



REPUBLIC OF KENYA



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**Onchiri & 38 others v Ngenda Location Ranching Company Limited & another (Environment & Land Case 204 of 2017) [2025] KEELC 161 (KLR) (28 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 161 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**  
**ENVIRONMENT & LAND CASE 204 OF 2017**  
**MAO ODENY, J**  
**JANUARY 28, 2025**

**BETWEEN**

**JOEL O ONCHIRI ..... 1<sup>ST</sup> PLAINTIFF**  
**JOYCE KWAMBOKA NYANGA ..... 2<sup>ND</sup> PLAINTIFF**  
**ESTHER NYAMOTIA ONCHIRA ..... 3<sup>RD</sup> PLAINTIFF**  
**ALBERT NGALA ONCHIRI ..... 4<sup>TH</sup> PLAINTIFF**  
**FELIY O KEMUME ..... 5<sup>TH</sup> PLAINTIFF**  
**DORCAS WAMBUI GITAU ..... 6<sup>TH</sup> PLAINTIFF**  
**PETER KIRAGU KARANJA ..... 7<sup>TH</sup> PLAINTIFF**  
**MARGARET W KARIUKI ..... 8<sup>TH</sup> PLAINTIFF**  
**SIMON MUHIRI WAMBUI ..... 9<sup>TH</sup> PLAINTIFF**  
**RUTH NJOKI MUIRURI ..... 10<sup>TH</sup> PLAINTIFF**  
**JOSEPH MWANGI KIAMA ..... 11<sup>TH</sup> PLAINTIFF**  
**PURITY WANJIKU MWANGI ..... 12<sup>TH</sup> PLAINTIFF**  
**JOSEPH NJENGA MUIRURI ..... 13<sup>TH</sup> PLAINTIFF**  
**JOHN MUIRURI MWANGI ..... 14<sup>TH</sup> PLAINTIFF**  
**TERESIAH WITHERERO MWANGI ..... 15<sup>TH</sup> PLAINTIFF**  
**DORCAS WANJIKU KAMAU ..... 16<sup>TH</sup> PLAINTIFF**  
**JOYCE WANJIRU WAWERU (SUING AS THE ADMINISTRATOR OF THE  
ESTATE OF JOHN WAWERU MAINA) ..... 17<sup>TH</sup> PLAINTIFF**  
**JAMES WAWERU FRANCIS KARIUKI ..... 18<sup>TH</sup> PLAINTIFF**



HARRISON NJUGUNA MUTHUA .....	19 <sup>TH</sup> PLAINTIFF
BENARD MUIRURI KIBURU .....	20 <sup>TH</sup> PLAINTIFF
MWATHA MBUGUA .....	21 <sup>ST</sup> PLAINTIFF
ELID N THUO .....	22 <sup>ND</sup> PLAINTIFF
SAMWEL KANAI .....	23 <sup>RD</sup> PLAINTIFF
REGINA MWIHAKI NDUNGU .....	24 <sup>TH</sup> PLAINTIFF
JOHANA WATUKO NJOROGE .....	25 <sup>TH</sup> PLAINTIFF
MICAH GICHUHI NJOROGE .....	26 <sup>TH</sup> PLAINTIFF
DAVID KAMAU NGUGI .....	27 <sup>TH</sup> PLAINTIFF
MOSES NJOROGE GAKIBE .....	28 <sup>TH</sup> PLAINTIFF
PETER KIWARA .....	29 <sup>TH</sup> PLAINTIFF
JANE WAIRIMU .....	30 <sup>TH</sup> PLAINTIFF
PRISILAH WANGARI MWANGI .....	31 <sup>ST</sup> PLAINTIFF
SIMON MAINA .....	32 <sup>ND</sup> PLAINTIFF
MARTHA MUTHONI .....	33 <sup>RD</sup> PLAINTIFF
MARY GATHONI .....	34 <sup>TH</sup> PLAINTIFF
LUCY NJOKI MWAURA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF PETER WAWERU NDEGWA) .....	35 <sup>TH</sup> PLAINTIFF
ABRAHAM NJIHIA MWANGI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF MUTHUI MAINA MAHINDA) .....	36 <sup>TH</sup> PLAINTIFF
PAUL MUHUHU MBUTHIA .....	37 <sup>TH</sup> PLAINTIFF
LILIAN WAITHERA KABIRA .....	38 <sup>TH</sup> PLAINTIFF
PETER MBUGUA .....	39 <sup>TH</sup> PLAINTIFF

AND

NGENDA LOCATION RANCHING COMPANY LIMITED .... 1<sup>ST</sup> DEFENDANT

STIMA INVESTMENT COOPERATIVE SOCIETY LIMITED . 2<sup>ND</sup> DEFENDANT

## JUDGMENT

### Background

1. By an amended Plaint dated 26<sup>th</sup> June, 2018, the Plaintiffs herein sued the Defendants seeking the following orders:



- a. An order of permanent injunction restraining the defendants either by themselves the servants and/or agents from disposing of land belonging to the shareholders without the consent of the shareholders.
- b. An order directing the defendant to settle all the landless shareholders according to the shares bought.
- c. An order annulling the sale of the suit property to the 2<sup>nd</sup> Defendant.
- d. Costs of the suit.
- e. Interest at court rates.
- f. Any other or further relief the Honourable Court may deem fit and just to grant.

### **Plaintiffs Case**

2. PW1 Eliud Ndungu Thuo Plaintiff No. 22 in this suit, adopted his witness statement filed in court and testified that the company was formed to buy and distribute land to members whereby it bought three parcels of land in 1975. It was PW1's evidence that the suit land was one of the parcels which was to be distributed to members but was not done as those elected on 20<sup>th</sup> January, 2012 sold the land without the members' consent. PW1 further stated that they could not have given consent as they did not have the land.
3. PW1 stated that the minutes in the 1<sup>st</sup> Defendant's supplementary list of documents at page 16 were falsified as they were done in a hurry to purport that the members had agreed and yet there has been no meeting since the new directors took office, there has been no meeting. It was PW1's testimony that the sale was a decision of the directors alone as they never attended the meeting
4. PW1 further stated that they got information from Gatundu office that the land had been sold and that they have never been allocated any land to date. He therefore stated that they want the sale agreement between the 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendant nullified and the directors ordered to explain the whereabouts of parcel Nos. 160, 793 and 600.
5. Upon cross-examination by Mr. Orege, PW1 stated that he became a member of the 1<sup>st</sup> Defendant Company in 2014 when he purchased shares from a person by the name Kabiti. He stated that he did not know how the company was run before 2014. PW1 confirmed that the minutes at page 15 of the Defendant's Supplementary Bundle indicate that there was a unanimous resolution by the company together with a list of names of attendees and that by 2014 the company had three parcels of land.
6. PW1 further stated that the sale of the land was the responsibility of the members and the power of the company is in the members' hands and that the directors simply implement the decision of the members and this was not done. PW1 also testified that the directors never had any meeting and if they did, he is not aware of the same. PW1 confirmed that the headquarters of the company is in Gatundu and when shown the bundle filed with the plaint and an extract of the minutes of 2<sup>nd</sup> October, 2014 he stated that the documents were obtained from Gatundu and it shows the price of the land.
7. PW1 further stated that he is not the one who obtained this document from Gatundu and that he was not aware that the company has six thousand members but only thirty-nine people have sued in this case. Further PW1 stated that they have not sued on behalf of other persons and never wrote a demand letter to the defendants.



8. When asked whether he paid survey fees, PW1 stated that he had not paid survey fees as required and that he never picked his ballot as the members had not agreed on the survey fees to be paid. It was PW1's testimony that most of the plaintiffs have paid Kshs 30, 000/ being survey fees but they have not been allocated land.
9. Upon cross-examination by Mr. Aim, PW1 stated that he became a member in 2014 and that the current chairman is Joseph Kaboge, the secretary is Mr. Kamau and the treasurer is Stephen Kimani. PW1 was shown the sale agreement of 2<sup>nd</sup> October, 2014 and confirmed that Joseph Wahogo Katiani and Gabriel Chege are named in the agreement. He stated that they tried to resolve the issue with the 1<sup>st</sup> Defendant company vide a meeting held on 7<sup>th</sup> February, 2014 which was attended by the director and the treasurer.
10. Upon re-examination PW1 testified that no meeting was called before the land was sold and they never conducted any balloting as they were never called to do so.
11. PW2 Abraham Njihia Mwangi Plaintiff No. 36 and an administrator of the estate of Muthui Maina testified that his deceased father who died in 1993 became a member of the 1<sup>st</sup> Defendant in 1983; was buried on the suit land. PW2 produced the limited grant dated 20<sup>th</sup> April, 2017 as PExh 7 and stated that the 1<sup>st</sup> Defendant's main purpose was to purchase and distribute land to its members. It was his testimony that people contributed money and the company purchased land Reference No. 9264 measuring 275 acres and got certificates.
12. PW2 testified that Land Reference number 6290 was 5.8 acres and Land Reference Number 11764 was 398 acres and that the members were to be given land later after the purchase and in 2014 they learned that the land had been sold by the directors of the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant.
13. It was PW2's testimony that the shareholders did not know of the sale as they were never informed. It was further his evidence that they were arrested for trespass when they entered the suit land and that they did not know of any balloting. PW2 was shown page 16 of the 1<sup>st</sup> Defendant's bundle filed on 24<sup>th</sup> November, 2020 and stated that the list was made up as people with no certificates were included and some were deceased like Phisia Wambui Kirori, Johneh Kariuki Hehu, Palina Wamuhu Mbugua and Silvester Kuria Kihumba. He testified that Silvester Kihumba died on 20<sup>th</sup> December, 2004 and there is a Kenya Gazette extract dated 12<sup>th</sup> May, 2006 where his wife Magdelina seeks letters of Administration for Silvester Kihumba who is at number 51 on page 17 in the bundle.
14. PW2 informed the court that some of the people listed including Susan Wanjiru, Karanja Muturi and Wangari Wanjiri do not have identity cards and others with the same identity cards like Kiruri Mutembei and Philsica Wanjiru Mwariki and Simon Mwaura Gikonyo, James Itemo and Jane Wamuhu and Githua Mbugua, and Paulina Wamuhu. At pages 16 the members do not have share certificates numbers of the members.
15. PW2 testified that some of the people appearing on the list have the same signatures especially Nos. 4, 5, 11,12, 13,16,17, 25, 26 and other do not have identity cards. It was PW2's evidence that the agreement stated the acreage to be 251.24 acres and yet the whole parcel of land was 275 acres. PW2 testified that they have not been allocated any land by the Defendant and do not know where the officials took the money.
16. Upon cross-examination by Mr. Orege, PW2 stated that his father passed away on 22<sup>nd</sup> September, 1993 and got a grant on 20<sup>th</sup> April, 1997 and further that he did not attend the meeting in 2012 as there was no meeting. It was his evidence that they are three in their family and have distributed the shares in the company but never did it in court.



17. PW2 stated that the company sold the land on which the company office was located together with the factory and other assets on the said land in 2014, LR No 11764(original No. 9391/1 and 9392/2 measuring 398 acres). That land was distributed to people whom he does not know.
18. PW2 informed the court that his father was buried on the company land being LR No 11764 (Org No 9391/1) and the company had not allocated him land as they were awaiting subdivision and distribution. PW2 stated that none of his family members has paid survey fees and he does not agree that many people do not have any issue with the company's activities. PW2 stated that they represent about 3000 members and a company member by virtue of being an administrator of the estate of a deceased member and is aware that if one fails to pay survey fees, he cannot get land from the company.
19. Upon cross-examination by Mr. Owuor, PW2 stated that the company records indicate that there are about 3000 members but they are 39 plaintiffs. PW2 stated that he does not have the death certificate of the deceased members in his analysis and has not brought anyone whom he has classified as having no identity card number in the minutes. PW2 stated that he saw the agreement dated 2<sup>nd</sup> October, 2014 executed by two directors.
20. Upon re-examination, PW2 testified that 11 people have paid survey fees but have not been given land and that the alleged Annual General Meeting of 2012 never took place. He testified that the data of the deceased people was from the Defendant's bundle.

#### **1<sup>st</sup> Defendant's Case**

21. DW1 Gabriel Chege Gichane adopted his witness statement dated 19<sup>th</sup> November, 2020 as his evidence and relied on the list of documents dated 20<sup>th</sup> November, 2020 and the C.R 12 of the company that shows who the directors of the company are. DW1 also relied on the further amended statement of defence of the 1<sup>st</sup> Defendant filed on 24<sup>th</sup> November, 2020. DW1 testified that he is a director and also the secretary to the board of the 1<sup>st</sup> Defendant company.
22. It was DW1's testimony that there are 6000 shareholders in the company and that the Annual General Meeting took place in Gatundu stadium as per the minutes of the company dated 26<sup>th</sup> January, 2012. DW1 testified that the list of shareholders who attended the meeting begins at page 16 and ends at page 52 of the bundle.
23. DW1 testified that during that meeting, they had a resolution which is at page 15 of the bundle which proposed to authorize the sale of a portion of the land to settle debts which proposal was seconded and passed. DW1 confirmed that they sold company land to the 2<sup>nd</sup> defendant with authority and vide an agreement at pages 3-11 of the bundle. He further stated that it is not true that they sold the land and pocketed the money and that the issue was never pleaded.
24. It was DW1's further evidence that they settled the company's debts with the proceeds of the sale and was not aware that PW2's father was buried on company land as it would not be procedurally possible for a member to bury a deceased kin on company land.
25. DW1 informed the court that they never received any demand letter and that there was no letter indicating that the company had not held an Annual General Meeting. DW1 stated that a member acquires land when he pays Ksh 30,000/= being the survey fees, thereafter pays title deed fees and the land is subdivided.
26. DW1 testified that some people became members by purchasing the shares from other members and this can be seen in the case of some plaintiffs. It was his evidence that the company owned other parcels of land in Narok and Gilgil. DW1 testified that the land at Narok has been given out to shareholders



and that LR No 11764/1 was not sold as alleged by PW2 that, they do not pick people at random and that they have settled around 3000 members of the company who have never taken them to court, as they have no complaint.

27. DW1 referred to PExhb 8 and testified that the person who claims members who attended the meeting were deceased needs to furnish a death certificate as these people attended the meeting and people may not have come with identity cards but with share certificates. During registration for the meeting a parent could come and register as a shareholder and his sons or daughters are recorded under the same identity card of the parent. DW1 was shown PW2's Grant Ad Litem issued on 20<sup>th</sup> April, 2017 and he testified that up to now, PW2 and his kin have not approached the company for distribution of Njihia's shares. He testified that the chief's documents are normally brought if a shareholder dies which they use.
28. DW1 testified that Plaintiff Number 17 came to court on behalf of Waweru Maina and her grant was issued for purposes of filing a civil suit hence Joyce is not a shareholder and similarly Plaintiff Number 35 in the suit on behalf of Peter Waweru Ndegwa's estate and that the grant was issued for purposes of filing a civil suit. DW1 testified that the family of Peter Waweru has not approached the company for distribution of his shares and that Plaintiff Number 35 is not a shareholder.
29. DW1 produced the minutes of 6<sup>th</sup> January, 2020 filed as 1 DExh 2 and stated that between 2007-2008, there were chaos and the farm was vandalized therefore they wanted to clear the debts due to salaried workers and opted to sell the land to the 2<sup>nd</sup> defendant as per the sale agreement for LR No 9264 dated 2<sup>nd</sup> October, 2014. DW1 testified that the agreement was sealed and it was a legal transaction.
30. DW1 testified that before the sale, they had never met as Directors and that he was aware that there was a meeting before the sale which minutes were signed. DW1 testified that since 2012, they have distributed land to shareholders and that Margaret Wanjiru, the 8<sup>th</sup> Plaintiff attended the meeting that resolved to sell the land.
31. DW1 testified that Mwatha Mbugua, Plaintiff number 21 did not ballot as he had not paid survey fees as required DW1 was shown paragraph 3 of the amended plaint and he testified that plot number 11764 is the one they subdivided to the shareholders and the Plaintiffs never wrote a letter of complaint to the company.
32. DW1 was shown the Memorandum and Articles of the 1<sup>st</sup> Defendant which he produced as DExhb 3 and he testified that the quorum as per the exhibit is 20 members. DW1 urged the court to dismiss the plaintiffs' case with costs.
33. Upon cross-examination by Mr. Aim, DW1 stated that the company was incorporated as a general business company and that the farm was set aside for employees who work at the farm. DW1 stated that the land that was sold had not been specifically allocated to any of the Plaintiffs in this case and that the directors were in charge of the affairs of the 1<sup>st</sup> Defendant's affairs and could make decisions with the backing of the shareholders.
34. DW1 stated that the sale of the suit property, was sanctioned by the shareholders vide a meeting held in Gatundu stadium in 2014 which led to the signing of a sale agreement on 2<sup>nd</sup> October, 2014. It was his evidence that Joseph Wahogo Karani who signed the agreement is still a director to date and that he signed as a secretary and Mbari Kiori Advocates acted for the 1<sup>st</sup> Defendant who stamped the agreement. DW1 stated that there was a resolution authorizing the sale of the land and that all the money from the 2<sup>nd</sup> Defendant was received by Mbari Kiori Advocates through a transfer that was effected from 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant.



35. Upon cross-examination by Mr. Ombati, DW1 was shown paragraph 2 of the agreement and he stated that the resolution shows it's from the directors and the shareholders are not indicated. He stated that there is no reflection that there was a resolution by shareholders. DW1 stated that the sold acreage was 251.4 acres and was not 275 acres.
36. DW1 stated that they have not finished subdividing the land and that they have other parcels of land in Narok and Gilgil and if the Plaintiffs pay survey fees, they can get the land at the next balloting. DW1 was shown a Notice of a Special General Meeting of 20<sup>th</sup> December, 2016 and he stated that they held another Annual General Meeting as per the Notice.
37. It was DW1's evidence that the debt was Ksh 53,000,000/= but the property was sold for Ksh 160,000,000/= and the difference is with the company. He stated that the shareholders had refused to pay the debts from their pocket hence the sale to pay the debts. Further that the vandalism of the farm was reported to the Police and that not all the Plaintiffs are members of the 1<sup>st</sup> defendant company and cannot claim anything before 2012. DW1 informed the court that people who joined before 2012 bought shares from old members and thus qualified to be members of the 1<sup>st</sup> Defendant.
38. DW1 stated that the Plaintiffs have not been allocated any land and there are 5.6 acres remaining and 811 acres in Solai which has neither been sold nor subdivided. He further stated that they have 170 acres in Narok at Kshs 140,000/ per acre and that land in Nakuru was going for Ksh 640,000/= at the time of the sale and Kshs. 540,000/= per acre in Gilgil.
39. He stated that when a shareholder pays for a certificate, the money is accumulated and paid to a surveyor and one would be entitled to two plots of 50 by 100 feet in Menengai and a shareholder would be entitled to a plot of 50 by 100 feet anywhere the company owns land and that the value does not matter. DW1 stated that the 5.6 acres at Menengai are for the construction of a borehole. DW1 further stated that he was not among the founding members of the 1<sup>st</sup> Defendant but joined the company in 2012 during the Annual General Meeting where he was elected and the quorum of the Annual General Meeting would be 200 people.
40. Upon re-examination, DW1 testified that he cannot recall whether the quorum for the Annual General Meeting is in the Articles of Association and that 5.6 acres were not allocated as they were reserved for social amenities. DW1 testified that they sold 251.4 acres to the 2<sup>nd</sup> Defendant but the title showed 275 acres, the 2<sup>nd</sup> Defendant's surveyor found 251.4 acres on the ground. He stated that they did not carry out a subdivision.
41. DW1 stated that the people who were in the Annual General Meeting were shareholders and some did not have share certificates as they had come to represent their parents. DW1 testified that before the Annual General Meeting, the shareholders were only eight and that Benard Muiruri (the 20<sup>th</sup> Plaintiff) balloted for land in Narok and paid the survey fees. DW1 testified that the 21<sup>st</sup> Plaintiff also paid survey fees but did not ballot. DW1 testified that the people who paid the survey fees were issued with receipts.

## **2<sup>nd</sup> Defendant's Case**

42. DW2 Damaris Mutile adopted her witness statement dated 9<sup>th</sup> March, 2023 and a list of documents dated 25<sup>th</sup> September, 2018 and supplementary list of documents dated 9<sup>th</sup> March 2023 which she produced as DExhb 1 to 4 and 5.
43. Upon cross-examination by Mr. Maina, DW2 stated that she has been the Legal Officer of the 2<sup>nd</sup> Defendant since 2023 and she was not present when the transactions were carried out but she is aware of the facts regarding the matter. She stated that prior to the purchase of the suit land LR No 9264/2



measuring approximately 251.24 acres they conducted due diligence and engaged a surveyor who confirmed the acreage.

44. DW2 stated that they obtained a CR 12 and from the title that they obtained, the acreage was 275 acres and did a search to confirm the status but they did not file a copy of the search in court. DW2 stated that there is no report on the discrepancy in the acreage and that they were aware that the 1<sup>st</sup> Defendant had members but they were not required to know their exact numbers. DW2 stated that they obtained a resolution dated 2<sup>nd</sup> October 2014 signed by the directors who were the officials of the company and entered into an agreement at a purchase price of Ksh 640,000/= per acre totaling to Ksh 160,793,600/=.
45. DW2 indicated that the acreage in the agreement is 251.24 acres, the entire purchase price was paid and that the title was not rectified before the transfer. DW2 stated that the titles issued to members were processed in 2022 and it is not true that they processed the titles while the case was pending to defeat justice and that there was no order stopping the process at the Lands office.
46. Upon cross-examination by Mr. Orege, DW2 referred to the Article of Association and stated that the quorum shall not be less than two. She stated that they are not aware that the Plaintiffs sent a demand notice to the 2<sup>nd</sup> Defendant. DW2 stated that the 2<sup>nd</sup> Defendant never complained about the purchase price or the purchase as a whole.
47. Upon re-examination by Mr. Aim, DW2 testified that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were represented by advocates during the transaction and this was done before she joined the 2<sup>nd</sup> Defendant. She testified that the transfer of the interest in the property could not have been done without the full purchase price being paid. She testified that the 1<sup>st</sup> Defendant was a private company limited by liability and there was no stay order issued restricting dealing with the property.

### **Plaintiffs Submissions**

48. Counsel for the Plaintiff filed submissions dated 28<sup>th</sup> October, 2024 and identified the following issues for determination:
  - a. Whether the Plaintiffs are entitled to the orders sought?
  - b. Who should bear the costs?
49. On the first issue, counsel submitted that the 1<sup>st</sup> Defendant did not follow the procedure for calling its Annual General Meeting and relied on Section 50, 131, 134 and 140 of the Company's Act and the cases of *Kimetto & 2 others vs Litein Kipangenge Farmers' Co-operative Society Limited* [2024] KECPT 901 (KLR), *Anne Wambui Ndiritu (Suing as Administrator for the Estate of George Ndiritu Kariamburi (Deceased) vs Joseph Kiprono Ropkoi & Four by Four Safaris Company Ltd and Muniu Mucheru vs National Bank of Kenya Ltd C.A Civil Appeal No 365 of 2017* [2019].
50. Counsel further submitted that the quorum for the alleged Annual General Meeting was improper and thus the passed resolutions were detrimental to the Plaintiffs and relied on the cases of *David Ojeabuo vs Federal Republic of Nigeria* [2014] LPELR-22555 (CA) and *John Cancio De SA vs V N Amin Civil Appeal No 27 of 1933* [1934] 1EACA 13.
51. It was counsel's further submission that the members have been left landless despite claims that they would be settled, and that the 1<sup>st</sup> Defendant did not prove that there was an alternative parcel of land that would be available and that the Plaintiffs would get their rightful share.



52. On the second issue, counsel submitted that the Plaintiffs are entitled to costs and relied on the case of Joseph Oduor Anode vs Kenya Red Cross Society, Nairobi High Court Civil Suit No 66 of 2009 [2012] eKLR and urged the court to grant the Plaintiffs the reliefs sought in the amended plaint.

### **1<sup>st</sup> Defendant's Submissions**

53. Counsel for the 1<sup>st</sup> Defendant filed submissions dated 24<sup>th</sup> November, 2024 and identified the following issues for determination:
- a. Whether or not the 1<sup>st</sup> Defendant sold the suit property without the consent or permission of its shareholders?
  - b. Whether or not the Directors of the 1<sup>st</sup> Defendant had authority and power to sell land on behalf of the 1<sup>st</sup> Defendant?
  - c. Whether or not the 1<sup>st</sup> Defendant failed to allocate land to its shareholders in accordance with the Company's Memorandum and Articles of Association?
  - d. Whether or not the Plaintiffs are entitled to the reliefs sought in the Plaint as against the 1<sup>st</sup> Defendant?
54. On the first issue, counsel submitted that the authority or consent by the shareholders or members of the 1<sup>st</sup> Defendant towards selling the land was given by the majority of the shareholders in attendance of the Annual General Meeting. Counsel submitted that the 1<sup>st</sup> Defendant's shareholders could not have attended the Annual General Meeting by accident but through being aware vide issuance of a notice and relied on the case of Affordable Homes Africa Ltd vs Henderson & 2 others [2004] eKLR.
55. On the second issue, counsel submitted that the Directors of the 1<sup>st</sup> Defendant had authority and power to sell or otherwise deal in the property owned by the 1<sup>st</sup> Defendant within the meaning of the objectives contained in the Memorandum and Articles of Association for which the 1<sup>st</sup> Defendant was formed and relied on Article 3 (4) of the Articles of Association and the case of Automatic Self-Cleansing Filter Syndicate vs Cuninghame [1906] Ch 34, C.A.
56. On the third issue, counsel submitted that the 1<sup>st</sup> Defendant allocated land to the majority of shareholders who had paid the survey fees in the sum of Ksh 30,000/= and had balloted.
57. On the fourth issue, counsel submitted that the Plaintiffs have failed to discharge the burden of proving their case and urged the court to dismiss the case with costs. On the issue of costs counsel relied on the case of Dr. Samson Gwer & 5 others vs Kenya Medical Research Institute & 3 others (2020) eKLR.

### **2<sup>nd</sup> Defendant's Submissions**

58. Counsel for the 2<sup>nd</sup> Defendant filed submissions dated 6<sup>th</sup> November, 2024 and identified the following issues for determination:
- a. Whether the contract for the sale of the land known as LR No 9264 entered into by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is valid?
  - b. Whether the order of permanent injunction sought by the Plaintiffs as against the 2<sup>nd</sup> Defendant is tenable?
  - c. Whether the prayer sought by the Plaintiffs, for the Defendant to settle the landless shareholders is merited?



59. On the first issue, counsel relied on Section 3(3) of the *Law of Contract Act* and Sections 35 and 37 (2) of the *Companies Act* and submitted that any contract with a company including a contract for the disposition of an interest in land should be in writing, signed by the authorized parties and witnessed. Counsel relied on the case of *Silverbird Kenya Limited vs Junction Ltd & 3 others* [2013] eKLR and submitted that there is evidence of common intention between the parties as the 1<sup>st</sup> Defendant agreed to sell LR No 9264 and the 2<sup>nd</sup> Defendant agreed to purchase it at Ksh 160, 793,600/=. Counsel submitted that the contract was in writing, witnessed and duly executed by the directors of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants companies and relied on the cases of *Royal British Bank vs Turquand* [1856] 119 886 and *Kamau Kabucho Karuga & Co Advocates vs Sundowner Lodge Limited* [2011] eKLR.
60. On the second issue, counsel submitted that the title to the land was properly passed to the 2<sup>nd</sup> Defendant and that upon the transfer the 2<sup>nd</sup> Defendant proceeded to sub-divide the land and sell it to the members of their organization and the property LR No 9264 is not in their possession thus granting the orders sought would interfere with the proprietary rights of third parties.
61. Counsel further submitted that the 1<sup>st</sup> Defendant owns land in Narok and Gilgil which have not been allocated and the solution is within the ambit of the 1<sup>st</sup> Defendant and the Plaintiffs. Counsel relied on the case of *Bandari Investments & Co Ltd vs Martin Chiponda & 139 others* [2022] eKLR. On the third issue, counsel submitted that the issue of the shareholders being landless does not concern the 2<sup>nd</sup> Defendant in any way as it is an internal matter to be dealt with between the 1<sup>st</sup> Defendant and its members.

### **Analysis and Determination**

62. The issues that arise for determination are:
- a. Whether or not the 1<sup>st</sup> Defendant sold the suit property without the consent or permission of its shareholders?
  - b. Whether the resolution to sell the suit plot was valid and whether the directors of 1<sup>st</sup> Defendant had authority and power to sell land on behalf of the 1<sup>st</sup> Defendant?
  - c. Whether or not the 1<sup>st</sup> Defendant failed to allocate land to its shareholders in accordance with the Company's Memorandum and Articles of Association?
  - d. Whether the plaintiffs are entitled to the orders sought.
63. This is a case where the Plaintiffs who purport to be shareholders of the 1<sup>st</sup> defendant company were dissatisfied with how one of the three parcels of land owned by the 1<sup>st</sup> defendant was sold to the 2<sup>nd</sup> defendant. I use the word 'purport' because as can be deduced from the evidence, there are some plaintiffs who were not members of the 1<sup>st</sup> defendant company. There are some whom the 1<sup>st</sup> defendant acknowledges to be their members.
64. It is the Plaintiffs' case that they are shareholders of the 1<sup>st</sup> Defendant company having bought shares either from the original members or are suing on behalf of their deceased parents. It is their case that the 1<sup>st</sup> Defendant company was formed for the purpose of buying land for its members and that the 1<sup>st</sup> Defendant sold the suit property to the 2<sup>nd</sup> Defendant without their consent as shareholders. Further that they have not been allocated land according to their shares.
65. It is on record that the 1<sup>st</sup> defendant sought consent of the shareholders vide an Annual General Meeting of the company which took place at Gatundu stadium as per the minutes dated 26<sup>th</sup> January 2012. The 1<sup>st</sup> defendant also produced a resolution of the meeting authorizing the Directors to sell the



suit land to clear debts which the company had accrued during the 2007 – 2008 post-election chaos. It is further on record that this resolution was seconded and approved which enabled the 1<sup>st</sup> defendant to enter into an agreement for sale of the suit land.

66. The issues raised by the plaintiffs that the shareholders did not authorize the sale were not backed with concrete evidence to shatter the 1<sup>st</sup> defendant's evidence that they sought and obtained approval of the shareholders to sell the land as the shareholders were not willing to pay money from their pockets. There was no evidence to back the allegation that some of the persons listed in the attendance list were deceased.
67. The 1<sup>st</sup> defendant admitted that it had three parcels of land in Nakuru, Gilgil and Narok and that they had not completed subdivision of Narok and Gilgil land as they were yet to settle some shareholders who had not paid survey fees and balloting. Some of the Plaintiffs standing as shareholders is still in dispute and this is an internal matter that can only be verified by the company officials and how much land they are entitled to. This means that not all is lost for the genuine shareholders who may qualify for the remaining land that had not been subdivided and allocated.
68. However, the issue of annulment of the sale of the suit land to the 2<sup>nd</sup> defendant does not arise having found that the 1<sup>st</sup> defendant had power and authority to sell the land as per the resolution by the shareholders. They entered into a valid contract which was in writing and signed by the parties. Whether the contract of sale met the threshold for a valid contract was not in issue apart from the issue as to whether there was a resolution authorizing the sale, which the court has already answered in the affirmative.
69. The evidence on record also indicates that upon the sale and transfer of the suit land the 2<sup>nd</sup> defendant subdivided the suit parcel and sold to its members. This means that it is not in their possession and any order of annulment of the sale would affect third parties who are not parties to this suit. A court of law cannot issue orders that affect people who are not party to a suit unless they are joined as parties.
70. The Court of Appeal in the case of Savings & Loan (K) Limited v Kanyenje Karangaita Gakombe & another (2015) eKLR held as follows:

“In its classical rendering, the doctrine of privity of contract postulates that a contract cannot confer rights or impose obligations on any person other than the parties to the contract. Accordingly, a contract cannot be enforced either by or against a third party.”
71. The 2<sup>nd</sup> Defendant's case was that it carried out due diligence and thereafter entered into an agreement with the 1<sup>st</sup> Defendant for the sale of the suit land measuring 251.4 acres as per the survey on the ground. It was their evidence that their lawyers did the transaction and the money was paid through Mbari Kioni Advocates.
72. The court has evaluated the evidence of all the parties and it is on record that DW1 confirmed to the court that they have other parcels of land in Gilgil and Narok which have neither been subdivided nor sold. As I had earlier stated that the 1<sup>st</sup> defendant having confirmed that there are shareholders of the company who had neither paid survey fees nor balloted, it follows that 1<sup>st</sup> defendant has to engage internal mechanisms of identifying the genuine shareholders and the number of shares that they hold to entitle them to the land. DW1 had explained to the court that a share would entitle a person to 50 by 100 plot in any part where the company holds land regardless of the location.
73. I have considered the pleadings, the evidence on record and find that the plaintiffs have not proved that the 1<sup>st</sup> defendant sold the suit land without the resolution and the consent of the shareholders therefore not entitled to an order of annulment of the sale to the 2<sup>nd</sup> defendant.



74. However, the 1<sup>st</sup> defendant having admitted that they have not yet settled all the shareholders as per their shareholding, the court orders that the 1<sup>st</sup> defendant identifies the genuine shareholders amongst the Plaintiffs herein and allocate them land in Gilgil and Narok upon proof of membership, balloting and payment of the survey fees. The court also orders that the Plaintiffs who had balloted and paid the survey fees to be allocated land parcels at the location of their choice either in Gilgil or Narok within 90 days. This is a win-win situation therefore each party to bear their own costs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 28<sup>TH</sup> DAY OF JANUARY 2025.**

**M. A. ODENY**

**JUDGE**

