



REPUBLIC OF KENYA



**Amolo & 3 others v Chunga & 4 others (Environment & Land Case
E005 of 2022) [2023] KEELC 729 (KLR) (16 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 729 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT & LAND CASE E005 OF 2022
AY KOROSS, J
FEBRUARY 16, 2023**

BETWEEN

**JOSHUA CHRISTOPHER AMOLO 1ST PLAINTIFF
SIMON OTOK AMOLO 2ND PLAINTIFF
RAPHAEL JUMA 3RD PLAINTIFF
DICK KOLA AMOLO 4TH PLAINTIFF**

AND

**PHILLIP OBONYO CHUNGA 1ST DEFENDANT
WILLIAM ODHOCH CHUNGA 2ND DEFENDANT
GEORGE ODHIAMBO CHUNGA 3RD DEFENDANT
CAREN AWINO OTIENO 4TH DEFENDANT
PHILLIP MANGO CHUNGA 5TH DEFENDANT**

JUDGMENT

1. By a notice of motion dated 22/03/2022, the plaintiffs who are all siblings instituted suit against the defendants who were the registered proprietors of land parcel no. North Sakwa/Maranda/40 ('suit property'). The defendants were also beneficiaries of the estate of Romanus Chunga Mango ('Romanus'). The plaintiffs claimed they had acquired 4 Ha ('disputed portion') out of the suit property which measured 28.5 Ha by customary trust or in the alternative, by adverse possession. They identified the following issues for this court's determination;
 - a. Whether the plaintiffs had an overriding interest over the disputed portion within the meaning of Section 28 (h) of the *Land Registration ACT*;



- b. If (a) was in the affirmative, whether the plaintiffs were entitled to a declaration that they held a beneficiary interest under customary trust of this disputed portion;
 - c. Whether the plaintiffs were jointly and severally entitled to an order of subdivision and transfer of the disputed portion within 90 days from the date of judgment or the deputy registrar or authorized officer do execute all necessary documents to confer the disputed portion to the plaintiffs;
 - d. As a result of interference by the defendants, whether the plaintiffs were entitled to general damages;
 - e. In the alternative, whether the plaintiffs were entitled to a declaration that they were adverse possessors of the disputed portion and court should vest it upon them;
 - f. If (e) was in the affirmative, whether the plaintiffs were entitled to an order that the defendants do excise the disputed portion and execute all the requisite documents and register the plaintiffs as the owners thereof;
 - g. In the event of failure to comply with (f) above, an order do issue directing the County Land Registrar, Siaya or such other officer as shall be delegated by the County Land Registrar, Siaya within Bondo sub county to survey, ascertain and excise the disputed portion for purposes of registration in the plaintiffs' favour.
 - h. Who should bear the costs of this suit.
3. The notice of motion was accompanied by the plaintiffs' supporting affidavits which were all dated 22/3/2022 together with several annexures in support of their case which were a title document of the suit property, a green card, a bundle of photographs and a letter by a chief.
 4. The 1st plaintiff deposed inter alia, they had been in occupation and possession of the disputed portion for over 60 years in a manner that was peaceful, without force or hindrance and had put up their developments on it; they buried family members therein; none of the defendants resided therein; other members of Kamayunje clan in which they belonged to resided on other portions of the suit property and they shared a common ancestry with the defendants.
 5. The 2nd, 3rd and 4th plaintiffs' depositions were of a similar tone to that of the 1st plaintiff and the only variations were that they had lived on the suit property for 40 years. They built their individual houses 15 years ago. They cultivated the disputed portion and Philip Mango (now deceased) held the suit property in trust for Kamayunje clan.
 6. In opposition, the 1st defendant with the authority of his co-defendants filed a replying affidavit dated 22/04/2022. He deposed inter alia, he and the co-defendants were the registered owners of the suit property having succeeded Romanus's estate and Romanus had acquired the suit property by succeeding his own father's estate Philip Mango (deceased); the suit property was bereft of trusteeship and Kamayunje clan was large and its members did not necessarily live on the suit property and Kamayunje was composed of 5 sub-clans- Okoyo (Philip Mango's sub clan), Koyundi, Wagonglo (Gumba's clan), Nyamwanga and Ochieng Miero.
 7. Further, he averred, the plaintiffs' mother Maritha Owala Amolo ('Maritha') relocated to the suit property in 1969 after her remarriage to Gumba; at Maritha's petition, Kamayunje clan elders acceded to her request and allowed her to reside on the suit property together with other 5 clan families; by virtue of the consent to Maritha, the plaintiffs occupied it; Maritha and Gumba did not sire any children; the defendants utilized 5 acres of the suit property; for over a decade, the 1st and 4th plaintiffs



had not possessed or occupied the suit property; the 2nd and 3rd plaintiffs had homes on the suit property; The plaintiffs had not listed all families who were in occupation of the suit property and all negotiations between the parties had failed.

8. Despite Patrick Otieno Juma swearing a replying affidavit on 22/04/2022, he did not testify.

Plaintiffs' rebuttal

9. In rebuttal, the 1st plaintiff swore a further affidavit dated 18/07/2022 in which he deposed inter alia; trust need not be registered; probate proceedings did not hinder his claim; Kamayunde was composed of 3 sub clans-Osir (plaintiffs' sub clan), Nyamwanga and Oyundi; Maritha was never married to Gumba; due to affinity, Maritha occupied the suit property as of right and not out of good faith or invitation; he and the 4th plaintiff had homes on the suit property and they were in occupation and possession thereof; Maritha did not enter the suit property in 1969 and Maritha was buried on it in 2013.
10. Further, upon his biological father's death in 1942, Maritha was inherited by his uncle (brother to his father); they lived on the suit property without the consent of the defendants and, he was the clan spokesman.

Plaintiffs' evidence

11. The 1st plaintiff testified as PW1 and he relied on his supporting affidavit, further affidavit and several documents.
1. The assertions made in the 1st plaintiff's witness statement were analogous to those contained in his affidavits and this court need not replicate them. In his oral testimony, he testified he had occupied the suit property for 50 years and he had come to court because the defendants had laid a stake on it.
 2. During cross examination, he testified that Okoyo was not a sub clan of Kamayunje; his biological father was not buried on the suit property; Maritha acquired membership to Kamayunje clan by marriage; his biological father belonged to Osir clan; Maritha was married to Gumba; the defendants were not his family members; the photographs he produced in court did not show his house; the families of Jorim Gumba, Oolo Milang and Walter Tombo also lived on other portions of the suit property and he had conducted a survey on the disputed portion. However, the survey documents had not been tendered to court.
12. The 3rd plaintiff testified as PW2 and in a similar fashion, he relied on his supporting affidavit. In his oral testimony, he testified that he was 68 years old and he entered the suit property in 1969 and built a house therein in 1992. Some people interfered with his right to occupancy in 2016 and he was claiming 1 Ha of land from the disputed portion. He pointed out his house from the photographs produced by PW1.
13. On cross examination, he testified that Maritha died on 9/01/2013 and was buried on the suit property. The defendants were not his family members. He knew Romanus but they were not close. Maritha entered the suit property in 1969 and Kamayunje had 3 sub clans.
14. The 2nd plaintiff testified as PW3 and he relied on his supporting affidavit. In his oral testimony, he testified that he put up his house on the suit property in 2010. He pointed out his house, his son's and those of PW3, PW4 and Maritha's from the photographs that were produced by PW1. From the photographs he also identified Maritha's gravestone and that of PW1's daughter.



15. During cross examination, he testified that he was 70 years old. He entered the suit property in 1982. The suit property was clan land. During 1st registration, Philip Mango (deceased) was deceased; he died in 1973. Meshack Ouma Tombo also lived on the suit property. PW1 lodged a caution over it on 19/9/2018 claiming beneficiary interest. Notwithstanding PW1 once resided on the disputed portion, he continued cultivating it. The trusteeship over the suit property was clan trusteeship and Philip Mango (deceased) was registered over it because he was the clan's spokesman. Maritha entered the suit property in 1969; Christopher, Maritha's deceased husband was buried on another parcel of land. After Maritha's demise, her house was occupied by workers because culturally, her children could not use it and currently, the clan did not have a spokesman but a clan elder who was the 3rd plaintiff.
16. On re-examination, he testified that in 1965, a dispute took place between the boundaries of Yimbo and Sakwa areas and because Kamayunje was the frontier clan, Philip Mango (deceased) was appointed as the clan representative for purposes of quelching the dispute and he did not know the circumstances that led to the deceased Philip Mango's registration.
17. The 4th plaintiff testified as PW4 and he relied on his supporting affidavit. In his oral testimony, he testified the plaintiffs had resided on the suit property since childhood. He knew the disputed portion was their land.
18. On cross examination, he testified that his father was Christopher Omolo Owuor who had been buried at Ujwanga. They moved onto the suit property in 1969. He was 63 years old. He built a house on the disputed portion in 1988-1989. Meshack Ouma was known to him. They had surveyed the disputed portion about 2-3 years ago.
19. During reexamination, he testified that Ouma Tombo lived on a portion of the suit property.

Defendants' evidence

20. The 1st defendant testified as DW1 and he relied on his replying affidavit. This court need not restate the depositions therein.
21. It was his oral testimony he and the plaintiffs belonged to Kamayunje clan but from different sub clans. The plaintiffs had utilized the suit property for 12 years but did not own it. The 1st plaintiff could not have entered the suit property in 1969; Gumba descended from Ochieng Miero sub clan. Negotiations with the plaintiffs through the local administration for him to hive off the plaintiffs' compound and assign it to them was repulsed by the plaintiffs. The plaintiffs' 5th brother one Francis had not been joined to these proceedings; the defendants had permitted people to use the suit property. The plaintiffs were not entitled to the disputed portion. The 4th defendant lived in Ujwanga.
22. During cross examination, he testified inter alia, all Chungas including the defendants resided in Nyambenge and most Chungas including Philip Mango (deceased) and Romanus were buried in Nyambenge. He was 41 years old. He did not know for how long the 2nd and 3rd plaintiffs' structures had been on the suit property. He did not know if Maritha's gravesite was on the suit property. The defendants were in the process of subdividing it. He did not start engaging the plaintiffs after the instant suit had been filed. The suit property was big and he did not know the activities that were carried out therein. He did not know Meshack Shadrack Ouma Tombo or Gilbert Onyango Ogola and Nyambenge was 20 kilometers away from the suit property.
23. In reexamination, he testified that the defendants did not live on the suit property and he had never allowed Jorim Gumba or Maritha to use the suit property.



Parties' written submissions.

24. As directed by the court, Mr. Odongo, counsel for the plaintiffs, filed his written submissions dated 18/11/2022. Counsel placed reliance on the issues that were pleaded in the plaintiffs' pleadings. On the issue of customary trust, counsel submitted that from the evidence adduced, it was clear that the plaintiffs and other occupants of the suit property were from Kamayunje clan and they had established customary trust which was an overriding interest over land.
25. Counsel placed reliance on Section 28 of the *Land Registration Act* and several authorities which held that occupation and possession of land amounted to overriding rights including the well cited Supreme Court of Kenya decision of *Isack M'Inanga Kiebia v Isaaya Theuri M'Lintari & another* [2018] eKLR where the apex court laid out guidelines for determination of whether a claim of customary trust existed as follows;
- '1. The land in question was before registration, family, clan or group land 2. The claimant belongs to such family, clan, or group 3. The relationship of the claimant to such family, clan or group is not so remote or tenuous as to make his/her claim idle or adventurous. 4. The claimant could have been entitled to be registered as an owner or other beneficiary of the land but for some intervening circumstances. 5. The claim is directed against the registered proprietor who is a member of the family, clan or group.'
26. In applying these principles, counsel submitted it emerged from the evidence that the suit property was before registration clan land. The plaintiffs and defendants came from the same clan and their relationship was not remote. Save that Philip Mango (deceased) was a clan spokesman, the plaintiffs' could have been registered at 1st registration. The defendants were the current registered proprietors and the plaintiffs were in occupation and possession in a manner that was peaceful, uninterrupted and hostile to the registered owners. Counsel placed reliance on the Court of Appeal decision of *Mtana Lewa v Kahindi Ngala Mwangandi* (2015) eKLR where the court stated:
- 'Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person as assertion of his title for a certain period, in Kenya its twelve (12) years.'
27. Counsel contended the succession of a deceased person's estate did not extinguish a claim of adverse possession and he placed reliance on the case of *Grace Jesoimo Tarus & another v Sarah Rop & 2 others* [2018] eKLR.
28. Mr. Siganga, counsel for the defendants filed his written submissions dated 5/12/2022. On statutory provisions, counsel held that Section 25 upheld sanctity of title while Section 25 (2) thereof dealt with identifiable trusts. Counsel asserted the plaintiffs had failed to lay stake on their claim during various probate proceedings over the suit property. In a similar fashion, counsel placed reliance on the case of *Isack M'Inanga Kiebia v Isaaya Theuri M'Lintari* (Supra). He also relied on *Tabitha Wambui Muchemi v Ziporah Njoki Muchemi* (2017) eKLR where the court in its dicta stated;
- 'In the case of *Peter Moturi Ogutu v. Elmelda Basweti Matonda & 3 others* (2013) e KLR it was stated:
- 'In the court of appeal cases of, *Muthuita .vs. Muthuita* (1982-88) 1 KAR 42 at 44 and *Njenga Chogera .vs. Maria Wanjira Kimani & Others* [2005] e KLR, it was held that customary law trust is proved by leading evidence on the history of the suit property and the relevant customary law on which the trust is founded. Interests in land arising from



customary law trusts are now expressly recognized under the provisions of section 28 (b) of the *Land Registration Act*, No.3 of 2012...’

29. Counsel also placed reliance on the case of *Dominic Otieno Ogunyo & 2 Others v Helida Akoth Walori* (2022) eKLR where the court held that a person who alleges customary trust must prove the intent of parties or family members that a suit was to be held in trust for them.
30. On the issue of customary trust, counsel submitted that the plaintiffs had not tendered any documentary evidence to prove trusteeship or even proffer evidence from an independent witness to corroborate their claim. Further, the suit property did not belong to Kamayunje clan. Counsel argued the plaintiffs had not proved their claim of adverse possession.
31. On the claim of adverse possession, counsel submitted that the occupation by the plaintiffs albeit open was not peaceful and the succession of the estate of Romanus interfered with computation of time.

Analysis and determination

32. I have considered the parties’ evidence including documents that were produced by PW1 in support of the plaintiffs’ case as well as the submissions by both counsels. Being guided by the provisions of law and judicial precedents that have been well articulated in counsels’ submissions, I shall now proceed to consider the merits or otherwise of the plaintiffs’ claim to the suit property and plausibly the two main issues for determination are;
 - I. Whether the plaintiffs have proved customary trust subsisted over the disputed portion.
 - II. If the answer to (I) above is in the negative, whether the plaintiffs have proved their claim of adverse possession to the required standards.
33. Before I delve into the issues for determination, I must deal with the manner in which the plaintiffs have moved this court in their pleadings; the header of their pleadings reads “notice of motion” instead of “originating summons”. Parties have throughout the entire proceedings referred to them as “originating summons”. The manner in which the “notice of motion” was crafted leaves no shadow of doubt that the court was moved by way an “originating summons” save for a typographical error. Blunders will often be made and it is my considered view that this was a technical error that did not go to the root of the issues for determination and it is curable by Article 159(2) (d) of *the Constitution*. In any case, the ‘originating summons’ was converted into a plaint by this court and likewise the replying affidavit was deemed a defence.

I. Whether the plaintiffs have proved customary trust subsisted over the disputed portion

34. As rightfully submitted by both counsels, Section 28 of the *Land Registration Act* recognizes customary trust as one of the overriding interests over land. According to Section 25 (b) of the same Act, it is an encumbrance on the land. This provision of law provides as follows;

‘25. Rights of a proprietor.

- (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.’ Emphasis added.

Whilst Section 28 (b) of the same Act recognizes customary rights as an overriding right and states thus;

‘28. Overriding interests.

Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register—

- (a)
- (b) trusts including customary trusts;
- (c)
- (d)
- e)
- (f)
- (g)
- (h) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;
- (i)
- (j)

35. Within the provisions of Section 25 of the *Land Registration Act*, certain trusts can still be noted in the register. Once so noted, such trusts, not being overriding interests, bind the registered proprietor on the terms noted in the register. Contrary to Mr. Siganga’s assertions, it is evidently clear from the provisions of Sections 25 (b) and 28 (b) that customary trusts are not usually noted on the registers of parcels of land; they subsist on land.

36. The Supreme Court of Kenya in the case of *Isack M’inanga Kiebia v Isaaya Theuri M’lintari* (Supra) settled the applicability of customary trust in Kenya and from this decision, apart from the scenarios that have been depicted by the submissions, one of the ways in which such a claim could be laid was by occupation and actual possession. In this decision, the court expressed itself thus at paragraph 58;

‘The rights of a person in possession or actual occupation of land, as previously envisaged under Section 30 (g) of the Registered *Land Act*, have now been subsumed in the “customary trusts” under Section 25 (b) of the *Land Registration Act*. Thus under the latter Section, a person can prove the existence of a specific category of a customary trust, one of which can arise, although not exclusively, from the fact of rightful possession or actual occupation of the land.’



37. Since such overriding rights are an encumbrance on land, the demise of Philip Chunga (deceased) and Romanus did not interfere with the encumbers which subsisted over the suit property. This is founded on Section 62 of the [Land Registration Act](#) which provides as follows;
- ‘(1) Subject to any restriction on a person’s power of disposing of any land, lease or charge contained in an appointment, the personal representative or the person beneficially entitled on the death of the deceased proprietor, as the case may be, shall hold the land, lease or charge subject to any liabilities, rights or interests that are unregistered but enforceable and subject to which the deceased proprietor held the land, lease or charge, but for the purpose of any dealing the person shall be deemed to have been registered as proprietor of the land lease or charge (Sic) with all the rights conferred by this Act on a proprietor who has acquired land, a lease or a charge, as the case may be, for valuable consideration.’ Emphasis added.
38. Having laid customary trust’s legal framework, the question that begs to be answered is whether the plaintiffs’ claim held water. I agree with Mr. Siganga that there must be evidence upon which a court can conclude that a registered proprietor of the land held the same as a trustee for the benefit of others and once this onus was discharged, then the court would render its decision on the intent of family members.
39. From the evidence adduced, it was undisputed inter alia, Maritha was married the 1st plaintiff’s father who died in 1942 (his name was not disclosed), upon his demise she got married to Christopher Omolo Owuor who was a brother to the 1st plaintiff’s father and with him she sired children - the 2nd to 4th plaintiff; the 4th plaintiff who was her last child was born in 1959; her 1st and 2nd husband were buried in Ujwanga; she later got married to Gumba who resided on the suit property and that is how she entered the suit property in 1969.
40. It was also undisputed Maritha did not sire children with Gumba; the plaintiffs’ fathers, Gumba and Romanus were from Kamayunde clan; the 2nd and 3rd plaintiffs had homes on the suit property; Kamayunde clan was large with membership spread out over different parcels of land; some of the plaintiffs occupied the suit property with other clan members; the defendants had never resided on the suit property- they resided in Nyambenge; the 1st and 2nd registered owners had been buried in Nyambenge and, Philip Chunga (deceased) died before land adjudication and the plaintiffs and defendants did not have close family ties.
41. In dispute were, the sub clan membership of Kamayunde, whether the 1st and 4th plaintiffs occupied and possessed the disputed portion and whether the plaintiffs claimed ownership of the disputed portion by being part of Kamayunde or otherwise.
42. Both the plaintiffs and DW1 denied each other’s sub clan membership to Kamayunde. Although DW1 did not list the plaintiffs’ clan as part of Kamayunde, he admitted in his exam in chief that the plaintiffs were Kamayundes. This testimony affirmed that Osir sub clan was part of Kamayunde. Further, DW1 was uncertain to which clan a person belonged to when he contradicted himself that Gumba belonged to Ochieng Miero sub clan yet in his affidavit he averred that Gumba belonged to Wagonglo sub clan.
43. Bearing in mind the intricate process of land adjudication, it was not plausible for Philip Mango (deceased) to have been registered as the proprietor unless there was some level of satisfaction of his familial relationship with the suit property. It is my finding that Kamayunde had 6 sub clans; Okoyo, Koyundi (Oyundi), Wagonglo, Nyamwanga, Ochieng Miero and Osir.



44. Black's Law Dictionary, 11th Edition has defined clan to mean;
- 'A group of people having a common descent and sharing a strong interest and heritage in a particular geographical area.'
45. Taking into account this definition and the tenuous relationship between the plaintiffs and defendants, I am not satisfied that Osir sub clan could trace their ancestry to this particular parcel of land. From the evidence adduced, it would appear that clan membership amongst the Luo was patriarchal. The plaintiff's fathers were buried in Ujwanga. They did not tender any evidence to establish that apart from themselves, other members of Osir sub clan lived on the suit property.
46. The plaintiffs' entry to the suit property could be traced to 1969 when Maritha got married to Gumba. Even if Gumba was a Kamayunde, no evidence was adduced that he was from the Osir sub clan- he either belonged to Wagonglo or Ochieng Miero sub clans. Further, no evidence was led that one could inherit clanship from a step-father. I was unable to trace the footsteps of Osir sub clan beyond the plaintiffs and their claim of customary trust could only lie after Maritha's entry in 1969.
47. PW1 produced photographs which showed that Maritha, PW2, PW3 and PW4 had constructed houses on the disputed portion. Photographs evidencing Maritha's gravestone and that of PW1's daughter were also produced. Apart from PW1 and PW3 who were minors when Maritha got married to Gumba, there was no evidence to contradict the plaintiffs' testimony that they had resided on the disputed portion as Maritha's children. I say so because, notwithstanding her demise, her homestead was still in existence and the residences of 3 of her children were still on the suit property. PW1 who did not have a residence thereon buried his daughter on the suit property. PW3's evidence that PW1 once resided there was not shaken. Further, PW1's alleged continuous cultivation of the disputed portion was not contradicted.
48. In light of this, I am of the humble opinion that the plaintiffs claim of customary trust stood by virtue of possession and occupation. Their testimony was consistent. Though DW1 contended that PW1 and PW4 ceased occupation and possession over a decade ago, he admitted that he did not know the activities that took place on the suit property. Phillip Mango (deceased) was long deceased at the time of 1st registration and the only logical conclusion this court can arrive at was that there were certain intervening circumstances that led to his eventual registration as the 1st registered owner.
49. This conclusion is affirmed by the fact that his (defendant's) family had always resided on a distinct and separate parcel of land in Nyambenge and there were several clan members in occupation and possession of the suit property. Further, despite Gumba's sub clan being separate from that of the plaintiffs and defendants, his (Gumba's) occupation and possession held credence that the land was for Kamayunde clan but assigned to some specific sub clan member.
50. Additionally, there was no tangible evidence that the plaintiffs or their fathers were ever registered as proprietors during 1st registration of any other parcel of land.
51. For the reasons stated above, it is my ultimate finding that the plaintiffs proved on a balance of probabilities their claim of customary trust. The plaintiffs did not lead any evidence on general damages and I shall not award it to them.
52. The plaintiffs shall be at liberty to determine if they will hold the disputed portion as joint tenants or as tenants in common. It is trite law that costs follow the event. The plaintiffs and the defendants are not close family members but are affiliated by clan, in view of the very special circumstances of this case, each party shall bear their respective costs of the suit.



53. Ultimately, I make the following disposal orders;
- a. A declaration be and is hereby made that the plaintiffs jointly hold under customary trust a portion measuring four (4) hectares within land parcel no. North Sakwa/Maranda/40.
 - b. At the plaintiffs' cost, it is hereby ordered that within ninety (90) days from the date hereof, a subdivision and transfer be conducted by the County Land Registrar, Siaya or such other officer as shall be delegated by the County Land Registrar, Siaya within Bondo sub county to survey, ascertain and excise a portion measuring four (4) hectares within land parcel no. North Sakwa/Maranda/40 for purposes of registration in the plaintiffs' favour.
 - c. In default of compliance with order (b) above, the deputy registrar or authorized officer do execute all the necessary documents to confer a portion measuring four (4) hectares within land parcel no. North Sakwa/Maranda/40 to the plaintiffs.
 - d. Each party shall bear their own costs of the suit.

DELIVERED AND DATED AT SIAYA THIS 16TH DAY OF FEBRUARY 2023.

HON. A. Y. KOROSS

JUDGE

16/02/2023

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:

In the Presence of:

Mr. Odongo for the plaintiffs

Mr. Siganga for the defendants

Court assistant: Ishmael Orwa

