



Mbindu & another v Joseph Gitau Chege, Peter Wainaina Mbugua, Isaac Njoka Mbugua, & Robert Kinyanjui Mbitiru Person(S) and (As Trustees of Adams Mirror Lari (CBO) Self Help Group) & another (Environment & Land Case 36 of 2016) [2023] KEELC 22158 (KLR) (11 December 2023) (Judgment)

Neutral citation: [2023] KEELC 22158 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 36 OF 2016
CA OCHIENG, J
DECEMBER 11, 2023**

BETWEEN

REUBEN MWANGANGI MBINDU 1ST PLAINTIFF

JESINTA MUTHEU MWANGANGI 2ND PLAINTIFF

AND

JOSEPH GITAU CHEGE, PETER WAINAINA MBUGUA, ISAAC NJOKA MBUGUA, & ROBERT KINYANJUI MBITIRU PERSON(S) AND (AS TRUSTEES OF ADAMS MIRROR LARI (CBO) SELF HELP GROUP) 1ST DEFENDANT

LAND REGISTRAR (MACHAKOS) SUED THROUGH THE HONOURABLE ATTORNEY GENERAL 2ND DEFENDANT

JUDGMENT

1. Through a Complaint dated the 23rd May, 2016, the Plaintiffs pray for Judgment against the Defendants for:
 - a. A declaration revoking and cancelling Title Number Mavoko Town Block 3/2744 issued to the 1st Defendants in persons and/or trustees of Adams Mirror Lari (CBO) Self Help Group on 21st October, 2010.
 - b. A declaration restoring the Plaintiffs Title Number Mavoko Town Block 3/ 2744 issued on 13th March, 2006 and the Plaintiffs as the only lawful and legitimate absolute proprietors of the said land.



- c. An order for a permanent injunction stopping the 1st Defendants and/or their agents or members of Adams Mirror Lari (CBO) Self Help Group and/or their agents from any further dealing, mutation or subdivision in anyway with the land registered as Title Number Mavoko Town Block 3/2744.
 - d. Compensation for the denial of the Plaintiffs from using and benefitting from the said land since the time the breach occurred.
 - e. Mesne Profits
 - f. General Damages for pain and suffering.
 - g. Costs of this suit.
 - h. Interest on (b) above.
 - i. Any other relief that this Honourable Court may deem fit.
2. The 1st Defendants filed a Statement of Defence including a Counterclaim dated the 13th October, 2016 where they denied the averments in the Plaint except the descriptive. They admitted that the Plaintiffs had been proprietors of land parcel number Mavoko Block 3/2744 hereinafter referred to as the 'suit land', but sold it to them for Kshs. 8, 600,000/=, vide a Sale Agreement dated the 24th May, 2010. They contended that they bought the suit land for a group of people, subdivided it and showed beacons to the members. They reiterated that they are the bona fide purchasers for value of the suit land. They denied the particulars of fraud and misrepresentation. In the counterclaim, the sought the following Orders:
- a. That the Plaintiffs' suit against the 1st Defendant be dismissed.
 - b. That a declaration affirming that the suit property Mavoko Town Block 3/2744 belongs to the 1st Defendant.
And or Alternatively
Without Prejudice to the above the Plaintiffs refund the 1st Defendant the sum of Kenya Shillings Eight Million Six Hundred Thousand only (8, 600,000/=) with interest at commercial rate since the date of Registration on 21st October, 2010.
 - c. Costs of the suit be awarded to the 1st Defendant.
3. The matter proceeded for hearing where the Plaintiffs called two witnesses while the Defendants had four witnesses.

Evidence of the Plaintiffs

4. The Plaintiffs claim to be the registered proprietors of the suit land since March 2006. They explained that the 1st Defendant had been fraudulently registered as proprietor of the suit land on 21st October, 2010. Further, that the alleged vendors impersonated them. They reported the matter to the CID and the impersonator one Veronica Kangwele Kibau was charged in Milimiani CM Cr Case No. 9 of 2012 but acquitted. They produced the following documents as exhibits;
5. Title number Mavoko town block 3/2744 dated 13th March 2006 issued in the name of Reuben Mwangangi Mbindu – ID XXXXXX and Jesinta Muteu Mwangangi - pass no. XXXXXXXX, Title number, Mavoko town block 3/2744 dated 21st October 2010 issued in the name of Joseph Gitau Chege ID 3073868, Peter Wainaina Mbugua ID XXXXXX, Isaac Njoka Mbugua ID 3073326



and Robert Kinyanjui Mbitiru ID XXXXXXXXX (As Trustees of Adams Mirror Lari (CBO) self Help group), Certificate of official search dated 31st December 2010 for title number Mavoko town block 3/2744, Letter by the plaintiffs to the Land Registrar, Machakos District dated 31st December 2010, Copy of Sale Agreement dated 24th May 2010 purportedly between the plaintiffs and the 1st defendant's, Acknowledgment receipt dated 1st July 2010 purportedly between the plaintiffs and the 1st defendants, Acknowledgment receipt dated 31st August 2010 purportedly between the plaintiffs and the 1st defendants, Service Agreement between dated 14th October 2010 Edward Wafula Namisis T/A Mutoca Survey Consultants and the 1st defendant, Copies of front page of the forged identity card numbers XXXXXXXXX and XXXXXXXXX or the plaintiff's respectively, True National Identity card no. XXXXXXXXX for Reuben Mwangangi Mbindu, True National Identity card no. 9241347 for Jesinta Mutheu Mutua, Passport number XXXXXXXXX for Jesinta Mutheu Mwangangi, PIN no. AXXXXXXXXXP fro Reuben Mbindu, PIN no. AXXXXXXXXXE for Jesinta Mutheu Mwangangi, Demand notice to Hon. the Attorney General dated 16th October 2016, Demand letter to Joseph Gitau Chege, Peter Wainaina Mbugua, Isaac Njoka Mbugua and Robert Kinyanjui Mbitiru (As Trustees of Adams Mirror Lari (CBO) Self Help Group,

Evidence of the Defendants

6. The 1st Defendant claimed they were the registered proprietors of the suit land which they purchased from Jesinta Mutheu Mwangangi and Reuben Mbindu for Kshs. 8, 600,000/=. They confirmed that the transaction was undertaken by advocates and most payments were effected through bankers' cheques drawn from Equity Bank but paid to the lawfirm of messrs Musyoka Kimeu who was acting for the vendor. They stated that after purchase, they got a surveyor, who subdivided the land to its members but in December, 2010, the real owner of the land fenced it. Further, they reported the matter to CID and the alleged vendor who turned out to be Veronica Kangwele Kibau was charged vide the aforementioned Milimani Criminal Case but acquitted. Most of the 1st Defendant's witnesses admitted to have been conned. The 2nd Defendant never tendered a witness to testify.

7. The 1st Defendant produced the following documents as exhibits;

Agreement of sale dated 24th May 2010, Certificate of official search no. 196/05/2010 dated 10th May 2010 Mavoko Town Block 3/2744, Receipt of payment for search no.1789404 dated 10th May 2010, Copy of title Mavoko Town Block 3/2744 issued on 30/3/2006, Application for consent of Land Control Board for subdivision of Mavoko Town Block 3/2744 into 30 portions LCR NO.23/7/2010, Cheque payment of Reuben Mwangi Mbindu Mwangangi And Jacinta Mutheu dated 10/8/2010 to Equity Bank Ltd A/C no.060300400516

- a. Cheque no. date 10/8/2010
 1. 017893 Ksh.400,000/-
 2. 017894 ksh.900,000/-
 3. 017895 Ksh.900,000/-
 4. 017896 Ksh.900,000/-
- b. Cheque no. date 31/8/2010
 1. 018169 Ksh.870,000/-
 2. 018168 Ksh.870,000/-



3. 017467 Ksh.990,000/-
- c. Cheque No. Date 10/8/2010
 1. 017894 Ksh.900,000/-
 2. 017897 Ksh.900,000/-
- d. Cheque no. Date 24/5/2010
 1. 017031 Ksh.600,000/-
- e. Cash payment date 25/5/2010
To Reuben Mwangangi – Ksh.300,000/-

Copies of identity card for Reuben Mwangangi no.0271002 and Jacinta Mutheu Mwangangi no.23756585, Search certificate Mavoko Town Block 3/2744 no.805/10/2010 dated 29/10/2010, Land control board consent no. 477278. Subdivisions into 80 portions dated 7/10/2010, A. Acknowledgment Receipt dated 10/8/2020 for Bankers Cheque no.017893, 017894, 017896, 017896 and 017897 all for Ksh.4,000,000/- from the defendants, b. Acknowledgment Receipt dated 1/7/2010 of Bankers Cheque no 017467,017468 of Ksh.1,980,000/-, Copy of title Mavoko Town Block 3/2744 dated 21st October 2010, Receipts of legal fees from Wanjiku Mwaura & Co.advocates dated 14/9/2010 and 30/12/2010, Receipts from Mutoca Survey Consultants dated 14/12/2010 and 22/12/2010, Mutation Form for subdivisions of Mavoko Town Block 3/2744 into new land parcel nos. ted 24/11/2010, Letter of director of criminal investigations officer from George N. Kimani & Co. Advocates, Proceedings of Criminal case no.9 of 2012 (to be supplied by court), Judgement of criminal case no.9 of 2012 (to be supplied by court).

Submissions

Plaintiffs' Submissions

8. The Plaintiffs in their submissions reiterated their evidence as presented and relied on their exhibits. They contended that no evidence was presented before Court which contradicted their claim as being the legitimate owners of the suit land as well as challenge the authenticity of their title and this meant in any event of any lawful transaction involving the said suit land, they should have been involved. They insisted that they were not involved in the fraudulent transaction with the 1st Defendant at all. They averred that the 1st Defendant's officials engaged with an imposter by the name of Veronica Kangwele Kibau who presented herself as Mrs. Jesinta Mutheu Mwangangi. Further, they denied knowing the alleged imposter and explained that the identity documents presented by the purported sellers of the suit land were clearly different from theirs who were the true owners of the said land. They made reference to the proceedings including Judgement in Milimani Court Chief Magistrate's Court Criminal Case No. 9 of 2021 where accused person was identified as **Veronica Kangwele Kibau alias Jesinta Mutheu Mwangangi** and argued that the said proceedings clearly demonstrate that the 1st Defendant's title cannot stand as the entire process of its acquisition was tainted with illegality. They reiterated that the 1st Defendant's title should hence be revoked. They further submitted that the 1st Defendant's Counter-claim lacks merit and ought to be dismissed forthwith in light of the



abundant facts that their acquisition of the title in respect to the suit land was marred and tainted with corruption hence invalidating its authenticity. They reaffirmed that the 1st Defendant failed to exercise due diligence in the process leading up to the registration of the (*illegal*) transfer. It stated that the 1st Defendant got into a transaction which was obviously opaque and potentially hazardous and hence they cannot claim to have been totally innocent. Further, that the 1st Defendant did not enjoin the fraudsters as Third Parties in this suit as authors of documents and participants in the mischief visited upon the parties herein. They also submitted that since it was the 1st Defendant's case that their purported payments were made in favour of the afore-mentioned Ms. Veronica Kangwele Kibau and her accomplice(s) those persons ought to be the persons they should pursue for recovery of their money. Further, they did not adduce any evidence that it made any payments to them at all, throughout the period of the fraudulent sale transaction nor did they provide court with copies of the Transfer Form. They hence claimed mesne profits amounting to Kshs. 5, 000,000/= because the 1st and 2nd Defendants have interfered with their possession of the suit land. To buttress their averments, they relied on **Section 26 of the [Land Registration Act, 2012](#)** as well as the following decisions: **Elijah Makeri Nyangwara vs Stephen Mungai Njuguna & Anor (2013) eKLR; Jonah Omoyoma vs Bonface Oure & 2 Others (2021) eKLR** and **Julia Wanjiku Gaburia (suing as the legal administrator of the Estate of the late Joseph Gaburia Mitaru) vs Sammy Ndungu Mungai & Anor (2020) eKLR.**

Defendants' Submissions

9. The 1st Defendant in their submissions relied on the evidence they tendered as well as the exhibits produced and challenged the testimonies of the Plaintiffs. They argued that together with its Trustees, they did not undertake any fraudulent sale transaction and registration in respect to the suit land. They insisted that the registration of their title over the suit land should not be cancelled. Further, that they are not liable to pay mesne profit and hence they were entitled to the orders as sought in the counterclaim. They further submitted that there was no conclusive evidence to fault them in denying the Plaintiffs', the use of their land as the 2nd Plaintiff admitted that he was using the said land for grazing. They further submitted that the registration and issue of the title into their name by a professionally qualified Land Registrar upto the consent to subdivide and the resultant subdivision would only lead to a reasonable person to deduce and infer that indeed the Plaintiffs played a part in fraudulent transfer of their legitimate land into third parties for economic benefit. They contended that the totality of their evidence was that they were bonafide purchasers for value without any notice. They also relied on the proceedings and judgement in the aforementioned Milimani Criminal Case and submitted that the fraudulent dealings of the sale of the suit land and the eventual registration of their title was a wider scheme to defraud them of Kshs 8,600,000/= and the only logical and plausible explanation is that the Plaintiffs and/or its agents were part of the said scheme. They referred to the pleadings by the 2nd Defendant and insisted that the transfer of the suit land into their name was done in good faith and upon representation by the Plaintiffs' themselves for financial benefits to their detriment. Further, that there was no evidence adduced by the Plaintiffs to link them with any fraudulent dealings with the sale and registration of the title in its name. To support their averments, they relied on section 26 of the [Land Registration Act](#) as well as the following decisions: **Peter Lavatsa Kabwoya Vs Nicholas G. Karira & Another (2021) eKLR; Kinyanjui Kamau Vs George Kamau [2015] eKLR; and Consolata Pande & Another Vs Ashish Bhupendra Patel & 4 Others (2019) eKLR.**



Analysis and Determination

10. Upon consideration of the Plaint, Defence including Counterclaim, testimonies of the witnesses, exhibits and rivalling submissions, the following are the issues for determination: Whether the 1st Defendant legally acquired the suit land and can be deemed as a bona fide purchaser for value without notice. Whether the Plaintiffs are entitled to mesne profits. Whether the Plaintiffs are entitled to the orders sought in the Plaint. Whether the 1st Defendant is entitled to the orders sought in the counterclaim. Who should bear the costs of the suit.
11. As to whether the 1st Defendant legally acquired the suit land and can be deemed as a bona fide purchaser for value without notice.
12. Both the Plaintiffs and 1st Defendant claim to be the registered proprietors of the suit land. The Plaintiffs acquired their title in March, 2006 while the 1st Defendants purportedly purchased the said land from the Plaintiffs and obtained their title on 21st October, 2010. PW1 and PW2 in their testimony insisted that they have never sold the suit land to third parties. DW1, DW2, DW3 and DW4 contended that they purchased the suit land from one Jesinta Mutheu Mwangangi and Reuben Mbindu. Further, that the transaction was undertaken by two lawfirms and they paid Kshs. 8,600,000/= as purchase price. It was their explanation that most of the payments were effected through Bankers' Cheques drawn from Equity Bank and the same were paid to the firm of messrs Musyoka Kimeu Advocates and they also had an Advocate. The 1st Defendant's in their submissions have alleged that the Plaintiffs must have colluded with the imposters to defraud them of the suit land since PW1 admitted he used to be a director at Equity Bank. Looking at the identification documents presented by the Plaintiffs, they indicate thus: ID Card No. 0271002 for Reuben Mwangangi Mbindu (1st Plaintiff), ID Card No. 9241347 for Jesinta Mutheu Mutua (2nd Plaintiff) and Passport No. A381875 for Jesinta Mutheu Mwangangi (2nd Plaintiff). In the Sale Agreement produced by the 1st Defendant's, the ID Numbers for the Vendors therein are: Jesinta Mutheu Mwangangi is 23756585 and Reuben Mbindu is 0271002. However, the photographs in the Identity Card were different. Further, the Plaintiffs confirmed that the details of where they hail from in the Identity Cards which the impostors used are different from the details in their Identity Cards. Further, PW1 confirmed that in their Certificate of Title, she did not use her Identity Card but her passport and that in her identity card her name is Jesinta Mutheu Mutua and not Mwangangi. It is worth noting that DW1, DW2 and DW3 expressly admitted that they did not deal with the Plaintiffs and even identified the alleged impostors during the Criminal proceedings. Further, the 1st Defendant despite knowing the identity of the impostors and their advocates while admitting they were conned, did not include them in the Counterclaim and claim a refund of the purchase price from them. Both Plaintiffs and 1st Defendant produced as exhibits the proceedings in the Milimani Criminal Case where one of the alleged impostor was charged. In the proceedings therein, as per evidence of PW5 (PC Eli John Mwangi) who was a Document Examiner, he confirmed that upon examining the imposters title deed which was presented for transfer, he noted that the Registrar's signature indicated therein was not authentic, while the Seal impressions were made by different seals and that the Stamp impressions were made by different stamps. PW8 (Fidelis Munyenze Muthui) also confirmed that the said title was not genuine. He denied signing it or issuing it and disputed the stamp and seal impressions' authenticity. Further, I note the Land Registrar who effected the transfer to the 1st Defendant was initially charged. In the Judgement delivered on 27th May, 2020, the trial Magistrate Hon. W. Wanjala Esq. (SRM) at paragraph 70 observed that "I am clear in my mind that the sale of parcel number Mavoko Town Block 3/2744 to the Adams Mirror group was a fraudulent transaction from its inception all through its entire execution.....the genuine owners



of the subject parcel , that is PW6 and 7 still hold the original and genuine title which was issued to them in 2006...”.

13. The Plaintiffs sought for a declaration that they are the owners of the suit land and for cancellation of the title held by the 1st Defendant but the 1st Defendant insists they are bona fide purchasers for value without notice. Further, that they conducted a search which confirmed the vendors were the owners of the suit land and they adhered to all the legal processes including paying the full purchase price culminating in their acquisition of their title. Insofar as the Plaintiffs’ failed to prove fraud as against the 1st Defendant, however since the root of its title is challenged as they acquired it from vendors who did not obtain it procedurally or legally, the said title cannot be deemed as indefeasible. Sections 26 (1) (b) of the *Land Registration Act* stipulates that: “The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer ... 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.”
14. In the case of *Arthi Highway Developers Limited V West End Butchery Limited & 6 others* (2015) eKLR the Court of Appeal dealt exhaustively with the issue of bona fide purchaser for value without notice and held that a party cannot invoke indefeasibility of title where the process of acquisition of the title was not done properly. While in the Uganda Court of Appeal Case of *Katende V Haridar & Company Ltd*, the Court defined what amounts to a bona fide purchaser for value and stated that:’ ... a bonafide purchaser for value is a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, he must prove the following:
 - a. He holds a certificate of Title
 - b. He purchased the Property in good faith;
 - c. He has no knowledge of the fraud;
 - d. The vendors had apparent valid title;
 - e. He purchased without notice of any fraud;
 - f. He was not party to any fraud.A bona fide purchase of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner.’
15. Further in the case of *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura Vs Attorney General & 4 others* (2017) eKLR the Court of Appeal held that a party cannot claim a bona fide purchaser for value where the vendor did not have a valid title.
16. Yet in the case of *Munyu Maina Vs Hiram Gathiha Maina*, Civil Appeal No.239 of 2009, the Court of Appeal held that:- “We have stated that when a registered proprietor root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”



17. Based on the facts as presented while relying on the legal provisions I have cited as well as associating myself with the decisions quoted, I opine that section 26(2) of the [Land Registration Act](#) does not offer the 1st Defendant protection over its title. Insofar as I sympathize with its plight, I find that the impostors did not pass to it a good title. In the circumstances, I find that the 1st Defendant cannot be deemed as bona fide purchaser for value without notice. I opine that whatever losses it will incur, it still has a recourse as against the impostors including their Advocate whom they paid the purchase price for the suit land.
18. As to whether the Plaintiffs are entitled to mesne profits.
19. Section 2 of the [Civil Procedure Act](#) Cap 21 of the Laws of Kenya defines mesne profits as follows:-“mesne profits”, in relation to property, means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession;’
20. While Order 21 Rule 13 of the Civil Procedure Rules provides as follows:-13. (1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the court may pass a decree— (a) for the possession of the property; (b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits; (c) directing an inquiry as to rent or mesne profits from the institution of such suit until— (i) the delivery of possession to the decree-holder; (ii) the relinquishment of possession by the judgment- debtor with notice to the decree-holder through the court; or (iii) the expiration of three years from the date of the decree, whichever event first occurs. (2) Where an inquiry is directed under sub rule (1) (b) or (1) (c), a final decree in respect of the rent and mesne profits shall be passed in accordance with the result of such inquiry.
21. I note the Plaintiffs claimed for mesne profits in their Plaint. PW1 and PW2 claimed they were unable to use the suit land because of the Court cases. However, PW2 in cross examination admitted that since December, 2010, they had fenced the suit land and had been using it for grazing. It further emerged in evidence that when the 1st Defendant attempted to take possession and subdivide the suit land to its members, the real owner of the land fenced it. The Plaintiffs had admitted in their evidence that prior to discovering that the suit land had been sold to a third party, it was vacant as they had not used it. In the submissions, they have claimed mesne profits amounting to Kshs. 5,000,000/= but did not produce any evidence on how they worked it out. In the case of Peter Mwangi Mbutia & another v Samow Edin Osman [2014] eKLR, the Court of Appeal while dealing with the issue of mesne profits held as follows:

We agree with counsel for the appellants that it was incumbent upon the respondent to place material before the court demonstrating how the amount that was claimed for mesne profits was arrived at. Absent that, the learned judge erred in awarding an amount that was neither substantiated nor established.”
22. Based on the evidence placed before me while associating myself with the legal provisions and decisions cited above, I find that the Plaintiffs have failed to discharge their burden of proof in respect to their entitlement to general damages including mesne profits and I will decline to award it.
23. As to whether the Plaintiffs are indeed entitled to the orders sought in the Plaint. The Plaintiffs sought for various orders including rectification of the register in respect to the suit land and cancellation of the 1st Defendant’s title. I note I have already dealt with some of the prayers. Since I have already held that the impostors/vendors did not have a proper title to pass to the 1st Defendant while noting



that the Plaintiffs still hold their original Certificate of Title issued in March 2006, I wish to make reference to section 143 of the Registered Land Act (repealed) that was the law in place at the time of registration of 1st Defendant title, which stipulated thus: . (1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake. (2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.’ These provisions are replicated in section 80 of the Land Registration Act which provides that:

- ‘(1) 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.
- (2) The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.’

24. Based on my findings above, I find that the Plaintiffs are indeed entitled to have the Title Number for MAVOKO TOWN BLOCK 3/2744 issued to the 1st Defendant in person and/or trustees of Adams Mirror Lari (CBO) Self Help Group on 21st October, 2010 revoked and cancelled. Further, I find that the Plaintiffs are entitled to have their title for MAVOKO TOWN BLOCK 3/ 2744 issued on 13th March, 2006 upheld as they are the lawful and legitimate owners of the said land.
25. As to who should bear the costs of the suit.
26. Since costs generally follow the outcome and the Plaintiffs having been the inconvenienced parties herein, I find that they are indeed entitled to the same.
27. As to whether the 1st Defendant is entitled to the orders sought in the Counterclaim.
28. The 1st Defendant sought for various orders enumerated above. Based on my findings above that the 1st Defendant cannot be deemed to be a bona fide purchaser for value since the root of its title is challenged. I find that it is not entitled to the orders as sought in the Counterclaim as against the Plaintiffs and will proceed to dismiss it with costs. I still reiterate that it still has a chance to pursue the impostors including their advocates for the refund of the purchase price.
29. It is against the foregoing that I find that the Plaintiffs have established their case on a balance of probability and will proceed to make the following final orders;
- a. A declaration be and is hereby issued revoking and cancelling Title Number Mavoko Town Block 3/2744 issued to the 1st Defendant’s in persons and/or trustees of Adams Mirror Lari (CBO) Self Help Group on 21st October, 2010.
 - b. A declaration be and is hereby issued restoring the Plaintiff’s Title Number Mavoko Town Block 3/ 2744 issued on 13th March, 2006 and the Plaintiffs as the only lawful and legitimate absolute proprietors of the said land.
 - c. An order be and is hereby issued for a permanent injunction stopping the 1st Defendants and/or their agents or members of Adams Mirror Lari (CBO) Self Help Group and/or their agents



from any further dealing, mutation or subdivision in anyway with the land registered as Title Number Mavoko Town Block 3/2744.

- d. Costs of this suit and Counterclaim awarded to the Plaintiffs.

DATED SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 11TH DAY OF DECEMBER, 2023.

CHRISTINE OCHIENG

JUDGE

