



**Cheptakum Kipsigis Farmers Limited v Attorney General & 121 others (Environment & Land Case 360 of 2013) [2023] KEELC 17653 (KLR) (25 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17653 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 360 OF 2013  
FM NJOROGE, J  
MAY 25, 2023**

**BETWEEN**

**CHEPTAKUM KIPSIGIS FARMERS LIMITED ..... PLAINTIFF**

**AND**

**THE ATTORNEY GENERAL ..... 1<sup>ST</sup> DEFENDANT**  
**REGISTRAR OF TITLES ..... 2<sup>ND</sup> DEFENDANT**  
**DISTRICT LAND REGISTRAR, NAKURU ..... 3<sup>RD</sup> DEFENDANT**  
**NATIONAL LAND COMMISSION ..... 4<sup>TH</sup> DEFENDANT**  
**REPRESENTATIVE OF KIPSOI A. TANUI ..... 5<sup>TH</sup> DEFENDANT**  
**GRACE MUKEIRA MARANYA ..... 6<sup>TH</sup> DEFENDANT**  
**DANIEL MOSOTI OSORO ..... 7<sup>TH</sup> DEFENDANT**  
**RICHARD NDUNGU MAINA ..... 8<sup>TH</sup> DEFENDANT**  
**TOME MERABA TONGI ..... 9<sup>TH</sup> DEFENDANT**  
**ERANCIS MANYIBE TONGI ..... 10<sup>TH</sup> DEFENDANT**  
**GEORGE NDUNGU MAINA ..... 11<sup>TH</sup> DEFENDANT**  
**PETER NGIGI NJIRANI ..... 12<sup>TH</sup> DEFENDANT**  
**JOSEPH THIONGO THUGU ..... 13<sup>TH</sup> DEFENDANT**  
**KIPSOI ARAP CHEPKOIMET ..... 14<sup>TH</sup> DEFENDANT**  
**CHEPKWONY A MIBEI ..... 15<sup>TH</sup> DEFENDANT**  
**JOSHUA ONONDO MORACHA ..... 16<sup>TH</sup> DEFENDANT**  
**NYABETA GESARE MOMANYI ..... 17<sup>TH</sup> DEFENDANT**



FRANCIS MAINA MWANGI .....	18 <sup>TH</sup> DEFENDANT
ANDREW MAKORI ONGOU .....	19 <sup>TH</sup> DEFENDANT
WILSON ONSAKIA GITAMO .....	20 <sup>TH</sup> DEFENDANT
FRANCIS OMWOYO OMWOYO .....	21 <sup>ST</sup> DEFENDANT
KIPLANGAT MISOI .....	22 <sup>ND</sup> DEFENDANT
DAVID OMWERI ONSARE .....	23 <sup>RD</sup> DEFENDANT
TAPRANDICH CHEMALI KORIRI .....	24 <sup>TH</sup> DEFENDANT
LUCY WANGARI MUCHIRI .....	25 <sup>TH</sup> DEFENDANT
CHARLES OBENGA NYAKUNDI .....	26 <sup>TH</sup> DEFENDANT
DAVID ONKANGA ONCHIRI .....	27 <sup>TH</sup> DEFENDANT
RICHARD GWARO MORACHA .....	28 <sup>TH</sup> DEFENDANT
JAPHANISON KARAGU GACHAGUA .....	29 <sup>TH</sup> DEFENDANT
KIPSOLA TANUI .....	30 <sup>TH</sup> DEFENDANT
KIPSOI CHEPKWONY .....	31 <sup>ST</sup> DEFENDANT
MALAKWEN ARAP CHEPOCHOK .....	32 <sup>ND</sup> DEFENDANT
JOHN TITUS N. WAIGWA .....	33 <sup>RD</sup> DEFENDANT
BARNABS ONKOBA OSIMBA .....	34 <sup>TH</sup> DEFENDANT
WILSON SIMBA MAMBA .....	35 <sup>TH</sup> DEFENDANT
WANGUI GITONGA .....	36 <sup>TH</sup> DEFENDANT
SAMUWEL DOUGLAS KIPKERICK A CHERUIYOT .....	37 <sup>TH</sup> DEFENDANT
MWANGI NJOROGE .....	38 <sup>TH</sup> DEFENDANT
MARY MORAA ONWONGA .....	39 <sup>TH</sup> DEFENDANT
MECHACK MATOKE BORAYA .....	40 <sup>TH</sup> DEFENDANT
BEGI OKINDO .....	41 <sup>ST</sup> DEFENDANT
SAMUEL KIPRONO ROTICH .....	42 <sup>ND</sup> DEFENDANT
STEPHEN LANGAT .....	43 <sup>RD</sup> DEFENDANT
JOSEPH KIBET LANGAT .....	44 <sup>TH</sup> DEFENDANT
FRANCIS KUNGU KAMAU .....	45 <sup>TH</sup> DEFENDANT
JOHN KIPKURUI MUTAI .....	46 <sup>TH</sup> DEFENDANT
PETER GITINA NGIGI .....	47 <sup>TH</sup> DEFENDANT
ANNA SARANGE OMBABA .....	48 <sup>TH</sup> DEFENDANT
MARITIM M. MASE .....	49 <sup>TH</sup> DEFENDANT



KIPRONO A. CHUCHUNEI .....	50 <sup>TH</sup> DEFENDANT
GEORGE NGUGI GACHEIE .....	51 <sup>ST</sup> DEFENDANT
SAMBA OMOYO .....	52 <sup>ND</sup> DEFENDANT
CHEPKWONY CHESENGENY .....	53 <sup>RD</sup> DEFENDANT
JOSEPH KIPKOSKEI A MARITIM .....	54 <sup>TH</sup> DEFENDANT
CHERUIYOT KIPTANUI ARAP KOROMICHA .....	55 <sup>TH</sup> DEFENDANT
KIOSKE A. CHEBEI .....	56 <sup>TH</sup> DEFENDANT
JOSPHINE WANJIKU MWENDIA .....	57 <sup>TH</sup> DEFENDANT
TAPKIGENY CHEMONGONY BWUON .....	58 <sup>TH</sup> DEFENDANT
JOSEPH CHERUITOT CHEPKWONY .....	59 <sup>TH</sup> DEFENDANT
ESTHER CHEPKEMOI LANGAT' .....	60 <sup>TH</sup> DEFENDANT
ANDREA A KERICH .....	61 <sup>ST</sup> DEFENDANT
SIMEON MOSIORI ANGUCHA .....	62 <sup>ND</sup> DEFENDANT
PHILIP ASANYO ONDENGI .....	63 <sup>RD</sup> DEFENDANT
KIPKURUI A. NGENO .....	64 <sup>TH</sup> DEFENDANT
PETER PADDY A. MWANGI .....	65 <sup>TH</sup> DEFENDANT
DOMINIC KAMAU MWANGI .....	66 <sup>TH</sup> DEFENDANT
OMBATI OKONGO .....	67 <sup>TH</sup> DEFENDANT
KIBIATO ARAP BII .....	68 <sup>TH</sup> DEFENDANT
ZACHARIA ONGAU OMBATI .....	69 <sup>TH</sup> DEFENDANT
SIMON KIPKEMOI RUTO .....	70 <sup>TH</sup> DEFENDANT
KIPRUTO ARAP KENDUIWO .....	71 <sup>ST</sup> DEFENDANT
KEMUNTO ONSARE .....	72 <sup>ND</sup> DEFENDANT
SAMWEL OKEMWA MAIRURA .....	73 <sup>RD</sup> DEFENDANT
STEPHINE NYAMBANE OMBAKI .....	74 <sup>TH</sup> DEFENDANT
GRACE MUKEIRA MARANGA .....	75 <sup>TH</sup> DEFENDANT
PATRICK MOSE MOREKA .....	76 <sup>TH</sup> DEFENDANT
JOSEPH MAGOMA MAGOMA .....	77 <sup>TH</sup> DEFENDANT
PRISCA KEMUNTO MOKE .....	78 <sup>TH</sup> DEFENDANT
THOMAS OGUTU OGETO .....	79 <sup>TH</sup> DEFENDANT
ENOCK MAETA AIKO .....	80 <sup>TH</sup> DEFENDANT
JANE KEMTO OBOTO .....	81 <sup>ST</sup> DEFENDANT



PATRICK KAMAU MWANGI .....	82 <sup>ND</sup> DEFENDANT
CALEB NYAIRO OENGA .....	83 <sup>RD</sup> DEFENDANT
GEORGE NGUGI GACHIE .....	84 <sup>TH</sup> DEFENDANT
DOMINIC KIMANI MUNA .....	85 <sup>TH</sup> DEFENDANT
MARY WANJIRU WAWERU .....	86 <sup>TH</sup> DEFENDANT
WILLIAM ONDIEKI OKENGO .....	87 <sup>TH</sup> DEFENDANT
MOSE NYAKENANDA .....	88 <sup>TH</sup> DEFENDANT
HENRY NJOROGE GICHOMO .....	89 <sup>TH</sup> DEFENDANT
PETER CHEGE MWAURA .....	90 <sup>TH</sup> DEFENDANT
WILLIAM MAKORI NYAGARA .....	91 <sup>ST</sup> DEFENDANT
JOHN ONGARO MUMA .....	92 <sup>ND</sup> DEFENDANT
ELIZABETH MORAA OYONDI .....	93 <sup>RD</sup> DEFENDANT
SIMON NYSENDE NYAGARA .....	94 <sup>TH</sup> DEFENDANT
GILBERT OBAIGWA NYANGA .....	95 <sup>TH</sup> DEFENDANT
JOSHUA ONDONDO MORACHA .....	96 <sup>TH</sup> DEFENDANT
ISANDA MWEBI .....	97 <sup>TH</sup> DEFENDANT
BOSTON NYANGAU KIYONDI .....	98 <sup>TH</sup> DEFENDANT
PHILIP KIPKIRUI KOECH .....	99 <sup>TH</sup> DEFENDANT
WILLIAM ONKUNDI MORONGE .....	100 <sup>TH</sup> DEFENDANT
SAMMY KIMARU MWANGI .....	101 <sup>ST</sup> DEFENDANT
JOSEPH ARAP KOSGE .....	102 <sup>ND</sup> DEFENDANT
YUNUKE SARANGE KOROSO .....	103 <sup>RD</sup> DEFENDANT
CATHERINE CHEROTICH CHERUBET .....	104 <sup>TH</sup> DEFENDANT
CHRISTOPHER KIPTEMAS CHERIRO .....	105 <sup>TH</sup> DEFENDANT
KIPROP ARAP CHUMA .....	106 <sup>TH</sup> DEFENDANT
JOSEPH MUNENE KURU .....	107 <sup>TH</sup> DEFENDANT
BENARD KIPNGETICH KOECH .....	108 <sup>TH</sup> DEFENDANT
JANE MORAA OMBONGI .....	109 <sup>TH</sup> DEFENDANT
JOHN KERAGIA KIYONDI .....	110 <sup>TH</sup> DEFENDANT
SAMWEL NCHORE NYAKENANDA .....	111 <sup>TH</sup> DEFENDANT
JOHN KAHUNYA MUCHIRI .....	112 <sup>TH</sup> DEFENDANT
ONCHOMBA OMWOYO .....	113 <sup>TH</sup> DEFENDANT



<b>WILSON TOO TANUI .....</b>	<b>114<sup>TH</sup> DEFENDANT</b>
<b>FREDRICK AZAEL MAUMBA .....</b>	<b>115<sup>TH</sup> DEFENDANT</b>
<b>DANIEL NGERICH TANGUS .....</b>	<b>116<sup>TH</sup> DEFENDANT</b>
<b>WESLEY KIPTONUI ROTICH .....</b>	<b>117<sup>TH</sup> DEFENDANT</b>
<b>RATEMO WAYA MICHIEKA .....</b>	<b>118<sup>TH</sup> DEFENDANT</b>
<b>FRANCIS ONKOBA NOTI .....</b>	<b>119<sup>TH</sup> DEFENDANT</b>
<b>FRANCIS OMWOYO OMWOYO .....</b>	<b>120<sup>TH</sup> DEFENDANT</b>
<b>HEZRON NYAMBANE CHWEYA .....</b>	<b>121<sup>ST</sup> DEFENDANT</b>
<b>ZABLON RATEMO MOSETI .....</b>	<b>122<sup>ND</sup> DEFENDANT</b>

## JUDGMENT

1. In its further amended plaint filed on May 9, 2022 and dated May 6, 2022 the plaintiff seeks the following prayers:
  - a. A declaration that the 1<sup>st</sup> – 4<sup>th</sup> defendants acted illegally and fraudulently in illegally surrendering titles of LR Number 554/2; 3877 and 555/2 now Molo South/Langwenda Block 8 and issuing title deeds meant for members of the plaintiff to the 5<sup>th</sup> to the 123<sup>rd</sup> defendants who did not contribute to its purchase whatsoever.
  - b. A declaration that all the title emanating from the subdivision of LR Number 554/2; 3877 and 555/2 now Molo South/Langwenda Block 8 were obtained through fraud and issued to the 5<sup>th</sup> to the 123<sup>rd</sup> defendants as highlighted in paragraph 14 above by the 1<sup>st</sup> – 4<sup>th</sup> defendants are null and void and be cancelled forthwith and that the titles revert to the plaintiff.
  - c. Mesne profits.
  - d. Costs of the suit.
  
2. The plaintiff's claim is that at all material times, it was the bona fide owner of LR Nos 554/2, LR 3877 and LR No 555/2 now known as Molo South/Langwenda Block 8 having bought it for value for the purpose of eventually subdividing it among its shareholders. It claims to have bought the land from Edith Mary Abraham on April 11, 1967. However, on November 20, 1989 or thereabouts, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants fraudulently colluded with some persons whom the plaintiff refers to as strangers to the company to surrender the aforementioned titles to the government in consideration for an approval of a subdivision scheme without the knowledge or approval of the plaintiff. The land was thereafter subdivided and issued to persons who never contributed to the purchase thereof and who include the 5<sup>th</sup> to the 123<sup>rd</sup> defendants. One Kipsoi A. Tanui (5<sup>th</sup> defendant), Grace Mokeira Maranya (6<sup>th</sup> defendant) and Daniel Mosoti Osoro (7<sup>th</sup> defendant) also got titles through the subdivision. The particulars of illegality are set out in paragraph 12 of the further amended plaint. The plaintiff claims that the titles emanating from that subdivisions are invalid and seeks their cancellation by reason thereof.



### **The defence of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants**

3. The defendants filed their defence on January 6, 2014 which was amended on October 25, 2021 denying the claim and averred that they are not privy to the changes of the land ownership. They denied any involvement in the subdivision of the land and issuance of titles in respect of the suit land; they denied collusion with strangers to surrender the titles; they stated that the titles were surrendered to the government after proper legal procedures had been followed; they denied the particulars of fraud set out in paragraph 12 of the plaint; they labelled the plaintiff's allegations as fabrications intended to mislead the court.

### **Defence of the 8<sup>th</sup> to 123<sup>rd</sup> defendants**

4. The 8<sup>th</sup> to 123<sup>rd</sup> defendants filed their defence on December 20, 2018 denying the claim. They stated that they were shareholders of the plaintiff and that they are the registered owners of the properties mentioned in the suit who were allocated land and issued with title deeds with the plaintiff.

### **Reply to 8<sup>th</sup> – 123<sup>rd</sup> Defendant's defence**

5. The plaintiff filed a reply to the 8<sup>th</sup> to 123<sup>rd</sup> defendants defence on February 6, 2019. In its reply, the plaintiff averred that the suit is proper and maintained that there was secrecy, collusion and violation of the shareholders fundamental rights to property in the dealings between the 8<sup>th</sup> and the 123<sup>rd</sup> defendants and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants; further they maintained that the defendants have never been the members of the plaintiff and therefore their acquisition of proprietary interest in the land in collusion with the 2<sup>nd</sup> and 3<sup>rd</sup> defendants was fraudulent and illegal; it reiterated the particulars of fraud in the plaint.

### **Hearing**

6. The suit was heard on various dates between February 6, 2020 and 18/1/2023.

### **Plaintiff's Evidence**

7. PW1 William Korgeren testified for the plaintiff on April 27, 2022 and adopted his witness statement dated May 13, 2013 as his evidence-in-chief. He stated that he is a director and chairman of the plaintiff company; he produced a copy of a letter served upon the Attorney General before suing as PExh 1; the certificate of incorporation in the bundle as PExh 2; the Articles of Association of the plaintiff as PExh 3; a copy of the title for LR No 10285 (Original No 555/2) as PExh 4; the Return of Allotment from Registrar of Companies as PExh 5 (copy); a letter from the Chief Land Registrar dated December 19, 1989 as PExh 6 (copy); he stated that Philip Asanyo Ondengi apparently mentioned in PExh 6, was a stranger to the company. He was never known in the company. The letter is a fraud. The plaintiff never surrendered the main title to B. N. Gicheha, Chief Land Registrar. If there had been a resolution of the company, the surrender would have been proper, but instead, Philip colluded with the Registrar. When shown page 64 – 73 Official Searches PExh 8(a) (i) & 8(a)(ii), PExh 8(b)(i) & 8(b)(ii) and PExh 8(c)(i) & PExh 8(c)(ii) showing the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants as owners he stated that he came to know the owners named therein after the search and that they are not shareholders of the plaintiff. PW1 stated that the company authorised the filing of this suit vide copy of minutes and the resolution of the plaintiff of 8/2/2013. He produced the resolution (copy) as PExh 9; he stated that the company had a debt of Kshs. 60,000/= which it cleared in 1978; another one of Kshs. 30,000/= which was cleared on 7/7/1989. Later they went to the AFC Molo and they were informed that the titles had been sent to the AFC Headquarters at Nairobi. They went to Nairobi but they did not find the titles. They came



- back to Molo and did not also find the titles. They later found that the titles had been surrendered to the Government by Phillip Asanyo Ondegi and B. N. Gicheha. He stated that they did not sell any shares, that the person who took titles to the AFC is fraudster. He has not seen any resolution from the defendants to surrender the titles. He asked for cancellation of the titles of the 8<sup>th</sup> – 123<sup>rd</sup> defendants.
8. Upon cross-examination by Mr. Oumo PW1 stated that the land is about 929 acres in total; that Plot 554/2 had 644 acres, Plot 3877 had 60 acres and Plot 555/2 (10285) had 75 acres; that a report was made to the police, who however did not give PW1 and his faction a hearing; that he was elected in 2008; that when the titles were surrendered he was not chairman of the plaintiff. The then chairman was Francis Arap Chumo (now deceased). The register of members was retained by the secretary; that on the Farm there is a primary school with permanent buildings which can host 600 pupils; that there are people settled on the farm but he does not know their number; that some people do not have titles but some have titles; that there are churches on the farm; that he would like the people to move from the lands they currently occupy; that the Chief of the affected location is the son of Ondegi, the alleged impostor; that the company is still active and it filed returns last in 2019; that the Chief and Assistant Chief have barred meetings; that the company does not know the person who surrendered the lease. That when PW1 and his group came to Nakuru the Land Registrar became harsh to them; that no surveyor ever came to the ground to survey the land. Upon re-examination by Mr. Kipkoech, PW1 stated that he only came to know titles had been issued after he was elected chairman in 2008.
  9. DW1 was Henry Njoroge Gichomo, the 35<sup>th</sup> defendant. He stated that he is a resident at Cheptakum - Kipsigis Farm which is in Molo. He adopted his witness statement dated December 19, 2018 filed in the suit as his evidence-in-chief. DW1 got his title in 1990. No one has ever told him that it is not a valid title deed or evicted him. His plot is Molo South Lagwenda Block 8/62 and that is where he has lived for more than 30 years; the farm has more than 700 acres and the parties in court including the witness for the plaintiff are residents on the farm. Every person has his own land parcel and they were issued with titles. The plaintiff company does not hold meetings as the members all have titles. Cheptakum Primary School is on the farm. It is a public school yet the school is not a defendant in this case. He has been farming on the land. Even the other witnesses for the defence live on the farm.
  10. Upon cross-examination by Mr. Kipkoech, DW1 stated that he has a share certificate with him in court which he had not produced as evidence; that he does not have any resolution of the plaintiff company resolving that shares be sold to him; that there was a Land Control Board Consent, though he did not have it with him in court; that he did not have the minutes or resolution on the subdivision of the land. that he was given a resolution for sale of shares to him upon purchase; that the defendants never invaded the land by force or robbed the original members of the plaintiff of their documents.
  11. Upon re-examination by Mr. Oumo DW1 stated that he has never been prosecuted for grabbing land; he has never been an official of the plaintiff; that the officials of the plaintiff have the documents of the company; he maintained that no person has ever questioned the defendant's titles before and that they live in peace with the other persons on the farm.
  12. DW2, Christine Chemutai Kenduiywo adopted her witness statement dated December 19, 2018 as her evidence-in-chief and stated that she lives at Cheptakum Farm; her land is registered in the name of Ezekiel Kipruto Kenduywo (deceased); that they started living on the land in 1974; that she has a title deed for that land; that she has lived in peace thereon ever since 1974; that everyone has their own land and therefore the company does not hold any meetings any longer. She stated that the proper procedure was followed in acquiring the defendants' titles. She does not recognize the plaintiff's witnesses as officials of the company and she does not know if they have land on Cheptakum Kipsigis Farm. She and her husband have never been charged with any offence regarding the land; she produced as evidence in this case a copy of her title at page 22 of the defendants' bundle.



13. Upon cross-examination by Mr. Kipkoech, DW1 stated that she has about 20 acres in the Farm; that she testifies on her own behalf and on behalf of 123 other defendants who are known to her. Her husband had about 10 shares and he got 20 acres but she does not know how many acres one share was worth; she did not have the minutes of the company with her; she never held directorship in the company. She did not know when the loan was advanced and neither did she know how much was acquired by way of loan. She did not know how much money each share was sold at. She did not have any receipt. Her late husband was a manager in the company. According to her, the 8<sup>th</sup> – 123<sup>rd</sup> defendants did not grab the suit land. Upon re-examination she maintained that she has never been prosecuted or evicted from the land.
14. DW3 George Ngugi Gachie, defendant No 30, testified and adopted his witness statement filed in this case dated December 19, 2018 as his evidence-in-chief. He stated that he lives at Cheptakum. He retired from the teaching profession in the year 2006. He had been teaching at Cheptakum Primary School located on the Cheptakum Farm. He was transferred to that school from another school in 1991. His plots are Molo South Langwenda Block 8/77 and 171. He showed the court the original of title for Molo South Langwenda Block 8/77 and its copy at page 62 of the defendant's bundle. In 1979 he heard the company was selling shares to new members and he purchased plot 77. He went and found Kipruto arap Kenduywo (chairman) Daniel Merech Tambus (treasurer) and William Koskei (secretary) and he spoke with them inquiring as to claims that the company was selling land. The information that they gave him was that the plaintiff took an AFC loan, had been farming but at a loss and AFC was pushing them and the land was about to be disposed of by AFC for default on repayment; that in 1978 members had at a meeting and agreed to pay the loan and each member had to pay additional Ksh.1200; that they were given time to pay. He also saw an Auctioneer's notice stating that on 15/9/1979 the sale of the land would occur outside the Molo Post Office. He asked the officials if they had authority to collect cash on behalf of the company and they answered in the positive stating that the District Commissioner had allowed them to. So DW3 paid Kshs. 2,000/= and later added Kshs.1,000/= totaling to Kshs.3,000/= being the cash value of 3 shares equivalent to 6 acres. He showed the court the originals of his receipts and their copies, the latter which are contained at page 64 of the defendants' bundle. He also paid Kshs.400/= for Surveys on December 18, 1981, Lastly, he paid Kshs.450 for title for 2 plots on 6/1/1990 and he was issued with a share certificate. After that he was issued with the title deeds for the plot No 77 by the company. By the time he got his title he had settled his family on the land in 1980 and built a permanent house. He also took his children to Kamwaura Primary School in the vicinity. In 1991 he built a permanent house in which he is currently living with his family. He has not been bothered by anyone before this suit. He also got plot No 171 by purchase from Philip Asanyo in 1985. Philip had no title by then and DW3 completed paying Kshs.10,000/= being Philip's indebtedness to the plaintiff company and they wrote an agreement; then they went to the directors and they effected a transfer and they and the directors signed it and DW3's name was put into the register and the title to plot No 171 was issued in his name. Plot 77 is about 6 acres. Plot 171 is about 2 acres. The whole farm is about 1000 acres. The former officials of the company have died. He does not know PW1. To his recollection no meetings have been ever conducted at the farm. PW1 does not own land in the Farm. He first saw him in court with others. DW3 has not been charged with trespass to land. No one has challenged his titles. The defendants are his neighbours and he knows the location of their lands. Philip Asanyo was known to DW3 and was secretary to the company but is now deceased. His son is now Assistant Chief of the location and his mother lives on Asanyo's land. Some of the defendants were shareholders and others purchased land from other people. There have been no quarrels on the land. There are public facilities on the land such as Cheptakum primary school (of about 8 acres) churches e.g. SDA, KAG, a Polytechnic etc. There has been no dispute concerning those public facilities.



15. DW3 was taken through his documents by Mr. Kipkoech and he stated that the receipts of 24/5/1979, 31/3/1979 December 18, 1981, 6/1/1995, are signed by the company officials and sealed; DW3 stated that Ngerechi, the then company treasurer, received the monies he paid; that Kenduiywo was one of the original buyers of the land. Kenduiywo occupied the chairman's position by the time DW3 came along. DW3 maintained that he paid for shares in 1979 and took possession of the land in the year 1980. He however did not have any company returns from the Registrar of Companies in terms of CR 12 and therefore he had no evidence that those he had named were directors or officials of the plaintiff. He however maintained that there were meetings and that minutes existed and added that notices of the meetings to be held were broadcast in local schools. DW3's belief is that the officials who served him had authority and the plaintiff never reported any misdeeds for many years for any criminal case to be preferred against any person.
16. Under re-examination by Mr. Oumo, DW3 stated that the directors of the plaintiff were in charge and responsible for titles issued and that the chairman who could have produced the relevant documents in the case is now deceased. He reiterated the evidence of the preceding witnesses that the company has not been operational since titles were obtained by members. On his part, he was not charged with any offence.
17. DW4, Francis Onkoba Noti, the 69<sup>th</sup> defendant testified and adopted his witness statement dated December 19, 2018 filed in this case. His plot is Molo South Langwenda Block 8/134 and a copy thereof copy is at page 134 of the bundle of the defendants. He however showed the court his original title and it was returned to him for safe custody. He purchased his land from Arap Koskei who had no title by then. He bought Arap Koskei's plot jointly with Wilson Onsakia and Roston Nyangaru Kiyondi, the 52<sup>nd</sup> defendant. They later obtained individual title deeds. He has charged his title to a bank twice and no one has ever complained about his occupation of the land or lodged any dispute before the authorities over the land. There have been no company meetings on the farm after the titles issued. He does not know the persons who testified for the plaintiff.
18. Upon cross-examination by Mr. Kipkoech, DW4 stated that he does not know Arap Koskei's other name; that he does not have the agreement he signed with him; that Francis Ayoti Onkoba is his brother; that they bought another parcel as 3 persons and subdivided it; that he never mentioned that title in his statement; that after he bought land he became a shareholder; he does not know the founder members of the company. He came much later onto the scene. He has not produced any share certificate here in court. He denied grabbing any land.

The 8<sup>th</sup> – 123<sup>rd</sup> defendants' case was marked as closed at the end of the testimony of DW4 and parties were asked to file submissions.

## **Submissions**

### **Plaintiff's Submissions**

19. The plaintiff filed submissions on 9/2/2023 and the 8<sup>th</sup> to 123<sup>rd</sup> defendants on 28/3/2023. In its submissions, it gave the brief facts of the case and identified the issue for determination as being whether the plaintiff is entitled to being issued with the prayers sought in the plaint. Just as in the further amended plaint, it maintained that the surrender and approval of the subdivision scheme in respect of its land was done without its approval and/or knowledge. It pointed out that among the 1<sup>st</sup> and 3<sup>rd</sup> defendants' documents filed vide a list dated 8/10/2019 was a green card for plot No Molo South Langwenda Block 8/155 issued on 4/4/2012 in the name of Mary Moraa Onwonga the 39<sup>th</sup> defendant which was issued a year before the suit was filed and which issuance was a sign that the titles



were being issued in a clandestine manner. Also the plaintiff faulted document number 29 for parcel No 122 alleging that it had not been issued to any person which was evidence of fraud and mischief; it alleged that the 4<sup>th</sup> to 8<sup>th</sup> defendants did not participate in the proceedings because they had a weak defence; it alleged that 8<sup>th</sup> to 123<sup>rd</sup> defendants have not exhibited share certificates, resolutions by the company, consent of the Land Control Board, minutes of the company meeting held between them and the directors of the company, sale agreements and stamp duty receipts and that they therefore did not prove that they are shareholders. The plaintiff averred that it had provided a list of shareholders and maintained that they are shareholders. The plaintiff denied allocating any land or issuing any title to the 8<sup>th</sup> to 123<sup>rd</sup> defendants. The plaintiff faulted DW3's evidence that he had acquired his title for plot No 177 from one Philip Asanyo in 1985 when the said Philip did not have land and that DW3 obtained title only in the year 1990. The plaintiff also faulted DW3 for failing to produce a sale agreement in court. It averred that DW3 did not prove that its directors approved of the transfer and effected it or that DW3's name was then inserted in the register and so it argued that due process as stipulated in the Land Control Act was not followed. It relied on the case of Onyango and another v Luwayi [1986] eKLR 513.

20. The plaintiff also submitted that though the 69<sup>th</sup> defendant Francis Onkoba Noti and the 37<sup>th</sup> defendant Francis Makoro Nyagara stated that they bought land from one Arap Koskey, the latter does not appear in the list of shareholders. Further there is no proof of resolution passed by the plaintiff company as alleged by those witnesses that allowed shares to be sold to new members. The two witnesses had their evidence faulted for failure to produce a receipt with the seal of the company and their mere statements cannot be taken to be the truth in respect of all the defendants and the process by which they became shareholders. The plaintiff cited the case of George W. Omondi and another v National Bank of Kenya Ltd and another [2001] eKLR for its proposition. The evidence of the 35<sup>th</sup> defendant, Henry Njoroge Gichomo and the 30<sup>th</sup> defendant, George Ngugi Gachie that they bought land directly from the company was dismissed by the plaintiff as lacking supportive documentation.
21. It was also argued that shareholders have proprietary interest in the shares they hold and that shareholding confers rights on the shareholder and obligations on the company in accordance with the memorandum and articles of association; therefore, to transfer a share the provisions in the memorandum and articles of association must be complied with and in default thereof the purchaser of shares cannot acquire title to those shares. They relied on the case of Arthi Highway Developers Ltd v West End Butchery Ltd & 6 others [2015] eKLR and Section 75 of the Companies Act (now repealed.) It submitted that a company cannot demand more money from its shareholders if they have paid up for the shares they own. Therefore, default in payment, if it happened as alleged by the 30<sup>th</sup> defendant, could not lead to arbitrary deprivation of a shareholder's shares without notice and sale thereof to another person. It was also submitted that clause 2 (c) and clause 7 provide that subject to the provision of the articles, transfer of shares must be in writing in the usual common form and clause 15 (a) provides that the instrument of share shall be executed by both parties; it maintained that their claim of transfer cannot stand unless evidence of compliance with those articles was supplied. Further it was submitted that no evidence of the occurrence of a meeting resolving that old members who failed to pay Kshs.1,200/= would have their shares sold to new members was availed. It was stated therefore that without having the names of the 8<sup>th</sup> to 123<sup>rd</sup> defendants entered in the register the defendants cannot claim to have been shareholders as alleged in the defence. The additional argument was put forward that a shareholder is not entitled to the company's property but only to dividend thereof.
22. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants filed their submissions on 7/3/2023 and identified two issues for determination namely: whether the plaintiff has pleaded the issue of fraud with specificity and whether it is entitled to the reliefs sought. The defendants submitted that under Sections 24, 25 and 26 of the



Land Registration Act 2012 indefeasibility of title has been upheld and that onus of proving fraud is on the plaintiffs if those titles are to be defeated and cited the case of Joseph Arap Ngok v Justice Moiyo Ole Keiywa & others, Nairobi Civil Appeal No 60/1997. They stated that the proper procedure was followed, that an allotment was issued, an approval plan was issued by the Director of Physical Planning and finally a Registry Index Map was made after which certificate of titles were issued. The defendants cited the case of Gladys Wanjiru Ngacha v Teresah Chepsarat and others [2013] eKLR for the proposition that allegation of fraud must be strictly proved on a standard balance higher than a balance of probabilities. The case of Arthi Highway Developers Ltd v West End Butchery Ltd & 6 others [2015] eKLR was also cited for the proposition that fraud must be proved on the standard higher than a balance of probability but not beyond reasonable doubt. The case of Lawrence Norreys (1880) 15 Appeal Cases 210 and Vijay Morjaria v Nansingh Madhusingh Darbar & another [2000] eKLR was also cited regarding pleading particularity in pleading fraud. It was stated that fraud has not been sufficiently proved as the plaintiff has not shown that registration of titles is not within the mandate of the 3<sup>rd</sup> defendant.

### **The 8<sup>th</sup> to 123<sup>rd</sup> defendants' submissions**

23. These defendants filed their submissions on 28/3/2023. They raised two issues for determination namely: whether the plaintiff's officials have locus standi and whether the plaintiff's case has been proved on a balance of probabilities against them. On the first issue, it was submitted that the plaintiff has not filed recent returns to the Registrar of Companies to demonstrate that it is life and active and that the officials of the plaintiff can only be deduced from the returns filed with the Registrar of Companies. The defendants added that the plaintiff has never held an annual general meeting and is therefore technically nonexistent. They asked that the suit be dismissed with costs.

### **Determination**

#### **Issues for determination**

24. Facts that are not disputed are as follows in the present suit: that the plaintiff bought the suit land for distribution amongst its members and that the land was eventually subdivided and parcels registered in the names of different persons while some were given out to institutions for public use and that many of the original registered proprietors, by whatever means they obtained title, whether by allotment by the company or by purchase from allottees, are still residing on their parcels of land situate in Cheptakum-Kipsigis Farm. On 8/5/2013 the parties entered into a consent whereby the Land Registrar was compelled to place a restriction on all those parcels of land that arose from the subdivision of LR Nos 554/2, 555/2 and 3877.
25. The dispute that arises is as to whether there was illegality and fraud in the surrender of titles, their conversion to RLA land law regime and the eventual subdivision of the land, whether the defendants were entitled to land from the plaintiff and whether the company was deprived or dispossessed of its land. It is the determination of the foregoing issues that will lead this court to the conclusion as to whether the titles resulting from the amalgamation and subdivision of the three main parcels mentioned above are liable to be cancelled.

### **Whether there was illegality and fraud in the surrender of titles, their conversion to RLA Land Law Regime and the eventual subdivision of the land**

26. Fraud must be particularly pleaded and proved and it can not be inferred. That is the law. The particulars of fraud claimed by the plaintiff are as follows:



- a. The defendants colluded to obtain the original title deeds from the plaintiff and had them converted to RLA land regime and subsequently subdivided the land;
  - b. The defendants issued titles to strangers who were not privy to or members of the company without any amendment of the area list;
  - c. The defendants purported to consolidate the original titles and issue new titles without any mutation being undertaken or amendment to the registry index map being effected;
27. I have referred to the copy of title for LR No 10285 (Original Number 555/2) in the name of the plaintiff company and established that there was a charge registered against that title and in the process I have also noted that the title number given in the plaint as the land purchased by the plaintiff is actually LR No 10285 and not the Original Number 555/2. I do not find any other copy of title for LR Nos 554/2 and 3877 and part of the plaintiff's claim that is dependent on the issue of consolidation of the titles is adversely affected by this default to exhibit the titles.
28. Be that as it may, and even upon the assumption that all the mentioned titles existed in the plaintiff's name and were indeed surrendered to the 1<sup>st</sup>-4<sup>th</sup> defendants, once the 1<sup>st</sup>-4<sup>th</sup> defendants being the offices in the government that deal with matters relating to surrender, consolidation subdivision and issuance of titles to land denied the plaintiff's entire claim in their defence filed on 16/1/2014, it was upon the plaintiff to establish its allegations by way of evidence against them, for the rule of evidence is that he who alleges proves. In particular, the plaintiff had to prove that the said 1<sup>st</sup>-4<sup>th</sup> defendants obtained the original title deeds from the plaintiff and had them converted to RLA land regime and subsequently subdivided the land. In this regard it is alleged that Philip Asanyo Ondegi, who took the plaintiff's titles for surrender and subsequent subdivision and issuance of titles to the Chief Land Registrar who acknowledged receipt vide a letter dated December 19, 1989, was a fraudster. However, it has not been demonstrated to this court how that is so. No complaint to the police was produced in evidence. It was not demonstrated that the said Philip has ever been apprehended and arraigned before a court of law with the offence of impersonation. It is also not proved that it was the said Philip who actually took the title documents to the Chief Land Registrar. The letter dated December 19, 1989 only shows that he received the RIM and the area list from the Chief Land Registrar, presumably for delivery to the Land Registrar Nakuru, and this court deduces that the said delivery was perfected because titles eventually issued out of the subdivision. The plaintiff has not therefore established that an unauthorised person delivered the titles to the three parcels it had bought or any of them to the Chief Land Registrar. In the absence of that evidence, the only presumption that can be arrived at is that the titles were delivered to the said office by the duly authorised directors of the plaintiff who were in office in or about the year 1989. No evidence has been presented that such directors who were in office then were holding those offices illegally or that they had no mandate to surrender the suit land parcel's titles in consideration for subdivision in order to benefit the individual members with titles in their names. Indeed, no evidence has been led by the plaintiff as to whom those directors, except one Kenduiywo, were. This court cannot therefore impute fraud in the surrender, conversion, subdivision or issuance of individual titles to the plaintiff's members or to any person who purchased from those members. I have also noted that not an iota of evidence was led as to the alleged issuance of title before a mutation was prepared or registered or without an amendment to the RIM. These allegations must therefore be dismissed.



**Whether the defendants were entitled to land from the plaintiff and whether the company was deprived or dispossessed of its land.**

29. While addressing this issue it is necessary to note that the plaintiff has conceded that it purchased the suit land in order to distribute it amongst its members and the only grievance that it has presented before this court regarding the loss is that the land was distributed so as to include the 5<sup>th</sup> -123<sup>rd</sup> defendants who were not so entitled to receive land from it. No allegation was made that the original titles were lost wholesale to individuals or other bodies. Proof of the claim that the plaintiff company was deprived of its land is therefore predicated upon the plaintiff establishing that the 5<sup>th</sup> – 123<sup>rd</sup> defendants were not members or that the land they hold was not transferred to them by original members.
30. The 8<sup>th</sup> – 123<sup>rd</sup> defendants called oral evidence and produced documentary evidence. Their defence is that the company was indebted to the Agricultural Finance Corporation Ltd (AFC) and the then directors, pursuant to a resolution by members to that effect at a general meeting, offered land to new members in order to collect money to pay the sums claimed by AFC.
31. I have earlier on stated that I have referred to the copy of title for LR No 10285 (Original Number 555/2) in the name of the plaintiff company and established that there was a charge registered against that title and that in the process I have also noted that the title number given in the plaint as the land purchased by the plaintiff is actually LR No 10285 and not the Original Number 555/2. Vide entry number 3 in that title it was charged to the Land and Agricultural Bank of Kenya and such a memorandum registered on April 11, 1967. The discharge of the charge earlier registered against that parcel was noted vide entry number 4 on the same title which is dated June 29, 1979. Surrender was done 10 years later on November 28, 1989. I must state here clearly that without the copies of the other titles being produced, and the plaintiff must be the entity in custody of such copies, this court can not know the extent to which the plaintiff company was indebted and to whom and if and when such indebtedness was discharged. It can not also be known if the plaintiff is deliberately concealing evidence. The defendants on their part produced their titles and receipts issued by the plaintiff company. This court does not expect the 5<sup>th</sup> -123<sup>rd</sup> defendants to have custody of such documents and so their ability to substantiate their claim that the plaintiff company was indebted is considerably impaired. The foregoing notwithstanding it was not in my view the duty of the 5<sup>th</sup> -123<sup>rd</sup> defendants to establish that the company was actually indebted, or to maintain the minutes of the company or company resolution that entitled them to purchase shares and be included in the membership of the company. They were entitled to believe what the then directors of the plaintiff told them and it is on the basis of that information by directors as to the dire need of the company to repay its debts, whether truthful or mendacious, that they bought shares in the plaintiff company. No evidence of forgery of share certificates was produced against the 5<sup>th</sup> -123<sup>rd</sup> defendants by the plaintiff. Further I have examined PExh 5 which is the return of allotments made on the 23<sup>rd</sup> January 2011 to the Registrar of Companies. It shows the company had 590 ordinary shares distributed amongst only 43 members. The principal flaw in that form is that it has not been executed and no proof of its being lodged with the Registrar of Companies has been availed to this court. It is therefore not capable of being deemed genuine. Furthermore, the plaintiff failed to avail before court the proper return of allotments that was valid as at 1989 when the surrender and subdivision and issuance of title was authorised by the Chief Land Registrar.
32. The plaintiff and the defendants concur in their evidence that the active director in the plaintiff company at the time of the alleged misdeeds was one Kenduiywo but he is now deceased. I have examined PExh 5 and found the Ngerechi, who was mentioned by DW3 as being among the company



officials is listed therein. It is the conclusion of this court that if there was any breach of trust on the part of those directors of the plaintiff company in office as at 1989, they and not the 5<sup>th</sup> -123<sup>rd</sup> defendants ought to be pursued for any indemnity. However, no proof of any report of fraud, arrest and arraignment of the said directors has been tabled before this court and this court must conclude that there was no fraud, and that the 5<sup>th</sup> -123<sup>rd</sup> defendants only benefited the company by providing it with funds with which to extricate itself from the bonds of indebtedness to a financial institution that could have occasioned it loss of its valuable land through its exercise of a statutory power of sale.

33. The upshot of the foregoing is that I find that the plaintiff has failed to establish its claim on a balance of probabilities and I hereby issue the following final orders:
- a. The plaintiff's suit is hereby dismissed.
  - b. The costs of the suit of all the defendants shall be borne personally jointly and severally by William Korgeren, PW1 and all the other directors of the plaintiff in office or professing to be in office and who have authorized the filing of the instant suit.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 25<sup>TH</sup> DAY OF MAY, 2023.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

