

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC SUIT NO. 1257 OF 2014 (O.S)

JOHN OTIENO OBADE & 299 OTHERS.....APPLICANTS

-VERSUS-

TERESIA WAIRIMU KIRIMA.....1ST RESPONDENT
ANNE WANGARI KIRIMA.....2ND RESPONDENT
CONSOLIDATED WITH

ELC SUIT NO. 252 OF 2011(O.S)

STEPHEN MAINA MWENDA
MARTIN IRUNGU MUTURI
SAMUEL ALILA AWUOR
CHARLES KOJO AGER
JOHN NDIRANGU NDEGWA
HARISSON KIRAGU GACHURU
(Suing as the officials of KAMATUTO
SELF-HELP GROUP and on behalf of 1310 others).....PLAINTIFFS

-VERSUS-

ALICE NJERI KIRIMA
ANNE WANGARI KIRIMA
JAMES NJUGUNA KIRIMA
(Sued as court-appointed administrators,
trustees or signatories of the estate
of GERISHON KAMAU KIRIMA, deceased).....1ST DEFENDANTS
JOHN GERISHON KIRIMA.....2ND DEFENDANT

ELC NO. 509 OF 2014

NARIDAI MUOROTO SELF-HELP GROUP
(Suing through its officials, JOHN MAINA MWANGI,
SAMUEL NYAMOHANGA & ANTHONY
NYONGESA WAFULA).....PLAINTIFF

-VERSUS-

JAMES GATUNDU.....1ST DEFENDANT
ISAAC MBUGUA NGANGA.....2ND DEFENDANT
STEPHEN MAINA WARUINGI.....3RD DEFENDANT
STEPHEN OLENTEIYA.....4TH DEFENDANT
JOSEPH NAIKUNI.....5TH DEFENDANT
MUTII KIVOTO.....6TH DEFENDANT
TERESIA WAIRIMU KIRIMA
& ANNE WANGARI KIRIMA
(Sued as the administrators of the estate
of the late GERISHON KIRIMA).....7TH DEFENDANT
GEOFFREY MUNGAI THIONG'O.....8TH DEFENDANT
PAUL NDUNG'U KIOI.....9^ATH DEFENDANT
ROBERT MENGE & 40 OTHERS.....9TH TO 50TH DEFENDANTS

ELC NO. 1496 OF 2013

TERESIA WAIRIMU KIRIMA &
ANNE WANGARI KIRIMA
(Suing as administrators of the estate of
GERISHON KAMAU KIRIMA, deceased).....PLAINTIFFS

-VERSUS-

VIRGINIA MWANGI.....1ST DEFENDANT
REDEMPTOR MUTHINI MASILA.....2ND DEFENDANT
JOASH AMUNGA KENGERE.....3RD DEFENDANT

ELC NO. 1318 OF 2013

TERESIA WAIRIMU KIRIMA
& ANNE WANGARI KIRIMA
(Suing as the administrators
of the estate of GERISHON KAMAU KIRIMA).....PLAINTIFFS

-VERSUS-

FATHER ROMEO.....1ST DEFENDANT
REGISTERED TRUSTEES
OF COMBONI MISSIONERIES.....2ND DEFENDANT

ELC NO. 850 OF 2014

PAUL NDUNGU KIOI.....PLAINTIFF

-VERSUS-

LAWRENCE KIMONDO MUTUARUHIU.....1ST DEFENDANT

JOHN MAINA.....2ND DEFENDANT

JUDGMENT

1. The disputes in the consolidated suits relate to all those parcels of land known as L.R No. 5908/8 and L.R No. 6852/2 (hereinafter together referred to only as “the suit properties” where the context so permits) which were at all material times registered in the names of Gerishon Kamau Kirima, deceased (hereinafter referred to only as “G.K.Kirima” where the context so permits”) and John Gerishon Kirima.
2. On 17th March 2015, the court gave the following directions on the disposal of the consolidated suits;
 - (a) The suits shall be heard together with ELC No. 1257 of 2014, John Otieno Obade & 299 others v. Teresia Wairimu Kirima & another as the lead file.
 - (b) After the conclusion of the hearing, the court will prepare one judgment which will deal with all cross-cutting issues touching on all the claimants and the respondents in the various suits and the judgment will apply to and bind all the parties in the said suits.
 - (c) All the suits will be classified as falling under the following categories;

(i) Claims based on alleged allotment of various plots by the defunct City Council of Nairobi.

(ii) Claims arising through adverse possession.

(iii) Claims through purchase from the registered owner(s).

(iv) Claims of purchase by third parties from persons who claim to have purchased land from the registered owner(s).

(v) Claim by the estate of the late Gerishon Kamau Kirima (G.K.Kirima) that they are the owners of the suit properties and are the registered proprietors thereof.

(d) The identified claims will be isolated as the issues to be tried by the court.

(e) The suit properties to be surveyed by the Director of Surveys and the portions occupied by the various groups be mapped out and delineated for ease of identification and reference.

(f) Pending the hearing and determination of the suit the status quo obtaining as at 26th February 2015 to be maintained.

3. **ELC SUIT NO. 1257 OF 2014(O.S)**

This suit was brought by John Otieno Obade by way of Originating Summons dated 26th September 2014 on his own behalf and on behalf of 299 others. In the Originating Summons, the applicants sought the following orders;

(a) That the court be pleased to issue a declaration that the applicants are the rightful owners of a portion of L.R No. 6825/2 known as Kirima Njiru Farm measuring 80 acres situated at Njiru area, Nairobi having acquired the same by adverse possession.

(b) That consequent upon the declaration, the court be pleased to order that the said portion of land measuring 80 acres be divided among the applicants and registered in their names as the lawful owners thereof.

(c) That the costs be provided for

4. The Originating Summons was brought on the grounds set out on the face thereof and on the affidavit of John Otieno Obade sworn on 26th September 2014. The applicants averred that for over 14 years, they had uninterrupted, exclusive and continuous occupation of a portion of L.R No. 6825/2 measuring 80 acres (the property). The applicants averred that they had acquired title to the property by adverse possession. The applicants averred that they had made enormous developments on the property. The applicants averred that the property was the only home that they had. They averred that they had nowhere to relocate to should they be required to vacate the property.

5. The applicants averred that they came to learn of the legal owner of the suit property upon being served with a copy of an order issued on 17th

September 2014 in Nairobi Succession Cause No. 1298 of 2011, In the matter of the estate of the late Gerishon Kamau Kirima, deceased. The applicants averred that they had never known the legal owner of the property which measured a total of 472.5 acres for the entire duration that they had occupied the property. The applicants averred that their social and economic rights guaranteed under the constitution were at risk of being violated. The applicants averred that they could not be evicted from the property without being afforded alternative settlement and housing.

6. The 1st respondent in the suit responded to the application through a replying affidavit sworn on 16th October 2014. The 1st respondent contested the authority of John Otieno Obade to represent the other applicants in the suit. The 1st respondent averred further that the applicants had not claimed any right or title to L.R No. 6825/2(the property) that they had referred to as Kirima Njiru Farm. The 1st respondent averred that the applicants were not known to her but she was aware of people who at various times had tried to encroach of the property. The 1st respondent averred that this is what necessitated the order that they sought in Succession Cause No. 1298 of 2011 for the removal from the property of the persons who had encroached thereon.

7. The 1st respondent averred that they had paid land rates for the property up to 2014 and that the applicants had not made any payment on account of rates for the property. The 1st respondent averred that the Governor of Nairobi City County had acknowledged that the suit properties were private properties. The 1st respondent averred that the applicants were busybodies who had committed crimes by interfering with the estate of G.K. Kirima, deceased by constructing on the property without development approvals.
8. The 1st respondent averred that she had Google Earth images of the property since 2010 when the deceased passed on which showed that the developments that the applicants claimed to have put up on the property were recent. The 1st respondent averred that the applicants had taken advantage of the death of G.K. Kirima to cause mischief in the hope of grabbing the property of the deceased. The 1st respondent wondered how the applicants managed to put up developments on the property without planning approval and knowledge of the legal owner thereof.
9. The 1st respondent averred that there were no social or economic rights to be protected in respect of persons who were in breach of the statutory law and the constitution. The 1st respondent averred that the applicants were being aided and abetted in their illegal activities on the property by senior police officers. The 1st respondent averred that the High Court had earlier

issued orders in 2003 in High Court Civil Case No. 249 of 2003 in respect of LR No. 6825/2(the property) for the eviction of the persons who had trespassed thereon. The 1st respondent averred that the applicants had not acquired any portion of the property by adverse possession. The 1st respondent averred further that the estate of the deceased had no obligation to provide alternative accommodation to the applicants.

10. The 2nd respondent in the suit opposed the Originating Summons through a replying affidavit sworn on 8th October 2014. The 2nd respondent averred that the property was registered in the name of Gerishon Kamau Kirima(G.K.Kirima), deceased and John Gerishon Kirima, and that the same was developed with a slaughterhouse that had been in operation and was being run by the Kirima family since the early 1970s. The 2nd respondent averred that the property also had domestic workers' quarters for farm workers. The 2nd respondent averred that the undeveloped part of the property was being used as cattle holding grounds.

11. The 2nd respondent averred that after the death of the deceased, Gerishon Kamau Kirima(G.K.Kirima) in 2010, the property became a target of land grabbers and persons who disguised themselves as squatters who used illegal means to acquire land ownership. The 2nd respondent averred that in 2003 the same persons encroached on the property and filed a suit claiming

adverse possession in Nairobi High Court Civil Case No. 249 of 2003, Odek Ochoko & 7 others v. Gerishon Kirima & others. The 2nd respondent averred that the suit was struck out and eviction orders issued against the plaintiffs in the case. The 2nd respondent averred that Odek Ochoko and the other plaintiffs in that suit were also permanently barred from trespassing on the property, L.R No. 6825/2.

12. The 2nd respondent averred that G.K.Kirima was allowed in that suit to remove and demolish the illegal structures that had been erected on the property through an order that was made on 19th May 2003. The 2nd respondent averred that following the said order, all the illegal structures that had been put up on the property were demolished. The 2nd respondent averred that between 2003 and 2010, the property was free of intruders.
13. The 2nd respondent averred that the applicants were trespassers on the property and had no ownership rights over the same. The 2nd respondent denied that the applicants had occupied the property for 14 years. The 2nd respondent averred that they were enjoying possession of the property until after the death of G.K.Kirima in 2010 when some people began encroaching on the property. The 2nd respondent averred that the applicants had no right to interfere with the property. The 2nd respondent averred that

the applicants were not entitled to the reliefs sought in the Originating Summons.

14. The applicants filed further affidavits on 18th December 2014 and 23rd June 2015 sworn by John Otieno Obade. John Otieno Obade stated that he had the authority of the persons on whose behalf he had filed the suit to bring the suit. The applicants reiterated that they had been in occupation of the suit property for over 14 years. The applicants averred further that they were not privy to the 2003 suit in which orders were given for the eviction of trespassers who were on the property.
15. The applicants averred that their occupation of L.R No. 6825/2 had never been interrupted by any person. The applicants averred that the developments on the property had been undertaken over a period of over 14 years. The applicants averred that they were not disputing the fact that G.K.Kirima was the registered owner of L.R No. 6825/2(the property). The applicants averred that their contention was that they had acquired the property by adverse possession.
16. The 2nd respondent filed a further affidavit sworn on 16th June 2015 in which she reiterated that the applicants had not occupied the property continuously for an uninterrupted period of over 14 years as they had claimed. The 2nd respondent averred that all persons who had entered the

said property and put up structures thereon were forcefully evicted and their structures demolished by the deceased, G.K.Kirima following the orders that were issued by the court in the previous suits by the deceased.

17. The 2nd respondent averred that G.K. Kirima was the registered owner of the property and that he paid land rent and rates for the property when required. The 2nd respondent averred that from the 1970s to late 2010, G.K.Kirima operated a slaughterhouse on a portion of the property and used the remainder as grazing ground. The 2nd respondent denied that the applicants had had exclusive possession of the property for more than 14 years. The 2nd respondent averred that the existence of the previous suit was clear proof that the applicants had not had uninterrupted occupation of the property. The 2nd respondent averred that G.K.Kirima was in possession of the property until 2010 when the slaughterhouse on the property was closed down.

18. ELC SUIT NO. 252 OF 2011(O.S)

This suit was brought by way of Originating Summons dated 31st May 2011. The Originating Summons was amended on 13th June 2011, further amended on 14th February 2012 and further further amended on 29th May 2012. In the Originating Summons, the plaintiffs/applicants in the suit sought the following orders;

- a) A permanent injunction restraining the defendants from trespassing, destroying, or demolishing structures/houses occupied by the plaintiffs or in any other manner evicting the plaintiffs from the 160 acres of land that they occupy on L.R 5908/8.
 - b) A declaration that the plaintiffs have become entitled to 160 acres of all that parcel of land known as L.R 5908/8(Original No. 5908/5/5) measuring 205.1829 hectares by way of adverse possession.
 - c) An order that the Plaintiffs be registered as the proprietors of the land measuring 160 acres which they occupy on L.R 5908/8(Original No. 5908/5/5) which measures a total of 205.1829 hectares by adverse possession.
 - d) The costs of the suit and any other relief as the court may deem fit and proper to grant.
19. The Originating Summons was supported by the affidavit of Stephen Maina Mwenda who stated that he had the authority of the members of Kamatuto Self Help Group (the group) to swear the affidavit on their behalf. The applicants averred that the group was registered in April 2004 with the Ministry of Gender, Children & Social Development. The applicants averred that the objective of the group was to advocate, lobby and administer effectively the needs and rights of its 1310 members who

were squatters and had been living and excavating building stones on a portion of L.R 5908/8 measuring 160 acres. The applicants averred that they had been occupying the said portion of L.R 5908/8 measuring 160 acres for over 15 years and that they had dug deep quarries from where they had been mining building stones for sale to provide food and shelter for their families who lived with them on the property.

20. The applicants averred that L.R 5908/8(Original No. 5908/5/5) was registered in the name of G.K.Kirima and John Gerishon Kirima(J.G.Kirima) trading as Gerishon Kamau Kirima & Sons. The property was a leasehold for a term of 99 years with effect from 1st August 1904. The applicants averred that whereas the property measured 205.1829 hectares, they were occupying and excavating stones on a portion thereof measuring 160 acres only. The applicants averred that they had occupied and extracted building stones from the said portion of land peacefully without interruption for over 15 years.

21. The applicants averred that the lease to G.K.Kirima and J.G.Kirima in respect of L.R No. 5908/8 expired in 2003 and G.K.Kirima and J.G.Kirima applied for extension of the same in July 2003. The applicants averred that they learnt later that G.K. Kirima and J.G. Kirima obtained an extension of the lease on 5th August 2005. The applicants averred that they

had also applied to the Commissioner of Lands to be allocated the said property in September 2004. The applicants averred that following that application, the Commissioner of Lands sent a land officer, R.N.O Matende to the area to conduct site inspection. The applicants stated that the said land officer inspected the land and made a report.

22. The applicants reiterated that they had had exclusive possession of the property for over 15 years without any interruption. The applicants averred that they had acquired the property by adverse possession. The applicants annexed to their affidavit in support of the Originating Summons among others; the minutes of the meeting of the members of Kamatuto Self-Help Group held on 25th May 2011 at the group's office at Mowlem, a list of the members who attended the meeting, Certificate of Registration of the group dated 24th April 2004, a letter dated 6th August 2010 to the District Officer, Njiru seeking permission to settle on L.R No. 5908/8, memorandum of registration of transfer dated 17th June 1972, a letter from the Chief Njiru Location dated 15th December 2009, and Grant No. I.R 98744 in respect of L.R No. 5908/8 dated 5th August 2005. The applicants averred that they had come to court with clean hands.

23. The Originating Summons was opposed by Alice Njeri Kirima through a replying affidavit sworn on 21st March 2012. Alice Njeri Kirima stated that

she was one of the court-appointed administrators of the estate of G.K.Kirima. She averred that L.R No. 5908/8 was registered in the name of G.K.Kirima and J.G.Kirima. She averred that the land was developed with a slaughterhouse which was in operation until October 2010. She stated that in addition to the slaughterhouse, there was also a domestic servant quarters for farm workers. She stated that the other portions of the property were being used as grazing fields for the cattle that were due for slaughter.

24. She stated that L.R 5908/8 was at all material times vacant and had never been occupied by the applicants or any other person without the permission of G.K.Kirima. She denied that the applicants had occupied the property for 15 years. She stated that upon the death of G.K.Kirima, people disguised as squatters attempted to encroach on G.K.Kirima's land situated at Njiru. She stated that the estate of G.K.Kirima had used legal means to resist the invasion. She stated that the applicants had not made out a case for adverse possession.

25. The Originating Summons was opposed by Anne Wangari Kirima through a replying affidavit sworn on 17th December 2014. She stated that G.K.Kirima purchased L.R No. 5908/8 lawfully and subsequently had the lease extended for a further term of 99 years with effect from September

2003. She stated that when G.K.Kirima died in December 2010, there was no encroachment on L.R No. 5908/8. She stated that it was after his death that the applicants and others started encroaching on the property. She stated that the applicants had not filed any suit against G.K.Kirima prior to his death since they were not in occupation of the disputed property prior to 2010. She stated that Google maps for the area between 2008 and 2010 showed that L.R No. 5908/8 was not occupied by squatters. She stated that the invasion of the property by persons disguised as squatters started in 2011 and increased rapidly in the following 3 years. She stated that that fact was confirmed by Google maps for 2012,2013 and 2014. She stated that L.R No. 5908/8 was private land and as such the same was not available for allocation to the applicants. She stated that the applicants had not established their adverse possession claim over L.R No. 5908/8.

26. Anne Wangari Kirima filed a further affidavit sworn on 16th June 2015 on 22nd June 2015. She stated that a grant of letters of administration in respect of the estate of G.K.Kirima was issued to her and Teresia Wairimu Kirima on 30th October 2013. She stated that L.R No. 5908/8 and L.R No. 6825/2 both situated at Njiru and referred to commonly as Kirima Njiru Farm formed part of the estate of G.K.Kirima. She stated that following the order that was issued on 19th May 2003 in Nairobi HCCC No. 249 of

2003, G.K.Kirima forcefully entered L.R No. 5908/8 and L.R No. 6825/2 and evicted all persons who had trespassed on the same and demolished their structures. She stated that on 19th July 2006, the court once again issued an order in Nairobi HCCC No. 662 of 2006 compelling the defendants in the suit who had been sued by G.K.Kirima to vacate the two parcels of land and not to interfere with G.K.Kirima's enjoyment and quiet possession of the said parcels of land. She stated that the applicants had not occupied the said parcels of land continuously for an uninterrupted period of 15 years. She stated that it was not true that the registered owners of the suit properties had never attempted to assert their rights over the said properties. She stated that there had never been any demarcation of L.R No. 5908/8 to create a portion thereof measuring 160 acres claimed by the applicants. She stated that the said orders and the forceful entry onto the suit properties by the deceased, G.K.Kirima and the demolitions of structures and eviction of the occupants of the suit properties had the effect of interrupting the alleged occupation and time from running for the purposes of adverse possession. She reiterated that the applicants had not met the conditions for an adverse possession claim.

27. Anne Wangari Kirima stated that some of the members of Kamatuto Self Help Group had not signed the authority given to the applicants to

plead on their behalf contrary to Order 1 Rule 13 of the Civil Procedure Rules. She averred that the pleadings filed by the applicants without the authority of the said members were defective and should be struck out.

28. ELC NO. 509 OF 2014

29. The plaintiffs in this suit brought their claim through a plaint dated 23rd April 2014. The plaintiffs averred that they were the beneficial owners and occupants of a parcel of land located in Njiru District commonly referred to as Naridai Muoroto Scheme which was owned by the Government of Kenya through the County Government of Nairobi. The Plaintiffs averred the suit property measured 500 acres. The Plaintiffs averred that they were at all material times landless and that between 1990 and 1994 they were moved by the Government to the suit property and acquired rights from the Government to occupy the same as squatters. The plaintiffs averred that their numbers grew from the initial 215 to the current 2000 people who were all living on the suit property.

30. The plaintiffs averred that the Government of Kenya and the County Government of Nairobi had recognised the plaintiffs' interests in the suit property and had issued them with letters of allotment in 2009 and were in the process of issuing them with titles. The plaintiffs averred that they had been in lawful possession of the suit property. The plaintiffs averred that in

March 2014, the defendants invaded the suit property and had since then been terrorising the plaintiffs by trespassing the suit property and claiming to be the owners thereof. The plaintiffs averred that the defendants had commenced cutting down trees and digging trenches on the property. The plaintiffs averred that the defendants had no evidence of ownership of the suit property.

31. The plaintiffs averred that despite being directed by the government to stop interfering with the plaintiffs' quiet and peaceful enjoyment of the suit property, the defendants had persisted with their acts of trespass. The plaintiffs sought judgment against the defendants jointly and severally for:
- (a) A declaration that the plaintiffs were entitled to exclusive and unimpeded right of possession and occupation of all that parcel of land located in Njiru District more commonly referred to as Naridai Muoroto Scheme owned by the Government of Kenya through the County Government of Nairobi.
 - (b) A permanent injunction restraining the defendants from interfering, trespassing and/or occupying the suit property.
 - (c) General damages for trespass.
 - (d) Costs and any other relief the court may deem appropriate.

32. The 8th defendant in the suit filed a defence to the plaintiffs' claim on 18th April 2015. The 8th defendant denied the plaintiffs' claim in its entirety. The 8th defendant averred that the suit property was privately owned and that he was the beneficial owner of portions of the property known as L.R Nos. 5908/649, 5908/675, 5908/677, 5908/672, 5908/666, 5908/664, 5908/648, 5908/647, 5908/662, 5908/646, 5908/663, 5908/673, 5908/665 and 5908/676 which he bought from G.K.Kirima, deceased. The 8th defendant averred that he purchased the said parcels of land through the firm of P.C.Onduso & Company Advocates who acted for G.K.Kirima. The 8th defendant averred that after paying the purchase price in full, he was issued with deed plans and he had since then been paying land rates to the Nairobi City County in respect thereof. The 8th defendant averred that he was given vacant possession of the said parcels of land awaiting the processing of titles in respect thereof.

33. The 8th defendant averred that the suit property was not available for allocation to the plaintiffs by the national government or county government since it was private land. The 8th defendant averred that the letters of allotment held by the plaintiffs were acquired fraudulently. The 8th defendant averred that contrary to the plaintiffs' claim that their parcels of land were invaded, it was the 8th defendant's parcels of land that were

invaded and his access blocked and temporary fence destroyed. The 8th defendant averred that the plaintiffs had never been in possession of the suit property.

34. The 7th defendant in the suit filed a statement of defence on 16th June 2015. The 7th defendant averred that the plaintiffs having admitted being squatters on the suit property, they were on the property unlawfully and as such had no sustainable claim over the same. The 7th defendant averred that the plaintiff was an amorphous group which invaded the suit property in 2010 after learning that the owner thereof, G.K.Kirima had passed away. The plaintiff averred that the then acting Town Clerk, Geoffrey Kahindi Katsoleh had denied on oath that he had signed the letters of allotment held by the plaintiffs. The 7th defendant averred that the said letters of allotment were forgeries. The 7th defendant averred that upon discovering the plaintiffs' encroachment on the suit property, they merely sought to regain possession of the suit property. The 7th defendant averred that the suit property was owned by G.K.Kirima and J.G.Kirima and not by the Government of Kenya or the County Government of Nairobi.

35. The 7th defendant averred that contrary to the plaintiffs' contention, there were previous proceedings between the parties. The 7th defendant averred that the plaintiffs had filed J.R Miscellaneous Application No. 72 of

2011 in which they sought a declaration that they had acquired equitable rights arising from their occupation of L.R No. 5908/8 and L.R No. 6825/2. The 7th defendant averred that the suit was dismissed on 30th January 2012.

36. The 8th and 9Ath defendants were added to the suit through an order made on 30th October 2014 in ELC No. 509 of 2014 while the 9th to 50th defendants were added to the suit through an order made on 3rd September 2015 in ELC No. 1257 of 2014. The 9th to 50th defendants filed a joint statement of defence on 11th September 2015. The 9th to 50th defendants (defendants) averred that the undescribed property alleged to be occupied by the plaintiffs was private property and that the 9th to 50th defendants were the beneficial owners of portions thereof known as L.R Nos. 5908/503,489,568 and 569, 583, 454, 487 and 489, 608 and 610, 484,573 and 574, 486, 667, 596 and 597, 485, 452, 454, 584 and 585, 650, 605, 657 and 658, 611, 559 and 560, 588 and 589, 609, 564, 555, 479, 626, 627, 480, 544, 545, 546, 547, 548, 551, 550, 549, 633, 634, 671,536, 521, 669, 604, 598 and 599, 594, 600, 601, 612 and 613 respectively having purchased the same from G.K.Kirima, deceased whose estate was represented by the 7th defendant.

37. The defendants averred that they were granted possession of the said parcels of land and most of them had erected residential premises thereon. The defendants averred that some of the plaintiffs had taken over and occupied by force some of the defendants' said parcels of land. The defendants averred that the Nairobi City County Government could not allocate to the plaintiffs private property. The defendants averred that it was the plaintiffs who had invaded the parcels of land owned by the defendants and had hired goons to terrorise the defendants.
38. The defendants averred that the title to the land claimed by the plaintiffs was held by the 7th defendant and that the 9th to 50 defendants held original deed plans issued upon the subdivision of the said parcel of land.
39. The 9th to 50th defendants brought a claim against a co-defendant, the 7th defendant. The 9th to 50 defendants averred that having paid the late G.K.Kirima Kshs. 250,000/- for each plot, the estate of G.K.Kirima was under an obligation to transfer to them the parcels of land that the deceased sold to them. The 9th to 50th defendants averred that the plaintiffs had no legal or equitable claim against the 7th defendant. The 9th to 50th defendnts prayed that the plaintiffs' suit be dismissed with costs and judgment be entered for the 9th to 50th defendants against the 7th defendant for the issuance of the completion documents.

40. The 2nd, 3rd, 6th and 9thA defendants in the suit filed a joint statement of defence together with a notice of claim against co-defendant (the 7th defendant) on 9th May 2014. In their defence, the 2nd, 3rd, 6th and 9thA defendants averred that L.R No. 5908/8 (the suit property) was registered in the name of G.K.Kirima and J.G.Kirima who subdivided the same and sold a number of the sub-plots to the 2nd, 3rd, 6th and 9thA defendants as follows; L.R Nos. 5908/641, 642 and 682 to the 2nd defendant, L.R Nos. 5908/469, 470, 471, 463, 464, 466, 46, 637, 638, 639, 655, 654 and 653 to the 6th defendant and L. R Nos. 5908/679, 680 and 681 to the 9thA defendant. The 2nd, 3rd, 6th and 9thA defendants averred that the 3rd defendant purchased L.R Nos. 5908/653, 562, 574, 575 and 576 from the 1st defendant who had purchased the same from G.K.Kirima.

41. The 2nd, 3rd, 6th and 9thA defendants averred that the suit property was private property and as such the same was not available for allocation by the Government or the City Council of Nairobi to the plaintiffs. The 2nd, 3rd, 6th and 9thA defendants averred that they had at all material times been in occupation of their respective parcels of land and as such it was not true as claimed by the plaintiffs that they had been in occupation of the same parcels of land.

42. The 2nd, 3rd, 6th and 9thA defendants averred that it was the plaintiffs who had been trespassing on the 2nd, 3rd, 6th and 9thA defendants' parcels of land and purporting to sell the same to unsuspecting members of the public. The 2nd, 3rd, 6th and 9thA defendants averred that the letters of allotment on which the plaintiffs based their claims over the suit property were fraudulent since the government could not allocate to the plaintiffs, private land. The 2nd, 3rd, 6th and 9thA defendants averred that Mr. Geoffrey Katsoleh and Mr. Aduma who were alleged to have signed the said letters of allotment had denied having signed the same. The 2nd, 3rd, 6th and 9thA defendants urged the court to dismiss the plaintiffs' suit with costs.

43. In their Notice of Claim against Co-Defendant (the 7th defendant), the 2nd, 3rd, 6th and 9thA defendants (the defendants) averred that G.K.Kirima was the registered owner of L.R No. 5908/8(suit property) which he subdivided and sold portions thereof namely; L.R Nos. 5908/641, 642 and 682 to the 2nd defendant, L.R Nos.5908/469, 470, 471, 463, 464, 466, 46, 637, 638, 639, 655, 654 and 653 to the 6th defendant and L. R Nos. 5908/679, 680 and 681 to the 9thA defendant.

44. The 2nd, 3rd, 6th and 9thA defendants averred that the 3rd defendant purchased L.R Nos. 5908/653, 562, 574, 575 and 576 from the 1st defendant who had purchased the same from G.K.Kirima. The 2nd, 3rd, 6th

and 9thA defendants averred that they were issued with receipts for the payments made for the said properties and original deed plans. The 2nd, 3rd, 6th and 9thA defendants averred that upon payment of the purchase price in full, they took possession of the properties and commenced various development activities thereon. The 2nd, 3rd, 6th and 9thA defendants averred that despite payment of the full purchase price, the properties had not been transferred to them. The 2nd, 3rd, 6th and 9thA defendants averred that upon obtaining Grant of Letters of administration in respect of the estate of G.K.Kirima, the 7th defendant was under an obligation to transfer to the 2nd, 3rd, 6th and 9thA defendants their respective parcels of land. The 2nd, 3rd, 6th and 9thA defendants averred that the failure or refusal to transfer the said properties to the 2nd, 3rd, 6th and 9thA defendants had caused them loss and damage as they had been unable to enjoy full benefits of their proprietorship of the same.

45. The 2nd, 3rd, 6th and 9thA defendants prayed for judgment against the 7th defendant for;

(a) An order for specific performance to compel the 7th defendant to complete the agreements and transfer to the 2nd, 3rd, 6th and 9thA defendants their respective parcels of land.

(b) Costs of the Co-Defendant claim.

46. **ELC NO. 1496 OF 2013**

47. The plaintiffs in this suit filed the suit on 9th December 2013. The plaint was amended on 15th January 2014. In their amended plaint, the plaintiffs averred that they are and were at all material times the joint administrators of the estate of the late Gerishon Kamau Kirima (G.K.Kirima) pursuant to a Grant of Letters of Administration that was issued to them on 30th October 2013. The plaintiffs averred that G.K.Kirima was the registered owner of L.R No. 5908/8 (suit property) which formed part of his estate. The plaintiffs averred that on or about August 2013, the defendants without the knowledge, consent or authority of the plaintiffs entered and commenced construction of illegal structures on the suit property. The plaintiffs averred that the said acts of the defendants amounted to trespass. The plaintiffs averred that by reasons of the foregoing, the plaintiffs and beneficiaries of the estate of G.K.Kirima had been deprived of the use and enjoyment of the suit property and had thereby suffered loss and damage.

48. The plaintiffs sought judgment against the defendants for;
- (a) An injunction restraining the defendants from entering or trespassing upon the suit property or any part of it.
 - (b) A mandatory injunction requiring the defendants to forthwith remove illegal structures erected and building materials placed on the suit property.

(c) General damages for trespass.

(d) Costs of the suit.

49. The defendants in the suit filed a joint statement of defence on 13th May 2014. The defendants denied that the plaintiffs were the owners of the suit property and that the defendants had trespassed thereon. The defendants averred that they were occupying the suit property as of right with the consent and knowledge of the Government of Kenya. The defendants averred that they had occupied the suit property for over 20 years with their families. The defendants prayed that the plaintiffs' suit be dismissed with costs.

50. ELC NO. 1318 OF 2013

51. The plaintiffs in this suit filed the suit on 21st May 2013. The plaint was amended 15th January 2014. In the amended plaint, the plaintiffs averred that they were the joint administrators of the estate of G.K.Kirima pursuant to a Grant of Letters of Administration that was issued to them on 30th October 2013. The plaintiffs averred that the late G.K.Kirima was the registered owner of L.R No. 5908/8(the suit property) which formed part of his estate. The plaintiffs averred that on or about 29th April(sic), the defendants without the consent of the plaintiffs entered the suit property,

pitched a tent, erected a fence and was in the process of sinking a borehole thereon.

52. The plaintiffs averred that the defendants subsequently embarked on and had continued to develop part of the suit property which they had occupied in total disregard of the plaintiffs' rights and interest in the property. The plaintiffs averred that the said acts of the defendants amounted to trespass. The plaintiffs averred that the plaintiffs and the other beneficiaries of the estate of G.K.Kirima had been deprived of the use and enjoyment of the said portion of the suit property and had therefore suffered loss and damage.

53. The plaintiffs sought judgment against the defendants jointly and severally for;

(a) An injunction restraining the defendants from entering or trespassing upon the suit property or any part thereof.

(b) A mandatory injunction requiring the defendants to forthwith remove the fence and structures erected on the suit property.

(c) General damages for trespass.

(d) Costs of the suit.

54. The defendants in the suit filed a joint statement of defence dated 20th May 2015. The defendants denied that the plaintiffs were the registered

owners of the suit property. The defendants averred in the alternative that the suit property was not an exclusive property of G.K.Kirima. The defendants averred further in the alternative that the suit property did not exist. The defendants denied that they had trespassed on the suit property and that they had caused loss and damage to the plaintiffs. The defendants averred that the plaintiffs had no right or interest in the suit property. The defendants urged the court to dismiss the plaintiffs' suit with costs.

55. ELC NO. 850 OF 2014

56. This suit was filed by the plaintiff in the suit on 27th June 2014. The plaintiff averred that he was the proprietor of all those parcels of land known as L.R No. 5908/679, L.R No. 5908/680 and L.R No. 5908/681 situated in Njiru area, Nairobi County (suit properties). The plaintiff averred that he purchased the suit properties from the late G.K.Kirima between 2007 and 2010 following the subdivision of G.K.Kirima's hitherto larger parcel of land known as L.R No. 5908/8.

57. The plaintiff averred that upon completion of payment of the purchase price to G.K.Kirima, he was issued with original deed plans for the suit properties and he proceeded to take possession of the same. The plaintiff averred that after taking possession of the suit properties, he put up a barbed wire fence around the same as he made arrangements to put up a masonry

wall around the premises. The plaintiff averred that after making arrangements to commence the construction of a perimeter wall around the suit properties, the 2nd defendant in the suit and his agents appeared at the site and stopped the construction work.

58. The plaintiff averred that he had been in possession of of the suit properties which he had temporarily permitted some three needy families to occupy. The plaintiff averred that the 2nd defendant had been harassing, intimidating and threatening the plaintiff and his staff. The plaintiff averred that on 16th June 2014, the 1st defendant in the suit entered the suit properties and began the construction of a perimeter wall while threatening to demolish the structures the plaintiff had put up thereon. The plaintiff averred that the acts of the defendants complained of were unlawful and amounted to trespass and nuisance.

59. The plaintiff averred that he had been deprived of his right to own and enjoy the suit properties and had thereby suffered loss and damage. The plaintiff sought judgment against the defendants for;

(a) A permanent injunction restraining the defendants from taking possession, constructing or in any other way interfering with the plaintiff's proprietary rights over the suit properties.

(b) The Officer in Charge of Mihang'o Police Station to assist in the enforcement of the order.

(c) General damages for trespass.

(d) Costs of the suit and any other relief the court may deem fit to grant.

60. I have not seen on record a defence to the plaintiff's claim by any of the defendants.

61. At the trial each party led evidence in support of its case. The first witness was, **FATHER PAULO ATOLE (PW1)** of Comboni Missionaries (**CLAIMANT No.1**) which claimed to have been allocated a portion of L.R No. 5908/8 by the City Council of Nairobi. Comboni Missionaries were the defendants in ELC No. 1318 of 2013. PW1 told the court that he was the administrator of Comboni Missionaries and that he had held that position since 2013. He stated that he was a representative of Father Romeo who was the one who had been sued. He stated that Comboni Missionaries were allocated the disputed property by the City Council of Nairobi (the council) through a letter of allotment dated 2nd July 2009. The letter of allotment was marked for identification as "MFI 1". He stated that in the letter of allotment, the property was identified as Plot No. B96 Naridai Mworoto Scheme.

62. He stated that their letter of allotment did not refer to the land claimed by the estate of Gerishon Kamau Kirima(G.K.Kirima). He stated that the payments that were required under the letter of allotment were made to the council. He stated that the disputed property was donated to Comboni Missionaries through a letter dated 12th August 2009. PW1 adopted his witness statement dated 20th May 2015 as part of his evidence in Chief.
63. On cross-examination by Mr. Onduso, PW1 stated that he was not involved in the transaction through which the property was allocated to Comboni Missionaries. He stated that it was his predecessor, Father Romeo who was involved. He stated that he only saw the documents in the office which included the letter donating the land. He stated that he did not know whether Father Romeo had applied to be allocated the property. He stated that the property was donated to them by Muoroto Self Help Group and that their certificate of ownership dated 5th June 2009 bore L.R No. 5908/8.
64. On cross-examination by Mr. Ojiambo S.C, PW1 stated that the certificate of ownership stated that Verona Fathers were the registered owners of Plot No. B96. He stated that he did not know whether Naridai Mworoto Self Help Group was a registered company. He stated further that he did not know the registered owner of L.R No. 5908/8. He stated that

they did not verify the ownership of L.R No. 5908/8 with the City Council of Nairobi. He stated that their attempts to conduct a search on the property after they were sued did not succeed. He stated that they were developing the plot in dispute but stopped when the court issued an order of status quo. He stated that they had no development approval from the City Council of Nairobi and that they had stopped development of the plot.

65. The next witness was **PAUL NDUNGU KIOI (CLAIMANT NO. 2)** (hereinafter referred to only as “**CLM 2**”). He stated that he was the plaintiff in ELC No. 850 of 2014 and the 9th defendant in ELC No. 509 of 2014. He adopted his witness statement as part of his evidence in chief. He stated that the persons he sued in ELC No. 850 of 2014 were encroaching on his plots which he purchased from G.K. Kirima, deceased. He stated that after suing them, they moved out of the plots. He stated that the plots he purchased were initially Plot Nos. 103, 104 and 105. He stated that the plots were subsequently given Land Reference Numbers. He stated that the plots were part of L.R No. 5908/8 owned by G. K. Kirima. He stated that he made payments to G.K.Kirima for the plots by cheque but was issued with receipts in the name of Embakasi Ring Road Developers. He stated that the cheques were all in the name of Gerishon Kirima and not in the name of the said company and that the receipts that were issued to him had

plot numbers. He stated that L.R NO. 5908/8 was registered in the names of Gerishon Kamau Kirima and John Gerishon Kirima but he did not know John Gerishon Kirima.

66. CLM2 stated that after being shown the plots on a survey map, he selected 3 plots. He stated that before entering into an agreement with G.K. Kirima he was required to make payment. CLM 2 stated that he had dealt with G.K. Kirima previously. He stated that he bought a property near Tajmal from him in 2007. He stated that the receipts that were issued to him were in the name of Embakasi Ring Road Developers. He stated that the office where he made the payments was on a building next to Jevanjee Gardens and that he occasionally met G.K.Kirma in that office. He stated that apart from the guards, the other people who worked in that office were, Mr. Wanyoike and Ms. Catherine. He stated that it was Mr. Wanyoike who showed him the plots on a map that was hung on the wall.

67. He stated that the plots were being sold at Kshs. 250,000/- each. He stated that he was subsequently given an agreement to sign which he signed. He stated that he was not given a copy of the agreement since the seller had not signed his part. He stated that he paid the full purchase price and he was issued with deed plans for the 3 plots. He stated that he had the original deed plans for the plots in his possession. He showed the court the

same. He stated that he collected the deed plans from G.K. Kirima's office and acknowledged receipt of the same. He stated that the plots were shown to him by a representative from G.K. Kirima's office. He stated that he had fenced the plots and allowed a family to reside thereon.

68. He stated that John Maina whom he sued was an official of Naridai Mworoto Self Help Group (Naridai). He stated that Naridai was claiming ownership of his plots. He stated that as far as he was concerned, the land in dispute belonged to G.K. Kirima. He stated that Naridai issued fake letters of allotment. He stated that the estate of G.K. Kirima should honour the contract that he made with G.K. Kirima, deceased.

69. On cross-examination by Mr. Ojiambo S.C, CLM2 stated as follows: He saw a copy of the title before he started the process of purchasing the plots. When he got a receipt for the payment that he had made for the plots, he noticed that it was not in the name of the seller but he did not think there was any problem. He did not verify who Embakasi Ring Road Developers were. He did not carry out a search on the entity. The persons he made payments to did not say they were officials of Embakasi Ring Road Developers. He had no agreement with G.K. Kirima. He was aware that he could not enforce a contract for the sale of land that was not in writing and

that the company that issued him with receipts for the payments he made was not the owner of the plots.

70. On cross-examination by Mr. Nyamu, CLM2 stated as follows: He visited the parcel of land in dispute between 2007 and 2010. During that period, there were no structures on the same. The place was vacant and bushy.

71. On cross-examination by Mr. Njuguna, CLM2 stated that he purchased the 3 plots in 2007 and that the same were portions of L.R No. 5908/8. He stated further that the subdivision was in progress and that his deed plans were issued in 2010.

72. On cross-examination by Mr. Nyangayo, CLM2 stated as follows: He saw a copy of the title before he purchased the plots. The title had the names of Gerishon Kamau Kirima and John Gerishon Kirima. He only dealt with Gerishon Kamau Kirima. He never met the person named John Gerishon Kirima. At the commencement of the sale transaction, he did not carry out an official search at the land office.

73. CLM2 was recalled and gave further evidence in chief and was cross-examined. He stated as follows in his evidence in chief on recall: During his earlier testimony, he had said that he made some payments to G.K. Kirima and he was issued with receipts. He made some payments in cash

and others by cheques. The cheques were made payable to G.K. Kirima. The receipts issued to him in the name of Embakasi Ring Road Developers showed the particulars of the cheques that he issued. He referred the court to his bundle of documents filed in ELC No. 850 of 2014. After giving evidence, he went to the bank and asked for cheque images. He got two images for the cheques which were paid after June 2007. The bank could not retrieve the cheques for June 2007 going backward. The cheque images were attached to his supplementary list of documents dated 6th May 2016. The cheque images corresponded with some of the receipts that were issued to him. After giving G.K.Kirima the cheques, he issued him with receipts in the name of Embakasi Ring Road Developers. He had bought other plots from G.K.Kirima earlier and the receipts were also issued to him bearing the name Embakasi Ring Road Developers. In the circumstances, he had no doubt that the entity and G.K. Kirima were one and the same. Embakasi Ring Road Developers was G.K. Kirima's company. The cheques he issued to G.K. Kirima were paid. He produced the supplementary bundle of documents dated 6th May 2016 filed in court on 9th May 2016 in ELC No. 850 of 2014 as CLAIMANT No. 2's Exhibit 2.

74. On further cross-examination by Mr. Onduso, he stated as follows: The payments for the plots he was claiming were made over a period of 3 years.

He was shown the property and he visited the same on several occasions. He did not notice any encroachment when he made the payments. The plots he was claiming were vacant at the time he was giving evidence. When he filed a suit there were some people who had attempted to encroach on his plots. The said people left after he brought the suit. The encroachment started in 2013 and he filed a suit in 2014.

75. On further cross-examination by Mr. Nyamu, he stated as follows: He was interested in L.R No. 5908/8. He developed interest in the property in 2007. When he bought the plots he was claiming, the Eastern By-Pass was not in existence. At the time of his evidence, the plots were on the Eastern By-Pass. When he purchased the plots, there was no access road. L.R No. 5908/8 was all vacant at the time. The same was not habited. If someone claimed that he occupied the land in 2007, that would be a lie.

76. On cross-examination by Mr. Janja, he stated that: His interest in L.R No. 5908/8 was that of a purchaser. He purchased portions of the property in 2007. He entered into a formal agreement for sale. The agreement was to be signed after he had completed the payment. He signed his part but G.K. Kirima did not sign his part because he was ailing at the time. The agreement did not have a completion period. The same was not prepared by an advocate. The transaction was between him and G.K. Kirima. There

were no witnesses. He went personally to see the property. The property was L.R No. 5908/8. The title was to be sub-divided into small portions. He was shown a sub-division scheme and was given a deed plan for his plot. He trusted G. K. Kirima and as such he did not carry out a search. He did not have a title for the plot. He only had a deed plan. He was not aware that the land that was sold to him was public land that had been settled by squatters.

77. On cross-examination by Mr. Jelle, CLM 2 stated as follows: When he was purchasing his plots he saw a copy of the title for L.R No. 5908/8. The registered owners of the property were G. K. Kirima and J. G. Kirima. The cheques that he issued were in favour of G. K. Kirima. The cheques did not indicate on their face the transactions in respect of which they were issued. The receipts were issued by Embakasi Ring Road Developers in G. K. Kirima's office.

78. On re-examination by Mr. Thuita, CLM 2 stated that: He signed the agreement for sale before Mr. Onduso advocate. Mr. Onduso was G. K. Kirima's advocate. He witnessed the agreement. The title was in the name of two people. He only knew G.K.Kirima. He signed the agreement and left it in the office of Mr. Onduso. He did not know that G.K. Kirima

would not sign the agreement. He had earlier bought another property from him.

79. The next witness was **MUTII KIVOTO – CLAIMANT NO.3(CLM 3)**.

CLM 3 stated as follows in his evidence in chief: He was sued by a group of people in respect of properties that he purchased from the Kirima family through Victoria Technical Enterprises Ltd. He was a director of the said company. When he was purchasing the said properties, he ascertained that the seller was the owner. He was given a copy of the title for L.R No. 5908/8 and he did a search on the title. He used to go to G. K. Kirima's office next to Jivanjee Gardens for the transactions he had with him. He bought 13 parcels of land from G.K. Kirima. The details of the said parcels of land were set out in paragraph 7 of his affidavit filed in court on 28th May 2014. He paid Ksh. 250,000/- for each parcel. The properties were adjacent to each other. He paid for the properties from 2008 until 2010. He purchased the properties in blocks. Each time he made payment, he was issued with a receipt. He referred the court to the receipt dated 2nd February 2010 at page 68 of his affidavit. The receipt was in respect of 3 parcels of land namely, L.R Nos.183,184 and 185. He also referred to the other receipts at page 83 of the same affidavit relating to the payments for 10 parcels of land. He started buying the plots in 2009. The receipts were

issued by G. K. Kirima's cash office. He met G.K. Kirima in his boardroom in that office. He discussed with him the purchase of the said parcels of land. The transaction went through. The receipts issued to him were in the name of Embakasi Ring Road Developers.

80. He referred the court to some of the receipts that were in his name and the others in the name of his co-director, Jemimah Undisa Kovoto. He referred the court to receipts dated 17th February 2014, 15th April 2014, and 20th May 2014 attached to the 6th defendant's list of documents dated 6th May 2016. The receipts were issued following receipt of the payments which they made by cheques. The cheques were made in favour of G. K. Kirima. The payments were for the properties at Pipeline which they purchased from G. K. Kirima. He had no reason to doubt G.K.Kirima after this earlier transaction. After purchasing the 13 parcels of land, he signed sale agreements at the office of Mr. Onduso, advocate. He signed an agreement for each plot. The agreements were witnessed by Mr. Onduso. The agreements were also signed by G. K. Kirima and his signature was also witnessed by the same advocate. He was familiar with G.K. Kirima's signature. After signing the agreements, he left the same with Mr. Onduso to forward the same to G.K. Kirima for signature. He picked up the agreements later at the office of Mr. Onduso. He had sale agreements for

all the plots that he purchased from G.K.Kirima. The agreements were on the same terms. The sale agreements were at pages 69 to 141 of his affidavit. He had the original agreements with him in court. He was issued with deed plans in respect of the 13 parcels of land. G. K. Kirima's surveyor, Mr. Mwaura called him. He was the one doing the sub-division. He asked him to pick the deed plans from G. K. Kirima's office. He did as he had been directed. He had the original deed plans with him in court for the 13 parcels of land. He referred the court to the documents at pages 143 to 155 of his affidavit.

81. He was in possession of the 13 parcels of land which were purchased by his company. As soon as he finished purchasing the said parcels of land, he was shown the beacons and he fenced the plots using barbed wire. He later changed the fence to a masonry wall. He used the plots for chicken rearing and horticultural farming. He referred the court to the the survey plan for L.R No. 5908/8(Plot Nos. 540 – 684) at page 156 of his affidavit. He stated that 6 of his plots fell within this survey plan. He also referred the court to the photographs at pages 158 to 167 of the affidavit. He stated that these were earlier photographs of his parcels of land. He erected a wall around the plots after these photographs were taken. The wall could be seen at page 167 of the affidavit. He was paying land rates for all 13 parcels of land.

The name of the ratepayer was G. K. Kirima & Sons. G.K.Kirima's family was not paying rates for the 13 parcels of land.

82. The receipts appearing at pages 168 to 178 of the affidavit were for the payments that he made for the rates. He took possession of the properties in the 2009. Together with the other persons who purchased land from G.K. Kirima, they used to have meetings with the representatives of G. K. Kirima. G.K. Kirima's side was represented by a surveyor, Catherine who used to work at the cash office of Mr. Kirima and Mr. Onduso advocate. He did not meet with any blood relative of G.K. Kirima at the site where they used to meet. The land was vacant and one could see through to Kangundo Road. There were no buildings on the land at the time. The land that he purchased belonged to G. K. Kirima. He came to learn that there were some purported allotments that were made by City Council of Nairobi. He carried out investigations which revealed that the purported allotments were not genuine.

83. The plaintiffs in ELC No. 509 of 2014 brought down the fences that had been put up by the purchasers. His fence was among those brought down. He resisted the invasion. Since the matter was brought to court, he had not had a problem with the plaintiffs in ELC No. 509 of 2014. He denied that there were people who had occupied his parcels of land for 12 years. He

purchased the plots at the registered office of G. K. Kirima, was taken to the site, and entered into written agreements with G. K. Kirima. He fulfilled his part of the bargain. The estate of G.K. Kirima had not asked them to do anything in respect of the said agreements of sale. As far as he was concerned, it was the administrators of the estate of G.K. Kirima who had failed to complete their part of the agreement. He urged the court to dismiss the claim brought against him in ELC No. 509 of 2014, and to compel the estate of G.K. Kirima to transfer the plots he purchased to his company.

84. He produced the documents attached to his replying/supporting affidavit sworn on 27th May 2014 and filed in court on 28th May 2014 in ELC No. 509 of 2014 as Claimant No. 3's exhibit 1. He also produced the documents attached to the 6th defendant's supplementary list of documents dated 6th May 2016 as a bundle as claimant No. 3's exhibit 2.

85. On cross-examination by Mr. Onduso, CLM 3 stated that: He made full payment of the purchase price for the 13 parcels of land to G.K. Kirima while he was still alive. In the transactions involving the said properties, he did not deal with either Teresia or Anne Kirima. When G.K.Kirima was alive, there was no dispute over the ownership of the said properties. A dispute over the ownership of the properties arose after the death of G.K.

Kirima when the plaintiffs in ELC No. 509 of 2014 invaded the said properties. The original title that gave rise to his parcels of land was L.R No. 5908/8. The sub-plots which he purchased bore the first digits of the original plot. On cross-examination by Mr. Nyamu, CLM 3 denied that the plaintiffs in ELC No. 509 of 2014 had been occupying L.R No. 5808/8 since 2002. He stated that when he went to fence his parcels of land in 2009/2010, the land was vacant and there was no habitation.

86. On cross-examination by Mr. Janja, CLM 3 stated that: The land that he purchased was vacant. The invasion of the land started in 2011/2012. The invaders came in groups of between 20 to 30. These were the officials of the plaintiffs in ELC No. 509 of 2014. The invaders were organised. They had leaders. The area was called Bypass. It was within Kayole Division. The area MCA was called Mr. Kadosi. The group interfered with his plots. They pulled down barbed wire fences he had erected. The act was criminal and was reported to Kayole Police Station but no action was taken. G. K. Kirima was not his family friend and he was not a land broker. He was not in the business of buying and selling land. He did not personally meet G. K. Kirima to negotiate the purchase of the plots which he purchased. He negotiated with the people he found in G.K. Kirima's office. He had personal knowledge of L.R No. 5908/8. He knew the land reference

number. He did a search on the land before he signed the agreements for sale. The land which he purchased did not belong to the government.

87. On cross-examination by Mr. Jelle, CLM 3 stated that: He visited L.R No. 5908/8 in 2008 before purchasing portions thereof. It was unoccupied. After putting up a fence around his plots, L.R No. 5908/8 was invaded. The invaders were not on the property when he purchased portions thereof. The invaders were violent. He engaged the invaders to supply him with building materials. This was a way of getting them off his back. The invaders had evicted other people. They wanted to evict him too. The contract to supply building materials was to appease them.
88. On cross-examination by Ms. Latif, CLM 3 stated that: when he purchased his parcels of land, L.R No. 5908/8 was unoccupied. He looked at the title before he purchased the said parcels of land. The title was in the names of Gerishon Kamau Kirima and John Gerishon Kirima. He met G.K. Kirima before purchasing the plots. His agreements for sale were signed by G.K.Kirima. He paid for the plots in cash. He paid the purchase price in G.K.Kirima's office. He was issued with receipts in the name of Embakasi Ring Road Developers. He did not enter into any sale agreement with Embakasi Ring Road Developers.

89. On cross-examination by Mr. Njuguna, he stated that the title he was shown had two names, Gerishon Kamau Kirima and John Gerishon Kirima whom he was told was one and the same person. He made payment to Embakasi Ring Road Developers. He did not do a search at the company's registry on Embakasi Ring Road Developers. He did not join the succession cause in respect of the estate of G.K. Kirima. On re-examination by Mr. Thuita, CLM 3 stated that he met G.K. Kirima in a boardroom in his office next to Jevanjee Gardens. He stated that when he met him, he (CLM 3) had gone to make some payments. He stated that he had known him before that day.

90. The next witness was **ISAAC NGANGA MBUGUA (CLAIMANT NO. 4) (CLM 4)**. He told the court that he had sworn an affidavit on 27th May 2014 which was filed in ELC No. 509 of 2014. He stated that he wished to adopt the affidavit as his evidence in chief. The affidavit together with the annexures was produced as Claimant No. 4's exhibit 1. He stated further that: He bought 3 plots from G.K.Kirima namely, Plot Nos. 148, 149, and 102. He paid for the plots at the rate of Kshs. 250,000/= per plot. The receipts issued to him were at page 25 of his affidavit. One of the receipts was in the name of his company, Best Point Auto Tyres. He paid for the plots in cash at G.K. Kirima's office at

Jivanjee Gardens. He did not enter into a written agreement with G.K. Kirima.

91. After he finished paying the purchase price in 2009, he was given some documents to sign which he did. He could not recall the nature of the documents that he signed. He was subsequently issued with deed plans for the plots. He was in possession of two of the plots. One of the plots, Plot No. 102, was invaded and the invaders had put up a small house on it. The invaders were members of Naridai Muoroto Self Help Group who were the plaintiff's in ELC No. 509 of 2014 who claimed to own the plot. The invasion was reported to the police. He was unable to use the plot. He had put up a building on Plot Nos. 148 and 149 which was incomplete. The two plots were not occupied. He urged the court to assist him in getting the titles for the plots. He stated that the plaintiffs in ELC No. 509 of 2014 had no valid claim over his plots.

92. On cross-examination by Mr. Onduso, CLM 4 stated that: Before he purchased the plots in 2009, he was shown around. The plots were not occupied and there were no structures on the plots at the time. He was shown the plots by people from G.K.Kirima's office. He could remember Mr. Nyoike and Mr. Kirima. He started fencing the plots in 2010. G.K.Kirima was alive when possession of the plots was handed over to

him. From the time he was handed possession of the plots in 2010 he had no problem until 2012 when his fence was brought down. This was after the death of G.K.Kirima. He came to know the plaintiffs in ELC No. 509 of 2014 when they came to his plots. They had no documents in support of their claims. He was shown a title before he purchased the 3 plots. The title had two names. He did not meet John Kirima at any time and did not know him. He bought his plots from G.K.Kirima. On cross-examination by Mr. Nyamu, CLM 4 reiterated that he viewed the plots in 2009 before he purchased the same and that the area was not developed. He stated that there were no houses in the area.

93. On cross-examination by Mr. Jelle, CLM 4 stated that: The title that he was shown had two names, G. Kirima and John Kirima. He had never met John Kirima. He did not enter into a written agreement for sale with G.K.Kirima. He paid the purchase price in cash at G.K. Kirima's office at Jivanjee Gardens. He was issued with receipts in the name of his company Best Point Auto Tyres. When he purchased the 3 plots, the same were vacant. He was shown the plots in 2009. He fenced the plots thereafter. He had no dispute with anyone over the plots until the same were invaded by the plaintiffs in ELC No. 509 of 2014.

94. On cross-examination by Mr. Nyangayo, CLM 3 stated that: He reported the invasion of his plots to the police and the invaders were arrested and released. He had employed a caretaker to look after his plots. The plot which was taken over by the plaintiffs in ELC No. 509 of 2014 was occupied by them. He did not sue the plaintiffs in ELC No. 509 of 2014. It was the plaintiffs in ELC No. 509 of 2014 who sued him. He did not carry out a search before he purchased the 3 plots. The plots belonged to G.K. Kirima. The plaintiffs in ELC No. 509 of 2014 did not show him their allotment letters. The title for the main parcel of land had two names. He only knew G. K. Kirima. The other owner, John Kirima was no known to him. He was in occupation of the plots.

95. The next witness was **STEPHEN MAINA WARUINGI (CLAIMANT NO. 5) (CLM 5)**. He stated that he was the 3rd defendant in ELC No 509 of 2014 and that he had sworn an affidavit on 27th May 2014 that was filed in the same case. He adopted the affidavit as his evidence in chief and produced the same in evidence as Claimant No. 5's exhibit 1. He testified further as follows: He was familiar with L.R No. 5908/8. He was residing on the property. A photograph at page 26 of his affidavit was that of his house on the property where he lived. He started constructing the house in 2007. He purchased the land where the house stood from the 1st defendant

in ELC No. 509 of 2014, James Gitundu. He did not buy the land from G.K.Kirima. He purchased 5 plots from James Gitundu (the 1st defendant). The plots were sold to him on the strength of deed plans. He had the original deed plans. He did an official search in 2007 and found that the land belonged to G.K. Kirima. He filed a supplementary list of documents dated 6th May 2016 which he produced as Claimant No. 5's exhibit 2. When he was constructing a house on L.R No. 5908/8, the property was vacant. There were only two buildings in the area. There were not many activities in the area. When he was putting up the house, he met resistance from young men who did not identify themselves. He repulsed them and continued with construction. He did not report the matter to the police. One, Mr. Otieno was occupying one of his plots with his family. The plaintiff in ELC No. 509 of 2014, Naridai Muoroto Self Help Group which claims to be the owner of the land in the area was an amorphous group. He urged the court to return the land in dispute to G.K.Kirima's family so that James Gitundu could get title documents which he could in turn transfer to him.

96. On cross-examination by Mr. Onduso, CLM 5 stated as follows: The land that he purchased belonged to the late G.K.Kirima. The land was vacant when he moved in a part from the two buildings he mentioned

earlier. James Gitundu showed him a receipt for the payment he made for the plots that he purchased from G.K. Kirima. He then did a search which showed that the land belonged to G.K.Kirima. He did further searches at the surveys office on the Deed plans which were given to him and found them genuine. He had not been paying rates. The same were being paid by James Gitundu. On cross-examination by Mr. Nyamu, CLM 5 stated that he was shown the plots in the year 2007. He stated that at the time, he found two buildings in the area. One was occupied and the other was under construction. He stated that the buildings did not belong to the squatters.

97. On cross-examination by Mr. Nyangayo, CLM 5 stated that: He bought the plots on the strength of receipts and deed plans. The receipt he produced in evidence was dated 29th June 2010 and was in respect of Plot Nos. 150,151,165 and 19. These were not the plots which he purchased. This was among the receipts which the 1st defendant, James Gitundu had. He had other receipts. The receipt did not indicate the deed plan numbers. The receipt was for the plots he had purchased. He entered into an agreement with James Gitundu (1st defendant) on the strength of the said receipts. He repulsed the young men who tried to prevent him from constructing a house on his plots. This was in 2008/2009. The young men did not identify themselves. He had done several searches on the disputed

property which showed that the property belonged to G.K.Kirima. The title had two names. He only dealt with the 1st defendant. He had interactions with Mr. Onduso advocate. He had interacted with him as a friend. He was not aware that it was Mr. Onduso who prepared the agreements infavour of the other defendants. L.R No. 5908/8 was vacant when he took possession of his plots save for the 2 houses that he had mentioned. As far as his eyes could see, there were no other people residing on the property. L.R No. 5908/8 had numerous access points. The property had suffered sporadic invasions. The land had been invaded and it had numerous inhabitants at the time of his testimony. He had never paid rates.

98. On cross-examination by Mr. Jelle, CLM 5 stated as follows: When he expressed interest in the plots that he bought, he had seen a copy of the title for L.R No. 5908/8. The property was registered in the names of G.K.Kirima and John Kirima. He purchased the plots from the 1st defendant. He made payments to the 1st defendant in cash. The 1st defendant issued him with receipts. The 1st defendant told him that he had purchased the plots from G.K.Kirima. He did not confirm that fact.

99. He was satisfied that the 1st defendant had purchased the plots from the owners thereof. He purchased the plots on the strength of the search which

he did. He entered into a written agreement with the 1st defendant. He moved into the house on his plots in 2012. He started constructing the house in 2008. At the time, he had nothing save for the receipts which the 1st defendant had showed him. When he first visited the property, the same was vacant save for the two houses. The people who interfered with his construction of the house appeared at the scene towards the end of 2007. They had no houses on the land. It was a hit and run group.

100. On cross-examination by Mr. Njuguna, CLM 5 stated as follows: The receipts which were given to him by the 1st defendant were not in the name of G. K. Kirima. He knew that Embakasi Ring Road Developers belonged to G.K.Kirima. The property in dispute, L.R No. 5908/8 measured 201.94 ha. He purchased 4 plots from this property. He was not familiar with the sub-division process. When land is subdivided, the mother title has to be surrendered. On re-examination by Mr. Thuita, CLM 5 stated that he paid for the plots around 2008. He stated that the 1st Defendant had several receipts but he only took the one for Kshs. 1,000,000/-.

101. The next to give evidence was **AMOS GATHOGO NJUGUNA (CLAIMANT NO. 6) (CLM 6)**. CLM 6 was among those who claimed to have purchased land from G.K.Kirima. He gave evidence on his own behalf and on behalf of the 9th to 50th defendants in ELC No. 509 of 2014. He

stated as follows in his evidence in chief: He was staying at Utawala on a plot that belonged to G.K. Kirima. The other defendants whom he was representing and he purchased land from G.K.Kirima. The parcels of land which they purchased were portions of L.R No. 5908/8. They used to meet at G.K.Kirima's office opposite Jivanjee Gardens. That was where they used to converge. At the office of G.K.Kirima, plots on sale were displayed and interested purchasers would pick plots of their choice and start paying for the same. They made payments in installments. They would make payment at the bank and then forward the bank deposit slip to the office for a receipt. There were also other modes of payment. The receipts were issued in the name of Embakasi Ring Road Developers. After finishing the payment, they were sent to the office of Onduso advocate where they signed sale agreements. After signing the agreements, the same were left at the office of Onduso advocate for G.K. Kirima to sign after which they were to collect the same. They had not received copies of the agreements that they signed. They received deed plans from the office of Mr. Onduso for their respective plots. He had the original copy of his deed plan No. 312312 in respect of Plot No. 5908/667. He had other deed plans for the defendants he was representing. He had a total of 33 deed plans. By the time, they were issued with deed plans, they were in occupation of their

respective plots. He was living on the plot that he purchased. They were told that they would be issued with instruments of transfer through Mr. Onduso's office. They never got the transfers because G.K. Kirima got ill and passed on. After the death of G.K. Kirima, their parcels of land were invaded by squatters. Those who had not developed their plots were denied access to the same. The invaders were calling themselves Naridai Muoroto Self Help Group. These are the plaintiffs in ELC No. 509 of 2014. He had given the particulars of the claimants/defendants that he represented and their respective parcels of land in his witness statement. Claimant No. 26 in his witness statement was Kandia Fresh Produce Supplies. It was defendant No. 4. They learnt of the plaintiffs' suit from Kandia Fresh Produce and joined the suit. The plaintiffs' claim against them had no basis. They purchased their plots from the late G.K. Kirima who was the proprietor of the same. They had pursued their titles from the advocate who was processing the same but they had not received the same. CLM 6 adopted his witness statement filed in court on 11th September 2018 as part of his evidence in chief and produced the documents attached to the witness statements of, Amos Gathogo Njuguna, Jacqueline Wanjiku Mwathe and Joseph Mwangi Githina at pages 16 to 185 of their bundle of documents as Claimant No. 6's exhibit 1. CLM 6 urged the court to dismiss the plaintiffs'

case against them. The court was also asked to order the administrators of the estate of the late G.K. Kirima to transfer their respective parcels of land to them.

102. On cross-examination by Mr. Onduso, CLM 6 stated as follows: He was representing about 40 claimants (9th to 50th defendants in ELC No. 509 of 2014). They knew each other when they were negotiating for the purchase of the plots he had referred to in his evidence in chief. They occupied their respective plots at different times. He made his first payment on 2nd April 2007 after viewing the property. The property was vacant. They entered into negotiations before the survey was done. They purchased the plots on the strength of a sketch plan. The property was surveyed later and deed plans were issued. They were shown the plots by Mr. Nyoike. They participated in the subdivision of the larger parcel of land. They engaged with the surveyor who carried out the survey of the property. He could not recall when the survey was completed but the deed plans were issued in 2009. They dealt directly with the late G.K.Kirima over a period of time. They had no reason to doubt that the property belonged to the late G.K.Kirima. When they used to go to G.K.Kirima's office, at times they could meet the late Kirima's wife. They did not however deal with her in relation to the property in dispute. He met others like Catherine in the

office but he also never dealt with her. He did not conduct a search on the property because a search was already displayed on the wall at G.K.Kirima's office. The purchase price was Kshs. 250,000/- per plot. They made payments through bank deposit. He did not know if all the claimants he was representing paid the purchase price in full. He was however sure that all those who had been issued with deed plans had completed payment of the purchase price. They commenced payment without an agreement for sale because they trusted G.K.Kirima. He used the G.K.Kirima's advocate in the transaction. He confirmed that the land he was occupying belonged to G.K.Kirima's family and that when he occupied it, it was vacant. He stated that Naridai Muoroto Self Help Group which was the Plaintiff in ELC No. 509 of 2014 came to the property in dispute after the death of G.K. Kirima.

103. On cross-examination by Mr. Nyangayo, CLM 6 stated as follows: He was giving evidence on behalf of 39 others. They had given him authority to do so. The authority was contained in his statement. He did not have a written authority. The people he was representing included natural persons and companies. Mr. Kifoto, the 41st defendant was the one who informed them of the existence of the suit. He did not know if Kifoto was the owner of the 41st defendant company. He had the authority of the 39th defendant

to give evidence on his behalf. He did not know when the 39th defendant purchased his plot from the late G.K.Kirima. The 9th defendant purchased his plot from Mr. Kathurima. The deed plans for Mr. Kathurima were Nos. 312539, 312542 and 312495. Mr. Kathurima had bought several plots which he sold to third parties. The 9th defendant did not purchase his plot from the late G.K.Kirima. There was evidence on record of these sale transactions. He referred the court to page 16 of the 9th to 50th defendants' bundle of documents.

104. He signed an agreement for sale at the office of P.C Onduso advocate and left the same at the office. Mr. Onduso witnessed his signature and he paid him for the service. He met the late G.K.Kirima when he was making the payments. He did not have a copy of the agreement for sale that he signed on 28th February 2011 at the office of P.C Onduso advocate. He was aware that the late G.K. Kirima died in 2010. He entered into an agreement with the administrators of the estate of the late G.K.Kirima. Mr. Onduso was the family advocate. He did not see any administrator of the estate or letter of administration. When he went to the office of G.K.Kirima, a copy of the title deed for the disputed property and a search were pinned on the wall. He did not see the original title deed or the original certificate of official search. He had occupied the plot that he

purchased since September 2009. When he went to L.R No. 5908/8, it was not occupied. The occupation was done in piecemeal. Some people had occupied the land by the time he took possession. The land was invaded by squatters from 2010. The invasion was gradual. The plaintiffs in ELC No. 509 of 2014 did not occupy L.R No. 5908/8 prior to 2010 to the best of his recollection. They entered the land after 2010. According to the title for the property in dispute, the same was owned by G.K.Kirima and John Gerishon Kirima. He only dealt with G.K. Kirima. He did not meet John Gerishon Kirima. The plaintiffs in ELC No. 509 of 2014 invaded L.R No. 5908/8. His plot was not invaded and he was living on the same.

105. On cross-examination by Mr. Jelle, CLM 6 stated as follows: He moved into the disputed property in 2009. Some people who purchased land from the late G.K.Kirima had moved in earlier. The plaintiffs in ELC No. 509 of 2014 invaded the suit property after 2010. Before he visited the property, he saw the Grant. He made payments of the purchase price at Barclays Bank and Co-operative Bank. After making the payments, he took the deposit slips to the office of G.K.Kirima next to Jevanje Gardens. He was issued with receipts in the name of Embakasi Ring Road Developers. He did not know the directors of Embakasi Ring Road Developers. He made the last payment on 21st May 2009. He moved to the property in September 2009.

He reiterated that he signed the sale agreement on 28th February 2011. He was told to wait for the other party to sign after which he would get a copy.

106. On re-examination by Mr. Irungu, CLM6 stated that his co-defendants had authorised him to represent them and that their authority was on the court record. He stated that G.K.Kirima was a reputable person and as such they had no reason to doubt him.

107. The next witness was **GEOFFREY CHARO KAHINDI KATSOLEH (COMMON WITNESS No.1) (CW1)**. CW1 was not a party to the suit. He was summoned to give evidence by Anne Wangari Kirima, the 7th defendant in ELC No. 509 of 2014. He was referred to as a common witness because several parties wanted to summon him as a witness. He stated as follows in his evidence in chief: He was a practising advocate based in Malindi. He swore an affidavit in connection with the dispute before the court on 22nd May 2014 that was filed in ELC No. 509 of 2014. He was shown letters of allotment said to have been signed by him. The letters of allotment were at pages 27 to 94 and pages 113 to 172 in the bundle of documents filed by F. N. Njanja & Company advocates in ELC No. 509 of 2014. He worked with the City Council of Nairobi and rose to the position of acting Town Clerk. The signatures appearing in the said letters of allotment were not his. He changed his signatures whenever he

moved to any new institution. His signature at the material time was similar to what appears in the said letters of allotment. The procedure for land allocation at the City Council of Nairobi was that a request was to come from the planning department. The request was to be presented before a committee of the Council. After the request was approved by the committee, it was to be placed before the full council for approval. If it passed that stage, it was to be presented to the Minister for Local Government. The Minister was then to Gazette the allotment in the Kenya Gazette so that if there was any dispute over the land to be allocated, those interested would come forward.

108. He could not remember if such a process was followed in this case. The letters of allotment in question did not refer to Plot No. 5908/8. The letters referred to various plots. He did not know where the plots were situated. He adopted the contents of his affidavit sworn on 22nd May 2014 and filed in court on 28th May 2014 in ELC No. 509 of 2014 as part of his evidence in chief. He stated that if the land was to be allocated as alleged, the Councillors would have been the first beneficiaries.

109. On cross-examination by Mr. Nyamu, CW1 stated that the purported letters of allotment did not originate from his office and that they did not look authentic. He stated that a letter of allotment would have a reference

starting with the letters “TC” and would mention the minutes pursuant to which the allotment was made. On cross-examination by Ms. Latif, CW1 stated that the signatures appearing in the letters of allotment were not his. On cross-examination by Mr. Kibera, he stated that if any payment was to be made in respect of the allotments, the payments would have been made to the City Council of Nairobi and receipts issued.

110. On cross-examination by Mr. Wanjohi, CW1 stated as follows: He was not the author of the letters of allotment in question. The signature in the letters of allotment was similar to his signature but the same was not his signature. He had not subjected the letters of allotment to forensic document examination. That was not necessary because he knew his signature. He denied being the author of the said letters of allotment. The letters did not bear L.R No. 5908/8. He was the town clerk of the City Council of Nairobi at the material time. The letters were on the letterhead of the City Council of Nairobi. The letters of allotment referred to plots in Naridai Muoroto Scheme. He was not aware of such a scheme. He had changed his signatures on several occasions. He had nothing to show that when he was working at the City Council of Nairobi, he was not using the signature appearing in the letters of allotment. On cross-examination by Mr. Irungu, CW1 stated that he was a deputy town clerk and when Mr. Gakuo

retired in 2009, he assumed the office of the town clerk in acting capacity. He stated that the town clerk was the Chief Administrator of the City Council of Nairobi and the accounting officer. He stated that during his tenure as the town clerk, he did not hear of an entity known as Naridai Muoroto. On cross-examination by Mr. Macharia, he stated that a letter of allotment had to refer to the full council minutes. He stated that during his tenure at the City Council of Nairobi, there was no land to allot unless it was a renewal of a lease.

111. The next witness was **RONALD MATENDE OMUOMA – CLAIMANT NO. 7 (CLM 7)**. Although he was referred to as a claimant, CLM 7 was merely a witness for the plaintiffs in ELC No. 252 of 2011. In his evidence in chief, he stated as follows: He worked at the Ministry of Lands for 27 years until August 2012. He was employed as a Land Administration Officer and retired as Chief Land Administration Officer in charge of Nairobi. The memo at page 35 of the plaintiff's List of Documents dated 29th May 2012 filed on 29th May 2012 in ELC No. 252 of 2011 was written by him. He prepared the memo for use by his seniors in decision making. The memo followed a visit to the Ministry of Lands by squatters who were claiming land which they occupied. It was necessary for an officer to visit the land. He was instructed by the Commissioner of

Lands to visit the land. His instructions came from the Assistant Commissioner of lands, Mr. Makofu. He visited the land and thereafter prepared the memo. When he visited the land namely, L.R No. 5908/8, there were few settlements on the land especially in the area between Kangundo Road and the river.

112. He referred the court to the map at page 45 of the plaintiffs' bundle of documents filed on 29th May 2012 in ELC No. 252 of 2011 which he said was a fair representation of the area at the time of his visit. The map showed the existence of a river at the far left and Kangundo Road some distance from the river. The portion of land between Kangundo Road and the river was occupied. From town to Kangundo, the parcel of land was on the left. The settlements were of mixed makeup. Some were mud houses; others were "mabati" structures while others were of a permanent nature. It was the same map which he used while preparing the memo. The memo described what was in the map. The area between Kangundo road and the river was the one he marked in red. It was extensively developed at the material time. The area which he marked in blue was where the squatters were drying fish. The portion below the blue area, was used by the squatters for quarrying.

113. He concentrated his inspection on the area edged in red. The area was extensively developed with mixture of semi-permanent and permanent structures. The area marked in blue in the map was used for drying fish. The area marked 3 was being used for quarrying. When he visited the place, the quarrying was going on and fish was being dried in the area marked 2. The area marked 4 had relics of demolished structures. The road passing through the area edged in red is Kangundo Road.
114. He also observed that the land outside the area edged in red was underutilised. That was the area marked 5. The area was not optimally utilised. He went to the area to carry out investigation because the people who were occupying the area edged in red wanted to be allocated the land. At the time, the lease for Plot No. 5908/8 had expired. He was in possession of the records. He made a recommendation to the government. He recommended that the area that was occupied by the squatters be used to solve the squatter problem. He recommended that a survey be done to isolate the area that was in actual occupation by the squatters. He made a further recommendation that the list of the squatters be vetted by the department of lands and the local leaders.
115. CLM 7 stated further that, leases normally have development conditions which have to be complied with. He referred to the letter at page 31 of the

plaintiffs' bundle of documents addressed to Kirima & Sons by Mr. E. M. Omagwa. He stated that E. M. Omagwa was known to him and that the government was reluctant to extend the 99 years lease. He stated that the lease had expired and that after he made the recommendation, he was moved to another section. He stated that someone else took over the issue of extension of the lease and that the lease was extended. He produced the plaintiffs' bundle of documents dated 29th May 2012 filed in ELC No. 252 of 2011 as Claimant No. 7's exhibit 1.

116. On cross-examination by Mr. Onduso, CLM7 stated as follows: He did not have a copy of the expired lease in respect of L.R No. 5908/8. There was a lease in respect of the property that had expired. He did not have a copy of the application for renewal of the lease in respect of L.R No. 5908/8. As at the time of the memo he had referred to in his evidence in chief, the lease had expired. He could not remember when the lease expired but at the time, the land had reverted to the government. Kirima & Sons was the previous owner of the leasehold interest. Kirima & Sons had a pre-emptive interest in the land. He was shocked that Kirima & Sons was registered as the owner of the land despite his recommendation. He visited the property. He did not take any photographs during the visit. He did not know if the suit property was resurveyed. He knew that the suit property

was in the name of G. K. Kirima. There were structures on the property when he visited. He did not count the same. He also did not talk to the inhabitants of the property. The claimants brought a letter to his superiors who assigned the work to him. He did not take down the names of the claimants.

117. On cross-examination by Mr. Nyamu, CLM7 stated as follows: He did not know the names of the claimants who sought to be allocated the property. He was summoned by the advocates for the claimants in ELC No. 252 of 2011 to be a witness in the suit. He knew the claimants as a group. He no longer worked for the Ministry of Lands. He had retired. He was not keeping the records for the Ministry of Lands. The documents he produced in evidence were official documents. His visit to the suit property was prompted by a complaint that was lodged by Kamatuto Self Help Group, the plaintiffs in ELC No. 251 of 2011. The group wrote to the Commissioner of Lands. He visited the area in 2003. It was in the same year that he made his report. The letter at page 34 of the plaintiffs' bundle of documents was not the letter which prompted his his visit to the suit property. As at the date of that letter, he had already done a memo to the Commissioner of Lands. The letter did not refer to the earlier correspondence. His memo referred to a visit he had made. The memo

was in the form of a report. They were not putting memos in letter heads at the time. Apart from the map, he did not support the report with any other document. He did not take photographs. He was not a surveyor. He was a land officer. The map was not drawn by him. He only used the same. The map was a government/public document which could be found at the Department of Surveys. They were allowed to use such materials for site inspection. The map had no reference number. It was also not signed. The suit property had a deed plan. He got the map from their records. He focused on the portion of the suit property edged in red. He found demolitions on the upper side of the land. The entire land was not settled. There were demolitions in the area marked 4. There were about 87 houses on the suit property when he visited. That was as at the time of his visit. Quarrying activities amounted to occupation. He did not see any maize growing on the suit property.

118. He could not at the time of giving evidence confirm official information from the Ministry of Lands. He had no interest in the suit property. He was giving evidence in his private capacity. The letter at page 31 of the plaintiffs' bundle referred to another visit which was carried out by Mr. Omagwa. This was after his visit. The lease for the suit property was extended despite his report. There was a group claiming the land and G. K.

Kirima applying for extension of the lease for the suit property. He was not hired by the plaintiffs to give evidence on their behalf.

119. On cross-examination by Mr. Ojiambo S. C., CLM 7 stated as follows:

He went to visit the suit property his capacity as an experienced land officer. He worked with the government for 27 years from October 1985 to January 2013. He had B. A. in Geography from University of Nairobi and Masters in Urban and Regional Planning also from the University of Nairobi. He did not ask to see the file for the suit property at the Land's Office before giving evidence. He did not choose the documents to be presented to court. The documents were presented to him by the claimants. He did not ask them to give him a complete file. He came to court willingly. He was aware that he had not given the court complete information regarding the suit property. He did not see the expired lease. His memo followed a claim. He found the land extensively developed. The land was sparsely occupied. The structures were scattered. He did not go to the structures. He presumed that people lived on the same. He spoke to some people in the area marked 2 on the map. They were the ones who gave him the information he had given in the memo. The area marked 4 had demolished structures. Area 5 had few buildings. His conclusion was intended to influence the Commissioner of Land to allocate the suit

property to the squatters. He did not mention the owner of the property in his report. That was beyond the scope of his instructions.

120. The claimants went to the Commissioner of Lands who then asked him to handle the case. He did not pick the documents which he had produced in court. He knew the claimants as a group. The claimants did not at any time come to see him personally. He did not know the claimants individually. The Commissioner of Lands at the time was Mrs. Okungu. He retired voluntarily on reaching 50 years. He knew that the suit property had a registered owner. He did not intend to defeat the interest of the registered owner. What he made was an administrative recommendation.

121. On cross-examination by Ms. Latif, CLM7 stated as follows: The group that lodged a claim was Kamatuto Self Help Group. When he went to the site, he met some people on the ground. Apart from Kamatuto Self Help Group, he did not meet any other group. He was not accompanied with a surveyor during the visit and he did not carry out a survey. He also did not take photographs. He used a sketch map. He did not count the structures that were on the suit property. He estimated the structures to be about 87. He established that the squatters had been in occupation of the suit property for some time. His report was preliminary. That was why he recommended that a survey be done.

122. On cross-examination by Mr. Nyangayo, CLM 7 stated as follows: His instruction was to carry out preliminary investigations on the claim by the squatters. On his visit to the property, he saw approximately 87 houses. He did not count the people who were occupying the houses/structures. He talked to some of them. He had no reason to doubt what they told him. He did not ask the people on the ground whether they were from Kamatuto or Naridai. After the visit, he did a report. He saw the file for the suit property in 2003. He did not take photographs during the visit. For land marks, he used the river, Kangundo Road and electric cables. There were demolitions. They appeared like mud houses which existed but were no longer in existence. There were still people living in the area marked 4. There was a mixture of old and new structures. He recommended that the squatters be allocated the area they occupied. He was surprised that this did not happen.

123. On re-examination by Mr. Wanjohi, CLM 7 stated that the lease for L.R. No. 5908/8 was for a term of 99 years with effect from 1st August 1904. He stated that he did not visit the site pursuant to the letter at page 34 of the plaintiffs' bundle of documents. He stated that he was not given any incentive to come and testify in the suit. He stated that he was shocked that

the lease was renewed because the land had a squatter problem which should have been sorted out before the lease was renewed.

124. The next witness was **AINEAH LUSIJI SMITH – CLAIMANT NO. 8 (CLM8)**. CLM 8 was one of the plaintiffs in ELC No. 252 of 2011. He stated as follows in his evidence in chief: He was residing on G.K.Kirima's land. He came to know G.K.Kirima when they came to court. The land they occupied belonged to a European by the name, Dominic. The European left the land for poor squatters. He entered the land when he was still a young man. His father used to stay on the land. His father used to work on the sisal farm on the property. The land had sisal plantation. He was born on 15th May 1939. He was born on the land. His parents were cultivating land near the river. He was still staying on the land. They had put up houses on the land which were demolished. His first house was demolished and he put up a second house in 2011. After the demolition, they were then allowed to rebuilt their structures. He was a member of Kamatuto Self Help Group. His name was in the membership list. He owned Plot No. 1417 which was indicated against his name. The officials of Kamatuto Self Help Group called for a meeting on 25th May 2011 at which the members passed a resolution to come to court. The quarry that could be seen in the photographs at pages 36 to 44 of Claimant No. 7's exhibit 1 was

on the suit property. The buildings on the photograph at page 37 of the exhibit were also on the suit property while the houses on the photograph at page 38 were not on the suit property. The structures on the photographs at pages 39 and 40 were on the suit property. CLM8 prayed that they be issued with titles in respect of the land that they were occupying. He stated that he had occupied the suit property since 1939.

125. On cross-examination by Mr. Onduso, CLM 8 stated as follows: He knew how to read and write. He was born on the suit property. After his birth, they left the property. His parents moved to Nakuru. They came back when he was 10 years old. He was issued with an identity card for the first time in 1955. He obtained that Identity Card (I.D) in Nakuru. He could not remember for how long they had stayed in Nakuru as at 1955. They left the suit property in 1952. They came back to Nairobi in 1962. He acquired another I.D Card in 1964. He was educated at Nyangori Secondary School. His parents were deceased. They were buried in Aldai Division, Nandi District. His father died first. His parents were not buried on the suit property because the property had issues. The dispute over the suit property started in 2000. As at the 2000, he knew that the suit property was owned by an Italian. In 2000, he was staying in Dandora Phase 4 in a rented

house. In 2001, he moved to Maili Saba between Embakasi and Dandora. Maili Saba was not part of the suit property.

126. He was still staying at Maili Saba since he moved there in 2001. He was a member of Kamatuto. Maili Saba was near Kamatuto. Some of the members of Kamatuto lived in Dandora, others lived in Maili Saba while the others were living at Kamatuto. They had several meetings before they filed ELC No. 252 of 2011. He could not remember the name of the Chairman of Kamatuto Self Help Group. The Secretary of the group was Martin Irungu. The Treasurer was Mumbi. He became a member of Kamatuto in the 2000. He registered with Kshs. 5,000/-. He was recruited by Martin Irungu and Samuel Alila. Martin Irungu was staying at Donholm. Samuel Alila was staying at Mwengeye next to Dandora. He knew Charles Ager, John Ndirangu and Harrison Kiragu. He knew Harrison Kiragu when they started having meetings to plan for the filing of a suit. He had several residences. He moved to Maili Saba in 2001. Before that, he was staying on rented premises in Dandora Phase 4. His first house was demolished in 2001. It was on G.K.Kirima's plot. The houses were demolished by G.K.Kirima using policemen. He was at work when the demolition took place. It was after the demolition that he moved to Maili Saba. He moved to the suit property from Dandora where he was staying.

After his house on the suit property was demolished, he moved to Maili Saba.

127. When they were putting up houses on the suit property, they did not know the property belonged to G.K.Kirima. They thought the land belonged to an Italian named Dominic. He was told the farm belonged to Dominic. They had a meeting at which they agreed to collect money to file a suit. The people came to the meeting from different places. Some people came from Maili Saba and others from Mengenyé. Some of the people came from the suit property. He knew few people in the list of 1310 people at pages 3 to 24 of the plaintiffs' bundle of documents filed in ELC No. 252 of 2011. The group had an office on the suit property. He contributed Ksh.500/- for the suit. They were told that they needed to make payment to cover court fees. He did not know about G.K.Kirima. He only knew Dominic who left the land to them.

128. On cross-examination by Mr. Jelle he stated as follows: He prepared his witness statement after which it was typed by his advocate before he signed it. He drafted the statement in English. They had a meeting on 25th May 2011. It was after the meeting that the list of members of the group was prepared. He did not sign the list against his name. The signature on the

list was not his. He had a house on G.K.Kirima's land. He had several houses. Some were on the suit property while others were elsewhere.

129. The next witness was **SARAH WAIRIMU CHEGE – CLAIMANT NO. 9 (CLM9)**. CLM 9 was also one of the plaintiffs in ELC No. 252 of 2011. She stated as follows in her evidence in chief: She was member No. 645 of Kamatuto Self Help Group. She could not remember the parcel number for the land which they were occupying. G.K.Kirima gave them a portion of his land. Her father was working for G.K. Kirima. She was brought up on the land in dispute. They had a farm on the property which they were cultivating. She could not remember when they entered the land in dispute. Some people demolished their houses and evicted them from the property. The land in dispute was fully developed with highrise buildings and petrol stations. The court had stopped development on the land. They were evicted from the land and other people came and took over the land. Although they were squatters who were given land by G.K.Kirima, they were not spared of the eviction. She urged the court to assist them and G.K.Kirima to get back their land from the invaders.

130. On cross-examination by Mr. Onduso, CLM 9 stated as follows: They were evicted from the suit property. She was staying with her son at Maili Saba. Their advocate also had a house on the land in dispute. His name

was Mr. Wanjohi. They were evicted before they came to court. Several houses were demolished. All the members of Kamatuto Self Help Group were evicted. They were out of the suit property. They had no houses on the suit property. They were evicted by hired youth. They decided to come to court after they were evicted. Apart from the members of Kamatuto, there were no other squatters on the disputed land. There was a slaughterhouse on the land. The slaughterhouse was still in existence. The slaughterhouse was constructed by G.K.Kirima. The suit property belonged to G.K.Kirima.

131. On cross-examination by Mr. Jelle, CLM 9 stated that she was a member of Kamatuto Squatters Self Help Group. She stated that she could not remember when she joined Kamatuto Group. She stated that she was brought up on the suit property. She stated that she paid a membership fee of Kshs.5/-. She stated that apart from G.K.Kirima, no one else was in occupation of the suit property. She stated further that apart from cattle dips, there were no other structures on the land. On cross-examination by Mr. Njuguna, CLM 9 stated that G.K.Kirima gave them a portion of his land. She stated that she was not present when G.K.Kirima gave them land. She stated that the land was given to their representatives. She stated that she had nothing in writing showing that they were given a portion of

G.K.Kirima's land. She stated that there were a number of people occupying the land some of whom were workers while others were born and brought up on the land.

132. On re-examination by Mr. Wanjohi, CLM 9 stated that they had put up houses on the suit property and all the members of Kamatuto group were staying on the suit property. She stated that not all the members had houses on the property. She stated that some were sharing houses. She stated further that not all the members were working for G.K.Kirima. She stated that some were working outside the property but residing therein.

133. The next witness was **JOHN OTIENO OBADE (CLAIMANT NO. 10)**. CLM10 (wrongly mentioned in the proceedings as CLM9) represented the claimants in ELC No. 1257 of 2014. CLM 10 stated as follows in his evidence in chief: He was staying at Mihango, Embakasi East Constituency. He and 299 others filed ELC No. 1257 of 2014 against the estate of G.K.Kirima seeking the orders set out in their Originating Summons. He swore an affidavit on his own behalf and on behalf of 299 others in support of the Originating Summons (O.S). He swore a further affidavit on 23rd June 2015 which was filed in court on the same date. He wished to rely on the documents attached to the said affidavits in support of their claim. He also wished to rely on the pleadings. They were occupying a

portion of the disputed property measuring 80 acres. They had constructed houses on the property. The photographs annexed to their affidavit in support of the Originating Summons showed the buildings they had put up. They entered the property in 2000. They had an association known as Njiru Mihango Farmers. All of them had put up permanent houses on the disputed land. The value of one house was about Kshs.3,000,000/-. They did not know the owner of the disputed property when they entered the same. It was until 14th September 2014 when they were served with a court order that they learnt that the land belonged to the late G.K.Kirima. From the time they entered the property up to 2014, no one came to lay a claim over the property.

134. On cross-examination by Mr. Ojiambo S.C, CLM 10 stated as follows:

He was 46 years old. He went to school up to Form IV. He was about 32 years old when he entered the disputed land. He was staying at Mihango before he entered the land. He went to live in Mihango in 1987. He was born in Siaya. He came to Nairobi in 1978 when he was 6 years old. When he came to Nairobi, he was staying with his parents at Mihango, Karagita. He was staying at Mihango, Njiru Farmers as at the time he was giving evidence. Their elders were staying in the area. He did not carry out a search on the title of the suit property. He was not aware that the court

issued an order in 2003 for the eviction of the occupants of the disputed land. He was also not aware of the 2006 court order. He did not know the land reference for the suit property. He saw the land reference in the court order. He was in the business of supplying building materials. He did not know the reference number for the land he was occupying. He knew the 299 people he was representing. He noted that the 2nd and 42nd plaintiff, Ruth Nyambura Waiguru were one and the same person. He did not know when she came to the suit property. She was a squatter. He was born at Masala, Bondo in Siaya County. Their association was not registered. He had a house on the suit property. The plan for the house was not approved. He came to know that the land belonged to someone else when they were served with a court order.

135. On cross-examination by Mr. Nyamu, CLM 10 stated as follows: He was born in 1982 according to his Identity Card. He reiterated that he came to Nairobi in 1978 and entered the suit property in 2000. He was a member of Njiru Farmers Association. They entered the disputed land at different times and settled on the property. He was claiming a portion of the property measuring 1/8 of an acre. He knew Virginia Kirunga. She was staying about 200 meters from his place. She entered the suit property in 2000. She was also claiming a portion of the disputed land measuring 1/8 of an acre.

Mr. Kabue who was No. 24 in the list of claimants was claiming a portion of the disputed land measuring $\frac{1}{4}$ of an acre. He also entered the land in 2000. He knew the plaintiff who was the first one in the list of claimants. He did not however know when he entered the disputed land. That plaintiff was claiming a portion of land measuring $\frac{1}{4}$ of an acre. He knew the portions of the suit land being claimed by each of the plaintiffs. The people with the least acreage owned $\frac{1}{8}$ of an acre. There was no one with land measuring 1 acre. The largest portion owned by the claimants measured $\frac{1}{4}$ of an acre. He did not know the number of people who owned $\frac{1}{4}$ of an acre plots. All the plaintiffs occupied land measuring 80 acres. He did not come to court with the other plaintiffs. He went to Equator High School in Thika. He finished Form IV in 1991. He did not go to college. He was doing supply work between 1991 to 2000. He was supplying building materials. He was supplying quarry stones for building. He neither owned a lorry nor a quarry. He had land in Bondo, Siaya. Before he constructed a house on the suit property, he was staying at Karagita, Mihango. When he was constructing the house, the owner of the land was unknown. Those who entered the property in 2000 knew each other. They had a surveyor who assisted them in the allocation of the land. He could not remember the

name of the surveyor. He denied that they entered the suit property after the death of G.K.Kirima.

136. On cross-examination by Mr. Onduso, CLM10 stated as follows: The list of the people he was representing was made on 18th September 2014. The list was prepared by their group secretary Mr. Awiti. The people whose names were in the list were present at the meeting. The list was not signed by members against their names. There was a list that was prepared earlier. He did not have the list in court. There was no indication in the list as to when each of the plaintiffs entered the disputed land. He was appointed by the members to represent them in the suit. He had annexed photographs of some buildings they had put up on the disputed land. His house was No. 20 in the photographs with some banana plants on the fence. He commenced construction in 2006 and finished building in 2010. The plan for the building was not approved by the relevant authorities. The land they were claiming was part of L.R No. 6825/2. He had not seen the title deed for the property and had not done a search on the title of the property. He had also not produced any subdivision plan before the court showing the portions of the suit property which they were claiming.

137. On re-examination by Mr. Ojienda, CLM10 stated that they did not plan to grab land. He stated that the County Government had not come to

inspect their buildings. He stated that when they entered the land in dispute, they were about 290. He reiterated that they did not know the owner of the land until they were served with a court order. He stated that the plaintiffs in ELC No. 1257 of 2014 were occupying the entire 80 acres they were claiming. The case for the plaintiffs in ELC No. 1257 of 2014 was closed with the evidence of CLM 9.

138. After the close of the claimants' cases, the case for the respondents was opened with the testimony of **ANNE WANGARI KIRIMA** (hereinafter referred to only as "the 1st respondent"). The 1st respondent stated as follows in her evidence in chief: She was one of the administrators of the estate of the late G.K.Kirima and she was familiar with the claims that had been made against the estate in relation to L.R No. 5908/8 and L. R No. 6825/2 (Plot No. 5908 and Plot No. 6825). She had copies of the titles for the two parcels of land. According to the Grant No. I.R 988744, the registered owners of L.R No. 5908/8 were Gerishon Kamau Kirima and John Gerishon Kirima. According to the indenture attached to her further affidavit filed on 22nd June 2015 in ELC No. 1257 of 2014 (O.S) as annexure "AWK 2" which was the title for L.R No. 6825/2, the property was registered in the name of Gerishon Kamau Kirima and John Gerishon Kirima.

139. The ownership of the two parcels of land had not changed. The allegations that these parcels of land had been sold and that people had moved into the same and had been in occupation for 12 years were not true. The allegations had been made before. There was a group which claimed to have had adverse possession of the suit properties in 2003. A suit was filed against them and an order was made for their eviction from the properties. Another claim arose in 2006 after the first group had been evicted. For the second time, a court order was issued in 2006 and this second group was also evicted.

140. These orders were issued on the basis that the claimants were illegal occupants of the said parcels of land. In 2011, using the orders issued in 2006, they carried out another round of evictions. The said orders were annexed to her Further List of Documents filed on 22nd June 2015 in ELC No. 252 of 2011. The owners of the two parcels of land and the estate of G.K.Kirima had asserted their rights to the properties and the court through the said orders had upheld the said rights. It was not true that the claimants had occupied the whole land in dispute. She had Google maps prepared by a court appointed surveyor. They applied in the succession cause for an order for a surveyor to help them identify their various parcels of land so that they could fence the same. The suit properties were among the

properties in respect of which the order was sought. The surveyor was to identify the beacons of the said properties. They also requested for Google maps which the surveyor provided. Google maps were satellite imagery taken at a specific point over a specific location at a specific time. The maps bear dates and time. The Google maps were attached to the affidavit of Teresia Wairimu Kirima filed on 16th October 2014 in ELC No. 1257 of 2014 (O.S). The Google maps dated 22nd January 2007, 30th June 2008 and 17th March 2009 all showed that the land was clear. This is indicated by a red marker. Trespass had not commenced at this time. The maps were in respect of L. R No. 5908/9.

141. The Google map dated 13th October 2009 was in respect of L.R No. 6825/2. The map showed that there was little encroachment at one end. The Google map dated 22nd January 2007 was also in respect of L.R No. 6825/2. The map also showed less encroachment. The maps showed progression in encroachment with the later maps showing increased number of trespassers on both parcels of land. The Google map dated 17th January 2011 in respect of L. R No. 5908/8 showed less activity while the Google map dated 1st October 2012 for the same parcel of land showed increased activity. The Google map dated 30th September 2013 showed an invasion.

142. G.K.Kirima died on 21st December 2010. Prior to his death, there was hardly any encroachment on his parcels of land. The Google map dated 4th March 2014 showed an influx of trespassers. The two parcels of land were adjacent to each other. The parcels of land had been in the possession of the family of G.K.Kirima for many years. L.R No. 6825/2 had been with the family since 1967 while L.R No. 5908/8 had been with the family since 1970. G.K.Kirima's family carried out the business of butchery. The business had been run by family members for several years. The family had a home on the properties which was occupied by family members. They never had trespassers on the suit properties. When trespass occurred in 2003, it was dealt with. Again when trespass occurred in 2006 it was similarly dealt with. In 2011, they obtained an order to fence the properties. The order was issued on 26th March 2013. They attempted to fence the properties but it became very difficult. They came back to court and obtained an order to clear the land so that they could fence the same. The order was made on 12th September 2014. The order emphasised their right over the suit properties. They were allowed to demolish the structures on the suit properties. They had always paid rates for the suit properties. She referred the court to the receipts annexed to the affidavit of Teresia Kirima filed in court on 16th October 2014. No one else had paid rates for the suit

properties. They had continued to pay rates. They had issued various notices in the Newspapers to the public about their interest in the suit properties. One of the notices was a caveat published on 6th June 2013. It was annexed to the aforesaid affidavit of Teresia Kirima. They also requested the Nairobi City County Government for assistance. Those who were developing the suit properties were unable to get their building plans approved and those who had put up illegal structures on the suit properties were ordered to remove them.

143. It was not true that the claimants had occupied the suit properties for a very long time. They were asking the court to allow them take back what rightfully belonged to their family. She was aware that there were people claiming to have bought portions of the suit properties from the late G.K.Kirima. The titles in respect of the suit properties were in the names of Gerishon Kamau Kirima and John Gerishon Kirima. She had not come across any sale agreement signed by the two owners of the properties. She was also not aware of any payments made to G.K.Kirima in respect of suit properties. The payments if any should have been made to both registered owners of the suit properties. The acknowledgements of the payments should also have come from both. She was not aware of any acknowledgement of payment by both owners in respect of the suit

properties. The receipts acknowledging payments attached to the list of documents filed in ELC No. 850 of 2014 on 27th June 2014 were issued by Embakasi Ring Road Developers. A search on the firm revealed that the same was registered in the names of Amos Kimani Kirikiru and Ms. Rachael Wacuha Kabue. The business was situated on L.R 209/679, Tom Mboya Street, Nairobi. It had a box number 73913, Nairobi as its postal address. The two persons did not own the suit properties. The payments made to the firm were not connected to the suit properties. The receipts did not bear G.K.Kirima's signature. There was a proposal to subdivide the suit properties but the properties were not subdivided. She was familiar with L.R No. 7106/2/1. This was G.K.Kirima's land in Embakasi. The land was not in dispute in the suit. G.K.Kirima was a businessman who used to receive several payments. He was in property development. Some payments were made after the death of G.K.Kirima and the administrators of his estate were not aware of the same. She had not come across any payment made to the estate of G.K.Kirima in respect of the suit properties. After the death of G.K.Kirima in December 2010, they could not sell the suit properties. They could only collect the estate. Prior to his death, only two people could sell the suit properties namely, G. K. Kirima and John G. Kirima.

144. She was aware that there were those who claimed to have been allocated the suit properties. She had looked at the documents attached to the plaintiffs' list of documents dated 23rd April 2014 filed in ELC No. 509 of 2014 on 28th April 2014. She saw the letters of allotment allegedly signed by G. C. K. Katsoleh. Katsoleh had given evidence and denied signing the said letters of allotment. Katsoleh stated that the said letters of allotment were fake. L.R No. 5908/8 was registered in the name of G. K. Kirima as private land. The City Council of Nairobi had no right to allocate private land to the public. Katsoleh swore an affidavit on 22nd May 2015 which was attached to her (1st respondent's) further list of documents dated 16th June 2015 filed on 22nd June 2015. Katsoleh referred to the alleged letters of allotment. He denied signing the same. He termed the same as forgeries.

145. She made a report to the police about the alleged allocation of the suit properties. Her complaint was addressed to the Director of Criminal Investigations to the attention of Mr. Wahoro Ndegwa. The complaint concerned the forgeries of the letters of allotment in relation to L.R No. 5906/8 by the members of Naridai Muoroto Self Help Group. The letter of complaint was dated 18th July 2018. The former Governor of Nairobi, Dr. Evans Kidero confirmed that L.R No. 5908/8 and L.R No. 6825/2 belonged to G.K.Kirima and were private land. The court made an order

on 19th May 2003 in HCCC No. 249 of 2003 for the eviction of the plaintiffs in that case from L.R No. 6825/2, Nairobi. Following that order, with the assistance of the Commissioner of Police they evicted all those who were on L.R No. 6825/2. There had been previous proceedings concerning L.R No. 5908/8. The proceedings were taken in Nairobi HCCC No. 662 of 2006. The documents relating to this case were in her further list of documents filed on 22nd June 2015. She referred the court to the order made by Aluoch J. on 19th July 2006. The order directed the defendants in the suit to vacate L.R No. 6825/2 and L.R No. 5908/8. She also referred the court to the order made by Lenaola J. in HC Succession Cause No. 1298 of 2011. The two parcels of land had been the subject of explicit court orders against those who had occupied the same. The two parcels of land were owned by G. K. Kirima and John G. Kirima. G. K. Kirima was her deceased father while John G. Kirima was his brother. The ownership of the properties had not changed.

146. On cross-examination by Mr. Thuita, the 1st respondent stated as follows: G. K. Kirima was her father while John G. Kirima was her brother. They were carrying out business as Gerishon Kamau Kirima & Sons. Her father had two spouses. Her mother was Agnes Waruguru. Her father's other wife was Teresia Kirima. John Kirima was the son of Agnes

Waruguru. Their first born was Maria Kirima. John Kirima was their first born son. He was 60 years old. He was born in 1957. Her father purchased L.R No. 5908/8 in 1970. John Kirima was 13 years old then. John Kirima was also known as Wanjau. She was aware that John Kirima filed a case against their father, G.K.Kirima. She was aware that G.K.Kirima swore an affidavit denying that he was running the business known as Gerishon Kamau Kirima & Sons with John Kirima also known as Wanjau. She was not a party to that case. G.K.Kirima had filed several suits for the eviction of squatters from the suit properties. The defendant in HCCC No. 249 of 2003 was G.K.Kirima. John Kirima was not a party to that case. She was aware there was a Catholic Church on the suit properties. She was aware of HCCC No. 1318 of 2013 which was consolidated with the present suit. In that suit, Anne Kirima and Teresia Kirima sued Father Romeo and the registered trustees of Comboni Missionaries. John Kirima was not a party to that suit. She could not recall any suit involving the suit properties in which John Kirima was a party. She did not know if he was aware of the present suit. She was not aware if John Kirima had filed a suit over the suit properties. She was also not aware if John Kirima was occupying any portion of the suit properties. John G. Kirima was not her father.

147. G.K.Kirima died 21st December 2010. He had several offices. He had an office at Kirima House, Moktar Street opposite Jevanjee Garden. G.K.Kirima used to go to that office when he was alive. He owned the building. She also used to go to that office. She used to work in that office with G.K.Kirima. There was an employee of G.K.Kirima by the name Catherine Njeri. She was G.K.Kirima's office administrator. She did not know Cephas Mwaura. She knew someone known as Mr. Mwaura from Geotop Survey Ltd. He was known to G.K.Kirima. He did survey work for him. She did not know for how long he served G.K.Kirima. She met him in G.K.Kirima's office. She was not aware if Mr. Mwaura was instructed by G.K.Kirima to survey L.R No. 5908/8 and L.R No. 6825/2. She was not aware that the deed plans which were produced by some of the parties in the suit were prepared by Mr. Mwaura. She was aware that Mr. Mwaura prepared fraudulent deed plans which he used to sell to the public. Embakasi Ring Road Developers mentioned in the suit did not belong to G.K.Kirima according to the official records. She did a search on the entity which revealed that it was owned by Amos Kimani Kirikiru and Ms. Rachel Wacuka Kabue. She did not know Amos Kimani Kirikiru. A certificate of official search dated 29th September 2009 in respect of L.R No. 6825/2 showed that in 2002, G.K.Kirima and John G. Kirima transferred a

property to one, Amos Kimani Kirikiru. The property which G.K.Kirima transferred to Amos Kimani Kirikiru had nothing to do with the suit properties.

148. G.K.Kirima owned a property at Embakasi next to Pipeline Estate. He sold the property to other people. She could not confirm that G.K.Kirima received the monies in respect of which receipts were issued by Embakasi Ring Road Developers. She could not confirm that the agreement dated 4th February 2006 between Gerishon Kamau Kirima and Victoria Technical Enterprises was signed by G.K.Kirima. They knew some of the people to whom portions of the suit properties were sold. They were occupying the suit properties. They had no interest in being unfair to people who validly purchased land from G.K.Kirima. They had no problem processing titles for the people who genuinely purchased land from G.K.Kirima.

149. On cross-examination by Mr. Irungu, the 1st respondent stated as follows: L.R No. 5908/8 was owned by Gerishon Kamau Kirima and John Gerishon Kirima. They were in a partnership known as Gerishon Kirima & Sons. They were only interested in the estate of Gerishon Kirima. She could not comment on the status of Gerishon Kirima & Sons. She was not aware that G.K.Kirima had engaged one, Cephas K. Mwaura of Geotops to subdivide L.R No. 5908/8. The last time she heard of Mr. Mwaura, he

was being sent to jail. She noted in the statement of Teresia Wairimu Kirima dated 26th March 2015 filed in ELC No. 1257 of 2014 that she had admitted that G.K.Kirima had commissioned Geotop Surveys Ltd. in 2009 to subdivide L.R No. 5808/8.

150. On cross-examination by Mr. Nyangayo, the 1st respondent stated as follows: John Gerishon Kirima who was the co-owner of L.R No. 5908/8 was alive. There was a partnership in the name of Gerishon Kamau Kirima & Sons. She had a copy of the certificate of registration of Gerishon Kamau Kirima & Sons. The renewed lease for L.R No. 5908/8 commenced on 1st September 2003. The last entry in the title was a caveat by the Registrar of Titles registered on 30th July 2009. The caveat was for 4 months and it had since expired. She did not ask Mr. Geoffrey Kahindi Katsoleh to come to court. Naridai Muoroto Self Help Group was not a party to HCCC No. 249 of 2003 and HCCC No. 519 of 2006 and the orders that were made in the same. She was not aware that P. C. Onduso was acting for G.K.Kirima before he died.

151. On cross-examination by Mr. Ojienda, the 1st respondent stated as follows: The orders issued in the previous suits she had referred to related to all the persons who had occupied L.R No. 6825/2. She did not know if the plaintiffs in ELC No. 1257 of 2014 were in occupation of L.R No. 6825/2

in 2003. When they got the eviction order, they evicted everybody who was on the property. They did not count those who were evicted. They evicted all the trespassers. She was involved in the eviction. The whole land was cleared of squatters in 2003 after the order of 19th May 2003. The plaintiffs in HCCC No. 249 of 2003 were eight. The order issued in that suit did not however refer to the eight plaintiffs only. She was present when the eviction that was carried out through the office of the Commissioner of Police was being carried out. She was brought up on L.R No. 6825/2. She could not remember when she stopped living on the property. They had a house on the property. The suit properties were surveyed once for the purposes of the report that was to be filed in the succession cause. The Google maps attached to the affidavit of Teresia Wairimu Kirima were part of a report that was filed in the succession cause. The report was in respect of the suit properties. The suit properties were partially occupied. On cross-examination by Mr. Njuguna, the 1st respondent reiterated that L.R No. 5908/8, Grant No. 98744 was registered in the names of Gerishon Kamau Kirima and John Gerishon Kirima, and that John Gerishon Kirima was not a party to any of the cases before the court.

152. On cross-examination by Mr. Wanjohi, the 1st respondent stated that:
She was aware that the plaintiffs in ELC No. 252 of 2011 were claiming

land by adverse possession which claim she denied. In the year 2009 the land was vacant. The claimants were not on the property in 2009. The lease for L.R No. 5908/8 was extended. There had been occasions when there were squatters on the suit properties but they had always been removed using court orders which she had produced in evidence. The photographs produced by the claimants were not georeferenced. They could have been taken anywhere. The land in dispute was occupied by them and the illegal occupants. The illegal occupants had defied court orders not to encroach on the land. The structures on the property comprised of mixed development. Some areas were vacant; some had temporary structures while others had rooms in a row.

153. On re-examination by Mr. Fred Ojiambo S.C, the 1st respondent stated as follows: There had been squatters on the suit properties at various times. They had always taken action against them. They had obtained eviction orders three times against the squatters and they were evicted. The orders were made on 20th May 2003, 15th September 2014 and 3rd March 2015. It was not true that the claimants in ELC No. 252 of 2011 had occupied the suit properties uninterrupted for several yeras. In 2009 there was total eviction of the squatters and the suit properties remained clear. She had produced Google maps to show the state of the premises at the time.

154. The next to give evidence was Teresia Wangari Kirima's first witness, **CEPHAS KAMANDE MWAURA (2nd Respondent's W1)**. He stated as follows in his evidence in chief: He was a surveyor working with Geotop Survey Ltd. He was familiar with the matter before the court. In 2008, the firm was contracted by the late G.K.Kirima to carry out survey work on his properties L.R No. 5908/8 and L.R No. 6825/2 ("the suit properties"). He had set out what they did in his statement dated 26th March 2015 which was filed in ELC No. 1257 of 2014. He made another statement on 4th November 2013 which was filed on the same date in ELC No. 1318 of 2013. He adopted the two statements as part of his evidence in chief. They were instructed to do a subdivision survey work on the suit properties. They subdivided L.R No. 5908/8 into 513 portions in respect of which deed plans were issued. Sales of the said portions of land were going on. As soon as they started the subdivision processs, sales were also going on at the office of G.K. Kirima on Moktar Dada Street. At the time they were instructed L.R No. 5908/8 (Plot No. 5908) was just grassland. He generated Google maps showing the state of the property during 2009, 2011 and 2014. He generated the maps to show the level of occupation of the property at different times. A Google map could show the history of land occupation. In 2009, the whole land was vacant. In 2011, the land was still

vacant. In 2013, there was some slight occupation. In 2014, there was considerable occupation. The Google maps were for L.R No. 5908/8. They carried out the subdivision. After they obtained all the approvals, they registered their work with the Survey of Kenya. They then produced the deed plans which they delivered to G.K. Kirima's office that was carrying out sales.

155. The deed plans were handed over to Catherine Njeri. He had interacted with Catherine for a very long time. She was the late G.K.Kirima's secretary. When they delivered the deed plans, the same were released to the purchasers who had made payment. He did not however know whether any titles were issued.

156. On cross-examination by Fred Ojiambo S.C, W1 stated as follows: He was a director of Geotop Surveys. He was a partner. They had a contract with G.K. Kirima on what they were to do. He was given instructions signed by G.K. Kirima. He was instructed to subdivide Plot No. 5908/8 in accordance with a Development Plan that had been approved by the Nairobi City Council. The deed plans were to be in accord with the said development plan. He also had instructions to sell Plot No. 5908/8. He sold the plots in G.K.Kirima's office. He first acted as a surveyor and subsequently as a salesman in G.K.Kirima's office. He was to get buyers

and send them to G.K.Kirima's office. He was to deal with Catherine or Wacuka Ndei. He got those instructions directly from G.K.Kirima. He did not know to whom payments were being made.

157. He also did not know who issued receipts when payments were made. He did not witness receipts being issued. He knew Embakasi Ring Road Developers. They were not the owners of the suit properties. Embakasi Ring Road Developers was selling Plot No. 5908/8 from G.K. Kirima's office. He was looking for purchasers for G.K.Kirima. He knew that Embakasi Ring Road Developers sold the land, received payments and issued receipts. He showed the purchasers their parcels of land. He did not know who the directors and shareholders of Embakasi Ring Road Developers were. He did not know if Catherine Njeri and Wacuka Ndei were shareholders and directors of Embakasi Ring Road Developers. He was not aware that the monies which were meant to go to the G.K.Kirima were diverted to Embakasi Ring Road Developers. It was not strange to him that receipts were being issued by Embakasi Ring Road Developers. He was instructed by G.K. Kirima to deal with the two ladies, Catherine Njeri and Wacuka Ndei. G.K. Kirima was present when the receipts were being issued. He did not know the arrangement G.K.Kirima may have had with Embakasi Ring Road Developers. He had no reason to doubt the

transactions. The receipts were being issued in the presence of G.K.Kirima. He was present when some of the receipts were being issued. G.K. Kirima was not present all the time. He was last in the suit properties in 2009/2010. He could not remember the exact date.

158. He did not know that G.K. Kirima had issued receipts in 2011. It was not only him who was looking for purchasers. Other people in the office were also instructed to look for purchasers. He was not told that the sale of the plots would be carried out by Embakasi Ring Road Developers. The sale was being carried out by G.K.Kirima. He (CW1) was involved in the survey of cemetery land. It was claimed that he received proceeds of crime. He was convicted. He appealed. The appeal had been heard but not yet determined. He was convicted of corruption. It was not for him to know how G.K.Kirima was operating his office. His duty was to take the buyers to the right office and to show them the land after payment. He did not know that it was corrupt for a person to receive money for land that did not belong to him. He was not receiving commission. His survey fee was dependent on the parcels of land sold. He was not part of any corrupt scheme. He did the subdivision and thereafter brought buyers. His role was to take the buyers to the office of G.K. Kirima. He did not know what was going on in G.K.Kirima's office and he was not involved in fraud. He

did not sent buyers to the disputed property in 2011. He was not aware that when he was sending buyers to buy the land, G.K.Kirima was indisposed.

159. He took buyers to G.K.Kirima's office for the last time in 2009/2010. He could not recall the sales he was involved in. He was not involved in the preparation of the sale documents. G.K.Kirima's office must have been involved in that. He processed some deed plans for L.R No. 6825/2 in respect of a survey that had been done earlier. He was not involved in the sale of L.R No. 6825/2. That parcel of land was not put up for sale. It was Plot No. 5908/8 that was put up for sale. He printed the Google maps himself. According to the said maps, in 2014 there was some encroachment on the land. From the year 2007 to 2012 there was no encroachment. In 2013 there was encroachment. In 2014 there was an explosion of trespassers. If there were people living on the land, their structures would be shown on the google maps. He was instructed to carry out the survey in 2008. He went to the ground. There were no structures on the land.

160. He had the letter of instruction that was given to him by G.K. Kirima. The instructions were in the form of a quotation and a meeting he had with G.K.Kirima. The insructions were contained in the letter dated 8th October 2002. He had already carried out a survey. The instructions to survey the property came in phases. He did not survey the whole of L.R No. 5908/8.

He only surveyed the portion of it which was put up for sale. Part of the land had been surveyed earlier. The letter dated 8th October 2002 instructed him to sell the sub-plots. The letter stated that the transfer was to be effected by G. K. Kirima in person. All payments were to be received by Catherine Njeri and Rachel Wacuka Ndei. It was Kirima & Sons which was selling the plots. A receipt was to be obtained. He was to take the buyers to the office of G.K. Kirima. He did not know who was to issue receipts. That was an internal matter. He must have seen G.K.Kirima for the last time around 2009. He did not know at that time that he was sick. He did a quotation for phases 4 and 5 to Kirima & Sons and they had a meeting in G.K.Kirma's office. The quotation was dated 23rd June 2009. They held a meeting on 26th June 2009 in G.K.Kirima's office. He could not recall if G.K. Kirima was in the office. He did not know that the monies that were paid by the purchasers were not received by G.K.Kirima. According to his instructions, the seller was G. K. Kirima. In normal circumstances, the receipts for payments should have been issued by the person to whom the money was paid. He did not know why the receipts were not issued by G. K. Kirima. He was not privy to what was happening in G.K. Kirima's office. He was being paid for keeping deed plans in safe custody for those who had not finished making payment for their plots. He

used to charge Kshs.2,000/- for keeping the deed plans in safe custody. He only surveyed part of the disputed land and produced deed plans. It was the sub-plots that were sold. It was not true that the whole of L.R No. 5908/8 was sold.

161. After the cross-examination of the 2nd respondent's W1 by Mr. Ojiambo S.C, the witness was stood down and the court took the evidence of **CLAIMANT NO. 10, JOHN OTIENO OBADE (CLM10)** who was recalled and gave further evidence and was cross-examined. He stated as follows in his evidence on recall. He had sworn an affidavit on 16th September 2019 in support of the Notice of Motion dated 16th September 2019. To the affidavit, he attached a bundle of photographs which he wished to produce in evidence. The soft copies of the photographs were projected on a screen. He could see the screen. He could see the houses. The houses were on land measuring 80 acres. The land was in Njiru. He could see the Kenya Power and Lighting Company's Wayleave. The houses were next to the Wayleave. He could see a slaughter house which belonged to G.K.Kirima. The photographs were marked as CLAIMANT No. 10 MFI 1.

162. On cross-examination by Mr. Ojiambo S.C., CLM10 stated as follows:
Photograph No. 1 was taken on 16th August 2019. It was taken a month

before he swore the affidavit. Photograph No. 80 was taken on the same day. He was present when the photographs were being taken. His photograph was not taken.

163. On cross-examination by Mr. Onduso, CLM10 stated as follows: He saw the photographs for the first time on 14th September 2020. He saw them at the site where they were taken. He was shown 80 photographs. He was shown the photographs by Mr. Nyakundi. He did not know Mr. Nyakundi before that day. He was the one who brought him. He was known to one of their members by the name Maurice. Maurice was the one who brought him. He was paid. His (CLM10) house was in photograph No. 6. He had developed his plot. The development was not approved. His house occupied land measuring 40 feet by 80 feet. He did not have a deed plan. The land was not surveyed. He put up his house in 2011. All the houses were on land measuring 80 acres. They had surveyed the land they were occupying. Their surveyor was called Joe Onyango. None of their houses was approved by the Nairobi City County.

164. On cross-examination by Mr. Nyamu, CLM10 stated as follows: He had brought the photographs to court to show the area they were occupying. The slaughterhouse was in photograph No. 60. His house was some distance from the slaughterhouse. He knew the slaughterhouse belonged to

G.K. Kirima. He did not know that the land he was occupying belonged to G.K. Kirima. They did not know the owner of the land. They used to cultivate the land. He was a member of a group. The group had no name. They did not invade the land. His father was cultivating the land. They also started cultivating the land. He constructed his house in 2011. He found people on the land when he entered the land. When they were entering the land, they were prepared to engage the owner in case he came to claim the land. They knew that the land belonged to G. K. Kirima in 2014. That is when they came to court.

165. On cross-examination by Mr. Nyangayo, CLM10 stated tht he had stayed on the disputed property for about 14 years. He stated that when he entered the property, he found other people on the land. He stated that no one had been evicted from the land. He stated that they had built houses on the land and they were staying therein.

166. On re-examination by Mr. Ojienda, CLM 10 stated as follows: He had occupied the suit property since the 1990s. The 14 years he mentioned was from 1990s. The photographs were taken on 17th August 2019. They were occupying land measuring 80 acres. The plots were 40 feet by 80 feet. He constructed his house in 2011. The other occupants put up their houses between 1990 and 2000. He entered the suit property in 2000. The others

entered in 1990s. When they entered the land, they did not know the owner. They came to court when they received a court order in 2014 to vacate the disputed land. The order was obtained by the estate of G.K.Kirima. They were not stopped from building houses on the property. The houses were connected to electricity and water. The water was from a private entity while electricity was from Kenya Power & Lighting Co. Ltd. Those in occupation of the land were over 300.

167. On examination by the court, he stated that he had I.D Card No. 1670339 and that his name in the I.D Card was JOHN OTIENO OBADE. He was born in 1972 in Siaya. He did Form IV examination in 1991. He entered the suit property in 2011 and constructed a house thereon in the same year. He stated that he did not have his I.D Card with him. He stated that the same was in the car that was parked in town.

168. After the recall of CLAIMANT No.10, the court continued with cross-examination of the **2nd respondent's W1, CEPHAS KAMANDE MWAURA** by the advocates for the other parties. He stated as follows on cross-examination by Mr. Ojienda: He had seen the photographs marked as CLAIMANT No. 10 MFI 1. The developments shown in the photographs were on L.R No. 6825/2 (suit property). He went to the ground in 2008. In 2008 the land was not occupied. He had produced Google images of the

land at the time. The images were of L.R No. 6825/2 although it was not indicated in the images. He went to the ground to find out the location of the parcels of land and if there were squatters on the land. He gave a report on the status of the land. The Google images could not be changed. The images showed what was on the ground at a particular time. He was acting on the instructions of the late G. K. Kirima. G. K. Kirima died on 21st December 2010. In 2008, he was doing subdivision work. He did not subdivide L.R No. 6825/2. It had been subdivided earlier by a surveyor by the name Nthiga who was deceased. He could not remember the number of sub-plots.

169. On cross-examination by Mr. Njuguna, W1 stated as follows: He was asked to record a statement in ELC No. 1318 of 2013 by the plaintiff in that case, Teresia Wairimu Kirima. There were other beneficiaries of the estate of G.K.Kirima apart from Teresia Wairimu Kirima. He had various agreements with G. K. Kirima. He was to subdivide L.R No. 5908/8. Comboni Missionaries occupied a small portion of L.R No. 5908/8. He knew Teresia Wairimu Kirima. She was a widow of the late G.K. Kirima. He informed Teresia Kirima of the occupation. He was doing survey and was concerned with the people who were entering the land.

170. On cross-examination by Mr. Irungu, W1 stated that the first instruction to subdivide L.R No. 5908/8 was given to him in 1991. He stated that he was to subdivide the portion along Kangundo Road. He stated that he used to show the purchasers of the sub-plots their parcels of land. He stated that L.R No. 5908/8 had almost 8 phases. He stated that he got instructions at various times. He stated that the deed plans were issued around 2010. He stated that he had produced a list of some of the purchasers of the subplots. He stated that the list originated from the office of G.K.Kirima.

171. On cross-examination by Mr. Wanjohi, W1 stated as follows: He was aware of Kamatuto Self Help Group. The group was trying to occupy a portion of L.R No. 5908/8. This was around 2008. He had produced Google maps because they gave what was happening at a particular place at a particular time. His role was to subdivide the land and produce deed plans. He did not know if titles had been issued. There were some public utility plots that were surrendered following the subdivision. Kamatuto Self Help Group was in the area between Kangundo Road and Mwiki. He was not aware if any land was surrendered in that area.

172. On cross-examination by Mr. Nyangayo, W1 stated as follows: The first instruction from G. K. Kirima was in 1991. He had several instructions to subdivide L.R No. 5908/8. He had produced one of the instructions. He

admitted that in his statement filed in ELC No. 1257 of 2014, he stated that he was instructed in 2008. He also admitted that the agreement he produced was dated 2000. He was to subdivide L.R NO. 5908/8. He was not asked to bring evidence on how he was paid. According to the agreement, his work was to be undertaken within 12 months. He had other agreements. Google map images could be produced at any time and dates were indicated in the maps. G. K. Kirima died in 2010. His contract with G. K. Kirima was still in place as at the time of his death. He was requested by Teresia Kirima through her advocates to produce the Google images that he had produced. The Google maps did not indicate the land parcels. He was given a copy of the original title. The title was in the name of Gerishon Kamau Kirima and John Gerishon Kirima. Gerishon Kamau Kirima and John Gerishon Kirima was one person. That is what G.K.Kirima told him. On cross-examination by Mr. Githara, W1 stated that Google maps were produced by Google company and that he only downloaded and printed the maps. He stated that he had used Google for a long time and as such he did not need to verify the maps.

173. On re-examination by Mr. Onduso, W1 stated as follows: Every Google image was represented by co-ordinates in a map. They used co-ordinates and not land reference numbers when generating the images. He had no

doubt that the images were from the locations he had referred to. He obtained approvals for the subdivision scheme. The subdivision scheme required the signature of the registered owner. G.K. Kirima signed the subdivision scheme. The Survey of Kenya did not call for a second signature in addition to that of G. K. Kirima. The issue of payment was between him and his client. He had no doubt that the land he was surveying belonged to G. K. Kirima. He completed the assignment he was given to the best of his knowledge. When G. K. Kirima died, the assignment was continuing. He still had pending work at the Survey of Kenya. The Grant in respect of the estate of G. K. Kirima was issued when his instructions were continuing. He had to brief the administrators of the estate. He was not involved in the sale of subplots after the subdivision. He did not handle the proceeds of sale of the subplots. Embakasi Ring Road Developers was used by G. K. Kirima while selling some of the plots in Outer Ring Road and Utawala. It was to this company that the payments for the plots were being made. He used to show the purchasers their plots. The purchasers had receipts bearing the name Embakasi Ring Road Developers. He surrendered all the deed plans at G. K. Kirima's Office. Those purchasing the plots got their deed plans at G. K. Kirima's office. In 2008, there was only a holding area for cows on L. R No. 6825/2. There were no other

developments on the land. It would not have been possible to place beacons on the ground if there were developments on the ground. In the phases he worked on, there were over 500 plots.

174. The next witness was **TERESIA WAIRIMU KIRIMA** (hereinafter referred to only as “the 2nd respondent”). She stated as follows in her evidence in chief: She was one of the defendants in ELC No. 1257 of 2014. She was sued together with Anne Kirima. She adopted her witness statement dated 26th March 2015 as part of her evidence in chief and produced the documents attached to her list of documents dated 26th March 2015 as exhibits. She stated that Anne Kirima and she were issued with a Grant in respect of the whole estate of G.K. Kirima (deceased). They obtained an order on 12th September 2014 for the police to protect L.R No. 5908/8 and L.R No. 6825/2 which belonged to the deceased from being grabbed. Prior to the death of G.K.Kirima, there were no suits concerning the two properties. The two parcels were now fully occupied. The occupation started in 2013 when people noted that there was a fight in their family. She filed a replying affidavit on 20th May 2014 in ELC No. 509 of 2014. In that suit, she was sued as the 7th defendant. She was sued together with Anne Kirima. The plaintiff in the suit was Naridai Muoroto Self Help Group (Naridai). She did not know Naridai. The replying affidavit was in

response to an application that was filed by Naridai. She annexed a number of documents to that affidavit. She denied their claim. She adopted the replying affidavit as part of her evidence in chief in the suit. She was a plaintiff in ELC No. 1318 of 2013. She sued Father Romeo. She recorded a witness statement in the suit and also filed a bundle of documents. The statement was adopted as her evidence in chief in that suit. She was also a plaintiff in ELC No. 1496 of 2013. She sued the defendants in the suit for trespass on G.K.Kirima's properties. She had produced documents showing that L.R No. 5908/8 belonged G.K.Kirima. She produced the documents attached to her list of documents filed in ELC 1257 of 2014 dated 26th March 2015 as 2nd respondent's exhibit 1.

175. She also produced, the annexures to her replying affidavit filed in ELC No. 509 of 2014 as 2nd respondents exhibit 2, the documents attached to her list of documents dated 4th November 2013 filed in ELC No. 1318 of 2013 as 2nd respondent's exhibit 3, and the documents attached to the list of documents dated 9th December 2013 filed in 1496 of 2013 as 2nd respondents exhibit 4. They did not get any assistance from the County Government. They were to evict the trespassers which they did not do. They only issued an enforcement notice. The succession dispute was still

pending in court. None of the parties in the suits before the court had filed an application in the succession cause.

176. On cross-examination by Mr. Ojienda, the 2nd respondent stated as follows: She did not know the plaintiffs in ELC No. 1257 of 2014. She did not know the measurement of L.R No. 6825/2 unless she confirmed from the title. They had a butchery on L.R No. 6825/2. She did not know the size of the land that was occupied by the butchery. It was not true that as at 2003 there were squatters on L.R No. 6825/2. There were people on the land at the time but they left. They instructed Geotop Surveyors Limited to carry out survey on L.R No. 5908/8. The Google maps she had produced showed that L.R No. 5908/8 was not occupied prior to the death of the deceased, G.K.Kirima. To her knowledge, L.R 6825/2 had not been subdivided. The enforcement notice she had referred to related only to L.R No. 5908/8. They stopped operating the butchery in 2014. There was no access to the place. The two properties were fully occupied and the whole place built up.

177. On cross-examination by Mr. Njuguna, the 2nd respondent stated as follows: In ELC No. 1318 of 2013, she sued Father Romeo and the Registered Trustees of Comboni Missionaries. She referred to Grant No. I.R 98744 for L.R No. 5908/8 and stated that Gerishon Kirima and John

Gerishon Kirima were one and the same person. Wanjau Kirima was a son of Gerishon Kamau Kirima. G.K.Kirima had stated in an affidavit that Gerishon Kamau Kirima and John Gerishon Kirima were one and the same person.

178. On cross-examination by Mr. Wanjohi, the 2nd respondent stated as follows: She did not know Kamatuto Squatters and did not know that they had applied to be allocated L.R No. 5908/8. They had cattle on L.R No. 5908/8. They thereafter started a slaughterhouse. They went to court to seek help to remove squatters/grabbers from their land. The squatters entered the land after the death of G.K.Kirima. The whole land was now occupied.

179. On cross-examination by Mr. Nyangayo, the 2nd respondent stated as follows: L.R No. 5908/8 was owned by G.K.Kirima deceased. She did not know how and when G.K.Kirima purchased the property. L.R No. 6825/2 was purchased from Percy Everley Randal. The deceased bought L.R No. 5908/8 from Domenico E. Maci. She did not know the purchase price for the property as she did not purchase the property. She started staying in Njiru in 1969/1970. At the time, there were no squatters on the suit properties. There were also no squatters on the suit properties at the time of the death of G.K.Kirima. She moved to Kitisuru from L.R No. 5908/8 in

1981. They were still managing the land. The property was not subdivided. Upon reading paragraphs 8,9,10 and 11 of her witness statement filed in ELC No. 1318 of 2013, she stated that she would find out in the office if L.R No. 5908/8 was successfully subdivided. She stated that there were some parts of L.R No. 5908/8 that were sold when G.K.Kirima was alive. She was aware that it was Mr. Onduso advocate who worked with the surveyor on the transactions. She stated that she was the one who asked the surveyor, Cephas Mwaura to give evidence in the matter.

180. She reiterated that Gerishon Kamau Kirima and John Gerishon Kirima were one and the same person. She stated that G.K.Kirima swore an affidavit to that effect. She stated that she knew Wanjau Kirima and that he claimed that he was also known as John Gerishon Kirima. She stated that according to her, Wanjau Kirima was John Wanjau Kirima. She stated that Wanjau Kirima was alive. She stated that the slaughterhouse was located on L.R No. 5908/8, Njiru. She stated that reference to Dandora and Plot No. 6825/2 in the Bussiness Permits for the slaughterhouse was a mistake although both L.R No. 5908/8 and L.R No. 6825/2 belonged to G.K.Kirima. She stated that Google maps which were prepared by Cephas Mwaura showed that the suit properties were not occupied before the death of G.K.Kirima. She stated that Cephas Mwaura was working with

G.K.Kirima before his death and continued to assist the estate. She stated that she did not have the original grant in respect of L.R No. 5908/8.

181. On cross-examination by Mr. Thuita, the 2nd respondent stated as follows: She lived in Njiru until 1980/1981 when she moved to Kitisuru. They still continued to go to the suit properties. They had a butchery on the property until the access was blocked. She still used to go to the suit properties even after the various suits were filed. According to her, Gerishon Kamau Kirima and John Gerishon Kirima were one and the same person. The suit properties were purchased in two names. Later, she saw an affidavit by Gerishon Kamau Kirima to the effect that he was also known as John Gerishon Kirima. She was married to G.K.Kirima in 1960s. She was married to Gerishon Kamau Kirima. She did not know John Gerishon Kirima. Nobody had come up claiming that he owned the land together with Gerishon Kamau Kirima. The suit properties belonged solely to Gerishon Kamau Kirima (deceased). There had been no objection in the succession cause concerning these properties. She could not recall when Wanjau Kirima was born. What she knew was that he was the son of the deceased. In 1967, he was a minor. The deceased died on 21st December 2010. He had an office in town. The office was still in existence on Moktar Dada Street. The office belonged to G.K.Kirima. When he was alive, his

operations were run from there. Catherine Njeri was his secretary. She had worked with the deceased for a very long time. Her mother was a sister to G.K.Kirima. She was G.K.Kirima's niece. It was in that office that the sale of his properties were taking place. It was his main office. She was aware of the property that G.K.Kirima sold in Pipeline area. She heard that G.K.Kirima had decided to sub-divide the Njiru land and to sell a portion thereof. They would honour genuine sales. The purchasers must have receipts from the deceased's office. The people who had made payments and had deed plans would have no problem. They will honour lawful transactions. They will check if the cheques that were made in favour of G.K.Kirima were paid. Cephas Mwaura was working with G.K. Kirima and she did not have any problem with him. On cross-examination by Mr. Kibera, she stated that she would confirm the payments and deed plans from the office. She stated that she will confirm the same from people like Catherine Njeri. She stated that the records were kept in the office of the deceased and that the office had many employees. On cross-examination by Mr. Irungu, she stated that the family had a dispute and that she would look for the documents. She stated that the subdivision was done and it was likely that the deceased was selling portions of the land. She stated that Mr. Onduso advocate used to act for G.K.Kirima.

182. On re-examination by Mr. Onduso, the 2nd respondent stated as follows:
L.R No. 5908/8 measured 201.94 hectares. L.R No. 6825/2 and L.R No. 5908/8 were adjacent to each other. There was no boundary between them. The slaughterhouse could fall on either parcel. The grazing cows were not limited to any particular plot. John Gerishon Kirima was a person unknown to her. She would not know if Naridai was related to John Gerishon Kirima. She knew Kirima & sons. When G.K.Kirima was selling the land she thought he was using Embakasi Ring Road Developers but she will have to check on that.

183. On re-examination by Mr. Nyamu, the 2nd respondent stated as follows:
As at 1998, there were no squatters on the suit properties. There was a previous court case in 2003. They obtained an order to evict the occupants of the suit properties. All the invasions of the suit properties during the lifetime of G.K.Kirima were resisted successfully by him. ELC No. 249 of 2003 concerned L.R No. 6825/2. The suit properties were managed as one. As at 2011, no squatter had occupied the suit properties for 12 years. The issue of adverse possession could not therefore arise.

184. After the close of the case for the 2nd respondent, Teresia Wairimu Kirima, the court went back to the case of those who claimed to have been allocated the suit properties by the City Council of Nairobi who had not

given evidence in their suit ELC No. 509 of 2014. Their witness was **JOHN MAINA MWANGI, CLAIMANT NO. 11 (CLM11)**. CLM 11 (wrongly referred to in the proceedings as CLM10) stated as follows in his evidence in chief. He lived in Mihango, Utawala. He lived on the disputed properties. He knew the plaintiffs in ELC No. 509 of 2014. He was an official of Naridai Muoroto Self Help Group (Naridai). He was the secretary. They filed a plaint, list of witnesses and bundle of documents. He was the one who signed the verifying affidavit. In ELC No. 850 of 2014, he was sued as 2nd defendant. He filed a replying affidavit in ELC No. 850 of 2014 on 28th February 2014 to which he annexed several documents. In ELC No. 1496 of 2013, Naridai was sued as a defendant. They filed a defence on 13th May 2014. He wished to produce the documents that he had referred to as exhibits. The documents attached to the plaintiffs' list of documents dated 23th April 2014 filed in ELC No. 509 of 2014 were produced as a bundle as CLAIMANT NO. 11's exhibit 1. The documents annexed to the affidavit of John Maina Mwangi sworn on 25th July 2014 filed in court on 28th July 2014 in ELC No. 850 of 2014 were produced as a bundle as CLAIMANT NO. 11's exhibit 2. The documents annexed to the affidavit of Virginia Mwangi sworn on 7th May 2014 filed in court on 13th May 2014 in ELC No. 1496 of 2013 were produced as a bundle as

CLAIMANT NO. 11's exhibit 3. CLM11 also adopted his witness statement as part of his evidence in chief and urged the court to grant the reliefs sought in the plaint filed in ELC No. 509 of 2014.

185. On cross-examination by Mr. Kibera, CLM11 stated as follows: They had not mentioned any land reference in the prayers they had sought in the plaint. They had also not indicated the size of the land they were claiming. The government settled them on the suit properties as squatters. They were part of a group who were settled by the government in Soweto. They did not get land in Soweto so they were moved to the suit properties. They were settled by the local administration. They started settling on the suit properties in 1998. They were given letters of allotment in 2009. They first got letters from the DC and the Chief. Thereafter, they went to the City Council for formalisation. One of the letters was at page 123 of CLM11 exhibit 1. The letter was written while they were on the land. They did not invade the land. Nobody had tried to remove them from the land. They identified the land themselves and then they tried to find out how their occupation could be formalised. Naridai was registered in 1994 with the Department of Social Services, in the Ministry of Gender, Children and Social Services. The group was first registered in 1994. He did not have the first certificate of registration in court. What he had was a certificate that

was issued on 7th July 2011. The first certificate got lost. They reported the loss. The registration number for the Certificate dated 7th July 2011 was DGSD/NJI/5/4/2011 (1351). This was a replacement certificate. The registration was done in 2011. The letters of allotment that he had produced were signed by G.C.K. Katsoleh. He was not aware that Mr. Kalsoleh has denied issuing the said letters of allotment. The letters of allotment were brought to them by the City Council Officers. He knew that the Government could not allocate what did not belong to it.

186. On cross-examination by Mr. Thuita, CLM11 stated as follows: He did not grow up in Njiru area. He was 58 years old. He went to the KDF area in 1981/82. He was with his mother. He was familiar with the area. He knew of one slaughterhouse that was run by G.K.Kirima in Njiru area. They knew that G.K. Kirima had a slaughter house in the area. They had not occupied the slaughterhouse. They had not occupied the whole of L.R No. 5908/8. They were in occupation of only a portion of the land. He did not know the acreage under their occupation. The government together with the City Council of Nairobi allocated to them the area. They did not have evidence that the land was owned by the City Council of Nairobi apart from the allotment letters. They were about 200. Naridai was divided into three major groups. Each group had its own register of members. They

were pursuing titles for the portion of land under their occupation. A survey was done but it was not completed. They were to make payment for the allotment within 30 days. Some of them may not have made the payment. They had an office on the disputed property to keep the register of members. They did not use the office to sell the land. They sued the defendants in ELC No. 509 of 2014 because when one of them was doing excavation, the 3rd defendant in the suit came up with a gun and started shooting. The 3rd defendant had a house in the area. He claimed that he acquired the land from G.K.Kirima.

187. On cross-examination by Mr. Onduso, CLM11 stated as follows: He was living in a structure on the suit property. The construction of his house on the property was approved although he had not produced evidence to that effect. He was occupying L.R No. 5908/8. They were issued with letters of allotment by the City Council of Nairobi. There were conditions regarding payment. He complied with the terms of payment. He did not have evidence of payment with him. They applied to be allocated the suit properties. He did not have a copy of the application. He was the secretary of Naridai. He had acted as the secretary for over 20 years. It was not true that he was recruiting members. They had always had members. Their members entered the disputed property at the same time. The list of

members was compiled by their office. He was only a keeper of records. They settled on the land in 1998. They had not recruited members since then. They were settled on L.R No. 5908/9 and LR No. 5908/10. L.R No. 5908/8 was non existent according to the survey records. The original parcel was L.R No. 5908/5/R. They obtained information on L.R No. 5908/10 from the Survey of Kenya.

188. He knew Kwanga Mboya & Co. Advocates. They instructed him in a matter that was brought to court in 2011. It was in J.R. No. 72 of 2011. He swore an affidavit in the matter. Swearing of affidavits had no consequences. He read paragraph 4 of his verifying affidavit. He denied the same. He stated that the signature in the affidavit did not look like his signature. He however admitted that Kwanga Mboya & Co. Advocates who drew the affidavit were their advocates and that he knew all the people who brought the application. He stated that they filed the application when the D.C. Njiru tried to evict them from the disputed properties which were the subject of that application. They sued the D.C. Njiru and the Attorney General. They also sued the Kirima family. They mentioned L.R No. 5908/8 in the suit. As at the time they filed J.R No.72 of 2011, they had already been issued with letters of allotment. They did not acknowledge receipt of the letters of allotment. The letters were brought to them and they

distributed the same to the members. He denied that the said letters of allotment were forgeries. The properties were not sold to them. They had the letters of allotment in 2011 when they filed the J.R application but did not attach the same to the affidavit in support of the application. He denied that they did not have the letters of allotment in 2011. He stated that they did not produce the letters of allotment at the time because the District Commissioner had turned against them.

189. Their claim in ELC No. 509 of 2014 was based on the allotment letters. In their J.R application, they did not refer to the letters of allotment. They did not find the same important. They did not show or disclose to their advocate that they had the said letters of allotment. He denied that they were collecting money from unsuspecting members of the public. He stated that his fortunes had changed not because he had been collecting money. He did not know the names of the officers of the City Council of Nairobi who delivered the letters of allotment to them. They were a lady and a gentleman.

190. On cross-examination by Mr. Nyamu, CLM11 stated as follows: He heard of G. K. Kirima for the first time in 2014 when they filed ELC No. 509 of 2014 against his family. They took the family to court for the first time around 2010/2011. When they went to court in 2010/2011, they sued

the Attorney General and other people whose names were given to them by the family. Those who were sued wanted to evict them. He was not sure of what became of the said earlier cases but he thought that they were concluded. When they brought the second case, there was no case pending. He could not remember the outcome of the earlier cases but what he was aware of was that they were allowed to remain in occupation of the suit properties. They did not disclose to the court that they had an earlier case. They were represented in the earlier matter by Kwanga Mboya Advocate and he gave evidence. The suit was against the estate of G. K. Kirima. He was an official of Naridai Muoroto Self Help Group (Naridai). The entity was registered in 1994 as a group. They were registered for the purpose of taking care of interest of squatters who were landless. Their origin could be traced to the time their parents were staying at the Muoroto Country Bus Station. They were moved from there to Embakasi near KDF. Their parents were then moved from KDF land to Soweto. Those who did not get land like them started coming together to fend for themselves. He finished Form IV but did not have a job. He was a mason by profession. Their parents were settled in Soweto in 1985/1986 by the KDF. The land belonged to KDF. Those who did not get land in Soweto like him started struggling in Kayole to get a place to stay. They did not know that the property in

dispute belonged to G.K. Kirima. They were settled on the property officially by the government in 2009. They had however settled on the land in 1990. When they entered the land, they were not registered. He was aware that there was an eviction order issued in 2003 and that those who were in occupation of the disputed land were all evicted. There was an attempt to evict them in 2010 and it did not succeed. Those who wanted to evict them ran away. They were issued with a letter dated 23rd June 2009 by the D.C Njiru confirming that they had occupied the disputed property for a considerable length of time. The letter recommended that they be considered for formalisation of their occupation. The letter was not addressed to them but to the Director Housing Development Department. It was pursuant to the letter that they were then issued with allotment letters by G.C.K Katsoleh, the then Town clerk, City Council of Nairobi on 2nd July 2009. The letters were brought to the members. He was not aware that Mr. Katsoleh had denied ever writing the letters. Mr Katsoleh did not give evidence on behalf of the City Council of Nairobi. Their case was based on the allotment letters and their stay on the suit property. They had other activities as a group. They had merry-go-round activities. He was born a squatter but he was no longer a squatter. He was proud of his background. He had raised his status to what he was. They were paying rates for the

land they were occupying. They were entitled to the land they were claiming by virtue of the allotment letters he had referred to.

191. On cross-examination by Mr. Njuguna, CLM10 stated that he was staying on L.R No. 5908/10 and that he was occupying a portion measuring 50 feet x 100 feet. He stated that there were members who had less than that and there were some who had more land. He stated that as a group, Naridai members occupied land measuring over 300 acres. He stated that Naridai was occupying part of L.R No. 5908/9 and LR No. 5908/10. He stated that Comboni Catholic Church was occupying part of L.R No. 5908/10. He stated that the church also had an allotment letter for the land it occupied issued by the City Council of Nairobi. He stated that the church was not on L.R No. 5908/8.

192. On re-examination by Mr. Wanjohi, CLM11 stated that the District Commissioner, Njiru requested that they be considered for formalisation of their occupation. He stated that the formalisation was done and they were issued with letters of allotment. He stated that he resided on the land that was allocated to them. He stated that their letters of allotment had never been revoked. He stated that the members of the group were all residing on the parcels of land that were allocated to them. He stated that the roads in their residences had been tarmacked and the place had street lights. He

stated that there were plans to supply them with clean water. He reiterated that they were paying rates to the Nairobi City County.

193. The evidence in the consolidated suits was closed with the evidence of CLM11. The court thereafter directed the parties to make closing submissions in writing. All the claimants were directed to file and serve their submissions within 30 days from the date of the order. The respondents were to file their submissions in reply within 70 days from the date of the order.

194. The submissions by the applicants' in ELC No. 1257 of 2014(O.S)

195. The applicants in ELC No. 1257 of 2014(O.S) (hereinafter referred to only as “the applicants”) filed their submissions dated 17th January 2023. In their submissions, the applicants framed 3 issues for determination namely; whether the applicants had met the threshold for grant of orders for adverse possession, whether the applicants were entitled to a portion of L.R No. 6825/2 commonly known as Kirima Njiru Farm measuring 80 acres and whether the said portion of land should be subdivided and registered in the names of the applicants, and who should bear the costs of the suit.

196. The applicants submitted that adverse possession was a fact to be observed upon the land and not to be seen in a title. The applicants submitted that they had occupied the portion of land claimed by them

continuously for uninterrupted period of over 14 years. The applicants submitted that their entry into the property was non-permissive and non-consensual. The applicants submitted that time started running in their favour from the time they took possession of the property about 14 years prior to the date of instituting the suit. The applicants submitted further that their occupation of the property had been open, continuous and exclusive. The applicants submitted that the applicants demonstrated their occupation of the property by adducing evidence of the homes and other structures they had put up on the property. The applicants submitted that their occupation of the property was admitted by the respondents in their evidence. The applicants submitted further that the respondents took no action to stop time from running in their favour. The applicants urged the court to find and hold that as at the time of filing suit, the applicants had occupied the disputed property for more than 14 years.

197. On the second issue, the applicants submitted that from the evidence on record, it was clear that L.R No. 6825/2 was not surveyed. The applicants submitted that for the 14 years they had occupied the disputed property, no surveyor had come to the ground to survey the land. The applicants averred that despite the fact that the property had not been surveyed, the portion of L.R No. 6825/2 claimed by them was easily identifiable. The applicants

submitted that L.R No. 6825/2 was registered in the name of G.K.Kirima and J.G.Kirima and measured 472.5 acres. The applicants submitted that the fact that they were occupying a portion of L.R No. 6825/2 measuring 80 acres was not disputed. The applicants submitted that they had on a balance of probabilities demonstrated that they were entitled to a portion of L.R No. 6825/2 measuring 80 acres which should be subdivided and registered in their names. On the issue of costs, the applicants submitted that costs follow the event and should as a general rule be awarded to the successful party. The applicants submitted that having proved their claim against the respondents, they were entitled to the costs of the suit. The applicants urged the court to grant the reliefs sought in their Originating summons. The applicants cited several authorities in support of their submissions some of which I will refer to later in this judgment.

198. Submissions by Teresia Wairimu Kirima, the 1st respondent in ELC No. 1257 of 2014(O.S):

199. **Teresia Wairimu Kirima** (referred to in the submissions as 2nd respondent and hereinafter only as “Teresia”) filed her submissions dated 2nd December 2022. Teresia’s submissions were in respect of all the claims brought in relation to L.R No. 5809/8 and L.R No. 6825/2 (the suit properties). Teresia submitted that the suit properties were part of

G.K.Kirima's estate. She submitted that, whereas L.R No. 5809/8 was registered in the name of Gerishon Kamau Kirima & Sons, L. R No. 6825/2 was registered in the name of Gerishon Kamau Kirima and John Gerishon Kirima. She submitted that the suit properties were the subject of succession proceedings in the High Court in High Court Succession Cause No. 1298 of 2011.

200. Teresia submitted that they had demonstrated through evidence that the suit properties had been the subject of 5 previous suits. The first suit was, Nairobi HCCC No. 249 of 2003(O.S), Odek Ochoko & 7 others v. Wilson Kirima & another. This suit sought a vesting order in respect of L.R No. 6825/2 on account of adverse possession. The second suit was, Nairobi HC.Misc. Application No. 519 of 2003, Odek Ochoko & 7 others v. Gerishon Kamau Kirima & another. This suit sought title to L.R No. 6825/2 by adverse possession. The third suit was, Nairobi HCCC No. 662 of 2006, Gerishon Kamau Kirima & another v. Jacob Muiru & 6 others. This suit sought a mandatory injunction compelling trespassers on L.R No. 5809/8 and L.R No. 6825/2 to vacate the two properties. The fourth suit was, Nairobi Judicial Review No. 72 of 2011, Maurice Oduor, John Maina (CLAIMANT No. 11), Habat B. Mugangai (Suing for and on behalf of Naridai Muoroto Squatters Self Help Group) v. District Commissioner-

Njiru & another, and Maria Kirima & 5 others, Interested Parties. In this suit, the applicants sought judicial review on the ground that they had occupied L.R No. 5809/8 and L.R No. 6825/2 since 1994 and as such had acquired prescriptive rights over the same. The fifth suit was, High Court Succession Cause No. 1298 of 2011, In the matter of the Estate of Gerishon Kamau Kirima, deceased. In this suit, the court issued an order to secure the suit properties through fencing.

201. Teresia framed 4 issues for determination by the court. The first issue was whether the claimants who claimed ownership of L.R No. 5908/8 through allotment by the City Council of Nairobi most of whom were the plaintiffs in ELC No. 509 of 2014, Naridai Muoroto Self Help Group, were entitled to the reliefs they have sought. On this issue, Teresia submitted that although 215 persons were listed as members of Naridai Muoroto Self Help Group(Naridai), the letters of allotment produced in evidence were in respect of only 58 of them. Teresia submitted further that none of the said letters of allotment referred to L.R No. 5908/8. She submitted that the letters of allotment were disowned by Geoffrey Katsoleh the officer in the City Council of Nairobi who was alleged to have signed the same. Teresia submitted further that the purported allotment was conditional and that none of the purported allottees tendered evidence showing that he/she had

complied with the conditions. She submitted that the said letters of allotment that Naridai used as the basis of their claim were foregeries.

202. Teresia submitted further that in any event, L.R No. 5908/8 was private property and as such the same was not available to the City Council of Nairobi for allocation to the members of Naridai and the other claimants who claimed that they had been allocated portions of the property. She submitted that members of Naridai knew way back in 2011 that the suit properties were private properties registered in the names of the Kirimas', and that the same neither belonged to the City Council of Nairobi nor the Government of Kenya. She submitted further that the court should take notice that although Naridai claimed to have been issued with letters of allotment prior to their filing of Nairobi J.R No. 72 of 2011, Naridai never mentioned the said letters of allotment in that suit which was dismissed with costs on 30th January 2012.

203. Teresia submitted that Naridai's claim was a backdoor attempt to grab the suit properties from the lawful owners using the purported letters of allotment having failed in Nairobi J.R No. 72 of 2011 to acquire the same through adverse possession.

204. The second issue framed by Teresia was whether the claimants who claimed the suit properties by adverse possession who included Naridai,

John Otieno Obade & 299 others (John Obade) who were the applicants in ELC No. 1257 of 2014 (O.S), and Kamatuto Self Help Group (Kamatuto) who were the plaintiffs in ELC No. 252 of 2011(O.S) were entitled to the reliefs sought. Teresia submitted that the first attempt by these claimants to claim the suit properties by adverse possession was made in 2003 during the lifetime of G.K.Kirima in Nairobi HCCC No. 249 of 2003 which suit was struck out on 20th May 2003 and an order made for the eviction of the then claimants of the suit properties from the properties. She submitted that a second attempt at acquiring L.R No. 6825/2 by adverse possession through Nairobi HC.Misc. Application No. 519 of 2013 met the same fate. She submitted that a third attempt at acquiring the suit properties by adverse possession by the claimants was made through Nairobi HC. Judicial Review No. 72 of 2011 which also failed.

205. Teresia submitted that although Naridai members claimed that they entered the suit properties in 1998, CLAIMANT NO. 7 and CLAIMANT NO. 9 who gave evidence on behalf of Kamatuto confirmed that the area was not occupied at the material time. Teresia submitted that the photographs produced by John Obade to prove occupation by he and the other persons he represented had no dates and did not bear the parcel number on which the properties shown in the photographs were situated.

She submitted that John Obade admitted that he had put up his house on the disputed property in 2011 about 3 years before he filed ELC No. 1257 of 2014(O.S). She submitted that in his affidavit, John Obade claimed that those on whose behalf he had brought the suit entered the portion of suit properties measuring 80 acres in 2000. Teresia submitted that no evidence was led by members of Naridai, Kamatuto and John Obade's group as to when each entered the suit properties. She submitted that John Obade told the court that he had never conducted a search on the suit properties and did not know the owners thereof.

206. Teresia submitted that the unlawful occupation of the suit properties began in 2013 when people noted that the beneficiaries of the estate of G.K.Kirima were fighting over the distribution of the estate. She submitted that, that was when she filed ELC No. 1318 of 2014 and ELC No. 1496 of 2013 against trespassers. She submitted that she also sought assistance from the County Government against the same people. She submitted that those claiming the suit properties by adverse possession invaded and occupied the same after the death of G.K.Kirima. She submitted that the fact that the claimants of the suit properties by adverse possession entered the properties after the death of G.K.Kirima was reinforced by the evidence of a surveyor, C.K.Mwaura (2nd Respondents W1) who produced in evidence Google

maps for the area for 2004, 2007, 2009 and 2010. She submitted that the said maps demonstrated that the suit properties had no significant encroachment initially and that the area was progressively and aggressively occupied after 2013 and 2014. She submitted that this was when the dispute in the Kirima family became public.

207. Teresia submitted further that the earlier suits that were filed against the claimants who had trespassed on the suit properties and the eviction and demolitions that were carried out following the orders that were issued in the said suits, constituted interruption of the said claimants' attempts to gab the suit properties and stopped the 12-year statutory period from running. She submitted that the parties claiming the suit properties by adverse possession had not met the threshold for an adverse possession claim as laid down in the case of Wambugu v. Njuguna [1983]KLR 173, Mbira v. Gachuhi [2002]1 EALR 137 and Jandu v. Kirpal & another [1975] E.A 225. Teresia urged the court to find that those claiming the suit properties by adverse possession had not been in open, exclusive and uninterrupted occupation of the suit properties for a minimum period of 12 years.

208. On the issue of whether the claimants who purchased portions of the suit properties from the owners are entitled to the reliefs sought, Teresia admitted that L.R. No. 5908/8 had been subdivided. She submitted that she

was aware that G.K.Kirima had instructed Geotop Surveys Limited to survey and subdivide L.R No. 5908/8 and that the said firm carried out the survey. She submitted that the the said survey firm processed about 500 subplots whose deed plans were issued and forwarded to the office of G.K.Kirima. She submitted that when the survey was being conducted, the property was unoccupied and the surveyor (2nd respondent's W1) was able to place the beacons on the ground. She submitted that some of the resultant plots were sold while G.K.Kirima was still alive. She submitted that she had no objection to transferring the plots that were sold to the bona fide purchasers provided that evidence of payment of the purchase price was furnished. She submitted that the subdivision of L.R No. 5908/8 and the sale of some of the resultant plots were confirmed by the testimonies of CLAIMANT NO. 2, Paul Ndungu Kioi, CLAIMANT NO. 3, Mutii Kivoto, CLAIMANT NO. 4, Isaac Nganga Mbugua, CLAIMANT NO. 5, Stephen Maina Waruingi and CLAIMANT NO. 6, Amos Gathogo Njuguna who purchased their plots directly from G.K.Kirima at his offices which were on Moktar Daddar Street. Teresia submitted that these claimants made payments by cheques directly to the bank account of Embakasi Ring Road Developers on the instructions of G.K.Kirima's office and were issued with receipts. She submitted that after these claimants had

made full payments, they were issued with deed plans for their plots pending agreements and transfer. She submitted that the transfers could not be effected because of the death of G.K.Kirima. She submitted that the evidence of these claimants supported her contention that there were no squatters on L.R No. 5908/8 when the property was surveyed, subdivided and portions sold and handed over to them.

209. Teresia urged the court to dismiss the claims by those claiming the suit properties through letters of allotment and adverse possession, and to uphold the claims by bona fide purchasers of portions of the the suit properties for value. She prayed further that an order be made in favour of the estate of G.K.Kirima for the eviction of those claiming the suit properties through allotment letters and adverse possession and for the costs of the suit.

210. Submissions by Anne Wangari Kirima, the 2nd Respondent in ELC No. 1257 of 2014(O.S).

211. Anne Wangari Kirima (referred to in the submissions as 1st respondent (hereinafter referred to only as “Anne”) was the last to file submissions in these proceedings. Anne filed her submissions dated 18th October 2023. Her submissions related to all the consolidated suits. Anne’s submissions in relation to the claimants claiming portions of the suit properties by adverse

possession are similar to the submissions by Teresia on the same issue. It will serve no purpose to reproduce the same. Anne added however that some of those claiming the suit properties by adverse possession were employees of G.K.Kirima and as such occupied the properties with his consent which disentitles them to claim the said properties by adverse possession. Anne submitted that the claim is unfounded and should be dismissed. Anne cited several cases in support of her submissions some of which I will refer to later in the judgment.

212. With regard to those claiming the suit properties through letters of allotment, Anne submitted that the suit properties were not unalienated government land at the time of the purported allocation of the same by the City Council of Nairobi to the said claimants. Anne submitted that the suit properties were private land registered in the names of G.K.Kirima and John Kamau Kirima and as such the purported allocation of the same to the said claimants was illegal and void. She submitted that in any event, a letter of allotment does not confer an interest in land. Several cases were cited in support of this submission.

213. In conclusion, Anne submitted that the claimants of the suit properties through adverse possession and letters of allotment had failed to prove their claims. With regard to the claimants claiming portions of the suit properties

through purchase, she submitted that the claimants who established that they validly purchased portions of the suit properties from G.K.Kirima should be allowed to retain the same. Anne urged the court to dismiss what she referred to as the illegal claims that have been mounted over the suit properties and grant the estate of G.K.Kirima orders for vacant possession of the suit properties. On the issue of costs, Anne submitted that costs follow the event. She submitted that if the court finds in favour of the estate of G.K.Kirima, the estate should be awarded the costs of the various suits.

214. The submissions by the plaintiffs in ELC No. 252 of 2011(O.S),

Kamatuto Self Help Group:

215. Kamatuto Self Help Group(Kamatuto) filed submissions dated 16th January 2023. Kamatuto submitted that its members had been living and occupying a portion of L.R No. 5908/8(the suit property) measuring 160 acres peacefully for uninterrupted period of over 12 years. Kamatuto submitted that its members were born and brought up on the suit property as from 1950s. Kamatuto submitted that its members had constructed permanent and semi-permanent houses on the suit property. Kamatuto submitted that it had sued both the estate of G.K.Kirima, and John Gerishon Kirima and that John Gerishon Kirima who was alive did not defend the suit even after entering appearance.

216. Kamatuto reiterated the evidence of its witnesses, CLAIMANT NOS. 7, 8 and 9. Kamatuto submitted that the evidence of these witnesses and in particular that of CLAIMANT NO. 7 proved that its members were in occupation of the suit property in 2003 when the witness visited the property for inspection purposes. Kamatuto submitted that although Anne Wangari Kirima, one of the administrators of the estate of G.K.Kirima claimed that they had carried out a series of evictions on the suit property, no evidence was produced in support of that fact. Kamatuto submitted that they had produced several photographs in proof of their occupation of the suit property. Kamatuto submitted that the estate of G.K.Kirima did not prove that they had been in occupation of the suit property from 1970s as claimed by Anne Wangari Kirima. Kamatuto submitted that the respondents admitted that the suit property was fully occupied by squatters and that the squatters were in occupation as at 2003. Kamatuto submitted that the estate of G.K.Kirima unsuccessfully sought help from the County Government of Nairobi to evict the squatters. Kamatuto submitted that the squatters who were its members stayed put despite the attempts to remove them from the suit property. Kamatuto submitted that its members had dispossessed the estate of Kirima of the suit property.

217. Kamatuto cited Wambugu v. Njuguna(supra), Mbira v. Gachuhi (supra) , Jandu v. Kirpal & another (supra), and Mtana Lewa v. Kahindi Ngala Mwangandi[2005]eKLR and submitted that it had satisfied the conditions for adverse possession. Kamatuto submitted that it had demonstrated that its members had been in continuous possession of the suit property for more than 12 years and that their possession had been open and notorious.

218. Kamatuto submitted that the respondents who testified that they live in Kitisuru had no need for the suit property and as such they should leave it to the squatters who were in occupation thereof. Kamatuto urged the court to allow its claim in terms of the further amended Originating Summons filed in court on 22nd February 2012. Kamatuto also prayed for the costs of the suit.

219. **The submissions by the 1st defendant in ELC No. 252 of 2011(O.S).**

220. The 1st defendant in this suit are Alice Wangari Kirima, Anne Wangari Kirima and James Njuguna Kirima, the known court appointed administrators, trustees and/or signatories of the estate of Gerishon K.Kirima, deceased. The 1st defendant filed submissions dated 23rd December 2022. The 1st defendant submitted that L.R No. 5908/8(suit property) had an abattoir that was in operation until 2010. The 1st defendant

averred that the deceased G.K.Kirima reared cattle on the property for slaughter in the said abattoir. The 1st defendant submitted that these activities necessitated the construction of domestic servants quarters which majority of the plaintiffs in this suit who are members of Kamatuto occupied with their families as they provided labour to G.K.Kirima. The 1st defendant submitted that the plaintiffs continued to occupy the suit property with the permission of G.K.Kirima. The 1st defendant averred that over the years several groups and individuals had continuously tried to encroach and or trespass on the suit property which attempts were resisted through court action.

221. The 1st defendant framed three issues for determination. The first issue was whether the plaintiffs had met the threshold for grant of an order for adverse possession. The 1st defendant cited the cases that I have referred to earlier for the conditions to be satisfied before an order for adverse possession can be made. The 1st defendant submitted that the plaintiffs occupied the suit property as employees and with the permission of G.K.Kirima. The 1st defendant submitted that a person in possession of land with the consent or permission of the owner cannot claim the land by adverse possession. The 1st defendant submitted that in any event, the plaintiffs did not demonstrate as to when they entered the suit property. The

1st defendant submitted that the evidence on record showed that by 2007, the suit property was not occupied. The 1st defendant submitted that the plaintiffs' claim that they had been in occupation of the suit property for a period of 15 years was misleading.

222. The 1st defendant submitted further that orders for the eviction of trespassers on the suit property had been issued in the previous suits in 2003 and 2006. The 1st defendant submitted that if the plaintiffs were in possession of the suit property at the material times, they would have been parties to the said suits and would have been evicted. The 1st defendant submitted that the plaintiffs were not in open and continuous occupation of the suit property. The 1st defendant submitted that the evidence of Ronald Matende Omwoma, CLAIMANT NO. 7 was unreliable as he had not taken any photograph during his visit to the suit property to prove occupation. The 1st defendant submitted further that CLAIMANT NO. 7 did not produce in evidence any authority from his superiors directing him to undertake the inspection exercise. The 1st defendant submitted further that at the time of his evidence, CLAIMANT NO. 7 was not working with the Ministry of Lands and as such, he gave evidence in his private capacity. The 1st defendant submitted that the documents produced by CLAIMANT NO. 7 were not official documents. The 1st defendant submitted that the

CLAIMANT NO.7's contention that he found only members of Kamatuto on the ground conflicted with the claim by Naridai. The 1st defendant submitted that the evidence by the 8TH CLAIMANT showed that most of the Plaintiffs had relocated from the property and that it was in 2011 when they converged in an attempt to acquire the suit property. The 1st defendant submitted that the CLAIMANT NO. 8 admitted that when they met for the purposes of planning on bringing the present suit, the members came from different places. The 1st defendant submitted that CLAIMANT NO. 8 denied his alleged signature in Kamatuto's members list and that he also stated that he had several houses. The 1st defendant submitted that CLAIMANT NO. 9 could not remember the land reference number of the plot she was occupying and claimed that the land was given to her by G.K.Kirima, deceased her father having been an employee of the deceased. The 1st defendant submitted that this claimant admitted that all members of Kamatuto were evicted from the suit property and that she did not have a house on the suit property. The 1st defendant submitted that a case for adverse possession had not been made out by the plaintiffs.

223. On whether the plaintiffs were entitled to land measuring 160 acres from L.R No. 5908/8, the 1st defendant submitted that the plaintiffs did not adduce evidence of the specific area they were claiming by adverse

possession. The 1st defendant submitted that the least the plaintiffs could have done was to produce in court a surveyors report to back up their claim to a portion of L.R No. 5908/8 measuring 160 acres. The 1st defendant cited Wilson Kazungu Katana & 101 others v. Salim Abdalla Bakshwein & another[2015] eKLR on the importance of identification of the land in the possession of an adverse possessor. The 1st defendant urged the court to dismiss the plaintiffs' suit with costs.

224. Submissions by Naridai Muoroto Self Help Group(Naridai), the plaintiff in ELC No. 509 of 2014.

225. Naridai filed submissions dated 6th March 2023. Naridai submitted that the portion of L.R No. 5908/8 (the suit property) occupied by them is served with various social and physical amenities that would not have been put in place if the land did not belong to Naridai. Naridai submitted that the evidence that was tendered by the estate of G.K.Kirima to challenge the validity of the allotment letters that were issued to members of Naridai was not credible. With regard to the evidence challenging their occupation of the suit property, Naridai submitted that Google Images that were tendred in evidence by the estate of G.K.Kirima were inadmissible since they were electronic evidence and ought to have been accompanied a certificate pursuant to Section 65(8) of the Law of Evidence Act, Chapter 80 Laws of

Kenya. Naridai submitted further that Mr. Mwaura who claimed to have subdivided the suit property did not produce the necessary documentation that normally precedes subdivision of land. Naridai submitted further that Mr.Mwaura did not also tender in evidence receipts for payments that he made for the statutory charges. Naridai submitted further that the evidence tendered by the estate of G.K.Kirima to demonstrate that they were carrying out a butchery business on the suit property was contradictory. Naridai submitted that the trade licenses produced in evidence were for premises in Dandora and not the suit property.

226. Naridai submitted that since they had proved that the suit property was not subdivided, the claims by those claimants claiming portions the suit property through purchase from G.K.Kirima were untenable. Naridai submitted that in any event the said claimants purchased their properties from an entity known as Ring Road Developers which had no relationship with the suit property. Naridai submitted further that the suit property was owned by G.K.Kirima and John Gerishon Kirima as joint tenants and that upon the death of G.K.Kirima, the land devolved upon John Gerishon Kirima who was still alive through the doctrine of survivorship. Naridai submitted that in the circumstances, the estate of G.K.Kirima, deceased

have no right to claim the property as it does not form part of the estate of the deceased.

227. Submissions by the 2nd, 3rd, 6th and 9th “A” defendants in ELC No. 509 of 2014.

228. The 2nd, 3rd, 6th and 9th “A” defendants (hereinafter referred to only as “the defendants”) filed joint submissions dated 7th March 2023. The defendants framed 5 issues for determination by the court. The first issue was whether the estate of G.K.Kirima was the registered owner of L.R No. 5908/8(the suit property). On this issue, the defendants submitted that the estate of G.K.Kirima established at the trial that the suit property was registered in the name of G.K.Kirima. The defendants submitted further that it also became apparent that John Gerishon Kirima and Gerishon Kamau Kirima was one person. The defendants submitted that the fact that the estate of G.K.Kirima was claiming the whole property left no doubt that the property was owned absolutely by G.K.Kirima.

229. The second issue framed by the defendants was whether they had lawfully purchased the plots they were claiming from G.K.Kirima. The defendants submitted that they demonstrated at the trial how they acquired the parcels of land they were claiming from G.K.Kirima. The defendants submitted that their claim was supported by the evidence of one of the

administrators of the estate of G.K.Kirima, Teresia Wairimu Kirima and her witness, Cephas Mwaura. The defendants submitted that the contention by the other administrator of the estate of G.K.Kirima, Anne Wangari Kirima that the defendants did not purchase their parcels of land from G.K.Kirima had no basis in light of the evidence on record. The defendants submitted further that the fact that some of the defendants did not have in their possession agreements for sale signed by G.K.Kirima could not defeat their claim. The defendants submitted that the said defendants had fulfilled their part of the transactions between them and G.K.Kirima and had been given possession of their respective parcels of land. The defendants submitted that in the circumstances, failure on the part of G.K.Kirima to sign his part of the said agreements could not defeat the said defendants' claims.

230. The third issue was whether there were parties entitled to the suit property by adverse possession. On this issue, the defendants submitted that they were only claiming portions of the suit property in their possession. The defendants submitted that they had no problem with those who were claiming other portions of the suit property by adverse possession or otherwise. The defendants submitted however that the 3rd defendant was the first to occupy the suit property just before 2010 and at the time, there was

no other occupants of the land a fact that was supported by Google maps that were produced in evidence. In the circumstances, the defendants submitted that the adverse possession claims were not proved.

231. The next issue was whether there were parties who were entitled to the ownership of the suit property by way of allotment. On this issue, the defendants submitted that the suit property was private land and as such the same could not be allocated to the public by either the government or the City Council of Nairobi. The defendants submitted that the claim by Naridai had no basis in the circumstances.

232. On the last issue on the remedies, the defendants submitted that the plaintiffs' claim be dismissed with costs and judgment be entered for the defendants against the estate of G.K.Kirima in terms of their co-defendants' claim. They also sought the costs of the suit.

233. Submissions by the 8th defendant in ELC No. 509 of 2014, Geoffrey Mungai Thiong'o.

234. The 8th defendant filed submissions dated 16th January 2023. The 8th defendant submitted that L.R No. 5908/8 (suit property) was privately owned and that he purchased portions of the property known as L.R Nos. 5908/649, 5908/675, 5908/677, 5908/672, 5908/666, 5908/664, 5908/648, 5908/647, 5908/662, 5908/646, 5908/663, 5908/673, 5908/665

and 5908/676 each measuring 0.0600 of a hectare from G.K.Kirima, deceased. The 8th defendant averred that he had valid agreements for sale dated 8th May 2008 with G.K.Kirima in compliance with the provisions of section 3(3) of the Law of Contract Act. The 8th defendant submitted that by virtue of the said agreements of sale, he was the lawful owner of the said parcels of land.

235. The 8th defendant submitted that he had been paying land rates for his parcels of land. With regard to the land rent, the 8th defendant submitted that since separate titles were yet to be issued in respect of his parcels of land, he was unable to pay the land rent. The 8th defendant submitted that he had complied with his obligations under clause 10.2.2 of the agreements of sale as he awaited the completion of the agreements. Finally, the 8th defendant submitted that since L.R No. 5908/8 was not public land, the same could not be allocated to the plaintiffs by the Government of Kenya or the City Council of Nairobi. The 8th defendant submitted that he was a purchaser of his parcels of land for value and was entitled to the same.

236. Submissions by the 10th to 50th defendants in ELC No. 509 of 2014:

237. The 10th to 50th defendants filed joint submissions dated 7th December 2022. The 10th to 50th defendants submitted that at the trial, Amos Gathogo, CLAIMANT NO.6 gave evidence on their behalf. The 10th to 50th

defendants submitted that a part from being defendants, they also made a co-defendant claim against the estate of G.K.Kirima. The 10th to 50th defendants submitted that they purchased their parcels of land from G.K.Kirima at Kshs. 250,000/- each. The 10th to 50th defendants submitted that when they purchased their parcels of land, L.R No. 5908/8 (the suit property) was not occupied by the plaintiffs. The 10th to 50th defendants submitted that the plaintiffs started encroaching the suit property during the ailment and subsequent death of G.K.Kirima. The 10th to 50th defendants submitted that the evidence of Cephass Kamande Mwaura supported their case. The 10th to 50th defendants submitted that they had proved their case against the estate of G.K. Kirima.

238. With regard to the claimants claiming the suit property through allotment by the City Council of Nairobi, the 10th to 50th defendants submitted that the suit property was private land and as such not available for allocation to the plaintiffs in ELC No. 509 of 2014. The 10th to 50th defendants submitted that in any event, the purported letters of allotment were disowned by Geoffrey Katsoleh who was alleged to have issued them while he was acting as the town clerk at the City Council of Nairobi. The 10th to 50th defendants submitted that this claim must fail.

239. For those claiming the suit property by adverse possession particularly the plaintiffs in ELC No. 252 of 2011, Kamatuto, the 10th to 50th defendants submitted that the evidence adduced by the estate of G.K.Kirima showed that those claiming the suit property by adverse possession had not occupied the same for a period of 12 years as at the time of bringing the suit.

240. The 10th to 50th defendants urged the court to dismiss the claims by those claiming the suit property by adverse possession and to grant the reliefs sought by the estate of G.K.Kirima and the purchasers of portions of the suit property. The 10th to 50th defendants also prayed for the costs of the suit.

241. Analysis and determination:

242. I have considered the pleadings, the evidence tendered and the submissions by the parties. In their submissions, the parties framed various issues for determination by the court. I am of the view that the most practical way to determine the issues and claims raised in the various suits is to consider each case separately.

243. ELC NO. 1257 OF 2014(O.S)

244. The applicants/plaintiffs in this suit are 300 in number. They have claimed a portion of L.R No. 6825/2 measuring 80 acres by adverse

possession. Their claim is against the estate of G.K.Kirima. I have set out earlier in the judgment, the basis of the applicants' claims and the response thereto by the respondents. What I need to determine in this suit are, whether the applicants have established a case for adverse possession, whether they are entitled to the reliefs sought, and who should bear the costs of the suit. Several cases were cited before me on proof of adverse possession. I will refer to a few.

245. In Gabriel Mbui v. Mukindia Maranya [1993] eKLR, the court stated that a person claiming land by adverse possession must establish on a balance of probabilities the following elements;

- a) The person claiming land by adverse possession must make physical entry and be in actual possession or occupancy of the land for the statutory period.**
- b) The entry and occupation must be with, or maintained under, some claim or colour of right or title made in good faith by the stranger seeking to invoke the doctrine of adverse possession as against everyone else.**
- c) The occupation of the land by the intruder who pleads adverse possession must be non-permissive use, i.e. without permission from the true owner of the land occupied.**
- d) The non-permissive actual possession hostile to the current owner must be unequivocally exclusive, and with the evinced unmistakable *animus***

possidendi, that is to say occupation with clear intention of excluding the owner as well as other people.

- e) Acts of user by the person invoking the statute of limitation to found his title are not enough to take the soil out of the owner or his predecessors in title and to vest it in the encroacher or squatter, unless the acts be done which are inconsistent with the owner's enjoyment of the soil for the purpose for which he intended to use it.
- f) The possession by the person seeking to prove title by adverse possession must be visible, open and notorious, giving reasonable notice to the owner and the community of the exercise of dominion over the land.
- g) The possession must be continuous uninterrupted, unbroken for the necessary statutory period.
- h) The rightful owner or paper title holder against whom adverse possession is raised must have an effective right to make entry and to recover possession of the land throughout the whole of, and during, the statutory period.
- i) The rightful owner must know that he is ousted. He must be aware that he had been dispossessed, or he must have parted and intended to part with possession.
- j) The land, or portion of the land adversely possessed must be a definitely identified, defined or at least an identifiable portion, with a clear boundary or identification. The absence of a plot or title number need not present any difficulty, nor should it be a bar to establishing a claim of adverse possession.

246. In Kimani Ruchine & Another v Swift, Rutherford Co. Ltd. & another

[1977] KLR 10 Kneller J. stated as follows at page 16:

“The Plaintiffs have to prove that they have used this land which they claim as of right, necvi, nec clam, necplecario (no force, no secrecy, no evasion)The possession must be continuous. It must not be broken for any temporary purposes or by any endeavours to interrupt it or by any recurrent consideration.”

247. In Wambugu v. Njuguna [1983] KLR 172 the court stated as follows:

“First in order to acquire by the Statute of Limitations title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title entails acts which are inconsistent with his enjoyment of the soil and for the purpose for which he intended to use it. The Limitation of Actions Act (Chapter 22) on adverse possession contemplated two concepts: dispossession and discontinuance of possession. The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession for the requisite number of years.”

248. In Githu v Ndeete [1984] KLR 776 it was held that:

a) **“Time ceases to run under the Limitation of Actions Act either when the owner takes or asserts his rights or when his right is admitted by adverse possessor. Assertion occurs when the owner takes legal proceedings or makes an effective entry into land. Giving notice to**

quit cannot be effective assertion of right for the purpose of stopping g the running of time under the Limitation of Actions Act.

b) A title by adverse possession can be acquired under the Limitation of Actions Act to a part of the parcel of land which the owner holds title.”

249. In Mombasa Teachers Co-operative Savings & Credit Society Limited v. Robert Muhambi Katana & 15 others [2018] eKLR, the Court of Appeal stated as follows:

“19. In computing the requisite statutory time, the date on which a party entered possession without consent of the title holder is of significance. It is from that date that the requisite time frame begins to run. In this case, the respondents claim was that they had entered into possession of the suit property and their rights thereon had crystalized prior to the purchase of the suit property by the appellant. It is without doubt that mere change of ownership of the land which is occupied by another under adverse possession does not interrupt time from running in that other person’s favour. See Titus Mutuku Kasuve vs. Mwaani Investments Limited & 4 Others (supra).

20. We cannot help but note that the evidence tendered in support of the respondents’ case was by five respondents. These respondents only gave evidence in relation to the dates they each entered into possession of the suit property. There was no evidence to show that such possession was without the consent of the former registered owner. The photographs of the structures erected on the suit property could equally not establish the absence of consent from the previous registered owner. In addition, we,

unlike the learned Judge, find that no further evidence was given with respect to when the other respondents took possession. Without such evidence there was nothing to support the respondents' contention that they had been in adverse possession of the suit property prior to the appellant's title.

21. Even if we were to accept that the five respondents who testified had established that they had been in an open and uninterrupted occupation of the suit property in excess of 12 years after the appellant acquired title still their claim fell short. There is a further problem because none of them tendered any evidence with regard to identifiable portion(s) of the suit property which they each occupied which was essential to their claim. More so, taking into account that there were allegations that apart from the respondents over 200 people were also in occupation of the suit property. In *Wilson Kazungu Katana & 101 Others vs. Salim Abdalla Bakshwein & Another* [2015] eKLR this Court observed: -

“The identification of the land in possession of an adverse possessor is an important and integral part of the process of proving adverse possession. This was so stated by this Court in the case of *Githu vs. Ndele* [1984] KLR 776. The appellants did not discharge the burden of proving and specifically identifying or even describing the portions, sizes and locations of those in their respective possession from the larger suit premises that they sought to have decreed to them.”

250. In the same case, the court stated as follows: **“18. Likewise, it is settled that a person seeking to acquire title to land by of adverse possession must prove non permissive or non-consensual, actual open, notorious, exclusive and adverse use/occupation of the land in question for an**

uninterrupted period of 12years as espoused in the Latin maxim, *nec vi nec clam nec precario*. See Jandu vs. Kirplal & Another (1975) EA 225. In other words, a party relying on the doctrine bears the burden of demonstrating that the title holder has lost his/her right to the land either by being dispossessed of it or having discontinued his possession of it for the aforementioned statutory period. See this Court's decision in Wambugu vs. Njuguna [1983] KLR 173. Did the respondents discharge this burden?

251. It is on the foregoing principles that the applicants' claim falls for consideration. As mentioned earlier, the applicants are claiming a portion of L.R No. 6825/2 measuring 80 acres which they claim to have occupied peacefully for uninterrupted period of over 14 years prior to the filing of the suit. In proof of the applicants' case, John Otieno Obade (CLAIMANT NO.10) gave evidence on his own behalf and on behalf of the other 299 applicants who gave him authority to represent them. I have analysed the contents of the various affidavits filed by John Otieno Obade in support of the Originating Summons and the evidence that he tendered at the trial earlier in this judgment. The applicants claimed that they had occupied land measuring 80 acres for over 14 years and had developed the same extensively. The applicants did not adduce evidence showing how and when each of them entered L.R No. 6825/2. John Otieno Obade was not precise as to when he entered the suit property. He told the court that he

entered the property in 1990s. He changed that to 2000 and finally he told the court that he put up a house on the property in 2011. He did not tell the court when each of the other 299 claimants entered the property. In the absence of a specific year or date when each of the claimants entered the suit property, it is not possible to determine whether each of the applicants had been in possession of the said property for 14 years as claimed. There was also no cogent evidence of occupation of L.R No. 6825/2 by the 300 applicants. What the applicants placed before the court as evidence of their occupation of the 80 acre-portion of land that they are claiming were several photographs of structures or buildings said to be on the said portion of land. The applicants did not relate the ownership of the said buildings to the 300 of them or to the 80 acre-portion of land that they are claiming. The court was not told which of the applicants owned which building or structure and from when. The court was also not told when each of the structures was put up. As mentioned above, John Otieno Obade told the court that he put up his building on the suit property in 2011 which was barely 3 years as at the time he brought this suit.

252. The applicants also failed to prove that the said buildings were on a portion of L.R No. 6825/2 measuring 80 acres which they are claiming. The applicants did not also tell the court how they arrived at this

measurement of 80 acres. Although John Otieno Obade claimed that each of them owned land measuring 40 feet by 80 feet, there was no evidence to prove that fact. In any event land measuring 40 feet by 80 feet is equivalent to 0.07346 acres. If that is what is owned by 1 applicant, then the 300 applicants own a total of 22.038 acres only. The remaining 57.962 acres claimed by the applicants has not been accounted for. Evidence as to the correct description and identification of the land claimed by the applicants was crucial because there are other groups also claiming portions of L.R No. 6825/2 which measures a total of approximately 471 acres.

253. In the absence of evidence as to when and how each of the applicants entered the suit property and which portion of the property is occupied by each applicant, I find the applicants' claim to a portion of L.R No. 6825/2 measuring 80 acres by adverse possession not proved.

254. Looking at the photographs of the buildings and other structures annexed to the affidavit of John Otieno Obade filed in support of the Originating Summons and those shown to the court at the trial, I find most of the buildings fairly new and a number of them still under construction. I have also noted that a number of plots have not been developed. They are just fenced. I am persuaded from the evidence adduced by the respondents that the applicants entered the suit property in 2010 onwards after the death

of G.K.Kirima. It is my finding therefore that the applicants have not proved that as at 2014 when they filed the Originating Summons to claim a portion of L.R No. 6825/2 measuring 80 acres by adverse possession, they had occupied the same for the statutory period of 12 years. In conclusion, I find no merit in the applicants' claim.

255. On the issue whether the applicants are entitled to the reliefs sought, the answer is in the negative. The applicants having failed to prove their adverse possession claim, they are not entitled to an order that the portion of land that they claimed by adverse possession be subdivided and registered in their names. I will dismiss the applicants claim with costs to the estate of G.K.Kirima and order that they vacate the suit property in case they are in possession thereof.

256. ELC NO. 252 OF 2011(O.S)

257. This suit by Kamatuto Self Help Group was brought by a total of 1310 people who were members of the group by way of Originating Summons. As mentioned earlier, Kamatuto Self Help Group (applicants) sought as its principal relief, a declaration that they had become entitled to a portion of L.R No. 5908/8 measuring 160 acres by adverse possession and that they be registered as proprietors of the said parcel of land. I have set out earlier in the judgment the grounds upon which the Originating Summons was

brought and the response thereto by the estate of G.K.Kirima. I have also analysed the evidence tendered by Ronald Matende Omuoma(CLM7), Aineah Lusiji Smith(CLM8) and Sarah Wairimu Chege(CLM9) in support of the applicants' case and the evidence tendered in response to the claim by the respondents.

258. Like in ELC No. 1257 of 2014, the issues arising for determination in this suit are, whether the applicants have established their claim to a portion of L.R No. 5908/8 measuring 160 acres by adverse possession, whether the applicants are entitled to the reliefs sought in their Originating Summons and who is liable for the costs of the suit.

259. Since the claim herein is the same as the claim in ELC No. 1257 of 2014 save for the parcel of land in dispute, I will adopt herin the same authorities that I have cited in ELC No. 1257 of 2014 on the conditions that must be satisfied by an applicant seeking to acquire land by adverse possession from a registered owner. The applicants' case as pleaded is that they occupied and were excavating stones on a portion of L.R No. 5908/8 measuring 160 acres. According to the title, the whole land comprised in L.R No. 5908/8 measures 201.94 hectrares (approximately 499 acres). The applicants contented that they had occupied and extracted stones on the said portion of land measuring 160 acres peacefully and continuously without

interruption for over 15 years. The respondents on the other hand contended that G.K.Kirima had a slaughterhouse on L.R No. 5908/8(the suit property). They contended that part of the property was used for the slaughterhouse while the other had domestic servant quarters. They contended that the invasion of the property by squatters started in 2011 after the death of G.K.Kirima and intensified thereafter. They contended that G.K.Kirima had filed suits in 2003 and 2006 against those who had attempted to encroach on the suit property during his lifetime and obtained orders for their eviction from the property which were followed by forceful evictions. They contended that the applicants had not occupied the suit property for uninterrupted period of 15 years as they claimed.

260. I have considered the evidence adduced by Ronald Matende Omuoma(CLM7), Aineah Lusiji Smith(CLM8) and Sarah Wairimu Chege(CLM9) in support of the applicants' case. I have also considered the exhibits that were produced by the applicants in evidence. Although the same did not form part of the evidence adduced before me, I have also read the witness statements of some of the applicants that were filed in the matter. The applicants appear to have entered the suit property at different times. Stephen Maina Mwenda who swore the affidavit in support of the applicants' application did not give evidence at the trial.

261. In his affidavit sworn on 9th June 2011, Stephen Maina Mwenda who described himself as the Chairman of Kamatuto stated that the group was registered in April 2004. He contended that members of Kamatuto numbering 1310 had been occupying and carrying out quarrying activities on a portion of the suit property measuring 160 acres for over 15 years. He did not state when each of the said members or all of them (if they entered at once) entered the suit property. He did not also state what portion of the said 160 acres was occupied by each of the 1310 members of Kamatuto. I did not find the evidence of Ronald Matende Omuoma (CLM 7) useful. CLM7 had ceased to be an employee of the Ministry of Lands at the time he was giving evidence. He gave evidence in his private capacity but purported to produce official documents from the Ministry of Lands. He produced undated internal office memo which he referred to as a report that he made after inspecting the suit property in 2003. The memo that was produced in evidence appeared to have some information that was supposed to be part of it missing. The memo refers to folio 122 and 123 which were not produced. The memo states that there were some squatters on the suit property. The particulars of the squatters and the extent of their occupation is not given. There is no indication of their names, when they entered the property and the measurement of the portion of the suit

property each occupied. On cross-examination, the witness stated that the squatters were members of Kamatuto. I wonder how this could have been the case since Kamatuto was registered in 2004 while the witness visited the suit property in 2003.

262. Aineah Lusiji Smith(CLM8) stated that he was born on the suit property in 1939. No evidence was produced to support this claim. He claimed that his father used to work for the European owner of the property. He stated that the structures on the property were demolished in 2001 and that it was until 2011 that he put up another structure on the suit property. He told the court that like other members of Kamatuto he was not staying on the suit property. He stated that many members of Kamatuto were staying in Maili Saba and Dandora. He stated that he knew only a few members of Kamatuto. He stated that members came from different areas to attend the meeting that was convened for the purposes of planning on how to file the present suit.

263. Sarah Wairimu Chege(CLM9) told the court that she did not know the particulars of the land she was occupying. She claimed that her father used to work for G.K.Kirima. She had no idea when she entered the suit property. She also confirmed that they were evicted from the suit property and their houses were demolished. She stated that all the members of

Kamatuto were evicted from the suit property and that was the reason why they decided to come to court. She also told the court that she was not staying on the suit property. She stated that she was staying at Maili Saba. She stated that not all the members of Kamatuto had houses on the suit property.

264. The foregoing is the state of the evidence that was adduced by the witnesses who testified in court in support of Kamatuto's adverse possession claim. Kamatuto's suit was brought by 1310 people who claimed a portion of the suit property measuring 160 acres by adverse possession. I find the claim not proved. There is no evidence as to when each of the 1310 members of Kamatuto entered the suit property. There is also no evidence that each of the 1310 members of Kamatuto had occupied the suit property for a period of 12 years as at 2011 when they brought the present suit. There is also no evidence showing that each of the 1310 members of Kamatuto are in occupation of the suit property. The court was also not told how Kamatuto arrived at the 160 acres that they are claiming. No evidence was presented to the court showing that they were in occupation of a portion of the suit property measuring 160 acres. There was also no evidence as to the size of land that each occupied. From the list of members, each of the applicants seem to have a plot which has a number. The court was not told

how these plots and numbers were arrived at, the location of the plots and sizes. For the members like Sarah Wairimu Chege (CLM9) who claimed to have been given land by G.K.Kirima since her father was working for him, the court was not told when the consent that was given to them by G.K.Kirima to occupy the land was withdrawn. I have perused the letter dated 15th December 2009 from the Chief of Njiru Location. In the letter, the said Chief stated that Kamatuto Group had lived on the suit property for 15 years. The letter did not indicate when and how the group that was formed in 2004 entered the suit property. There is also no indication as to the names of the members of the group and the extent of their occupation of the property. I have also noted that as at 6th August 2010, the applicants were still seeking permission from the District Officer, Njiru to settle on the suit property. I wonder why they were seeking such permission if they were already in occupation. This request lends credence to the contention by the estate of G.K.Kirima that the applicants and other squatters entered the suit property after the death of G.K.Kirima in 2010. It is my finding that the 1310 members of Kamatuto have not proved that they had occupied a portion of the suit property measuring 160 acres openly for uninterrupted period of 12 years prior to the filing this suit. I therefore find no merit in their adverse possession claim.

265. In view of that finding, I will answer the second issue in the negative.

The applicants having failed to prove their adverse possession claim are not entitled to orders of injunction restraining the estate of G.K.Kirima from evicting them from the suit property. They are also not entitled to an order that they be registered as the owners of the land that was the subject of their claim. I will dismiss their claim with costs to the 1st defendant and order those in occupation of the suit property to vacate.

266. **ELC NO. 509 OF 2014**

267. This suit was brought by Naridai Muoroto Self Help Group. According to the list of members produced in evidence, the group has 215 members. In their plaint, they claimed that their number had grown to 2000 members. Naridai Muoroto Self Help Group(Naridai) is claiming undefined parcel of land referred to as Naridai Muoroto Scheme measuring 500 acres located in Njiru District and owned by the Government of Kenya through the County Government of Nairobi. Naridai averred that they were at all material times squatters and that the Government of Kenya settled them on the land they are claiming and subsequently issued them with letters of allotment.

268. Naridai sought a declaration that they were entitled to exclusive and unimpeded right of possession and occupation of the Naridai Muoroto

Scheme, a permanent injunction restraining the defendants from trespassing on or occupying the property and general damages for trespass.

269. The issues arising for determination in this suit are whether Naridai has any valid interest in the parcel of land they have referred to as Naridai Muoroto Scheme owned by the Government of Kenya through the County Government of Nairobi, and whether Naridai is entitled to the reliefs sought in their plaint. At the trial, Naridai's secretary, John Maina Mwangi (CLM 11) gave evidence in support of their case. I have analysed his evidence earlier in this judgment. I have also looked at the exhibits that were produced in evidence by CLM11. CLM 11 claimed that they were occupying land parcels known as L.R No. 5908/9 and L.R No. 5908/10. He stated that Naridai members occupied land measuring a total of 300 acres. CLM 11 claimed that L.R No. 5908/8 was non-existent according to the survey records. Naridai did not produce any evidence showing that there existed parcels of land known as L.R No. 5908/9 and L.R No. 5908/10 owned by the Government of Kenya or the City Council of Nairobi. Naridai produced in evidence a letter dated 23rd June 2009 from the District Commissioner, Njiru District stating that Naridai had occupied L.R No. 5908/8 for a considerable length of time and that their occupation should be considered for formalisation. They also produced a Ministry of

Lands internal memo written by F.N.O.Matende whom I believe is CLM 7 on his observations regarding the squatters on L.R 5908/8. Naridai also produced several letters of allotment allegedly issued to them by Nairobi City Council in respect of the land they are claiming.

270. From the testimony of CLM11 and the exhibits produced by him in evidence, there is no doubt that the land referred to by Naridai as Naridai Muoroto Scheme is part of L.R No. 5908/8 measuring 499 acres owned by G.K.Kirima and John Gerishon Kirima. As submitted by the defendants, L.R No. 5908/8 was private land and as such was not available for allocation to Naridai by either the Government of Kenya or the Nairobi City Council. The court has also noted that G.C.K.Katsoleh who is alleged to have signed the said letters of allotment disowned them claiming that they did not bear his signature. A rising from the foregoing, it is my finding that Naridai's claim to a portion of L.R No. 5908/8 which they have referred to as Naridai Muoroto Scheme based on the said letters of allotment have no merit. In view of this finding, it is not necessary for me to deal with the other issues raised by Naridai in their submissions.

271. Due to the foregoing, Naridai's claim against all the defendants in ELC No. 509 of 2014 must fail and is therefore for dismissal with costs. An

appropriate order will also be made for them to vacate the portion of L.R No. 5908/8 which they are occupying.

272. The cross-claim by the 9th to 50th defendants, and 2nd, 3rd, 6th, 9th “A” defendants in ELC No. 509 of 2014 against the 7th defendant, Teresia Wairimu Kirima and Anne Wangari Kirima as administrators of the estate of G.K.Kirima, deceased.

273. The 9th to 50th defendants claimed that they were the beneficial owners of a portion of L.R No. 5908/8 known as 5908/503,489,568 and 569, 583, 454, 487 and 489, 608 and 610, 484,573 and 574, 486, 667, 596 and 597, 485, 452, 454, 584 and 585, 650, 605, 657 and 658, 611, 559 and 560, 588 and 589, 609, 564, 555, 479, 626, 627, 480, 544, 545, 546, 547, 548, 551, 550, 549, 633, 634, 671,536, 521, 669, 604, 598 and 599, 594, 600, 601, 612 and 613 respectively having purchased the same from G.K.Kirima, deceased whose estate was represented by the 7th defendant.

274. The 9th to 50th defendants averred that they paid the full purchase price for the said parcels of land and were given deed plans and possession thereof. The 9th to 50th defendants sought judgment against the 7th defendant for specific performance of the contracts that they entered into with G.K.Kirima in respect of the said parcels of land.

275. In their Notice of Claim against the 7th defendant, the 2nd, 3rd, 6th and 9th “A” defendants claimed that G.K.Kirima sold portions of L.R No. 5908/8 as follows; L.R Nos. 5908/641, 642 and 682 to the 2nd defendant, L.R Nos.5908/469, 470, 471, 463, 464, 466, 46, 637, 638, 639, 655, 654 and 653 to the 6th defendant and L. R Nos. 5908/679, 680 and 681 to the 9th “A” defendant.

276. The 2nd, 3rd, 6th and 9th “A” defendants claimed further that the 3rd defendant purchased L.R Nos. 5908/653, 562, 574, 575 and 576 from the 1st defendant who had purchased the same from G.K.Kirima. The 2nd, 3rd, 6th and 9th “A” defendants averred that they were issued with receipts for the payments made for the said properties and original deed plans.

277. The 2nd, 3rd, 6th and 9th “A” defendants averred that upon payment of the purchase price in full, they took possession of the properties and commenced various developments thereon. The 2nd, 3rd, 6th and 9th “A” defendants averred that despite payment of the full purchase price, the properties had not been transferred to them. The 2nd, 3rd, 6th and 9th “A” defendants sought judgment against the 7th defendant for specific performance of the said agreements for sale and costs.

278. The 9th to 50th defendants, and the 2nd, 3rd, 6th and 9th “A” defendants claimed various portions of L.R No. 5908/8 through purchase directly from

G.K.Kirima or from those who had purchased the said portions of land from G.K.Kirima. There was also the 8th defendant Geoffrey Mungai Thiong'o who filed a defence only without a cross-claim against the estate of G.K.Kirima. His claim related to portions of L.R No. 5908/8 known as L.R Nos. 5908/649, 5908/675, 5908/677, 5908/672, 5908/666, 5908/664, 5908/648, 5908/647, 5908/662, 5908/646, 5908/663, 5908/673, 5908/665 and 5908/676 which he claimed to have purchased from G.K.Kirima.

279. I did not see any defence by the estate of G.K.Kirima to the claims by these defendants. Although the claims were not contested through pleadings, one of the administrators of the estate of G.K.Kirima, Anne Wangari Kirima contended in her evidence that she was not aware of any sale of L.R No. 5908/8 by G.K.Kirima or any payment that was made to him. She also denied any knowledge of Embakasi Ring Road Developers to which most of the purchasers of portions of L.R No. 5908/8 made payment. She claimed that she did not know Cephass Kamande Mwaura (2nd respondent's W1). She claimed that she only knew one, Mr. Mwaura of Geotop Surveys whom she met at G.K.Kirima's office who prepared fraudulent deed plans which he sold to the public. She claimed that she was not aware that G.K.Kirima had instructed Cephass Kamande Mwaura to subdivide L.R No. 5908/8 and L.R No. 6825/2. She stated however that

the estate of G.K.Kirima was aware that G.K.Kirima sold portions of the two properties to some people who had taken possession of the plots that had been sold to them. She stated that the estate did not wish to be unfair to the people who genuinely purchased land from G.K.Kirima and that they would have no problem processing titles for them. In her submissions, Anne Kirima toned down on her earlier emphatic denial of these claims. She admitted that there were claimants who had validly purchased land from G.K.Kirima during his lifetime. She submitted that it was her wish that they retained those parcels of land.

280. In his evidence that he gave on behalf of Teresia Wairimu Kirima but was also relied on to some extent by Anne Wangari Kirima, Cephas Kamande Mwaura (2nd respondent's W1) stated that on the instructions of G.K.Kirima, he surveyed and subdivided L.R No. 5908/8 into 513 portions in respect of which deed plans were issued. He stated that the said portions of L.R No. 5908/8 were sold at G.K.Kirima's office through Embakasi Ring Road Developers. He confirmed that he was involved in showing the purchasers their parcels of land on the ground and that the purchasers were issued with deed plans once they completed making the payment of the purchase price.

281. On her part, Teresia Wairimu Kirima told the court that G.K.Kirima had instructed Geotop Surveys to survey and subdivide L.R No. 5908/8. She stated that Gerishon Kamau Kirima and John Gerishon Kirima were one and the same person. She denied that John Gerishon Kirima was the son of G.K.Kirima known as Wanjau Kirima. She stated that the suit properties belonged absolutely to G.K.Kirima. She stated further that she was aware that portions of L.R No. 5908/8 were sold by G.K.Kirima while he was still alive. She stated that the estate would honour genuine sales. She stated that those who paid for their plots and had deed plans needed not worry.

282. I have seen on record a supplementary list of documents that was filed by Teresia Wairimu Kirima in ELC No. 1257 of 2014(O.S) dated 9th February 2021. In the list, Teresia Wairimu Kirima annexed a list of the names of persons who had purchased portions of L.R No. 5908/8 from G.K.Kirima together with the particulars of their plot numbers and deed plan numbers. Cephas Mwaura referred to this list in his evidence. Also annexed to that list of documents was copies of 6 survey plans through which L.R No. 5908/8 was subdivided.

283. I have noted from the said list of purchasers that the names of the 5th, 10th, 11th, 12th, 14th, 15th, 16th, 17th 19th to 22nd, 25th ,27th, 29th to 32nd, 34th,

35th, 37th, 41st, 42nd, 43rd, 45th, 49th and 50th defendants and the parcels of land which they claim to have purchased are in the list. I have also noted that the names of 2nd, 3rd, 6th and 9th "A" defendants also appear in that list against several parcels of land which they claim to have purchased either from G.K.Kirima or from those who purchased the same from G.K.Kirima. The name of the 8th defendant is also in the list together with all the plots that he claims to have purchased. The other defendants appear in the list through the persons from whom they purchased the plots some of which seem to have changed hands several times.

284. In her submissions, Teresia Wairimu Kirima conceded that L.R No. 5908/8 was subdivided and some of the resultant subdivisions sold to some of the claimants before the court who claim to have purchased the same from G.K.Kirima. She conceded that the evidence tendered by the 2nd (CLM2), 3rd (CLM3), 5th (CLM 4), 9th "A" (CLM5) and 20th (CLM6) defendants was true. She conceded to the claims by the claimants who purchased portions of L.R No. 5908/8, paid for the same and were issued with deed plans. As I have stated above, Anne Wangari Kirima also conceded in her submissions that L.R No. 5908/8 was indeed subdivided during the life time of G.K.Kirima and that some portions thereof were

sold. She submitted that those who proved that they purchased portions of the said parcel of land from G.K.Kirima should retain the same.

285. The 20th defendant (CLM6) gave evidence on his on behalf and on behalf of the other defendants in the 9th to 50th defendants' group. He explained to the court in detail how they acquired portions of L.R No. 5908/8 from G.K.Kirima. The 2nd, 3rd, 5th and 9th "A" also gave evidence on how they acquired their various plots. From the evidence on record, I am satisfied that the claimants who purchased portions of L.R No. 5908/8 from G.K.Kirima have made out a case for specific performance. Those who are entitled to the order are those holding original deed plans for the plots in respect of which they have brought the claims and evidence of payment made either directly to G.K.Kirima or to Embakasi Ring Road Developers. The payment and/or purchase should have been made by the claimant personally, through his/her company or by the persons from whom they purchased the plot/s. It is my finding from the evidence on record that G.K.Kirima issued receipts for the payments made for the purchase of portions of L.R 5908/8 in the name of Embakasi Ring Road Developers. I have not been persuaded by Anne Wangari Kirima and Kamatuto that Gerishon Kamau Kirima (G.K.Kirima) and John Gerishon Kirima were two different persons and that John Gerishon Kirima was alive and should

have participated in the sale transactions. The suits herein have been in court for the last 10 years. If John Gerishon Kirima was indeed different from G.K.Kirima, he should have come forward to protect his interest in the suit properties. There is also no evidence before the court that such a person has lodged a claim in the Succession Cause relating to the estate of G.K.Kirima challenging the right of the estate to claim the suit properties absolutely.

286. ELC NO. 1496 OF 2013

287. In this suit, the estate of G.K.Kirima sought orders restraining the defendants in the suit from continuing with acts of trespass on L.R No. 5908/8 and an order for their eviction from the property. The estate also sought general damages for trespass. The estate contended that the defendants entered the suit property without its consent and commenced construction of illegal structures thereon. In their defence, the defendants contended that they were in occupation of the property as of right with the consent and knowledge of the Government of Kenya. The defendants herein are members of Naridai who claimed that portions of L.R No. 5908/8 were allocated to them by the City Council of Nairobi. At the trial, they produced among others, Certificate of Registration of Naridai, a list of members of Naridai showing that the 2nd defendant was member No. 160,

and a letter of allotment dated 22nd August 2008 issued in favour of the 1st defendant by the Nairobi City Council in respect of Kangundo Road Njiru L.R No. 5908/9 Plot No. 016. I have already made a finding that L.R No. 5908/8 was at all material times private property and as such the same was not available for allocation to the members of Naridai by the Government of Kenya or Nairobi City Council. I have found the claim of Naridai to portions of L.R No. 5908/8 that were allegedly allocated to them without merit. It follows that the defendants' claim to a portion of L.R No. 5908/8 based on the letter of allotment dated 22nd August 2008 is unsustainable. Without any legal basis for entering and carrying out construction on the suit property, the defendants were trespassers thereon. The plaintiffs are in the circumstances entitled to an injunction to restrain the trespass and an order for the eviction of the defendants from the portion of the suit property occupied by them. The plaintiffs are also entitled to damages for trespass. However, they have not made submissions in that regard and as such I am unable to assess the general damages payable. The plaintiff will have judgment for the reliefs sought save for general damages for trespass.

288. ELC NO. 1318 OF 2013

289. This suit was also filed by the estate of G.K.Kirima seeking orders restraining the defendants in the suit from continuing with acts of trespass

on L.R No. 5908/8 and an order for their eviction from the property. The estate also sought general damages for trespass. The estate contended that the defendants entered the suit property without its consent and commenced development on a portion thereof. The defendants denied that they had trespassed on the suit property and that the plaintiffs had suffered loss as a result thereof. At the trial, the defendants contended that the portion of the suit property in dispute was donated to the 2nd defendant by Naridai to construct a church following which donation, the defendants were issued with a letter of allotment on 2nd July 2009 by the Nairobi City Council. I have already held that Naridai did not acquire any valid interest in the portion of L.R No. 5908/8 that they referred to as Naridai Muoroto Scheme. In the circumstances, Naridai had no interest in the property, that it could donate to the defendants herein. It is therefore my finding that the defendants did not acquire a valid title to the portion of the suit property that they occupied and started developing. They were therefore trespassers on the said portion of the suit property. Being trespassers, they have no right to continue in possession. The plaintiffs are therefore entitled to the orders sought in the plaint save for general damages in respect of which no submissions were made to guide the court in assessing an appropriate award.

290. ELC NO. 850 OF 2014

291. The plaintiff in this suit is also the 9th “A” defendant in ELC No. 509 of 2014. In this suit, he sued Lawrence Kimondo Mutuaruhiu and John Maina for trespassing on his parcels of land known as L.R No. 5908/679, L.R No. 5908/680 and L.R No. 5908/681 being portions of L.R No. 5908/8 that he acquired from G.K.Kirima. The plaintiff sought orders restraining the defendants from continuing with acts of trespass on the said parcels of land and general damages for trespass.

292. As I mentioned earlier in the judgment, the defendants did not file a defence. I have however noted that the defendants were members of Naridai. The 1st defendant was a member of the group while the 2nd defendant was a member and a secretary of the group. Naridai claimed portions of L.R No. 5908/8 through letters of allotment that were issued to them by the Nairobi City Council in respect thereof. I have already considered Naridai’s case and found it to have no merit. The plaintiff in this suit is among those claiming portions of L.R No. 5908/8 through purchase from G.K.Kirima. I have already considered the plaintiff’s claim above and made a finding that he has a valid interest in L.R No. 5908/679, L.R No. 5908/680 and L.R No. 5908/681. In view of the foregoing, the plaintiff was at all material times entitled to a peaceful occupation and enjoyment of the

said parcels of land. The defendants could only enter thereon with his permission. The plaintiff has proved that the defendants did not obtain his consent before entering into his said parcels of land and commencing construction thereon. The defendants were in the circumstances trespassers on the said parcels of land. It is my finding that the plaintiff has proved his case against the defendants and as such the plaintiff is entitled to the reliefs sought save for general damages in respect of which no submissions were made that could guide the court on an appropriate award.

293. CONCLUSION

294. In the final analysis and for the foregoing reasons, the court makes the following orders in the consolidated suits:

- a) ELC No. 1257 of 2014(O.S) by John Otieno Obade & 299 others is dismissed with costs to the respondents/defendants. The plaintiffs in this suit have no valid claim over L.R No. 6825/2. To save them from forceful eviction from the property, I hereby give those of them who are in actual occupation of L.R No. 6825/2 upto and including 31st December 2023 to vacate and handover possession of the property to the estate of G.K.Kirima in default of which the estate shall be at liberty to evict them from the property.

- b) ELC No. 252 of 2011(O.S) by Kamatuto Self Help Group is dismissed with costs to the 1st respondent/defendant. The plaintiffs in this suit have no valid claim over L.R No. 5908/8. To save them from forceful eviction from the property, I hereby give those of them who are in actual occupation of L.R No. 5908/8 upto and including 31st December 2023 to vacate and handover possession of the property to the estate of G.K.Kirima in default of which the estate shall be at liberty to evict them from the property.
- c) ELC No. 509 of 2014 by Naridai Muoroto Self Help Group is dismissed with costs to the 2nd, 3rd, 5th, 6th, 7th, 8th, 9th “A” and 9th to 50th defendants. The plaintiffs in this suit have no valid claim over L.R No. 5908/8. To save them from forceful eviction from the property, I hereby give those of them who are in actual occupation of L.R No. 5908/8 upto and including 31st December 2023 to vacate and handover possession of the property to the estate of G.K.Kirima in default of which the estate shall be at liberty to evict them from the property.
- d) Judgment is entered for the plaintiffs in ELC No. 1496 of 2013 in terms of prayers (a), (b)and (d) of the amended plaint.
- e) Judgment is entered for the plaintiffs in ELC No. 1318 of 2013 in terms of prayers (a), (b), (c) and (e) of the amended plaint.

- f) Judgment is entered for the plaintiff in ELC No. 850 of 2014 in terms of prayers (a), (b) and (d) of the plaint.
- g) Teresia Wairimu Kirima and Anne Wangari Kirima as the administrators of the estate of Gerishon Kamau Kirima, deceased shall within a period of ninety (90) days from the date hereof complete the sale of portions of L.R No. 5908/8 known as L.R Nos. 5908/649, 5908/675, 5908/677, 5908/672, 5908/666, 5908/664, 5908/648, 5908/647, 5908/662, 5908/646, 5908/663, 5908/673, 5908/665 and 5908/67 to the 8th defendant in ELC No. 509 of 2014, Geoffrey Mungai Thiong'o.
- h) Teresia Wairimu Kirima and Anne Wangari Kirima as the administrators of the estate of Gerishon Kamau Kirima, deceased shall within a period of ninety (90) days from the date hereof complete the sale of portions of L.R No. 5908/8 known as L.R No. 5908/679, 5908/680 and 5908/681 to the 9th "A" defendant in ELC No. 509 of 2014, Paul Ndung'u Kioi.
- i) Teresia Wairimu Kirima and Anne Wangari Kirima as the administrators of the estate of Gerishon Kamau Kirima, deceased shall within a period of ninety (90) days from the date hereof complete the sale of portions of L.R No. 5908/8 known as L.R No. 5908/464, L.R No. 5908/465, L.R No. 5908/466, L.R No. 5908/469, L.R No. 5908/638,

L.R No. 5908/639, L.R No. 5908/654, and L.R No. 5908/655 to the 6th defendant, in ELC No. 509 of 2014, Mutii Kivoto who purchased the properties through Victoria Technical Enterprises Limited.

- j) Teresia Wairimu Kirima and Anne Wangari Kirima as the administrators of the estate of Gerishon Kamau Kirima, deceased shall within a period of ninety (90) days from the date hereof complete the sale of portions of L.R No. 5908/8 known as L.R No. 5908/682 to the 2nd defendant in ELC No. 509 of 2014, Isaac Mbugua Nganga.
- k) Teresia Wairimu Kirima and Anne Wangari Kirima as the administrators of the estate of Gerishon Kamau Kirima, deceased shall within a period of ninety (90) days from the date hereof complete the sale of portions of L.R No. 5908/8 known as L.R No. 5908/574, L.R No. 5908/575 and L.R No. 5908/653 to the 3rd defendant in ELC No. 509 of 2014, Stephen Maina Waruingi.
- l) Teresia Wairimu Kirima and Anne Wangari Kirima as the administrators of the estate of Gerishon Kamau Kirima, deceased shall within a period of ninety (90) days from the date hereof complete the sale of portions of L.R No. 5908/8 known as L.R No. 5908/479, L.R No. 5908/480, L.R No. 5908/544, L.R No. 5908/545, L.R No. 5908/546, L.R No. 5908/547, L.R No. 5908/548, L.R No. 5908/549, L.R No.

5908/550, and L.R No. 5908/551 to the 41st defendant in ELC No. 509 of 2014, Kandia Fresh Produce Supplies.

m) Teresia Wairimu Kirima and Anne Wangari Kirima as the administrators of the estate of Gerishon Kamau Kirima, deceased shall within a period of ninety (90) days from the date hereof complete the sale of portions of L.R No. 5908/8 known as L.R No. 5908/489, L.R No. 5908/626 and 627, L.R No. 5908/612 and 613, L.R No. 5908/600 and 601, L.R No. 5908/484, L.R No. 5908/487 and 488, L.R No. 5908/608 and 610, L.R No. 5908/572 and 573, L.R No. 5908/667 and 668, L.R No. 5908/596 and 597, L.R No. 5908/584 and 585, L.R No. 5908/605, L.R No. 5908/658, L.R No. 5908/559 and 560, L.R No. 5908/588 and 589, L.R No. 5908/555, L.R No. 5908/633 and 634, L.R No. 5908/671, L.R No. 5908/669, and L.R No. 5908/564, to the 10th , 37th , 50th 49th , 16th , 14th , 15th , 17th , 20th , 21st , 22nd , 25th , 27th , 29th , 31st , 40th , 35th , 41st , 42nd , 43rd , 46th and 34th defendants in ELC No. 509 of 2014 respectively.

n) Teresia Wairimu Kirima and Anne Wangari Kirima as the administrators of the estate of Gerishon Kamau Kirima, deceased shall complete the sale of portions of L.R No. 5908/8 to the other defendants in ELC No. 509 of 2014 not already covered in the above orders, and the

defendants already covered in the above orders in respect some of their parcels of land which are omitted in the said orders within a period of ninety (90) days from the date when they shall present to Teresia Wairimu Kirima and Anne Wangari Kirima evidence of payment for the said plots in the form of original receipts issued by G.K.Kirima or Embakasi Ring Road Developers, and evidence that they are holding the original deed plans for the plots they are claiming. For the defendants who purchased their parcels of land from third parties who had purchased the same from G.K.Kirima, evidence of payment of the purchase price by such third parties would be sufficient.

- o) The estate of G.K.Kirima and the affected defendants in ELC No. 509 of 2014 shall be at liberty to apply in respect to order (n) above limited only to any issue that may arise in relation to the enforcement of the order.
- p) The defendants in whose favour Teresia Wairimu Kirima and Anne Wangari Kirima as the administrators of the estate of Gerishon Kamau Kirima, deceased shall complete the sale of portions of L.R No. 5908/8 as ordered above shall pay on a pro rata basis (depending on the size of the land owned) the land rates and land rent that have accrued from the time they or the persons they purchased their respective parcels of land

from had purchased the same from G.K.Kirima in the event that they have not been paying the same.

q) Each party shall bear its own costs in respect of the claims by the defendants in ELC No. 509 of 2014 against the estate of G.K.Kirima.

Delivered and Dated at Kisumu on this 23rd day of October 2023

**S. OKONG'O
JUDGE**

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

Mr. Ojienda, Mr. Mwenesi, Mr. Rao h/b for Dr. Ojiambo S.C, Mr. Wanjohi, Mr. Nyangayo, Ms. Alice Kamau, Mr. Thuita, Mr. Nyamu, and Ms. Murimi.
Ms. J. Omondi-Court Assistant

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