



**Registered Trustees of Legion Maria of Africa Church Mission v Otieno & another (Suing as the legal representative of the Estate of the Late Anton Otieno Okwany) (Environment and Land Case Civil Suit 404 of 2015) [2023] KEELC 17469 (KLR) (18 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17469 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND CASE CIVIL SUIT 404 OF 2015  
SO OKONG'O, J  
MAY 18, 2023**

**BETWEEN**

**THE REGISTERED TRUSTEES OF LEGION MARIA OF AFRICA CHURCH  
MISSION ..... PLAINTIFF**

**AND**

**SAMSON OCHIENG OTIENO ..... 1<sup>ST</sup> DEFENDANT**

**MAURICE ADIPO OTIENO ..... 2<sup>ND</sup> DEFENDANT**

**SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE  
ANTON OTIENO OKWANY**

**JUDGMENT**

- 1 The Plaintiff instituted this suit against the 1<sup>st</sup> Defendant on 24<sup>th</sup> July 2007 by way of a plaint dated 16<sup>th</sup> July 2007. The suit was transferred to this court in 2015 and assigned its current case number. In his plaint, the Plaintiff sought judgment against the 1<sup>st</sup> Defendant for;
  - a. An order of eviction against the 1<sup>st</sup> Defendant from all those parcels of land known as KABONDO/KASEWE/1377 and 1378.
  - b. Mense profits of Kshs. 1,000/- per month for 6 months.
  - c. Costs of this suit.
- 2 The Plaintiff averred that it was the registered owner and proprietor of all those parcels of land known as KABONDO/KASEWE/1377 and 1378 (hereinafter together referred to as “the suit properties” and individually as “Plot No. 1377 and Plot No. 1378 respectively). The Plaintiff averred that the 1<sup>st</sup> Defendant had without any colour of right, justification, authority and without the Plaintiff’s



- permission trespassed on the suit properties and embarked on committing waste on the same to the prejudice of the Plaintiff's rights, privileges and interests in the properties.
- 3 The Plaintiff averred that the 1<sup>st</sup> Defendant had remained on the suit properties and had refused, ignored and neglected to vacate the same thereby denying the Plaintiff access and use of the same. The Plaintiff averred that it continued to suffer both general and special damages on account of the 1<sup>st</sup> Defendant's said unlawful acts of commission and omission. The Plaintiff averred that it had suffered damages for loss of use of the suit property and claimed mense profits at the rate of Kshs. 1,000/- per month. The Plaintiff also claimed general damages for detinue.
  - 4 The 1<sup>st</sup> Defendant entered appearance and filed a statement of defence on 3<sup>rd</sup> September 2007 in which he denied that the Plaintiff was the lawfully registered proprietor of the suit properties. The 1<sup>st</sup> Defendant denied that he was unlawfully occupying and using the suit properties. The 1<sup>st</sup> Defendant averred that he was a stranger to the alleged losses suffered by the Plaintiff. The 1<sup>st</sup> Defendant denied the particulars of special damages pleaded by the Plaintiff and put the Plaintiff to strict proof thereof.
  - 5 The 1<sup>st</sup> Defendant averred that if at all the Plaintiff was the registered owner of the suit property, then, the Plaintiff acquired the same fraudulently and illegally. The 1<sup>st</sup> Defendant averred that the Plaintiff presented false and/or forged documents to the Homa Bay District Land Registrar for registration of the suit properties in the name of the Plaintiff. The 1<sup>st</sup> Defendant averred that the Plaintiff either did not obtain the Land Control Board Consent or obtained the same after the expiry of the prescribed period.
  - 6 The 1<sup>st</sup> Defendant averred in the alternative that if at all he was in occupation of the suit properties as alleged by the Plaintiff, then his occupation and usage of the same was justified in that the properties formed part of the estate of his late father Antoney Otieno Okwany which was bequeathed to him and which the Plaintiff fraudulently registered in its name. The 1<sup>st</sup> Defendant averred further in the alternative that if at all he was occupying and using the suit property, then the Plaintiff's suit was statute barred. The 1<sup>st</sup> Defendant averred that he had lived on the suit properties since he was born and his family had cultivated the same for over 12 years. The 1<sup>st</sup> Defendant averred that his entry into the suit properties was peaceful and without the Plaintiff's permission. The 1<sup>st</sup> Defendant averred that the Plaintiff's suit was bad in law, an abuse of the court process and did not disclose a reasonable cause of action and prayed that the same be dismissed with costs.
  - 7 The plaintiff filed a reply to defence on 10<sup>th</sup> September 2007 in which it joined issue with the 1<sup>st</sup> Defendant in his defence save for the admissions. The Plaintiff denied that it acquired the suit properties fraudulently. The Plaintiff also denied that the 1<sup>st</sup> Defendant had a right to occupy and use the suit properties. The Plaintiff further denied that its claim was time barred.
  - 8 The 2<sup>nd</sup> Defendant was added to the suit on its own application and filed a defence and counter-claim against the Plaintiff on 15<sup>th</sup> June 2012 on behalf of the estate of ANTON OTIENO OKWANY (hereinafter referred to as "the deceased"). The 2<sup>nd</sup> Defendant denied that the Plaintiff was the registered owner of the suit properties. The 2<sup>nd</sup> Defendant denied that he was in unlawful occupation or usage of the suit properties in a manner that would give the Plaintiff any right of claim in this suit. The 2<sup>nd</sup> Defendant averred that he was a stranger to the alleged losses and suffering occasioned to the Plaintiff by the Defendants. The 2<sup>nd</sup> Defendant denied the particulars of general and special damages pleaded by the Plaintiff. The 2<sup>nd</sup> Defendant averred that if at all the Plaintiff was the registered owner of the suit properties, then the titles held by the Plaintiff were obtained by the Plaintiff through fraudulent and illegal means. The 2<sup>nd</sup> Defendant averred that the Plaintiff presented false and/or forged documents to Homa Bay District Land Registrar for registration of the suit properties in the name of the Plaintiff



- and processing of title in his favour. The 2<sup>nd</sup> Defendant averred that the Plaintiff failed to obtain the requisite consent of the Land Control Board at all or within the prescribed time. The 2<sup>nd</sup> Defendant contended further that the Plaintiff's suit was bad in law, fatally defective and an abuse of the process of the court.
- 9 In his counterclaim, the 2<sup>nd</sup> Defendant averred that he was the legal representative of the estate of the late Anton Otieno Okwany (the deceased) pursuant to a Grant of Letters of Administration ad litem that was issued to him in Kisumu High Court Succession Cause No. 545 of 2008. The 2<sup>nd</sup> Defendant averred that at all material time to this suit, the deceased was the registered proprietor of a parcel of land known as KABONDO/KASEWE/952(hereinafter referred to as "the original parcel") which was subsequently subdivided into two parcels namely, KABONDO/KASEWE/1377 and 1378 (the suit properties). The 2<sup>nd</sup> Defendant averred that the deceased retained both the suit properties in his name following the said subdivision.
  - 10 The 2<sup>nd</sup> Defendant averred that at all material times to this suit, the deceased lived on the suit properties together with his family who included his son, the 1<sup>st</sup> Defendant and used part of the properties for cultivation and grazing cattle. The 2<sup>nd</sup> Defendant averred that the Plaintiff unlawfully and by use of illegal means caused the transfer of the suit properties to its name without the consent and/or authority of the administrators of the estate of the deceased.
  - 11 The 2<sup>nd</sup> Defendant enumerated the particulars of the Plaintiff's alleged fraud and averred that due to the alleged fraudulent acts of the Plaintiff, the estate of the deceased had suffered loss and damage for which it wholly blamed the Plaintiff. The 2<sup>nd</sup> Defendant averred that the estate of the deceased was entitled to recover from the Plaintiff the damages suffered.
  - 12 The 2<sup>nd</sup> Defendant sought judgment against the Plaintiff in his counter-claim for;
    - a. A declaration that the Plaintiff had fraudulently, unlawfully and illegally obtained titles to the suit properties hence an order of rectification of the register of the said properties do issue cancelling the Plaintiff's registration as the owner of the suit properties.
    - b. General damages for conversion and detinue of the suit properties.
  - 13 The Plaintiff filed a Reply to the 2<sup>nd</sup> Defendant's Defence and Defence to the Counter-claim on 22<sup>nd</sup> June 2012. The Plaintiff denied each and every allegation made in the 2<sup>nd</sup> Defendant's defence and counter-claim and put the 2<sup>nd</sup> Defendant to strict proof thereof.
  - 14 The parties entered into a consent on 9<sup>th</sup> July 2013 through which the Defendants relinquished their claim over KABONDO/KASEWE/1378 (Plot No. 1378). With that consent, only the land parcel known as KABONDO/KASEWE/1377 (Plot No. 1377) (hereinafter referred to as "the suit property") remained in dispute. The suit came up for hearing on 9<sup>th</sup> November 2022 when the Plaintiff withdrew his claim against the Defendants. That left the 2<sup>nd</sup> Defendant's counter-claim against the Plaintiff as the only active claim.
  - 15 The 2<sup>nd</sup> Defendant, Maurice Adipo Otieno (DW1) adopted his witness statement filed in court on 4<sup>th</sup> November 2022 as his evidence in chief. He thereafter produced the bundle of documents filed on the same date as exhibits. On cross-examination, the 2<sup>nd</sup> Defendant stated that the Plaintiff forged transfer in respect of the suit property. On examination by the court, the 2<sup>nd</sup> Defendant confirmed that he had no claim over Plot No. 1378 since the same was given to the Plaintiff by the deceased while he was still alive. He stated that the whole of the suit property was being used by the wife of the 1<sup>st</sup> Defendant. He stated that the Plaintiff was not in occupation of the land. He stated that the Plaintiff had encroached



on the land but moved out. He stated that it was in 2004 that he learnt that the suit property was registered in the name of the Plaintiff.

- 16 The 2<sup>nd</sup> Defendant stated that the reason why he was saying that the Plaintiff acquired the suit property fraudulently was that the instrument of transfer that was purportedly executed by the deceased in favour of the Plaintiff was dated 6<sup>th</sup> April 2004 and the same was registered on 4<sup>th</sup> May 2004; 4 years after the death of the deceased on 22<sup>nd</sup> March 2000.
- 17 The Plaintiff did not give evidence in its defence to the 2<sup>nd</sup> Defendant's counter-claim. After the close of the 2<sup>nd</sup> Defendant's case, the court directed the parties to make closing submissions in writing.

#### **The Plaintiff's submissions:**

- 18 The Plaintiff filed its submissions on 21<sup>st</sup> November 2022. The Plaintiff submitted that under section 83 of the *Evidence Act*, Chapter 80 Laws of Kenya, there is a presumption that government documents are genuine and authentic. The Plaintiff submitted that section 20 (1) of the *Land Control Act*, Chapter 302 Laws of Kenya gives the Land Registrar the discretion to register or to refuse to register a controlled transaction. The Plaintiff submitted that the Land Registrar exercised the said discretionary power by registering the transfer of the suit property in favour of the Plaintiff. The Plaintiff submitted that the documents through which the suit property was transferred to the Plaintiff from the deceased, Anton Otieno Okwany were perused by the Land Registrar and found to be authentic.
- 19 The Plaintiff submitted that the law on allegations of fraud is settled. The Plaintiff submitted that fraud must not only be pleaded and particularised but must also be proved to a standard slightly above a balance of probabilities and slightly below beyond reasonable doubt. In support of this submission, the Plaintiff cited *R.G Patel v. Lalji Makanji* [1957] E.A 314 and *Vijay Morjaria v. Nansingh Madhusingh Darbar & Another* [2000] eKLR.
- 20 The Plaintiff submitted that the Defendants claimed that the documents used by the Plaintiff to transfer the suit property to its name were fraudulent but failed to prove the alleged fraud to the required standard. The Plaintiff urged the court to dismiss the 2<sup>nd</sup> Defendant's claim with costs to the Plaintiff.

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

- 21 The 2<sup>nd</sup> Defendant filed his submissions on 23<sup>rd</sup> November 2022. The 2<sup>nd</sup> Defendant framed the following issues for determination by the court;
1. Whether the 2<sup>nd</sup> Defendant had proved to the required standard that the Plaintiff fraudulently and illegally transferred the suit property from the deceased to itself.
  2. Whether the court should cancel the title held by the Plaintiff over the suit property.
  3. Whether the Plaintiff should pay to the 2<sup>nd</sup> Defendant general damages for conversion of the suit property and costs of the suit, and if so, how much?
- 22 On the first issue, the 2<sup>nd</sup> Defendant submitted that he had proved on a balance of probabilities that the Plaintiff acquired the title to the suit property through fraudulent and illegal means. The 2<sup>nd</sup> Defendant submitted that the Plaintiff did not furnish any proof of how it acquired the suit property. The 2<sup>nd</sup> Defendant submitted that neither the agreement of sale nor the instrument of transfer of the suit property from the deceased to the Plaintiff was tendered in evidence by the Plaintiff to demonstrate that the Plaintiff had a dealing with the deceased in respect of the suit property. The Defendant cited section 3 (3) of the *Law of Contract Act*, Chapter 23 Laws of Kenya and submitted that any disposition



of an interest in land must be in writing, signed by the parties and the signatures of each party must be attested by a witness who is present when the document is executed by the parties. The 2<sup>nd</sup> Defendant submitted further that whereas section 8 (1) of the *Land Control Act* requires an application for consent to be made within 6 months of the date of the controlled transaction, the Letter of Consent to transfer the suit property from the deceased to the Plaintiff was allegedly issued on 6<sup>th</sup> November 1991 while the instrument of transfer of land to the Plaintiff was lodged for registration on 6<sup>th</sup> April 2004 after the death of the deceased.

- 23 The 2<sup>nd</sup> Defendant submitted further that whereas the deceased died on 22<sup>nd</sup> March 2000, the transfer of the suit property from his name to the Plaintiff was registered on 6<sup>th</sup> April 2004 before a Grant of Letters of Administration in respect of his estate was obtained. The 2<sup>nd</sup> Defendant submitted that the transfer of the suit property to the Plaintiff amounted to intermeddling with the deceased's estate. In support of this submission, the 2<sup>nd</sup> Defendant relied on *Zachariah Wambugu & Another v. John Ndungu Maina* [2019] eKLR.
- 24 On the second issue, the 2<sup>nd</sup> Defendant submitted that under section 26 of the *Land Registration Act* 2012, a certificate of title can be challenged on the ground of fraud or misrepresentation and where the certificate has been obtained illegally, unprocedurally or through a corrupt scheme. The 2<sup>nd</sup> Defendant submitted that it was clear that the Plaintiff acquired the suit property fraudulently and as such the court ought to cancel the Plaintiff's title so that the property can revert to the name of the deceased. The 2<sup>nd</sup> Defendant submitted that there was no way the deceased who died on 22<sup>nd</sup> March 2000 could have transferred the suit property to the Plaintiff on 6<sup>th</sup> April 2004. The 2<sup>nd</sup> Defendant submitted further that the suit property was being used by the beneficiaries of the estate of the deceased who were seeking protection under Article 68 (c) (vi) of *the Constitution* of Kenya 2010. The 2<sup>nd</sup> Defendant cited *Evans Muthemba Chege v. Twiga Lodge & 2 Others* [2018] eKLR in support of his submission that once the deceased died, the suit property vested in his personal representative.
- 25 On the third issue, the 2<sup>nd</sup> Defendant submitted that in the circumstances of this case, the Plaintiff's acts of fraudulently and illegally acquiring the suit property that belonged to the estate of the deceased subjected the beneficiaries of the deceased's estate to loss and damage. The 2<sup>nd</sup> Defendant submitted that the estate of the deceased was entitled to general and exemplary damages. The 2<sup>nd</sup> Defendant submitted that a sum of Kshs. 5,000,000/- as general damages would be a reasonable compensation for the loss suffered by the estate of the deceased. In support of this submission, the 2<sup>nd</sup> Defendant relied on *John Chumia Nganga v. Attorney General & Another* [2019] eKLR.

### **Analysis and determination:**

- 26 From the pleadings, the following in my view are the issues arising for determination in the 2<sup>nd</sup> Defendant's counter-claim;
1. Whether the Plaintiff acquired the suit property fraudulently.
  2. Whether the 2<sup>nd</sup> Defendant is entitled to the reliefs sought against the Plaintiff in his counter-claim.
  3. Who is liable for the costs of the counter-claim.



### **Whether the Plaintiff acquired the suit property fraudulently.**

27 In *Kuria Kiarie & 2 Others v. Sammy Magera* [2018] eKLR the Court of Appeal stated as follows on proof of fraud:

“The next and only other issue is fraud. The law is clear and we take it from the case of *Vijay Morjaria –vs- Nansingh Madhusingh Darbar & Another* [2000] eKLR, where Tunoi, JA (as he then was) states as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

28 I am satisfied from the evidence on record that the 2<sup>nd</sup> Defendant has proved fraud against the Plaintiff in the acquisition of the suit property. It is not disputed that at all material times, the suit property was registered in the name of the deceased. It is also not disputed that the deceased died on 22<sup>nd</sup> March 2000 and that the suit property was registered in the name of the Plaintiff on 4<sup>th</sup> May 2004 four years after the death of the deceased. I am in agreement with the submission by the 2<sup>nd</sup> Defendant that since the suit property was registered in the name of the deceased as at the date of his death, the same vested in his legal representative. The suit property could therefore be transferred to the Plaintiff only by the legal representative of the estate of the deceased. The suit property was not transferred to the Plaintiff by the legal representative of the estate of the deceased since there was none at the time the property was registered in the name of the Plaintiff. The deceased could also not have transferred the suit property to the Plaintiff since he had died at the time the property was registered in the name of the Plaintiff. The instrument of transfer of the suit property to the Plaintiff produced in evidence by the 2<sup>nd</sup> Defendant is dated 6<sup>th</sup> April 2004. Although it is claimed to have been signed by the deceased, there is no indication as to when it was so signed. The 2<sup>nd</sup> Defendant having proved that the suit property was registered in the name of the Plaintiff after the death of the deceased and that the same was not transferred to the Plaintiff by the legal representative of the deceased and there being no evidence from the Plaintiff on how he acquired the suit property, the only conclusion this court can arrive at is that the acquisition of the suit property by the Plaintiff was fraudulent.

29 In *Munyu Maina v. Hiram Gathiha Maina*[2013] eKLR, the Court of Appeal stated as follows:

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”

30 In *Daudi Kiptugen v. Commissioner of Lands & 4 Others* [2015] eKLR, the court stated that:

“...the acquisition of title cannot be construed only in the end result; the process of acquisition is material. It follows that if a document of title was not acquired through a proper process, the title itself cannot be a good title. If this were not the position then all one would need to do is to manufacture a Lease or a Certificate of title at a backyard or the



corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein.”

31 The 2<sup>nd</sup> Defendant having proved that; the suit property was registered in the name of the deceased as at the date of his death; the same was transferred to the Plaintiff on 4<sup>th</sup> May 2004 after the deceased’s death and that the deceased’s legal representative did not transfer the property to the Plaintiff, the burden shifted to the Plaintiff to prove that he acquired the suit property lawfully and not fraudulently. As I have mentioned earlier in the judgment, the Plaintiff did not tender any evidence in its defence to the counter-claim. The Plaintiff did not therefore explain to the court how it managed to acquire a property registered in the name of a deceased person. The evidence tendered by the 2<sup>nd</sup> Defendant regarding the fraudulent acquisition was not controverted. It is my finding from the foregoing that the Plaintiff acquired the suit property fraudulently.

**Whether the 2<sup>nd</sup> Defendant is entitled to the reliefs sought against the Plaintiff in his counter-claim.**

32 The suit property was registered under the Registered Land Act, Chapter 300 Laws of Kenya (now repealed). Sections 27 and 28 of the Registered Land Act provide as follows:

“27. Subject to this Act -

- (a) a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;
- (b) b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease.

28. The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject -

- (a) a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- (b) b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 30 not to require noting on the register:

33 Provided that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee.”

34 Section 143(1) and (2) of the Registered Land Act provides as follows:

“(1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake.



- (2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.”

35 Section 24 and 25 of the [Land Registration Act](#), 2012 provides as follows:

“24. Subject to this Act—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

25.

- (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
- (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
- (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.”

36 From the foregoing, it is clear that under the current land registration system and the land registration regime under which the suit property was registered and purportedly transferred to the Plaintiff, the Plaintiff’s title was indefeasible unless any illegality, procedural impropriety or fraud was established in the acquisition thereof. The Registered [Land Act](#) which is the statute under which the suit property was registered provides that a register of land can be rectified by the cancellation of any entry therein where such registration has been obtained by fraud or mistake.

37 The 2<sup>nd</sup> Defendant has sought a declaration that the Plaintiff acquired the suit property illegally and fraudulently. The 2<sup>nd</sup> Defendant has also sought the rectification of the register of the suit property by



the cancellation of the registration of the plaintiff as the owner of the property. The final prayer is for damages. I have already made a finding that the Plaintiff acquired the suit property fraudulently. The 2<sup>nd</sup> Defendant is therefore entitled to the declaratory relief sought and an order for the rectification of the register of the suit property by cancellation of the title held by the Plaintiff. With regard to damages, I am of the view that the same is not supported by evidence. The 2<sup>nd</sup> Defendant led evidence that the Plaintiff had encroached on the suit property but vacated the same. The status of the occupancy of the suit property according to the 2<sup>nd</sup> Defendant was that the same was occupied by the wife of the 1<sup>st</sup> Defendant. There was no evidence as to when the Plaintiff encroached on the suit property and when it vacated the same. In the absence of any evidence that the Plaintiff is in occupation of the suit property, I find no basis for awarding general damages against the Plaintiff for conversion and detinue of the suit property (sic) as sought by the 2<sup>nd</sup> Defendant in the counter-claim or for trespass as sought in the 2<sup>nd</sup> Defendant's submissions.

### **Conclusion:**

- 38 In conclusion, it is my finding that the 2<sup>nd</sup> Defendant has proved his counter-claim against the Plaintiff to the required standard. I therefore enter judgment for the 2<sup>nd</sup> Defendant against the Plaintiff for:
- a. A declaration that the Plaintiff acquired all that parcel of land known as Title No. KABONDO/KASEWE/1377 (the suit property) fraudulently and illegally.
  - b. An order for the rectification of the register of Title No. KABONDO/KASEWE/1377 by the cancellation of entries No. 3 and No.4 therein through which the Plaintiff was registered as the proprietor of the suit property and issued with a title deed. For the avoidance of doubt, the suit property shall revert to the name of Antoney Otieno Okwany as the proprietor thereof.
  - c. Costs of the suit and the counter-claim.

**DELIVERED AND DATED AT KISUMU THIS 18<sup>TH</sup> DAY OF MAY 2023**

**S.OKONG'O**

**JUDGE**

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of;

Mr. Onsongo for the Plaintiff

Mr. Maube for the Defendants

Ms. J. Omondi-Court Assistant

