



REPUBLIC OF KENYA



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Tari v IEBC Isiolo North Constituency Office of Co-ordinator & 2 others (Environment & Land Case E012 of 2021) [2025] KEELC 1448 (KLR) (20 March 2025) (Judgment)

Neutral citation: [2025] KEELC 1448 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND CASE E012 OF 2021**

**JO MBOYA, J
MARCH 20, 2025**

BETWEEN

ABDI ABKULLA TARI PLAINTIFF

AND

**IEBC ISIOLO NORTH CONSTITUENCY OFFICE OF CO-
ORDINATOR 1ST DEFENDANT**

IEBC ISIOLO COUNTY OFFICE CO-ORDINATOR 2ND DEFENDANT

CHAIRMAN, IEBC 3RD DEFENDANT

JUDGMENT

1. The Plaintiff has approached the court vide the Plaint dated the 19th day of November 2018; and wherein the Plaintiff has sought for the following reliefs [verbatim]:
 - i. An order of declaration that the Plaintiff is the legal and beneficial owner of the Property known as Isiolo Township Plot No. 7918/286 measuring approximately 0.0630 Hectares by reason whereof he is entitled to the occupation and possession thereof as proprietor to the exclusion of Defendants and any other person whatsoever.
 - ii. An order of declaration that the Plaintiff is the legal and beneficial owner of the Property known as Isiolo Township plot No. 7918/286 measuring approximately 0.0630 Hectares, and therefore he is entitled the outstanding rent arrears as from 2008 to date.
 - iii. An order of permanent injunction restraining the Defendants, whether acting by themselves, their servants, agents, contractors and/or any other persons whatsoever, from remaining on the property, damaging, developing, transferring, charging or registering in the name of the 1st Defendant or any person other than the Plaintiff or in any other manner howsoever interfering



with the Plaintiff's right to ownership, possession and quiet enjoyment of the Property known as Isiolo Township plot No. 7918/286 measuring approximately 0.0630 Hectares.

- iv. This Honourable Court do issue Eviction orders that the Defendants do vacate forthwith from the Plaintiff's Land known as Isiolo Township plot No. 7918/286 measuring approximately 0.0630 Hectares.
 - v. General damages against the Defendants, jointly and severally.
 - vi. Costs of the Suit against Defendants, jointly and severally.
 - vii. Interest on (b), (e) and (f) above at court rates until settlement thereof in full.
 - viii. Any other relief that this Court may deem fit and just to grant in the circumstances of the case.
2. Upon being served with the Plaint and summons to enter appearance [STEA], the Defendants duly entered appearance and filed a statement of defence dated the 11th February 2019; and wherein the Defendants denied the Plaintiff's claims. Furthermore, the Defendants contended that though the Plaintiff was hitherto the registered proprietor of the suit property, the Plaintiff entered into a lawful sale agreement with the Electoral Commission of Kenya [now defunct] and which was succeeded by the 3rd Defendant.
 3. Subsequently, the Defendants sought for and obtained leave to amend the statement of defence culminating into the amended statement of defence dated the 6th October 2020 and wherein the Defendants have reiterated the contention that the suit property was duly sold to and in favour of the Electoral commission of Kenya [now defunct].
 4. The Plaintiff filed a reply to the amended statement of defence dated the 19th October 2020 and wherein the Plaintiff denied the averments adverted to at the foot of the amended statement of defence. In particular, the Plaintiff contended that same is the lawful and legitimate proprietor of the suit property.
 5. Moreover, the Plaintiff averred that same was approached by the first Defendant with a view to procuring the suit property for use by the electoral commission of Kenya [now defunct]. To this end, the Plaintiff contended that thereafter same entered into a lease agreement with the electoral commission of Kenya [now defunct]. However, the Plaintiff posited that the lease agreement was never reduced into writing.
 6. The hearing of the instant matter commenced on the 21st March 2022; before Honourable Justice Njoroge Muchoki, Judge; now retired, whereupon the Plaintiff's case was heard. However, the Plaintiff and his witness were not subjected to cross examination by and on behalf of the Defendant[s].
 7. Notwithstanding the foregoing, the Defendants mounted an application dated the 4th April 2024 and wherein the Defendants sought to have the Plaintiff's case re-opened and the Plaintiff and witness recalled for cross examination. For good measure, the Application under reference was duly allowed.
 8. Suffice it to state that thereafter, the Plaintiff and his Witness were duly recalled for purposes of cross-examination and the same were duly cross-examined by the Advocate for the Defendants.
 9. The Plaintiff's case is premised on the evidence of two [2] witness, namely; Abdi Abkullah Tari and Dabaso Boro Dika. Same testified as PW1 and PW2, respectively.
 10. It was the testimony of PW1 that same is the Plaintiff. Furthermore, the witness averred that same has since filed a witness statement dated the 19th November 2018 and which statement the witness sought



- to adopt and rely on as his evidence in chief. Instructively, the witness statement under reference was adopted and constituted as the evidence in chief.
11. Additionally, the witness referenced the list and bundle of documents dated the 25th November 2019 and thereafter sought to adopt and produce same [documents] as exhibits before the court. For good measure, the documents were duly adopted and constituted as exhibits on behalf of the Plaintiff.
 12. On cross examination by learned counsel for the Defendants, the witness averred that same was allocated the suit property by the County Council of Isiolo [now defunct]. Furthermore, the witness averred that same was thereafter issued with a Letter of allotment by the Commissioner of Land, now defunct.
 13. It was the further testimony of the witness that the upon complying with the terms of the Letter of allotment, same [witness] was issued with a Lease instrument and thereafter a Certificate of lease. To this end, the witness posited that same is the lawful and registered proprietor of the suit property.
 14. Moreover, it was the testimony of the witness that on or about the year 1999 same [witness] was approached by the Election coordinator for Isiolo District with a view to leasing the suit property on behalf of the Electoral Commission of Kenya [ECK]. In this regard, the witness posited that same took the election coordinator to the suit premises.
 15. Whilst still under cross examination, the witness averred that the Electoral Commission rented the premises from the year 1999. Nevertheless, it was averred that despite renting the premises, the Electoral commission of Kenya [ECK] only paid rents of Kes.1, 100, 000/= only relative to the period between 1999 to 2007.
 16. On the other hand, it was the testimony of the witness that same did not enter into and/or execute a sale agreement with the electoral commission. In this regard, the witness denied having signed a sale agreement dated the 25th May 2007 as well as the transfer instrument of even date.
 17. It was the further testimony of the witness that same was paid the sum of kes.1, 100, 000/= only. However, the witness averred that the payment in question was done in cash. In addition, the Witness averred that the payment in question was in respect of rent[s] over the suit premises and not otherwise.
 18. On further cross examination by learned counsel for the Defendants, the witness averred that same did not receive the cheque which is at page 26 of the Defendant's list and bundle of documents. In any event, the witness denied that the cheque under reference was for payment of the purchase price in respect of the suit property.
 19. The second witness who testified on behalf of the Plaintiff was Dabaso Boro Dika. Same testified as PW2.
 20. It was the testimony of the witness [PW2] that same was previously the Election coordinator for Isiolo. Furthermore, the witness averred that same was an employee of the Electoral Commission of Kenya [now defunct]. In addition, the Witness has averred that same has recorded a witness statement dated the 18th November 2018; and which witness statement the witness sought to adopt and rely on as his evidence in chief.
 21. Instructively, the witness statement dated the 19th November 2018 was thereafter adopted and constituted as the evidence in chief of the witness, namely, PW2.
 22. On cross examination by learned counsel for the Defendants, the witness averred that same was hitherto the District Election Coordinator for Isiolo district. Furthermore, it was the testimony of the witness



- that same worked with electoral commission of Kenya [ECK] up to the year 2008 when his [witness] contract was terminated.
23. It was the further testimony of the witness that when same was posted to Isiolo District, he [Witness] found the Electoral Commission of Kenya [ECK] premises in a dilapidated state. Thereafter, the witness averred that same undertook renovation of the premises.
 24. Whilst still under cross examination, the witness averred that same wrote to the District Physical Planner and Land Registrar, seeking to know whether the suit property was public land. In this regard, the witness averred that the District Physical Planner and the Land Registrar wrote back and confirmed that the land was public land.
 25. Furthermore, it was the testimony of the witness that the surveyor informed same [witness] that the land in question belongs to the Plaintiff herein. To this end, the witness testified that he thereafter alerted the commission who called the Plaintiff to Nairobi.
 26. Additionally, the witness averred that document number 7 in the Defendant's list and bundle of documents is a cheque for the sum of Kes.1, 100, 000/= only. Furthermore, it was averred that the cheque is from Central Bank of Kenya [CBK] and that same was issued to the Plaintiff by the Electoral Commission of Kenya.
 27. It was the further testimony of the witness that the cheque in question was paid out to the Plaintiff on the 25th May 2007. In addition, the witness averred that the cheque in question contained writings on the face thereof which confirms that the payment was in full payment of the purchase price.
 28. Moreover, it was the testimony of the witness that the cheque bears his [witness] name as a witness. In addition, the witness added that his signature is also contained on the face of the cheque as having witnessed the payment.
 29. With the foregoing, the Plaintiffs' case was closed.
 30. The Defendant's case is premised on the evidence of one witness, namely; Abdikadir Abdulahi Ahmed. Same testified as DW1.
 31. It was the testimony of the witness that same is currently the Constituency Coordinator for Mandera West Constituency. However, the witness averred that same was previously the election coordinator for Isiolo North Constituency.
 32. Furthermore, the witness averred that same has since recorded a witness statement dated the 25th November 2019 and which witness statement the witness sought to adopt and rely on as his evidence in chief. Suffice it to state, that the witness statement was duly adopted and constituted as the evidence in chief of the witness.
 33. The witness further referenced the List and Bundle of documents filed on behalf of the Defendants and thereafter sought to tender and produce the documents as exhibits before the court. To this end, the documents were duly produced as exhibits D1 to D7, respectively.
 34. On cross examination by learned counsel for the Plaintiff, the witness averred that suit property belongs to the 3rd Defendant, namely; the Independent Electoral & Boundaries Commission. Furthermore, the witness averred that the suit property was purchased by the electoral commission of Kenya [now defunct]. To this end, the witness referenced a sale agreement that was entered into between the Plaintiff and Electoral commission of Kenya [now defunct].



35. It was the further testimony of the witness that the Plaintiff herein duly executed the sale agreement. Moreover, the witness also averred that the Plaintiff also signed a transfer instrument. In any event, the witness added that the Plaintiff was paid the entire purchase price in the sum of kes.1, 100, 000/= only vide cheque from Central Bank of Kenya [CBK] on behalf of the electoral commission of Kenya [now defunct].
36. Following the close of the defence case, the advocates for the parties covenanted to file and exchange written submissions. To this end, the court proceeded to and circumscribed the timelines for the filing of the written submissions.
37. The Plaintiff proceeded to and filed written submissions dated the 23rd May 2024; whereas the Defendants filed written submissions dated the 26th June 2024. Both sets of written submissions are on record.
38. Having reviewed the pleadings on record; the evidence [both oral and documentary] and upon consideration of the written submissions filed on behalf of the respective parties, I come to the conclusion that the determination of the instant matter turns on three [3] salient issues, namely;
- i. Whether the suit property lawfully belongs to the Plaintiff;
 - ii. Whether the Plaintiff entered into and executed a sale agreement with the Electoral commission of Kenya [now defunct]; and
 - iii. Whether the Plaintiff is entitled to the relief sought or otherwise.
39. Regarding the first issue, namely; whether the Plaintiff herein is the lawful proprietor and/or owner of the suit property, it is imperative to state and underscore that the Plaintiff has placed before the court the minutes of the County Council Isiolo [now defunct] wherein the said council approved the application for allotment of what now constitutes the suit property to and in favour of the Plaintiff.
40. Additionally, it is also worthy to recall and reiterate that the Plaintiff has also placed before the court a copy of the letter of allotment dated the 18th February 1999 and which letter references the part development plan [PDP] number ISL/117/98/9, showing the ground location of the suit property.
41. Moreover, the Plaintiff also tendered and placed before the court the lease instrument which was issued in his favour and which lease instrument was lodged for registration on the 10th November 2006.
42. Pertinently, the lease instrument appears to have been duly registered on even date, namely; the 10th November 2006, in accordance with the certificate of official search which was tendered as an exhibit on behalf of the Plaintiff.
43. Be that as it may, it is not lost on this court that the Plaintiff did not tender and or produce the certificate of lease or at all. Perhaps, the failure to produce the certificate of lease touches on and concerns the fact that same may have been surrendered to the electoral commission of Kenya [now defunct] in fulfilment of the terms and conditions of the sale agreement. However, I shall revert to this issue shortly.
44. Taking into account the documentation that were placed before the court, I come to the conclusion that the suit property was lawfully allocated to and in favour of the Plaintiff. Furthermore, I also come to the conclusion that the Plaintiff duly acquired title to and in respect of the suit property.
45. Without belabouring the point, I beg to underscore that the issuance of the certificate of lease to and in favour of the Plaintiff herein denoted that the Plaintiff was the lawful owner of the suit property and thus same accrued lawful rights and interests thereto.



46. To this end, it is appropriate to take cognizance of the holding of the Court in the case of *Wreck Motor Enterprises v Commissioner of Lands & 3 others* [1997] eKLR, where the Court of Appeal stated as hereunder;

Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of title document pursuant to provisions held. See *Dr. Joseph N.K. Arap Ng'ok v Justice Moiwo ole Keiwua & 4 Others*, Civil Application No. NAL.60 of 1997 (unreported). Sections 23(1) of the Registration of Titles Act reads as follows:-

"Section 23 (1)

The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misinterpretation to which he is proved to be a party."

47. The scope of the rights of the registered proprietor of a landed property was also elaborated upon in the case of *Mohansons (Kenya) Limited v Registrar of Titles & 2 others* [2017] KEELC 2730 (KLR), where the court stated as hereunder;

(17) The petitioner as a registered proprietor of the suit property has established a strong prima facie case for the grant of the reliefs for the protection of his property rights sought in the petition. I do not agree that the petition is about ownership of the suit property which should be determined by a civil suit rather than by petition for protection of property rights. Having perused petition, I do not accept that the petitioner has violated the rule of specificity of pleading constitutional claims as propounded by *Anerita Karimi Nejru v. A.G No. 1 (1979) KLR 154*. The petitioner as registered proprietor asserts his constitutional right to protection of property under Article 40 of the *Constitution*. If he 2nd Respondent contends that the title of the petition is vitiated by fraud, misrepresentation or the certificate of title is illegal, unprocedural or obtained through a corrupt scheme, it is for the said respondent to move the appropriate Court by suitable proceedings in that behalf for such determination. In the absence and prior to any such determination, the petitioner is entitled to protection of his undoubted property rights. [Emphasis supplied].

48. Flowing from the foregoing analysis, my answer to issue number one [1] is to the effect that the Plaintiff was the lawful and registered proprietor of the suit property. For good measure, the registration of the Plaintiff as the owner of the suit property is vindicated vide the certificate of official search issued on the 12th July 2018 and which was tendered before the court as an exhibit.

49. Next is the issue of whether the Plaintiff entered into and executed a lawful sale agreement with the electoral commission of Kenya [now defunct] and if so, whether the sale agreement is binding on the Plaintiff.

50. To start with, the Defendant's witness [DW1] tendered and produced before the court assorted documents including a copy of the sale agreement entered into on the 25th May 2007 between the Plaintiff herein and the electoral commission of Kenya [now defunct]; a copy of the duly executed transfer instrument dated the 25th May 2007 and a copy of the cheque dated the 14th March 2007, but which was received and acknowledged by the Plaintiff on the 25th May 2007.



51. The documents which were tendered by and on behalf of the Defendants herein were neither challenged nor controverted. However, it is not lost on this court that the Plaintiff contended that same was not privy to or aware of the sale agreement.
52. Additionally, the Plaintiff herein contended that same did not execute the transfer instrument. Instructively, the Plaintiff posited that the transfer instrument was a forgery.
53. As concerns the cheque for the sum of Kes.1, 100, 000/= only, the Plaintiff denied having received the said cheque. However, the Plaintiff conceded having been paid the sum of kes.1, 100, 000/= only by the electoral commission of Kenya [now defunct] but which payment the witness contended was made on account of rent arrears for the period between 1999 and 2007.
54. Be that as it may, even though the witness [Plaintiff] denied having received the cheque dated the 14th March 2007, the witness acknowledged that his signature was contained thereunder. Notably, it is also apposite to add that the cheque under reference also bears the Plaintiffs I.D No, namely; No. 9855925. For good measure, the said I.D Number corresponds with the I.D No. that has been alluded to in the preamble of the verifying affidavit.
55. Other than the fact that the cheque bears the I.D card number and the signature of the Plaintiff, it is also worthy to underscore that the payment under reference was made in the presence of one Dabaso B Dika; who is shown to have been the District Electoral Coordinator- Isiolo.
56. Pertinently, the said Dabaso B Dika testified before the court as DW2. Interestingly, the witness pretended not to have been aware of the payment that was made in favour of the Plaintiff. Nevertheless, it is evident that the witness herein acknowledged his signature on the copy of the cheque that was paid to the Plaintiff.
57. For ease of appreciation, it is expedient to reproduce the evidence of PW2 [Dabaso B Dika] whilst under cross examination by learned counsel for the Defendant.
58. Same testified as hereunder;

“The cheque is dated 14th march 2007. It is from the central bank of Kenya. It is issued to the Plaintiff by the ECK. The writing on the cheque being in full payment of the purchase price. Abdi Tari Habkula have signed it on the 25th May 2007. It has me as a witness. I dispute that I was a witness. The signature is mine, the name is mine but I never saw the cheque”.
59. My reading of the testimony of PW2 drives me to the conclusion that indeed same witnessed the payment of the cheque of kes.1, 100, 000/= only to the Plaintiff herein. Furthermore, it is evident that the payment in question constituted the full purchase price of the suit property, which statement is evident on the face of the cheque under reference.
60. Other than PW2, it is also noteworthy that PW1 signed the sale agreement as well as the transfer form. For good measure, even though PW1 feigned ignorance about the sale of the suit property and pretended that the property had been leased to the electoral commission of Kenya [now defunct], it is important to underscore that the validity and authenticity of the sale agreement and the transfer instrument were neither challenged nor impugned.
61. Additionally, it is now apposite to revert to the issue of the absence of the certificate of lease. Pertinently, it is worthy to recall that the Plaintiff herein neither tendered nor produced the certificate of lease as an exhibit before the court.



62. However, it is not lot on this court that the Plaintiff herein had been issued with the certificate of lease. For good measure, the issuance of certificate of lease to the Plaintiff is reflected as entry number two [2] in the certificate of official search issued on the 12th July 2018.
63. Why did the Plaintiff fail to produce the certificate of lease, which no doubt would have been under his custody? The answer to this question is traceable to the sale agreement that was entered into and executed by the Plaintiff and wherein clause 1 [special conditions] stipulated as hereunder;
- “On completion date, the following document will be made available to the purchaser (a) a duly executed transfer of the said property in favour of the purchaser; (b) a certificate of clearance of land rent and rate; (c) a duly completed and signed form for valuation of stamp duty and (d) original title document [title deed] in the name of the vendor”.
64. In the absence of any explanation by the Plaintiff as to what happened to the certificate of lease [certificate of title], there exists a credible basis to infer that indeed the certificate of lease was surrendered to the Electoral Commission of Kenya [now defunct] upon the payment of the purchase price of kes.1, 100, 000/= only vide cheque dated the 14th March 2007; but paid out on the 25th May 2007.
65. From the foregoing background, I come to the conclusion that the totality of the evidence tendered by the Defendants and which had neither been controverted nor disputed by the Plaintiff demonstrates that the suit property was lawfully sold to and in favour of the electoral commission of Kenya [now defunct].
66. Before departing from this issue, it is imperative to mention one more perspective. The perspective touches on and concerns the fact that the Plaintiff herein executed both the sale agreement and the transfer instrument before an advocate of the High Court of Kenya; namely P. M Malonza who thereafter attested the Plaintiff’s signature.
67. Despite the fact that his Plaintiff signature was duly attested by an advocate, the Plaintiff failed to either summon the said witness or lodge a criminal complaint to warrant forensic document examination as pertain[s] to the authenticity or otherwise of the instrument in question.
68. Quite clearly, the Plaintiff herein was and is aware of the sale of the suit property. However, the Plaintiff appears to be keen to partake of the suit property merely because the transaction in favour of the electoral commission of Kenya [now defunct] was not concluded and no title was issued.
69. Additionally, what becomes apparent is that the Plaintiff herein appears keen to propagate the claim of being the lawful and registered proprietor of the suit property merely because same [Plaintiff] discovered that despite the sale, the suit property still remains registered in his name.
70. To my mind, the claim by the Plaintiff herein represents a classic case of unjust enrichment. Such a claim, must be frowned up. In this regard, it suffices to cite and reference Article 10[2][b] of the Constitution 2010 and more particularly, the values highlighting Equity and Social justice.
71. As pertains to the reliefs [if any] that ought to be issued, I beg to state that the Plaintiff herein had contended that same is the lawful proprietor and registered owner of the suit property. Furthermore, the Plaintiff had also contended that the Defendants have trespassed onto and encroached upon the suit property.
72. Whilst discussing issue number two [2], this court has since found and held that the suit property was lawfully sold to and in favour of the Electoral Commission of Kenya [now defunct]. The only



- thing that did not happen is the effective transfer and registration of the suit property in favour of the electoral commission of Kenya [now defunct].
73. To my mind, the occupation and use of the suit property by the Defendants herein is predicated upon a lawful sale agreement that underpins beneficial rights to the suit property. In this regard, the Plaintiff herein has neither proven nor established the plea [claim] of trespass.
 74. On the other hand, the Plaintiff also sought for payment of [sic] rent arrears due and owing from the electoral commission of Kenya [now defunct] and replaced by the 3rd Defendant.
 75. Pertinently, it is stated that the rent arrears have accrued since the year 2007. For the sake of arguments only, it is imperative to underscore that if there were any rent arrears [which have not been proven], same ought to have been claimed and recovered in accordance with the provisions of Section 4 of the Limitation of Actions Act, Chapter 22 Laws of Kenya as read together with Section 3 of the Public Authorities Limitation Act, Chapter 39 Laws of Kenya.
 76. Without belabouring the point, it is my finding and holding that the limb of the Plaintiff's claim touching on [sic] payment of rent arrears is statute barred.
 77. Finally, the Plaintiff also sought for an order of eviction and permanent injunction. Suffice it to state, that the court has found and held that the Plaintiff had entered into and executed a binding sale agreement and instrument of transfer. In any event, the authenticity of the said document has not been impugned.
 78. Having sold the suit property and having received the requisite consideration in accordance with cheque paid out on the 25th May 2007, the Plaintiff herein is not entitled to the relief[s] of eviction and permanent injunction, either in the manner sought or at all.
 79. Other than the foregoing, there remains one lingering question which requires the attention of the court. The Plaintiff herein entered into and executed a sale agreement as well as the instrument of transfer. Furthermore, the Plaintiff also received due payment and or consideration.
 80. Despite the foregoing, the transfer and registration of the suit property in favour of electoral commission of Kenya [now defunct] appears not have been concluded. Most probably, the non-completion of the transaction arose because the electoral commission of Kenya was disbanded following the mayhem that ensued after the disputed 2007 elections, better referenced as the post-election violence [Pev].
 81. Nevertheless, the successors of the electoral commission of Kenya, namely, the IEBC; have remained in occupation of the suit property. For coherence, the suit property is still being used as the office[s] of the IEBC to date.
 82. In the circumstances, the question that does arise is whether the registration of the suit property in the name of the Plaintiff ought to remain even though the suit property had been sold and the purchase price duly paid out.
 83. To my mind, Equity treats as done that which ought to have been done. Furthermore, Equity also frowns upon unjust and unlawful enrichment.
 84. In the case of *Nyambok v Ojuka & another* (Environment and Land Appeal E030 of 2022) [2023] KEELC 21647 (KLR) (15 November 2023) (Judgment), the court considered the import and tenor of the doctrine of Equity and stated as hereunder;



32. Article 10 (2) (b) of the Constitution of Kenya , 2010 anchors the principles of equity which include;
- a. Equity treats as done that which ought to have been done (equitable conversion).
 - b. Equity will not allow a wrongdoer to profit by a wrong; see also *Jeho v Vivian* [1876] Law Rep 6 Ch App.742 (restitution)
 - c. He who seeks equity must do equity.
 - d. Equity will not allow a statute to be used as a cloak for fraud (constructive trust)
85. Additionally, I am reminded of the dicta in the case of *Maina & 87 others v Kagiri* (Civil Appeal 6, 26 & 27 of 2011 (Consolidated)) [2014] KECA 880 (KLR) (22 January 2014) (Judgment), where the court stated thus;
- We are reminded and guided by the dicta of Madan, JA (as he then was) in *Chase International Investment Corporation and Another v Laxman Keshra and others* [1978] KLR 143; [1976-80] 1 KLR 891 to the effect that:“If the circumstances are such as to raise equity in favour of the Plaintiff and the extent of the equity is known, and in what way it should be satisfied, the plaintiff is entitled to succeed...”
86. Finally, it is worthy to take cognizance of the provisions of Section 13[7] of the Environment and Land Court Act, 2011.
87. For ease of appreciation same provides as hereunder;
- (7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including——
- (a) interim or permanent preservation orders including injunctions;
 - (b) prerogative orders;
 - (c) award of damages;
 - (d) compensation;
 - (e) specific performance;
 - (g) restitution;
 - (h) declaration; or
 - i costs.

Final Disposition:

88. Arising from the analysis, enumerated in the body of the Judgment, it is evident that the Plaintiff has failed to prove his [sic] entitlement to and in respect of the suit property. Instructively, the Plaintiff’s claim is devoid and bereft of merits.
89. Consequently, and in the premises, the final orders that commend themselves to the court are as hereunder;
- i. The Plaintiff’s suit be and is hereby dismissed.



- ii. Costs of the suit be and are hereby awarded to the Defendants.
- iii. In line with the provisions of Section 13[7] of the *Environment and Land Court Act* 2011, the registration of the suit property in the name of the Plaintiff be and is hereby revoked and/or cancelled.
- iv. The Register in respect of the suit property shall be rectified and thereafter the name of the 3rd Defendant, namely; Independent Electoral & Boundaries Commission [IEBC] shall be registered in lieu of the Plaintiff.
- v. The Land Registrar Isiolo County shall thereafter proceed to and issue the Certificate of Lease in favour of the 3rd Defendant.

90. It is so ordered.

DATED SIGNED AND DELIVERED ON THE 20TH DAY OF MARCH, 2025.

OGUTTU MBOYA

JUDGE.

In the presence of .

Mr. Mutuma – Court Assistant.

Mr. Abkullah Tari- The Plaintiff in person.

Mr. C.B Mwangela for the Defendants.

