOYA KARANJA ..... 177TH PLAINTIFF

BEN MWANGI WANDIA ..... 178TH PLAINTIFF

LOISE NJAMBI RANJI ..... 179TH PLAINTIFF

RAHAB WANJIKU GITHINJI ..... 180TH PLAINTIFF

ESTHER WAMBUI WAHINYA ..... 181ST PLAINTIFF

FREDRICK MBURU NGANGA ..... 182ND PLAINTIFF

JANE NJERI GAKURU ..... 183RD PLAINTIFF

REGINAH WNAJIKU GITAHI ..... 184TH PLAINTIFF

SAMSON MWATHI KAMAU ..... 185TH PLAINTIFF

GEOFFREY KAMAU WANYOIKE ..... 186TH PLAINTIFF

GEORGE KIARIE NJUGUNA ..... 187TH PLAINTIFF

JULIUS NDUNGU GIKONYO ..... 188TH PLAINTIFF

PETER KABU NJOROGE ..... 189TH PLAINTIFF

MARY NJERI KIUNA ..... 190TH PLAINTIFF

PETER KIBUNJA GITAU ..... 191ST PLAINTIFF

MARGARET NYAMBURA MBURU ..... 192ND PLAINTIFF

NEHEMIAH KARIUKI CHEGE ..... 193RD PLAINTIFF

DAVID KARANU KIMANI ..... 194TH PLAINTIFF

JOSEPHINE MUTHONI KIMANI ..... 195TH PLAINTIFF

FRANCIS NDUNGU RABOI ..... 196TH PLAINTIFF

MACHARIA KAMAU ..... 197TH PLAINTIFF

MARGARET NJERI CHEGE ..... 198TH PLAINTIFF

PATRICK NJGUNA KURIA ..... 199TH PLAINTIFF

PETER MAINA NJOROGE ..... 200TH PLAINTIFF

PETER NJOROGE KIBUGI ..... 201ST PLAINTIFF

ELIUD MACHARIA KARINGI ..... 202ND PLAINTIFF

BENARD MBUGUA GATONYE ..... 203RD PLAINTIFF

PETER NDUNGU GODFFREY NJIHIA ..... 204TH PLAINTIFF

AND

UTHERI WA LARI COMPANY LIMITED ..... 1ST DEFENDANT

KENNEDY PULEI, TINANKA OLE KANTIM, SILAS OLE KOIL, NEKURSAI OLE MUSEI, KORIO OLE TUUKUO, KINTALEL OLE NTINA, SABAYA OLE KOTIKASH, SENTO NGUSSUR OLE MASARI, PAUL PARKINYIARO LEKERIN, TEKERO OLE POREKA (SUED ON THEIR OWN BEHALF AND AS REPRESENTATIVES OF KITET MAASAI COMMUNITY) ..... 2ND DEFENDANT

JUDGMENT

1. The Plaintiffs filed an amended plaint dated 8/9/2017 in which they sought the orders set out verbatim as follows:

    a) An eviction order to be issued forthwith directing that the 2nd Defendants herein, their servants, agents and/or any unauthorized person be evicted from all that property known as Longonot/Kijabe Block-2 (Utheri wa Lari) 1 to 7956 comprised in the various titles and situate in the County of Nakuru which is registered in the names of the Plaintiffs and the said eviction be carried out by the Court Bailiff with the assistance of the Nakuru County Police Commandant.

    b) A permanent injunction be issued restraining the 2nd Defendants, their servants, agents and/or any unauthorized persons from trespassing on all that property known as Longonot/Kijabe Block-2 (Utheri wa Lari) 1 to 7956 comprised in the various titles and situate in the County of Nakuru which is registered in the names of the Plaintiffs.

    c) An order of mandatory injunction be granted directing the 2nd Defendant, their agents, servants and/or any other persons claiming under them to remove themselves and any building, structures and construction materials that they may have deposited on the suit property known as Longonot/Kijabe Block-2 (Utheri wa Lari) 1 to 7956 comprised in the various titles and situate in the County of Nakuru within fourteen (14) days of the making of the said order and if they fail to do so, the Plaintiffs be at liberty to remove them at the 2nd Defendants expense.

    d) General damages for trespass on the suit property known as Longonot/Kijabe Block-2 (Utheri wa Lari) 1 to 7956 comprised in the various titles and situate in the County of Nakuru.

    e) Any other or further relief that this honourable court may deem fit and just to grant.

    f) The cost of this suit.

2. The plaintiffs' claim is that the individual natural persons named as defendants are all sued on their own behalf and as representatives of Kitet Maasai Community, said to be comprised of about 10,000 people (this judgment will collectively refer to them as "the 2nd defendant") while the plaintiffs are the beneficiaries of the subdivision of land formerly known as Land Reference No. 11192 which was subdivided to create parcels known as Title Nos. Longonot/Kijabe Block 2 (Utheri wa Lari 1 – 7956). Parcel number 11192 was purchased by the 1st defendant herein on 5/9/1983 for valuable consideration with a view to subdivision and distribution to members and willing purchasers. The subdivision was approved by the County Council of Nakuru and the Land Registrar in 1994. Upon subdivision, the original titles for LR 11192 and 376 were surrendered to the government to facilitate preparation and issuance of title documents. After the subdivision, the plaintiffs now hold titles in their individual names to some of the subdivisions and they bring this suit on their own behalf and on the behalf of all the other registered owners of the said properties. Upon transfer of ownership of the suit properties most of the plaintiffs took possession of their parcels in or around 1987 and developed them. Kenya Pipeline Company also bought 5 acres from the 1st defendant and constructed an office complex and a medical clinic. For 5 years after that, there was peace. However, between 1991 and 1992 during agitation for multiparty democracy and subsequent tribal clashes the plaintiffs experienced sporadic attacks from a group of persons of Maasai ethnic origin whom they later learned they were members of the 2nd defendant and who would invade their lands claiming that the plaintiffs

were "outsiders" who should leave immediately. This harassment continued up to the year 1997 and it involved stealing of livestock, grazing livestock on the plaintiff's land, and the plaintiffs were compelled to flee their home for safe refuge elsewhere. In 1997, it is alleged that the government advised some of the plaintiffs to leave their farms and relocate to Mai Mahiu shopping centre some 10 kilometres away due to insecurity. From then on, the plaintiffs have lived under constant harassment from the 2nd defendant and they have had to move in and out the said farms depending on the prevailing security situation at any particular time. It is further alleged that the 2nd defendants' members have entered part of the suit properties and fenced portions of it thus barring the plaintiffs therefrom, erected permanent and temporary structures on the suit property and caused them to be occupied by certain people, erected cow sheds and grazed cows on the plaintiff's farms with impunity thus occasioning the plaintiffs great loss and threat of dispossession if the invasion continues. It is pleaded that previous litigation has occurred including HCJR Misc. Appl. No. 8 of 2004 Salaton Ole Koile and others v Chief Land Registrar and the Attorney General and HCCC 315 of 2010 Kennedy Kulei & others v Utheri wa Lari Co. Ltd and others. In addition, the National Assembly Department Committee on Lands inquired into the matter and came up with a report dated 29/5/2015 declaring the plaintiffs the legal owners of the suit property. In the litigation HCJR 844 of 2003 it is claimed that the 2nd defendants' application for Judicial Review orders against the Nakuru District Land Registrar's decision dated 8/5/2003 was dismissed and it was held that the subdivision of the land and transfer to the plaintiffs was legal. It is claimed that in Nakuru HCCC 315 of 2010 the 2nd defendant was seeking to be declared to have become entitled to the suit land under the doctrine of adverse possession and also that the suit was struck out by the court in 2015.

3. The 2nd defendant filed its defence on 29/8/2018 denying the claim. They assert that the subdivision of LR No. 11192 was unprocedurally or illegally obtained; that they are ordinarily resident on all the parcels of land arising from subdivision of LR No. 11192, having been born, raised and continually lived thereon without any interruption from time immemorial up to the year 2010 when the plaintiffs started interfering with it. They denied that the plaintiffs have developed the suit land. They assert that they are pastoralists and they have so been since the days of yore; that they have schools and cow sheds on the land; that the title deeds in the plaintiff's names are irregularly acquired, are forgeries, arise from no transfer, and some were issued to deceased persons without grants of representation as required by law while the suit land was subject to an ongoing case being Nakuru HCCC 315 of 2010; that there is no sale agreement and there were no consents to the Land Control Board issued to the alleged transactions.

4. In their counterclaim, they have joined the plaintiffs in the main suit as the 1st to 203rd defendants, the Deputy County Commissioner Naivasha County as the 204th defendant and the Attorney General as their 205th defendant. They reiterate that the suit land belongs to them by reason of their having been ordinarily resident thereon from time immemorial having been born, brought up and lived continuously uninterrupted on the suit land; they claim to have overriding interest on the land as provided by law and that they were never consulted or considered at the subdivision stage. Further they state that in the previous litigation Nakuru HCCC 315 of 2010, they established that their ancestors had always occupied LR No. 11192, the suit land. They further allege that the suit land was originally comprised of parcels numbers 373, 374, 355 and 277 in the name of H.G. Hardyold which were consolidated with LR 376 granted to one G.H Barker under the Crown Land's Ordinance for 999 years. They maintain that LR 11192 was held under a 999-year lease and LR 376 was held in perpetuity and leased to Colville Limited; that the land was subsequently transferred to Olmagogo Estate Limited in 1966 and subsequently to Kedong Ranch Ltd; that Kedong Ranch Ltd increased its shareholders or membership to 26 members from the initial 4; that on 17/9/1985 Lari Holdings Limited made an application for valuation for stamp duty purposes for the two parcels and on 20/12/1996 a surrender

of LR 11192 to the government of Kenya was made but not registered under Section 65 (1) (h) of the Government Lands Act. According to the counterclaim the documents were not dated and should not have been acted upon. However, in March 1996 the government allowed entry into and subdivision of LR 11192 and LR 376 and subdivision thereon into 7513 of various sizes of public utilities including churches, offices, water troughs, reserve water catchment areas and forestry reserves at the recommendation of the Central Authority of the Department of Lands. That subdivision was authorised by the Chief Land Registrar and a new registry index map was created. On 31/12/1997, the 1st defendant in the main suit irregularly obtained new title deeds for the suit land. It is alleged that 500 other families occupy the suit land and to the best of the plaintiffs' knowledge there have been no sale or other dealings regarding the land. The plaintiffs claim that the authorities failed to conduct investigations into the question of whether the land was occupied before subdivision and issuance of new title deeds and that the defendants in the counterclaim intend to render them landless much to their detriment. They aver that Nakuru HCCC 315 of 2010 is still pending. In their counterclaim they seek these orders:

1) A declaration that the 1st to 11th Plaintiffs being the representative of the Kedong Valley (Kitet) Maasai Community are the rightful owner of all that parcel of land known as Land Reference Kijabe/No. 11192 (now subdivide to Land Reference Number Longonot/Kijabe Block 2 (Utheri wa Lari) 1 to 7956) by virtue of adverse possession.

2) An order directing the District Land Registrar – Nakuru to cancel and/or revoke all the titles issued to the 2nd to 203rd Defendants to wit: - Title deeds for Land Reference Longonot/Kijabe Block 2 (Utheri wa Lari Company Limited) 1 to 7956.

3) A mandatory injunction be issued for the 1st to 11th plaintiffs to be registered as the proprietors of the said parcel of land namely Land Reference Kijabe/ No. 11192 (now Land Reference Longonot/Kijabe Block 2 (Utheri wa Lari Company Limited) 1 to 7956 in place of the above named Utheri wa Lari Company Limited in whose name the said parcel of land is currently registered.

4) A permanent injunction to issue against the Defendants restraining them either by themselves, their servants or agents or any other persons whomsoever from entering, transferring, surveying, alienating, wasting, apportioning or in any other manner interfering with the Plaintiffs peaceful and quiet occupation and enjoyment of the Land Reference Kijabe/No. 11192 Longonot/Kijabe Block 2 (Utheri wa Lari Company Limited) 1 to 7956.

5) Costs of this suit.

6) Any other relief(s) that the Honourable Court may deem fit and just to grant.

Evidence of the Parties

5. PW1, Peter Ndungu Njehia the 204th plaintiff, testified on 30/11/2021. His evidence is that he has been a farmer for more than 30 years at Utheri wa Lari Farm where he farms maize and beans; that he knows all the plaintiffs in the case who belong to the farm and they have granted him authority to represent them and give evidence on their behalf; he produced the authority as PExh.20 and averred that he and all his co-plaintiffs have titles to the land situated within the farm; his land Parcel No. 7357 measures 2.3Ha and the title thereto was issued on 24/10/2016; his other Parcel No. 8094 measures 10.926Ha and was issued on 5/11/2018; he was farming on the suit land even before the title was processed in his name. His further evidence is that members of Utheri wa Lari gathered money from their business activities in order to purchase the land and banked it; so when they got land in Kedong they bought it under the company name "Utheri wa Lari"; they bought the land

from a company called Kedong Ranch Ltd through a sale agreement between the two companies; he produced correspondence concerning the transaction as evidence; according to those documents he said the land was sold to Utheri wa Lari Ltd for Kshs.32,500,000/=. Kshs. 15,000,000/= was paid first, followed by a sum of Kshs. 17,500,000/=. The directors of the company signed the agreement alongside the directors of Kedong Ranch. A receipt dated 21/10/1983 for Kshs. 9,450,510.75 was produced; an acknowledgement of Kshs. 14,898,095.75 dated 28/8/1986 was produced. A copy of a letter from the Chief Land Registrar dated 24/3/2004 was also produced showing that the suit land was sold to Lari Holdings Ltd and that the existing encumbrances were discharged to pave the way for the existing transfer to Lari Holdings Limited. According to the witness, the government through the Ministry of Lands recognises the plaintiffs as the owners of the land. PW1 produced a copy of the grant for LR. 11192 to show an entry dated 9/10/1985 as evidence of transfer of the suit land to Lari Holdings Limited for Kshs. 32,500,000/=. After the transfer, the company made arrangements to subdivide the land in accordance of each members' share contribution and sought consent to subdivide from the Physical Planning Department of the Ministry then charged with Land affairs which consent was granted so that the land may be subdivided into 7512 agricultural plots. The County Council of Nakuru also gave its consent for the subdivision on 3/10/1994 subject to surrender of land for public utilities. In a letter dated 31/12/1997 the Chief Land Registrar authorised the District Land Registrar Nakuru to issue titles for the subdivisions as the surrender of the head titles had been registered. According to the witness the surrender was registered on 23/5/1994. A new Registry Index Map was then created for Longonot/Kijabe/2 (Utheri wa Lari) with 11 sheets comprising of 7956 individual plots and that map was transmitted to the District Land Registrar Nakuru in a letter forwarded to him on 31/12/1997; an area list was also generated and sent to the District Land Registrar alongside the Registry Index Map. The 2nd defendant filed Nairobi Misc. Appl. No. 844 of 2003 – Salaton Ole Koilel and 4 others Vs. the Chief Land Registrar seeking Judicial Review Orders quashing the decision of the District Land Registrar Nakuru in which he refused to cancel the registration titles of the new portions and that he be compelled to hear an appeal filed on 17/6/2003 under Section 150 of the RLA. Judgment was delivered in that case by the Hon. Justice R.V.P Wendoh on 3/3/2006 dismissing the application on the basis that it was time barred and that the surrender had already been endorsed under the Act.

6. PW1 also testified that there existed Nakuru HCCC 315 of 2010 (OS) – Kennedy Kulei and 10 others suing on behalf of the Kitet Maasai Community Vs. Utheri wa Lari Co. Ltd and 3 others which was struck out as the plaintiffs therein never availed a copy of title they were claiming. PW1 maintained that the plaintiff in that case is the same as the 2nd defendant in the present case. He averred that from 2002 to the present date only one group led by Kennedy Pulei and Tinanka ole Kantim have been involved in the dispute. According to the witness, the National Assembly Departmental Committee on Lands had entertained the dispute and prepared a report thereon in August 2015 in which Kennedy Pulei was named as those giving evidence before the committee. The committee noted that the courts had issued a number of rulings in the dispute and that most of the plaintiffs live as internally displaced persons in Mai Mahiu town. PW1 stated that hostilities begun in 1992 when the Kitet Maasai Community became hostile hence the flight to Mai Mahiu by the company members. The witness stated that the committee observed that Lari Holdings Ltd owned the land and that the recommendation by the committee was that the Kitet Maasai Community be settled elsewhere on the existing public land or on private land purchased by the Ministry.

7. PW1 also produced a report prepared by the Ministry through the Minister on 13/2/2015 to the committee stating that Kedong Ranch Limited had transferred the land to Lari Holdings Limited on 9/10/1995 for valuable consideration of Kshs. 32,500,000/= and that the land had already been subdivided and distributed amongst the company members of Lari Holdings Ltd.

8. PW1 also testified that the Kitet Community had written to the Permanent Secretary Ministry of Lands on 22/7/2008 claiming that the land was theirs by virtue of the doctrine of adverse possession. He maintained that when the subdivision of the land was being conducted, the Kitet Community did not feature anywhere. According to a memorandum (undated) by Douglas Mbugua, the Naivasha District Land Officer's issuance of title to the subdivisions commenced in the year 2000 and surrender of title and subdivision were procedural. Some press clippings showed that there was conflict on the land in which two people were killed and others injured in January 2015; others showed that herdsmen had invaded the suit land. PW1 claimed that he had 50 acres and that the herdsmen grazed their flocks on his crops. He averred that in the year 2007 many people died on the farm. He also maintained that he lives on the farm and he has developed his portion. Regarding the herdsmen, he stated that there are temporary structures that they had erected on the farm, that they normally enter the farm at night and graze their animals on it. A letter from the Chief Land Registrar dated 23/7/2015 was produced in which she said that the title purportedly in possession of the 2nd defendant over the suit land was a forged document. He prayed that the 2nd defendant be evicted and injuncted from interfering with the land.

9. Upon cross-examination by Mr. Karanja for the 1st defendant, he stated that the 1st defendant company had paid the full purchase price for the land and had surrendered it to the government; that at the time of purchase of the land the 2nd defendant was not living thereon. Since Kedong Ranch Limited was rearing beef cattle on the land, the 2nd defendant could not enter the suit land. It was his evidence that the Lands Cabinet Secretary's report dated 13/2/2015 read that there was a dispute over the suit land. According to him the 2nd defendant had not been in physical occupation of the suit land. Between the time of purchase by the 1st defendant and surrender of the title to the government, none of the 2nd defendants' members had invaded the land nor built houses thereon and the community did not enter into the land or begin living there in 1994. The witness stated that none of them had built on the land as per the time of hearing and that even when those who pass through the land do so, they built temporary dwellings made of sticks. From 1992 there had been sporadic attacks whereby the invaders attacked and killed residents and grazed their cows on the land but none of the 2nd defendant's members have ever lived on the land for more than 12 years. PW1 denied fraud in the issuance of company members with title deeds at the Naivasha Land Registry. He maintained that the titles were issued by the government and the company adhered to the proper procedure; that survey and subdivision of the land was done openly and by the time new titles were created, there were not any Maasai herdsmen on the suit land. Asked why the plaintiffs sued the 1st defendant, he stated that it was because it presided over the land and gave them titles while the 2nd defendants' members were not on the land. He stated that the reason the earlier case by the 2nd defendant was dismissed was failure to exhibit title to the land and even now there are still no certified copies of title presented with their counterclaim and the adverse possession claim lacks merit.

10. When cross-examined by Mr. Wanyoike for the 2nd defendant, PW1 indicated that a search was conducted which established that the seller was the registered owner. He maintained that the full purchase price had been paid and stated further that other persons presiding over the company had met their demise but they had given all the documents they had found to their Advocates. He did not have a transfer nor a Land Control Board Consent. He stated that he was 77 years old. He stated that he had reported to police regarding the 2nd defendant's act of grazing on the land but did not have with him in court evidence of that report. He stated that the plaintiffs built a school; that there were no individual agreements with the 1st defendant over the transfer of subdivisions to the members.

11. Under re-examination by Mr. Kenyatta, PW1 averred that the 1st defendant was sued so that it could come and confirm the identity of the person to whom it gave title to land. He stated that Kedong

Ranch Ltd had never complained regarding any non-payment of the purchase price and that the comprehensive list of members with their numbers was given to the government. According to him, transfer of the land to the 1st defendant occurred on 9/10/1985 and not on 9/10/1995 as intimated in the Chief Land Registrar's letter of 24/3/2004 which was an error.

12. With the close of the evidence of PW1, the plaintiff's case was marked as closed and the 1st defendant's counsel indicated that no witness would be called in the matter for the 1st defendant and therefore the 1st defendant's case was also deemed as closed.

Evidence for the Defence

13. DW1, Kennedy Ole Pulei a member of the 2nd defendant testified on 2/3/2022. He stated that he resides at Kitet and that he is a livestock farmer. He adopted his witness statement filed on 30/7/2019 as his evidence-in-chief and also another statement filed on 29/8/2018. In his oral evidence he stated that the suit land LR No. 11192 belonged to his community which he was representing in the suit; that they have never subdivided it; that their forefathers lived and died there; that from 1992 onwards some people came and claimed that they had bought the suit land; that in 1996 they discovered that some people were claiming to have titles to the suit land which according to them were irregularly obtained. He stated that there had been no peace and that the claimants had been assisted by the police; he said that the 2nd defendant's members have lived and developed the suit land with churches and schools, some permanent and some made of temporary materials; some are registered with the government and have government teachers employed to teach the children.

14. Upon cross-examination by Mr. Kenyatta for the plaintiffs, he stated that his home is on the land but he did not have photographs of the same and that the land belonged to the Kitet Maasai Community. He however admitted to a white man Hardyold having been allocated the land in 1912 and that it was never registered in the community name; that Hardyold transferred the land to another white man called Baker and between 1912 to 1963 the land was owned by white people. Ol Magogo then bought the land in 1963 and then transferred it to Kedong Ranch Ltd. In 1985 it was transferred to Lari Holdings Limited and they were issued with title. He averred that in 1997 when the land was subdivided he was on the land. He knew that titles had been issued but he did not concern himself with conducting a search and identify the plot number issued to the parcel he living on. He admitted having gone to court in 2003 in Nairobi HCCC 844 of 2003 in which case he was listed as the 12th claimant. However, he was not present when the decision in that case was given and he avers that he was not heard in that case as he is being heard in the present case. When referred to judgment delivered on 3/3/2006 in that case, he stated that he does not agree with the said judgment and maintained that the land was irregularly subdivided and that it still belonged to the community. At first he distanced himself by saying that he had only heard that the Departmental Committee on Land had visited the suit land but soon thereafter he retreated from that position when he was shown the Departmental Committee Report and he admitted that he was present at the meeting held by the committee. He admitted that there had been conflict and that many of the 1st defendant's members had already fled the land; however, he does not agree with the Departmental Committee's finding that the land belongs to the 1st defendant or that the government should seek alternative land for the community. When shown the pleadings in Nakuru HCC 315 of 2010 (OS) he admitted that he was the 1st plaintiff in that case. However, he maintained that he does not know the contents on the decision made in that case. He maintained that since 1992, there had been a dispute regarding the land. DW1 maintained that the plaintiffs farm only on a small portion of the farm and only when the police were around and that there is usually no peace. He stated that from the year 1992 the community had barred all other persons from entry into the land and that in 2015 the two sides were engaged in a conflict in which

some people lost their lives. He admitted knowing one Francis Patu the accused in Naivasha Criminal Case Number 18 Of 2016 who was charged with assault alongside his father. However, he does not know whether Francis Patu was charged with murder. He averred that the persons of Kitet community live in peace among themselves. He admitted that he had not presented evidence before court to prove existence of schools and churches built on the land. He admitted to having seen PW1 walking with the policemen on the land.

15. Upon cross-examination by Mr. Karanja for the 1st defendant, DW1 stated that Lari Holdings Ltd and Utheri wa Lari Ltd are two different firms. He maintained that there are manyattas (temporary houses) and stone houses too but he had not brought evidence of the same. He reiterated that since 1992, the 1st defendant's members have claimed to have bought the land and thus disturbed the Kitet Maasai Community's peace. He averred that the plaintiffs normally visit the land accompanied by the police due to fear for the reason that the land is not theirs. He admitted that one person from the Maasai Kitet Community was charged in court with the offence of murder but maintained that his arraignment was unjust. He admitted to knowing George Ole Sangui but denied knowledge as to whether George and others had ever sued Kedong Ranch or if their case was dismissed. He admitted that the 2nd defendant is comprised of nomadic pastoralists.

16. Upon re-examination by Mr. Ochieng, he stated that he was born in 1955 and that the discovered that there were titles issued over the land in 1996 and that is when conflict begun. He averred that the community members move around with their herds leaving the women, children and the elderly behind and later they return to the place where they started off. He denied ever having given evidence on behalf of Kitet community in any litigation. However, he was aware that the community had earlier on been given a 7 days' oral notice by the District Commissioner to vacate the suit land.

17. DW2 testified on the same date as DW1 and adopted his witness statement filed in court on 30/7/2019 and he was then subjected to cross-examination by Mr. Kenyatta for the plaintiffs. His evidence is that he is one of the representatives of the Maasai Kitet Community living in Kedong which comprises of about 10,000 people; that they have lived on the suit land openly and peacefully and without interruption, that he learnt in 1997 that the plaintiffs had obtained title to the land which acquisition he considers irregular, that they were never consulted prior to that acquisition; that on 23/8/2018 the Deputy County Commissioner held a meeting with them and stated that they have to vacate the land or be forcibly evicted therefrom.

18. Upon cross-examination he averred that he lived on plot number 11192 and he does not know of the surrender at entry number 13 of the grant to that land. However, he later admitted that he has information that the head title has already been surrendered. He stated that he lives at Kitet at a place called Lolai; that he had planted trees and keeps livestock but did not have any evidence of development on the suit land; he started living on the suit land in 1996 and schooled at an institution called Witi Primary School but he did not have any evidence of that. He averred that persons now claiming title found him and the community on the land. He admitted that there had been conflict on the ground. He stated that the government has never asked the community to leave the land. However, when shown his statement, filed in his case he admitted that he had stated therein that in 2018 the government through the Deputy County Commissioner had told the community to vacate. He averred that deaths occurred on both sides when the community and the plaintiffs clashed in 2015 and that he witnessed the conflict. He is aware that the land formerly belonged to white people who farmed livestock. He claimed that his parents were employed by the white people. At first he stated that land is not subdivided but when shown his own statement in the present suit he admitted that the land had been subdivided. He denied seeing surveyors on the land conducting subdivisions. He averred that he was born in 1981. According to him the community claims land reference number 11192 as a whole parcel

and it does not recognise the 7956 individual titles that arose from the subdivision. He does not know whether the Departmental Committee visited the land.

19. Upon cross-examination by Mr. Karanja, he produced his national identity card number 23235946 issued on 15/2/1982 at Kajiado showing that he was born at Keekonyokie location at Inkiushin in Kajiado. He denied that he had only migrated to the land and maintained that he was born there notwithstanding the identity card details. He denied that Title Number 11192 had been subdivided into smaller portions. According to him the plaintiff's claim is in respect of LR. No. 11192 but he does not know who the registered owner thereof is. He only knows that the land was part of Kedong Ranch.

20. With the close of the evidence of DW2, the case of the 2nd defendant was marked as closed and parties were directed to file submissions.

Submissions of the parties

21. The plaintiffs filed their submissions on 13/5/2022. They recapitulated the matters in the pleadings and evidence of all the parties and identified the issues as follows: (i) whether the plaintiffs legally acquired titles to the suit property, (ii) whether the 2nd defendant has proved allegations of fraud and forgery against the plaintiffs in the acquisition of the titles to the suit properties by the plaintiffs, (iii) whether the 2nd defendant are entitled to the original title or, in the alternative, the suit properties by way of adverse possession.

22. Concerning the first issue, the plaintiffs submitted as follows: that the original title was surrendered to the government on 23/5/1994 to facilitate subdivision thereof and the suit properties emanated from that subdivision; that uncontroverted documentary evidence was produced in evidence of how the previous owners of the suit properties Lari Holdings Limited complied with all steps and procedures that led to the creation of the title numbers to the suit properties and eventual registration of title in the names of the plaintiffs as legal proprietors. They term the 2nd defendant s' allegations of procedural impropriety as hollow and aver that all applicable laws were complied with; that in any event the plaintiffs' registrations were indefeasible by virtue of Sections 14 and 143(1) of the RLA (now repealed) and they can not therefore be cancelled or impeached even on grounds of fraud or mistake as held in Violet Omusula Sikenyi v Vincent Kamari [2006] eKLR; they aver that their titles were protected under Sections 27 and 28 of the repealed RLA and that the 2nd defendant has failed to demonstrate any overriding interests over the suit property which would defeat the plaintiffs' rights. It was submitted that the registration and issuance of titles is still going on and that some titles were issued after the enactment of the *Land Registration Act* Number 3 of 2012 but nevertheless those titles are still indefeasible under Sections 24, 25 and 26 of the Act; they cite the case of David Peterson Kiengo & 2 others v Kariuki Thuo [2012] eKLR and Charles Karathe Kiarie & 2 others v the administrators of the estate of the John Wallace Muthare (deceased) and 5 others.

23. Regarding the second issue, the plaintiffs maintain that the 2nd defendant did not even attempt to prove its allegations of illegality, irregularity or forgery on the part of the plaintiffs in the acquisition on the suit property; that no particulars of the alleged forgery were given and the court's attention was not drawn to any document alleged to have been forged by the plaintiffs. They invoked Sections 109 and 112 of the *Evidence Act* and cite the cases of Vijay Morjaria v Nansingh Madhusingh Darbar and another [2000] eKLR where it was held that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts, and the case of Kinyanjui Kamau Vs. George Kamau [2015] eKLR where the court held that since the respondent was making a serious charge of forgery of fraud, the standard of proof required of him was obviously higher than the proof on a balance of probabilities required in ordinary civil cases.

24. It is also submitted that the allegation of fraud and forgery in relation to the surrender of the head title and subdivision is res judicata HCJR Misc. 844 of 2003 filed by the 2nd defendant against the Chief Land Registrar and the Attorney General. It is stated that in the said suit the court held that the 2nd defendant claim that the transfer from Kedong Ranch Limited to Lari Holdings Limited was time barred as it was made 28 years after the transfer and that secondly, the surrender and subdivision and the creation of the current titles was proper in law. The 2nd defendant is therefore not entitled to reopen the issue and re-litigate it in the present suit. For this proposition the case of Independent Electoral and Boundaries Commission and 5 others [2017] eKLR is cited where it was held that the doctrine of res judicata was meant to bring finality to litigation and afford parties closure and respite from the spectre of being vexed by issues and suits that have already been determined by a competent court.

25. It was also submitted that the 2nd defendant cannot challenge the very titles to the properties that it are seeking ownership of by way of adverse possession as it is in effect asking the court to give it what it considers to be defective titles; it is stated that the 2nd defendant cannot ask the court to cancel the titles on the basis of fraud and forgery and in the same breath claim to be the owner of the same titles by way of adverse possession; they cite Hanningtone Oloo Ogumbo v Albert Makau Kyambo and another [2021] eKLR where the court held that the plaintiff cannot claim the suit property by way of adverse possession and in the same breath challenge the 1st defendant's title, and that the mere fact that the plaintiff in that suit was claiming the suit property by way of adverse possession, he had conceded to the fact that the 1st defendant is the bona fide registered proprietor of the suit property. The plaintiffs in the present suit also relied on Wellington Lusweti Barasa and 75 others v Lands Limited and another [2014] eKLR where the court held that a party cannot plead adverse possession and at the same title assert cancellation of the same title in the same suit, for in the claim for adverse possession there must be a title to which the party claims possession that is adverse to that of the title holder.

26. On the third issue, the plaintiffs averred that though the 2nd defendant's claim in the counterclaim is premised on the legal doctrine of adverse possession, the pleadings are foggy as to whether its claim is based on the original title or the numerous current titles. They cite Sections 7, 37(a) and Section 38(1), (2) and (3) of the Limitations of Actions Act; they further submit that under Order 37 Rule 7(1) of the Civil Procedure Rules an application for adverse possession shall be made by originating summons and Rule 7(2) provides that summons shall be supported by an affidavit to which an extract of the title to the land in question shall be annexed. However, the only extract produced by the 2nd defendant is the copy of the original title of LR.11192 while the plaintiffs have clearly demonstrated that the title was surrendered to the government in 1994 to pave the way for subdivision whereupon it became non-existent and cannot become the basis of an adverse possession claim by the 2nd defendant. They cite the case of Stephen Mwandoro & 56 others Vs. Alhad Mohamed Hatimy [2020] eKLR. They also submit that the 2nd defendant did not attach extracts of the current titles and cited the case of Titus Mutuku Kasuve Vs. Mwaani Investments Ltd & 4 others [2004] eKLR where the court, citing Rule 3 (D) (2) of Order XXXVI of the Civil Procedure Rules, held that the identification of the land in possession of an adverse possessor is an important and integral part of the process of proving adverse possession.

27. The plaintiffs also cited Wesley Kipyegon Bor and 8 others v Richard Pares and 3 others [2020] eKLR where the court gave an explanation of why an extract of title should be annexed to an application for adverse possession.

28. The plaintiffs aver that the 2nd defendant has failed to prove continuous possession under the original title or under the current titles; that it never provided evidence of houses, schools or churches of the suit properties. The plaintiffs singled out DW2 as being untruthful and unreliable a witness who despite claims that he was born and brought up on the suit property, had an identity card showing

his birth place as Ngong in Kajiado County while the suit property is in Naivasha in Nakuru County. The plaintiffs averred, citing Simion Kipsang Yator and 7 others v Joshua Kipsonoji Sumukwo [2020] eKLR for the proposition that for a claim of adverse possession to succeed, the claimant must prove the definite portion or acreage that he has dispossessed the owner of. They also relied on the cases of Mutana Lewa Vs. Kahindi Ngala Mwagandi [2015] eKLR and Selina Muthoni Kithinji Vs. Satiya Binti Swaleh & 8 others.

29. Finally, the plaintiffs submitted that the 2nd defendant had also confirmed the plaintiffs' evidence that the latter's occupation has neither been peaceful or quiet and that it was characterised by violence that most targeted the plaintiffs. They submitted that the claim for adverse possession cannot be based on forceful and violent occupation of the registered title holder's property.

30. I have perused through the court record and found no submissions filed on behalf of the 1st defendant.

The 2nd defendant's submissions

31. The 2nd defendant filed its submissions on 2/9/2022. In those submissions, it gave a background to the case, stating the history of the land as far as it is within their knowledge and identifying the following issues for determination (i) whether the court has jurisdiction to hear claims based on historical injustices, (ii) whether the plaintiffs' claims to ownership of the property are based on inherent fraud, (iii) whether the 2nd defendant is entitled to a claim for restitution over the suit property, (iv) whether in the alternative the 2nd defendant is entitled to the suit property by way of adverse possession and (v) whether the 2nd defendant is entitled to an order of permanent injunction.

32. Regarding the first issue, the 2nd defendant cited Henry Wambega and 733 others Vs. Attorney General & 9 others [2020] eKLR and submitted that this court has jurisdiction to hear the counterclaim and grant the orders sought therein.

33. On the second issue, the 2nd defendant submitted that Article 67(2) (e) provides that one of the functions of the National Land Commission (NLC) is to initiate investigations on its own initiative or on a complaint into present or historical land injustices and recommend appropriate redress, which function was further fleshed out in Section 15 of the *National Land Commission Act*. The 2nd defendant avers that it has tried to have the NLC perform that duty with regard to the suit land. It states that the historical injustice in this case was occasioned by the Anglo-Maasai treaties of the early 1900s. It refers to the National Land Policy [2009] Sessional Paper No. 3 Of 2009 (NLP) and avers that it is critical in resolving the present dispute. It submits that paragraph 174 of the NLP provides for restitution whose purpose is to restore land rights to those that have been unjustly deprived of such rights. It singles out paragraph 178 as tracing historical land injustices to the colonial land administration practices and laws that resulted in mass disinheritance of communities of its land and that its grievances have not been sufficiently been resolved to date, the sources of those grievances being inter alia treaties and agreements between local communities and the British. It avers that the Kitet Community has been in exclusive possession of the whole of the area including the subject land prior to the annexation of the land by the British crown in the early 1900s for inclusion in the Kenya colony. The community was allegedly ignored by successive governments but those governments never evicted the community from the land. It cites the case of Mabo Vs. Queensland HCA 23 (1992) 175 CLR. It avers that historical injustice must be viewed from the standpoint of an affected indigenous community and urge the court to find that colonial dispossession is a valid reason to declare the title claimed by the plaintiffs as invalid. It also refers to paragraph 198 of the NLP regarding the land rights of minority communities as well as Article 1 of the ILO Convention No. 169 On The Rights of Indigenous and Tribal Peoples 1989 and avers that the Kenya government admits and recognises that the Kitet Maasai Community is one of the minority groups who have through successive policies lost their access to land

and their right to live in Kedong Valley pastoral area through excision and allocation to individuals. It also referred to the 11th Parliament's Departmental Committee on Land Report recommending that the NLC and the Ministry of Lands Housing and Urban Development should take appropriate action of settlement of the community on existing public land in the area or purchase of alternative land by the Ministry.

34. It is submitted for the 2nd defendant that *the Constitution* of Kenya 2010 has provided for community land under Article 63 which includes ancestral land and lands traditionally occupied by hunter-gatherer communities and they urge the court to find that the 2nd defendant was a victim of historical injustices perpetrated by the colonial government and the post-independent governments which ought to be remedied through a declaration that it is the valid owner of the property. It avers that the land ought to be returned to it as community land by way of restitution.

35. The next issue the 2nd defendant has addressed in its submissions is whether the plaintiffs' claim to ownership is based on inherent fraud. It cites Section 30 of the Government Lands Act which according to it recognised its rights as natives living on the suit property; it states that the first registration of suit property in the names of any person other than its members' ancestors was in violation of that Section and therefore fraudulent. It asserts that the plaintiffs do not contest the assertion that it is the Kitet Masai Community that has always lived on the suit property. It also relies on Section 31(1) of the Government Lands Act (repealed) as having provided for the rights of natives living on leased land; it states that in so far as sections of the suit property were occupied by the 2nd defendant, those sections were not included in the granted lease and were therefore not available for surrender by the lessee for the purpose of sale and conversion and freehold ownerships now held by the plaintiffs. In addition, it cites Section 44 of the Registration of Titles Act as having been enacted in recognition of those native rights; that the conditions prior to surrender of the leasehold land were to ensure that rights such as those protected in Sections 30 and 31(1) of the GLA (repealed) were considered before the surrender was undertaken. The 2nd defendant further avers that the surrender of the suit land was defective and in violation of Section 44 (1) of the RTA (repealed) since the parcels of land being surrendered were not shown in the instruments of surrender and the lessee did not endorse on the surrender of the lease.

36. Referring to Section 30(d) of the RLA (repealed), the 2nd defendant urged that constructive trust on the part of all previous registered owners in favour of the 2nd defendant is provided for, first, against Kedong Ranch Ltd the sellers (who are not parties to this suit) and secondly, the plaintiffs who ought to have made inquiry as to the defendants, rights before purchase. It cites the case of John Waweru Ribiro v Margaret Wachu Karuri [2022] eKLR for the proposition that the plaintiffs had an obligation to conduct an inquiry on the defendants' occupation to establish if the 2nd defendant had any interest in the property. It also cites the case of Macharia Mwangi Maina & 87 others v Davidson Mwangi Kagiri [2014] eKLR on the conditions for the creation of a constructive trust. It avers that since 1964, and through a series of transfers the 2nd defendant had been uninterruptedly allowed to continue occupying the suit property. A constructive trust had been formed and it was incumbent upon the plaintiffs' agents to inquire about the 2nd defendant's interest in the property. Consequently, the 2nd defendants' member's rights as natives in occupation as protected by various laws set out hereinbefore rendered any subsequent registrations that are the basis of the plaintiffs' claim of title to the suit property to be fraudulent.

37. Regarding the issue of whether its members are entitled to the land by way of adverse possession, the 2nd defendant avers that it has fulfilled the requirement of having been in adverse possession for the requisite minimum of 12 years and cites the case of John Mwangi Ndegwa v Eliud Macharia [2015] eKLR for the proposition that the mere change of ownership from the original allottee through a series

of purchasers does not interrupt their adverse possession of the land. It avers that once an overriding interest matures, such portion occupied by the claimant ceased being the property of the registered proprietor and the title thereto is extinguished by operation of the law and subsequent proprietors receive the title as encumbered by the overriding interest.

38. The 2nd defendant avers that the change of ownership between 1912 and 1985 did not terminate the defendants' adverse possession. It further avers that failure to attach 7,956 titles that resulted from the subdivisions is inconsequential for the reason that the 2nd defendants' claim for adverse possession is based on the original title which is in their list of documents. The 2nd defendant also relied on the case of Daniel Mwangi & 2 others v John Peter Kinuthia Gatheri [2014] eKLR in support of its claim of adverse possession and added that it is not a must that an adverse possessor should have buildings on the land claimed and that cultivation alone would confer proprietary interest to a claimant; it avers that a nomadic lifestyle is not inconsistent with the acquisition of land through prescription. Further, it stated that the plaintiffs' suit per se is proof of possession by the 2nd defendant.

39. Regarding whether the 2nd defendant ought to have come by way of originating summons to urge their claim, it urged the court to discard the argument and cited Chevron Kenya Limited Vs. Harrison Charo wa Shutu [2016] eKLR for the proposition that the court should uphold their claim even though commenced by way of counterclaim. Finally, it submitted that as the rightful owner of the suit property it is entitled to an order of permanent injunction.

Determination

Issues for determination

40. This court has identified the following as the issues for determination in this suit:

    a. Who is the registered owner of the suit land?

    b. Is the 2nd defendant entitled to be registered as proprietor of the suit land by reason of the doctrine of adverse possession?

    c. Should the plaintiffs' titles be revoked?

    d. Should a permanent injunction issue either against the plaintiffs or against the 2nd defendant and eviction orders issue against the 2nd defendant?

    e. Should general damages be awarded to the plaintiffs?

    f. Who ought to bear the costs of this litigation?

41. Regarding the first issue, I have noted that the plaintiffs have stated that they are the registered proprietors of parcels of land within the block registered as Longonot/Kijabe Block 2(Utheri Wa Lari). They produced copies of titles issued to the members of the Utheri Wa Lari Company Limited in proof of ownership. The 2nd defendant keenly narrated the history of the registrations of proprietorships over the suit land through many decades and admitted that the suit land used to be referred to as LR No 11192 but it was later subdivided in 1996 into the portions that are now claimed by the plaintiffs. The defendants recognise that titles have issued to those portions. This concurs with the plaintiffs' evidence that they have been issued with titles to the subdivisions of LR No 11192. Indeed, a section of the prayers of the 2nd defendant in its counterclaim seeks that the title numbers Longonot/Kijabe Block 2(Utheri Wa Lari)1-7965 be cancelled or revoked by the District Land Registrar. The 2nd defendant therefore recognises the registration of the plaintiffs as the owners of the suit lands. Despite the 2nd defendant's refusal to recognise the subdivision of LR No 11192, it is clear that titles issued from that

subdivision were registered not in the name of the 1st defendant but in the names of the plaintiffs. It is therefore common ground that the plaintiffs are the owners of the suit land.

42. The second question is whether the 2nd defendant has become entitled to be registered as proprietor of the suit land by reason of the doctrine of adverse possession. The 2nd defendant avers that the Kitet Community has been in exclusive possession of the whole of the area including the subject land prior to the annexation of the land by the British crown in the early 1990s for inclusion in the Kenya colony. The 2nd defendant avers that it has fulfilled the requirement of having been in adverse possession for the requisite minimum of 12 years and cites the case of John Mwangi Ndegwa Vs. Eliud Macharia [2015] eKLR, that the plaintiffs' title thereto is extinguished by operation of the law; that a nomadic lifestyle is not inconsistent with the acquisition of land through prescription; that change of ownership from the original allottee through a series of purchasers does not interrupt their adverse possession; that once an overriding interest matures such portion occupied by the claimant ceased being the property of the registered proprietor; that failure to attach 7,956 titles that resulted from the subdivisions is inconsequential for the reason that the 2nd defendant's claim for adverse possession is based on the original title to LR No 11192 which is in its list of documents; that it needed not have come by way of originating summons to urge its claim for adverse possession.

43. Section 7 of the *Limitation of Actions Act* provides as follows:

> " An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person."

44. Section 38(1) and (2) of the same Act provides as follows:

> "(1) Where a person claims to have become entitled by Adverse Possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.
>
> (2) An order made under subsection (1) of this section shall on registration take effect subject to any entry on the register which has not been extinguished under this Act.

45. In the exchange between the plaintiffs and the 2nd defendant in respect of the issue of adverse possession and its applicability herein I have noted that the main sub-issues that arise are as follows:

a. Is the claim for adverse possession defective for failure to attach the titles to the suit land?

b. Is the claim for adverse possession fatally defective for failure to bring it by way of an originating summons?

c. Has the 2nd defendant satisfied the requirements for adverse possession?

d. Is the claim for adverse possession inconsistent with the claim for the cancellation of the titles issued to the plaintiffs on the ground of forgery and illegality?

46. Regarding the first sub-issue above the plaintiffs have submitted that the 2nd defendant's claim is not clear as to whether it are seeking adverse possession under the old title or the new titles; that Order 37 rule 7(2) provides that summons shall be supported by an affidavit to which an extract of the title to the land in question shall be annexed. However, the only extract produced by the 2nd defendant is

the copy of the original title of LR.11192 while the plaintiffs have clearly demonstrated that the title was surrendered to the government in 1994 to pave the way for subdivision; thereupon it became non-existent and cannot become the basis of an adverse possession claim by the 2nd defendant and they cite the decision in Stephen Mwadoro & 56 others Vs. Alhad Mohamed Hatimy [2020] eKLR for that proposition. They cite Titus Mutuku Kasuve Vs. Mwaani Investments Ltd & 4 others [2004] eLKR and Wesley Kipyegon Bor and 8 others Vs. Richard Pares and 3 others [2020] eKLR for the proposition that the identification of the land in possession of an adverse possessor is an important and integral part of the process of proving adverse possession.

47. The 2nd defendant avers that its claim under the doctrine is premised on the old title that is the RTA title issued in respect of LR Number 11192. It avers that failure to attach the titles to the subdivisions is inconsequential for the reason that the copy of the title to LR NO 11192 is in its documents. There is no dispute that the subdivision of LR No 11192 gave birth to the 7956 parcels claimed by the plaintiffs and which have titles issued under the Registered *Land Act*. The plaintiffs and the 2nd defendant therefore refer to the same land whether under the old number on the original title or under the new numbers issued to the resultant subdivisions. However, the established rule is that the person claiming adverse possession should attach an extract of title to the originating summons while seeking to be declared owner by way of adverse possession. The rationale is to establish that the land exists and that it is titled for one can not seek adverse possession over untitled land. It also confirms the details as to ownership and that the suit has been commenced against the proper parties.

48. The Court in the case of Symon Gatutu Kimamo & 587 Others v East African Portland Cement Co. Ltd [2011] eKLR held as follows:

> " 26. The relevant passage in Kweyu v Omuto which was relied on by Mr. Koech for the Respondent for the argument that the requirements of Order 37, Rule 8 is mandatory and failure to comply with it makes an Originating Summons under section 38 of the Limitations of Actions Act unsustainable reads as follows:
>
> 'As I said at the beginning of this judgment, the appellant's supporting affidavit to his Originating Summons did not have annexed to it a certified extract of the title to the parcel of land out of which the suit land was claimed. Save what the parties deponed to in their respective affidavits and the oral evidence before the superior court, the certainty of the existence and proprietorship of the suit land could not otherwise be guaranteed. An order under section 38(1) of the Act was not therefore capable of being made. (Emphasis mine).'
>
> 27.Reading this passage in Kweyu v Omuto in context, I do not believe that the Court of Appeal was making a categorical and formalistic requirement that a failure to attach the certified extract of the title ineluctably dooms a suit for adverse possession. The italicized words above indicate that the Court of Appeal had in mind the policy objectives of the rule itself, to wit, the desirability of establishing with certainty both the existence and proprietorship of the suit land before an order under section 38(1) issues. To my mind, the idea was never to simply require a certified extract of the title as a formalistic or talismanic hoop to be jumped by an intended disseisor for the sake of

it. The objective was to provide a means for the Court to be certain about the existence and proprietorship of the suit land.

28. In this case, the certainty of both the existence and proprietorship of the Suit Property is not in dispute. In fact, the Respondent itself has attached a certified extract of the title. In my view, its formalistic insistence that the suit is defective simply because the certified extract of the title is not attached to the affidavit of the Plaintiff but that of the Respondent is elevating technical requirements above the need to determine cases based on substantive merit contrary to the Constitutional instructions in sections 22 (3)(d) and 159(2)(d) as well as the Oxygen Principles. I therefore refuse to reject the Applicants' suit simply on this basis."

49. As pointed out before, the 2nd defendant in this matter is claiming LR Number 11192 by way of adverse possession. The plaintiffs indicate that LR Number 11192 was submitted back to the government in 1994 for subdivision and it resulted in land parcel No's Longonot/Kijabe Block 2(Utheri Wa Lari)1-7965. The 2nd defendant in its counterclaim has only attached a copy of the title for LR Number 11192 whose entirety it is claiming.

50. As was held in the case of Symon Gatutu Kimamo & 587 Others v East African Portland Cement Co. Ltd (supra), the certainty of both the existence and proprietorship of the suit property in the instant case is not in dispute and therefore the failure to attach the titles for land parcel No's Longonot/Kijabe Block 2(Utheri Wa Lari)1-7965 should not render the 2nd defendant's claim defective.

51. The foregoing findings notwithstanding, the 2nd defendant has not pleaded with specificity the particular portions of the suit properties that it is claiming. It is for the defendants to plead clearly and lead the necessary evidence to that effect which they failed to do. It only refers to "portions it has occupied". I agree with the decisions in Simion Kipsang Yator and 7 others v Joshua Kipsonoji Sumukwo [2020] eKLR, Mutana Lewa Vs. Kahindi Ngala Mwagandi [2015] eKLR and Selina Muthoni Kithinji v Satiya Binti Swaleh & 8 others for the proposition that for a claim of adverse possession to succeed, the claimant must prove the definite portion or acreage that he has dispossessed the owner of. Can the 2nd defendant validly claim even the public utility lands that were surrendered for public use? That is doubtful. The 2nd defendant was aware of the subdivision. It never availed any survey data and titles to properly identify the portions it claimed to occupy. This court finds no credible reason why the 2nd defendant never attached the particular titles over the land resulting from the subdivision the existence of which they were aware and which should have pointed out the land that they claim with greater specificity. Its claim ought to fail for that very reason.

52. As to whether the 2nd defendant's claim for adverse possession is fatally defective for failure to bring it by way of an originating summons I have examined the existing decisions and found that courts have in recent times eschewed enforcement of strict compliance with the provisions of Order 37 requiring the filing of an adverse possession claim by way of an originating summons.

53. Ordinarily, an originating summons was originally meant, and still remains to date, be a summary procedure for expeditious disposal of court business possessed of a minimum of disputed facts. That explains why it may have been prescribed for adverse possession matters.

In the case of James Joram Nyaga & Another v Attorney General & Another 2019 eKLR the Court of Appeal observed as follows regarding civil procedure:

> "In our view, there is no justifiable reason advanced to warrant this Court's interference with those findings. As a parting shot, it is our opinion that the issues canvassed herein through an originating summons were better suited for determination through an ordinary suit. An originating summons is only suitable specifically for matters or issues that are not complex factually and legally. An ordinary suit allows better canvassing of competing claims. In Kibutiri v Kibutiri [1983] eKLR, the Court stated as follows,
>
> "The procedure by way of originating summons is intended to enable simple matters to be settled by the court without the expense of bringing an action in the usual way. The procedure is, however, not meant to determine matters which involve serious complex questions of law and fact (Re Giles (2) [1890] 43 Ch. D 391 and Kulsumbhai v Abdulhussein [1957] EA 699). 2. In cases where complex issues and contentious questions of fact and law are raised, the judge should dismiss the summons and leave the parties to pursue their claims by ordinary suit because the scope of inquiry which is made and dealt with on an originating summons".

54. Back to the issue of whether adverse possession can be sought in any manner other than by originating summons, it is noteworthy that the cases of Chevron Kenya Limited Vs. Harrison Charo wa Shutu [2016] eKLR, Kombe v Omar & 2 others [2003] 3 KLR (EP 391) and Gulam Miriam Noordeen v Julius Charo Karisa [2015] eKLR support the proposition that a claimant is at liberty to raise his claim for adverse possession even by way of defence. I therefore reject the plaintiff's objection to the procedure employed by the defendant of seeking to be granted orders declaration of adverse by way of a counterclaim.

55. Regarding the question as to whether the 2nd defendant has satisfied the requirements for adverse possession, it is noted that the main ingredients of adverse possession are that one ought to have obtained without force or permission or licence from the paper title owner uninterrupted and quiet possession with animus possidendi and which is adverse to the title holder for a period of not less than 12 years.

56. The above requirements were set out by the Court of Appeal in the case of Samuel Kihamba v Mary Mbaisi [2015] eKLR where it was held as follows:

> "Strictly, for one to succeed in a claim for adverse possession one must prove and demonstrate that he has occupied the land openly, that is, without force, without secrecy, and without license or permission of the land owner, with the intention to have the land. There must be an apparent dispossession of the land from the land owner. These elements are contained in the Latin phraseology, nec vi, nec clam, nec precario. The additional requirement is that of animus possidendi, or intention to have the land"

57. The Court of Appeal also in the case of Richard Wefwafwa Songoi v Ben Munyifwa Songoi [2020] eKLR held that any party seeking for adverse possession must establish the following:

    (a) on what date he came into possession.

    (b) what was the nature of his possession?

(c) whether the fact of his possession was known to the other party.

(d) for how long his possession has continued and

(e) that the possession was open and undisturbed for the requisite 12 years.

58. The plaintiffs claim that the 1st defendant purchased the land in the 1970s and subdivision thereof was approved on 3/10/1994 subject to surrender of land for public utilities. In 1997 the Chief Land Registrar authorised the District Land Registrar Nakuru to issue titles for the subdivisions as the surrender of the head titles had been registered in1994 and a new Registry Index Map was created for Longonot/Kijabe/2 (Utheri wa Lari) with 11 sheets comprising of 7956 individual plots which were registered in the names of the members of the 1st defendant.

59. The 2nd defendant's claim for adverse possession has already been found to be defective for failure to disclose with specificity the extent of the land that they desire to be registered in respect of. The next issue is how the 2nd defendant came into possession. However, before I deal with the issue of the manner in which possession can be deemed to have been rightfully obtained in a claim under the doctrine, I must state that the 2nd defendant's evidence of possession is scanty and unreliable. No evidence of any developments on the suit land was availed to court and no evidence of definite possession and use of any specific portion was provided. It would appear that the 2nd defendant being of nomadic lifestyle has not perfected any fixed settlement. In the circumstances animus possidendi has not been established. That observation notwithstanding, even if it were to be found, which is not the case, that possession was indeed attained, the question arises as to whether it was obtained without force or with permission or licence from the paper title owner.

60. The evidence of the plaintiffs is that the upon transfer of the suit properties to them, most of the plaintiffs took possession of their parcels in or around 1987 and developed them and that for a number of years after settlement, they lived peacefully on the suit land. However, between 1991 and 1992 during agitation for multiparty democracy the infamous so called ethnic clashes ensued and the plaintiffs experienced sporadic attacks from a group of person of Maasai ethnic origin whom they later learned they were members of the 2nd defendant and who would invade their lands, claiming that the plaintiffs were "outsiders" who should leave immediately. The plaintiffs maintained that the harassment continued up to the year 1997 and it involved stealing of livestock, grazing livestock on the plaintiff's land, and the plaintiffs were compelled to flee their home for safe refuge elsewhere. It is also the plaintiffs' evidence that in 1997 the government, upon assessing the seriousness of the insecurity situation, advised some of the plaintiffs to leave their farms and relocate to Mai Mahiu shopping centre some 10 kilometres away for safety. The plaintiffs state that from then on, they have lived under constant harassment from the 2nd defendant and they have had to move in and out the said farms depending on the prevailing security situation at any particular time.

61. The question also arises as to whether the plaintiffs adduced any evidence to support their claims of violence meted out against them by the 2nd defendant. This court has taken judicial notice of the prevalence of the so called ethnic clashes that rocked the country during the period for the agitation for a multi-party state and thereafter. This occurred in the early and mid-1990s. Indeed, the Departmental Committee On Lands Report on Land Conflict in Kedong Ranch dated August 2015 which was filed by the plaintiffs states that "there are inter-communal tensions in the area as the land in question has a history of communal tensions leading to tribal conflict." The report also stated that the Maasai Kitet community is nomadic

and they moved continuously with livestock in and out of the area in question. It is also evident from the report that many of the plaintiffs and their compatriots who had purchased land from the 1st defendant had fled from Karina, Kigecha, Satellite and Utheri Wa Lari trading centres and lived as internally displaced persons in Mai Mahiu town. The Committee finalised the report with inter alia a recommendation that the Ministry of Interior and Co-Ordination of National Government should enhance security in the area. The evidence of the parties herein is also replete with references to the lengthy conflict that has plagued the suit land. DW1 stated as follows in his examination-in-chief:

> " The problem that brought us here is that in 1992 onwards some people came and said they had bought the land. In 1996 we discovered that some people were claiming to have title to the land which was irregularly obtained. There has been no peace. These people are assisted by the police."

62. In cross-examination by Mr Kenyatta for the plaintiffs, DW1 stated as follows:

> " From 1992 we disagreed. We were in a dispute. They farm on a small portion. They farm only when police are there. There is no peace. They have come to our land with the police. We cannot agree. When the court gives a truthful verdict. I will agree with it. From 1992 we said no entry onto the land for all others.... In 2015 there was a conflict between Maasais and those who came from outside. Some people lost their lives. I know Francis Patu the accused in Criminal Case 18/2016 – Naivasha. The other was his parent. It was on assault. I know there was a conflict. I don't know if someone died. I don't know if Francis Patu was charged with killing someone.... we lived in peace. From 1992 there has been no peace. We ourselves live in peace. The dispute arose in 1992. There has been a dispute."

63. DW1 admitted under cross-examination by Mr Karanja that the person arraigned in Criminal Case 18/2016 – Naivasha was one of the members of the Kitet community, but asserted without giving particulars that the accused was unjustly arraigned in court.

64. DW2 at one point stated as follows upon cross-examination by Mr Kenyatta:

> " ...I see policemen in the photograph. It seems as if there was a conflict. It is true there has been a conflict on the ground. There was a conflict in the year 2015. I don't know if people lost lives. People died on both sides..."

65. Under cross-examination by Mr Karanja he stated as follows:

> " There has been conflict there on the farm till people killed one another."

66. From the foregoing it would appear that there was conflict on the ground in respect of the suit land which resulted in death of some people as stated by the plaintiffs. At the hearing the 2nd defendant's witnesses appeared quite knowledgeable that the land belonged to the 1st defendant and its members and that they strived to evict them in order to gain possession thereof by force. The finding that there was violence in the 2nd defendant's quest for possession of the suit land obviates the need to inquire as to whether there was permission or licence from the plaintiffs that would have enabled the 2nd defendant to enter the land. Possession of the suit land by the 2nd defendant was obtained by way of force directed at the registered owners which compelled them to flee for their lives. Use of force is not, and will not be, recognised by

this court as one of the eligible methods of taking possession of land that would subsequently entitle a claimant in adverse possession to title to the land; in fact, it vitiates the claim. It is also plain to see that possession of the suit land by the 2nd defendant cannot be said to have been uninterrupted quiet possession owing to the continuous hostilities that subsisted in the circumstances described by the witnesses from both sides of the case. This finding also renders it needless to embark on any expedition seeking to answer the question as to whether the 12-year requirement has been attained by the 2nd defendant.

67. The last sub-issue is as to whether the 2nd defendant's claim for adverse possession in this case is inconsistent with the claim for the cancellation of the titles issued to the plaintiffs on the ground of forgery and illegality. The pleadings and the evidence of the 2nd defendant consistently emphasises that it does not recognise the suit titles and the plaintiffs took up this approach and stated in their submissions that it disentitles the 2nd defendant from any relief under the heading of adverse possession. The plaintiffs cited the decisions in Hanningtone Oloo OgumboAlbert Makau Kyambo and another [2021] eKLR and the case of Wellington Lusweti Barasa and 75 others v Lands Limited and another [2014] eKLR for the proposition that that a party cannot plead adverse possession and at the same time seek cancellation of the same title in the same suit. That indeed is the correct legal position. In the case Joseph Kazungu Mwangi v Joseph Odero Obwore & 11 others [2018] eKLR of the court observed as follows:

> " 25. However, in the instant case the defendant's claim for rights through the law of limitations is preceded by the claim by the same defendants of invalidity of the plaintiff's title to the same land. Perchance this court finds that the plaintiff's title was invalid, the defendant's case for adverse possession against him would collapse. The question that arises is if a person who is uncertain of another's legal title to land, and who in fact actively challenges the validity of that title, may maintain a claim for adverse possession to the same land. I find those two claims to be inconsistent and that it is improper to include both of them in the same pleading."

68. Consequently, I also find that in this case the claim for a declaration of adverse possession can not lie side by side with a claim for the nullification of title in the same suit.

69. The next main issue is whether the plaintiffs' titles should be revoked. The basis upon which the 2nd defendant urges revocation is that first, it is entitled to the suit land by way of adverse possession; two that there occurred a historical injustice and that colonial dispossession is a valid reason to declare the title claimed by the plaintiffs as invalid; it urges the court to find that the 2nd defendant was a victim of historical injustices perpetrated by the colonial government and the post independent government which ought to be remedied through a declaration that it is the valid owner of the property and that the land ought to be returned to it as community land by way of restitution; three, that the plaintiffs' claim to ownership is premised on inherent fraud; four, that Section 30 of the Government Lands Act (repealed) recognised rights of natives living on the suit property and Section 31(1) of the same Act provided for the rights of natives living on leased land and that therefore the first registration of suit property in the names of any person other than their ancestor was in violation of that Section and therefore fraudulent; that in so far as sections of the suit property were occupied by the 2nd defendant, those sections were not included in the granted lease and were therefore not available for surrender by the lessee for the purpose of sale and conversion and freehold ownership now held

by the plaintiff; that Section 44 of the Registration of Titles Act was enacted in recognition of those native rights; that the conditions prior to surrender of the leasehold land are meant to ensure that rights such as those protected in Sections 30 and 31(1) of the GLA (repealed) are considered before the surrender is undertaken, and that the surrender of the title to the suit land was defective and in violation of Section 44 (1) of the RTA (repealed) since the parcels of land being surrendered were not shown in the instruments of surrender and the lessee did not endorse on the surrender of the lease; the 2nd defendant urged that constructive trust on the part of all previous registered owners in favour of the defendants is provided for by Section 30(d) of the RLA (repealed), first against Kedong Ranch the sellers and secondly, the plaintiffs who supposedly ought to have made inquiry as to the 2nd defendant's rights before purchase; that since 1964, and through a series of transfers the 2nd defendant had been uninterruptedly allowed to continue occupying the suit property and so a constructive trust had been formed and consequently, the 2nd defendant's members' rights as natives in occupation as protected by various laws set out hereinbefore rendered any subsequent registrations that are the basis of the plaintiffs' claim of the title to the suit property to be fraudulent.

70. This court has already dealt with the issue of adverse possession above and it is clear from what has been said that the claim for adverse possession does not allow the revocation of the plaintiffs' title to the suit land. The next point to address therefore is whether the suit titles should be cancelled by reason of the alleged historical injustices the 2nd defendant alleges to have occurred.

71. Section 15(2) of the *National Land Commission Act* defines historical land injustice as follows:

> (2) 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.

72. The conundrum that arises regarding the 2nd defendant's claim of historical injustice and ancestral rights over the suit land is the manner in which the provisions of Section 15(2) of the *National Land Commission Act*, Section 26(1) (a) and (b) of the *Land Registration Act* and Article 27(1) and 27(2) of *the Constitution* as read with Articles 39(3) and 40(2)(a) and (b) may be harmonised.

73. The 2nd defendant's narrative commences from afar off with specific reference being made to Anglo-Maasai Treaties of the 1900s. These treaties were not placed before the court by the 2nd defendant and it is therefore not possible to examine their contents in the present suit. However, the main thread of their argument is that the Kitet Community has been in exclusive possession of the whole of the area including the subject land prior to the annexation of the land by the British crown in the early 1900s for inclusion in the Kenya colony and that the community was thereafter ignored by successive governments which nevertheless never evicted

the community from the land. The standpoint of the 2nd defendant, which it enjoins this court to adopt is that it holds fast to the belief that the land belongs to it and that colonial dispossession is a valid reason to declare the title claimed by the plaintiffs as invalid. In this court's view, there is no likelihood of objectivity in that standpoint and a critically objective perspective is needed to resolve the dispute at hand.

74. The claims of the 2nd defendant must be viewed with the known history of the land question in Kenya in mind. They must also be viewed through the prism of other legislative and constitutional provisions for a just decision of this court must interpret the relevant law in harmony.

75. First, the provisions of *the constitution* classifying land are relevant. They are as follows:

Article 62. (1) Public land is—

(a) land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date;

(b) land lawfully held, used or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease;

(c) land transferred to the State by way of sale, reversion or surrender;

(d) land in respect of which no individual or community ownership can be established by any legal process;

(e) land in respect of which no heir can be identified by any Classification of land.

(f) all minerals and mineral oils as defined by law;

(g) government forests other than forests to which Article 63 (2)(d) (i) applies, government game reserves, water catchment areas, national parks, government animal sanctuaries, and specially protected areas;

(h) all roads and thoroughfares provided for by an Act of Parliament;

(i) all rivers, lakes and other water bodies as defined by an Act of Parliament;

(j) the territorial sea, the exclusive economic zone and the sea bed;

(k) the continental shelf;

(l) all land between the high and low water marks;

(m) any land not classified as private or community land under this Constitution; and

(n) any other land declared to be public land by an Act of Parliament—

(i) in force at the effective date; or

(ii) enacted after the effective date.

Article 63 (2) Community land consists of—

(a) land lawfully registered in the name of group representatives under the provisions of any law;

(b) land lawfully transferred to a specific community by any process of law;

(c) any other land declared to be community land by an Act of Parliament; and

(d) land that is—

(i) lawfully held, managed or used by specific communities as community forests, grazing areas or shrines;

(ii) ancestral lands and lands traditionally occupied by hunter-gatherer communities; or

(iii) lawfully held as trust land by the county governments, but not including any public land held in trust by the county government under Article 62 (2).

Article 64. Private land consists of —

(a) registered land held by any person under any freehold tenure;

(b) land held by any person under leasehold tenure; and

(c) any other land declared private land under an Act of Parliament.

76. Is already clear that the land having been assigned a title under the law long ago, it has been private land in the hands of individuals for many decades. The rights of individuals to land over which they have been issued with titles are indefeasible as recognised under Section 25 of the LRA with some qualification. That section provides as follows:

"25.

(1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee."

77. A window of opportunity to seek nullification of a proprietor's title was left open by the provisions of Section 26 of the LRA which states as follows:

26. (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner,

subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original."

78. It is with the foregoing provisions of *the constitution* and the statute that the 2nd defendant's claim must be construed. Consideration of some history of real property in Kenya would also be helpful. Smokin C. Wanjala, S.C.J., in an article entitled "Land Ownership and Use in Kenya: Past, Present and Future" observes that it is difficult to identify the system of land tenure that prevailed in the precolonial Kenya. Part of the reason for that sad state of affairs is that there is lack of adequate literature on the subject and the existence of faulty anthropological, ethnographical and historical accounts on traditional land tenure by western researchers and the diversity and complexity of traditional society.

79. It is clear that land belonged to no-one in particular during the precolonial times and that the lands were not owned by the then political authority, whatever format that authority took, and each member had only rights of access to that land depending on their individual needs at any given time. That contrasts sharply with the prevailing milieu that cannot be wished away now, in which, courtesy of colonialism, a law disrupted and destroyed the traditional systems, imposed the English property law in Kenya and transformed the traditional land tenures, culminating in the extension of the theory of eminent domain to Kenya which has lasted to this day.

80. Land was alienated to individual white settlers on the basis that the crown owned the land and security of tenure was established by various legislations including the Crown Lands Ordinance 1902 and the Registration of Titles Ordinance. The 2nd defendant has clearly articulated in its defence in the present suit that the suit land was originally comprised of a consolidation of a leasehold over LR Number 11192 granted to one H.G. Hardyold in 1924 with another leasehold over LR No 376 granted to one G.H. Barker both under the Crown Land Ordinance of 1915, which consolidated leasehold parcels were subsequently registered in favour of Colville Limited under the Registration of Titles Ordinance under LR Number 11192 on 1/1/1964. The latter is the number under which the suit land herein came to be alienated and title registered.

81. It is acknowledged by both sides in the instant dispute that after the initial alienation, the suit land changed hands for value in a series of sale transactions and was also serially charged to a financial institution before it was acquired by the 1st defendant, also for value, who then surrendered it to the Government in exchange for a subdivision scheme that bore sub-plots which it distributed it to its members. It is therefore clear that the old land tenure that the 2nd defendant claims under, whatever form that tenure took, was extinguished upon the initial alienation of the suit land by the Crown.

82. The 1st defendant having purchased the suit land for value and its rights and interest in the land were created under the Registration of Titles Act (RTA) (now repealed). The provisions of

Section 15(2) of the *National Land Commission Act* on historical land injustices were enacted long after the RTA (repealed). This court must interpret those recent provisions as subservient to the existing law under the RTA (repealed) in so far as they never repealed the provisions as to indefeasibility of title in the RTA (repealed) and its successor legislation the LRA. Therefore, in this court's view, the titles the plaintiffs hold are still indefeasible as provided for in Section 26 of the *Land Registration Act* unless there is any other ground set out in the Act which the 2nd defendant can rely on for invalidation. If this court proceeds to uphold the 2nd defendant's claim on historical injustices absurd consequences may result in that the very law under which the Government issued titles to the plaintiffs will have been implied to be of no force to protect the registered owners yet all citizens are deemed equal and entitled to equal protection of the law; this court finds that such an approach would be inconsistent with the proper interpretation of Article 27(1) and 27(2) of *the Constitution* as read with Articles 39(3) and 40(2)(a) and (b).

83. Article 27((1) states as follows:

> " Every person is equal before the law and has the right to equal protection and equal benefit of the law."

84. Property rights are protected by *the Constitution* of Kenya at Article 40 where it is stated as follows:

> " 40. Protection of right to property
>
> (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—
>
> (a) of any description; and
>
> (b) in any part of Kenya.
>
> (2) Parliament shall not enact a law that permits the State or any person—
>
> (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
>
> (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4).
>
> (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
>
> (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
>
> (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—

(i) requires prompt payment in full, of just compensation to the person; and

(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.

(4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.

(5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.

(6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.

85. A citizen of the republic of Kenya is entitled therefore to acquire and own property of any description in any part of Kenya. While Article 40 provides that the State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation meets certain stringent conditions. Article 39(3) provides that every person has the right to enter remain in and reside anywhere in Kenya. It is the view of this court that the enjoyment of rights under the provisions of Article 39(3) are predicated on lawful acquisition, entry and establishment of residence in accordance with the statutes and *the constitution*.

86. The claims of ancestral rights or of historical injustice by the 2nd defendant are being raised more than one century after the land was registered in favour of the original allottee; more so, the claim has come after that land has passed on from that allottee through a series of sale transactions and dispositions up to the present holder.

87. The Court in the case of Henry Wambega & 733 others v Attorney General & 9 others [2020] eKLR held as follows:

> " 37. 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."

88. Justice Munyao in the case of Parkire Stephen Munkasio & 14 others (Suing On Their Own Behalf and Behalf of Their Families And All The Members Of The Maasai Community Living On Land Reference No.8396 (I.R 11977) situated in kedong) v Kedong Ranch Limited & 8 others [2015] eKLR had no difficulty in holding as follows:

> " 53. The petitioners made arguments that this land forms part of the Maasai community land. I am afraid that it does not. The land is private land in the hands of Kedong Ranch. In fact it became private land way back in 1950 and has remained so all along. It matters not that the petitioners believe that the land was their ancestral land. In fact it is immaterial whether the land was at one point or another, the ancestral land of the Maasai, or the ancestral land of the petitioners. The land is now private land, as provided by our Constitution which is the supreme law of this country."

89. Later on in his judgment Justice Munyao observed as follows:

57.A lot was said about the petitioners being in occupation of the suit property. To me it matters not whether they are in occupation of it, or they are outside it, at least in so far as the right to property is concerned. If they are in occupation, they are in occupation as trespassers since they have not demonstrated any right over the property which may be protected. If their occupation was enough to entitle them to the property, then they would have succeeded in the case Nakuru ELC No. 21 of 2010, but they failed.

58. It also matters not, that the petitioners are of Maasai descent. I am not sure if they fall within the category of a minority or vulnerable group, but it doesn't matter. Even assuming, without holding, that the Maasai are a minority or vulnerable group, the fact that one is a member of a vulnerable group or a minority, does not give him licence to trespass upon privately owned land, and assert title to it, merely because he is a member of a minority or vulnerable group."

90. Article 29 (c) of *the Constitution* provides that every person shall have the right to freedom and security of the person which includes the right not to be subjected to any form of violence from either public or private sources. The implication of this provision is that it would therefore be illegal for citizens, no matter how strongly they believe in their ancestral or other claims, to deprive fellow citizens of property by means of violence and without following the due process after the registered owners have acquired it by way of purchase for valuable consideration as in the present case.

91. In the light of the foregoing it would be inimical to the interests of justice and a denial of the plaintiff's right to equal protection and equal benefit of the law for this court to nullify the suit titles and thereby limit the plaintiffs' constitutional right to own land that they purchased for value.

92. That said, it is noted that the 2nd defendant has lodged its counterclaim herein as part of the due process and this court must determine whether ground exist as provided for in the LRA upon which its title can be invalidated.

93. The titles held by the plaintiffs can only be nullified by this court as sought by the 2nd defendant if the grounds given in Section 26 of the LRA are established. These grounds are: fraud or misrepresentation to which the plaintiffs are proved to be a party or if their certificate of title was acquired illegally, unprocedurally or through a corrupt scheme.

94. In its defence and counterclaim the 2nd defendant commences with the claim that the subdivision of LR No. 11192 was unprocedurally or illegally obtained; they follow up that claim with allegations of their occupation of the land and creation of overriding interests to support their claim for adverse possession which this court has just found to lack merit in the analysis above. They also claim that title deeds in the plaintiff's names are irregularly acquired, are forgeries, arise from no transfer, and some were issued to deceased persons without grants of representation as required by law while the suit land was subject to an ongoing case being Nakuru HCCC 315 of 2010;that there is no sale agreement and there were no consents to the Land Control Board to the alleged transactions; thaton 20/12/1996 a surrender of LR 11192 to the government of Kenya was made but not registered under Section 65 (1) (h) of the Government *Land Act*.

95. According to the counterclaim the surrender documents were not dated and should not have been acted upon; that the authorities failed to conduct investigations into the question whether the land was occupied before subdivision and issuance of new title deeds and that the plaintiffs and the Deputy County Commissioner Naivasha Sub-County and the Attorney General, the defendants in the counterclaim, intend to render them landless much to their detriment. Those are the grounds upon which the 2nd defendant seeks orders directing the District Land Registrar Nakuru to cancel or revoke all the titles issued to the plaintiffs, to wit, title deeds for Land Reference Longonot/Kijabe Block 2 (Utheri wa Lari Company Limited) 1 to 7956 and for the 2nd defendant to be registered as the proprietors of the original unsubdivided parcel of land (Land Reference Kijabe/ No. 11192.)

96. This court has already dealt with the issue of occupation and overriding interests under the theme of adverse possession above and it is not worth reiteration here. The court in the case of Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others [2015] eKLR held as follows:

> " It will be seen from the above that title is protected, but the protection is removed and title can be impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, unprocedurally, or through a corrupt scheme. Where one intends to impeach title on the basis that the title has been procured by fraud or misrepresentation, then he needs to prove that the title holder was party to the fraud or misrepresentation. However, where a person intends to indict a title on the ground that the title has been acquired illegally, unprocedurally, or through a corrupt scheme, my view has been, and still remains, that it is not necessary for one to demonstrate that the title holder is guilty of any immoral conduct on his part. I had occasion to interpret the above provisions in the case of Elijah Makeri Nyangwara –vs- Stephen Mungai Njuguna & Another, Eldoret ELC Case No. 609 B of 2012 where I stated as follows:- "...it needs to be appreciated that for Section 26(1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, unprocedurally or through a corrupt scheme. The heavy import of Section 26 (1) (b) is to remove protection from an innocent purchaser or innocent titleholder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally, or through a corrupt scheme. The titleholder need not have contributed to these vitiating factors. The purpose of Section 26 (1) (b) in my view is to protect the real

title holders from being deprived of their titles by subsequent transactions." I stand by the above words and I am unable to put it better that I did in the said dictum."

97. The claims that title deeds in the plaintiffs' names were irregularly acquired and that there were no transfers, and that some were issued to deceased persons without grants of representation having been issued as required by law and thus are forgeries were not supported by evidence.

98. There was also no evidence of privity of contract between the 2nd defendant and the 1st defendant to entitle the former to seek and obtain orders of nullification of the plaintiffs' titles on the basis of the claim that there was no sale agreement, that there were no consents from the Land Control Board to the transactions, that surrender of LR 11192 to the government was made but not registered or that transactional documents were not dated. These are matters that should in my view be raised, if at all, between the parties privy to the transactions over the suit titles for the court's determination of their rights under the transaction.

99. The claim that the authorities failed to conduct investigations into the question whether the land was occupied before subdivision and issuance of new title deeds has been partially addressed by this court's discourse on the doctrine of adverse possession herein before where it was found that occupation by use of force could not entitle the 2nd defendant to declaration of acquisition of title through adverse possession. Whether any investigation by the State was conducted or not, the taint of forcible ejection of the plaintiffs by the 2nd defendant rendered occupation of the suit land by the 2nd defendant illegal ab initio.

100. The lack of any proof of both registered title and unregistered interest in the suit land and the fact of prior allocation and the serial transfers of the suit land for value between other citizens have therefore denied the 2nd defendant a proper launching pad for its barrage of private law claims calculated at having the suit titles nullified under Section 26 of the LRA or to have the land registered in its name.

101. Since this court finds no evidence from the 2nd defendant establishing that there was any fraud, misrepresentation, irregularity or corruption prayers in the counterclaim for cancellation of the plaintiff's titles must therefore be denied, and all the titles emanating from the subdivision of LR 11192 must be therefore upheld.

102. The other questions are the twin whether a permanent injunction should issue either against the plaintiffs or against the 2nd defendant and whether eviction orders should issue against the 2nd defendant.

103. Consequent upon the court's finding that titles issued under the subdivision of LR 11192 must be upheld, the plaintiffs being beneficiaries of those titles cannot be injuncted from their own property. From the facts of this case, an injunction and an order of eviction may issue against the 2nd defendant to restrain it from any interference with the plaintiffs' lands since it has not established that it has any right to the said lands.

104. The penultimate question for determination in this suit is whether the court ought to grant the plaintiffs in this suit mesne profits. On this the court simply observes that no evidence was led by the plaintiffs on entitlement to or quantum of mesne profits. That claim must therefore fail.

105. Lastly on costs I find that since the claim by the plaintiffs has succeeded, they deserve the costs of the instant suit which should be met only by the 2nd defendant and its individual members jointly and severally.

106. The upshot of the foregoing is that the plaintiffs' claim in the main suit succeeds and the 2nd defendant's counterclaim fails. I therefore dismiss the 2nd defendant's counterclaim dated 29/8/2018 with costs and I enter judgment for the plaintiffs on their claim in the amended plaint dated 8/9/2017 and I issue the following final orders:

a. The 2nd Defendant, its agents, servants and/or any other persons claiming under it shall at their own expense remove themselves and any building, structures and constructing materials that they may have deposited on the suit properties comprised in the various titles known as Longonot/Kijabe Block-2 (Utheri wa Lari) 1 to 7956 (inclusive) and situate in the County of Nakuru within thirty (30) days of this order

b. In default of compliance with order No. (a) herein above, the 2nd Defendant, its agents, servants and/or any other persons claiming under it shall be evicted under security provided by the Nakuru County Police Commandant and the Assistant County Commissioner Naivasha from all those suit properties known as Longonot/Kijabe Block-2 (Utheri wa Lari) 1 to 7956 (inclusive) situate in the County of Nakuru at their expense and the plaintiffs shall be put into possession of their respective parcels of land.

c. A permanent injunction is hereby issued restraining the 2nd Defendant, its servants, agents and/or any unauthorized person from interfering in any manner whatsoever with all those properties known as Longonot/Kijabe Block-2 (Utheri wa Lari) 1 to 7956 (inclusive) situate in the County of Nakuru registered in the names of the Plaintiffs.

d. General damages for trespass on the suit property shall not be awarded as they have not been proved.

e. The 2nd defendant jointly and severally through the persons named as its representatives in this suit shall bear the costs of this suit and the counterclaim.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 19TH DAY OF JANUARY, 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU