



**Mungai v Attorney General & 8 others (Environment & Land Case
338 of 2016) [2023] KEELC 19970 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 19970 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 338 OF 2016
LA OMOLLO, J
SEPTEMBER 21, 2023**

BETWEEN

ELIUD MACHARIA MUNGAI PLAINTIFF

AND

THE ATTORNEY GENERAL 1ST DEFENDANT

THE COUNTY LAND REGISTRAR NAKURU 2ND DEFENDANT

THE CHIEF KAPTEMBWA 3RD DEFENDANT

THE COUNTY SURVEYOR 4TH DEFENDANT

BEATRICE KAGWANYA ANDALA 5TH DEFENDANT

HABATI KIMBO CHOGO 6TH DEFENDANT

ESTHER CHEBATI NG'ETICH 7TH DEFENDANT

JOSIAH OMAMBIA OUMO 8TH DEFENDANT

LOISE BWOGO RUTO 9TH DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit vide a Complaint dated 18th August, 2016. The complaint was subsequently amended on 11th October, 2019.
2. In the Amended Complaint he avers that on or about 1975, he purchased 25 shares from one Chesire Arap Chepkwony who was a shareholder in an entity known as Kalenjin Enterprises Ltd and that the said purchase entitled him to the parcel of land measuring approximately 1.8 acres.



3. He further avers that after purchase of the said shares, his name was entered into the register of shareholders and he was issued with a share certificate as proof of his ownership.
4. It is his averment that he took ownership, possession and occupation of the said property, commenced development projects on it and has lived in it, as his only home, for over 40 years, from 1975 to date.
5. He further avers that around 1980's, the Government caused the survey and subdivision of the whole farm owned by the said entity known as Kalenjini Enterprises after which each shareholder was shown and allocated his parcel of land equivalent to the shares owned.
6. It is the Plaintiff's averment that he was allocated and physically shown parcel number 1016, measuring approximately three quarters (3/4) of an acre and 1027 measuring approximately half (1/2) an acre, the two to which he is entitled and both total 1.8 acres.
7. He avers that the two parcels of land were fronted on two sides by public roads of access that are clear and distinct in the official map of Nakuru.
8. The Plaintiff further avers that during the 2007/2008 post-election violence which seriously affected the Ronda Area where the properties are situated, his entire homestead was burnt down and he and his family members escaped with their lives and lived as post-election violence victims at the Nakuru Agricultural Society of Kenya (ASK) showground for a while and thereafter with relatives in Nairobi.
9. It is the Plaintiff's averment that although he does not know, and has never seen the 5th, 7th, 8th and 9th Defendants, they all have title documents to parcels of land excised from parcels 1016, 1027 and 1028.
10. He avers that on 4th May, 2003, he sold to the 6th Defendant a parcel of land measuring approximately 50 by 100 excised from parcel no 1016 but a search done in July, 2016 shows that on 9th October, 2015, the said Defendant obtained a title deed for the entire parcel 1016.
11. It is the Plaintiff's averment that the acquisition of the suit properties by the 5th – 9th Defendants is inexplicable and fraudulent. The plaintiff lists the particulars of fraud as:
 - a. The 5th – 9th Defendants were not members of Kalenjini Enterprises Ltd and given that they did not purchase the properties from the Plaintiff, the acquisition from any other party was through manipulation of official government records.
 - b. The survey and subdivision of the suit properties without the Plaintiff's knowledge, consent and involvement was against the law.
 - c. There was no proper lawful procedure in the acquisition of the suit properties.
 - d. The 2nd Defendant knowingly and intentionally concealed the information available in the share register of Kalenjini Enterprises Ltd regarding ownership of the suit properties with the intention of dispossessing the Plaintiff.
12. It is the Plaintiff's averment that the 5th -9th Defendants are using the 3rd and 4th Defendants to try to evict the Plaintiff from his home.
13. The Plaintiff further avers that about two or three years ago, the proprietors of Nakuru Municipal Block 29/1187 started harvesting sand therefrom and extending the sand harvesting into the public road of access thus destroying it and despite protests and reports made to the 3rd Defendant, no action was taken to stop him/them.
14. He further avers that on 20th July, 2016, the 3rd Defendant recruited and armed 25 drunk rowdy youths, some armed policemen and a surveyor and they invaded the Plaintiff's two parcels of land and started



- destroying the Plaintiff's fence, maize crop, trees and other vegetation with the aim of creating a public road of access through the two properties.
15. He avers that he was threatened with physical violence and warned against interfering with their destructive mission and that he proceeded to report the invasion and trespass to the police.
 16. It is his averment that he stands to suffer irreparable loss and damage as his property is the only home he owns from which he derives livelihood for himself and his family.
 17. The Plaintiff also avers that efforts to have title deed issued to him have been frustrated since 1992 when the history of tribal clashes commenced in the country with Ronda being one of the areas affected.
 18. It is his averment that he has been in continuous, open, exclusive and uninterrupted adverse possession of the parcels of land known as Nakuru Municipality Block 29/1016, 1023, 1027, 1028 and 1238 since 1975.
 19. The Plaintiff prays for judgment against the Defendants jointly and severally for:
 - a. A temporary injunction in the short term and a permanent injunction in the long term to restrain the Defendants, their servants, employees or others whosoever from taking possession of, entering into, trespassing upon, selling, transferring, charging, developing, surveying or dealing in any other manner with properties title numbers Nakuru Municipality Block 29/1023, 1016, 1027, 1028 and 1238.
 - b. A declaration that the acquisition by the 5th -9th Defendants of title to properties title number Nakuru Municipality Block 29/1023, 1016, 1027, 1028 and 1238 was tinged with fraud and therefore null and void and should all be cancelled forthwith.
 - c. A declaration that the Plaintiff has acquired title to all those properties known as Nakuru Municipality Block 29/1016, 1023, 1027, 1028 and 1238 by adverse possession.
 - d. The county land registrar do issue to the Plaintiff title deeds to properties title number Nakuru Municipality Block 29/1023, 1016, 1027, 1028 and 1238.
 - e. General damages for trespass.
 - f. Costs of this suit plus interest.
 20. On 5th September, 2016 a memorandum of appearance dated 30th August, 2016 was filed on behalf of the 1st, 2nd, 3rd and 4th Defendants. There is also on record a statement of defence by the 1st, 2nd, 3rd and 4th Defendants dated 18th February, 2020.
 21. The 5th Defendant neither filed a memorandum of appearance nor defended the suit.
 22. The 6th Defendant filed a memorandum of appearance dated 5th September through the firm of M/s Ogega Achola and Company advocates.
 23. The suit against the 6th Defendant was withdrawn by the Plaintiff vide a Notice of Withdrawal dated 16th October, 2017 and filed in court on 18th October, 2018.
 24. The 7th Defendant neither filed a memorandum of appearance nor defended the suit.
 25. The 8th Defendant filed their Statement of Defence dated 5th October, 2016 and filed in Court on 6th October, 2016 vide M/s Makori Nyanga'u and Company Advocates and subsequently filed a Notice of Change of Advocates through which he was represented by M/s Onkoba Omariba and Company



Advocates. The 8th Defendant filed an amended written statement of defence and counterclaim dated 21st October, 2019.

26. The 8th Defendant states that the suit filed is bad in law, inept, ambiguous and does not sufficiently disclose proper particulars of claim or cause of action. The 8th Defendant prays that the suit be dismissed with costs for failure to disclose any cause of action against the 8th Defendant.
27. The 8th Defendant avers that the Plaintiff has invaded a portion of his property Nakuru Municipality Block 29/1028 (ronda) and constructed illegal structures thereon and describes himself as a Bonafide purchaser for value.
28. The 8th Defendant further avers that the Plaintiff has purported to sell a portion of his land namely Nakuru Municipality Block 29/1028 (ronda) to 3rd Parties using fake Title documents and allowed them to erect illegal temporary structures and thereby lost possession adverse to the Plaintiff.
29. The 8th Defendant further states that it has made several demands and complaints addressed to the Plaintiff and its Agents and/or servants but the Plaintiff is adamant, abusive and threatened violence on the 8th Defendant.
30. The 8th Defendant also states that he recognizes the original survey map and has no problem with the County Government's opening up of the access roads around its property.
31. The 8th Defendant further states that he is aware that the Plaintiff had his property around the area which he sold and has intentionally come to squat on his land without any colour of right whatsoever.
32. The 8th Defendant also denies the particulars of fraud as set out in paragraphs 16 sub paragraph (a) to (d) of the Plaint and calls the Plaintiff to strict proof.
33. In his counterclaim, the 8th Defendant states that he is the registered owner of all that piece of land known as Nakuru Municipality Block 29/1028 (ronda).
34. He states that sometimes in 2014, the Plaintiff without colour or right and or consent of the 8th Defendant unlawfully trespassed into the 8th Defendant's land and put up temporary structures, assembled building materials with an intention to commence construction of a permanent house and/or illegal use of the property thereby depriving the 8th Defendant user thereof as a result of which the 8th Defendant has suffered both loss and damages.
35. The 8th Defendant states that despite issuing a demand that the Plaintiff removes himself, his agents or servants from the suit land, the Plaintiff has refused to comply.
36. The 8th Defendant avers that the Plaintiff has fraudulently sold a portion of Nakuru Municipality Block 29/1028 (ronda) to 3rd Parties using fake documents and that the said third parties have erected illegal structures and remained on the 8th Defendant's land illegally.
37. The 8th Defendant seeks the following orders against the Plaintiff:
 - a. A declaration that the Plaintiff is a trespasser as the 8th Defendant is the registered owner with a valid title deed to the parcel of land known as Nakuru Municipality Block 29/1028 (ronda).
 - b. An order of eviction do issue against the Plaintiff, his agents, servants, employees and/or any other person by whatsoever name claiming through the Plaintiff from Nakuru Municipality Block 29/1028 (ronda).
 - c. Costs of the suit and costs of the Counter- Claim.



- d. Any other relief that this Honourable Court may deem fit to grant.
38. The 9th Defendant neither filed a Memorandum of defence nor defended the suit.

Factual Background.

39. Prior to hearing, the matter was mentioned in court on 9th February, 2022 and the court directed that the parties be served and the suit was scheduled for hearing on 15th March, 2022.
40. On 15th March, 2022 the suit came up for hearing. The Plaintiff was represented by Mr. Magatta, the 1st, 2nd, 3rd and 4th Defendants were represented by Miss Chepkurui, the 8th Defendant was represented by Mr. Bitok, the 5th Defendant was absent and never entered appearance, the suit against the 6th Defendant had been withdrawn, the 7th Defendant was absent and never entered appearance, the 9th Defendant was absent and never entered appearance.
41. The court scrutinized the record which shows that the 5th, 7th and 9th Defendants were served as set out in the affidavit of service filed on 11th March, 2022. The Court being satisfied that service on the Defendants was properly effected, ordered the matter proceed to hearing.

Plaintiff's Evidence.

42. During the hearing of the Plaintiff's case, one Gladys Wanjiru testified as PW1. There is an Affidavit dated 28th February, 2022 invoking Rule 12 of the Civil Procedure (Amendment) Rules 2020. On account of the said amendment to the law, the Plaintiff has sworn an affidavit authorizing Gladys Wanjiru to appear and testify on his behalf.
43. She stated that the Plaintiff who is her husband suffered a stroke and therefore authorized her to testify on his behalf.
44. She prayed that her husband's statement dated 25th February, 2021, filed in Court on 16th March, 2021 be adopted as part of her evidence.
45. The Plaintiff called three witnesses who were;
- a. Gladys Wanjiru- PW1 who on 24th November, 2022 and testified on 15th March, 2022
 - b. Mathew Chebon Cherogony (PW2) who testified on 30th May, 2022
 - c. Wilson Chepkonga Arap Ruto (PW3) who testified on 26th September, 2022.
46. The Plaintiff produced the documents attached to his list of documents dated 25th March, 2021 as follows;
- a. Copy of Kiplagat Arap Chepkwony certificate of shares as Exhibit P1.
 - b. Sale of land agreement dated 1975 as Exhibit P2.
 - c. Executed transfer form 1975 as Exhibit P3.
 - d. Plaintiffs certificate of shares as Exhibit P4.
 - e. Title Charges/Survey Fees receipt as Exhibit P5.
 - f. Share Holder Card as Exhibit P6.
 - g. 2 Photograph of Permanent House before 07/08 violence as Exhibit P7 (a) and (b).



- h. Sale agreement in favour of Habati Kimbo Chombo dated 4th May 2003 as Exhibit P8.
 - i. 3 Photographs dated 2nd May, 2005 and 3 Photographs dated 4th April, 2013 as Exhibit P9 (a-f).
 - j. Plaintiff's Letter dated 20th October, 2014 as Exhibit P10.
 - k. Title deed Nakuru/Municipality/Block29/567 (Rhonda) issued on 3rd December, 2002 as Exhibit P11.
 - l. Photograph of church occupying Nak/mun/block 29 567 (ronda) as Exhibit P12.
 - m. Deputy commissioners letter dated 17th November 2014 as Exhibit P13.
 - n. Plaintiffs letter dated 2nd September, 2015 as Exhibit P14.
 - o. Photographs on page 42 as Exhibit P15.
 - p. Copy of OB extract dated 20th July, 2016 as Exhibit P16.
 - q. Photograph showing destruction as Exhibit P17.
 - r. Photograph at page 45 and as Exhibit P18 (a) and P18 (b).
 - s. A letter dated 3rd February, 2015 as Exhibit P19.
 - t. A letter from Oumo Advocates (demand letter) Exhibit P20.
 - u. A letter dated 23rd May 2016 from Oumo Advocates as Exhibit P21
 - v. Title Deed for Block 29/567 at page 35 as Exhibit P22
 - w. A letter from Chief P.K Kirui Kaptembwo location dated 11th July, 2018 as Exhibit P23
 - x. A search for property title number Nakuru Municipality/ Block 29/23 as Exhibit P24
 - y. A search for property title number Nakuru Municipality/ Block 29/ 1016 as Exhibit P25
 - z. A search for property title number Nakuru Municipality/ Block 29/1027 as Exhibit P26
 - aa. A search for property title number Nakuru Municipality/ Block 29/ 1238 as Exhibit P27
 - ab. A search for property title number Nakuru Municipality/ Block 29/1028 as Exhibit P28
 - ac. A map for Nakuru Municipality Block 29 (Ronda) as Exhibit P29
47. It was PW1's testimony that she lives in Ronda and works as a farmer adding that the Plaintiff is her husband. She stated that she has a share certificate in the name of Kiplagat Arap Chepkwony. The same was produced as Exhibit P1.
48. She stated that her husband purchased the suit parcel vide an agreement made in 1975. This was produced as Exhibit P2
49. It was her testimony that the parcel was bought from Mr. Chepkwony. She further testified that she has a transfer which is for transfer of shares/stock from Kiplagat Arap Chepkwony to Eliud Macahria Mungai for consideration of Ksh. 5500. This was produced as Exhibit P3.



50. She testified that after transfer, the share was registered in her husband's name and that the share certificate is in the name of the plaintiff. This was produced as Exhibit P4
51. It was her evidence that after registration of the shares in his name, the Plaintiff paid certain amounts of money so as to get the title. She went on to explain that it was a total of 14500 and made reference to a receipt of Ksh. 11500 dated 14th March, 2000. This was produced as Exhibit P5
52. It was her further evidence that the Plaintiff was given a shareholder card. This was produced as Exhibit P6
53. She testifies that after acquiring this property, the Plaintiff and herself built a house on the property. She explained that she had a photograph of the second house. The first one having been burnt down during the 2007 & 2008 clashes. These photographs were produced as Exhibit 7 (a)-(b)
54. PW1 went on to state that she had an agreement dated 4th May, 2023. She explained that the Plaintiff sold a portion of the suit land to Habati Kimbo (He is the 6th Defendant against whom the suit was withdrawn). This was produced as Exhibit P8.
55. She further testified that she has a bundle of photographs. She made reference to Page 28 of the Plaintiffs bundle of documents and explained that it is a photo taken during her grandson's funeral. She stated that the deceased was Billy; a son of her daughter Alice. She testified that the photograph was taken on 2nd May, 2005.
56. PW1 made reference to a Photograph on Page 31 of the List and Bundle of documents. she explained that it is a photograph of the burial site of another grandchild whose name is Wanjiru, daughter of Chepkwony, married to her son Charles Mungai.
57. It is also her evidence that at Page 31 of the Plaintiffs trial bundle is a photo of her mother in law's funeral. She stated that her name is Rahab Wamaitha adding that she is the Plaintiff's mother. She explained that the same funeral is shown at Page 33 of the trial bundle. She testifies that all these people are buried on the suit parcel. The photographs were produced as Exhibit P 9 (a)- (f).
58. It is her evidence that she also has a letter dated 20th October, 2014. It is a letter written by the Plaintiff to the District Commissioner Nakuru. It's in respect of plots 1016, 1027, 1028 and 910 Ronda. This was produced as Exhibit P10.
59. She testifies that there is another suit filed- No 20 of 2015- and that it involves plot No 910. She stated that the suit is filed by her husband (the Plaintiff) against Caprice Chelimo.
60. She testified that she knows one Christopher and explained that he worked at Kalenjini Enterprises as a treasurer. She went on to narrate that he brought the title deed to the suit property [Nakuru Municipality Block 29/567 (Ronda)] to their home in the year 2002 and gave the title to her daughter. The title is at page 35 of the trial bundle and was produced as Exhibit P11.
61. It is her evidence that when the Plaintiff investigated the title deed (Exhibit P11), he found that there was a church on it and that other people had also built on it. She produced the photograph of the church as Exhibit P12.
62. She testified that the District Commissioner responded to the letter dated 20th October, 2014 (Exhibit P10) in a letter dated 17th November, 2014. This was produced as Exhibit P13.
63. It is her testimony that there is another letter dated 2nd September, 2015. It was written by the Plaintiff to the land registrar which was on account of advice contained in the letter of 17th November, 2014(Exhibit P13). This was produced as Exhibit P14.



64. She went on to testify that in the year 2016, someone was harvesting sand on the suit parcel. She gave his name as Paul Bii. She explained that while he was harvesting sand, he was causing damage to the public road. She produced the photos on page 42 of the Plaintiff's trial bundle as evidence of the damage. They were marked as Exhibit P15.
65. She testified further that they reported the matter to the Member of Parliament and when the police came, Paul Bii took off. She states they got an OB on 20th July, 2016. This was produced as Exhibit P16.
66. PW1 went on to testify that she has another photograph on page 46 of the Plaintiff's trial bundle depicting the damage caused by Paul Bii to the fence. She explained that the persons on the photo are the Plaintiff and Chief Koech who has since been dismissed from employment. This was produced as Exhibit P17.
67. She further testified that after damage to the live fences, they put iron sheets as a fence. This is evidenced in the photographs produced as Exhibit 18 (a) (b).
68. It was her further testimony that she has a letter dated 3rd September, 2015. She explained that the letter is written by their lawyer to the area Chief Kaptembwo location objecting to an intended re-survey. This letter is produced as Exhibit P19.
69. She went on to testify that in 2016 after the fence was destroyed, the 8th Defendant wrote a letter dated 18th May, 2016. It's written by Mr. Oumo's advocate. She explained that it is in relation to Block 28/1028. This was produced as Exhibit P20.
70. It is her further testimony that that the Plaintiff took the letter (Exhibit P20) to his advocate who responded to it vide letter dated 23rd May, 2016. This letter was produced and marked as Exhibit P21.
71. She further testifies that the Plaintiff went to the Ministry of Lands and physical planning and the district Land Registrar wrote a letter dated 25th April, 2017 to Kalenjin enterprises. She explained that the said letter makes reference to the land parcel Nakuru/Municipality Block 29/567 (RONDA) whose title was produced as Exhibit 11. This letter was produced as Exhibit P22.
72. It was also her testimony that in 2018, the Chief Kaptembwo wrote a letter dated 11th July, 2018 to the District Land Registrar. She explained that the said chief who has since retired is one P.K Kirui. The letter was produced as P23.
73. PW1 stated that they conducted a search in respect of Nakuru Municipality Block 29/23 and the search showed that the 5th Defendant, Beatrice Kagwanya Andala is the registered owner. This was produced as Exhibit P24.
74. It is her testimony that another search for Nakuru Municipality Block 29/1016 showed that the 6th defendant is registered as the owner. However, the suit against him was withdrawn against him. This search was produced as Exhibit P25.
75. She stated that she has another search for Nakuru Municipality Block 29/1027 which shows the parcel is registered in the name on one Esther Chebati Ng'etich, the 7th Defendant. This search was produced as Exhibit P26.
76. She further testified that another search for Nakuru Municipality Block 29/1238 shows that the property registered in the name of one Loise Bwogo Ruto, the 9th Defendant. This was produced as Exhibit P27.



77. She went on to testify that she has another search for Nakuru Municipality Block 29/1028 which shows that the land was registered in the name of one Josiah Omambia Oumo; the 8th Defendant. This was produced as Exhibit P28.
78. It is PW1's testimony that she has a map showing the location of suit parcels. The map was produced as Exhibit P29. She also testified that the Plaintiff has never been issued with the title for the parcel of land that he bought from Arap Chepkwony in 1975.
79. It was her further testimony that she and the Plaintiff have tried to follow up on the title but found that the titles were issued to other people.
80. She further testified that Exhibit P11 is the title deed that was given to them by Kalenjin enterprises but it's for another parcel not where she and the Plaintiff live. She testified that she and the Plaintiff have lived on the suit parcel since 1975 and they have 6 children.
81. It is her testimony that she also wrote a statement dated 25th February, 2021, has signed it and wants the Court to adopt it as part of her evidence.
82. PW1 ended by praying for the orders sought in the plaint.
83. On cross examination by Counsel for the 1st to 4th Defendant, PW1 stated that the Plaintiff and her have lived on parcels No. 1016, 1028 and 1027 since 1975.
84. When referred to Exhibit 25 which shows the name Habati Kimbo, PW1 stated that the case against him was withdrawn because the Plaintiff sold the parcel to him. She explained that the other Defendants got the land without reference to PW1 and the Plaintiff adding that Habati Kimbo has his own portion.
85. PW1 stated that she was in court to testify in respect of the Plaintiff's parcel. She stated that 1016, 1028 and 1027 belong to the Plaintiff adding that she does not have the title. She stated that she lives on the said parcels.
86. The witness was referred to Exhibit P2 (the agreement) and stated that there is an agreement between her husband and Chepkwony. She stated that the agreement is for parcel No 534 and confirmed that the agreement does not have a date.
87. She further stated that after the sale, they did a transfer but she did not have transfer forms or consent of the LCB.
88. When referred to Exhibit P5, (the receipt for Kshs 11500 for payment for title/survey fees) she confirmed that it does not have a stamp of Rift Valley Enterprises.
89. She also confirmed that there is no receipt to show that Kshs.11500 was paid and that she does not know if the Plaintiff was issued with a receipt.
90. PW1 stated that Arap Chepkwony had shares at Kalenjin Enterprises whose name was later changed to Rift Valley Enterprises.
91. When referred to Exhibit P6 at page 23, PW1 stated that its true the shareholder certificate does not have plot numbers and certificate number.
92. PW1 explained that the chief came to her parcel because he wanted create a road passing through her land and that in the process he damaged a fence and crops growing. She stated that she does not have a photo of the Chief and they only took photos of the damage caused after they left.



93. On cross examination by Counsel for the 8th Defendant, PW1 stated that she has produced a share certificate as Exhibit P1 which only shows the shares but not the plot numbers. PW1 was referred to Exhibit P2 and confirmed that while the agreement makes reference to parcel No. 534, the share certificate does not.
94. PW1 further confirmed that the agreement has no day and month and it only shows the year 1975. when referred to Exhibit P5 she confirmed that it has no stamp for Rift Valley Enterprises. She also confirmed that there is an amount of Kshs. 9400 written by hand 9400 and another figure of Kshs. 11500 that is printed. She stated she does not know how much was paid.
95. When referred to Exhibit P8- the agreement between the Plaintiff and the 6th Defendant- PW1 confirmed that the Plaintiff sold parcel No. 1016.
96. When referred to paragraph 44 of the Plaintiff's statement, PW1 confirmed that apart from Habati Kimbo, the parcel has been sold to 14 other persons. She confirmed that the parcels were sold from the year 2017 adding that the last person purchased in 2018 and that the persons are named in the statement.
97. PW1 further confirmed that these 14 people who purchased bought parcels form Block 29/1016, 1027 and 1028.
98. PW1 stated that when the Plaintiff was selling the parcels of land, this suit was already filed and that she did not know if the Plaintiff was prohibited from selling.
99. She stated that the Plaintiff has sold part of 1028 and confirmed that 1028 is in the name of Josiah Omambia Oumo adding that his title is not legal.
100. When referred to paragraph 5 of the Plaintiffs statement, PW1 confirmed that Paragraph 5 speaks of 25 shares while paragraph 9 speaks of 3 shares. She further stated that both 25 and 3 shares are equal. Chepkwony only disposed 1 share and 1 share is equal to 25 acres.
101. PW1 stated that Christopher visited the Plaintiff and PW1 and gave them a title deed (Exhibit P11). She states they were given 567 and on follow up they found a church and other people on the said parcel. PW1 further testifies that they informed Kalenjin Enterprises and were advised to continue with their occupation of the suit parcels.
102. PW1 stated that the Plaintiff did not talk to the people occupying 567 adding that the parcel was unsurveyed and had no beckons.
103. PW1 stated that for there to be a title, a survey had to be done. She stated that there is a map capturing the suit parcels but nobody came to the land to do a survey. She further stated that the map she has produced is from the government office.
104. PW1 stated that they occupied the part that was shown to them after purchase of shares by the person they bought the shares from.
105. She stated that he was not living there. The person who bought the shares is the one who was shown. She further stated that when they took occupation, there was sisal growing on the entire parcel adding that numbers were given after survey.
106. When referred to Exhibit P13- a letter for the District Commissioner (DC)- PW1 explained that She testifies that the DC used to check matters relating to land and the lands office gives title. PW1 also added that the District Commissioner would advise people to go to the Lands Office.



107. PW1 stated that that the Plaintiff continued to visit the Lands office until he fell ill. It was her further testimony that part of the suit parcels have been sold. She stated that the Plaintiff continues to be the owner of the suit parcels even though he had sold part of them. She explained that not all of it is sold.
108. PW1 stated that the Plaintiff's prayer is that the suit parcels be returned to him despite having sold part of them
109. On re-examination, PW1 was referred to parcel numbers 1016, 1027 and 1028. On Exhibit P24, she stated that the title of Beatrice was issued on 13th May, 2008. On Exhibit P25 she stated that Habati Kimbo's (6th Defendant) title was issued in 2015. On Exhibit P26, she stated that Esther Chebati's (7th Defendant) title was issued in 2004. On Exhibit P27, she stated that Loise Ruto's (9th Defendant) title was issued in 2008 and on Exhibit 28, she stated that the title to Josiah Omambia was issued in 2014.
110. It was PW1's testimony that all these titles are in respect of the parcel that they are occupying. She further testifies that she has never seen any surveyor come to the suit parcels.
111. It is her testimony that on plot 534, she has not produced any title deed. On Exhibit P5, she stated that the receipt for Kshs.11500 was issued by Rift Valley Enterprises and has a stamp for the advocate and some writing on it "physical PP unit"
112. When referred to Exhibit P6, PW1 explained that it is a shareholder card and that one had to show it at the door before going into meetings and that it was issued to all shareholders.
113. She also explained that that the name changed from Kalenjin Enterprises to Rift Valley Enterprises. This is because the shares were bought by different communities.
114. When referred to Exhibit P1- the share certificate-, PW1 explained that it has writings at its back which shows allocation of plot No 1016, 1027, 1028 and also has an endorsement "transferred to EliudMacharia".
115. On Exhibit P2, PW1 clarified that though the sale agreement doesn't have a date and month, it is of the year 1975 and was drawn by Kamere & Company Advocates.
116. On Exhibit P5, PW1 explained that it is a receipt for 11500 and that it came from Kalenjin Enterprises. She further explained that Exhibit P8 is a sale agreement between the Plaintiff and one Habati Kimbo and is dated 4th May, 2003.
117. She stated that she has not been shown any court order prohibiting any dealings in the suit parcels adding that she does not know where the 5th, 7th, 8th and 9th Defendants got their titles from.
118. She stated that 25 shares are equivalent to 1.8 acres and added that she does not know the difference between acres and hectares. She also stated that 1 share is equivalent to 1.8 but added that she does not know the meaning of this. She stated that the suit parcels are 1.8 and does not know if it is acres or hectares.
119. PW1 testifies that the parcel has no beckons and does not understand how a survey could have been done.
120. It is her testimony that they were shown the parcel to occupy by Arap Chepkwony and that it had sisal growing on it and that there were people living there.
121. The second witness to testify was one Mathew Chebon Cherogony herein after referred to as PW2.



122. PW2 stated that he lives in Ronda Estate and is a farmer. He testified that he filed a statement dated 25th February, 2021 and wished that the court adopts it as part of his evidence.
123. On cross examination by counsel for the 8th Defendant. He stated that he lives in Ronda estate. It was his testimony that he started living in Ronda in the year 1980.
124. He stated that he was born in 1962 and knows Eliud Macharia (the Plaintiff) as his neighbour. It was his further testimony that he was 18 years old at the time and was living with his brothers in Ronda.
125. He went on to state that his brothers were harvesting sand in Ronda and that he too joined in the sand harvesting business and later took occupation of part of the property belonging to Kalenjji Enterprises Ltd, now Rift Valley Enterprises Limited.
126. He stated that he later purchased shares after he took occupation and explained that he bought 3 shares. The 3 shares gave him 5.4 acres. It is his testimony that the Plaintiff was also a sand harvester like him and became his neighbour.
127. He stated that all he knows is that Macharia was his neighbour and in 1980 he found him living on the suit parcels with his family. He states that he does not know if the Plaintiff was a shareholder at Rift Valley Enterprises adding that it was for him (the Plaintiff) to prove this fact.
128. PW2 further testifies that when he took occupation of his parcel, it was abandoned. He explained that it had no beacons and was near the river adding that there were many people living there.
129. He further testified that when Macharia and himself and other people took occupation, the land had no beacons but later had beacons. He states that previously the suit land had old numbers and that the new directors added another portion to the old map and gave the entire parcel new numbers without considering the old numbers.
130. It is his evidence that it's not possible to know the acreage before purchase of shares. He further stated that he took occupation of land that was abandoned because he needed a place to live adding that nobody asked him to leave the suit parcel that he occupied.
131. PW2 explained that Kalenjji Enterprises Limited did a survey but left some unsurveyed land and this unsurveyed land is the one he took occupation of.
132. He confirmed that he was not given permission to live on it and added that subsequently he bought 3 shares from another shareholder called Kobot Macharia in the year in 1995.
133. He went on to state that after buying his share, he went to Kalenjji Enterprises and was given 0.6 acres and he was told that he had a balance of 1.2 acres. It was his further evidence that Kalenjji Enterprises knew that he was living on parcel No. 1153. He explained that this is where his house was and there were no beacons on the 0.6 acres. He also testified that all plots are 0.6 acres and he believed his plot was 0.6 acres too.
134. PW2 stated that he did not know how much Macharia was given and only knows that he (the plaintiff) is his neighbour and that he found him on the suit parcels in 1980.
135. He further testifies that Macharia's mother and son are buried on the suit parcels and that the parcels have a live fence which is grown having been there since 1980. He added that the Plaintiff's children (Charles and Irene) and his mother are buried on the suit parcels.



136. On cross-examination by counsel for the 1st, 2nd, 3rd and 4th Defendants, PW2 stated that he did not know the acreage of the plaintiff's parcel. He states that he only knows him as his neighbour and he found him there in 1980.
137. On his assertions as contained at Paragraph 15 of his statement, he stated that it is true that there is fraud going on at Kalenjin enterprises and explained that in many instances a person having title to land and a person in occupation are different.
138. He finally stated that his evidence in court is that he knows the Plaintiff and that in 1980 he found him living on his parcel since 1980 and that they were both sand harvesters.
139. The third person to testify in favour of the Plaintiff's case is one Wilson Chepkonga Arap Ruto, herein after referred to as PW3.
140. He stated that he has lived in Ronda Nakuru since 1980 and that he is a farmer. He went on to state that he took occupation of his parcel after the purchase of someone else's shares. He further testified that he knows Eliud Macharia (the Plaintiff) adding that he found him in occupation of the suit parcels in 1980.
141. PW3 prayed that his witness statement dated 5th March, 2021 be adopted as part of his evidence which the Court did.
142. He stated that he had read the statement of PW2 and agrees with the things stated therein.
143. He also confirmed that he had seen the 8th Defendant's (Josiah Omambia Oumo) further list of documents which was filed on 18th February, 2020. When referred to the letter dated 1st March, 2002, he confirmed that the allotment letter is in the name of David Langat and Simon Koskei and further that it is in respect of Block 29/1028 Rhonda.
144. He further confirmed that the names on the allotment letter are similar to those in the title deed for Block 29/1028 (Ronda) adding that he knows Block 29/1028 (Ronda) and that it's his land having bought it in 1991.
145. It was his evidence that he bought it from Mwaneka Kanyoro and that the agreement was drawn by Omweya Omwama in 1991. (Exhibit P30)
146. It was also his evidence that the agreement makes reference parcel No. 870/819 and that Mr. Mwaneka explained to him that 870 is the old number and the new number is 819.
147. PW3 confirmed that he knows he knows Ambrose Arap Chebusit adding that after he purchased his land No. 870/819 and went to collect his title he found that the title had been issued to the said Ambrose.
148. It was his testimony that he is the one in occupation but Ambrose has the title. He further testifies that he has a copy of the title that is in Ambrose Arap Chebusit's name adding that the parcel is Nakuru/ Municipality Block 29/819 (Ronda).
149. It was also his evidence that he has a search (appearing at page 71 of the Plaintiff's bundle) and that the search shows that as at 2nd February, 2016, the parcel No. 29/819 was in the name of Joseph Kipkurui Bet and Peter Kipkurui Rotich. He stated that after discovery, he sued Ambrose Arap Chebusit, Joseph, Peter and other people. He gave the case number as ELC number 25 of 2018.
150. He went on to state that the title shows that 29/819 Ronda is subject of that suit and he produced copies of the pleadings. This is Exhibit 31.



151. PW3 denied the allegation that parcel No. 29/1028 arises from 29/819. He explained that the number on the allotment letter must match the number on the title deed. He further testified that when he went to the lawyers to write a statement, he discovered that the allotment letter for his parcel had been used to acquire parcel no 29/1028.
152. On cross examination by counsel for the 8th Defendant, PW3 stated that he bought his parcel from one Mwanike who explained to him that 870 is an old number and 819 is the new number.
153. It is also his evidence that he has never seen the allotment letter and that when he asked Mwanike, they went to the lands office and he found that the land, indeed, had no allotment and were told that the allotment letter would come after.
154. He went on to testify that when he went to the office of Kalenjii Enterprises and confirmed that 870/819 was in the name of Mwanike. He states that he is a member of Kalenjii Enterprises and only knows about the land that he was buying and did not see ownership details of other people.
155. It is his evidence that in respect of the suit he filed i.e. ELC No 259 of 2016, he had listed only 13 parcels adding that he had many other parcels.
156. He denied allegations that he is in the business of filing adverse possession claims in respect of people's land.
157. PW3 testified that the number on the allotment letter must match the number on the title deed. He stated that he found the Plaintiff (Macharia) in occupation of the suit parcels but does not know how he acquired them.
158. On cross-examination by Counsel for the 1st, 2nd, 3rd and 4th Defendant, PW3 confirmed that his parcel was sold to him by Mwanike in 1991 but they did not conclude the transfer. He stated further that they discovered Ambrose took the title in 2001.
159. It was his testimony that between 1991 and 2001, he did nothing to transfer his land and that in the year 2018 he filed the suit No. 259/2018 as exhibited in Exhibit P31.
160. He also testified that Mwanike is not one of the people he has sued because he is in occupation of the land and it's the title that he does not have. He further states that he has not lodged a caveat against the land.
161. PW3 went on to state that the land is his, he is in occupation of it but does not have the title deed and the title issued is not in his name.
162. Upon re-examination by counsel for the Plaintiff, it was PW3's stated that he purchased block 29/819 in 1991 and he has lived on the parcel from 1991 to date.
163. He further stated that that he has not been sued by anyone over his occupation adding that he does not have the title. He explained that the suit filed by him is aimed at getting his title deed adding that the suit is not concluded.
164. The Plaintiff closed his case.
165. Counsel for the 1st, 2nd, 3rd and 4th Defendants informed the court that they did not file any document and further informed the court that they shall not be calling any witness. Consequently, their case was closed.



8Th Defendant's Evidence.

166. The 8th Defendant produced the documents contained in the list of documents dated 21st October, 2019 and the further list of documents dated 10th February, 2020 as follows;
- a. Copy of Title Deed- Nakuru Municipality Block 29/1028 (ronda) dated 23rd December 2014 as Exhibit D1
 - b. Copy of Certificate of Search dated 25th May 2016 as Exhibit D2
 - c. Allotment Letter dated 1st March, 2002 for Nakuru Municipality Block 29/1028 (Rhonda) in the names of David K Langat and Simon K Koskei and Title deed issued on 28th June ,2004 as Exhibit D 3 (a) and (b)
 - d. Sale agreement dated 27th September, 2013 between Josiah Omambia Oumo and Simon K Koskei as Exhibit D4
167. The 8th Defendant herein after referred to as DW1 introduced himself by stating that his name is Josiah Omambia Oumo. He prayed that his witness statement dated 21st October, 2019 be adopted as part of his evidence, which prayer the court acceded to.
168. DW1 stated that he knows the Plaintiff and explained that he knew him after the purchase and occupation of part of the suit property.
169. He went on to state that he has since sold part of the property. He stated that the 6th Defendant purchased the property during the pendency of the proceeding. He referred to the sale agreement between the Plaintiff and the 6th Defendant (Exhibit P8.)
170. DW1 stated that the Plaintiff had since lost possession and ownership of the property that he is claiming and asked the court to allow the prayers in the counterclaim and that he be declared as the owner of Nakuru Municipality Block 29/1028 (Ronda) and that the plaintiff be evicted from the said parcel.
171. On cross-examination by counsel for the Plaintiff, when referred to Exhibit D3, DW1 stated that David Langat and Simon Koskey were the owners of the suit land as at 1st March, 2002.
172. It is also his evidence that pursuant to the said allotment, David Langat and Simon Koskey acquired a title. He further testifies that Exhibit P3 is an allotment letter issued in respect of Block 29/819 Ronda and the property they sold to him is Block 29/1028.
173. When referred to Exhibit D3 (b) which is a title issued on 28th June, 2004, he stated that it is not connected to Exhibit D3 which suggests that the allottees were initial shareholders of Rift Valley Enterprises Ltd.
174. When referred to the title at page 10 of the bundle, DW1 stated that he does not have an allotment letter connected to this title and does not know how David Langat and Simon Koskey acquired the title.
175. When referred to Exhibit D4 which is a sale agreement dated 27th September, 2013 DW1 stated that as at 27th September, 2013, the property he bought was jointly owned by David Langat and Simon Koskey.
176. DW1 confirmed that only one of the owners, Simon Koskey, executed the agreement for the sale. He stated that paragraph 7 of his statement explains that David Langat did not sign because he is deceased. He went on to state that Simon Koskey informed him that Langat David was deceased.



177. DW1 stated that he was not shown a death certificate and confirmed that without the death certificate, the Court could not establish whether David Langat was alive or dead.
178. He further testified that the suit land was subsequently transferred to him on 23rd December, 2014 as evidenced on Exhibit D1 and Simon Koskei signed the transfer documents.
179. It is his evidence that since David Langat was dead he never signed the transfer documents. He stated that the procedure must have been followed and that succession must have been done and consent to transfer given. He stated that he does not remember the succession cause and does not have the evidence of the succession cause.
180. When referred to Exhibit P20- a demand letter from the 8th Defendants advocate- he stated that the Plaintiff trespassed onto his land in 2014 and he wrote a demand letter in 2016. He further testified that before the demand letter, they had a sitting before the chief and the District Officer. However, he had no evidence of those meetings.
181. He went on to state that the Plaintiff was claiming about 3 acres of land from several people. He confirmed that he did not file a suit and confirmed that the Plaintiff filed a suit on 19th August, 2016 and that he had filed a counter claim.
182. DW1 (who is the 8th Defendant) stated that the size of land he is claiming is 0.2113 Hectares and not 50 by 100. He further disputed that the Plaintiff owns 1.8 acres but did not know how much land he owns. He confirmed that his portion lies inside the portion that the plaintiff claims to own.
183. He stated that before he bought the land, he performed a search and visited the property. He further stated that at the time, nobody was on the land and there were no houses. He went on to state that he took possession and put a temporary fence which the Plaintiff destroyed in 2014.
184. DW1 stated that he disputes that the Plaintiff bought the suit parcels in 1975 as he has not seen a sale agreement. When referred to Exhibit P2- the sale agreement between Kiplagat Arap Chepkwony and the Plaintiff- he stated that can see it's for sale of plot No 534 which has no relation to the suit property.
185. He stated that he is not aware that the Plaintiff has lost relatives and that they are buried on the suit parcel. He states that this is not possible as the land is within the Municipality.
186. He denied that the Plaintiff has been in possession of the suit parcels for 25 years. It is his evidence that the Plaintiff lost possession in 2003 by selling to the 6th Defendant and many other people.
187. He stated that a portion of the suit parcels as at 4th May 2003 had been sold to Habati Kimbo i.e. 50 by 100 of it. He stated that the Plaintiff lost possession of a portion of LR 1016 and that he (DW1) has no interest in 1016.
188. In respect of 1028, DW1 stated that he sold a portion of it in 2020 And that the Plaintiff had therefore lost possession of a portion of 1028.
189. On re-examination, DW1 stated that he bought the suit property as is evidenced by his title deed. He further testifies that the information on the death of the co-proprietor was conveyed to him by Simon Koskey.
190. It was his testimony that the terms of the agreement were that Simon Koskey was to provide letters of administration to the Estate of David K Langat. He further states that the letters of administration were availed to him pursuant to which the property was transferred to him.



191. He stated that he does not know how much land and acreage of land is held by the Plaintiff. He stated that he is the registered owner of Block 29/1028 adding that sometime in 2014, the Plaintiff trespassed onto part of it.
192. He stated that the Plaintiff sold part of the suit property during the pendency of this suit and added that the Plaintiff had no right to sell and he was enjoined by the Court.
193. In reference to parcel No.1016, DW1 stated that sale agreement between Plaintiff and the 6th Defendant the said parcel is part of those that he claims. He made reference to paragraph 3 of the plaint adding that it is contrary to paragraph 24 A of the amended plaint.
194. The 8th Defendant closed his case.
195. Counsel for the Plaintiff informed the court that they had filed a response to the 8th Defendants counterclaim and needed, therefore, to tender evidence.
196. PW1 stated that the Plaintiff took possession of the suit parcel in 1975 and still lives on them.
197. She stated that she had filed a witness statement dated 25th February, 2021 and prayed that the court adopts it as her evidence in defence of the counterclaim.
198. The 1st, 2nd, 3rd and 4th Defendants closed their case on 26th September, 2022.
199. The 5th Defendant's case was also closed.
200. The 7th Defendant's case, who failed to enter appearance was closed.
201. The 9th Defendant's case, who also failed to enter appearance was closed.

Issues For Determination.

202. The Plaintiff filed his submissions on 2nd February, 2023. He identifies the following issues for determination:
 - a. Whether the registration of Land Parcel Nos. Nakuru Municipality Block 29/1023- in the name of 5th Defendant, Nakuru Municipality Block 29/1027- in the name of the 7th Defendant, Nakuru Municipality Block 29/1028- in the name of the 8th Defendant and Nakuru Municipality Block 29/1238 in the name of the 9th Defendant, was fraudulent, illegal, unprocedural or through a corrupt scheme and should therefore be cancelled.
 - b. Whether in the alternative, the Plaintiff has acquired title by adverse possession to all those parcels of land known as Nakuru Municipality Block 29/1023, 1027, 1028 and 1238.
 - c. Whether the Plaintiff is entitled to an order of a permanent injunction against the 5th, 7th, 8th and 9th Defendants and an order that he be issued with titles of the suit property.
 - d. Whether the Plaintiff is entitled to costs.
203. The Plaintiff submits that he explained in detail how the subject land was obtained and to support the said explanation PW1 produced 28 Exhibits.
204. On the parties' failure to participate in the proceedings, the plaintiff relies on the cases of *Shaneebal Limited Vs County Government of Machakos* [2018] eKLR, *Trust Bank Limited vs Paramount Universal Bank Limited & 2 Others Nairobi (Milimani)* HCCS No. 1243 of 2001, *Karuru Munyororo Vs Joseph Ndumia Murage & Another Nyeri* HCCC No 95 of 1988.



205. He submits that the 1st, 2nd, 3rd, 4th, 5th, 7th, and 9th Defendants neither filed any written statement of defence nor adduced any evidence. He further submits that the cross-examination conducted by counsel for the 1st – 4th Defendants never shook the Plaintiff's testimony and it did not change the Plaintiff's evidence with regard to the fact that he purchased the suit property from one Mr. Chepkwony in the year 1975 and that he has been in possession and occupation thereof after purchasing it.
206. The Plaintiff submits that the 8th Defendant acquired title to Nakuru/Municipality Block 29/1028 (Ronda) fraudulently, unlawfully, unprocedurally and/or through a corrupt scheme. The Plaintiff relies on Section 80 of the Land Registration Act, Section 24 (a) of the Land Registration Act and Section 26 of the Land Registration Act.
207. The Plaintiff submits that Article 40 of the Constitution of Kenya 2010 makes provision for the protection of right to property however this protection is not absolute as sub Article (6) thereof provides that: "The rights under this article do not extend to any property that has been found to have been unlawfully acquired." It is the Plaintiff's submission that this legal provision creates the threshold for any impeachment of title to pass muster.
208. The Plaintiff submits that he has challenged the 8th Defendant's title as well as that of the 5th, 7th, and 9th Defendants and reiterates that he is the lawful owner of the suit land and that the 8th Defendant as well as the 5th, 7th, and 9th acquired their respective titles fraudulently, unlawfully, unprocedurally and/or through a corrupt scheme.
209. The Plaintiff relies on the case of Arthi Highway Development Limited Vs West End Butchery Limited & 6 others [2015] eKLR and submits that he has established, to the required standard that he acquired and occupied the suit property.
210. The Plaintiff further submits that save for the 8th Defendant, all other Defendants squandered the opportunity to defend themselves with regard to how they acquired the impugned titles. The Plaintiff submits that by virtue of Section 107 and 109 of the Evidence Act, DW1 openly failed to discharge the burden of proof.
211. It is the Plaintiff's submission that it is his evidence that in so far as it intends to show that the titles acquired by the 5th, 7th, and 9th Defendants was fraudulent and unprocedural has been established. The Plaintiff also submits that with regard to the 8th Defendant, there is no doubt that the 2nd Defendant processed for him the impugned title and the 2nd Defendant did not tender any evidence in this suit.
212. The Plaintiff submits that the 8th Defendant stated that one of the initial owners of the impugned title (Mr. Langat) was dead at the time of execution of the land sale agreement and the Court was not shown any death certificate. The Plaintiff further submits that there was no explanation offered as to why a sale agreement was executed, consent from the Land Control Board obtained, transfer executed in favour of the 8th Defendant yet there was no proof of death of the said Langat as alleged. The Plaintiff therefore submits that the failure to prove the death of the said Langat, in itself rendered the acquisition of the 8th Defendant's title fraudulent, illegal, unprocedural or through a corrupt scheme.
213. The Plaintiff relies on the case of Joseph Igogo Gathirwa Vs Peter Nduati Mbau & 2 others [2021] eKLR and submits that the 8th Defendant dangled the impugned title as proof of ownership but failed to prove the legality of its acquisition. It was the Plaintiff's submission that the 8th Defendant failed to demonstrate the impugned title's root without a break in the chain with regard to its acquisition. The Plaintiff urged the Court to find that the Plaintiff has proved his case to the required standard and consequently find issue (a) in the affirmative.



214. On the second issue, the Plaintiff submits that he sought prayer number 3 in the plaint as an alternative in the unlikely event that prayer number 2 of the plaint fails. The plaintiff submitted that prayer number 2 and 3 cannot be granted simultaneously. The Plaintiff further relied on the cases of *Chevron (K) Ltd Vs Harrison Charo Wa Shutu* [2016] eKLR. The Plaintiff submitted that in the unlikely event that the Court does not grant prayer 2 in the Plaint then the Court finds that the Plaintiff has obtained title to the suit land by way of adverse possession.
215. On the third issue, the Plaintiff submits that he has also sought for a permanent injunction against the defendants and an order that the land registrar issues him with the title to the suit property. The Plaintiff relies on the cases of *Joseph Gathirwa Vs Peter Nduati Mbau & 2 others* [2021] eKLR, *Alice Chemutai Too Vs Nickson Kipkurui Korir & 2 others* [2015] eKLR and submits that the 5th, 7th, 8th and 9th Defendants have failed and/or neglected to prove how they acquired title over the suit property and consequently failed to prove the root of their impugned titles.
216. The Plaintiff also submits that he was clearly able to prove how he acquired the suit land. He further submitted that he is the lawful and bonafide owner of the suit land and thus he is entitled to a declaration that the registration of the suit property in the names of the said Defendants is null and void and should be cancelled and same registered in the names of the Plaintiff.
217. The Plaintiff further submits that he holds absolute and indefeasible rights and interests over the suit property and he is thus entitled to a permanent injunctive order against the 5th, 7th, 8th and 9th Defendants and their agents so that he can enjoy peaceful and quiet occupation and possession thereof. The Plaintiff prayed that the counterclaim be dismissed with costs.
218. The Plaintiff concludes his submissions by relying on Section 7 of the *Civil Procedure Act* (Cap 21) and the case of *Jasbir Singh Rai & 3 others Vs Tarlochan Singh Rai & 4others* [2014] eKLR in seeking that the court awards him costs for the suit and the counterclaim.
219. Only the 8th Defendant filed his submissions. He identified the following issues for determination;
- a. Whether the 8th Defendant is a bonafide purchaser for value without notice.
 - b. Whether to the knowledge of the 8th Defendant, Simon K. Koskei had good title to parcel of land title number Nakuru/Municipality/Block 29/1028 (Ronda)
 - c. Whether the 8th Defendant's title was acquired illegally, unprocedurally or through a corrupt scheme
 - d. Whether the Applicant has met the threshold for grant of orders for adverse possession
 - e. Whether the 8th Defendant is entitled to the prayers sought in its counter-claim
220. On the first issue, the 8th Defendant relies on the case of *Lawrence Mukiri Vs Attorney General & 4 others* [2013] eKLR and Section 80 (2) of the *Land Registration Act*. The 8th Defendant submits that he acquired parcel of land known as Nakuru/municipality Block 29/1028 (ronda) by way of transfer from the registered owner. He further relies on Section 7 (1) (g) of the *Land act* which provides for methods of acquisition of title to land to include transfers.
221. He further submits that at the time of purchasing the land, the 8th Defendant conducted due diligence and confirmed that indeed the vendor was the registered owner of the land. He submits that he has produced in court a copy of title of Simon K Kosgei in support of this.
222. On the second issue, the 8th Defendant submits that this property was at the time registered under the Registered *Land Act*, Chapter 300. Laws of Kenya (now repealed) (RLA). He further submits that the



- property was registered in the name of both David K Langat and Simon K Kosgei. The 8th Defendant submits that registration of land in the names of more than one person was provided for in sections 101, 102, 103 of the RLA.
223. The 8th Defendant relies on Section 118 of the RLA, which was repealed by the [Land Registration Act, 2012](#) and he submits that Section 91 of the Land Registration Act has a similar provision.
224. The 8th Defendant submits that for one to prove tenancy in common, there ought to be distinct shares for each of the registered proprietors, failure of which the property shall be deemed to have been jointly owned. He submits that in the present, there was no distinct portion to each of the previous owners to the property belonging to the 8th Defendant and as such, the tenancy was joint and upon demise of one the property vested on the other.
225. The 8th Defendant relies on the case of *Diana Muchiri Vs Lydia Wariara Njenga & another* [2022] eKLR and submitted that Simon K Kosgei had title to the parcel of land which the 8th Defendant has produced in its evidence. He further submits that the search on the title confirmed that the title had no encumbrances. The 8th Defendant submits that to his knowledge, he acquired title of his parcel of land from persons with good title.
226. On the third issue, the 8th Defendant relies on Section 26 (1) of the [Land Registration Act](#) and submits that he has explained how he acquired his title and there is no evidence to suggest any fraud on the part of the 8th Defendant.
227. On the fourth issue, the 8th Defendant submits that a claim for adverse possession is attached to the land and not title. He further submits that where an Applicant seeks for an order for acquisition of land by adverse possession, he must satisfy the court that he has been in continuous uninterrupted occupation and possession of the suit property for a period in excess of 12 years and the burden of leading the court to ascertaining this lies with the Applicant. The 8th Defendant relies on the cases of *Maweu Vs Liu Ranching & Farming Cooperative Society* [1985] eKLR, *Gabriel Mbui Vs Mukindia Maranya* [1993] eKLR Nairobi Civil No 283 of 1990 and *Wambugu Vs Njuguna* [1983] KLR 172.
228. The 8th Defendant quotes Section 7 and 38 of the [Limitation of Actions Act](#) and further submits that for the Plaintiff to seek an Order for adverse possession, he must first concede to the fact that the land belongs to the Respondent and that he has been in continuous uninterrupted occupation for a period of 12 years with full knowledge of the Registered owner and that he has been using the suit property in a manner inconsistent with ownership of the Respondent.
229. He also submits that the 8th Defendant acquired his title in 2014 and this claim was brought before this Honourable court in 2016, barely two years after acquisition of title by the 8th Respondent and it's on that basis that this claim must fall.
230. He further submits that the Plaintiff also seeks adverse possession to property that he has already lost possession thereof and reiterates that one can only claim adverse possession when his occupation of the property is adverse to that of the registered proprietor but in the instant case the Plaintiff has lost possession and thus cannot claim adverse possession.
231. On the fifth issue, the 8th Defendant submits that he is the registered owner of parcel of land known as Nakuru/municipality Block 29/1028(ronda) as he has produced in his evidence a certificate of title to confirm this. He also submits that he has explained how he has acquired his title. He submits that the Plaintiff has not proved any fraud on the part of the 8th Defendant and the Plaintiff is a trespasser.



232. The 8th Defendant quotes section 25 of the *Land Registration Act* and Article 40 of *the Constitution* of Kenya 2010 and prays that the Court protects the 8th Defendants right to property against infringement by the Plaintiff personally or through its agents by granting an order for eviction as prayed in the counterclaim.
233. The 8th Defendant concludes his submission by stating that the Plaintiff has not proved his case to the required standard of proof and prays that the same be dismissed with costs to the 8th Defendant. He submits that the 8th Defendant has proved its counterclaim and pray the same be allowed.

Analysis And Determination.

234. After considering the pleadings, submissions and testimonies of the Plaintiff, the 1st-4th Defendants, and 8th Defendants together with their witnesses;
the following issues arise for determination;
- a. Whether the registration of Land Parcel Nos. Nakuru Municipality Block 29/1023- in the name of 5th Defendant, Nakuru Municipality Block 29/1027- in the name of the 7th Defendant, Nakuru Municipality Block 29/1028- in the name of the 8th Defendant and Nakuru Municipality Block 29/1238 in the name of the 9th Defendant, was fraudulent, illegal, unprocedural or through a corrupt scheme and should therefore be cancelled.
 - b. Whether in the alternative, the Plaintiff has acquired title by adverse possession to all those parcels of land known as Nakuru Municipality Block 29/1023, 1027, 1028 and 1238.
 - c. Whether the Plaintiff is entitled to an order of a permanent injunction against the 5th, 7th, 8th and 9th Defendants and an order that he be issued with titles of the suit property.
 - d. Whether the 8th Defendant is entitled to the prayers sought in its counter-claim.
 - e. Who should bear costs of this suit.
 - A. Whether the registration of Land Parcel Nos. Nakuru Municipality Block 29/1023- in the name of 5th Defendant, Nakuru Municipality Block 29/1027- in the name of the 7th Defendant, Nakuru Municipality Block 29/1028- in the name of the 8th Defendant and Nakuru Municipality Block 29/1238 in the name of the 9th Defendant, was fraudulent, illegal, unprocedural or through a corrupt scheme and should therefore be cancelled.
235. The Plaintiff in his amended plaint avers that he does not know the 5th, 7th, 8th and 9th Defendants. He avers that the said persons all have title deeds to parcels of land excised from parcels 1016, 1027 and 1028.
236. The Plaintiff avers that the acquisition of the suit properties by the 5th and 7th - 9th Defendants is inexplicable and fraudulent. The 1st-4th Defendants are joined to the suit by virtue of being government agents and according to the Plaintiff they are implicated in the illegal fraudulent/unprocedural transfer of Land to the 5th and 7th - 9th Defendants.
237. Only the 8th defendant tendered evidence in a bid to explain the root of his title.
238. I am satisfied that the 5th, 7th, and 9th defendant were properly served and thus aware of the existence of this suit and the importance of entering appearance.



This is evidenced by the numerous affidavits of service on record i.e. the affidavit of service dated 25th November, 2019 sworn by Samuel N Gikana, An affidavit of service dated 18th February, 2020 sworn by Owen Magata, an Affidavit of service dated 12th February 2021 sworn by Owen Magata, an affidavit of service dated 9th March, 2022 sworn by Samuel N Gekanana, an affidavit of service dated 18th May, 2022 by Samuel N Gekanana, an affidavit of service dated 24th August, 2022 sworn by Samuel N Gekanana and an affidavit of service dated 6th March, 2023.

239. The 1st, 2nd, 3rd and 4th Defendants entered appearance, filed a statement of defence, participated in the hearing by way of cross-examination of witnesses but chose not to call any witnesses or adduce any evidence.

240. The Learned Judge in *Grace Nzula Mutunga v Joyce Wanza Musila* [2017] eKLR cited with approval the decision in *Janet Kaphiphe Ouma & Another Vs. Marie Stopes International (Kenya)* Kisumu HCCC No. 68 of 2007 wherein it was held as follows;

“In this matter, apart from filing its statement of defence the defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1st plaintiff and that of the witness remain uncontroverted and the statement in the defence therefore remains mere allegations...Section 107 and 108 of the *Evidence Act* are clear that he who asserts or pleads must support the same by way of evidence.”

241. Taking cue from this decision, the evidence of the plaintiff against the 1st, 2nd 3rd and 4th, 5th, 7th and 9th Defendant has not been challenged.

242. Despite the fact that there was no evidence tendered by the 1st, 2nd 3rd and 4th, 5th 7th and 9th Defendants this court has a duty to and shall interrogate the evidence tendered by the Plaintiff. In *Propwa Company Limited Vs Justus Nyamo Gatondo & another* [2020] eKLR held as follows:

“The fact that the evidence is not challenged does not entirely mean that the Court will not interrogate the evidence tendered by the Plaintiff. The Court still has an obligation to interrogate the Plaintiff’s evidence and determine whether the same is merited to enable the Court come up with logical conclusion as ex-parte evidence is not automatic prove of a case on the required standard. The Plaintiff has to discharge the burden of proof.”

243. In the judicial decision of *Kenya Power & Lighting Company Limited... Vs...Nathan Karanja Gachoka & another* [2016] eKLR, it was held as follows:

“I am of the opinion that uncontroverted evidence must bring out the fault and negligence of a defendant, and that a court should not take it truthful without interrogation for the reason only that it is uncontroverted. A plaintiff must prove its case too upon a balance of probability whether the evidence is unchallenged or not.”



244. In *Gichinga Kibuth -Vs- Caroline Nduku* (2018) eKLR it was held as follows:

“It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”

245. Bearing this judicial decisions in mind, the question that this court seeks to answer is whether the Plaintiff has discharged the burden of proof. He (the Plaintiff) alleges fraud and illegality on the part of the Defendants and seeks orders for cancellation of titles held by the 5th, 7th, 8th and 9th Defendants.

246. The Plaintiff’s evidence is that sometime in 1975, the Plaintiff purchased 25 shares, equivalent to 1.8 acres from one Kiplagat Arap Chepkwony who was a shareholder in an entity known as the Kalenjin Enterprises Ltd.

247. The Plaintiff has produced a copy of a Sale agreement which has no date or month but contains the year 1975. The sale agreement is between Kiplagat Arap Chepkwony and Eliud Macharia Munga in respect of the parcel of land described as plot No 534. The fact of existence of Kalenjin Enterprises Limited has not been disputed.

248. The Sale agreement at clause 2 states as follows;

“It is hereby expressly agreed that though the Vendor would be treated as the owner of the said plot until the said plot is transferred to the purchaser by the Kalenjin Enterprises Limited of Post Office Box 1110 Nakuru in the said Republic the ownership is now transferred by the Vendor to the Purchaser in consideration of having received a part of the sale price and the Vendor hereby withdraws all his claims of interest from the said plot and the Purchaser is hereby authorized to carry out development as per requirement in the Vendors name and the expenses of such development will not be by the Purchaser and all such moneys invested for development of the said plot shall be the property of the Purchaser and the Vendor has no claim whatsoever over it.” (emphasis is mine)

249. Clause 4 of the Sale agreement goes on to state:

“The possession of the said plot shall be given to the Purchaser on execution of this agreement.”(Emphasis is mine)

250. The Plaintiff has also produced a certificate for ordinary shares issued by Kalenjin Enterprises Limited (Exhibit P1). The reverse of the said certificate of shares has a date 16th July, 1987 and the following words;

“Transfer to Eluid Macharia”

There is third name which is not legible. There are also receipt numbers indicated at the back of the said share certificate but they are not entirely legible.

251. Still on the reverse side of the said share certificate, there are more writings. This second batch is both handwritten and stamped. It is not entirely legible but I can see the words

“Allocated plot 1016, 1027, 1028”

It is dated and signed but the date and signature are not too clear. I must also mention that this exhibit when shown to court was falling apart and had been put together by cello tape.



This is reflective of the age of it. This can also be seen on the coloured photocopy that is in the court file.

252. The Plaintiff testified that after purchase of Plot No 534 in 1975, in 1980 a survey was done and he was physically shown and took occupation of No. 1016 and 1027 totaling 1.8 acres. He has produced a Map (Exhibit P29).
253. The plaintiff has also produced a bundle of letters as evidence of his attempts at procuring a title for the parcels that he is in occupation of.
254. There is a letter dated 20th October 2014 written to the District Commissioner Nakuru (Exhibit P10). In this letter, the plaintiff narrates how he purchased land from Kiplagat Arap Chepkwony, how they visited an advocate's office and executed a document through which Kiplangat Arap Chepkwony's shares were transferred to him (Exhibit P3).
255. The Deputy County Commissioner responded to this letter dated 2010/14 vide a letter dated 17th November, 2014 (Exhibit P14). In the said letter, the Plaintiff is advised to get the title documents of his plots from the land's office. It is not clear if this letter acknowledges the contents of the one dated 20th October, 2014 or if it is only meant to point him to the government department that has the mandate to issue title deed.
256. The Plaintiff also produced a letter dated 11th July ,2018 (Exhibit P23). This is a letter written by the Chief Kaptembwa Location to the District Land Registrar Nakuru. In the said letter the chief states that the Plaintiff was allocated plots No. 1016, 1027 and 1028 by a vetting committee at the District Office. He explains that the said plots initially belonged to Kiplangat Arap Chepkwony who sold them to the Plaintiff as indicated in Receipt 461 and 5838.
257. The letter goes on to state that Kiplangat Arap Chepkwony transferred the shares to the plaintiff in the presence of Kamere and Co. Advocates, a sale agreement was drawn and on completion of payment, the plaintiff took occupation and has lived on the said parcels.
258. These letters are consistent in so far as they tell the story of acquisition and occupation of the suit parcels by the Plaintiff.
259. PW2 and PW3's evidence was to the effect that they are neighbours of the Plaintiff and that he (the Plaintiff) has been in occupation of the suit parcels since 1980. PW3's evidence also sheds light on the problems that have dogged the members of Kalenjin Enterprises Limited in respect of occupation and title documents. More particularly, PW3 testified that he is in occupation of a parcel of land while certain other third parties hold title to it.
260. The Plaintiff's evidence is also that one of the officials of Kalenjin Enterprises visited his home and left a title deed (Exhibit P11) with his daughter. His evidence is that the said title deed though in his name is not for the parcel of land occupied by him.
261. The Plaintiff, while this suit was pending in court, sold a portion of the suit parcels to the 6th Defendant, Hebert Kimbo Chogo, via sale agreement dated 4th May, 2023. The suit against him was subsequently withdrawn.
262. The Plaintiff's evidence is that he has built a house on the suit parcel which was burnt down during the 1992 clashes and that after calm returned he build another house on the suit parcel. He has produced photographs to show the developments on the suit parcels including a house, a hedge fence and photographs of funeral rites being conducted for his deceases kin whose remains are interred on the suit parcels.



263. By and large, the Plaintiff's evidence as to acquisition and occupation is plausible and is supported by documents produced and evidence of witnesses. The evidence of the witnesses fortifies the Plaintiff's testimony which is that he bought the suit parcels from Chepkwony and that he has been in occupation since purchase.
264. The 8th Defendant has also told his story of acquisition of a portion of the suit properties. His evidence is that he bought Nakuru Municipality Block 29/1028 from David Langat and Simon Koskey. He acknowledges that the plaintiff is in occupation of part of this parcel of land that he lays claim to.
265. The 8th defendant produced a sale agreement (Exhibit D4) entered into by him and Simon Koskei, one of the alleged original owners of Nakuru Municipality Block 29/1028. His explanation is that he was informed that David Langat is deceased.
266. The 8th Defendant also produced an allotment letter (Exhibit D3(a)). The said allotment letter is from Rift valley enterprises (formerly Kalenjin enterprises Ltd). It is issued in favor of David Langat and Simon Koskey and the parcel of land is described as Nakuru Municipality Block 29/819.
267. The 8th Defendant also produced a title deed for Nakuru Municipality Block 29/1028 in the name of David Langat and Simon Koskey (Exhibit D3(b)).
268. There is an obvious disconnect between the number in the allotment letter and the title produced. The 8th defendant acknowledged that he did not know how the two individuals acquired the title to Nakuru Municipality Block 29/1028.
269. The title deed produced for Nakuru Municipality Block 29/1028 has two names. It does not state whether the two people are joint owners or owners-in-common. The presumption as to joint ownership is only in respects of married couples. In any other instances the parties are deemed to hold land as owners-in-common. Therefore, the submissions by the 8th Defendant that on the death of David Langat (which has not been proved) the entire parcel devolved to Simon Koskey cannot hold.
270. The 8th Defendant acknowledges that he did not see the death certificate of David Langat or any documents that speak to succession to his estate. He confirmed however that the parcel was transferred to him and he got a title deed.
271. The 8th Defendant also, during the hearing, stated that he does not know how David K Langat and Simon K Kosgei acquired the title.
272. I do not find the evidence by the 8th defendant as to acquisition plausible. There is a disconnect between Exhibit D3(a) and D3(b) i.e. the allotment letter and the title deed. PW3's testimony is that he is the one in occupation of Nakuru Municipality Block 29/819 (Ronda) whose allotment letter DW1 produced as Exhibit D3(a). He produced a search appearing at page 71 of the plaintiff's bundle which also shows that the parcel Nakuru Municipality Block 29/819 (Ronda) is registered in the name of Joseph Kipkurui and Peter Kipkurui Rotich. PW3 stated that he has since instituted a suit ELC No. 259 of 2018 wherein he is asserting his rights over Nakuru Municipality Block 29/819 (Ronda). The pleadings were produced as Exhibit P31.
273. An analysis of these documents and evidence casts doubt over the 8th Defendants claim over Nakuru Municipality Block 29/1028. PW3 was categorical that the allotment letter and title must complement each other. The 8th defendant was unable to explain the discrepancies pointed out in respect of the numbers on the allotment letter produced by him and the numbers on the title deed.



274. The 8th Defendant acknowledges that one of the original owner of Nakuru Municipality Block 29/1028 Ronda was deceased at the time of purchase yet he entered into an agreement with the surviving co-owner to purchase land without any reference to the estate of the deceased co-owner.
275. The allotment letter produced, is at variance with the title held by the 8th defendant. PW3 testified that he is in occupation of Nakuru Municipality Block 29/819 (Ronda) and that the title documents to the said parcel were issued to Joseph Kipkurui and Peter Kipkurui Rotich. The search is at page 71 of the Plaintiff's trial bundle.
276. In *Munyu Maina -Vs- Hiram Gathiha Maina* [2013] eKLR, held 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.”

277. The 8th Defendant's testimony and documents are inadequate in so far as the are intended to satisfactorily prove the root of his title. He has essentially, only manage to dangle an instrument of title at this court.
278. The plaintiff has alleged fraud at paragraph 16 of the amended Plaint. Fraud has been defined in Black's Law Dictionary 11th Edition as

“A knowing misrepresentation or knowing concealment of material facts made to induce another to act to his or her detriment.”

It is an established principle of law that a claim based on fraud must be specifically pleaded and strictly proved.

279. The Court of Appeal in the case of *Vijay Morjaria vs Nansingh, Madhusingh Darbar & another* [2000] eKLR held as follows;

“It is well established that fraud must be specifically pleaded and the particulars of fraud alleged must be stated on the face of the pleading. The act 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.”

280. In *Koinange & 13 others vs Charles Karuga Koinange* 1986 KLR at page 23 the court held that:

“When fraud is alleged by the Plaintiffs the onus is on the Plaintiffs to discharge the burden of proof. Allegations of fraud must be strictly proved, although the standard of proof may not be so heavy as to require proof beyond a reasonable doubt, something more than a balance of probabilities is required.”



281. In *Kinyanjui Kamau Vs George Kamau* [2015] eKLR the court dismissed the appeal as it was not demonstrated that the appellants had proved fraud to the required degree and stated thus:

“It is trite law that any allegations of fraud must be pleaded and strictly proved. see *Ndolo vs Ndolo* [2008] 1KLR (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 the 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 upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases...”

282. Based on the foregoing, the Standard of proof in cases of fraud ought to be higher than in ordinary cases. In case where fraud is alleged it is not enough to simply infer fraud from the facts. The Plaintiff ought to have done a lot more in proving fraud but his evidence fell short. He has however proved that the registration to the 5th, 7th, 8th and 9th Defendants was unprocedural and illegal. More particularly, the transfer to the 8th Defendant by only one of the alleged owners without any reference to the estate of the deceased owner is curious.

283. I have considered the evidence on record and particularly the evidence of PW1, PW2 and PW3 and find that the Plaintiff has on a balance of probability proved that the registration of Land Parcel Nos. Nakuru Municipality Block 29/1023- in the name of 5th Defendant, Nakuru Municipality Block 29/1027- in the name of the 7th Defendant, Nakuru Municipality Block 29/1028 in the name of the 8th Defendant and Nakuru Municipality Block 29/1238 in the name of the 9th Defendant, was unprocedural and illegal.

284. Section 26 (1) of the [Land Registration Act](#) states as follows:

“The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except-

- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

285. Section 80 of the [Land Registration Act](#) provides as follows;

“Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”

- B. Whether in the alternative, the Plaintiff has acquired title by adverse possession to all those parcels of land known as Nakuru Municipality Block 29/1023, 1027, 1028 and 1238.

286. The Plaintiff submits that the prayer for adverse possession was sought as an alternative prayer. He must have realized that the evidence adduced cannot support this prayer and has by and large abandoned it.



287. This court will not address itself on the question of adverse possession especially considering my finding on issue A above and further due to the fact that the Plaintiff concedes that a prayer for adverse possession was an alternative prayer.
- C. Whether the Plaintiff is entitled to an order of a permanent injunction against the 5th, 7th, 8th and 9th Defendants and an order that he be issued with titles of the suit property.
288. This Court has the powers to grant the Permanent Injunction under Sections 1A, 3 & 3 A of the Civil Procedure Act, 2010.
289. In Kenya Power & Lighting Co. Ltd -vs- Sheriff Molana Habib (2018) eKLR it was stated thus: -
- “A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the Court and is thus a decree of the Court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.”
290. After the hearing, finds that the Plaintiff is entitled to an order of a permanent injunction against the 5th, 7th, 8th and 9th Defendants.
- D. Whether the 8th Defendant is entitled to the prayers sought in his counter-claim.
291. The 8th Defendant (now Plaintiff) has sought the following prayers in his counter claim dated 21st October, 2019;
- a. A declaration that the Plaintiff (now Defendant) is a trespasser as the 8th Defendant (now Plaintiff) is the registered owner with a Valid Title Deed to the parcel of land known as Nakuru Municipality Block 29/1028 (ronda)
- b. An Order of eviction do issue against the Plaintiff (now Defendant), his agents, servants, employees and/or any other person by whatsoever name claiming through the Plaintiff (now Defendant) from Nakuru Municipality Block 29/1028 (ronda)
- c. Costs of the suit and costs of the Counter-claim.
- d. Any other relief that this Honourable Court may deem fit to grant.
292. This courts finds that the 8th Defendant’s counterclaim fails for the reasons set out in the foregoing paragraphs.
- E. Who should bear costs of this suit?
293. Cost in the Black’s Law Dictionary is defined as follows;
- “The expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other”
294. Section 27 (1) of the Civil Procedure Act, Cap. 21 provides that Costs follow events.

Disposition.

295. In the result, I find that the Plaintiff’s suit succeeds. Consequently, I grant orders as follows:



- a. A declaration is hereby issued that the acquisition of the suit parcels by the 5th, 7th, 8th and 9th Defendants of title to properties title number Nakuru Municipality Block 29/1023, 1016, 1027, 1028 and 1238 was illegal and unprocedural therefore null and void.
- b. An order of permanent injunction is hereby issued restraining the 5th, 7th, 8th and 9th Defendants their servants, employees or others whosever from taking possession of, entering into trespassing upon, selling, transferring, charging, developing, surveying or dealing in any other manner with properties title numbers Nakuru Municipality Block 29/1023, 1016, 1027, 1028 and 1238.
- c. A declaration is hereby issued that the registration and issuance of title deed in respect of Nakuru Municipality Block 29/1023, 1016,1027,1028 and 1238 to the 5th, 7th, 8th and 9th Defendants was unprocedural, is null and void and the same is hereby cancelled.
- d. An order is hereby issued that the register of Land parcel No. Nakuru Municipality Block 29/1023, 1016, 1027, 1028 and 1238 shall be rectified by deleting the names of the 5th, 7th, 8th and 9th Defendant and registering the name of the plaintiff.
- e. The plaintiff shall have costs of this suit and interests thereon from date of judgment until payment in full.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 21ST DAY OF SEPTEMBER, 2023

L. A. OMOLLO

JUDGE

In the presence of:

Mr. Magata for the Plaintiff

AG for the 1st, 2nd, 3rd & 4th Defendant (Absent)

No appearance for the 5th Defendant

No appearance for the 7th Defendant

Mr. Guto for 8th Defendant.

No appearance for the 9th Defendant

Court Assistant; Ms. Monica Wanjohi.

