



**Misoi (Suing as the Legal Representative of the Estate of Chepyego Kipkorkor Sigor - Deceased) & another v Kipchumba & 8 others (Environment & Land Case 445 of 2015) [2023] KEELC 16315 (KLR) (22 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16315 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**  
**ENVIRONMENT & LAND CASE 445 OF 2015**  
**SM KIBUNJA, J**  
**MARCH 22, 2023**

**BETWEEN**

**MAGARINA SANIAKO MISOI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF CHEPYEGO KIPKORKOR SIGOR - DECEASED) ..... 1<sup>ST</sup> PLAINTIFF**

**ROSEMARY JEPKOSGEI CHERONO (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF CHEYEGO KIPKORKOR SIGOR - DECEASED) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ROBERT LIMO KIPCHUMBA ..... 1<sup>ST</sup> DEFENDANT**

**STEPHEN KANDIE KIPCHUMBA ..... 2<sup>ND</sup> DEFENDANT**

**JONATHAN KIPRONO KIPCHUMBA ..... 3<sup>RD</sup> DEFENDANT**

**PETER KIPKOECH KIPCHUMBA ..... 4<sup>TH</sup> DEFENDANT**

**WILSON KIMELI KIPCHUMBA ..... 5<sup>TH</sup> DEFENDANT**

**ELIZABETH SOTE KIPCHUMBA ..... 6<sup>TH</sup> DEFENDANT**

**TIMOTHY KIPCHUMBA KOSGEI ..... 7<sup>TH</sup> DEFENDANT**

**THE LAND REGISTRAR ELGEYO MARAKWET COUNTY .. 8<sup>TH</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL ..... 9<sup>TH</sup> DEFENDANT**



## JUDGMENT

1. This suit was commenced vide the plaint dated the December 18, 2015 and amended on the January 22, 2016, in which the Plaintiffs sought for the following prayers;
  - a. 'An order for declaration that the process and or the transactions leading up to and including the transfer of land parcel number IRONG/SERGOIT/1155 on or about 27.02.2014 from the name of Robert Limo Kipchumba, the 1<sup>st</sup> Defendant herein was fraudulent and illegal.
  - b. An order of declaration that the process and or transactions leading up to and including the sub-division of land number IRONG/SERGOT/1155 into title numbers IRONG/SERGOT/1577, 1578, 1579, 1580, 1581 and 1582 and close of title number IRONG/SERGOT/1155 was fraudulent and illegal.
  - c. An order for declaration that the process and transactions leading up to including the transfer of land reference numbers Irong/sergoit/1577 Into The Name Of The 1<sup>st</sup> Defendant, Irong/sergoit/1578 Into The Name Of The 2<sup>nd</sup> Defendant Irong/sergoit/1579 Into The Name Of The 3<sup>rd</sup> Defendant, Irong/sergoit/1580 Into Both Names Of The 5<sup>th</sup> And 6<sup>th</sup> Defendants, Irong/sergoit/1581 Into The Name Of The 4<sup>th</sup> Defendant And Irong/sergoit/1582 into the name of the 7<sup>th</sup> Defendant was/were fraudulent or illegal.
  - d. An order of the cancellation /revocation of a transfer effected on or about February 27, 2014 over parcel number IRONG/SERGOIT/1155, transferring the said parcel of land into the name of the 1<sup>st</sup> Defendant ad the ownership thereof revert back into the status before January 27, 2014 that is, into the name of Chepyego Kipkorkor Sigor pending the distribution and transmission of the said estate to its rightful beneficiaries/heirs.
  - e. An order of cancellation/revocation of the transfers effected on or about June 4, 2014 and June 12, 2014 over parcels numbers Irong/Sergoit/1577, 1578, 1579, 1580, 1581 and 1582 transferring the said parcels of land into the names of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup>, defendants and the reversion of the same to the status before February 27, 2014.
  - f. An order directing/ordering the 8<sup>th</sup> defendant and or any other relevant Lands Officer to accordingly rectify the registers in respect of title Nos Irong/Sergoit/1155, and Nos Irong/Sergoit/1577, 1578, 1579, 151580, 1581, and 1582 by cancelling and/or revoking the entries of the said parcels of land and or the said titles and restoring the original title to wit title No. Irong/Sergoit/1155 into the name of Chepyego Kipkorkor Sigor pending the distribution and transmission of the same to its rightful beneficiaries/heirs.
  - g. A permanent order of injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Defendants, their servants and /or agents from surveying, demarcating, fencing off, alienating/ selling and /or doing anything whatsoever howsoever over The Said Land Reference Numbers Irong/sergoit/1155 And Or Irong/sergoit/1577, 1578, 1579, 1580, 1581 and 1582 and/or from doing anything





restriction. That the 8<sup>th</sup> defendant was not aware that the suit land should have been subjected to the Law of Succession Act first.

5. The 1<sup>st</sup> plaintiff, Magarina Sanieko Misoi, testified as PW1 and adopted her witness statement dated April 12, 2016. She testified that the deceased was her husband and had died on November 24, 2011 at the age of 99 years. She produced the death certificate in respect of the deceased as exhibit. That the deceased had two wives and the first one had passed away in 1982. She had eight children and two of them had died. Those that had died included her only son, Joseph Kipchumba who passed away on in 2013. That the 6<sup>th</sup> defendant was widow to the late Joseph Kipchumba, and the 1<sup>st</sup> to 5<sup>th</sup> Defendants their sons. She further told the court that the 2<sup>nd</sup> Plaintiff and herself had prior to filing the case applied and obtained grant of letters of administration intestate and produced the grant as exhibit. That her matrimonial home was on the suit parcel, and it was on the same land that the deceased was buried. She produced the green cards of the parcels as exhibits. She further testified that during the 2014 memorial of the deceased, the issue of subdivision of the suit parcel came up and members from the first house wanted the land shared equally, while the 1<sup>st</sup> to 6<sup>th</sup> Defendants were in opposition to the suggestion. Some members of the first house pursued the matter with the Assistant Chief and the District Officer and they gave an indication that the matter would be resolved amicably at home. However, in the midst of that, the 1<sup>st</sup> Defendant secretly transferred the suit parcel to himself on the February 27, 2014 without her consent or knowledge. Soon after the suit parcel was subdivided into title Irong/sergoit/1577 to 1582, and was transferred to the names of the 1<sup>st</sup> to 7<sup>th</sup> Defendants. That the plaintiffs reported the matter to the Assistant chief and District Officer of the area as confirmed in the letters dated August 14, 2015 and June 24, 2015 that she produced as exhibits. That they tried to register a caution with the lands office at Iten in 2014 but their efforts were frustrated by that office despite them paying the requisite registration fee. She added that the deceased had in 2008 become partially blind and was under her care. That between 2008 to 2011 the deceased became blind and senile and his mobility was completely compromised and he could not have been able to execute any transaction without her knowledge or that of his other care givers. She added that the deceased used to keep the suit land's title deed. That after the deceased passed on, the 1<sup>st</sup> – 6<sup>th</sup> Defendants had threatened her with eviction and title deed for Irong/Sergoit/1155 later disappeared before it's subdivision into parcels 1577 to 1582. During cross examination PW1 testified that the deceased never gave her the title deed. She testified that there was a land board meeting where the deceased gave his daughters two acres each, but neither herself nor the 1<sup>st</sup> Defendant were in attendance. That the 1<sup>st</sup> Defendant was never given land by the deceased.
6. The 2<sup>nd</sup> plaintiff, Rosemary Jepkosgei Tonui, testified as PW2 and she adopted her witness statement dated April 12, 2016 as her evidence in chief. She testified that the deceased was her father and PW1 was her step mother. Before subdivision of Irong/sergoit/362, her late mother used to live on that land, and she had also grown up on the same land, as was the 1<sup>st</sup> Defendant's late father. That the deceased had given her and her two sisters two acres of land each and a promise to give them more land. That around that time the 2<sup>nd</sup> Defendant had assaulted her and the 5<sup>th</sup> Defendant had threatened to kill her, and attempted to run her over with a tractor. That during the deceased's memorial of 2014, the issue of subdivision of the suit parcel came up. Members of the first house were of the opinion that it should be divided equally between the two houses, but the 1<sup>st</sup> to 6<sup>th</sup> Defendants were opposed to the idea. The matter was referred to the Assistant chief and a meeting was held. That among those who attended the meeting were the 1<sup>st</sup> Defendant, 4<sup>th</sup> Defendant and herself. The meeting seemed to have progressed positively well, and the 1<sup>st</sup> Defendant said he would consider the matter. That though another date was fixed, the 1<sup>st</sup> Defendant in cahoots with the 2<sup>nd</sup> to 6<sup>th</sup> Defendants fraudulently and illegally transferred the land to themselves and the 7<sup>th</sup> Defendant. The plaintiffs reported the matter to the District Officer



and a meeting was called which the 1<sup>st</sup> to 5<sup>th</sup> Defendants, herself and other family members attended. The DO was disappointed and surprised about the transfer and told them to seek redress from Court. They attempted to lodge a caution at the Land Registrar's office at Iten but they were frustrated. She testified that the transfer document dated 21<sup>st</sup> February 2011 was a forged document, as at that time the deceased was blind, senile, incapacitated and could not have signed the said document. She testified that when they went to the Land Disputes Tribunal the 1<sup>st</sup> Defendant and his father were not present. On cross examination she told the court that she had not notified the Land Registrar, Iten that the deceased had died.

7. The plaintiffs called Jenifer Jemutai Chepyego who testified as PW3, and adopted her witness statement dated March 31, 2016. She testified that PW1 was her mother and the deceased was her father. That on several occasions the 1<sup>st</sup> to 6<sup>th</sup> defendants had threatened to evict her mother. That they had also threatened to evict her as well after her mother passed away. That the 1<sup>st</sup> to the 7<sup>th</sup> Defendants had come with 30 goons armed with pangas and other weapons when they subdivided the suit parcel. She testified that when her mother died in 2020, the Defendants also refused to bury her outside her house, and she had to be buried elsewhere. On cross examination she told the court that her late brother, father to the 1<sup>st</sup> to 5<sup>th</sup> defendants, had mental problems. That she had heard that the 2<sup>nd</sup> Plaintiff and her sisters had sued the deceased over land, but she was not sure if he had given them two acres each. She also did not know if the deceased had attended the Land Control Board. She was however aware that the suit parcel had been subdivided and registered under several people. Her mother had been buried in February, 2020 in the elder's wife family land that was registered with the 2<sup>nd</sup> Defendant. That she had not informed the Land Registrar that her father had died. That she was in her mother's house when the Defendants in a group of 30 to 40 people came and subdivided the land. That she was among the family members who went to the District Commissioner, Land Control Board and Land Registrar to complain about the sub division of the suit land. She further testified that in their culture, the deceased could not give out all his property when he was alive, but could give it out in small portions like the portions given to the three sisters. She further testified that the 1<sup>st</sup> to 6<sup>th</sup> Defendants forged her father's signature in the subdivision documents.
8. Syvellina Jebet Chepyego, testified as PW4, that the 1<sup>st</sup> plaintiff, PW1 who died in February 2020, was her mother and the 2<sup>nd</sup> Plaintiff was her sister from the 1<sup>st</sup> family. She testified that the land in dispute belonged to her father but was taken by the 1<sup>st</sup> to 7<sup>th</sup> Defendants by forging her late father's thumbprint and signature. During cross examination she told the court that her brother, the 1<sup>st</sup> Defendant's father, Joseph Kipchumba, had a right to inherit her father's land. She testified that she knew that her father had given her sisters two acres each but she was not present to ascertain whether the 1<sup>st</sup> Defendant was given a share of the land at the same time. It was not in their custom to give out land when one was alive. That when giving out land when one was alive, due process had to be followed. She further testified that the deceased had lost sight in 2007 and died in 2011. That the deceased was over hundred years when he died and used to be assisted by his children who were living with him. The sisters who sued their father got two acres each on account of being members of the first house. That the deceased had a total of 14 children and each ought to have gotten an equal share.
9. The next witness was Christine Jemutai Kemboi, who testified as PW6. There is no indication on the record why she was referred as PW6 instead of the sequential PW5. She adopted her statement dated April 12, 2020. She testified that PW1 was her step grandmother. She reiterated the memorial of the Deceased in 2014 and subsequent meeting at the Chiefs office that lead to the filing of the suit and the frustrating encounter that they had when attempting to file a caution. She further testified that PW1 had wanted to be buried at her portion of land but the 6<sup>th</sup> Defendant forcefully buried her next to the 1<sup>st</sup> Wife's grave. On cross examination she said she had not attended the Land Dispute Tribunal



hearing and she had no idea that the deceased had transferred the suit parcel to the 1<sup>st</sup> Defendant. She testified that the transfer document shown to her was dated February 21, 2011 and at that time her Grandfather, the deceased, was senile and blind. She could not confirm whether the thumb print on the form was that of the deceased, but could see that the form indicated the 1<sup>st</sup> Defendant had signed it. From its contents the document looked valid and there was no reason to make the Land Registrar doubt its contents. After learning of the transfer of land to 1<sup>st</sup> Defendant, they had their Advocate prepare a caution to register with the lands office but when they took it to the Land Registrar, it was not registered. She testified that she was not sure whether the consent obtained by the 1<sup>st</sup> Defendant was from the Land Control Board. That she got to know of the subdivision of the suit land and transfers of the parcels thereof on the June 4, 2014, when the owner, the deceased, had passed away in 2011. She further testified that her mother was not involved when the father's land was shared out.

10. PW7 was Bernard Wanjau Taiku, a Registrar of Persons and gazetted finger prints officer for 23 years. He testified that he examined the exhibit memo and the assignment was to ascertain whether the print thereon was identical to the one of holder ID card xxxx, that belonged to the deceased, and he found it was not. He produced the documents as exhibits. He also produced as exhibits report prepared by his colleague, Evans Mangoe Mayoli, whose assignment was to compare the fingerprints presented on transfer documents dated June 4, 2008 against print impressions and found that the left thumb impression was identical to the holder of identification number xxxx. On cross examination he testified that in his report the disputed document was an application for Land Control Board. The thumb print, he said was above the place of the owner or authorized agent of the owner and they were unable to identify its owner and that is the reason it was reported that the impression was for unknown person. On the second report, he testified that he had no doubt that the examination report was prepared by his colleague. The findings were that the impression was unsuitable as impression was blurred/dull for investigations as lines were incomplete and the person who is said to have thumb printed the transfer forms is shown to have been born in 1912, but the report did not indicate that the print had been made by the person whose identity card was available as it could have been indicated.
11. PW8 was No xxxx CIP Moses Mthwithi of DCI Headquarter, Criminal Records Offices, Scenes of Crimes and incharge Single Digit Laboratory, with 23 years' experience in finger prints. He testified that a memo was brought by Sgt Chepkok on May 29, 2018 with documents for examinations. He compared the exhibit A1 with B1 and B2 and found that A1 and B2 had different patterns of finger prints and were therefore from different persons. The second impression was however not clear on the right. On cross examination the witness stated that he was requested to confirm whether the impression on the transfer document was by the same person and his conclusion was that it was not by the same person. He added that he could not have ascertained whether the documents belonged to the card holder as he was not tasked to do that. He added that he did not agree with anyone who claimed that the two impressions on the transfer form were unsuitable for comparison. He testified that the impression did not belong to the identity card holder. He added that experts with some training and equipments working on the same documents would arrive at the same results.
12. For the defence case, Robert Limo Kipchumba, the 1<sup>st</sup> Defendant, testified as DW1. He testified that when Rosemary Cheron, Margret and another took their father to the tribunal he was present. He said when the land was subdivided it created parcels 1157 which was registered under Tecla on behalf of Margret, and the suit parcel was given to him as per his late father's wishes. His father suffered from mental health issues but on that day he was okay. He further said that the Land Control Board minute No 34/08 of June 14, 2008 is the one that dealt with the consent to transfer the suit parcel to him as a gift. He produced the minutes, undated consent and transfer document as exhibits. He said that he was present when his grandfather put a print on the transfer documents in the presence of his Advocate, one Kiplagat. He said he produced the transfer form in 2014 and he was issued title on February 27,



2014 as he had lacked funds to finish the transfer process earlier. That it was in 2014 that alongside with his brothers, the 2<sup>nd</sup> to 5<sup>th</sup> defendants, they sold a portion of the land to the 7<sup>th</sup> Defendant to get funds for the transactions. On cross examination DW1 stated that it was the deceased who had taken the transfer documents to the land office and not him. That he personally made a follow up in 2014 at the Land Registrar's offices. He further said that though the application for consent was undated, it was prepared by his Advocate Kiplagat and approved in 2008. That he further stated that the person who took the transfer documents to the Land Registrar was in fact his Advocate Kiplagat in the year 2011. That he did not notify the Land Registrar that the deceased had died. He admitted that going by the documents he produced as exhibits, the consent was issued before the Land Control Board meeting, which he attributed to a mishap done by his Advocate Kiplagat. That he used to take care of the deceased and at no point did he ever lose his sight.

13. DW2 was Robert Sanduki, the Land Registrar, Iten. He testified that the green card for Irong/sergoit/362 registered in the name of Chepyego Arap Koror, shows it was subdivided into parcel 1155 to 1158. He testified that parcel 1155, the suit parcel, was registered in the name of the 1<sup>st</sup> Defendant. He stated that the application for consent dated 3<sup>rd</sup> June 2008 was made by the deceased. He produced copies of the green cards, receipts and agenda for the meeting dated June 4, 2008 and June 14, 2008 as exhibits. He also produced original and copy of transfer document dated February 27, 2014, and pointed out that the stamp duty had been paid. On cross examination he said that the land registry did not prepare the mutation forms and could not have known who signed for the registered owner. He testified that he, personally did not collude with the 1<sup>st</sup> to 7<sup>th</sup> Defendant in the transfer of the suit parcel because in 2008 he was based in Nairobi, while in 2011 he was in Nyamira County and only came to Iten, Elgeyo Marakwet in April 2019. That there was no fraud at the land registry as no formal report had been made to the police. He added that the thumb print on the transfer document seemed okay to him, although it appeared it was made by a shaking thumb. He added that the death certificate of the deceased had never been brought to the land registry and had it been presented, the suit parcel would never have been transferred to the 1<sup>st</sup> Defendant. He further testified that the minutes of the meetings showed that one William Kimeli Kipkorir was to be registered as the owner of the suit parcel. The 1<sup>st</sup> Defendant was also to be registered as owner of suit parcel in the same minutes and this was an anomaly. He further said that the decree issued in Iten Magistrate's case number 15 of 2006 did not include the name of the 1<sup>st</sup> Defendant. He added that he had not been aware that a caution or restriction had been presented to the office against the suit parcel and that the registry declined to register it.
14. The learned counsel for the plaintiffs filed their submissions dated the April 4, 2022 on the May 6, 2022, while that for the 1<sup>st</sup> to 7<sup>th</sup> defendants filed theirs dated the June 13, 2022.
15. The learned Counsel for the Plaintiffs submitted that the transfer of LR no Ir/irongsergot/1155 to the name of the 1<sup>st</sup> Defendant was unprocedural and illegal, as the transfer forms produced were contested and proved to be a by-product of forged print impression. The purported transfer was also done in the year 2014 without the consent of administrator or personal representative of the deceased. That the alleged letter of consent obtained on June 4, 2008 relied upon by the 1<sup>st</sup> defendant was evidentiary insufficient as the basis of the transfer. The counsel cited section 45 of the Succession Act and the cases of *Gitau & 2 Others VS Wandai & 5 others (1989) KLR 231*, *Wilson Nzuri Ayolo Machakos High Court Probate and Administration Cause No 152 of 2000* and [\*Zacharia Wambugui Gatimu Vs John Ndungu Maina \(2019\) eKLR\*](#), which provide that an act done concerning the estate of a deceased by a person who has not obtained representation amounts to intermeddling with the estate. It was submitted that transfer of the suit land to the 1<sup>st</sup> Defendant was tainted by fraud, impropriety and or a corruption. It was counsel's submission that evidence of the two expert witnesses, and their relevant reports and annexed memos was sufficient to prove that the transfer was borne out of a fraudulent



transaction. It was submitted that the evidence of the Plaintiffs' witnesses reached the threshold required as provided in [Mutonyi & Another V Republic \[1982\] eKLR](#), and the Court of Appeal case of [Kimatu Mbuvi t/a Kimatu & Bros VS Augustine Munayo Kioko \(2006\) eKLR](#). That the Defendants did not contest expert evidence adduced during the Plaintiffs' case. The counsel further relied on the case of [Obadiab Peter Kairararia VS Anderson Gitonga & 2 Others \(2018\) eKLR](#), and submitted that the Plaintiff evidence was sufficient to prove that title over the suit land was procured by the Defendants fraudulently and is eligible for impeachment under section 26(b) of the [Land Registration Act](#) which is a replica of section 29 of the repealed Registered [Land Act](#). This is because the 2<sup>nd</sup> Plaintiff testified that she never saw the 1<sup>st</sup> Defendant at the Land Control Board where the 1<sup>st</sup> Defendant claims he sought consent. The 1<sup>st</sup> Defendant also in his testimony confessed that he could not remember the exact date the consent was given and his lawyer was responsible for the anomaly in the documentation, yet he failed to call the said lawyer to clarify the position. The defendants also failed to call upon the Land Control Board secretary to explain the anomalies on the dates of the minutes dated the June 14, 2008 of the board and letter of consent which indicated that it was issued on June 4, 2008. The 8<sup>th</sup> Defendant also produced different documents. The counsel pointed out the documents the Plaintiffs were supplied with by the lands office were undated and unsigned unlike those produced by the 8<sup>th</sup> Defendant. That the 8<sup>th</sup> Defendant failed to explain why the Plaintiff's copies did not have franking marks whereas documents availed from the lands office as final evidence were franked. Reliance was placed on the case of [Kibor Waguru Makumi VS Francis Nduati Machria \(2018\) eKLR](#); [Jandu VS Kirpal & Another \(1975\) EA 225](#) and [Charles Karathe Kiarie & 2 others V Administrator of the Estate of John Wallace Mathare \(Deceased\) & 5 others \(2013\) eKLR](#). It was submitted that the 8<sup>th</sup> Defendant is a public office and is mandated to adhere to the ethos of public service and Chapter 6 and Article 73 of the [Constitution](#) to ensure integrity of their office and public confidence. It was Counsel's contention that as 1<sup>st</sup> defendant evidence was that his advocate presented the transfer forms and that the consent was presented by the deceased in his lifetime, then it was expected that the said documents would have been registered as entries on the transfer and updates on the proprietorship section done at that time. The counsel further pointed out that the green card for the land parcel No Irong /sergoit/1155 was not produced by any of the defendants. That fraud maybe inferred when green cards are plucked out as per the case of [Samuel Kamau Macharia VS Ali Khan Muses & 2 Others \(2014\) eKLR](#). It is the Defendant's responsibility to prove that the title held was acquired lawfully and transactions were above board as provided in the Court of Appeal case of [Munyu Maina VS Hiram Gathiba Maina, Civil Appeal No 239 of 2009](#). It was submitted that the court has power to revoke title acquired fraudulently as provided in [Chemei Investments Limited VS The Attorney General & Others Nairobi Petition No 94 of 2005](#); [National Bank of Kenya VS Wilson Ndolo Ayah](#); [Alice Chemutai Too Vs Nickson Kipkurui Korir & 2 others \[2015\] eKLR](#). It was counsel's submission that the 1<sup>st</sup> Defendant did not prove to the required standard that the nature of transfer was by way of gift. The 1<sup>st</sup> Defendant did not prove the requisites of transfer by gift as provided in [in Re Estate of Godana Songoro Guyo \(Deceased\) \[2020\] eKLR](#); RE Estate of the Late Gedion Manthi Nzioka (Deceased) [2015] and Rose, Re [1952] [Pelington Another V Waine & Ors \(2022\) ALL ER](#), and In Lubberts Estate Re [2014] ABCA 216. It was submitted that in addition to the 2<sup>nd</sup> Plaintiff evidence that the 1<sup>st</sup> Defendant was not present in the Land Control Board meeting on June 14, 2008, the impugned minutes of the land board also did not indicate that disposition of the land was by way of gift, and the alleged transfer prepare by an advocate did not indicate that consideration was a gift. The Advocate purported to have drawn the documents was not presented as a witness. The counsel relied on the case of [Esther Kabugi Njunguna VS Martha Chebet & 3 others \(2020\) eKLR](#) which provided that the burden of proof in a suit vests on a person who would fail if no evidence at all was given by the other side. It was submitted that the 7<sup>th</sup> Defendant did not tender any evidence to demonstrate that he obtained title to the land in question lawfully, and his title is liable for revocation even if acquired by an innocent purchaser for value as provided in [Kenya](#)



*Industrial Estate Limited v Anne Chepsiror & 5 others [2015] eKLR* ; *Elisha Makeri Nyangw'araa VS Stephen Mungai Njunguna & Another (2013)eKLR*; Esther Ndegi Njiru & Another V Leonard Gatei (2014); *Daniel Maina Kabage(registered as attorney of Gideon Gitanga VS Kenya Forest Service (2018) eKLR*.

16. On the part of the Learned Counsel for the 1<sup>st</sup> to the 7<sup>th</sup> Defendants, the counsel submitted that the late Chebyego Kipkokor transferred and gifted land parcel Irong/sergoit /1155, the suit parcel, to Robert Limo Kipchumba, the 1<sup>st</sup> defendant. It is Counsel's position that land parcel Irong/sergoit/362 was subdivided pursuant to the award of the Land Disputes Tribunal in RMCC NO 15 of 2006 resulting to land parcels Irong/sergoit/1155 to 1158, and the suit land transferred to Robert Limo by his father Joseph Kipchumba by way of gift to keep in trust for his siblings. The transfer was consented by deceased before the Land Control Board in which the 2<sup>nd</sup> Plaintiff and her sisters were present and no objection was raised to that effect. It was submitted that since the suit parcel was transferred during the deceased's lifetime, it does not fall under the estate of the deceased. That as Chepyego was the legal owner, he had absolute right to dispose or transfer the same to the name of the 1<sup>st</sup> Defendant and transfer was one by way of gift. The counsel relied on the case of RE Estate of Phyllis Muthoni Minoti (Deceased) [2018] eKLR. It was further submitted that the claim of fraud was not proved to the required standard. That on the concerns raised on the anomalies on the dates on the face of the printed minutes, counsel pointed out that DW2 had clarified that they were merely typographical errors that did not change the fact that the meeting took place on June 4, 2008. Counsel also submitted that DW2 had produced the original official receipt for KSH 350 /- dated June 3, 2008 in respect to parcel 1155 for booking for Land Control Board consent on June 4, 2008 and the receipt was not challenged. That the minutes of the board were also produced and the Plaintiff did not produce alternatives. That the Land Registrar had attested to the fact that the transactions were above board and thumb prints were genuine. The examination report dated April 7, 2016 by Evans Oyori had confirmed that the sample was unsuitable for comparison and the thumb on transfer document appeared smudged because of the age of the deceased and the same was not done in a controlled set up. Counsel submitted that though the thumb could not be used for comparison, the thumb print constitutes evidence of transferor's authority as it was shown that it was the intention on the part of the of the deceased to transfer the suit parcel. It was submitted that it was the duty of the Plaintiff to prove fraud, as provided in the cases of *Demutilla Nanyama Pururmu V Salim Mohammed Salim [2021] eKLR*, Kinyanjui Kamau VS George Kamau [2015] eKLR, Vija Morjaria VS Nansingh Madhusingh Darbar & Another [2000] eKLR, and Esther Kabugi Njunguna VS Martha Chebet & 3 Others [2020] eKLR. It was submitted that it was not the duty of the Defendants to prove authenticity of transfer but the Plaintiffs'. That DW2 had attested that presence of transferor was not needed as long as instruments of transfer were properly attested to and statutory payments made. That by the time of the deceased's death, he had already done the transfer of the suit parcel.
17. The following are the issues for the determinations by the court;
  - a. Whether the transfer of the Irong/sergoit/1155 to the 1<sup>st</sup> Defendant was characterized by fraud, impropriety and or a corrupt scheme on his part and the 8<sup>th</sup> Defendant?
  - b. Whether subdivision and transfer of land parcel Irong /sergoit/1155 Into Land Parcels Irong/sergoit/1577 to 1582 was characterized by fraud, impropriety and or corrupt scheme on the part of the 1<sup>st</sup> to 8<sup>th</sup> Defendant?
  - c. Whether the land parcel Irong/Sergoit/1155 was part of the estate of the deceased.



d. Who pays the costs of the suit.

18. The court has after considering the parties' pleadings, evidence tendered, submissions by the learned counsel, the superior courts decisions cited thereon, come to the following conclusions:

a. The history of the parcels of land in this disputes originated from land reference Irong/sergot/362, that belonged to the late Chepyego Kipkorkor Sigor, the deceased, who was the husband to the 1<sup>st</sup> plaintiff, and father to the 2<sup>nd</sup> Plaintiff. The deceased had two wives. The first wife, died in 1982 and the 1<sup>st</sup> Plaintiff who died in 2020 was the 2<sup>nd</sup> wife. The first wife had 4 children. All were daughters, and one is deceased. The 2<sup>nd</sup> wife, [1<sup>st</sup> plaintiff], had 9 children, being one son and 8 daughters. The son, Joseph Kipchumba died in 2013 and was the father of the 1<sup>st</sup> to 5<sup>th</sup> Defendant and husband to the 6<sup>th</sup> Defendant. The 7<sup>th</sup> Defendant has no relationship to the deceased's family. In the year 2006 the 2<sup>nd</sup> Plaintiff and her two sisters from the first house took their father, the deceased, to the land Dispute Tribunal as they feared he would disinherit them on account of their gender. They demanded the deceased bequeath them some land. The deceased acquiesced to their demands and gave each of them two acres of land from Irong/Sergoit/362, as confirmed in the award of the tribunal dated May 9, 2006. The award was subsequently adopted and a decree dated July 6, 2006 issued. The land was then subdivided and resulting to parcels number Irong/Sergoit/1155, the suit land, Irong/Sergoit/1156 registered under Mathew Kipkemoi, Irong/Sergoit/1157, registered under Tecla Chemaiyo and Irong/Sergoit/1158, registered under Oliver Kimutai Tanui. The deceased later died on the November 24, 2011. Then on the February 27, 2014 the suit land, Irong/Sergoit/1155, was allegedly, illegally transferred to the 1<sup>st</sup> Defendant and subsequently subdivided into Irong/Sergoit/1577 to 1582. Then the parcels thereof were transferred and registered under the names of the 2<sup>nd</sup> to 7<sup>th</sup> Defendant. The Plaintiffs alleged that the deceased had died intestate and the subdivision and transfer of the said parcels was fraudulent. The plaintiffs then filed this suit.

b. The broad jurisdiction of the Environment and Land Court is provided under Article 162 of the Constitution which establishes the system of Kenya's courts, as follows:

1. 'The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).
2. Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-
  - a) Employment and labour relations; and
  - b) The environment and the use and occupation of, and title to, land.
- 3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).
- 4) The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article.'

In accordance with the above Article, Parliament enacted the Environment and Land Court Act No 19 of 2011. Under section 13 of the Act the jurisdiction of the Court is provided as follows;



' 13.

- (1) The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- 2) In exercise of its jurisdiction under Article 162(2) (b) of the Constitution, the Court shall have power to hear and determine disputes-
  - a) Relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - b) Relating to compulsory acquisition of land;
  - c) Relating to land administration and management;
  - d) Relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interest in land; and
  - e) any other dispute relating to environment and land.
- 3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and health environment under Articles 42, 69 and 70 of the Constitution.
- 4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
- 5) Deleted by Act No 12 of 2012
- 6) Deleted by Act No 12 of 2012



- 7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including-
- a) Interim or permanent preservation orders including injunctions;
  - b) Prerogative orders;
  - c) Award of damages;
  - d) Compensation;
  - e) specific performance;
  - f) restitution; or
  - g) declaration; or
  - h) costs.'

The matter herein relates to the alleged fraudulent transfer of Land reference number Irong/ Sergoit/1155, the suit land, from the name of the deceased to the 1<sup>st</sup> Defendant with the aid of the 8<sup>th</sup> defendant; its subsequent subdivision into Land parcels Irong/sergoit/1577 to 1582, and the transfers thereof. The suit parcel falls under the category of private land and issues brought forth are in relation to enforceable interests in land, which falls under the jurisdiction of this court.

c. Black's Law Dictionary gives a broad description of fraud as; -

' Fraud consists of some deceitful practice or willful deceit, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. As applied to contracts, it is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Fraud, in the sense of a Court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another'.

In their amended plaint dated January 22, 2016 the Plaintiffs allege particulars of fraud and illegality on the part of the 1<sup>st</sup> Defendant to include;

a. 'Intermeddling with an estate of a deceased person.



- b. Acting in total disregard of the requirements of chapter 160 of the Laws of Kenya.
- c. Usurping the role of the rightful heirs to the estate.
- d. Acting in total disregard of the provisions of the [Land Registration Act](#), 2012.
- e. Converting the estate of the deceased estate to become his estate.
- f. Causing to be subdivided and transferred the aforesaid pieces and parcels of land and yet he had no good title to the same.
- g. Transferring the said pieces and parcels of land while knowing that the said pieces and parcels of land belonged to the estate of a deceased person.
- h. Not generally following the due process.
- i. Influencing the lands office.
- j. Acting against the legitimate expectations of the plaintiffs.
- k. Aiding and abetting an illegality.
- l. Causing transfers on the basis of invalid consents or without consents.'

The pleading of fraud is as set out under Order 2 Rule 4 of the [Civil Procedure Rules](#) that provides thus;

' 4.

- (1) A party shall in any pleading subsequent to a plaint plead specifically any matter, for example performance, release, payment, fraud, inevitable accident, act of God, any relevant Statute of limitation or any fact showing illegality-
  - (a) Which he alleges makes any claim or defence of the opposite party not maintainable;
  - (b) Which, if not specifically pleaded, might take the opposite party by surprise; or
  - (c) Which raises issues of fact not arising out of the preceding pleading.'



The superior courts have long established that the onus of proving fraud is on the person alleging it, and the standard of proof is higher than that of ordinary civil claims.

- d. In the case of *Kuria Kiarie & 2 Others -vs- Sammy Magera [2018]* eKLR the Court held thus;

' The next and only other issue is fraud. The law is clear and we take it from the case of *Vijay Morjaria - vs- Nansingh Madhusingh Darbar & Another [2000]* eKLR, where Tunoi, JA (as he then was) states as follows; It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of



course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.'

The standard of proof in matters dealing with allegations of fraud is also higher than those required in ordinary civil suit but less than those required in a criminal case. That was stated in the case of Kinyanjui Kamau – vs George Kamau [2015]



eKLR, as follows; -

' it is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo – vs- Ndolo [2008]1 KLR (G & F) 742 wherein the court stated that: 'we start by saying that it was the Respondent who was alleging that the will



was  
a  
forgery  
and  
the  
burden  
to  
prove  
that  
allegation  
lay  
squarely  
on  
him.  
Since  
the  
Respondent  
was  
making  
a  
serious  
charge  
of  
forgery  
or  
fraud,  
the  
standard  
of  
proof  
required  
of  
him  
was  
obviously  
higher  
than  
that  
required  
in  
ordinary  
civil  
cases,  
namely  
proof  
upon  
a  
balance



of  
probabilities;  
but  
the  
burden  
of  
proof  
on  
the  
Respondent  
was  
certainly  
not  
one  
beyond  
a  
reasonable  
doubt  
as  
in  
Criminal  
Cases.'

- e. It is the Plaintiffs' position that in 2006, PW2 and her two sisters took their father, the deceased, to the Land Disputes Tribunal on the fears that the deceased wanted to disinherit them on account of their gender. The deceased acquiesced to their demands and gave PW2 and her two sisters two acres each from Irong/Sergoit/362. That subsequent thereto the land was subdivided and the mother title closed on the May 29, 2008 giving rise to Irong/Sergoit/1155 to 1158. It is the plaintiffs' case that parcels 1156 to 1158 were transferred by the deceased to the



three sisters or their nominees, while parcel 1155 remained in the name of the deceased until his death intestate in 2011. That the deceased could not have executed the transfer of parcel 1155 to the 1<sup>st</sup> defendant without their knowledge as alleged because he had become incapacitated, senile and blind by the time he died in 2011.

- f. The position taken by the 1<sup>st</sup> Defendant was that the suit parcel was transferred to him by his late father, Joseph Kipchumba, who attended the Land Control Board on June 14, 2008 alongside PW2, her two sisters and the deceased. That though his late father suffered from mental health issues, he was okay that time and chose to have his portion of the land transferred to him, 1<sup>st</sup> defendant, to hold in trust for his siblings. The 1<sup>st</sup> Defendant produced three documents in support of his claim as the rightful owner of IRONG/SERGOIT/1155, which are the executed transfer documented marked as MFI (D6) dated 21<sup>st</sup> February 2011 indicating land was transferred from the deceased to himself and registered on February



27, 2014, undated Land Control Board consent letter marked as MFI (D4) that was approved on June 4, 2008 and the Land Control Board minutes approved on June 14, 2008 that dealt with the transfer of the suit parcel to the 1<sup>st</sup> Defendant.

- g. However, the Plaintiffs challenged the authenticity of the transfer document, on the basis that the deceased was blind, senile and incapacitated from late 2008 to 2011, and could not have affected the transfer without knowledge of PW1 and his other care givers. In support of their allegations, PW7, Bernard Wanjau, an officer with the Registrar of persons and gazetted finger prints officer testified in regards to the authenticity of the finger print, that allegedly belonged to the deceased that was appended on the transfer document. It was PW7 testimony that upon examination of the application for consent to the Land Control Board, his assessment was that the print on it was not similar to that of holder of identity card No xxxx that belonged to the deceased. He further produced



reports marked as MF1 (4) (a) to (d) as exhibits 4(a) to (d) respectively prepared by his former colleague Evans Mangoe Mayoli, who retired in 2016. He testified that as per assessment of his former colleague, the finger print presented on the transfer of land document dated February 4, 2008 and print impressions was identical to the left thumb impression of the holder of identification number xxxx, but was however found to be unsuitable for comparison. PW8, NO, xxxx CIP Moses Mthwithi of DCI headquarters, a finger print expert with 23 years' experience also testified on his assessment of original transfer documents dated January 21, 2011 referred to as A-1 and application of land consent documents referred as B-1 and B-2. He produced report marked as PEXH 6(a) and the determination was that thumb prints on A1' the original transfer of land in respect to the Deceased and 'B1' and 'B2' consent for land control board were of two different people. DW2, Mr Robert Sanduki, the Iten Land Registrar produced application



for consent dated June 3, 2008 for suit parcel and minutes for land control meeting marked as MF1 9. DW2 testified that it was impossible for the application of consent to have been made on June 3, 2008 and have the consent letter dated June 4, 2008 and have the minutes dated June 14, 2008. He further added that the consent letter dated June 4, 2008 referred to minute of June 4, 2008 which did not exist. DW2 also noted that minute 52 referring to the suit parcel indicated that there was another Applicant, William Kimeli Kipkorir, who transferred the same land to Joseph Kimaiyo. He testified that he did not know how two consents to transfer a similar parcel of land were given on the same day.

- h. It is trite law that a certificate of title held by a person as a proprietor of a property is conclusive proof that such person is the owner of the property. However, the holding of such title is not absolute as the same may be impeached under certain circumstances.



Section 26 (1) of the  
*Land Registration Act*;

' The  
certificate of  
title issued by  
the Registrar  
upon  
registration,  
or to a  
purchaser of  
land upon a  
transfer or  
transmission  
by the  
proprietor  
shall be taken  
by all courts  
as prima facie  
evidence that  
the person  
named as  
proprietor of  
the land is the  
absolute and  
indefeasible  
owner,  
subject to the  
encumbrances,  
easements,  
restrictions  
and  
conditions  
contained or  
endorsed in  
the  
certificate,  
and the title  
of that  
proprietor  
shall not  
be subject  
to challenge,  
except—

- (a) on  
the  
ground  
of



fraud  
or  
misrepresentation  
to  
which  
the  
person  
is  
proved  
to  
be  
a  
party;  
or  
(b) where  
the  
certificate  
of  
title  
has  
been  
acquired  
illegally,  
unprocedurally  
or  
through  
a  
corrupt  
scheme.'

In the case of *Alice Chemutai Too VS Nickson Kipkurui Korir & 2 Others* [2015] eKLR, the Court held that: -

' It will be seen from the above that title is protected, but the protection is removed and title can be impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, unprocedurally, or through a corrupt scheme I do not see how a person with a perfectly good title should be deprived of his title by activities of fraudsters. It is in fact time to put down our feet and affirm that no fraudster, nor any beneficiary of fraudulent activities, stands to gain for his fraud, and no title holder will ever be deprived of his good title by the tricks of con artists.'



- i. The Court of Appeal decision in the case of MUTONYI – vs – REPUBLIC [1982] KLR 203, at page 210, stated as follows about expert witness;

' So, an expert witness who hopes to carry weight in a court of law, must, before giving his expert opinion: Establish by evidence that he is skilled in his science or Art. Instruct the court in the criteria of his science or art, so that the court may itself test the accuracy of his opinion and also form its own independent opinion by applying these criteria to the facts proved. Give evidence of the facts on which may be facts ascertained by him or facts reported to him by another witness'.

And in the celebrated case of *Kimatu Mbuvi t/a Kimatu Mbuvi & Bros v Augustine Munyao Kioko* [2006] eKLR, the Court expressed itself thus on the probative value of expert opinions as follows;

' Like other sciences, medicine is not an exact science and that is why expert medical opinion is no different from other expert opinions. We have stated before, and it bears repeating, that such opinions are not binding on the court although they will be given proper respect, particularly where there is no contrary opinion and the expert is properly qualified. But a court is perfectly entitled to reject the opinion if upon consideration alongside all other available evidence there is proper and cogent basis for doing so.'

In the case of *Ndolo v Ndolo* [1995] LLR 390 (CAK), the Court stated that;

' The evidence of PW1 and the report of Munga were, we agree, entitled to proper and careful consideration, the evidence being that of experts but as has been repeatedly held the evidence of experts must be considered along with all other available evidence and it is still the duty of the trial court to decide whether or not it believes the expert and give reasons for its decisions. A court cannot simply say: 'Because this is the evidence of an expert, I believe it'.

With the above decisions in mind, and upon considering the expert evidence of the two expert witnesses in this case on the finger print impression and their qualifications thereto, and evidence of DW2 in regards to the discrepancy on dates of application of consent and the minutes suggesting that the suit parcel was approved to be transferred to two different persons in the same meeting, I find that the Plaintiffs have proved fraud, impropriety and illegality on the part of the 1<sup>st</sup> Defendant, in the way the suit land, Irong/Sergoit/1155, was transferred to his name, years after the death of the registered proprietor, the deceased.

- j. The evidence of PW1, PW2 and other family members who testified told the court of the 2014 memorial service of the late Chebyego, that was attended by the 1<sup>st</sup> to the 6<sup>th</sup> defendants and others. The defendants did not deny that



the said service took place as told by the plaintiffs. The issue of division of the suit parcel came up during the said memorial, and the plaintiffs' evidence is that the 1<sup>st</sup> to 6<sup>th</sup> defendants opposed the members of the first house opinion that the suit parcel be divided equally between the two houses. The matter was reported to the Assistant Chief and the 1<sup>st</sup> Defendant was summoned. He attended in the company of the 4<sup>th</sup> Defendant, and there was some positive progress as the 1<sup>st</sup> Defendant and his brother said that they would consider the matter. However, the plaintiffs were to learn later that the 1<sup>st</sup> defendant had fraudulently transferred the suit land to his name, then subdivided it and transferred the resultant parcels to the 1<sup>st</sup> to 7<sup>th</sup> defendants. The matter was reported to District Officer who summoned the family members. The 1<sup>st</sup> to 5<sup>th</sup> Defendants were in attendance and after listening to what had happened, the District Officer advised the family members to move to Court. The 1<sup>st</sup> to the 7<sup>th</sup> Defendant did not discount the evidence provided by the Plaintiffs about those meetings. In any case the 2<sup>nd</sup> to the 7<sup>th</sup> defendants did not testify in court.

- k. It is trite law that just because a Plaintiff's evidence is uncontroverted, it does not automatically follow that his/her prayers will be allowed. The burden of proof never shifts to the Defendant, in view of Sections 107 and 108 of the Evidence Act, chapter 80 of Laws of Kenya, which provides:

' 107.

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.'

In the case of Peter Ngigi & Another (suing as legal representative of the Estate of Joan Wambui Ngigi) -v- Thomas Ondiki Oduor & Another 2019 eKLR the Court opined thus:

' There are any authorities that deal with the question of uncontroverted evidence, such as the situation in the present case where the defence did not show up at the trial. The general position running through such authorities is that uncontroverted evidence bears a lot of weight and a statement of defence without any evidence to support the assertions therein will amount to mere statements.'

From evidence provided by PW1, PW2 and PW6, it is evident that the as the 2<sup>nd</sup> to 6<sup>th</sup> Defendants were present in the 2014 memorial service where subdivision of the Deceased's land among the two houses was discussed, they were therefore aware that



the 1<sup>st</sup> Defendant did not have title to the suit parcel at that time. That was about three years after the death of the deceased in 2011, and the subsequent subdivision of the suit land and transfer of the parcels thereof was therefore, fraudulently done as no grant was obtained from the succession court. Though particulars of fraud and illegalities against the 2<sup>nd</sup> to the 7<sup>th</sup> defendants were pleaded at paragraph 25 of the amended plaint, the plaintiffs have failed to adduce specific evidence that shows that the 7<sup>th</sup> defendant was aware about the 1<sup>st</sup> defendant fraudulent transactions over the suit land. In conclusion I find that the Plaintiffs have proved fraud on the part of the 2<sup>nd</sup> to 6<sup>th</sup> Defendants.

- l. The Plaintiffs also averred that there was fraud on part of the 8<sup>th</sup> Defendant. Particulars of fraud against the 8<sup>th</sup> defendant were set out at paragraph 25 of the amended plaint as follows;
  - a. 'Intermeddling with an estate of a deceased person.
  - b. Acting in total disregard of the requirements of chapter 160 of Laws of Kenya.
  - c. Failing, neglecting and or refusing to register restrictions/cautions as requested by the plaintiffs.
  - d. Failing to be diligent whilst dealing with the estate of the deceased person herein.
  - e. Acting in cahoots with defendants Nos 1 – 7 herein.
  - f. Deliberately disregarding the rights and interests of the plaintiffs, more particular the 1<sup>st</sup> plaintiff in view of the provisions of the [Land Registration Act, 2012](#).
  - g. Causing and or allowing an estate of a deceased to be intermeddled with.
  - h. Causing a transfer of an estate of a deceased into the name of a stranger.
  - i. Knowingly failing and or ignoring to be a custodian of people's rights and interests.
  - j. Generally failing to honour his/her obligations.
  - k. Abusing the office of a Land Registrar.
  - l. Acting against the legitimate expectations of the plaintiff and other heirs.
  - m. Aiding and abetting an illegality.
  - n. Causing and or issuing title deeds on the basis of invalid consents and or without consents.
  - o. Generally disregarding the overriding interest of the 1<sup>st</sup> Plaintiff."

It was the plaintiff's case that the 8<sup>th</sup> Defendant was acting in cahoots with the 1<sup>st</sup> to the 7<sup>th</sup> Defendants in fraudulently transferring and subdividing the suit parcel and the subdivisions thereof. DW2, the Land Registrar Iken, told the court that he was not the at that office when the transactions over the suit land herein occurred between 2008



and 2015. He further stated that had the then Land Registrar known of the death of the deceased, the transfer of the suit parcel to the 1<sup>st</sup> Defendant could not have occurred. However, the Plaintiffs averred and testified that the 8<sup>th</sup> Defendant failed to register a caution they had paid for before the filing of the suit. Further, among controversial documents produced in court were the undated consent letter and Land Control Board minutes showing that consent to transfer the suit land was given to two different individuals on the same day. The dates on the minutes and the letter of consents do not also tally. Whereas these inconsistencies could be a reflection of ineptitude and negligence on the part of the Land Registrar, they fall short without more, to amount to fraud on the part of that office. The Plaintiffs have in my considered opinion failed to prove fraud on the part of the 8<sup>th</sup> Defendant.

m. It is trite that costs largely follow the event, unless where for good cause the court directs differently as can be seen from the provisions of section 27 (1) of the *Civil Procedure Act* chapter 21 of Laws of Kenya. That as the Plaintiffs have proved their case against the 1<sup>st</sup> to 6<sup>th</sup> Defendants, they are awarded costs to be borne by the 1<sup>st</sup> to 6<sup>th</sup> Defendants.

1. The court therefore finds and holds that Plaintiffs have proved their case against the 1<sup>st</sup> to the 6<sup>th</sup> defendants. That judgement is hereby entered for the plaintiffs and against the 1<sup>st</sup> to 6<sup>th</sup> defendants severally and jointly, and the court orders as follows;

- a. A declaration be and is hereby issued that the process and or the transactions leading up to, and including the transfer of land parcel number IRONG/SERGOIT/1155 on or about February 27, 2014 from the name Chepyego Kipkorir Sigor, the deceased, to the name of Robert Limo Kipchumba, the 1<sup>st</sup> Defendant, herein was fraudulent and illegal.
- b. A declaration be and is hereby issued that the process and or transactions leading up to, and including the sub-division of land parcel number IRONG/SERGOT/1155, into title numbers IRONG/SERGOT/1577 to 1582, and the closing of title number IRONG/SERGOT/1155 was fraudulent and illegal.
- c. A declaration be and is hereby issued that the process and or transactions leading up to, including the transfer of land reference numbers IRONG/SERGOIT/1577, 1578, 1579, 1581 and 1582 to 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 7<sup>th</sup> defendants respectively, and parcel 1580 to the both the 5<sup>th</sup> and 6<sup>th</sup> defendants were fraudulent or illegal.
- d. An order be and is hereby issued cancelling/revoking the parcel numbers Irong/Sergoit/1577 to 1582 that were subdivided from Irong/Sergoit/1155 in 2014.
- e. An order of the cancellation/revocation of the transfer effected on or about February 27, 2014 over parcel number IRONG/SERGOIT/1155, transferring the said parcel of land into the name of the 1<sup>st</sup> Defendant be and is hereby issued, thereby reverting the



ownership of the said land thereof back to name of the late Chepyego Kipkorkor Sigor, pending the distribution and transmission to its rightful beneficiaries/heirs, in accordance with the provisions of the Law of Succession chapter 160 of the Laws of Kenya.

- f. An order of permanent injunction be and is hereby issued restraining the 1<sup>st</sup> to the 7<sup>th</sup> Defendants, their servants and /or agents from surveying, demarcating, fencing off, alienating/selling and /or doing anything whatsoever howsoever over the said land reference numbers IRONG/SERGOIT/1155 and or the subdivisions thereof, being IRONG/SERGOIT/1577 to 1582 and/or from doing anything that will violate the deceased's estate and or the Plaintiffs' interest and rights over the said parcels of land.
- g. An order be and is hereby issued directing/ordering the 8<sup>th</sup> Defendant and or any other relevant Land Officer to accordingly rectify the registers in respect of title Nos. IRONG/SERGOIT/1577 to 1582 by cancelling and or revoking the said titles and restoring the subdivisions to the original title, to wit IRONG/SERGOIT/1155, in the name of late Chepyego Kipkorkor Sigor, pending the distribution and transmission of the same to its rightful beneficiaries/heirs in accordance with the *Law of Succession Act*.
- h. That in case the 7<sup>th</sup> defendant is possession of any part of the suit land, he is hereby directed to give vacant possession in ninety [90] days and in default, eviction order to issue against him.
- i. The 1<sup>st</sup> to the 6<sup>th</sup> defendants to pay the plaintiffs' costs of the suit.

19 It is so ordered.

**DATED AND VIRTUALLY DELIVERED THIS 22<sup>nd</sup> DAY OF MARCH 2023.**

**S. M. KIBUNJA, J.**

In The Presence Of:

Plaintiffs: Absent

Defendants : Absent

Counsel : Mr Wafula for Plaintiffs. M/s Jeruto for Mwetich for 1<sup>st</sup> to 7<sup>th</sup> Defendants.

Wilson – Court Assistant.

