



Kinisu v Makokha & 3 others; Munyasia (Interested Party) (Environment & Land Case 27 of 2016) [2023] KEELC 18892 (KLR) (14 July 2023) (Judgment)

Neutral citation: [2023] KEELC 18892 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE 27 OF 2016**

EC CHERONO, J

JULY 14, 2023

BETWEEN

PATRICK SIFUNA KINISU PLAINTIFF

AND

PROTUS SIFUNA MAKOKHA 1ST DEFENDANT

FRANCIS BARASA MAKOKHA 2ND DEFENDANT

DAVID WANJALA MAKOKHA 3RD DEFENDANT

LINDA MULAMA KAMANDE 4TH DEFENDANT

AND

JOB WEKESA MUNYASIA INTERESTED PARTY

JUDGMENT

1. The plaintiffs, vide a further Amended plaint filed in court on 1st November 2021 seek the following orders;
 - aa) The plaintiffs claim against the interested party is for a declaration that the interested party got registered as the owner of land parcel NO. E.Bukusu/S.Kandunyi/18401 and 18415 fraudulently and irregularity and an order be issued cancelling the interested party's titles of E.Bukusu/S/Kandunyi/18401 and 18415 and the same be reverted back in the plaintiff's name.
 - 11B. The plaintiffs' claim against the defendants jointly and severally is for an eviction and demolition order from land parcel NO. E.Bukusu/S.Kandunyi/18411, 18414, 18401 and or any other plaintiff's parcel thereto. The plaintiff also prays or a permanent injunction restraining the defendant from remaining and or entering on all land parcels NO. E.Bukusu/



S.Kandunyi/18401-to-18428 save for L.R NO. E.Bukusu/S.Kandunyi/18407 and 18408 and the plaintiff also prays for mesne profit.

- 11BB. The plaintiff prays that a declaration order be made that sell and or charge and subsequent transfer of L.R NO. E.Bukusu/S.Kandunyi/18401 & 18414 to the 4th defendant was irregularly null and void hence against the doctrine of pendete lite and lis pendens and the registration of said land L.R NO. E.Bukusu/S.Kandunyi/18401 & 18414 in the names of 4th defendant be cancelled and the titles be reverted in the names of the plaintiff Patrick Sifuna Kinusu and the Interested party and 4th Defendants be ordered to pay general damages to the plaintiff
- b) Court order for immediate eviction from the suit parcel of land or any annexations the reofandsurrender of vacant possession to the plaintiff
 - bb) Costs of this Suit
 - cc) Any other relief the court may deem just and fit to grant.
2. The 1st, 2nd and 3rd defendants filed a joint statement of defence and counterclaim dated 25th November, 2016. The 4th defendant did not enter Appearance nor file defence. The Interested party on other hand filed defence and a counterclaim dated 1st April, 2019.

The Plaintiff's Case

3. This case came up for hearing on 29/3/2023. The plaintiff referred to his witness statement filed in court on 10/6/2016 which upon request by the plaintiff was adopted in his testimony-in-chief. He also referred to a further witness statement dated 9/2/2023 which he also sought to be adopted as his testimony –in-chief.
4. The plaintiff was referred to his list of documents dated 10/6/2016 and a further list of documents dated 9/2/2023 containing 30 and 61 items respectively all of which he produced as exhibits in support of this suit. In his testimony, the plaintiff stated that he is the legal Representative of the Estate of Julius Wanyonyi Mutoro also referred to as Wanyonyi Mutoro alias Julius Wanyonyi (deceased) and the registered proprietor of land parcels NO. E.Bukusu/S.Kandyi/18401 to 18428 which are resultant subdivisions of LR NO. E.Bukusu/S.Kandunyi/1249.
5. The plaintiff also stated that his father Julius Wanyonyi Mutoro alias Wanyonyi Mutoro alias Julius Wanyonyi (deceased) bought a parcel of land NO. E.Bukusu/S.Kandunyi/1249 from one Makokha Kanjala (deceased) who is the father to the defendants herein. The plaintiff further stated that in or about the year 1963, his father Julius Wanyonyi also bought a portion of land measuring 5.5 acres out of land parcel NO. E.Bukusu/S.Kandunyi/976 from the same Makokha Kanjala (deceased) at a mutually agreed price of Kshs. 1,900/ and applied to the Kabuchai land Control Board on 22/2/1972 for consent to transfer and was granted the same during the Board's meeting on 8/3/1972. The plaintiff further testified that the transfer could not be executed immediately by the land Registrar because there was a court order subsisting on the subject parcel of land issued pursuant to a letter issued by the land Registrar dated 22/10/1973, a copy of the then District Magistrate's letter Reference BGN/DMC/25/58 dated 26/3/1974, and a copy of green card for land parcel NO. E.Bukusu/S.Kandunyi/976. He averred that the land Registrar executed the transfer after both the buyer (Julius Wanyonyi) and the seller (Makokha Kanjala) appended their signatures to Form R.L ON 12/2/1974 in his presence before closing title NO. E.Bukusu/S.Kandunyi/976 and activating title NO.E.Bukusu/S.Kandunyi/1249 for his father, Julius Wanyonyi which had been opened on 26/03/1973 but remained inactive due to the court order alluded to above. He stated that after complying with all the legal



processes, his father Julius Wanyonyi was duly issued with a land Certificate on 8/4/1974. He said that on or about October 1984, the defendants' father Makokha Kanjala died and being landless, was buried at his brother's farm at Mupeli Village, Bungoma. The plaintiff further stated that from 1963, they established their home on the suit land until their mother Dinah Namarome Wanyonyi died in the year 1985 and was buried in the same land. The plaintiff also stated that when his two younger brothers Sammy Juma Wanyonyi and Chrisanthus Sikuku Wanyonyi also passed on, they were buried on the same parcel of land.

6. The plaintiff also stated that in or about the year 1994, the defendants herein, without any colour of right trespassed onto their parcel of land and constructed grass thatched huts then filed a dispute at Kandunyi Land Disputes Tribunal claiming ownership of the parcel of land which was dismissed in 1995 and thereafter, the defendants lodged an appeal before the provincial land Disputes Appeals Committee at Kakamega in 1996. The plaintiff further stated that the defendants were forcibly evicted twice from the suit land parcel NO. E.Bukusu/S.Kandunyi/1249. He stated that after the appeal was dismissed by the provincial land disputes Appeals Committee in 1996, the defendants filed an application for judicial Review in the High court vide Civil Appeal No. 97/1999 at Bungoma and that the application was allowed and directed the case to be remitted to the lower court for hearing.
7. On cross-examination, the plaintiff stated that he acquired titles to the suit properties after he filed Succession Cause after the demise of his father Julius Wanyonyi Mutoro (deceased). He stated that the sale transaction started in the year 1963 until the year 1972 when it was concluded. He confirmed that he did not produce the sale agreements between his father and the Makokha Kanjala, the seller.

1st, 2nd And 3rd Defendants Case

8. Protus Sifuna Makokha Kinisu, the 1st defendant herein was called to testified on his own behalf and on behalf of the 2nd and 3rd defendants. The witness referred to his witness statement dated 25/5/2016 which the court on his request adopted as his testimony-in-chief. In his testimony, the witness stated that to the best of his knowledge, his father Makokha kanjala (deceased) did not sale his land parcel NO.E.Bukusu/S.Kandunyi/1249 to the plaintiff's father, Julius Wanyonyi Mutoro and neither did he sell a portion of land measuring 5.5 acres out of land parcel NO. E.Bukusu/S.Kandunyi/976 to him. He stated that the purported sale of land in 1963 and a letter of consent in 1972 are forgeries because when the requisite transfer of land form was prepared on 14/3/1972, it could not be executed by the land Registrar since there was a prohibition order issued pursuant to Civil Suit NO. 290 of 1969 barring any dealings in the subject parcel of land. He stated that the land Registrar did not execute the transfer on 12/2/1974 nor did they append their signatures to it as alleged. He further stated that when their father died in 1984, they buried him in the suit property land parcel NO.E.Bukusu/S.Kandunyi/1249. He further stated that at all material times, they have been staying in the suit land with the rest of their family members since childhood until the year 1994 when they realized that the plaintiff's father had taken the title fraudulently causing them to file a dispute at Kandunyi land Disputes Tribunal claiming ownership of land parcel NO.E.Bukusu/S.Kandunyi/1249 and in 1985, their claim was dismissed and they filed an appeal before the provincial land disputes Appeals committee in 1996. He further stated that when their appeal was dismissed by the provincial appeals committee at Kakamega, they filed a Judicial Review application for the orders of certiorari and prohibition in the High court at Bungoma whereof the Appeals committee award adopted under Misc. Civil application No. 104 of 1999 was quashed vide Judicial Review (JR) Application NO. 97 of 1999.
9. The 1st defendant further stated that upon the demise of their father on 26/7/1997, the plaintiff secretly filed Succession Cause NO. 191 of 1999 in the High court at Bungoma and was issued with a certificate of confirmation of grant dated 11th December 2000 whereby he was registered



by transmission as the owner of land parcel NO.E.Bukusu/S.Kandunyi/1249. He said that upon registration as proprietor of the said land, the plaintiff embarked on sub-division of the said same into 28 plots and registered the resultant titles in his name.

Plaintiff's Submissions

10. The plaintiff, through the firm of M/s Emmanuel Wanyonyi & Company Advocates filed submissions on 30/5/2023 on five issues as follows;

Whether the plaintiff is entitled to the relief sought in the plaint?

11. The learned counsel submitted that the plaintiff is the registered owner of the titles in question and that a title deed is conclusive evidence that the holder is entitled to use the land. He submitted that the 1st defendant admitted on cross-examination that it was his deceased father who subdivided L.R NO. E.Bukusu/S.Kandunyi/976 into two portions and transferred L.R NO. E.Bukusu/S.Kandunyi/1250 to Kusima Kaverwa. The learned counsel further submitted that the plaintiff did Succession in L.R NO. E.Bukusu/S.Kandunyi/1249 which was registered in the name of his father and upon acquiring the land, he subdivided the same into 28 plots and that no fraud was committed.
12. As regards the Judicial proceedings in the High Court at Bungoma Misc. Civil Application NO. 97 of 1999 (J.R.), the learned Counsel submitted that the Judge set aside the Orders of the provincial appeals committee but not the proceedings. He submitted that the proceedings are still valid and are admissible in this court as evidence.

Whether the 1st, 2nd and 3rd defendants have locus standi to file counterclaim?

13. The counsel for the plaintiff submitted that the 1st, 2nd and 3rd defendants are not clothed with capacity to file the counterclaim on behalf of a deceased person without a grant. He submitted that the grant that was issued to the defendants was revoked by Hon. Gesora, Chief Magistrate Bungoma on 15/11/2022. He further submitted that the defendants filed a civil suit NO. CM-ELC 323 of 2005 which was also dismissed by Hon. G. Sogomo on 4/7/2005 which order was not appealed against.

Whether the plaintiffs' claim against the 4th defendant should be allowed?

14. The plaintiff's counsel submitted that the 4th defendant was duly served with Summons to enter appearance and all pleadings in this case but failed to Enter Appearance or file defence. He submitted that the 4th defendant bought land from the interested party when the case was pending in court. As such, he submitted, the 4th defendant is guilty of the doctrine of pendete lite and lis pendens.

Whether the interested party had a good title to pass to 4th defendant?

15. The counsel for the plaintiff submitted that the Interested party acquired Title to land parcel NO. E.Bukusu/S.Kandunyi/18401 & 18414 fraudulently as no sale agreement was produced in evidence as required under Section 3(3) of the Law of Contract Act as read with Section 38 of the Land Registration Act. He further submitted that either way, the interested party did not file any defence to the plaintiff's claim.

1st, 2nd And 3rd Defendants Submissions.

16. The 1st, 2nd and 3rd defendants through the Firm of M/s Amani Wekesa & Co. Associates filed submissions on the following two issues;



(i). Ownership of the land.

17. That counsel for the 1st, 2nd and 3rd defendants submitted that this Honourable court should not admit the proceedings of the tribunal on grounds that the processes conducted by the tribunal were set aside by the High Court. The learned Counsel also submitted that the plaintiff failed to produce a sale agreement showing that his father Julius Wanyonyi Mutoro bought the original land from the 1st, 2nd and 3rd defendants' father Makoha Kanjala. He submitted that the allegation by the plaintiff that the sale agreement got burnt in the house in 1965 is merely an escape which is untenable. He submitted that the assertion by the plaintiff that his father bought the suit land NO. E.Bukusu/S.Kandunyi/1249 in 1963 cannot be possible since the said land parcel NO. E.Bukusu/S.Kandunyi/976 came into existence in 1969 and land parcel NO.E.Bukusu/S.Kandunyi/1249 which is a resultant subdivision of land parcel NO. NO. E.Bukusu/S.Kandunyi/976 came into existence in 1973.
18. The learned counsel further submitted that the transfer of land parcel NO. E.Bukusu/S.Kandunyi/1249 from Makokha Kanjala to Julius Wanyonyi was fraudulent hence the transaction ought to be cancelled and by extension all resultant title deeds and thereafter reverse all transactions and in the interest of justice allow the rightful beneficiaries access to their inheritance.
19. He referred to Section 26 of the [Land Registration Act](#) which allows this Honourable court to cancel a title deed obtained through fraud, misrepresentation or a title acquired illegally, unprocedurally or through a corrupt scheme.

Analysis And Determination.

20. I have considered the pleadings, the testimony by the parties and the documents adduced in evidence as well as the rival submissions. From the pleadings, the evidence adduced and the submissions, the following issues commend for determination;
 1. Whether the plaintiff has proved his claim against the defendants to the required standard?
 2. What is the implication of the orders issued by Hon. G.P Mbiti in the High Court at Bungoma Civil Appeal NO.97 of 1999 between Francis Makokha versus Patrick Sifuna Kinisu) Vis-à-vis the plaintiff's title to land parcel NO. E.Bukusu/S.Kandunyi/1249?
 3. Whether the 1st, 2nd and 3rd defendants have proved their counterclaim to the required standard?
 4. What appropriate orders to issue?
 5. Who should bear the Costs of this suit?

1). Whether the plaintiff has proved his claim against the defendants to the required standard?

21. The plaintiff in his testimony stated that sometimes in the year 2016, he offered to sell some of his parcels of land that resulted from the subdivision of land parcel NO. E.Bukusu/S.Kandunyi/1249 and the interested party approached and asked him to sign blank transfer forms, application for consent copies of the plaintiff's passport size photographs on pretext that he was to look for potential buyers and that the transaction would be easier considering that he was based in Nairobi. The plaintiff further stated that after failing to receive response from the interested party, he decided to carry out an official search on 10/2/2017 and to his consternation, he discovered that his two parcels of land NO. E.Bukusu/S.Kandunyi/18401 and 18415 were registered in the name of the interested party. The plaintiff also testified that while this case was pending, the interested party secretly liaised with the land



Registrar to have the caution placed on the two parcels removed and thereafter sold and/or caused the parcels transferred to the 4th defendant herein.

22. It is trite that fraud is not only actionable in law but is also a serious criminal offence punishable by imprisonment. The plaintiff in paragraph 10H of his Further Amended plaint dated 1st November 2021 set out particulars of fraud & misrepresentation against the interested party and the 4th defendant. However, he did not lead any evidence how the two committed the alleged fraud and/or misrepresentation. In the case of *Kuria Kiarie & 2 Others –v– Sammy Magera* (2018) eKLR, the Court of Appeal stated thus;

It is trite law that any allegation of fraud must be pleaded and strictly proved. See *Ndolo v Ndolo* (2008) 1 KLR (G & F) 742 wherein the court stated that; “---We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof on a balance of probabilities, but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases; “In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

23. It is no doubt that the plaintiff at paragraph 10H of his Further Amended plaint dated 1st November 2021 pleaded fraud and set out particulars as follows;

Particulars Of Fraud & Misrepresentation Against The Interested Party And 4th Defendant

- i. Transferring the suit land when there is a pending suit.
- ii. Charging the suit land when there is a pending suit.
- iii. Causing the caution imposed on the two-title removed without the knowledge of the cautioner.
- iv. Trying to defeat justice by causing the suit land change hands.
- v. Trying to institute frivolous suit outside the jurisdiction and have the suit land transferred to the 4th defendant.
- vi. Failing deliberately to inform land Registrar that the two title have a pending case in this court.
- vii. Concealing material facts to charge and or lend while using the two titles as security to obtain credit.
- viii. Generally acting fraudulently and not above board.

Particulars Of Irregularity/fraud And Corrupt Scheme On The Part Of Interested Party.

- i. Fraudulently inserting his name and other particulars in the blank signed transfer forms and application for consent.
- ii. In a corrupt scheme obtained letters of consent from Kandunyi land control Board.
- iii. Misleading the Chairman of Land Control Board as well as the land Registrar that the plaintiff had signed for him the necessary conveyance documents.
- iv. Breaching his name as an agent in land transaction on behalf of the plaintiff and turning around to become opportunist in bad faith.



- v. Register himself as the owner of land parcel NO.E.Bukusu/S.Kandunyi/18401 and 18415 without the knowledge and authority of the plaintiff.
- vi. Generally acting corruptly and irregularly.
 - a. The next question which this Court will ask is whether the plaintiff presented sufficient evidence to prove the allegations of fraud to the required standard. The answer in my view is in the negative. First, the plaintiff did not present an occurrence Book (OB) showing that he made any complaint to the Police or any investigative agencies after he realised that his two parcels of land being NO. E.Bukusu/S.Kandunyi/18401 & 18415 were registered in the names of the Interested party herein. The plaintiff did not make any complaint to the police that the Interested party had obtained documents from him by misrepresentation and presented the same for registration without his authority. The plaintiff did not also join the land Registrar as a party or even seek an order to summon him as a witness to shed light on the issues raised such as the registration of the interested party as proprietor of the two parcels and removal of caution. The plaintiff also failed to join the Attorney General as a party or seek an order for summons to issue upon the Chairman of the land control Board to shed light on the consent to transfer given in respect of the two parcels registered in the names of the Interested party and the subsequent transfer to the 4th defendant herein. In a nutshell, the plaintiff has not presented any evidence showing that either the Interested party or the 4th defendant were involved in any acts of fraud, misrepresentation, illegality, unprocedural and/or corrupt scheme in the acquisition and/or transfer of the two Parcels of land NO. E.Bukusu/S.Kandunyi/18401 and 18415. Prayers No. aa) of the Further Amended plaint are therefore disallowed for want of sufficient evidence.

What is the implication of the orders issued by Hon. G.P Mbiti in the High Court at Bungoma Civil Appeal No.97 of 1999 between Francis Makokha v Patrick Sifuna Kinisu vis-à-vis the plaintiff's title to land parcel NO.E.Bukusu/S.Kandunyi/1249?

- 24. The 1st defendant in his testimony stated that in 1994, they filed a dispute at Kandunyi land Disputes Tribunal claiming ownership of the land parcel NO. E.Bukusu/s.Kandunyi/1249 and in 1995, their claim was dismissed. They were aggrieved by the award and preferred an appeal to the provincial land Disputes Appeal committee at Kakamega in 1996 which appeal was also dismissed. Upon dismissal of the said appeal, they filed Judicial Review application for orders of certiorari and prohibition at the High Court in Bungoma Civil Appeal NO.97 of 1999. After the hearing of the said Appeal, the Hon. Justice G.P Mbiti (as he then was) allowed the Appeal and set aside the award by the Tribunal. The Judge also ordered the matter to be remitted back to the subordinate court for hearing.
- 25. When the defendants' claim for the suit property NO. E.Bukusu/S.Kandunyi/1249 was dismissed in 1995, the Tribunal awarded the land to the plaintiff's father, Julius Wanyonyi Mutoro. The said award was forwarded to the Magistrate's court for adoption vide SPM-Misc. Application no. 110 of 1995. Thereafter, the plaintiff made an application for eviction of the defendants from the suit property which was granted on 8th March, 1996. From the green card in respect of the suit parcel produced by the plaintiff as P-Exhibit No. 6, it is clear that Makokha Kanjala (deceased) who is the father to the 1st, 2nd and 3rd defendants herein first got registered as proprietor of the suit land on 26/10/1973. Entry No.2 shows that the suit parcel was transferred to the plaintiff's father Julius Wanyonyi at a consideration of Kshs. 1,900/=on 8/4 /1994 and Entry No.3 shows land certificate was issued the same date. Entry No.4 shows change of proprietor's name to Julius Wanyonyi Mutoro. The 1st, 2nd and



3rd defendants stated that the plaintiff's title was obtained through fraud, misrepresentation, illegally, procedural impropriety, or through a corrupt scheme. Where the root of a title is questioned, the proprietor of title under attack has evidentiary burden to prove how he acquired the same. In this case, the plaintiff failed to produce the sale agreement and why he failed to exercise due diligence to establish the interest of the 1st, 2nd and 3rd defendants and their families who were in possession and occupation of the suit land. Where a party expends money to buy land which is under possession and occupation of 'strangers' without establishing the interest of those third parties, he/she risks losing his/her investment. The person must exercise due diligence and demand that the seller removes any 'strangers' or even structures and gives him/her vacant possession.

3). Whether the 1st, 2nd and 3rd defendants' have proved their counterclaim to the required standard?

26. As regards the counterclaim, the 1st defendant testified on his behalf and that of the 2nd and 3rd defendants and stated that the documents relied on by the plaintiff in effecting the transfer of the suit property from their late father Makokha Kanjala (deceased) to his father Julius Wanyonyi Mutoro are forgeries and the plaintiff's title deed NO. E.Bukusu/S.Kandunyi/1249 was therefore acquired fraudulently and therefore liable to be impeached. They set out the following particulars of fraud;
- i. Falsifying documents at the lands office purporting that he bought land parcel no. e.Bukusu/s.Kandunyi/1249
 - ii. Obtaining illegal consent before land control board for NO. E.Bukusu/S.Kandunyi/1249.
 - iii. Misrepresentation of consent and transfer documents before lands office.
 - iv. Liaising with some officers at the land office to change and obtaining illegal title using unlawful means.
 - v. Falsifying records at the lands office for purposes of obtaining illegal title.
 - vi. Forging land sale agreement dated 12/2/1994
 - vii. Failing to note that land parcel NO. E.Bukusu/S.Kandunyi/976 had been closed by 1973
27. The questions that beg answers is whether the 1st, 2nd and 3rd defendants have proved the particulars of fraud to the required standard. To begin with, the issue whether the plaintiff falsified documents at the lands office in my view has not been proved. First, it has not been shown that the plaintiff who is not an employee of the lands office had the capacity to falsify documents or even collude with employees at the lands office to falsify documents. The defendants have not also demonstrated how the plaintiff obtained an illegal consent from the land control board. It has not also been shown that the plaintiff misrepresented consent and transfer documents before the lands office. The Land Registrar is not joined as a party to these proceedings and neither was she summoned as a witness in this case. The Land Registrar is charged with the duty of receiving, registering and issuing titles to land. The parties did not find it prudent to call her as a witness.
28. The defendants also alleged that the plaintiff liaised with some officers at the land office to change and obtain illegal title, falsifying records at the lands office for purposes of obtaining illegal title and forging land sale agreement dated 12/2/1994. No iota of evidence has been adduced by the defendants to prove any of the particulars of fraud. Be that as it may, I have pronounced myself elsewhere in my analysis in this case that the suit parcel NO. E.Bukusu/S.Kandunyi/1249 which is a resultant subdivision of the original land parcel NO. E.Bukusu/S.Kandunyi/976 registered in the name of Makokha Kanjala (deceased) at the time of the purported sale was under occupation and possession of the 1st, 2nd and 3rd defendants' and their families. The purported Purchaser, Julius Wanyonyi (deceased) failed to exercise



due diligence to establish the interests of the 1st, 2nd and 3rd defendants and their families who were in active possession and occupation of the subject land. In my view, the purported purchase of the suit land parcel NO. E.Bukusu/S.Kandunyi/1249 which was under occupation and possession of the 1st, 2nd and 3rd defendants and their families was not available for disposition and the sale, transfer and subsequent issuance of title in my view is impeachable. I also note that the 1st, 2nd and 3rd defendants have alluded to the suit land being an ancestral land which is not disputed. If that be the case, I find that the suit land is subject to the doctrine of intergenerational Equity. The entirety of my analysis is that the 1st, 2nd and 3rd defendant have proved the counterclaim only to the extent stated hereinabove.

29. The upshot of my finding is that the 1st, 2nd and 3rd defendants have proved their counterclaim to the required standard and do hereby enter judgment in the following terms;

1. The plaintiff's suit is hereby dismissed with costs.
2. The 1st, 2nd and 3rd defendants' counterclaim is allowed as follows;
 - A. A Declaration that the transfer and registration of Julius Wanyonyi Mutoro as proprietor of land parcel NO. E.Bukusu/S.Kandunyi/1249 was done illegally, unprocedurally and through a corrupt scheme and the same is declared null and void.
 - B. An order for Cancellation of the subdivision, transfer and registration of land parcels NO. E.Bukusu/S.Kandunyi/1249 and all the resultant portions being NO. E.Bukusu/S.Kandunyi/18401- 18428 and reverting in the name of Makokha Kaniala(deceased).
 - C. A declaration that the sell and/or charge and subsequent transfer of land parcel NO. E.Bukusu/S.Kandunyi/18401 & 18415 to the 4th defendant was irregular, null and void and the same is hereby cancelled.
 - D. An order for permanent injunction is hereby issued restraining the plaintiff, his servants, assigns and/or any other person(s) from tilling, planting, transferring, wasting, damaging, alienating, trespassing, selling, utilizing, developing, removing, evicting and/or otherwise disposing of land parcel NO. E.Bukusu/S.Kandunyi/1249, now subdivided into E.Bukusu/S.Kandunyi/18401-18428.
 - E. The land Registrar Bungoma to dispense with the production of the original title and all statutory documents and cause land parcel NO. E.Bukusu/S.Kandunyi/1249 registered in the name of Makokha Kanjala(deceased)
 - F. The Deputy Registrar, Environment and Land Court Bungoma to execute all statutory documents necessary to register land parcel NO.E.Bukusu/S.Kandunyi/1249 in favour of Makokha Kanjala(deceased).
 - G. The costs of the suit and the counterclaim shall be borne by the plaintiff

**READ, DELIVERED AND SIGNED IN THE OPEN COURT/VIRTUALLY AT BUNGOMA THIS
14TH DAY OF JULY, 2023**

HON. E.C CHERONO

ELC JUDGE

In the presence of;

Mr. Wekesa H/B Wamalwa R for the plaintiff

1st defendant-present



2nd defendant-present

Joy C/A

