



**Mwangathia & 2 others v Muriira & 4 others (Environment & Land Case 245 of 2012) [2023] KEELC 15738 (KLR) (22 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 15738 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 245 OF 2012  
CK NZILI, J  
FEBRUARY 22, 2023**

**BETWEEN**

**HENRY M'ARUNGA MWANGATHIA ..... 1<sup>ST</sup> PLAINTIFF  
KAILIBIA FREDRICK ARUNGA ..... 2<sup>ND</sup> PLAINTIFF  
STEPHEN KIAO MWANGATHIA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**SAMUEL MURIIRA ..... 1<sup>ST</sup> DEFENDANT  
MICHAEL BAARIU ..... 2<sup>ND</sup> DEFENDANT  
INTEX ROAD CONSTRUCTORS CO LTD ..... 3<sup>RD</sup> DEFENDANT  
OLIVER KIRIMI KARIJI ..... 4<sup>TH</sup> DEFENDANT  
AURELIA MUTHONI KARIJI ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. By a plaint dated December 21, 2012, the plaintiffs claiming to be the lawful owners of 50 acres of land situated in New Kiare/Mituntu Adjudication Section (hereinafter after the suit land), sued the 1<sup>st</sup> defendant for holding himself as the true owner of the said land and or conspiring with the rest of the defendants in March 2012 to enter into, lease out, sell, mine, erect structures, excavate and carry away the excavated murram without the plaintiff's consent, approval or authorization.
2. It was averred that despite notices through letters from the plaintiffs to stop such trespass, the defendants fraudulently and unlawfully entered into lease agreements with the 3<sup>rd</sup> defendant and drawing out a cheque in the names of the 1<sup>st</sup> & 2<sup>nd</sup> defendants for the excavated material despite warnings from the area chief and later on from the District Commissioner of the area. The plaintiffs averred that the 1<sup>st</sup> defendant also purported to sell and or transfer part of the land to the 4<sup>th</sup> and 5<sup>th</sup>



- defendants with a view of defrauding and depriving them the right to use and occupy their property. Therefore, the plaintiffs prayed for an order directed at the 1<sup>st</sup>-3<sup>rd</sup> defendants to release the payment cheques in respect of the murrum excavated, mined, and taken away from the suit land and a permanent injunction restraining the defendants together with their employees, agents, or servants from in any way whatsoever entering, constructing or interfering with the suit land. The plaint was accompanied by the plaintiffs' list of witnesses, witness statements, and documents dated August 28, 2013 and July 5, 2014 respectively.
3. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants filed a defence dated February 1, 2013 while the 3<sup>rd</sup> defendant filed a defence which was purportedly amended on July 19, 2019. In the said defence, the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants denied the contents of paragraphs 1-7 of the plaint. Concerning paragraphs 7 & 8 of the plaint, the 3<sup>rd</sup> defendant on its part averred that it lawfully bought the murrum from the suit land measuring 50 acres from the rightful owners with the full knowledge of the plaintiffs. It was averred that since the plaintiffs lacked proof of ownership of the suit land no loss or damage was occasioned to them.
  4. The 3<sup>rd</sup> defendant averred that the dispute between the 1<sup>st</sup> plaintiff and the 1<sup>st</sup> defendant was heard by Meru Njuri Ncheke elders on August 11, 2012 whose verdict was that the land belonged to the 1<sup>st</sup> defendant. The 3<sup>rd</sup> defendant averred that eventually the area provincial administration officers, confirmed to it on the true owner, following which a valid sale agreement was executed. The 3<sup>rd</sup> defendant, therefore, averred that the plaintiffs' claim was driven by malice, envy, and bad blood between the plaintiffs and 1, 2, 4<sup>th</sup> & 5<sup>th</sup> defendants. The 3<sup>rd</sup> defendant also averred that having consulted and exhausted all avenues to authenticate the true owner(s) of the land before entering into the sale agreement, the plaintiffs claim was unsustainable in law. In support of the defence, the 3<sup>rd</sup> defendant filed a list of documents dated February 7, 2022.
  5. Following leave of court, the parties filed further witnesses' statements and list of documents. The plaintiff filed a list of issues and case summary dated July 5, 2017, October 31, 2014, and further lists of witnesses dated July 5, 2017 and December 13, 2018. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants filed case summaries, a list of documents dated July 18, 2016, further list of witnesses and a fresh list of documents dated March 20, 2019, witness statements dated February 22, 2022, May 10, 2022 and a supplementary list of documents dated May 10, 2022. All these formed part of a bundle of documents dated July 12, 2022.
  6. At the trial, Henry M'Arungu Mwangathia testified as PW 1 and adopted his witness statement dated July 4, 2017 as his evidence-in-chief. His testimony was that on or about 1993, his family acquired approximately 50 acres of land in an area described as New Kiare/Mituntu Adjudication Section. He said that he developed the land, built a traditional home and started planting food crops. Further, PW1 told the court that his friend, the 1<sup>st</sup> defendant sought for a portion of his land to cultivate cotton which he readily agreed to and gave him 0.50 acres. He testified that in May 2012, he noticed that the 3<sup>rd</sup> defendant had allegedly leased started mining and extracting murrum from his land allegedly under the consent of the 1<sup>st</sup> defendant. PW 1 said that his efforts to stop the 3<sup>rd</sup> defendant extracting the murrum from his land through his son were in vain, since the 3<sup>rd</sup> defendant alleged that he had bought the murrum from the true owner, the 1<sup>st</sup> defendant. PW 1 told the court that he reported the matter in writing to the area chief and later on to the District Commissioner who ordered the 1<sup>st</sup> & 3<sup>rd</sup> defendants to vacate the land.
  7. PW 1 said that the 1<sup>st</sup> & 3<sup>rd</sup> defendants defied the District Commissioner's directives. On top of this, PW1 said that the 1<sup>st</sup> defendant even purported to sell some portions of his land to the 4<sup>th</sup> and 5<sup>th</sup> defendants. He produced demand letters that he wrote to the 3<sup>rd</sup> defendant dated March 26, 2012 as



P Exh No (1) and (2), chief's letter dated May 15, 2012 to the DC as P Exh No (3), his letter dated June 26, 2012 to the 3<sup>rd</sup> defendant as P Exh No (4), a reply to his letters from the 3<sup>rd</sup> defendant as P Exh No (5), a consent to sue from the District Land Adjudication Officer dated October 26, 2012 as P Exh No (6), a demand letter from his lawyers dated August 11, 2012 as P Exh No (7), a confirmation letter from the District Land Adjudication Officer dated September 11, 2012 as P Exh No (8), a sale agreement dated March 1, 2012 as P Exh No (9), a chief's letter dated March 22, 2012 as P Exh No (10) and another chief's letter to the 3<sup>rd</sup> defendant as P Exh No (11). In cross-examination, PW 1 said that his land was at Gathirine Athanja Adjudication Section, described as Parcel No 2. PW 1 told the court that the advocate who cross-examined him on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants. Mr Kaume was actually the chairman of the Adjudication Committee in the area where the suit land was situated. He did not however produce any document showing that he had been recorded as the owner of the land he was claiming to be his.

8. Fredrick Arungu was PW 2 a son of PW 1, he adopted his witness statement dated August 22, 2013 as his evidence-in-chief. He confirmed that at the time the suit was filed, the land had not been allocated a parcel number by the adjudication committee. PW 2 said that the 1<sup>st</sup> defendant was allowed or licensed to till a portion of their land in 2011, through an oral agreement temporarily only for him to decline to surrender the land. Similarly, PW2 told the court that instead of surrendering the land, the 1<sup>st</sup> defendant allegedly started selling the murrum from the suit land to the 3<sup>rd</sup> defendant on top of selling other portions to third parties among them the 4<sup>th</sup> & 5<sup>th</sup> defendants.
9. PW 2 stated that the trespass dispute was handled at the area chief's office on May 15, 2012 whose decision they did not agree with.
10. Asked about how much land was taken up, PW 2 said that the 1<sup>st</sup> defendant had unlawfully taken approximately 19.5 acres out of their 50 acres. He confirmed that a Village Trust Fund Technical Training Institute was also in occupation of the land out of an alleged agreement of sale from the 1<sup>st</sup> defendant. Additionally, PW 2 said that it was not possible to resort to the internal dispute mechanism under the adjudication process such as A/R objection since the adjudication process had not reached that stage at the time the suit was filed. PW 2 clarified that the suit land was distinct and had known boundaries. He however denied that the dispute over the land was handled by the Njuri Ncheke council of elders. PW 2 testified that the 3<sup>rd</sup> defendant in one of the meetings came with a cheque of Kshs 100,000/= for the murrum but the parties declined to receive it, since they could not agree on the true owner of the land.
11. In re-examination, PW 2 said that the 1<sup>st</sup> defendant allegedly dealt out the land with both the Technical Training Institute and the 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> defendants without any proprietary rights since it was PW 1 who initially gathered the land and took possession before the area was declared an Adjudication Section.
12. Stephen Kio was PW 3. He adopted his witness statement dated December 13, 2018 as his evidence-in-chief. As a brother to PW 1, he confirmed that it was PW 1 who gathered the disputed land and leased out a portion to the 1<sup>st</sup> defendant to plant cotton in 1993, measuring ½ an acre of land only for PW 1 to discover later on that the 1<sup>st</sup> defendant had allegedly sold out or let a portion of the land to third parties. PW 3 said that the 1<sup>st</sup> defendant was only authorized to plant cotton for two seasons and vacate the land. He clarified that the 1<sup>st</sup> defendant allegedly sold all of the land and left the locality. M'Mpui M'Anampiu and Andriano Kauian testified as PW 4 & 5 respectively. They adopted their witnesses' statements dated August 22, 2013 as their evidence in chief an associated their testimony as that of PW 1, 2 & 3.



13. DW 1 was Bunjah Daniel, a Land Adjudication Officer in Tigania East & Central. He was called to verify the ownership and the status of the suit land. His evidence was that the disputed land was recorded as Parcel No 286 Ngaremara Adjudication Section within Tigania East Sub-County, in the name of the 1<sup>st</sup> defendant. He testified that the area was declared an adjudication section on March 11, 2016. At the time of his testimony he said the area was at the demarcation stage, governed by the [Land Adjudication Act](#) though affected by then pending Meru Petitions No 5, 10 & 19 of 2019. He recommended that the court guided by Section 30 (1) – (3) of the [Land Adjudication Act](#) should terminate the suit so that the dispute could be processed by the District Land Adjudication and Settlement Officer. He clarified that the suit land was within the Ngaremara Adjudication Section and not New Kiare Adjudication Section. He produced the letter of confirmation of ownership in favour of the 1<sup>st</sup> defendant as D Exh No (1).
14. In cross-examination, DW 1 clarified that in 2012, the Suitland could not have been demarcated since the adjudication process commenced in 2016 upon declaration as an adjudication section. As regards P Exh No (8) dated September 11, 2012, DW 1 said that was a valid letter from the Tigania East Adjudication Section on that at the time, there was a pending boundary dispute case. He however said that such a letter could not amount to a confirmation letter in favour of the plaintiffs. As to the issue of the boundary dispute alluded above, DW 1 said that the same was resolved through the creation of the Ngaremara Gambella Adjudication Section on March 11, 2016. Further, DW 1 said that Parcel No 286 was not affected by Meru ELC Petition Nos 5, 10 & 19 of 2019.
15. DW 2 was Benson Mutanya representing the 3<sup>rd</sup> defendant. He adopted his witness statement dated September 19, 2021. He was however stood down since he did not have the bundle of documents at the time he was testifying. He was never recalled to complete his evidence or produce the 3<sup>rd</sup> defendant's list of documents.
16. DW 3 was Samuel Muriira, the 1<sup>st</sup> defendant. His testimony was that there was a dispute on ownership with the 1<sup>st</sup> plaintiff at Njuri Ncheke's panel of elders when the 1<sup>st</sup> plaintiff attempted to enter his land. He said that the panel of elders ruled in his favor. Further, DW 3 told the court that the dispute was also handled at the area chief's office who declined to hear the matter since the land was at the time was undergoing land adjudication. He produced a chief's letter dated March 22, 2012 as D Exh No (1 & 2), a Njuri Ncheke letter as D Exh No (3), the elder's proceedings as D Exh No (4), a function permit as D Exh No (5), a sale agreement dated March 1, 2012 as D Exh No (6), a letter from the 2<sup>nd</sup> defendant dated August 23, 2012 as D Exh No (7), a payment of compensation form from the 3<sup>rd</sup> defendant as D Exh No (8), a letter to the 3<sup>rd</sup> defendant dated November 15, 2012 as D Exh No (9) and lastly, his witness statement dated May 22, 2022 as D Exh No (10). The plaintiffs failed to attend court to cross-examine the defence witnesses the date having been taken by consent.
17. DW 4 was Michael Baari Igweta. He adopted his witness statement dated May 10, 2022. DW 5, DW 6 & DW 7 were Emanuel Mungathia, Aurelia Muthoni Mitheu the 5<sup>th</sup> defendant, and Oliver Kirimi Karinja the 2<sup>nd</sup> defendant. DW 5 confirmed that he sat in the Njuri Ncheke panel of elders. Similarly, DW 7 said that her organization the technical bought land from the 1<sup>st</sup> defendant after undertaking a due diligence and establishing that he was the bonafide owner of the land.
18. At the close of the defence case parties were directed to file and exchange written submissions by January 3, 2023. The plaintiffs submitted that going by P Exh numbers 1-11 they proved ownership of the suit land and the circumstances in which the 1<sup>st</sup> defendant was licensed to temporarily use the land for two seasons, surrender it to the 1<sup>st</sup> plaintiff only for him to illegally and fraudulently take it away from the 1<sup>st</sup> plaintiff for disposal to the rest of the defendants.



19. Concerning the 1<sup>st</sup> defendant's case, the plaintiffs submitted that DW 1 was a mere licensee of Parcel No 286 Ngaremara/Gambella Adjudication Section and not their parcel P/No 268. It was submitted that DW 1 was unable to explain how he acquired the land in the first instance, its size, and who his neighbours were, unlike the plaintiffs.
20. The plaintiffs submitted that the letters sent to the defendants were ignored, the Njuri Ncheke elders failed to hear their side of their story, the sale agreements were a nullity; an assistant chief of Laciathuriu Sub-location did not exist, women could not sit in a Njuri Ncheke meeting at the time as alleged by DW 5; the compensation money was unlawfully taken by the 1<sup>st</sup> defendant. The plaintiff submitted that DW 3 did not own the suit land and that the 3<sup>rd</sup> defendant never exercised any due diligence but only colluded with DW 1 and a chief from another location to take away the murram. It was submitted that, the 3<sup>rd</sup> defendant failed to contact the neighbors or the local administrators of the area to verify ownership of the 1<sup>st</sup> defendant before writing an agreement with him.
21. Further, the plaintiffs submitted that DW 4 & DW 5 were unable to produce any parcel numbers issued to them during the alleged adjudication process. In summary, the plaintiff submitted that the land adjudication officer ignored the history of the suit land and fraudulently allocated their land as Parcel No 286 to the 1<sup>st</sup> defendant while the suit was pending before the court. Reliance was placed on *Jamila Ebrahim Attanwalla & another vs Hussein Abdulaziz & another* (2014) eKLR on the proposition that a license is revocable by the licensor as held in *Kamau vs Kamau* (1984) 1KLR (E & L) which could not be used to pass any interest in land to a third party.
22. For the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants, it was submitted that the issues for determination were:
  - a. Who were the legal owners of the suit land?
  - b. If the 1<sup>st</sup> defendant lawfully entered into a sale agreement with the 4<sup>th</sup> & 5<sup>th</sup> defendants.
  - c. If the plaintiffs interfered with the defendant's possession of the land.
  - d. If the plaintiffs were entitled to the prayers sought.
23. On the issue of ownership, the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants submitted that the plaintiffs were not the owners of the suitland since they failed to challenge D Exh No's (1), (2), 6, 7 & 8. Further the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> & 5<sup>th</sup> defendants submitted that the alleged New Kiare/Mituntu adjudication section was different and distinct. That at inception, PW 1 admitted that he was not aware of his parcel number(s); the consent to sue lacked a parcel number; that the alleged license to the 1<sup>st</sup> defendant was not substantiated; the 1<sup>st</sup> defendant did not require a consent to sell or lease out his land to the plaintiff; the evidence by DW 1 was not challenged; the suit offended Sections 10 & 29 of the *Land Adjudication Act* and that the evidence of DW 3 – 6 was consistent that the plaintiffs had no proprietary rights on the land which land, in any event, was not situated in New Kiare Adjudication Section but Ngaremara/Gambella Adjudication Section in Tigania East and not Tigania West. The defendant relied on *Elias Ntwiga vs LAO meru south & 7 others* (2018) eKLR & *Joseph Kiruja Maingi vs Rose Nambura & 2 others* (2021) eKLR.
24. The court has considered the pleadings, evidence tendered and written submissions. The issues for the court's determination are; -
  - i. If the suit land is the same as pleaded by the parties.
  - ii. If the Suitland falls within a known Adjudication Section and if so which one.
  - iii. Whether the suit is properly before the court.



- iv. If the plaintiffs have proved any fraud or illegality against the defendants in the manner that they entered into, acquired and or extracted benefits from the suit land.
  - v. If the plaintiffs are entitled to the prayers sought
  - vi. What is the order as to costs?
25. It is trite law that parties are bound by their pleadings and issues flow from the pleadings. See *Mutinda Mule vs IEBC* (2014) eKLR. In this suit, the primary pleadings were the plaint dated December 21, 2012, the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants' defence dated February 1, 2013, a purported amended defence dated July 19, 2019 by the 3<sup>rd</sup> defendant's reply to the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants defence dated February 18, 2013.
  26. At paragraph 5 of the plaint, the plaintiffs described the Suitland as a chunk of land measuring 50 acres in New Kiare/Mituntu Adjudication Section which the defendants allegedly trespassed into and unlawfully dwelt with in March 2012. The plaintiffs at paragraphs 7 & 8 of the plaint pleaded the particulars of the alleged fraudulent transactions and activities among the defendants regarding the sale or lease while aware that the suit land belonged to the 1<sup>st</sup> plaintiff.
  27. In answer to the plaint, the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants denied the contents of paragraph 5 of the plaint and in the particulars, the alleged fraud or interference with the alleged plaintiffs land. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> & 5<sup>th</sup> defendant failed to plead specifically the alnd parcel number(s) and the date in which they acquired the suit land.
  28. On its part, the 3<sup>rd</sup> defendant denied the contents of paragraphs 5, 6 & 7 of the plaint. As to paragraphs 8 & 9 of the plaint, the 3<sup>rd</sup> defendant admitted to having lawfully bought murram from the 1<sup>st</sup> defendant as the rightful owner and which the 1<sup>st</sup> plaintiff was aware of but did not object to since he had no proof of ownership of the suit land.
  29. The 3<sup>rd</sup> defendant averred that the issue of ownership of the suit land between the 1<sup>st</sup> defendant and the 1<sup>st</sup> plaintiff was settled by Njuri Ncheke council of elders as well as by the area chief.
  30. Looking at the pleadings and evidence before court, there is no doubt that the plaintiff produced no record of the land, its adjudication status, locality and its description in any of the Adjudication sections or administrative district it was falling under. P Exh No 2 indicated that the land was falling in Tigania East District which was yet to be declared an Adjudication Section. P Exh No 3 mentioned the land as falling in an Adjudication Section. P Exh No (6) referred the land to be within Tigania Adjudication Area, within Tigania District and in New Kiare/Mituntu Adjudication Section. P Exh No (7) indicated that the dispute was referred for arbitration before the chief Buuri location since the land was situated within his area. P Exh No (8) stated that the land was within Tigania Adjudication area whose adjudication process had been stopped by the court in Meru HC Misc Application No 100 of 2010. The letter described the land in dispute as falling between the disputed Tigania East/West boundary with no ownership dispute. In P Exh No 9, the land sold to the Village Trust Fund was described as falling along Amos -Muriri – Isiolo road near the junction. D Exh No (1) stated that the land was falling under Ngaremara/Gambella Adjudication Section which was affected by the pending Meru ELC Petition No 5/19, 10/2019 and 19/2019.
  31. Looking at all these conflicting facts, documents and descriptions the court comes to conclusion that the plaintiffs failed to prove the exact locality and the description of the land allegedly trespassed into and unlawfully sold or leased out by the defendants in March 2012.



32. The next issue is whether the land in dispute fell under an adjudication section. P Exh No 6 & 7 indicated that the area was falling under an adjudication section. This was confirmed by D Exh No (1) and the testimony of DW 1.
33. The plaintiff also admitted that the area had been declared an adjudication section. Given the foregoing evidence, there is no doubt that the subject land falls under Ngaremara/Gambella Adjudication Section. Even though the consent to sue was dated October 26, 2012, it was not court stamped alongside the plaint. It was only filed alongside the plaintiffs' documents dated August 28, 2013. If then the plaintiffs were referring to the land as falling under New Kiare/Mituntu Adjudication Section and recorded in their names in 2012, they failed to produce either a gathering/demarcation book and or a copy of the register to prove ownership.
34. Similarly, if after at all the land was demarcated in plaintiffs favour, the plaintiffs failed to amend the plaint to include the parcel number. The consent to sue issued was therefore defective to the extent that it did not include the parcel numbers and was not accompanied or supported by a publication of New Kiare/Mituntu Adjudication Section.
35. The land was declared an adjudication section as Ngaremara/Gambella Adjudication in 2016, during the pendency of this suit. This was confirmed by DW 1 who said that the suit improperly before the court since the court lacks jurisdiction to determine ownership or ascertain the interests of the respective parties on land under adjudication, by dint of Section 29 & 30 of the Land Adjudication Act. See Tobias Ochola Osidi & 13 Others -vs- Cyprianus Otieno Ogola & 5 Others (2013) eKLR. On that account alone, I find the lacking jurisdiction to hear and determine the suit.
36. As to whether the plaintiffs proved the irregularities, fraud and illegalities in the manner that the defendants acquired and or trespassed into the land to the detriment of their rights, it is trite law that fraud or illegality must not only be pleaded but specifically on a balance higher than in the ordinary suit be proved. In the case of Wambui vs Mwangi & 3 others (Civil appeal 465 of 2019) (2021) KECA 144 (KLR) (CIO) November 19, 2021) (Judgement) the court cited with approval Black Laws Dictionary 9<sup>th</sup> Edition page 131 where fraud was defined as "Knowing, misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment". The court cited with approval Arithi Highway Developers Ltd vs West End Ltd (2015) where it was held that the court would not provide succor for any crook using forgery, or deceit to acquire a legal or valuable title from a legally innocent proprietor or to sanction a claim to entitlement to property as a purchaser of value without notice.
37. Since the court has found that it cannot determine who owns the suitland, while the land is under the adjudication process, it goes without saying that the plaintiffs' case is unsustainable until their interests to the land are ascertained through the land adjudication process. The plaintiffs also failed to specifically plead, prepare, file or produce any valuation reports for the damage caused to the suit land for a defined parcel of land to be entitled to the reliefs sought.
38. Consequently, I find the plaintiffs have failed to prove the case to the required standards. The same is dismissed with costs.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 22<sup>ND</sup> DAY OF FEBRUARY, 2023**

In presence of:

C/A: Kananu



Mr. Mwendwa for plaintiff

1<sup>st</sup> defendant

M.G Kaume for 1- 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants

**HON. C.K. NZILI**

**ELC JUDGE**

