



**Kirobon Farmers Co. Ltd v Nyarangi (Land Case 29 of 2017)
[2022] KEELC 3119 (KLR) (21 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3119 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
LAND CASE 29 OF 2017
FM NJOROGE, J
JUNE 21, 2022**

BETWEEN

KIROBON FARMERS CO. LTD PLAINTIFF

AND

SAMUEL ONCHURU NYARANGI DEFENDANT

JUDGMENT

1. The plaintiff filed the plaint dated 2/2/2017 and prayed for judgment against the defendant for:
 - a) An order of permanent injunction restraining the defendant, his servants, employees and or authorized agents from trespassing upon, entering, farming, leasing and or interfering with the Plaintiff's peaceful possession and use of its land parcel LR No. Molo South/Langwenda Block 17/1 (Seguton).
 - b) Costs of the suit and interests.
 - c) Any other and or further relief as the Honourable Court may deem fit and just to grant.

The Plaintiff's Case

2. The plaintiff's case is that it is the registered proprietor of LR Molo South/Langwenda Block 17/1 (Seguton) measuring 38.1Ha (the suit land). The Plaintiff obtained title to the suit land on 21/2/2016. During the time the title was being processed the suit land was being utilised by among others one Francis Nyarangi (deceased); it is alleged that the deceased utilised the land with the knowledge that it belonged to the Plaintiff and that at one time he expressed interest to purchase the suit land. The defendant claims to be next of kin and administrator to the estate of the deceased and intends to use the land. It is claimed that the defendant together with other persons have been trespassing by farming on it and leasing out portions. The plaintiff now intends to utilise the land by way of subdivision and allocation to its members. It is stated that the dispute between the defendant has been taken to the local



administration for resolution but not finally resolved and that the defendant's actions are unlawful and they have occasioned the plaintiff considerable inconvenience hence the suit.

The Defence and counterclaim

3. The defendant filed a defence on 14/3/2017 in which he claimed as follows: That he is the administrator to the estate of the late Justice James Onyiego Nyarangi. The defendant states that Samuel Kimutai Birir (The deponent to the replying affidavit attached to the Plaintiff) does not have the locus standi to institute or prosecute the suit on behalf of the plaintiff in view of the orders made in Nakuru HCCC No. 73/2016 – Paul Ruto & others Vs. Benjamin Chesulut & others. The land belongs to the family of Justice James Onyiego Nyarangi and Margaret Muragwa Nyarangi (both now deceased), the parents to the Defendant. The late James Onyiego Nyarangi purchased the suit property in 1997 by paying registration fees and purchase price for 100 acres and took possession thereof immediately and the family has remained in possession and utilisation since. In the counterclaim the Defendant reiterates the contents of the defence and avers that the Plaintiff's title was obtained by way of misrepresentation and fraud. He alleges that the Plaintiff applied for the title documents with full knowledge that that it had sold the suit property to Seguton Farmers. It is also alleged that the defendant was unfairly targeted by the plaintiff and that the plaintiff misrepresented facts to the Land Registrar to obtain the title. He prays for an order of cancellation of title in the plaintiff's name and its registration in the defendant's name and a perpetual injunction to restrain the plaintiff from any interference from the land as well as the costs of the suit.

Hearing

4. Hearing commenced on 3/11/2020 when PW1 testified and closed his case. The defendant's evidence was taken on 25/11/2020 and on 18/1/2022 when the Defendant's case was closed and directions on filing of submissions given.

The Plaintiff's Evidence

5. PW1 Samuel Kimutai Birir testified that he is a director and current chairman of the plaintiff; that the plaintiff's directors had resolved that the plaintiff should file the instant suit; he adopted his witness statements filed on 2/2/2017 and 10/3/2020 as his evidence in chief; he denied that the defendant's parents had bought the suit land and admitted that the dispute had been taken to the Chief's office and the District Officer's office and that the Defendant attended the meetings. He maintained that currently the Defendant is in possession of the suit land. He produced documents showing that the Defendant had been attempting to lease the land to third parties. He stated that there is a dispute among directors which led to HCCC 11 of 2018 Kirobon Farmers Ltd Vs. Benjamin Chesulut a former director of the company. The suit concerned the conduct of elections. The court gave a ruling on 28/11/2018 giving directions on the conduct of company elections. PW1 was elected as director/chairman. When the dispute was escalated to the Registrar of Companies, the Registrar of Companies erroneously expunged the directors and also expunged the company from his records. However, later when PW1 and his co-directors produced evidence that they were properly elected the Registrar reinstated the company and the directors in 2020. He produced CR 12 to show the directorship. Regarding Seguton Company Ltd which issued receipts exhibited by the Defendant, he denied knowing that company. He produced a copy of the green card and title issued to the Plaintiff and stated that the title was cancelled due to a court case filed by Benjamin. However, the Land Registrar did not summon the Plaintiff before cancelling of the title. Later on they went to visit the current Land Registrar and he indicated that he would reinstate that title issued on 23/3/2016. He stated that the company was incorporated in 1972 and that the delay was occasioned by squabbles amongst



the directors as well as ignorance in that the directors in charge who did not know the procedure for issuance of title.

6. Prior to the issuance of title, the suit property was being used by various people at various times. The Plaintiff surrendered the original title to the Land Registry for mutation and subdivision and those processes are now awaiting the outcome of this case. PW1 denied that any plot was sold to Seguton Co. Ltd and that there was no relationship between the two companies. He stated that any meeting held in 2019 was not lawful since there was a court order stopping company meetings.
7. When cross-examined he stated he became a director in 2014; that the object of the Plaintiff is to obtain land and subdivide it amongst its members; that the suit property was purchased by the Plaintiff in 1996; that he does not know what was happening on the land before he became the director, that the mother title prior to subdivision was LR.10380; that as the time Justice Nyarangi expressed interest to buy the land PW1 was not yet a director and that there are some people who had been in occupation of the land since the early 1980s. according to him Benjamin Chesulut became a director in 1998; that originally the land was freehold property but later changed to leasehold; that the dispute regarding the directorship has been finally resolved; that the Defendant is not involved in company directorship; that Seguton Farm is part of Kirobon Farm; that the land in the Seguton area was sold by the Plaintiff to individuals. At that point the Plaintiff's case was closed.

The Defendant's Evidence

8. DW1 Benjamin Kibiwot Chesulut testified and adopted his witness statement dated 19/11/2018; his evidence is that Kirobon bought several parcels of land measuring 28,000 acres in 1977 from white farmers for resale to other groups that needed land; that in 1977 Kirobon sold 1888 acres out of the 28,000 to Seguton Farmers Co. Ltd. Thereafter, Seguton subdivided that parcel and allocated to its various members; that the Defendant's parents were allocated 100 acres out of 1888 acres upon payment of Kshs. 50,000/=; that the Defendant's parents took possession since 1977 and have had quiet possession since 1977 and that the title issued to Kirobon Farmers Ltd/Seguton is a forgery and the purported directors of Kirobon are imposters. On cross-examination he admitted being a shareholder and past director of Kirobon Farmers from its inception up to 2019. He alleged that he was edged out by non-shareholders. He stated that Seguton Farmers is not a registered company and he does not know if it is registered business name but admitted that he is not a shareholder therein; that at the time Seguton Farmers bought land he was a director at Kirobon; that the sale was vide a written agreement which he failed to produce; that he didn't also have the agreements for sale of land between Justice Nyarangi and Seguton. He denied collusion with the Defendant aimed at benefiting him once the Defendant secures the 100 acres through the instant suit. He denied bad faith in coming to testify against the company in which he had been a director and asserted that the dispute over the directorship is still pending in court. He further stated that there is no tittle deed in respect to the suit property and denied interfering with the title issuance to Kirobon.
9. Upon re-examination he admitted that the Defendant's father was a shareholder to Seguton which comprised of 34 people and that he handed over the mother title to the chairman of Seguton. He stated that when he recorded his witness statement he was still a director to Kirobon.
10. DW2 Samuel Onchuri Nyarangi testified and adopted his witness statement dated 19/11/2018 as his evidence in chief. His evidence is that his parents bought the suit land for Kshs. 50,000 after complying with the registration of paying a fee of Ksh.100; the suit property measures 100 acres; the receipt was issued in the name of his late mother; that the family took possession on the land in 1997 and put up a wooden house and worked the land and kept animals and has been in uninterrupted possession for over 40 years when they had rumours that some people were claiming the land to be theirs. They



went to chief's office where a meeting was held and produced the receipts for payment of purchase price as prove of ownership. On 28/2/2017 one Samuel Kimutai Birir and others invaded the land and ploughed the entire portion and DW2 was immediately served with pleadings and he then realised that the title to the land had been registered in the name of the Plaintiff. He complained to the Director of Criminal Investigations Department regarding forgery by the Plaintiff and the matter is still under investigations. He later contacted the Lands Office and confirmed that a certificate of lease had been issued over the land in favour of the Plaintiff. He produced a copy of the letter dated 2/3/1978 from Chesaina, Advocate addressed to his father of the survey process and advising to pay the survey fees. He also produced a letter dated 15/3/1978 requesting his father to attend a meeting scheduled for 2/4/1978. The said meeting was allegedly for the purpose of his being shown the suit land; he produced a copy of a letter dated 13/4/1982 from Chesaina, Advocate which was expressed to enclose a list of owners and the acreage they had. He produced letters dated 27th May 1991, 12th March 1996, 22nd May 1998 and 16/7/2002 as evidence that Seguton owned LR NO 10380 which was later subdivided. He produced a copy of the chief's letter dated 12/6/1999 as evidence of a boundary dispute to be resolved between the owners of certain subdivisions in the farm; he stated that Seguton members began lodging grievances with the national land commission regarding issuance of titles to the rightful owners. The NLC held a meeting with them on 21/3/17. Minutes of the meeting were taken. Memoranda were submitted by the members to the NLC. The NLC also wrote to the County Commissioner Kuresoi North Sub County vide a letter dated 29/3/17 asking that the status quo be retained. He states that Samuel Birir has purported to swear the verifying affidavit and to file the instant suit without authority from the directors of the company. He exhibited a letter from the registrar of companies dated 25/8/15 showing the list of directors of Kirobon. He also attached a copy of a map from the survey department to show that the land had already been subdivided. He asserted that it can not be in the circumstances be denied that Kirobon sold land to Seguton and that the purchasers under the banner of Seguton are many but the plaintiff discriminated against the defendant by invading his land and avoiding the others. The defendant also stated that at around the time he came to court he was evicted from the suit land and he wants to be compensated. That the Plaintiff and some of the workers he had are still in occupation of the land. However, he maintained that he is still in occupation of part of the land and that the Plaintiff should be evicted.

The Parties Submissions

11. The plaintiff filed submissions on 2/3/2022. It stated that the defendant amended his pleadings to read that he was suing as a legal representative of the estate of James Nyarangi & Margaret Nyarangi (deceased). It stated that this amendment was unlawful because the Plaintiff had not sued in that capacity in the first place and therefore the counterclaim by the Defendant which introduced his capacity as the administrator of the estate of James Nyarangi and Margaret Nyarangi should struck out with costs. It proceeded to state that the CR 12 forms filed in court showed who the directors of the plaintiff were; that the letter dated 10/6/2020 from the Registrar of Companies indicated that the Plaintiff was properly registered and directors properly elected; that there had been wrangles in the company which had been sorted out and now the directors are properly in office; that minutes of 26/11/2012 showed a resolution by the company in respect of the suit land to subdivide it for distribution to its members, issue title deeds and seek redress in court; it also stated that title to the suit land had been produced. On the other hand, the defendant's documents were said to be irregular and the defendant did not produce a certificate of confirmation of grant to confirm that the suit land belonged to his family. It was stated that the defendant did not establish that the Seguton Co. Ltd existed. It finalised by stating that the plaintiff is the owner of the land; that it is in occupation and that it has title; that the defendant has no title document over the same; it sought that judgment be entered against the defendant and that the defendant's counterclaim be dismissed.



The Defendant's Submissions

12. In his submissions the Defendant gave a brief background of the case and identified the following as issues for determination: 1. Whether the Defendant lawfully purchased and owned the suit property 2. Whether there was fraud and illegalities on the part of the Plaintiff on registration of suit property 3. Whether the Plaintiff's suit should be dismissed for lack authority to plead 4. Whether the suit is merited. The Defendant stated that he purchased the land from Seguton Co. Ltd which it had purchased from Kirobon Farmers Co. Ltd; that his parents were demonstrated to be members of Seguton and that they had purchased the suit property as a share from Seguton Farmers Ltd; that his parents paid the entire purchase price for the entire 100 acres and took possession and the family has been utilising it ever since. The Defendants stressed that the photographs in his list of evidence were of possession of the suit land. He also pointed out that the submissions of the plaintiff had admitted that the land was used by various people including Francis Nyarangi (deceased) and other persons. He further submitted that no evidence was provided by the Plaintiff to demonstrate that the deceased had leased the land from the Plaintiff. It was further his case that upon PW1 being cross-examined he confirmed that he knew Seguton Farmers and that there are people who have been in occupation of the land since the 1980s when he was not a director of the Plaintiff and before the Plaintiff got title to the suit land. He also submitted that correspondence produced was evidence of possession of the land by his family and his father's involvement in the process of survey of the suit property. The National Land Commissions has been petitioned by the farmers on the ground for titles through memoranda which showed the close relationship between Seguton Farmers Ltd and the Plaintiff and also the relationship between Sekuton and Seguton. He submitted that the suit land had been surveyed for issuance of titles and that DW1 who was one of the former directors of the Plaintiff had confirmed that land had been sold LR.10328 had been sold to Seguton citing the case of Caroline Awinja Achieng & another vs. Jane Anne Mbithe Gitau & 2 others [2015] eKLR; he submitted that the documents he had provided which were not controverted by the Plaintiff are sufficient proof of ownership. His further submission is that the Plaintiff illegally and fraudulently applied for title documents to the suit property to be issued in his name with full knowledge that it had sold the suit property to Seguton. Further the records in the Ministry of Lands show two types of titles for the same land being leasehold and absolute both issued on 21/3/2016; the Plaintiff relied only on the absolute title and yet produced land rent requests and payment receipts and rent clearance certificate which do not apply to an absolute title. An irregularity was detected in that the land rent payment request was generated on 21/2/2016 before the title was issued to the Plaintiff. These inconsistencies were not explained by the Plaintiff.
13. Further evidence of fraud was said to be the cancellation of title that had been issued to the Plaintiff as seen in the green card exhibited by the Defendant. That cancellation is said to have been effected and backdated when the defendant's advocate wrote to the District Land registrar Nakuru on 5/11/2018. It is submitted that cancellation would not normally issue unless fraud and misrepresentation in which the registered proprietor is involved has been present or where the title had been acquired illegally or through a corrupt scheme as envisaged by section 26 of the [Land Registration Act](#) 2012. The next issue the defendant focused on is whether the Plaintiff's suit should be dismissed for lack of authority to plead. In this he referred to a preliminary objection dated 30/5/2019 which the court had directed should be determined together with the main suit. The grounds raised in that PO is that the Plaintiff lacks authority to sue and the Plaintiff offends order 4 rule 1(4) and (6) of the [CPR](#) 2010 and should be struck out with costs. In elaboration in his PO he stated that the verifying affidavit fails to state that the deponent was authorised by the Plaintiff company to swear it on its behalf and that there is no resolution produced by the Plaintiff's witness authorising the filing of the suit or the swearing of the verifying affidavit yet this is a mandatory requirement under order 4 rule 1(4). Citing [Affordable Homes Africa Ltd Vs Henderson & 2 Others](#) [2004] eKLR and Kenya Commercial Bank Limited Vs.



Stage Coach Management Ltd [2014] eKLR, the defendant submits that in the absence of a board resolution sanctioning the commencement of the suit the company is not before the court at all; it was further submitted that since the filing of the preliminary objection the Plaintiff has never taken any step to avail the authority to plead and therefore does not deserve favourable exercise of discretion by the court. It was stated that none of the contents of the minutes dated 26/11/2015 amounts to such a resolution.

14. In conclusion the defendant submitted that the Plaintiff's suit is not merited; that the Plaintiff's title was cancelled by the Land Registrar on 8/8/2018 and no other title save the cancelled one was produced to demonstrate its ownership of the land; no lease agreement or receipts was produced by the Plaintiff to demonstrate that the land was being let out; the Plaintiff has not been in the possession of the suit property while the defendant has demonstrated continuous possession for 40 years. The defendant's defence is assertion that he is administrator in the counterclaim by stating that he was sued in his name but as representative of the estate of the deceased and in fact he is one of the administrators. He avers that in the plaint the Plaintiff mentions Francis Nyarangi and avers that he is keen and administrator of the deceased. He sums up by stating that there is nothing unlawful when he files a counterclaim in his capacity as an administrator of the estate of the deceased. He further states that leave to withdraw the defence and counterclaim dated 14/3/2017 and to file the defence and counterclaim dated 6/11/2018 was granted by consent of the parties without demur on the part of the plaintiff regarding the illegality of the counterclaim or the propriety of the pleadings and therefore the counterclaim is properly on record. He further submits that in any event article 159 2(d) of *the Constitution* of Kenya provided that technicalities should not hinder the delivery of substantive justice. He therefore prays that the Plaintiff's claim be dismissed with costs and the Defendant's counterclaim be allowed.

Determination.

15. The issues arising for determination in the instant suit are as follows:
- a. Whether the plaintiff has established its ownership of LR No. Molo South/Langwenda Block 17/1 (Seguton)
 - b. Whether the defendant had locus to sue in the counterclaim;
 - c. Whether the defendant has established that he owns the suit land;
 - d. Who should pay the costs of the suit.
16. The plaintiff claims LR No. Molo South/Langwenda Block 17/1 (Seguton) to be its land which the defendant denies. He states that the land was purchased from Seguton by his parents and that his family has been in possession thereof since 1978. The plaintiff has a certificate of lease issued on 21/3/2016 and lease of even date. However, on 8/8/18 the land registrar endorsed a cancellation of that title on the green card stating as follows:
- “Title cancelled and should be surrendered to allow for verification. Determination of ownership pending in court see correspondence file Land registrar/Nakuru.
6/11/18”
17. The green card does not detail any deeper history of the land. It has no particulars of the original parcel from which it was carved. Neither does it have the registry index map sheet number. From the dates on the green card it is clear that the lease and the certificate of lease issued to the plaintiff were the target of cancellation by the Land Registrar. The plaintiff's title having been cancelled there is nothing that it



can show the court as evidence of its ownership of the suit land. I am not convinced that the plaintiff has brought to court sufficient evidence to enable this court hold that it owns the land.

18. The defendant has come to court qua defendant. He later amended his defence and counterclaimed against the plaintiff for cancellation of its title and an injunction. I have considered the grant of letters of administration produced as DExh 1 and DExh 2. DExh 2 was obtained purposely for the purpose of enabling the defendant to counterclaim against the plaintiff in the instant suit. I am therefore convinced that the defendant has locus standi to counterclaim against the plaintiff as an administrator to the estates of the late Margaret Morogwa Nyarangi and James Onyiego Nyarangi (Deceased).
19. Regarding whether the defendant has proved ownership of the suit land, it is noteworthy that he produced documentary evidence that showed that the land was originally plot no LR 10380 – Molo and that there were attempts to subdivide it as early as 1991 through the office of the Provincial Land Adjudication and Settlement Officer Rift Valley Province. DExh 10 (a) is relevant in this regard. DExh 10 (b) shows that Seguton farmers submitted for approval a subdivision scheme for LR NO 10380 to the District land officer Nakuru who circulated it to various offices for their comments including the Land Control Board Nakuru, the Provincial Public Health Officer Nakuru, the Provincial Surveyor Nakuru, the District Physical Planning Officer Nakuru, the Clerk To the Council Nakuru, the District Works Officer Nakuru and the District Water Engineer Nakuru in a letter copied to the Secretary, Central Authority, Nairobi and the District Surveyor Nakuru. DExh 10 (c) and DExh 10(c) being letters from Seguton Farm to the District Surveyor Nakuru and from the provincial surveyor rift valley province respectively are evidence of attempts to establish the proper boundary between the LR 10380 and LR 11323 at the instance of Seguton Farm and the plaintiff does not claim to have been involved in all these efforts.
20. The plaintiff does not deny that the land has been in the possession of other people. The plaintiff can also not explain why it has not been in possession of the suit land for a very long time. It also can not explain the presence of the defendant’s family on the suit land. PW1, the current chairman of the plaintiff has admitted that he was not one of the founding directors of the company and that he does not know much concerning the history of the land. This is a very candid confession. If he was not present at the time the company was founded how then can he speak with confidence about the history of the property owned by the company? The documentation that he brought to court was bare of any history save that of attempts to revive the company and the issuance of the certificate of lease and lease which have already been cancelled by the Land Registrar Nakuru.
21. There is a very long and unexplained history of the suit land which lends credence to the account in the memoranda submitted to the National Land Commission: that owing to the huge number of parcels that the plaintiff bought individual parcels were placed under committees assigned who focused on their parcels only, a sort of independence from the plaintiff company.
22. DW1’s evidence is that the plaintiff bought several parcels of land measuring 28,000 acres in 1977 from white farmers for resale to other groups that needed land; that in 1977 Kirobon sold 1888 acres out of the 28,000 to Seguton Farmers Co. Ltd.; thereafter, Seguton subdivided that parcel and allocated to its various members; that the Defendant’s parents were allocated 100 acres out of 1888 acres upon payment of Kshs. 50,000/=; that the Defendant’s parents took possession since 1977 and have had quiet possession since then; that at the time Seguton Farmers bought their land, he was a director at Kirobon. DW1 testified that he is a former, founding director of the plaintiff. He came through as a candid witness while he was giving his evidence before the court and this court has no reason to doubt that what he said was the truth. This court has, by looking at the defendant’s documentary evidence, concluded that the greatest probability is that the group that bought the farm in Seguton from the



plaintiff did not register itself as a company or a society for there is no evidence of such registration but this does not detract from the fact that they acquired the land for distribution amongst themselves.

23. Recently it was stated as follows in the case of in the case of *Munyu Maina v Hiram Gathiba Maina* [2013] eKLR the Court of Appeal (Visram, Koome & Otieno-Odek, JJ.A.) stated 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.”

24. I would have expected the title documents relied on by the plaintiff to bear more information as to their origins but they even lack basic information such as RIM sheet number which would make it difficult to locate the land they represent on the registry index map. I am not convinced the least that the title documents produced by the plaintiff, unsupported as they are by any other source evidence such as allocation or purchase or gift, are genuine. I am also persuaded that the same reasons may have informed their cancellation by the Land Registrar.

25. The defendant has in his submissions quoted the case of *Caroline Awinja Achieng & another vs. Jane Anne Mbithe Gitau & 2 others* [2015] eKLR. In that case the court stated as follows:

“In determining the above issue it would perhaps be appropriate to first state that tracing ownership of unregistered land is dependent on tracing the root of title. Unlike registered land where ownership is domiciled and founded in the register of titles, ownership of unregistered land and the ascertainment or confirmation thereof involves the intricate journey of wading through documentary history.

The simple reason is that unregistered titles exist only in the form of chains of documentary records. The court has to perform the delicate task of ascertaining that the documents availed by the parties are not only genuine but also lead to a good root of title minus any break in the chain. It is the delivery of deeds or documents which assist in proving not only dominion of unregistered land but also ownership. The deeds must establish an unbroken chain that leads to a good root of title or title paramount. A good compilation of the documents or deeds relating to the property and concerning the claimant as well as any previous owners leading to the title paramount certainly proves ownership. It is such documents which are basically ‘the essential indicia of title to unregistered land’: per Nourse LJ in *Sen v Headley* [1991] Ch. 425 at 437.

The documents in my view are limitless. It could be one, they could be several. They must however establish the claimant’s beneficial interest in the property. Examples of the deed or documents include, at least in the Kenyan context: sale agreements, Plot cards, Lease agreements, allotment letters, payment receipts for outgoings, confirmations by the title paramount, notices, et al.”

26. A perusal of the defendant’s documents including copies of the receipts as well as correspondence has persuaded this court that his predecessors paid Seguton Farm for land he has been in occupation of. It is this chain of documents that helps the court believe that the plaintiff has had nothing to do with the suit land for a very long time. The plaintiff’s lack of a history of land it bought in the 1970s save the bare certificate of lease and lease issued about 35 years after the purchase shows that it had let go of the



land as indicated by the defence evidence. I do not see how the plaintiff's suit against the defendant can succeed with such overwhelming evidence against its case. The lease and certificate of lease it presented before this court were obtained by way of misrepresentation that it owned the land while it knew that the same belonged to members of the Seguton Farm who had purchased it from the plaintiff. Those title documents are therefore illegal.

27. The upshot of the foregoing is that I find that the plaintiff's case lacks merit and the defendant's counterclaim must succeed.
28. I therefore issue the following orders:
 - a. The plaintiff's case is hereby dismissed;
 - b. The lease and certificate of lease registered in favour of the plaintiff on 21/3/2016 are hereby cancelled;
 - c. The National Land Commission and the Ministry of Lands Housing and Urban Development shall undertake all steps necessary to ensure that the suit land occupied by the defendant and his family within Seguton Farm, is properly surveyed at the defendant's expense and title issued in the name of the Administrator of the Estate of James Nyarangi and Margaret Nyarangi, (Deceased).
 - d. An order of permanent injunction is hereby issued against the plaintiff restraining the plaintiff, its servants, employees and or authorized agents from trespassing upon, entering, farming, leasing and or interfering with the defendant's peaceful possession and use of the suit land formerly referred to in the land register before cancellation of title in order No. (b) herein above as LR No. Molo South/Langwenda Block 17/1 (Seguton).
 - e. The plaintiff shall bear the costs of the suit and of the counterclaim.

It is so ordered.

DATED, SIGNED AND ISSUED AT NAKURU VIA ELECTRONIC MAIL ON THIS 21ST DAY OF JUNE, 2022.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

