



**Taki & 35 others v Sururu & 7 others (Environment & Land Case
23 of 2019) [2023] KEELC 16947 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 16947 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 23 OF 2019**

CG MBOGO, J

APRIL 27, 2023

BETWEEN

MOSES TAKI & 35 OTHERS PLAINTIFF

AND

SEMPEWUAN OLE SURURU & 7 OTHERS DEFENDANT

JUDGMENT

1. The plaintiff filed a plaint dated 18th February, 2016 seeking judgment against the defendants jointly and/or severally for: -
 - a. A declaration that the adjudication process, subdivision and allocation of the entire piece of land contained in Entario Adjudication Section (the suit section herein) was fraudulent, illegal and therefore null and void.
 - b. An order directing re-election of new committee members of Entario Adjudication Section.
 - c. An order directing the District Land Registrar-Narok and the District Land Adjudication and Settlement Officer-Narok to rectify the register of Entario Adjudication Section to include all legitimate members, remove all the names of non-members, fresh subdivisions be carried out and title deeds be issued accordingly.
 - d. Costs of this suit.
 - e. Any other relief this honourable court may deem fit to grant.
2. In the plaint, the plaintiffs averred that they were registered members of Enatario Adjudication Section which was declared an Adjudication Section on 9th October, 2009 by the 4th defendant who also appointed the Land Adjudication Committee. The said adjudication section measures approximately 6,400 acres.



3. The plaintiffs further averred that the adjudication section was flawed with corrupt malpractices that were fraudulently conducted by the defendants.
4. The plaintiff pleaded particulars of fraud and illegality on the part of the 1st to 3rd defendants as follows:
 - a. Facilitating irregular subdivision of the suit section.
 - b. Facilitating allocation of larger tracts of land to themselves, their close friends and relatives than those of the plaintiffs.
 - c. Facilitating allocation of land to some children (minors) while leaving others out.
 - d. Facilitating registration of non-members in the register and allocation of land to the same.
 - e. Discriminating against the plaintiffs and members by displacing the original members from their portions of land and replacing them with non-members.
 - f. Failing to take into consideration the interests and rights of persons with disability in the suit section.
 - g. Failing to ensure allocation and/or preservation of land intended for public utilities and instead allocating those areas to individuals.
 - h. Engaging the services of a private surveyor without the consent and/or knowledge of the plaintiffs.
 - i. Failing to facilitate allocation of land to some members of the suit section.
 - j. Holding meetings and passing resolutions without involving the members of the suit section especially the plaintiffs.
 - k. Disregarding the resolutions and grievances of the plaintiffs and/or members.
 - l. Failing to address the objections raised by the plaintiffs and/or members of the suit section.
 - m. Falsifying the records of the suit section.
5. The plaintiff further pleaded particulars of fraud and illegality on the part of the 4th -8th defendants as listed below: -
 - a. Causing irregular subdivision of the suit section.
 - b. Failing to follow due process in allocating parcels of land in the suit section.
 - c. Failing to ensure preservation of public land meant for public utilities.
 - d. Allowing registration of non-members in the register and allocation of land to the same.
 - e. Failing to take into account the interest of plaintiffs and legitimate members.
 - f. Failing to adequately address or at all the complaints and/or grievances of the plaintiffs and the members aggrieved by the actions of the 1st to 3rd defendants.
 - g. Failing to address the objections raised by the plaintiffs and/or members of the suit section.
 - h. Issuing a certificate of finality when objections and appeals had not been fully addressed.
 - i. Issuing a final adjudication register and notice of finality despite the pending appeals.



6. The plaintiffs averred that even after the notice of finality was issued, they kept advocating for their rights and interests in vain and the actions of the defendants have caused unrest and wrangles. Also, that the defendants are in the process of processing title deeds to individuals and if the same is done, great injustices shall be occasioned to the plaintiffs.
7. The 1st, 2nd and 3rd defendants filed their joint statement of defence dated 7th March, 2018.
8. The 1st, 2nd and 3rd defendant averred that the suit section was declared on 9th October, 2009 pursuant to Section 5 of the *Land Adjudication Act* and the 1st defendant guided the committee to perform its functions transparently and in the best interest of the general membership.
9. Further that the committee has discharged its mandate and not engaged in any corrupt deals and that it is dishonest to state that the plaintiffs have not been allocated a share of the group land. That the plaintiffs have been allocated parcels numbers 35, 81, 139, 5, 111, 147, 141, 256, 130, 138, 158, 142, 154, 252, 74, 161, 82, 96, 159, 132, 160, 42, 261, 258, 166 and 116 respectively.
10. The 1st, 2nd and 3rd defendants further averred that upon successful completion of the mutation, the register was displayed for the duration provided for by the law and that the stage where any person was aggrieved had an opportunity to file an objection has long lapsed as the register is closed.
11. Further that the plaintiffs did not raise any objection and if they did, there concerns were fully addressed. Also, that members were issued with individual title deeds including the plaintiffs who cannot claim to have been disinherited.
12. The 1st, 2nd and 3rd defendants denied the particulars of illegalities. Also, that the male children of the respective members were allocated land through their principal member for distribution.
13. Further, that the share allocated to each individual member was approved by the entire membership of the demarcation committee pursuant to the resolution passed in the year 2011.
14. In addition, that the adjudication record for the section was published on 9th February, 2012 and was open for inspection. That a total of 116 of objections were filed with the Land Adjudication Officer and as such the plaintiffs are feigning ignorance to perpetuate their selfish interest to impede the exercise.
15. The plaintiffs filed a reply to defence dated 9th April, 2018. While reiterating the contents of their plaint, the plaintiffs denied that the 1st, 2nd and 3rd defendants discharged their mandate transparently and that their grievances were addressed.
16. The plaintiffs' case proceeded *de novo* on 4th October, 2022.
17. The 1st plaintiff while adopting his witness statement dated 18th February, 2016, testified that he resides in the adjudication section which was declared on 9th October, 2009 of which he is a member, registered as number 69 in the register. That the Land Adjudication Committee was appointed by the Land Adjudication and Settlement Officer in consultation with the members of the adjudication section.
18. The 1st plaintiff testified that the adjudication process began in the year 2010 and that the adjudication committee did not invite members to a meeting to give their input on how the land was to be subdivided but were surprised to learn later that the committee had brought a private surveyor. Further, that some members were allocated larger portions of land than others while public spaces were grabbed and non-members allocated land. Also, that there was also displacement of some members and on 21st February, 2011 he complained to the Land Adjudication Officer in the company of the area Councillor.
19. The 1st plaintiff further testified that upon receiving his complaint, the Land Adjudication Officer wrote to the Land Adjudication Committee and directed that a meeting be held on 1st March, 2011.



- That indeed a meeting was held on the said date but he was not satisfied with the deliberations but before the date of the meeting, he wrote a letter to the Director of Land Adjudication and Settlement pointing out the issues of discrimination in allocation of land amongst others.
20. That the Director of Land Adjudication and Settlement responded to his letter by writing to the Land Adjudication and Settlement Officer on 18th August, 2011 the same was copied to him. In the letter, the 1st plaintiff testified that the Director of Land Adjudication and Settlement Officer directed that the issues they had raised in their complaint be addressed. The 1st plaintiff further testified that the secretary of the adjudication committee also wrote to the District Land Adjudication and Settlement Officer on 29th August, 2011 and 9th September, 2011 complaining of the malpractices of the committee.
 21. The 1st plaintiff further testified that the said secretary of the Adjudication Committee further wrote another letter dated 24th November, 2011 to the Maasai Council of Elders over the malpractices whereupon the Maasai Council of Elders responded by writing to the Minister of Lands vide a letter dated 28th November, 2011.
 22. It was the 1st plaintiff's evidence that their complaints were not addressed by the respective government officers and that later, they received a report that the adjudication process was complete vide a copy of the notice dated 9th February, 2012. Indeed, the 1st plaintiff lodged an objection within the 60 days period and the same was heard by the District Land Adjudication and Settlement Officer after which it was dismissed. That he appealed to the Minister and that the District Officer, with the assistance of the chiefs, sat on 13th February, 2013 to hear and determine his appeal. That his complaint was that his rightful parcel of land was number 207 but instead, he was directed to move to parcel number 166 which was smaller than what he was entitled to. That, he had been allocated 9 acres by the committee but the District Officer directed that he be allocated 15 acres as the area was rocky.
 23. From the decision of the Minister, the 1st plaintiff testified that he was not satisfied as the Adjudication Committee did not comply with the Minister's order. That, he later got a certificate of finality-PEX No 15 dated 12th February, 2014 during this time, not all the appeals had been determined. Further, that the certificate of finality was accompanied by a register of members and the acreage of their parcels of land and a register of the members which is PEX No 16 and 17 respectively.
 24. The 1st plaintiff further testified that he was dissatisfied with the developments forcing him to complain to the Chairman of the National Land Commission vide a letter dated 20th February, 2014. Further, that the National Land Commission wrote a letter to the Director of Land Adjudication and Settlement directing to be issued with the objections letters and recommendations before closing of the section amongst others.
 25. As such, his complaint was not addressed as the Director of Land Adjudication and Settlement responded in a letter dated 25th March, 2014 by saying that the register was complete even though there were pending objections and up to the date of filing the suit, he was yet to get assistance which forced him to come to court.
 26. That as against the 1st to 3rd defendants, they committed several malpractices which he had earlier on complained as they were members of the adjudication committee. With respect to the 4th to 8th defendant, the 1st plaintiff testified that they are government officers who failed to address their complaints. That before he sued the Attorney General, he wrote a notice of intention to sue dated 29th July, 2015-PEX No 20.
 27. It was the plaintiff's testimony that he was denied 24 acres and allocated 9 acres. That Pemba Marima was entitled to 40 acres but was allocated 14 acres and while his parcel of land was to be 227, he was



- allocated parcel number 111. That Kaitet Ole Surum was moved from his 24 acres of land in parcel number 59 to parcel number 116 which is 10 acres. That Kashu Ole Dapash was displaced from parcel number 229 which is 24 acres and allocated parcel number 251. That Luka Punyua was displaced from parcel number 183 which is 25 acres to parcel number 236 which is 15 acres.
28. Further, that Supet Kaika was displaced from plot number 250 as part of his land was allocated to someone else leaving him with 12 acres.
 29. The 1st plaintiff also testified that there were members who were not included in the register who include Kasino Ole Kiu, Molai Ole Karia, Kokai Esho, Nkuteti Ole Karia, Rueti Ole Kiu and many others.
 30. The 1st plaintiff further testified that he also complained of non-members who were allocated large parcels of land and who include Allan Ntimama who was allocated 24 acres, Kipas Ole Esho who got 24 acres, Kuntai Esho who got 24 acres, Maripel Ole Ngoshesh who got 24 acres, Emmanuel Partoip who was allocated 14 acres, Ngolia Taki who was allocated 14 acres, Tom Sururu who got 24 acres and who do not reside in the area. Also that children of the committee members were also allocated land and they include Kitoyian Keriamuny who was allocated plot number 118 measuring 10 acres, Deresh Ole Sato who was allocated parcel number 90 measuring 14 acres, Tianta Surum who got plot number 102 with 9 acres, Dupoi Ole Ntimama who got 14 acres from plot number 128.
 31. The 1st plaintiff further testified that there were also children of the committee members who were minors at the time of the allocation of land while some got 30 acres, others 40 acres some 24 and 3 acres. Further, that the public utility land that was grabbed include plot number 261 which had been set apart for cattle dip was allocated to two persons. Also, that plot number 265 was allocated to private individuals.
 32. The 1st plaintiff proceeded for cross examination on 19th October, 2022. The 1st plaintiff testified that he is a member of the group ranch and he read the notice which showed that no court shall hear a suit from the adjudication process until the same has become final without the consent of the adjudication officer. The 1st plaintiff admitted that he did not obtain consent from the adjudication officer to file this suit.
 33. Further that whereas the committee had 25 members, he sued the three members because they were the leaders i.e. chairman, vice chairman and one member and by suing them, he has sued all the other committee members. Further, that the register was not published and they only learnt of the completion of the register from the lands office.
 34. The 1st plaintiff admitted that there were 116 objections and members were given 60 days to lodge their complaints and that the said notice was for inspection of the register which is dated 9th April, 2012. He also admitted that he attached 116 objections including his which was heard and dismissed with respect to parcel number 207. He testified that with respect to his appeal, the Minister directed that the boundary of the land that he had been allocated been straightened. That the appeal was with respect to the parcel of land that he had been allocated. He further testified that the committee declined to follow the Minister's decision forcing him to come to court. Also, that he has not moved out of the land as directed.
 35. The 1st plaintiff further agreed that there were members who filed Judicial Review applications against the Minister and include one Supeto Ole Kaika. Further, that there was a certificate of finality, (PEX. No 14) which followed the issuance of title deeds. He further testified that he does not know how many title deeds were issued but upon being shown the copies of title deeds, he agreed that title deeds



- were issued and he left it with his advocate to decide whether they would challenge the title deeds that were issued.
36. He further admitted that only 21 appeals were lodged to the Minister and whose minutes were recorded. Further, that it is the Land Adjudication Officer who records the minutes at the objection stage whereas the Minister records the minutes at the appeals stage and that the defendants do not keep the minutes.
 37. The 1st plaintiff further admitted that he objected to non-members being issued with parcels of land as he had indicated in his letter. However, he has not sued the non-members in the suit. With regard to the children who were allocated land, the same is contained in his letter but he informed the court that he has never seen the register but only saw it in court, when the court ordered for the same to be availed to them. He also admitted that he filed this case before he accessed the register. As per the register of members PEX No 2, the 1st plaintiff testified that one Kipas Ole Esho is not a defendant in this case and instead, it is the Chairman who should represent their interest. Also, that he did not sue the National Land Commission because it assisted him get the information.
 38. On re-examination, the 1st plaintiff testified that he was only required to seek consent from the Land Adjudication Officer to file suit only if the register was not complete. Also, that it is the National Land Commission and the court that assisted the plaintiffs to access the register but also he is yet to get his title deed. That when he tried to get the same, it was not produced as the certificate of finality shows that it was subject to outstanding appeals. Further, that no title deeds could be issued until the appeals are finalized.
 39. The 1st plaintiff further testified that no title deeds had been issued by the time they filed this suit as the current case concerns the process of adjudication in which the committee members aided non-members and children to acquire land. That he did not sue non-members, instead, he wrote a letter to the relevant government offices to complain about the process.
 40. Johnson Siapara Ole Karia (PW1) while adopting his undated written statement filed in court on 7th March, 2018 testified that he was a member of the Land Adjudication Committee as indicated in number 15 of PEX. No 2.
 41. PW1 testified that the adjudication process started off well but later it did not go on as required for the reasons that there were displacements of people from where they had settled, non-members were allocated land, land was not allocated equally and children were allocated 9 acres which was against what they had agreed. On his part, he was allocated 30 acres while the 1st plaintiff was allocated 9 acres instead of 24 acres.
 42. On cross examination, PW1 testified that he ceased being a member of the Adjudication Committee in 2012 but did not officially resign from the committee. He agreed that as a committee, they conducted their work in accordance with the law and the adjudication process went on up to finality. He also agreed that there was a window period for lodging complaints and the number of complaints lodged were 116. Further, that those who did not lodge objections were satisfied with the process. He also agreed that the Surveyor had done the mutation of the land by the time of lodging the objections.
 43. Further that they had agreed that there should be minimum displacement of the members which is contained in the minutes of the secretary but does not have the resolution that provides for such. He further testified that he does not have any resolution of the committee to show that committee members were to get 30 acres and members were to get 24 acres. He also did not indicate the names of the committee members who approached the Surveyor in order to be allocated larger portions. He



- did not indicate the sizes of the parcels of land that they got from the Surveyors. Also, that he did not lodge any objections as he was satisfied with the register.
44. PW1 further testified that he was allocated parcel number 13 which he acquired procedurally towards the closure of the process and there is no dispute over his parcel of land. Also that he has a title deed which he has not collected. He further testified that he ceased being an active member.
 45. On re-examination, PW1 testified that he has not resigned as a committee member and has no reason to lie to the court. Also, that he was satisfied with the land that he got although he is yet to collect his title deed but there are other members who were discriminated against.
 46. Matayian Ene Sururu, the 20th plaintiff, while adopting her witness statement dated 6th March, 2018, testified that she is also known as Nailito ene Kiu and she is a member of the adjudication section. The 20th plaintiff testified that her boma which was in the 20 acres where she had resided for 20 ½ years together with her children was demolished.
 47. The 20th plaintiff further testified that she heard that she was allocated land which is by the river and measures 19 acres while the one she occupies is 24 acres. Further, that she was moved from her land which is in a good area and someone else allocated her land, and as such, she has been discriminated against. She further testified that her children had already undergone circumcision at the time of the adjudication but they were not allocated land. That Rokonka Ole Esho was allocated her land and whereas his father is a committee member, he is not a member of the adjudication section.
 48. On cross-examination, the 20th plaintiff testified that whereas she is a member of the adjudication section, she does not know her membership number in the register but has lived on the land in question for over 20 ½ years. She further testified that Rokonka Ole Esho is not a member of the adjudication section which is evidenced by the presence of the names in the adjudication register. On being shown the register, the 20th plaintiff confirmed that Rokonka is a member of the adjudication section as member 132 but she is not aware that she was allocated parcel number 60. Further, that she does not know her parcel number and neither does she know the parcel of the land where she lives. She further testified that she raised an objection to the allocation of her land to Rokonka but she does not know the objection proceedings number. She insisted that she raised an objection and her name is Nailito Ene Kiu but her national identity card shows that her name is Matayia Ene Sururu which is not in the register. She also informed the court that her name is also Naitaloi Ene Kiu and that she had an affidavit to show that the two names refer to her. Also, that she is aware that her objection was dismissed and that she appealed to the Minister and she won the said appeal whose proceedings are with the District Officer.
 49. The 20th plaintiff further testified that she does not know how to read and write and that she did not sign her witness statement.
 50. On re-examination, the 20th plaintiff testified that she recorded a statement in an advocate's officer which bears her signature. Also that she was confused when she told the court that she did not sign any statements. She further testified that Nailaloi Ene Kiu is also her name and that she is occupation of the land that is being claimed by Rokonka.
 51. She further informed the court that she filed an objection against Rokonka and also an appeal to the Minister which appeal was dismissed. Also, that the Minister retained the proceedings of the appeal which again she re-appealed. That indeed her name is in the area list and she is court because she was displaced.



52. The defendant's case proceeded for hearing on 16th November, 2022. Sempewuan Ole Sururu, the 1st defendant herein while adopting his witness statement dated 7th March, 2018, testified that he is the chairman of Enatario-Olkiteng Group Ranch and performed his duties as per the letters of appointment in PEX. No3. Further, that he took over the position of Chairman before the Group Ranch was sub divided after which they conducted subdivision as was required of them. He said that they were 25 committee members and they advised whoever was not satisfied with the subdivision of the land to appeal to the Ministry of Lands.
53. The 1st defendant further testified that they prepared the area list and members register and displayed the register as required which is contained in PEX No2. He further testified that they carried out the subdivision under the supervision of the District Land Adjudication and Settlement Officer and there were no complaints that were lodged after they displayed the register. He remembered that there were people who were not satisfied with the subdivision and they advised them to file objections which were heard and determined by the Land Adjudication Officer.
54. Further, that the District Land Adjudication and Settlement Officer advised those who were dissatisfied to appeal to the Minister. He further informed the court that no one lodged an appeal over the parcel of land that was allocated to him. The 1st defendant admitted to know the 1st plaintiff whom he said, was allocated land but objected to the land that had been allocated to his brother which he lost.
55. The 1st defendant further testified that he knows Nateloi Kiu who was also allocated land but she does not know Matayian Ene Sururu as she was not in the register. Further, that the exercise was declared complete and members were issued with title deeds by the National Land Commission, the area Member of Parliament and the District Commissioner as well as other Government Officers. As it is the Group Ranch does not exist. Also, he denied knowing Johnson Ole Karia but admitted to knowing Johnson Shapara who was one of the members of the committee.
56. On cross examination, the 1st defendant testified that he was in charge of the preparation of the area list and he can recall that there were 280 members of the Group Ranch and which information was provided by the members of the committee who tallied the numbers of the members. Also, that there were a few children in the register whom he referred to as the ones who had undergone circumcision. Further, that women were not included in the register. The 1st defendant further testified that they had a Surveyor whom they informed as to the acreage of what each member was to get which was 24 acres and which each member was allocated.
57. He further informed the court that acceptees and invitees got lesser acreages than the members. That in his case, he was allocated 30 acres of parcel number 221 alongside other committee members. Further, that he does not remember the parcel number allocated to the 1st plaintiff but he recalls that it could be measuring 9 or 10 acres as he was an invitee. Also that he was included in the register after the members had been allocated land. The 1st defendant informed the court that it may be possible that they have not produced the letter that had the names of invitees. He also agreed that there were no young children who were allocated land.
58. With regard to Kitoyian Ole Kiriamuny, the 1st defendant stated that he did not know how old he was but had already undergone circumcision when he was allocated land. Also, that it is not true that the children of the members of the committee were the only ones who were allocated land. It was also his testimony that they set aside land for public utilities and they did not allocate land meant for a public cattle dip to private individuals. Also, that they no longer have a cattle dip as they did away with it. Further, that it is not true that non- members were allocated land. That Tom Sururu does not reside in the area although he had a house in the area. That Kuntai Ole Esho's father was a member of the



- Group Ranch and that is why he was allocated land. Also, that he does not know of members who were allocated more than one parcel of land.
59. The 1st defendant further testified that Ole Marima was not allocated parcel number 11 and 15 but that he was to subdivide his land to his sons and that if at all his name is in the register, then the same was a mistake. Also that Moriasi Ole Sururu has parcel number 278 and that parcel number 275 belongs to his son. Further that it is not true that a member received more than one parcel of land and in the event they found such a case, they would ask one person to move out if more than one family resided in one place so that they could get land elsewhere.
60. That Daniel and Kuntai Taki were sharing the same parcel of land but Daniel moved to his own parcel of land whereupon the plaintiff moved into his land where Daniel had been allocated. With respect to Nailatoi Ene Kiu, the 1st defendant testified that they moved her to some other parcel of land as the land she was occupying belonged to Rokonka Ole Esho. Further, that the said Rokonka Ole Esho does not reside on the parcel of land that was allocated to him.
61. The 1st defendant further testified that William Kakai resigned as a secretary of the committee and that it is not true that they subdivided the land against the law. That those whose land did not have a dispute were allocated title deeds and there was no appeal concerning parcel number 60 by the time the title deed for the said parcel of land was issued.
62. On re-examination, the 1st defendant testified that he was not shown the title deed for Rokonka Ole Esho as there was dispute between him and Naitaloi Ene Kiu. Further that Naitaloi Ene Kiu lost the appeal. The 1st defendant also informed the court that he had not been shown any documents for the cattle dip. Also, that the plaintiff filed an objection against parcel number 207 belonging to Kuntai.
63. The plaintiffs filed written submissions 21st February, 2023. The plaintiffs raised three issues for determination as listed herein below:-
1. Whether the adjudication process, allocation and subdivision of Enatario Olkiteng Section was marred with irregularities, illegalities and fraudulent dealings.
 2. Can the title deeds alleged to have been issued be cancelled.
 3. Whether the plaintiffs are entitled to the prayers sought.
64. On the first issue, the plaintiffs submitted that Article 27 (1) of the [Constitution](#) provides for equality and freedom from discrimination and that by discriminating against the members in allocation of land, the defendants acted in contravention of the [Constitution](#) and as such promoted illegality. The plaintiffs further submitted that the actions of allocating land to non-members who were not part of Enatario Olkiteng Section, allocating land set aside for public utilities to individuals were actions done to deprive the members of public utilities and deprive some members their portions of land in favour of non-members which are acts of fraud.
65. The plaintiffs also submitted that Section 27 of the [Land Adjudication Act](#) provides that the Adjudication Officer can forward the register to the Director of Land Adjudication and Settlement upon finalization of objections and appeals, if any, but in this case, the register was forwarded to the Chief Registrar vide a letter dated 19th February, 2014 before finalisation of some of the appeals to the Minister. The plaintiffs submitted that this was an outright abuse of the provisions of Section 27 of the [Land Adjudication Act](#) therefore it was unprocedural.



66. The plaintiffs submitted that the 1st to 4th defendants who were charged with conducting the adjudication process did not do so and that the process was marred with irregularities, illegalities and fraud.
67. On the second issue, the plaintiffs submitted that having established that there were illegalities and irregularities in the adjudication process, the title deeds can be challenged or impeached under the circumstances of fraud, misrepresentation, illegality or acquiring title through a corrupt scheme. The plaintiff relied on the case of *Alice Chemutai Too v Nickson Kipkurui Korir & 2 others* [2015] eKLR.
68. On the third issue, the plaintiffs submitted that having established the illegalities, irregularities and fraudulent dealings that were undertaken by the defendants in the adjudication process, it goes without saying that such deeds no matter the extent ought not to be tolerated. The plaintiffs relied on the case of *Raila Amolo Odinga & another v The Independent Electoral and Boundaries Commission & 2 others*, Election Petition 1 of 2017.
69. The 1st, 2nd and 3rd defendants filed written submissions dated 28th February, 2022 and filed in court on 20th April, 2022. They raised three issues for determination as listed below:-
1. Whether the plaintiffs had exhausted the dispute resolution mechanism under the *Land Adjudication Act* and/or whether the court had the jurisdiction to sustain the plaintiffs' suit.
 2. Whether fraud has been sufficiently proved.
 3. Whether the plaintiffs have proved their case on a balance of probabilities and whether they are entitled to the reliefs sought.
70. On the first issue, the 1st, 2nd and 3rd defendants submitted that the process of ascertainment of rights under the *Land Adjudication Act* is concluded when the finalized adjudication register is handed over to the Chief Land Registrar by the Director of Land Adjudication under Sections 27 and 28 of the Act for the ascertained interests to be registered. They submitted that upon successful completion of the mutation of the Land Adjudication Officer (sic), the register was displayed for 60 days' inspection to give everyone concerned an opportunity to challenge any entry, omission or anomaly. The 1st, 2nd and 3rd defendants submitted that the procedure in addressing claims under the *Land Adjudication Act* was followed and that one cannot re-open an adjudication process that has been completed. They relied on the case of *Speaker of National Assembly v Karume* (1992) KLR 21 and Nyeri Civil Appeal 340 of 2002, *Julia Kaburia v Kabeera & 5 others*.
71. The 1st, 2nd and 3rd defendants further submitted that this court can only interfere with the decision of the bodies established under the *Land Adjudication Act* by way of judicial review proceedings and the plaintiffs having failed to exhaust the remedies laid down in the *Land Adjudication Act*, are estopped from pursuing any perceived interest in the suit land through this case. Reliance was placed in the cases of *Lepore Ole Maito v Letwat Kortom & 2 others* [2016] eKLR, Environment and Land Case 249 of 2013 *Peter Tomito & 2 others v Korinko N. Nkoilai & 12 others* [2018] eKLR and *Jimmy Parnyumba Luka & 3 others v Chairman Land Adjudication Committee Lesbuta Land Adjudication Section & 6 others* [2021] eKLR.
72. On the second issue, the 1st, 2nd and 3rd defendants submitted that the adjudication process was done openly, fairly and all rules of natural justice were observed. Also, that it is a legal requirement and a rule of practice that where fraud or misrepresentation is alleged the particulars of the fraud or misrepresentation must be specifically pleaded and set out so that the defendant is clear as to the case he is required to answer. The 1st, 2nd and 3rd defendants relied on the cases of *Ochieng Sese v John Ocharo* [2005] eKLR, *Kampala Bottles Limited v Damanico (U) Limited* quoted in *John Mbugua Gitau v*



- Simon Parkoyiet Mokare & 6 others* [2014] eKLR, *Merin Ole Tuyoto & 124 others v Chairman Limanet Group Ranch Committee & 3 others* [2021] eKLR and *Central Bank of Kenya Limited v Trust Bank Limited & another*, Nairobi Civil Appeal No 215 of 1996. They further submitted that the acts of fraud as claimed by the plaintiffs were perpetuated and convened between the 1st and 2nd defendant who failed to prevent the said fraud save for the mere allegations, and for this reason, the plaintiffs have not sufficiently proved the particulars of the alleged fraud to the required standards.
73. On the third issue, the 1st, 2nd and 3rd defendants submitted that the plaintiffs have not shown evidence of any person who was allocated land and was neither a member nor a purchaser and/or family member allocated land pursuant to the subdivision of the land. The 1st, 2nd and 3rd defendants further submitted that the area list of the group ranch shows that every member was given a share of the land. Reliance was placed on the case of *Peter Tomito & 2 others v Korinko N. Nkoliai & 12 others* [2018] eKLR.
74. I have considered the pleadings, the evidence and the written submissions filed by the plaintiffs and the 1st, 2nd to the 3rd defendants and in my view the issues for determination are:-
- i. Whether fraud was proved; and
 - ii. Whether the plaintiffs are entitled to the reliefs sought.
75. The *Land Adjudication Act*, Cap 284 is described in its preamble as “An Act of Parliament to provide for the ascertainment and recording of rights and interests in community land, and for purposes connected therewith and purposes incidental thereto.” The purpose of the Act is to ensure that rights and interests in land are ascertained. The Act expressly deals with community land where ownership of land is realized through the adjudication process.
76. The *Land Adjudication Act* further provides for the realization of such interest and rights in land beginning with the declaration of an area as an adjudication section, formulation of the committee, their roles and functions and a detailed dispute resolution mechanism from the time of inception of claims to the final determination by the Minister under Section 29.
77. The dispute resolution mechanism is supposed to deliver constitutional protection and just determination of rights. It was the plaintiffs’ case that the adjudication process in Enatario Adjudication Section was marred with irregularities, illegalities and fraudulent dealings. The explanation given was that committee members allocated themselves larger portions, the committee members allocated their children portions of land whereas they were not members of the adjudication section, some members were left out, there was allocation of land to non-members, displacements and land set aside for public utility allocated to individuals.
78. It was the evidence of the 1st plaintiff that in his case, he was denied his 24 acres and instead, he was allocated 9 acres. Pemba Marima was entitled to 40 acres and which parcel of land was supposed to be 227 and allocated 14 acres in parcel number 111. That Kaitet Ole Surum was moved from parcel number 59 which was 24 acres to parcel number 116 which was 10 acres. That Kashu Ole Dapash was displaced from parcel number 229 which was 24 acres and allocated parcel number 251. That Luka Punyua was displaced from parcel number 183 which was 25 acres and allocated parcel number 136 which is 15 acres. Supet Kaika was displaced from parcel number 250 with part of land being allocated to someone else and was left with 12 acres.
79. A look at the certified copy of the adjudication register of Enatario Olkiteng Adjudication Section, PEX No 16 shows that the section has 282 members. The land is not allocated in equal shares and therefore, members were allocated land in hectares in different measurements. With regard to Pemba Marima, he appears on the list having been allocated parcel number 111 measuring approximately 5.77



hectares. Kaitet Ole Sururu was allocated parcel number 116 which is 4.06 hectares. Kashu Ole Dapash was allocated parcel number 251 which was 7.94 hectares. That Luka Punyua was allocated parcel number 136 which is 6.07 hectares. Supet Ole Raurau appears to have been allocated parcel number 250 which is 4.8 hectares.

80. It was upon the 1st plaintiff to prove that those displaced or aggrieved by the process filed objections to have their disputes heard and determined. I have perused the objection list produced by the plaintiff as PEX No 13 and I note that Pemba Marima's objection with regard to parcel number 227 was dismissed. Kaitet Ole Sururu objection was dismissed with respect to parcel number 59. Kashu Ole Dapash objection was dismissed with respect to parcel number 229. With regard to parcel number 183, the objector's name appears to be Kilelu Ole Punyua whose objection was dismissed.
81. Section 29 of the *Land Adjudication Act* provides that;
- “(1) Any person who is aggrieved by the determination of an objection under section 26 (1) & (2) of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by—
- (a) delivering to the Minister an appeal in writing specifying the grounds of appeal; and
- (b) sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.
- (2) The Minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar”.
82. In this case, the persons whose names appear in paragraph 79 above if dissatisfied with the decision of the Land Adjudication Officer, ought then to have filed an appeal to the Minister through the procedure set out above. In this regard, 21 appeals were filed and appeals with respect to parcels numbers 227, 59, 229 and 183 were pending before the Minister vide letter dated 25th March, 2014 (PEX No 19). However, the plaintiffs have not availed evidence of the decisions by the Minister touching on their respective appeals. The plaintiffs on this ground alone overlooked the statutory jurisdiction of the Minister outlined in Section 29 of the *Land Adjudication Act*.
83. It was also the plaintiffs case that there were members of the adjudication section who were not included in the register. The 1st plaintiff listed the names of Kasino Ole Kiu, Molai Ole Karia, Kokai Esho, Nkuteti Ole Karia, Rueti Ole Kiu among others. For a person to claim that he was not included in the adjudication register, there was need to show that first and foremost, they are members of the adjudication section by availing the area list. The register of members produced by the 1st plaintiff as PEX No 2 is not dated, does not bear the stamp or the signature of the respective officer of the department of the Land Adjudication and Settlement Office. In other words, this court is unable to verify that indeed the names contained in the list are all the members of the adjudication section.
84. Enatario Adjudication Section was established as an adjudication section on 9th October, 2009. It followed thereafter that anyone claiming interest in land within this section was to comply with the provisions set out under the *Land Adjudication Act*. The demarcation officer was pursuant to Section 15 (a) demarcate the boundaries of each separate parcel of land. This in my view, would only be achieved if the person claiming ownership of land would be physically present when the said officer was performing this duty to enable such a person have his property recorded in the register. Again, no



- evidence has been tendered to show that these persons were left out, they filed a complaint, and their complaint was not addressed.
85. The plaintiffs also testified that non-members were allocated large portions of land but that they did not sue them. On this issue, I see no purpose why the plaintiffs would claim against these said non-members and fail to enjoin them as defendants. This court cannot condemn unheard persons who have not been given an opportunity to address claims levelled against them.
86. The plaintiffs also claimed that children of committee members were allocated land. Again, the plaintiffs have not presented evidence before this court to show that a particular person was a child of a committee member and was allocated a larger parcel of land than the members.
87. As per the plaint, the 20th plaintiff in this case was Naitetoi Ene Kiu, however during the hearing Matayian Ene Sururu informed the court that she is also known as Naitetoi Ene Kiu. During cross examination, she insisted that her name is Naitetoi Ene Kiu. On production of her national ID, the same bears the names of Matayian Ene Sururu. According to the register, the said Matayian Ene Sururu's name is not included. She informed the court that she has an affidavit to show that all the names refer to her. However, this said affidavit was not produced. Interestingly, she did not seem to know details of her membership number, objection proceedings, that Rokonka was allocated parcel number 60, and she did not know the parcel number of the land where she lives. Also, that she won her appeal before the Minister but did not have the proceedings before the Minister. The identity of the 20th plaintiff is in question. Without any other document to show that Matayian Ene Sururu and Naitetoi Ene Kiu are one and the same person, the evidence of the said 20th plaintiff is not credible and cannot be considered.
88. With respect to the 1st plaintiff himself, he filed an objection on claims that he was allocated parcel number 166 which is a small portion of land, not arable for farming and which is far from where he has constructed his house. The committee allocated him the same parcel of land but increased the acreage to 13.7 acres. He appears to have been satisfied with this outcome. As for parcel number 207, it was his evidence that he filed an appeal to the Minister. Again, no evidence of the outcome of the decision by the Minister has been produced.
89. The question then, is, was there fraud in the adjudication process? On this issue, I am guided by the Court of Appeal in the case of *Kuria Kiarie & 2 others v Sammy Magera* [2018] eKLR where it was held:
- “The next and only other issue is fraud. The law is clear and we take it from the case of *Vijay Morjaria v 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.” [Emphasis added].
90. The same procedure goes for allegations of illegality. (See Order 2 Rule 4 of the *Civil Procedure Rules*). In cases where fraud is alleged, it is not enough to simply infer fraud from the facts. In my view, the plaintiffs have not sufficiently proved fraud as required as their claims to a large extent remain unsubstantiated. In fact, there were no minutes produced of the general membership proposing that



each member of the adjudication section was entitled to 24 acres of land, that there was land set aside for public utility and the names of children who had not attained the age of 18 years. There was no list of the members, either original inhabitants of the land, those invited and those who applied to enable this court ascertain what each member was entitled to.

91. More importantly, the plaintiffs by passed and ignored the provisions of the *Land Adjudication Act* to finality. I say finality because they failed to adduce evidence of their respective outcomes of the appeals to the Minister and ultimately failed to invoke the necessary process where dissatisfied with the decision of the Minister. Even if the plaintiffs supplied this court with the final determination of the Minister regarding their respective appeals, this court would not be in a position to hear and determine their claims reason being that there exist a proper channel through which such claims could be entertained. In this case, judicial review proceedings would suffice.
92. My reasoning above answers issue number (ii). In the absence of all that I have stated above, this court sees no reason whatsoever to cancel the title deeds so far issued to individuals who have acquired their rights and interests over land by due process. Suffice it to say, the plaintiffs have not satisfied this court that on a balance of probabilities, they have a cause of action against the defendants.
93. As such, the plaint dated 18th February, 2016 is dismissed. The order issued on 22nd March, 2022 is hereby vacated. Each party to bear its own costs.

It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 27TH DAY OF APRIL, 2023.

MBOGO C.G.

JUDGE

27/4/2023.

In the presence of:-

CA: Chuma

