

THE COMMISSION ON ADMINISTRATIVE JUSTICE

“Office of the Ombudsman”



Hata Mnyonge ana Haki

**AN INVESTIGATION REPORT ON ALLEGED IRREGULAR
REGISTRATION OF PARCEL OF LAND NUMBER 341,
NKARARO ADJUDICATION SECTION,
TRANSMARA WEST SUB-COUNTY**

February, 2022

Foreword

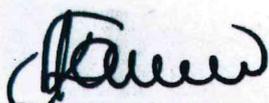
The Commission on Administrative Justice (CAJ), pursuant to its mandate as stipulated under Section 8 of CAJ Act, 2011 undertook an investigation into alleged irregular registration of land belonging to the complainant, Hellen Moraa Nyangwara to a third party, Simion Masake.

In conducting the investigation, the Commission interviewed officials from the Adjudication Department, Land Registry, Survey, Adjudication committee, complainant, the purported landowner (Simion Masake), and examined relevant documents.

The investigations established that the registration of the parcel of land in question to Simion Masake was fraudulent. Consequently, the Commission has made a raft of recommendations including recalling the certificate of title issued to Simion Masake and amending it in favor of Hellen Moraa Nyangwara, the rightful owner of the land.

I reiterate our commitment as a Commission to address maladministration in public institutions and endeavor to uphold administrative Justice.

Signed this ^{14th}.....day of February 2022



HON. FLORENCE KAJUJU, MBS

CHAIRPERSON OF THE COMMISSION

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Acronyms

A/R	Adjudication Record
CAJ	Commission on Administrative Justice
CC	County Commissioner
Ha.	Hectares
ID No.	Identification Number

Executive Summary

The Commission carried out an investigation into alleged irregular registration of parcel number 341, Nkararo Adjudication Section, Transmara West Sub County in the name of Simion Masake instead of the complainant, Hellen Moraa Nyangwara who has occupied the land for more than thirty years and has undertaken several developments on it.

The Directors, Adjudication and Settlement Department, Survey of Kenya and Chief Land Registrar were notified of the Commission's decision to undertake the investigation. Thereafter, a team of investigators visited Kilgoris and the Ministry of Lands Headquarters in Nairobi to conduct interviews and recover relevant documents.

The investigation established that the registration of the parcel of land in favor of Simion Masake was done irregularly given that the adjudication record relied upon during the registration was found to be fake. It was prepared in disregard of the primary document (Demarcation Book/Rough book) and no entry was made on the book to explain the change; Its serial number and color don't tally with other adjudication records in that cluster and no explanation was either noted down or given to CAJ investigators for the mismatch. The purported signature of the Adjudication Committee chairperson was confirmed to be fake by the purported signatory. The person (current registered owner) in whose favor the record was made never signed it.

The Commission, therefore, recommends rectification of the irregularity in line with Section 79(2) of the Land Registration Act, 2012, and revert the ownership of the land to Hellen Moraa Nyangwara.

1.0 Introduction to the investigation

Commission received a complaint letter on 27th November, 2015 from Hellen Moraa Nyangwara a resident of Trans mara West Sub-County, Narok County, alleging delay in processing of certificate of title for her land parcel no.341, Nkararo Adjudication Section which had been demarcated in 1980s. The Commission sent a letter dated 22nd February, 2016 to the District Land Adjudication and settlement Officer (Trans mara East/West District) but no feedback was given.

On 24th May, 2021, the complainant made a fresh complaint to the Commission alleging that the registration of parcels of land in Nkararo Adjudication Section had been completed but her said piece of land had been registered in the name of one, Simion Masake, a person unknown to her. She alleged that the certificates of title for the Adjudication Section were issued between 23rd April 2021 and 27th April 2021 at the Adjudication Section, during which, she was present to collect hers. However, her name was not mentioned and upon visiting the Land Registry and Adjudication Registry, she established that the certificate of title for her parcel of land had been registered under one, Simion Masake, and had already been collected by him.

In light of the foregoing, the Commission carried out investigations with a view to establishing the veracity of the matter. In particular, the investigation focussed on how the adjudication and registration process in respect to parcel number 341, Nkararo Adjudication Section was undertaken.

1.1 Issues under investigation

The following are the issues investigated:

- i. Alleged irregular registration of Parcel No. 341, Nkararo Adjudication Section in favor of Simion Masake.
- ii. Alleged unfair treatment, manifest injustice, and abuse of power by land officials in the processing of certificate of title in respect to the land in question.

1.2 Investigation Process

1.2.1 Notification

The Directors, Adjudication and Settlement Department, Survey of Kenya and the Chief Land Registrar were notified of the Commission's decision to undertake the investigation vide a letter Ref: CAJ/IE/6/101/21 dated 22nd July 2021.

1.2.2 Respondents

The following persons were interviewed:

- i. Deputy Director, Adjudication and Settlement Department
- ii. Chief Land Registrar
- iii. Head of Adjudication Department, Kilgoris Sub-County
- iv. Head of Survey Section, Kilgoris Sub-County
- v. Head of Kilgoris Land Registry
- vi. Complainant
- vii. Chairman, Land Committee, Nkararo Adjudication Section
- viii. Vice Chairman, Land Committee, Nkararo Adjudication Section
- ix. Simon Masake, registered owner of the parcel of land in question
- x. Demarcation Officers

1.2.3 Documents Recovered

The following documents were recovered:

- i. Copy of Green Card for the land in question
- ii. Demarcation Book (Rough Book) for Nkararo Adjudication Section
- iii. Adjudication Record for the land in question
- iv. Other adjudication records in the sequence (340.342,343,344)
- v. Demarcation Map for the section

vi. Confirmation letter

vii. Recorded statements

1.3 Legal Framework

The following legal documents provided the framework that guided the investigation.

1.3.1 CAJ's mandate under the constitution and CAJ Act, 2011

The Commission is mandated under Article 59 (2) (h-j) and 59(4) of the Constitution and the CAJ Act, 2011 to, *inter-alia*, investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.

In addition to its investigative powers under Article 252 (1) (a) of the Constitution, Sections 26-29 of the CAJ Act gives the Commission powers to conduct investigations on its own initiative or on a complaint made by a member of the public, issue summons and require that statements be given under oath, adjudicate on matters relating to administrative justice, obtain relevant information from any person or Governmental authorities and to compel production of such information.

The Commission is further required under Section 46 of the CAJ Act, to prepare a report to the state organ, public office, or organization to which the investigation relates. The report shall include the findings of the investigation, action the Commission considers to be taken and reasons thereof, and recommendations the Commission deems appropriate.

CAJ may upon an inquiry into a complaint, undertake such other action as it may deem fit against a concerned person or persons where the inquiry discloses a criminal offense as provided for under Section 41 of the CAJ Act. Section 8 (g) of the CAJ Act also gives the Commission power to recommend compensation or other appropriate remedies against persons or bodies to which the Act applies. According to Section 46 (4) of the Act, if there is a failure

or refusal to implement the recommendations of the Commission within the specified time, the Commission may prepare and submit a report to the National Assembly detailing the failure or refusal to implement its recommendations, and the National Assembly shall take the appropriate action.

1.3.2 Adjudication Act, Revised Edition 2012[2010]

5. Establishment of adjudication sections

(1) The adjudication officer shall by notice either—

- (a) establish adjudication sections within the adjudication area;
- (b) establish the whole adjudication area as an adjudication section.

(2) A separate notice shall be published in respect of each adjudication section, and in each such notice the adjudication officer—

- (a) shall define as clearly as possible the area of the adjudication section;
- (b) shall declare that interests in land within the adjudication section will be ascertained and recorded in accordance with this Act;
- (c) shall fix a period within which a person claiming an interest in land within the adjudication section must make his claim to the recording officer, either in writing or in person or by his agent duly authorized according to the law (including recognized customary law); and
- (d) may require any person making a claim to point out to the demarcation officer or to demarcate or assist in the demarcation of the boundaries of the land in which he claims to be interested or to clear any such boundaries or any other line in the manner and before a date fixed by the demarcation officer.

6. Appointment of the adjudication committee

(1) In respect of each adjudication section, the adjudication officer, after consultation with the District Commissioner of the district within which the adjudication section lies, shall appoint not less than ten persons resident within the adjudication section to be the adjudication committee for that adjudication section.

(2) The adjudication officer shall appoint an executive officer for each committee to keep its records and to inform the recording officer of its decisions, and the executive officer shall attend and may speak at any

meeting of the committee, but may not vote.

PART III – ASCERTAINMENT OF INTERESTS IN LAND

13. Claims and attendance

(1) Every person who considers that he has an interest in land within an adjudication section shall make a claim to the recording officer, and point out his boundaries to the demarcation officer in the manner required and within the period fixed by the notice published under section 5 of this Act.

14. Warning of demarcation and recording

Not less than seven clear days before the demarcation of an adjudication section is begun, the demarcation officer shall give warning of the intended demarcation and recording of claims, and of the time and place at which it will begin, in such manner as the adjudication officer considers most likely to bring the matter to the knowledge of the persons who will be affected by the demarcation and recording.

15. Duties of demarcation officer

Subject to any general or particular directions given by the adjudication officer, the duties of the demarcation officer within an adjudication section are—

(a) to demarcate or cause to be demarcated—

16. Duties of survey officer

Subject to any general or particular directions given by the adjudication officer, the duties of the survey officer within an adjudication section are—

(a) to carry out such survey work as is required in carrying out the adjudication process; and

(b) to prepare or cause to be prepared a demarcation map of the adjudication section, showing every parcel of land identified by a distinguishing number, except those roads, railways, waterways and lakes need not be identified by a number.

19. Duties of recording officer

(1) Subject to subsection (2) of this section, the recording officer shall consider all the claims made in pursuance of the notice published under section 5 of this Act, and, after such investigation as he considers proper, shall prepare in duplicate, in accordance with section 23 of this Act, a form in respect of every parcel shown on the demarcation map.

(2) If there are two or more conflicting claims to an interest in land and the recording officer is unable to resolve the conflict, he shall submit the dispute to the committee to decide.

(3) The recording officer shall rectify the forms in accordance with any decision that the adjudication officer, the committee, or the board may make in accordance with this Act.

(4) The recording officer shall perform and exercise his duties under this section in accordance with the general or particular directions of the adjudication officer.

20. Functions of the adjudication committee

The committee appointed for an adjudication section shall—

(a) adjudicate upon and decide in accordance with recognized customary law any question referred to it by the demarcation officer or the recording officer;

(b) advise the adjudication officer or any officer subordinate to him upon any question of recognized customary law as to which he has sought its guidance;

(c) safeguard the interests of absent persons and persons under disability; (d) bring to the attention of officers engaged in the adjudication any interest in respect of which for any reason no claim has been made;

(e) assist generally in the adjudication process.

PART IV – PREPARATION OF THE ADJUDICATION REGISTER

23. Preparation of adjudication record

(1) The forms prepared by the recording officer under section 19 of this Act shall together comprise the adjudication record.

(2) In preparing the adjudication record, the recording officer, if he is satisfied that—

(a) any person has, under-recognized customary law, exercised rights in or over land which should be recognized as ownership, shall determine that person to be the owner of that land: Provided that if—

(i) The land adjoins land of which a group is determined under paragraph (b) of this subsection to be the owner; and

(ii) that person desires to join the group and to have his land added to the group's land; and

(iii) the group is willing to have that person as a member, the recording officer shall determine that group to be the owner of that land, and thereupon that person shall become a member of that group;

(b) any group has, under-recognized customary law, exercised rights in or over land which should be recognized as ownership, shall determine that group to be the owner of that land;

(c) land has been set apart under the Constitution, shall determine the person in whom the land is vested to be the owner of the land set apart;

(d) land is entirely free from private rights, or all private rights in or over the land have been relinquished in favor of the county council, shall determine the county council to be the owner of the land;

(a) any person or group is entitled to any interest in a land not amounting to ownership, including any lease, right of occupation, charge, or other encumbrance, whether by virtue of recognized customary law or otherwise, shall determine the nature, incidents, and extent of the right to enable it to be recorded in the name of the person or group entitled to the benefit of it.

24. Adjudication register

The demarcation map and the adjudication record are collectively known as the adjudication register.

25. Action on completion of adjudication record

When the adjudication register has been completed, the adjudication officer **shall so certify on the adjudication record and demarcation map**, and shall then—

- a) deliver the duplicate adjudication record (bearing a copy of the certificate) to the Director of Land Adjudication;
- b) display the original adjudication register for inspection at a convenient place within the adjudication section; and
- c) give notice that the adjudication register has been completed and may be inspected at that place during a period of sixty days from the date of the notice.

26. Objection to Adjudication Register

(1) Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.

(2) The adjudication officer shall consider any objection made to him under subsection (1) of this section, and after such further consultation and inquiries as he thinks fit, he shall determine the objection

26A. No Objection Register

(1) When the time for objection under section 26(1) has expired, the adjudication officer shall prepare a No Objection Register in respect of any land not subject to an objection, and deliver the same to the Director of Land Adjudication who shall—

- (a) **certify** thereon and on the duplicate adjudication register that the adjudication of the land set out therein has become final; and

(b) forward the No Objection Register together with a copy of the duplicate adjudication register to the Chief Land Registrar for the purpose of registration under section 28.

28. Action by Chief Land Registrar

“...the Chief Land Registrar shall cause registrations to be effected in accordance with the adjudication register.”

1.3.3 Land Registration Act, Revised Edition 2016[2012]

PART VIII – RECTIFICATION AND INDEMNITY

79. Rectification by Registrar

(1) The Registrar may rectify the register or any instrument presented for registration in the following cases—

- (a) in formal matters and in the case of errors, mistakes or omissions not materially affecting the interests of any proprietor;
- (b) in any case and at any time with the consent of all affected parties; or
- (c) if upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel;
- (d) for purposes of updating the register;
- (e) for purposes of correcting the name, address or other particulars of the proprietor upon the written application by the proprietor in a prescribed form.

(2) No alteration affecting the title of the proprietor may be made pursuant to sub-section (1) without the proprietor's consent unless—

- (a) the proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission; or
- (b) it would for any other reason be unjust for the alteration not to be made, provided that a written notice of ninety days shall be given to the proprietor of such intention to make the alteration.

2.0 Analysis and Findings

It was alleged that the parcel number 341, Nkararo Adjudication Section was fraudulently registered in the name of Simion Masake contrary to what was indicated in the primary document (Demarcation Book/Rough Book) as Hellen Moraa Nyangwara (the complainant in this case). To resolve the matter, the investigation delved into the adjudication process leading to the registration of the parcels of land in the section. Analysis and findings of the investigation are done hereunder.

2.1 Overview of the adjudication Process

The following is an overview of the land adjudication process as stipulated in the Adjudication Act, 2012 CAP 284:

- i. Declaration of an area by the Minister of lands as an Adjudication Area
- ii. Formation of an Adjudication Committee composed of resident's familiar with the area to assist in the adjudication process
- iii. Demarcation of the section
- iv. Preparation of Adjudication Register (Maps and Adjudication Records)
- v. Inspection of Adjudication Register by person's who claim an interest in the land to ensure correctness or completeness of the register
- vi. Hearing of objections raised during the inspection of the register
- vii. Forwarding of the Adjudication Register to the Director, Adjudication, and Settlement, Nairobi
- viii. The director, Adjudication, and Settlement forwards the Adjudication Records to the Chief Land Registrar for registration and generation of certificates of title for the parcels of land

2.2 Overview of Nkararo Adjudication Section

Investigations revealed that the Nkararo Adjudication Section is an agriculturally rich area situated in Transmara West Sub- County in Narok County. The area has been affected by conflicts between the Siria and Uasin Gishu Maasai clans who have been battling over land boundaries since 1970s.

In an interview with Mr. Maurice Otieno, In-Charge, Adjudication Department, Transmara East, West and South Sub-counties, it was established that Nkararo Adjudication Section was declared by the Minister of lands on 27th May 1985 as an adjudication area. Demarcation of the area, preparation of demarcation map of the adjudication section showing every parcel of land with distinguishing parcel numbers and preparation of adjudication records for each of the parcel numbers was concluded on 30th October 1990.

Sixty-day notice was thereafter issued for anyone with a claim of interest in the land to inspect the Adjudication Register (Map and Adjudication Records) for their parcels of land for correctness or completeness of the register as required by the Land Adjudication Act of 2012.

Registered objections of the adjudication register by persons claiming interest on the land were heard until 30th June 2020. Mr. Maurice Otieno forwarded all the Adjudication Records and Maps to the Director, Adjudication, and Settlement in Nairobi on 26th June 2020 for registration and processing of certificates of title.

Issuance of the certificates of title was launched on 26th April 2021 at Nkararo Adjudication Section and landowners picked their certificates of title. The function was attended by Governor Samuel Tunai, Narok County Commissioner (CC), Evans Achoki, and the former Director of Land Adjudication and Settlement, Paul Mwangi. The complainant noted that the land had been allocated to Mr. Simion Masake of ID. No. 11710950 who also collected the certificate hence the complaint to the Commission.

2.3 The land in question (Parcel Number 341)

It was established that the parcel of land is in Nkararo Adjudication Section. Analysis of documents relating to the parcel of land is done here-under: -

a) Demarcation Book popularly known as Rough Book (copy attached hereunder)

The demarcation book forms a primary document containing the details of all the persons claiming an interest in the land. It contains the date when the land was demarcated, Parcel Number, Name of the landowner, Sketch map, Map Sheet No., land size (Hectares), Interest in the land, and whether the land has any objection. The book plays a pivotal role in the processing of certificates of title as the details of every parcel number in the book are transferred to their respective Adjudication Records.

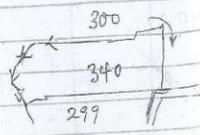
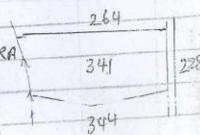
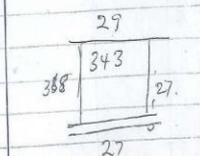
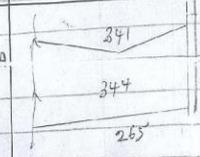
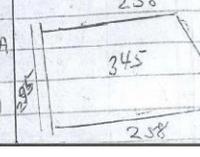
A perusal of the book for the Nkararo Adjudication Section reveals that the land in question was demarcated on 12th December 1987 and was recorded in the name of Hellen Moraa Nyangwara (the complainant in this case). The remarks column is blank meaning there was no objection in respect to the land.

ROUGH BOOK

NKARARO

certify this to be a true copy of the original
Signature _____
Date _____
Inspector _____

TRANSBAMA
25/8/21

DATE	P/No.	NAME OF LANDOWNER	SKETCH	PHOTO No.	MISTAKES	INTEREST	REMARKS
2/1/88	340	DAVID OMBETO OMBASA SIMON KETERE BLE MASKE		18			Refer Obj. No 554
2/2/87	341	HELLEN MORAA NYANGWARA		18			
12/1/88	342	JOSEPH ANALEMA KARANI MOSES OLE KICHO		10			Ref. L. committee case No. 4 of 1984. Name cancelled as per Obj. 248.
2/1/88	343	OLKWO OLE KIU DANIEL OGEQA		10			see objection no. 273.
11/1/88	344	JAMES OJINDA OJINDA		18			
2/1/88	345	JOHN RAEMO MALTEKA CAUSTONED BY DAVID LEKOKI		26			COUNTERSIGNED BY DAVID LEKOKI 0729820733

Copy of the book containing the parcel number 341

b) Confirmation Letter

Transmara Sugar Milling Company Ltd. was set up in Nkararo in the year 2010. Before entering into any contract with farmers, the company required potential farmers to produce proof of ownership of land before being allowed to plant sugar for the company. Hellen Moraa Nyangwara had to seek confirmation from the Adjudication Office, Kilgoris on 13th July 2011. She paid KSh. 300 and was issued with an official receipt number B1360532.

According to a letter Ref: LA/TM/73 VOL. II/163 issued to her on the material day of 13th July 2011, signed by one Bether A. on behalf of the District Adjudication and Settlement Officer, Transmara East/West Districts, the parcel number 341 was demarcated and recorded in the name of Hellen Moraa Nyangwara as per available records at the Kilgoris Adjudication Office then.

②

REPUBLIC OF KENYA
MINISTRY OF LANDS



DEPARTMENT OF LAND
ADJUDICATION AND
SETTLEMENT
P.O BOX 47,
KILGORIS.

When replying please quote
LA/TM/73 VOL.II/163

13th July, 2011

TO WHOM IT MAY CONCERN

**RE: LETTER OF CONFIRMATION LAND PARCEL NO. 341 NKARARO
ADJUDICATION SECTION-TRANSMARA DISTRICT.**

This is to confirm that the above mentioned parcel of Land is demarcated and recorded in the name of **HELLEN MORAA NYANGWARA** as per our records.

Nkararo Adjudication Section is at the hearing of objection to A/R cases stage.

Please accord her the necessary assistance.


(BETHER A.)
For; DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER
TRANSMARA EAST/WEST DISTRICTS.

DISTRICT LAND ADJ
SETTLEMENT OFFICER
TRANSMARA
P.O.BOX 47, KILGORIS.

ORIGINAL
REPUBLIC OF KENYA
OFFICIAL RECEIPT B 1360532
Station TRANSMARA Date 13-7- 2011
Received from HELLEN MORAA NYANGWARA
Shillings THREE HUNDRED ONLY.
cents _____
on account of LETTER OF CONFIRMATION
P.NO. 341- NKARARO ADJ. SECT.
Vote Read R36 ML Sh. 300/- cts. _____
Sub: _____

c) Map (copy attached hereunder)

The Map, Sheet Number 18 shows that the land is in Nkararo Adjudication Section and it borders numbers 264, 344 and 357. It is worth to note that the certificate of title in respect to number 344 was also registered under Simion Masake and is in contention. Similarly, number 264 is also suffering the same fate as its certificate of title was issued to a different person from the one occupying the land.



Nkarano Adj.
Sheet 18

C.T.C.
C.M.



d) Adjudication Record (copy attached hereunder)

YELLOW

SHEET 18 ORIGINAL

REPUBLIC OF KENYA

THE LAND CONSOLIDATION/ADJUDICATION* ACT A 212963
(Cap. 283/No. 35 of 1968*)

ADJUDICATION RECORD

CERTIFIED TRUE COPY
OF THE ORIGINAL
DISTRICT LAND REGISTRAR
TRANS-MARA
SIGN. DATE 25/12/2001

1. District NAROK

2. Adjudication area TRANSMARA

3. Adjudication section NKARARO

4. Parcel No. 341 5. Approximate area in hectares 1.32

6. Name of Landowner SIMION MASARE

7. Residential particulars, address, etc. P.O. BOX 61,
KILGORIS.

8. Any other information required by section 23/24* of the Act

9. I, the above-named landowner, have been informed of the contents of this form, and accept the details as correct.

10. Certified that the signature at (9) was made in my presence.

Signature of the Witness

Signature or Thumb-print

Name

Address

11. Certified that the particulars contained in this form are acceptable to the Committee.

12. Certified that I have caused the contents of this form to be explained to the landowner*. Certified that I am satisfied with the accuracy of the details recorded on this form*.

PIMNYALGO
Chairman
Date 12/09/90

Jimmy
Executive Officer
Date 12/9/90

13. Certified that the landowner *cannot be traced to sign the form. *has withheld his signature.

Date 12/09/90 Chairman PIMNYALGO

Date 12/09/90 Executive Officer Jimmy

14. Action taken as a result of objection (if any)—

Objection No. _____ Submitted by _____

Date _____ Adjudication Officer _____

15. Brief details of the Minister's order on appeal (if any)—

No. of Appeal _____ Submitted by _____

Date _____

Signed _____

* Director of Land Adjudication
* Assistant Land Registrar

*Delete as appropriate.



The Adjudication Record is a vital document prepared in line with Section 19 and 23 of the Land Adjudication Act, 2010 [Revised 2012]. Every parcel number shown on the demarcation map has an adjudication record prepared in duplicate. The Record is in 15 Parts; Part 1 to 7 contains the location of the land (district/ sub-county), Adjudication Area, Adjudication Section, Parcel No., Approximate Area (Ha.), name of the landowner, and residential particulars of the landowner. Any other information required by section 23/24 of the Act is captured in Part 8 of the Record. Part 9 provides for landowners to verify whether the aforementioned details in Parts 1 to 7 are correctly captured. An officer from the Adjudication Office has to witness that the landowner's signature in Part 9 was made in his/her presence. Part 11 requires the Chairman of the Adjudication Committee to certify that the particulars contained in the Record are acceptable to the Committee. Similarly, an executive officer from the adjudication department has to certify in Part 12 that the details recorded in the form are accurate and explained to the landowner. In the event that the landowner is not traced, the Chairperson, Adjudication Committee, and Executive officer from Adjudication Department certify in Part 13 that the landowner cannot be traced to sign the form or has withheld his/her signature. Part 14 at the back of the form contains details of objection (Objection No., name of objector, and date of the objection), and action is taken. This part is signed by the adjudication officer. The last part of the form contains brief details of the minister's order on appeal if any.

It is worth underscoring the fact that the particulars captured in the adjudication register are derived from the Demarcation Book commonly referred to as Rough Book discussed above.

The Adjudication Record in respect to the land in question contains particulars of one, Mr. Simion Masake of Postal Office Box number 61, Kilgoris. Parts 9 and 10 of the form were neither signed by the landowner nor any witness as shown in the form attached above. It was purported to have been signed by the chairman on 12th September 1990 to certify that the particulars recorded in the form are acceptable to the Adjudication Committee. However, when the

Chairman was asked to explain whether he certified the document, he vehemently disowned the signature appended. Part 12 of the form was purportedly signed by the Executive Officer on the 12th day of September 1990 to certify that the details recorded in the form were accurate and explained to the landowner. Part 13 of the form was also signed by the chairman and the Executive officer to certify that the owner could not be traced to sign the form or the owner withheld his signature. There is a contradiction in the sense that the chairman and executive officer indicated that the landowner could not sign the form because he couldn't be traced to sign it. This being the case, why did the executive officer sign Part 12 to certify that the details recorded in the form were accurately done and that the contents were explained to the purported owner of the land?

It was also established that the Adjudication Records for parcel numbers 1 to 400 were green in color and had four-digit serial numbers starting with A437. In fact, the Adjudication Record for the adjoining parcels numbers 342 and 340 was found to be A43742 and A43740 respectively and was green in color. Therefore, the Adjudication Record for the land in question ought to have been Serial Number A43741 and also green in color but it was replaced with a yellow-colored Record with serial number A212963. If there was a reasonable ground to amend the green-colored original form, the cancellation would have been done on the same form as the common practice demands. Additionally, if the form was badly torn beyond repair due to some reasons, a new one would have been prepared and the old one attached to it. The original green-colored Serial Number A43741 was neither available nor accounted for. This, therefore, means that the yellow-colored form with the Serial Number A212963 was inserted to favor Simion Masake, the purported owner of the land in question. The finding was corroborated by the fact that the Chairman of the Adjudication Committee denied signing the form, thus confirming that the land actually belongs to Hellen Moraa Nyangwara and not Simion Masake as indicated in the questionable form. Secondly, the land registrar, Transmara Land Registry stated that several parcel numbers with the yellow-colored Adjudication Records with six-digit serial numbers starting with A21 have been contested in his office as well

as the court of law. Additionally, the adjudication officer couldn't explain the replacement of the green-colored Record with a yellow-colored one with a totally inconsistent serial number.

e) Green Card (Copy attached hereunder)

Scrutiny of the Green Card opened on 8th January 2021 at Transmara Registration Section reveals that the parcel of land is registered under Simion Masake. The land measures 1.32 Hectares. Caution has been placed in favor of Hellen Mora Nyangwara of ID No. 31525854 who claims a beneficiary interest.

EDITION: 1		PART A - PROPERTY SECTION			
OPENED: 8.1.2021		REGISTRATION SECTION		NATURE OF TITLE	
TRANSMARA		EASEMENTS ETC.		ABSOLUTE	
NKARARO		<div style="border: 1px solid black; padding: 5px; text-align: center;"> CERTIFIED TRUE COPY OF THE ORIGINAL DISTRICT LAND REGISTRAR TRANSMARA SIGN:  DATE: 25/8/2021 </div>			
PARCEL NUMBER					
341					
APPROXIMATE AREA					
1.32 Ha					
REGISTRY MAP SHEET No.		18			
PART B - PROPRIETORSHIP SECTION					
ENTRY No.	DATE	NAME OF REGISTERED PROPRIETOR	ADDRESS AND DESCRIPTION OF REGISTERED PROPRIETOR	CONSIDERATION AND REMARKS	SIGNATURE OF REGISTRAR
1	8.1.2021	SIMION MASAKE			
2	29.1.2021	TITLE DEED		ISSUED	
3	25.6.2021	CAUTION IN FAVOUR OF HELLEN MORAA NYANGWARA OF ID/NO. 31525854 CLAIMING BENEFICIARY INTEREST			SIGNED
TITLE BELOW THIS LINE		REGISTRATION SECTION		PARCEL No.	
TITLE NUMBER		TRANSMARA/NKARARO		341	

Green card in favor of Simon Masake with a caution from the complainant

f) Objection Register

A careful perusal of an objection register in respect to the adjudication section reveals that the parcel of land had no objection. This means that the details contained in the Demarcation Book were correct. This was corroborated by the confirmation done on 13th July 2011 which indicated that the land was registered in the name of Hellen Moraa Nyangwara.

2.4 Occupation of the parcel of land

Hellen Moraa Nyangwara is currently the occupant of the land having lived on the parcel since 1982 and confirms never selling or transferring the land to anyone. She has raised her family on the said piece of land and undertaken several developments including planting sugar cane and bananas on the parcel of land as shown in the photographs below:





Her two sons are all married and have built their houses on the parcel of land as illustrated in the photographs above.

3.0 Consequential Observations

In an interview with the Registrar, Kilgoris Lands Registry, it was established that several aggrieved residents of Nkararo Adjudication Section have visited his office to lodge complaints regarding their parcels of land. The Registrar averred that their parcels of land were registered in the names of other people despite being the demarcated and registered owners in the Demarcation Book which forms the primary document in the preparation of adjudication records.

4.0 Conclusion

1. There was irregular processing of certificate of title to Simion Masake in respect to Parcel No. 341, Nkararo Adjudication Section. This is pegged on the following findings:
 - a) The Demarcation Book (Rough Book) which is a primary document in the preparation of the Adjudication Records (Forms) was disregarded. The registered name in the book is Hellen Moraa Nyangwara.
 - b) The Adjudication Form was deliberately filled with details of Simion Masake (current registered owner) instead of Hellen Moraa Nyangwara as reflected in the Demarcation Book/Rough Book.
 - c) The Adjudication Record in respect to the parcel of land bearing the name of Simion Masake was invalidated by the Section Adjudication Committee which played a critical role in the adjudication process.
 - d) The Adjudication Record (yellow in color and 6-digit Serial Number A212963) was inserted between green-colored Adjudication Records with 5-digit Serial Numbers A43742 and A43740 for adjoining parcel numbers 342 and 340 respectively. Serial number A43741 Adjudication Record (Green in color) was missing in the file. This means that the yellow-colored Adjudication Record was inserted in the file to favor Simion Masake, the purported owner.

2. Mr. Simion Masake fraudulently acquired ownership of the land in question;
 - a) He could not explain how he acquired the land
 - b) The adjudication committee doesn't recognize him as the owner of the parcel of land in question. The committee recognize Hellen Moraa Nyangwara as the legitimate adjudicated owner of the land
 - c) The primary document (Demarcation Book) reflects the name of Hellen Moraa as the adjudicated and registered owner of the land.

- d) The Adjudication Record which led to the erroneous registration of the land in favor of Simion Masake has been invalidated by the committee. The chairman disowned the signature appended on the Record purporting to have confirmed that the details in the Record were acceptable to the committee. Instead, they stated that they recognize Hellen Moraa Nyangwara as the owner of the land.
 - e) There is sufficient reason to believe that the correct and original Record with serial number A43741 was deliberately removed and replaced with the yellow-colored Adjudication Record with serial number A212963 to favor Simion Masake.
 - f) Hellen Moraa Nyangwara has occupied for more than thirty years and has developed the land with her sons who are all married.
3. Hellen Moraa Nyangwara is the adjudicated owner of the parcel number in question.
4. There was a dereliction of duty on the part of Mr. Maurice Otieno, the In-Charge, Adjudication, and Settlement Office, Transmara for forwarding unauthentic Adjudication Records to the Director, Adjudication and Settlement Department, Nairobi. Mr. Otieno failed to verify the Adjudication Record to ensure that its contents, particularly the details of the landowner correspond with what is recorded in the Demarcation Book, the primary document.
5. Hellen Moraa Nyangwara was unfairly treated after having been deprived of her adjudicated property which she has occupied with her children for more than thirty years and has done a lot of development on it. The deprivation of her rightful interest in the land also amounted to manifest injustice.

5.0 Recommendations

1. The Land Registrar should invoke Section 79(2) ***“No alteration affecting the title of the proprietor may be made pursuant to subsection (1) without the proprietor’s consent unless-(a) the proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission; or (b) it would for any other reason be unjust for the alteration not to be made, provided that a written notice of ninety days shall be given to the proprietor of such intention to make the alteration of the Land Registration Act, 2012”*** and rectify the certificate of title for parcel number 341 in favor of Hellen Moraa Nyangwara, the rightful adjudicated owner of the land
2. The Director, Office of the Directorate of Public Prosecutions to direct an investigation into the matter with an intent of instituting a joint criminal prosecution of Mr. Maurice Robert Otieno, In-charge, Adjudication, and Settlement Office, Kilgoris, and Mr. Simion Masake, the registered owner of the land in question, for making and uttering a false Adjudication Record contrary to Section 347 and 353 of the Penal Code, CAP 63 Laws of Kenya. The false Adjudication record was made to fraudulently procure the registration of the parcel of land in favor of Mr. Simon Masake.
3. The Cabinet Secretary, Ministry of Land and Physical Planning should cause auditing of all certificates of title in respect to Nkararo Adjudication Section with a view to canceling the ones acquired fraudulently.
4. An online system for land adjudication and settlement currently being developed in Nairobi should be deployed to all the regional adjudication and settlement offices. The system will facilitate the generation of accurate adjudication records as the list of adjudicated owners of the parcels of land will be contained in the system. The system will also eliminate the physical forwarding of land documents from the regional

offices to the Director, Land Adjudication and Settlement in Nairobi. Approval will also be done in the system.

5. Meanwhile, the Director, Adjudication and Settlement Department should ensure that the Adjudication Officers at the regional offices strictly do due diligence to ensure that the particulars on every adjudication record tally with the particulars on the primary document (Demarcation book/Rough book) for every parcel number.
6. The Director, Adjudication and Settlement Department should ensure that adjudication records received at the Headquarters are thoroughly verified before forwarding to the Chief Land Registrar for registration and issuance of certificates of title.