



**Mweno ( Suing as a Legal Representative of the Estate of Lawrence Ndurya  
Mulisho - Deceased) & another v Kenya Railways Corporation & another (Tribunal  
Case E004 of 2023) [2024] KELAT 562 (KLR) (24 April 2024) (Judgment)**

Neutral citation: [2024] KELAT 562 (KLR)

**REPUBLIC OF KENYA  
IN THE LAND ACQUISITION TRIBUNAL  
TRIBUNAL CASE E004 OF 2023  
NM ORINA, CHAIR & G SUPEYO, MEMBER  
APRIL 24, 2024**

**BETWEEN**

**SAID MWENO ( SUING AS A LEGAL REPRESENTATIVE OF THE ESTATE OF  
LAWRENCE NDURYA MULISHO - DECEASED) ..... 1<sup>ST</sup> PLAINTIFF**

**MDOE NDURYA (SUING AS A LEGAL REPRESENTATIVE OF THE ESTATE OF  
ALEX NDURYA BOMA - DECEASED) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**KENYA RAILWAYS CORPORATION ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs in this case, Said Mwero (suing as a legal representative of the estate of Lawrence Ndurya Mulisho) and Thomas Mdoe (suing as a legal representative of the estate of Alex Ndurya Boma) have approached the Tribunal seeking, among others, a declaration that the Defendants illegally, unlawfully and/or unconstitutionally acquired 10.88ha being part of land known as Kwale/Southsamburu/129.

**The Plaintiffs' Case**

2. It is contended in the Plaintiffs' suit that sometime in 2015, the Defendants published a notice of intention to acquire various parcels of land between Mombasa and Nairobi for purposes of construction of the Standard Gauge Railway and that part of that parcel of land known as Kwale/Southsamburu/129 had been identified for compulsory acquisition despite the fact that no gazette notice had been published to communicate the same.
3. The Plaintiffs aver that they found out that other third parties were colluding with officials of the Defendants to file for compensation emanating from the compulsory acquisition of the suit property,



- taking advantage of the un-surveyed and unregistered status of the suit property by posing as its bonafide owners.
4. The Plaintiffs contend that having got wind of the plans to compensate strangers who had posed as the rightful owners, they reported the matter to the local administration who in turn wrote to the 2<sup>nd</sup> Respondent advising them not to authorize payment with respect to the suit land until the dispute as to ownership was solved.
  5. Consequently, the Plaintiffs aver, the 2<sup>nd</sup> Defendant advised the 1<sup>st</sup> Defendant via a letter dated 9<sup>th</sup> May 2015 to withhold payments with respect to the Plaintiffs' land until the issue of ownership was resolved.
  6. It is the Plaintiffs' contention that the land dispute was later resolved by the adjudication officers and that on the 29<sup>th</sup> March 2021, the deceased – Lawrence Mulisho Ndurya and Alex Ndurya Boma - were issued with a copy of the title with respect to the suit property.
  7. The Plaintiffs concludes by stating that their demands for compensation have gone unanswered.

### **The 1<sup>st</sup> Defendant's Response**

8. The 1<sup>st</sup> Defendant responded to the Plaint via a Statement of Defence dated 24<sup>th</sup> January 2024 and a Witness Statement of Nathaniel Ochieng, a Senior Land Surveyor of even date.
9. The 1<sup>st</sup> Defendant avers that the Suit Property described as Kwale/Southsamburu/129 is situate at Samburu in Kwale County within South Samburu Group Ranch, an area that was affected by the Mombasa-Nairobi Standard Gauge Railway project. The 1<sup>st</sup> Defendant states that the affected areas were identified and gazetted expressing the government's intention to acquire among others the property known as Kwale/SouthSamburu/58 vide the Gazette Notice No 4096 published on 20<sup>th</sup> June 2014. The Cumulative area to be acquired from the South Samburu Group Ranch was 102.611 Hectares of land.
10. The 1<sup>st</sup> Defendant further avers that according to the provisions of section 162(2) of the [Land Act](#), public participation and inquiries through hearing of claims to compensate the persons affected by the project following the compulsory acquisition process was gazetted vide the Gazette Notice No 5503 published on 8<sup>th</sup> August 2014 and that the inquiries were conducted at the Assistant County Commissioner's office Samburu from 8:30 AM.
11. It is the 1<sup>st</sup> Defendant's case that the portion of the ranch affected by the project was identified, inspected and compensations done to the individual owners/ ranch members as per the details provided by the 2<sup>nd</sup> Defendant.
12. The 1<sup>st</sup> Defendant avers that it is apparent from the title that the suit property fell within the group ranch identified as South Samburu Group Ranch and was unregistered and unsurveyed as at the time of acquisition. Further, it is the 1<sup>st</sup> Defendant's contention that the title having been issued on 29<sup>th</sup> March 2021, the Suit Property was non- existent at the time of acquisition.
13. Nevertheless, the 1<sup>st</sup> Defendant admits that it was advised by the 2<sup>nd</sup> Defendant via letter dated 9<sup>th</sup> May 2015 to withhold payments in regard to several individuals in the South Samburu Group Ranch which included the subject land. However, the 1<sup>st</sup> Defendant concludes that the 1<sup>st</sup> Defendant transferred the role of disbursement of payments to the 2<sup>nd</sup> Defendant and hence submitted all the pending payments to the 2<sup>nd</sup> Defendant.



## **The 2<sup>nd</sup> Defendant's Response**

14. The 2<sup>nd</sup> Defendant responded to the Plaint through a Statement of Defence dated 24<sup>th</sup> January 2024 and avers that when it issued a Notice of Intention to Acquire the affected areas, all the project affected properties were listed and the respective owners notified.
15. The 2<sup>nd</sup> Defendant further avers that it complied with all the statutory procedures for compulsory acquisition of land which include issuing a notice of intention to acquire land and conducting of inquiries. The 2<sup>nd</sup> Defendant contends that it undertook an inspection exercise for valuation followed by inquiry hearings between the diverse dates of 27<sup>th</sup>- 29<sup>th</sup> October 2015 over the affected parcels of land and all affected persons were invited to attend. That during the inquiry exercise, the 2<sup>nd</sup> Defendant states that it undertook verification of ownership documents and claims raised over the project affected parcels of land.
16. Further, the 2<sup>nd</sup> Defendant contends that contrary to the Plaintiffs' allegations in the Plaint, neither was the Plaintiffs' parcel of land among the properties affected by the project nor was it in existence during the project construction phase.
17. Lastly, the 2<sup>nd</sup> Defendant states that the plaintiffs' title over the suit property was issued on the 29<sup>th</sup> March, 2021 after it had finalized the acquisition process and even the project completed.

## **The Plaintiffs' Rejoinder**

18. The plaintiffs replied to the 1<sup>st</sup> Defendant's statement of defence via a reply dated 26<sup>th</sup> January 2024. The Plaintiffs aver that the 1<sup>st</sup> Defendant is indebted to the Plaintiffs for having failed to honor the contents of the letter from the 2<sup>nd</sup> Defendant Ref. Val 1451/47 and dated 5<sup>th</sup> August 2015 authorizing payments to the Alex Ndurya Boma.
19. The Plaintiffs further aver that the absence of registration of land does not impute the non-existence of the land and that in any event the suit property existed at all material times and that the same had been identified for the subject property as evidenced from the correspondences of the Defendants.
20. In response to the 2<sup>nd</sup> Defendant, the Plaintiffs aver that despite an acknowledgement by the 2<sup>nd</sup> Defendant vide the letter Ref. Val 1451/fm/7.2015 and dated 9<sup>th</sup> May 2015 that prior to the dispute by the Plaintiffs, the 2<sup>nd</sup> Defendant had identified 3<sup>rd</sup> parties as the rightful parties who were to be compensated, it should be noted that not even a single gazette notice was ever published identifying them as land owners which is a clear indication that their identification process was secretive in nature and thus suspicious.
21. The Plaintiffs further state that further to the letter Ref. Val 1451/fm/7/2015 and dated 9<sup>th</sup> May 2015, the 2<sup>nd</sup> Defendant proceeded to write a letter Ref. Val 1451/47 and dated 5<sup>th</sup> August, 2015 authorizing payments to Alex Ndurya Boma person but payments have never been made.  
Viva Voce Evidence
22. The suit proceeded by way of viva voce evidence on 13<sup>th</sup> February 2024 when the testimony of the Plaintiffs' witness was taken as well as the 1<sup>st</sup> Defendant's witness. A further hearing was conducted on 22<sup>nd</sup> February 2024 and 29<sup>th</sup> February 2024 for the testimony of the 2<sup>nd</sup> Defendant's witness and an additional witness for the Plaintiffs, respectively.



23. Mr. Said Mwero (PW1), the 1<sup>st</sup> Plaintiff, testified on behalf of the Plaintiffs on 13<sup>th</sup> February 2024. PW1 adopted his witness statement dated 6<sup>th</sup> December 2023. He stated in his evidence in chief that the late Lawrence Mulisho was his father and he had authority to act on behalf of his estate.
24. PW1 confirmed that he was aware about the matters in dispute and that a railway line had passed through the suit property. He further testified that there was a dispute over the property which prompted the Chief to intervene by writing a letter to the 2<sup>nd</sup> Defendant to stop payments. After the dispute was resolved, PW1 testified that his late father received a letter to go for payment but he never received any payment. The title to the suit property was later on issued in the year 2021.
25. On cross examination by Ms. Muriranjia for the 1<sup>st</sup> Defendant, PW1 confirmed that he only had authority in regard to the estate of the late Lawrence Mulisho to testify in the proceedings. On further questioning, PW1 confirmed that plot number 129 was not among the plots that were identified in the Plaintiffs' documents (letter dated 9<sup>th</sup> May 2015 from the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Defendant). The witness further confirmed that Lawrence Mulisho's name does not appear in that letter as either a payee or a disputant.
26. The witness was also referred to the Plaintiffs' documents at pages 16-18 of the bundle of documents being letters from the Assistant County Commissioner to the Chairperson of the 2<sup>nd</sup> Defendant dated 26<sup>th</sup> June 2015, and letter from the Chief – Samburu South Location to the 2<sup>nd</sup> Defendant - being letters from the local administration informing the 2<sup>nd</sup> Defendant of the dispute in regard to compensation affecting South Samburu/58. The witness confirmed that in these three (3) letters, Alex Ndurya Boma is solely identified as the owner of the disputed property and not together with Lawrence Ndurya Mulisho.
27. Furthermore, through Ms. Muriranjia's cross-examination, PW1 confirmed that the letter dated 5<sup>th</sup> August 2015 (from the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Defendant advising on payments) which is marked as exhibit no. 10 in the Plaintiffs' list of exhibits names Alex Ndurya Boma as the correct payee.
28. On cross-examination by Mr. Osoro, on behalf of the 2<sup>nd</sup> Defendant, PW1 further confirmed that Lawrence Mulisho was not given any award. The witness further confirmed that the letter from the Assistant County Commissioner contained at page 16 of the Plaintiffs bundle of documents only refers to Alex Ndurya Boma and not Lawrence Mulisho.
29. On re-examination, PW1 clarified that his late father, Lawrence Mulisho died in the year 2013 and that Alex Ndurya Boma was representing the family during the acquisition process.
30. The second witness to testify was Mr. Nathaniel Ochieng (DW1) on behalf of the 1<sup>st</sup> Defendant. DW1 testified that he was a Senior Land Surveyor working with the 1<sup>st</sup> Defendant. He adopted his witness statement dated 24<sup>th</sup> January 2024. He also relied on the bundle of documents filed by the 1<sup>st</sup> Defendant on 24<sup>th</sup> January 2024 and a supplementary bundle of documents filed on 4<sup>th</sup> February 2024.
31. The witness was cross-examined by Mr. Maitha for the Plaintiffs. It was his testimony that without a certificate of title, the existence of any property cannot be authenticated. He further stated that the lack of a title implied that the land in question did not exist in the registry.
32. On further questioning by Mr. Maitha, DW1 stated that he didn't know the status of the dispute which the 1<sup>st</sup> Defendant had been informed existed in regard to Alex Ndurya Boma. He further couldn't confirm if payments had been made in regard to entries in serial numbers 330, 332, 334, and 335 which appear on pages 14 and 15 of the payment schedule.



33. Mr. Mariko Kailamoi (DW2) appeared on 22<sup>nd</sup> February 2024 to testify on behalf of the 2<sup>nd</sup> Defendant. DW2 works with the 2<sup>nd</sup> Defendant as a valuer. He adopted his witness statement dated 24<sup>th</sup> January 2024.
34. DW2 stated that the property that existed was South Samburu/58 – a group ranch. There was no property known as South Samburu/129. He also confirmed that he authored the letter to the 1<sup>st</sup> Defendant asking it to withhold payments due to the dispute that was there on who the correct payee was. Later on, DW2 testified that the dispute was resolved but Lawrence Mulisho was not among the payees of the disputed payees. He further testified that the title issued in regard to the suit property was issued in 2021 after the exercise had been completed.
35. On cross-examination by Ms. Muriranjia on behalf of the 1<sup>st</sup> Defendant, DW2 confirmed that after acquisition is completed, final survey is done by the acquiring entity then followed by vesting. It was his testimony, therefore, that it would not be possible to obtain a title after property has been compulsorily acquired that would include the portion that has been acquired.
36. DW2 was further cross-examined by Mr. Maitha. He confirmed that he had received letters from the Assistant County Commissioner and the area chief in regard to the dispute pitting Alex Ndurya Boma and other payees. The dispute was eventually resolved.
37. On further questioning by Mr. Maitha, DW2 admitted that Alex Ndurya Boma was not among those project affected persons who had been identified in the gazette notices by the 2<sup>nd</sup> Defendant. However, DW2 stated on further questioning that the 2<sup>nd</sup> Defendant took no action in regard to Alex Ndurya Boma's case until it received the letter from the Assistant County Commissioner.
38. On re-examination by Mr. Osoro for the 2<sup>nd</sup> Defendant, DW2 affirmed that one cannot be issued with a title over land that has been compulsorily acquired as that land is public land. DW2 also reiterated that there was no land for Lawrence Ndurya Mulisho that was subject to compulsory acquisition.
39. On 29<sup>th</sup> February 2024, Mr. Maitha who had obtained leave of the Tribunal presented his second witness, Mr. Edward Kiguru (PW2), a surveyor for purposes of producing a survey report which was part of the Plaintiffs' documents. PW2 stated that he was a licenced surveyor with a current certificate who had practiced the trade since 1988. PW2 also informed the Tribunal that he had been tasked to undertake a survey in respect of Kwale/Samburu/129 to determine the amount of land taken by the Standard Gauge Railway. His findings were that the Standard Gauge Railway had occupied 10.88ha (approximately 26.88 acres) of the suit property.
40. On cross examination by Ms. Muriranjia for the 1<sup>st</sup> Defendant, PW2 confirmed that the title produced by the Plaintiffs includes the area acquired for the Standard gauge Railway. PW2 further testified that he had not relied on the survey report before the Standard Gauge Railway was constructed.
41. PW2 testified further under cross-examination by Ms. Muriranjia that the owners of Plot no. 129 also owned parcels of land in Plot no. 130 and that he couldn't tell if Plot no. 129 was an amalgamation of previous plots.
42. On cross-examination by Mr. Osoro, PW2 admitted that he had not done any searches on previous surveys in regard to the suit property. He had relied on the copy of certificate of title in regard to Kwale/Samburu/129, official search, and the Registry Index Map (RIM).
43. On re-examination, PW2 clarified that he had not been instructed to conduct a background search on the property.



## Analysis and Determination

44. Parties herein filed their respective submissions and identified issues for determination by the Tribunal. We have identified two key issues which sum up the issues for considerations proposed by the parties. In our view, a determination of whether the Plaintiffs' land was compulsorily acquired, and a determination whether part of land known as Kwale/Samburu/129 was compulsorily acquired will dispose of the matters in contention. We note that these two issues involve overlapping related sub-issues which will be addressed together with the main issues.
45. The Plaintiffs have emphatically argued that the suit property belongs to them. To our minds, there is no contention that land known as Kwale/Samburu/129 is registered in the names of Lawrence Ndurya Mulisho and Alex Ndurya Boma – both deceased. It is also the case that the certificate of title for this property was issued in the year 2021.
46. What is in contention is, however, whether the suit property is the land that was compulsorily acquired by the Defendants for purposes of the Standard Gauge Project. The Plaintiffs, on the one hand, and the Defendants, on the other, part ways on this question.
47. The Plaintiffs submit that whereas the suit property was unsurveyed and unregistered in the year 2014 when the process of compulsory acquisition was commenced, the same still belonged to Lawrence Ndurya Mulisho and Alex Ndurya Boma who later acquired the title to the suit property in 2021. The Plaintiffs, therefore, submit that whereas the suit property was unregistered at the time of acquisition, Lawrence Ndurya Mulisho and Alex Ndurya Boma still had interests on it. The Plaintiffs further argue that the Defendants were well aware of the status of the suit property at the time of compulsory acquisition and had relied on the local administration to identify the owners of various parcels of land that were due for acquisition.
48. On its part, the 1<sup>st</sup> Defendant argues that the Defendants complied with the process of compulsory acquisition in respect of the property known as Kwale/South Samburu/58 which was a group ranch. It is argued that inquiries were conducted in compliance with Section 162(2) of the Land Act to identify the owners of the affected plots and to compensate them. A notice inviting the project affected persons to an inquiry was published in Gazette Notice Number 5503 of 8<sup>th</sup> August 2014.
49. Thereafter, the 1<sup>st</sup> Defendant argues, the portions of land forming part of the group ranch were identified and compensated with the exception of those who had pending disputes over ownership. According to the 1<sup>st</sup> Defendant, the suit property known as Kwale/Samburu/129 was non-existent at the time of acquisition as the title was issued in 2021, several years after the acquisition had been completed.
50. In answer to whether the suit property was part of those parcels of land that were compulsorily acquired, in its unregistered status, the 1<sup>st</sup> Defendant argues that according to the compensation schedule dated 7<sup>th</sup> February 2015, the properties which had been identified by serial numbers 332 and 334 that had an ownership dispute are the only ones that were relevant to the estate of the Alex Ndurya Boma. The 1<sup>st</sup> Defendant further argues that through a letter dated 5<sup>th</sup> August 2015, the 2<sup>nd</sup> Defendant advised the 1<sup>st</sup> Defendant to pay one Alex Ndurya Boma in respect of properties identified by serial numbers 332 and 334. An award was issued to the said Alex Ndurya Boma and accepted on the 5<sup>th</sup> August 2015. This evidence and assertions in regard to properties identified by serial numbers 332 and 334 are not controverted.
51. Consequently, the 1<sup>st</sup> Defendant argues that property known as Kwale/Samburu/129 was not part of those properties identified for compulsory acquisition. On the face of it, this is a rather obvious





deduction. The contention is however in regard to the acreage of the property that was compulsorily acquired. Whereas the Plaintiffs claim that the suit property which was allegedly acquired by the Defendants measured 10.88ha, the Defendants maintain that the property identified as 332 and 334 measured 1.351ha and 0.232ha, respectively. Further, the 1<sup>st</sup> Defendant submits that the ownership of property identified as 332 and 334 vis-à-vis the suit property is different. Whereas property identified as 332 and 334 was confirmed to be owned by one Alex Ndurya Boma after the ownership dispute was resolved by the Assistant County Commissioner and the area Chief, the suit property is jointly owned by Lawrence Ndurya Mulisho and Alex Ndurya Boma.

52. In conclusion, the 1<sup>st</sup> Defendant argues that the Plaintiffs have not established a nexus between the property identified as 332 and 334, and the suit property.
53. The Plaintiffs' explanation as contained in their submissions that the suit property and the property identified as 332 and 334 are one and the same is less than satisfactory. The Plaintiffs' argument that one Alex Ndurya Boma was making a follow-up of the acquired property on his own behalf and on behalf of his late brother, Lawrence Mulisho Ndurya, is not supported by any evidence. The Plaintiffs have not presented to the Tribunal any evidence to show that Alex Ndurya Boma was acting on behalf of his brother Lawrence Mulisho Boma in the acquisition. It is trite law that the estate of Lawrence Ndurya Mulisho, who was deceased at the time of the acquisition, could have only been represented by the lawful representatives of the estate in accordance with the Law of Succession Act. Section 79 of the said Act provides:

“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative”.

54. Furthermore, it is inconceivable that Alex Ndurya Boma was acting on behalf of his late brother in this process when the said brother had not been mentioned in any correspondence over ownership of property identified as 332 and 334 from the local administration who were at the centre of resolving the dispute that pitted Alex Ndurya Boma and other parties who had laid claim to the property being Nahenza Nyanje, Chizi Nyanje and Mgaza Nahenza as identified in the 1<sup>st</sup> Plaintiff's further written statement dated 6<sup>th</sup> February 2024.
55. The Plaintiffs' assertions are also self-contradictory. On one hand, the Plaintiffs assert that the suit property was unsurveyed and unregistered but on the other hand claim that the same was not part of Kwale/Southsamburu/58 which was a group ranch. From the evidence presented before the Tribunal by the 1<sup>st</sup> Defendant, the compensation schedule dated 6<sup>th</sup> October 2014 that was to be used to pay project affected persons identifies properties serialized as 332 and 334 as part of Kwale/Southsamburu/58.
56. The Plaintiffs position is a difficult one to accept because as was demonstrated in the evidence before the Tribunal, even though the group ranch identified as South Samburu Ranch had not been surveyed and demarcated, the 2<sup>nd</sup> Defendant, through the assistance of the local administration, was able to identify the owners of the specific plots within the ranch that were earmarked for acquisition.
57. Furthermore, there is uncontroverted evidence that one Alex Ndurya Boma accepted the award in respect of property serialized as 332 and 334 and went further to provide details for payment. Besides, Section 113(3) has provisions for issuing awards where the interest in land is held by two or more persons. In this case, the award was issued to Alex Ndurya Boma who accepted the same wholly by appending his signature.



58. It is also not lost on us that the estate of Lawrence Ndurya Mulisho had access to other legal mechanisms of lodging its claim for compensation before the 2<sup>nd</sup> Defendant. At the inquiry conducted pursuant to Section 112 of the *Land Act*, every project affected person is entitled to make a claim for compensation before the 2<sup>nd</sup> Defendant for consideration. Indeed, it is apparent from the evidence presented in this case that the 2<sup>nd</sup> Defendant had wrongly identified other payees in regard to properties identified by serial numbers 332 and 334 until Alex Ndurya Boma successfully challenged the compensation schedule. There is no evidence that a similar challenge was lodged by the estate of Lawrence Ndurya Mulisho or by Alex Ndurya Mulisho on behalf of the estate of Lawrence Ndurya Mulisho.
59. Furthermore, the 1<sup>st</sup> Plaintiff who is the legal representative of the estate of the late Lawrence Ndurya Mulisho confirms through his further written statement dated 6<sup>th</sup> February 2024 at paragraph 5 that the 2<sup>nd</sup> Plaintiff and himself “advised him to fill the acceptance form and submit the account details in order to process payments.” “Him” in this case ostensibly refers to the late Alex Ndurya Boma which then leads to the conclusion that the 1<sup>st</sup> Plaintiff, although not officially a legal representative of the estate of the late Lawrence Ndurya Boma, was aware that payment of compensation was due to Alex Ndurya Boma. He never raised any objection at this stage as would have been expected if the compensation was due to both Alex Ndurya Boma and his late brother Lawrence Ndurya Mulisho.
60. Turning to the evidence of the Plaintiffs second witness (PW2) Mr. Kiguru, although we find no reason not to believe the testimony and the survey report presented in evidence as evidencing the correct survey of property known as Kwale/Samburu/129, we find the testimony to be of less value in resolving the matters in question for two reasons. First, PW2’s brief in preparing the survey report did not include instructions to obtain survey records prior to the registration of the suit property. This historical record would have resolved the question of the nexus between the properties serialized as 332 and 334 and the suit property. Second, the survey report does not show the relationship between the parcels of land that were previously part of Kwale/Southsamburu/58 and the suit property. Importantly, is the suit property now identified as Kwale/Samburu/129 an amalgamation of a number of plots that were part of the group ranch? This testimony could not address that, and the Plaintiffs’ case does not make a connection or explain the disparity in the acreage.
61. A plausible explanation to us would be that the property identified as Kwale/Samburu/129 straddles the initially identified parcels of land which formed part of the South Samburu Group Ranch. The Plaintiffs have not made a case to show that part of this parcel of land was acquired in the manner in which their case alleges. We have no doubt that the late Alex Ndurya Boma was entitled to be paid as advised by the 2<sup>nd</sup> Defendant for property which had been serialized as 332 and 334. The case before us is however not in regard to those specific plots and the estate of Alex Ndurya Boma.
62. Finally, our conclusions on the identified issues necessitate a comment on the necessity of the 2<sup>nd</sup> Plaintiff’s testimony. While it is the Plaintiffs’ prerogative to call witnesses to support their case, we find that the testimony of the 2<sup>nd</sup> Plaintiff was necessary to address questions that needed additional clarification. The joint Plaintiffs’ claim potentially overlaps to the 2<sup>nd</sup> Plaintiff’s individual claim as against the Defendants which makes it a bit curious that the Plaintiffs’ counsel did not find it necessary to call him to testify. Specifically, the Plaintiffs’ case is hinged on the allegation that the late Alex Ndurya Boma was acting on behalf of the estate of the 1<sup>st</sup> Plaintiff when he accepted an award of compensation from the 2<sup>nd</sup> Defendant. This is an aspect that needed confirmation from the representative of the estate of the late Alex Ndurya Boma. In this regard we are guided by the case of *Trust Bank Limited vs. Paramount Universal bank Limited & 2 Others* NBI HCCC No. 1243 of 2001 where it was held,





“it is trite that where a party fails to call evidence in support of its case, that party’s pleadings remain mere statements of fact since in so doing the party fails to substantiate its pleadings.”

63. The upshot of the above analysis is that the Plaintiffs’ case fails and is hereby dismissed with costs.

**DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY OF APRIL 2024.**

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**DR. NABIL M. ORINA MR. GEORGE SUPEYO**

**Chairperson Member**

Before: -

Mr. Maitha for Plaintiffs

Ms. Muriranjia for the 1st Defendant

Mr. Osoro for The 2nd Defendant

Everlyne – C/A

