



REPUBLIC OF KENYA



**Kanai v Githiri & 2 others (Environment & Land Case 54 of 2021)
[2022] KEELC 15595 (KLR) (19 December 2022) (Judgment)**

Neutral citation: [2022] KEELC 15595 (KLR)

NYERI ELC CASE NO. 622 OF 2014

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NANYUKI

ENVIRONMENT & LAND CASE 54 OF 2021

AK BOR, J

DECEMBER 19, 2022

BETWEEN

STEPHEN GICHUKI KANAI PLAINTIFF

AND

JOHN GITHIRI 1ST DEFENDANT

LAND REGISTRAR, LAIKIPIA COUNTY 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

1. The Plaintiff brought this suit claiming ownership of the land known as Tigithi Matanya Block 3/1042 (Matanya Centre) measuring approximately 1.250 hectares (“the suit property”). He seeks an order for rectification of the land register to have the suit property registered in his name in place of the 1st Defendant together with costs and interest.
2. The Plaintiff averred that on or about 27/4/1999 the 1st and 2nd Defendants caused the 1st Defendant to be fraudulently registered as the proprietor of the suit property while knowing that he was reflected as the owner of the suit property in the register of Matanya Holdings Estates. He faulted the 2nd Defendant for failing to issue a title deed to him over the suit property in accordance with the entries in the register for Matanya Holdings Estates.
3. The Plaintiff pleaded that the 2nd Defendant referred the dispute between him and the 1st Defendant to the Laikipia Land District Tribunal *vide case No. 22 of 2000* yet he knew the Tribunal lacked jurisdiction. The Tribunal ordered the parties to share the suit property equally. An appeal was lodged against the Tribunal’s award in Rift Valley Provincial Land Disputes *Appeal No. 18 of 2000*. The Appeals Committee found that the Plaintiff was the rightful owner of the suit property. A further



appeal was filed, being Nyeri High Court *Civil Appeal No. 74 of 2001*. That appeal was withdrawn by consent and the Plaintiff was granted leave to file fresh proceedings before the Nyeri High Court.

4. In his defence dated 25/10/2005, the 1st Defendant denied the averments made in the plaint and the particulars of fraud levelled against him. He averred that the Plaintiff had never been registered as the owner of the suit property. He contended that the reference of the dispute to the Tribunal was regular and that there was no cause of action against him while arguing that the proper Defendant should have been Matanya Farmers' Co-operative Society.
5. The 3rd Defendant filed a statement of defence on behalf of the 2nd Defendant which essentially denied the averments in the plaint.
6. From the typed proceedings, the court notes that on 20/7/2012 Judge Sergon summoned the Land Registrar, Laikipia to appear in court on 15/10/2012 to give oral or tender affidavit evidence regarding ownership of the suit property.
7. Ms. Beatrice Wairimu Mwai, the Laikipia District Land Registrar attended court on 15/10/2012 and gave evidence. She stated that the Plaintiff, holder of identity card number 363263/66 was the owner of the land in question. She produced a copy of the members' register for Matanya Estates Limited ("the Company") indicating that the suit property was allocated to the Plaintiff. She testified that the title deed issued to the 1st Defendant was contrary to the documents in her possession. She produced a copy of the green card. Upon her request the court adjourned the hearing to 6/11/2012.
8. The typed proceedings show that the Land Registrar pointed out the variations between the certified copy of the Company's register which she produced when she first testified in court and the original register which she brought to court the second time she came to court to testify.
9. She stated that the original register showed that the D.O of Lamuria forwarded the register on 21/4/1989 but that there was a cancellation before that. She stated that Stephen Gichuki Kanai was listed as the owner of plot number 1042, with the old number being 152. She added that the policy at the Matanya Estates Company Limited was that clearance certificates were issued before titles were given.
10. The Land Registrar told the court that she did not trace any clearance certificates in her registry and indicated that she would be surprised if a clearance certificate were issued to the 1st Defendant. The court adjourned the hearing of the case to 21/2/2013 to give her time to go through the 1st Defendant's witness statement before she could be cross examined further.
11. The matter came up severally in Nyeri and the Land Registrar was cross examined on 14/5/2014. On being cross examined by the 1st Defendant's advocate, she mentioned the other variations evident on the certified and original registers for the Company including the board of directors being different; and block II being shown on one register as being for Marura while the other register showed block III Matanya Centre. The two registers were forwarded by the D.O on 4/2/2008 and 21/4/1989 respectively. She told the court that she could not tell the right register for Matanya Company and that it was only the directors of the company who could do that.
12. She clarified that they required the register and clearance certificate from the Company to register a person as a landowner and issue a title to the person. She stated that for plot number 1047 the clearance certificate read John Githiri plot number 152 (1042) and was dated 28/2/2008. That certificate was marked for identification. She clarified that the clearance certificate should correspond with the members' list but that in this instance it did not. She added that the Land Registrar could register a person on the strength of the members' register without a clearance certificate.



13. The Land Registrar stated that the suit property was registered in the 1st Defendant's name. Entry no. 2 on the register was made on 27/4/1999 and the title was issued on 4/8/2005. She was of the view that the person who registered the name was the one who ought to have testified. She stated that there was no clearance certificate for either the Plaintiff or the 1st Defendant. She stated that the register was taken to their offices on 21/4/1989.
14. On 28/6/2016 the court gave directions for the hearing to proceed from where it had stopped and for proceedings to be typed. After the proceedings were typed, Lady Justice L. Waithaka went through them and gave directions on 7/3/2017 for the Land Registrar to produce the register to assist the court in writing the judgment.
15. The court noted that from the typed proceedings that the register of members of Matanya was not produced and took the view that to clarify the position on who was allocated the suit property, the directors of Matanya Estates Company Limited needed to produce the register which they forwarded to the Land Registrar for the issuance of the title deed.
16. The court issued summons to the Land Registrar and the directors of Matanya Estates Company. The Plaintiff was directed to serve the summons on the Land Registrar while the Defendant was to serve the directors of Matanya Estates Limited. Both the Registrar and directors of Matanya were to produce the register containing the members allocated land in Tigithi/Matanya Block 3/1042 (152). Further, the court directed that on 27/11/2017 only the evidence of the Land Registrar and the directors of Matanya Company would be taken.
17. The court record shows that the directors of Matanya attended court on 27/11/2017 but the case was adjourned because the 1st Defendant had just appointed a new advocate to act for him in the matter. Parties were to take a date in the registry with the orders issued on 17/3/2017 being extended. The matter came up on diverse dates but the hearing of the case did not proceed.
18. The file was transferred from the Nyeri Environment and Land Court (ELC) to the Nanyuki ELC for further hearing and disposal *vide* the order made on 26/10/2021. The case came up before this court on 8/2/2022 and 1/3/2022 when the court directed parties to file their trial bundles and fixed the case for hearing for 21/3/2022.
19. The hearing of the case proceeded on 21/3/2022 and 28/6/2022 when parties called their respective witnesses to give evidence. Since the Plaintiff was indisposed and bedridden, it was agreed by consent of the parties that Mr. Samuel Kariuki Wachira would present evidence on his behalf under Rules 1 and 2 of Order 9 of the *Civil Procedure Rules*.
20. Mr. Samuel Kariuki Wachira is the Plaintiff's brother in law who assisted him to purchase the suit property because at the time the Plaintiff worked as a teacher in Nakuru. He stated that the Plaintiff gave him money to purchase four shares in his name. He paid Ksh 5120/=, each share being Ksh 1280/= and gave the receipts to the Plaintiff. He did not buy the shares as the original shareholder.
21. Mr. Wachira stated that in 1983 the Government told people to go balloting and that the Plaintiff got ballot number 152 for Matanya Richuga area which he took to him in Naro Moru. He went to the land with the surveyor and was shown the land measuring approximately 3.2 acres. He stated that he started using the land for farming from 1983 to 1998. The land was not developed but was fenced with a wire.
22. In 1988 the owners were called to go and fill transfer forms at the D.O Central Division where ballots were verified and signed by the D.O. A second verification was done on 24/4/1990 on the actual site. They went to the land with D.O Maina who was the chairman of the panel and other members drawn from the community. After verifying with the register which they had, they entered the name of the



- owner in the new register of 1990 which they termed as the final register. However, he could not sign the transfer forms as it was the Plaintiff to execute these. For the people who signed the transfer forms, their titles were available almost immediately.
23. Further, he testified that on 12/5/1998 they went to the D.O Lamuria because the Central Division had been split into three, to collect the clearance certificate and sign the transfer forms. They collected the clearance certificate signed by the D.O Lamuria which the Plaintiff went away with to Nakuru since he had to get back to work.
 24. The Chief went to his house on 30/4/1999 and informed him that the title deed had been issued. He went to follow up the matter regarding plot 152/1042 with the Land Registrar. The Land Registrar by the name Cyrus Lintari took out the Matanya file from his cabinet and informed him that the land was in the 1st Defendant's name and that there was an error which he sought two weeks to rectify. Mr. Wachira stated that he verified that the Plaintiff's name was on the Matanya register but the 1st Defendant's name was on the green card.
 25. He called the Plaintiff and they went back to the Land Registrar who persuaded the Plaintiff to take the matter to the Tribunal. The Tribunal decided that the land was to be divided into two. They lodged an appeal with the Provincial Appeals Board at Nakuru which decided that the land was to be given to the Plaintiff. The 1st Defendant appealed to the High Court at Nyeri. The appeal was withdrawn by consent of the parties on the basis that the Tribunal did not have jurisdiction from the beginning and he was granted leave to bring a new suit.
 26. He explained that in 1984 members were told to surrender their receipts to the Criminal Investigations Directorate (CID) office in Nyeri due to investigations which were being conducted involving the Government and the directors of the company. He had a photocopy which got lost and the Plaintiff swore affidavits to this effect.
 27. Mr. Wachira produced a copy of the Kenya Gazette dated 31/3/1983, a copy of ballot number 152, the clearance certificate signed by the D.O Lamuria Division on 12/5/1998 and the Plaintiff's complaint to the District Commissioner against the Land Registrar dated 21/10/1999 on the issue of the ownership of the suit property. He also produced the Plaintiff's affidavit dated 24/1/2000 giving the sequence of events on the purchase of the suit property and his loss of the photocopy of the receipt after the original was taken by the Nanyuki CID Officer as well as and the notice of intention to sue the Attorney General.
 28. On cross examination, he stated that he farmed on the land from 1983 to 1998. He confirmed that the clearance of members was done three times and that a member was required to pay entrance fees, survey fees and share capital fees. He stated that these documents were taken by the Nyeri CID officers but were never given back to them. He also stated that members were dissatisfied when in 1983 the Company shared out the land following which the land was placed under administration.
 29. He clarified that clearance was being done by the D.O and not the D.C. He contended that the 1st Defendant's clearance certificate dated 28/2/2008 was not genuine because by then the land had already been distributed by the directors. He maintained that the first clearance was done by the Government in 1988 and that they went to the ground in 1990 when the ballots were verified and stamped.
 30. On being cross examined about the Gazette notice, he stated that it related to the initial subdivision which was later done away with. That the Provincial Commissioner came from Nakuru and decided that the Provincial Surveyor was to subdivide the land. Members re-balloted and that the Plaintiff got



- ballot number 152 for title number 1042. He stated that the Gazette notice only showed the procedure followed.
31. The 1st Defendant testified. He recalled that on 13/3/1968 he sent his wife to pay Ksh 25/= to Matanya Farmers' Co-operative Society. On 7/1/1983 he sent her to pay the share capital of Ksh 800/=. His wife went to ballot in 1983 and got ballot number 873. She was shown the land and left it under the care of Eunice Wamucii Kagiri who had already settled in Matanya.
 32. In May 1990, the caretaker sent her son to inform him that Karicho Waweru had settled on his land and buried his wife on his land which is number 873. He went to the D.O's office with his wife and Eunice Kagiri. The D.O arranged a meeting between the directors of Matanya company and the Chief and his assistant. They met on 4th, 19th and 29th July 1990. During those meetings, Karicho Waweru conceded that he was on his plot and was prepared to surrender his own plot to the 1st Defendant. It was resolved that Karicho Waweru would stay on the 1st Defendant's land being plot number 873 while the 1st Defendant would move to Karicho's plot number 152.
 33. He stated that Karicho informed them that Chief Ngubia allowed him to bury his wife on the land when he went to get the burial permit. When Karicho was asked to produce his ballot he stated that he gave it to Chief Ngubia, and was to avail it later. Since Karicho's ballot was not available, the D.O wrote on his ballot that he would move to parcel number 152 and crossed out 873 on his own ballot. He stated that they were shown parcel number 152 by a director of the company and administration policemen.
 34. His wife went to Nanyuki on 25/7/1990 to collect the clearance certificate for plot number 152 (1042). He sent his wife to collect the title deed on 27/4/1999, a copy of which he produced in court. The following day his wife was shown the land which was not developed or settled on.
 35. On 29/10/1999 the Plaintiff went to his home in Ndurumo to deliver summons from the District Criminal Investigations Officer (DCIO) to present documents relating to plot number 152. He stated that after all day long grilling and perusal of his documents he was cleared. He was summoned to appear before the Tribunal and later went to court. He went to meet the Matanya land directors in February 2012 who issued a certificate to him indicating that he was the *bona fide* owner of plot number 152 with the new number being 1042.
 36. The 1st Defendant produced the receipts which Matanya Farmers Co-op Society issued to him on 13/3/1968, 7/1/1983 and 9/2/1989. On the receipt dated 9/2/1989 plot 873 is crossed out and plot 152 inserted and countersigned for 17/7 with the year cut out. He also produced the ballot on which 873 is crossed out and 152 written over it. He produced an illegible slip of paper dated 8/2/89 signifying the exchange of plots with Karicho Waweru.
 37. The 1st Defendant produced a copy of the clearance from Matanya Estate dated 25/7/1990 for plot number 152 (new no. 1042) signed and stamped by the Nanyuki District Commissioner. He produced a copy of his title deed issued on 27/4/1999 together with the summons issued by the DCIO Laikipia on 28/10/1999 and the letter dated 10/2/2012 from the DCIO Laikipia confirming that the police inquiry confirmed that his title was genuinely issued hence no charges were preferred against him. He also produced a clearance certificate issued by Matanya Estate on 28/2/2008 for plot number 152 with the new number being 1042.
 38. On cross examination, the 1st Defendant stated that the three meetings were held at the D.O's office and that Karicho never took the ballot to the meetings. When the Chief was asked about the ballot, he explained that he had forgotten it in his office. He stated that Karicho Waweru and his children had the documents for plot number 152 and that it was the D.O who changed his ballot from number 873



- to 152. He stated that the Plaintiff went with ballot number 152 and said it was for Karicho and that the ballot had the name John Karicho. He confirmed that Karicho Waweru was dead and that nobody lived on parcel number 1042. He had two clearance certificates dated 25/7/1990 and 28/2/2008.
39. The 1st Defendant called George Waweru Kabicho, the son of the late Kabicho Waweru, to give evidence. He stated that his father's plot was number 873. That when balloting was done in 1983, his father got ballot number 152 which was not where he had settled. When his mother died his father was allowed to bury her on plot number 873 which was where he had settled.
40. The 1st Defendant complained about his mother being buried on his plot and meetings were held to resolve the dispute. The dispute took two months to resolve. He recalled his father telling the committee comprising the D.O, directors, the Chief and his assistant, that his ballot number 152 was taken by Chief Ngubia when he went to collect his mother's burial permit. The Chief acknowledged that fact and stated that it was in his Nanyuki house and that he would avail the ballot later. His father pleaded with the 1st Defendant to swap the plots and the committee resolved that his father would stay on plot 873 and the 1st Defendant would move to plot number 152.
41. On cross examination, the witness stated that his father did not ballot because the Government decreed that those who were already on the land did not need to ballot. He later stated that his father had been given ballot number 152, which he confirmed that he had never seen. He conceded that his father and the Chief were given an opportunity to present ballot number 152 to the meeting but they never did. He confirmed that his father had no documents to give the 1st Defendant when it was resolved that they would swap the plots.
42. The Plaintiff filed submissions on 6/7/2022. His case is that the suit property was formerly known as plot number 152 for which he balloted, got a clearance certificate and his name was entered in the register of members of Matanya Estates which was submitted to the lands office. The 1st Defendant's case is that he balloted for plot number 873 on which Karicho Waweru buried his wife. That in exchange, Karicho Waweru offered parcel no. 152 to the 1st Defendant leading to the alteration of his ballot to read 152 and his subsequent clearance and registration as owner of the suit property despite the register at lands office showing the Plaintiff as the owner.
43. The Plaintiff's contention is that the title issued to the 1st Defendant has no basis and that it was necessary for the 1st Defendant to prove that Karicho Waweru had balloted for the suit property. He relied on Section 107(1) and (2) of the [Evidence Act](#) and argued that Karicho Waweru was given three opportunities to avail his ballot card to the D.O but he failed to do so. Further, he contended that Chief Ngobia who it is alleged collected the ballot was not called as a witness hence the existence of that ballot card was not been proved and relied on Section 3(4) of the [Evidence Act](#).
44. The Plaintiff urged the court to find that the particulars of fraud he pleaded were proved and that the 1st Defendant's title deed over the suit property was procured unprocedurally because it was not supported by the register. He urged that the title was not protected by Section 26 of the [Land Registration Act](#). He insisted that he had no cause of action against Matanya Estate because the company forwarded the register with the correct entries to the lands office and the alterations made on ballot number 873 were not done by the Directors of the company. In any event, the [Civil Procedure Rules](#) allowed the 1st Defendant to join the company if he felt it was a necessary party to the suit.
45. The 1st Defendant filed his submissions on 11/10/2022. He urged that the Plaintiff failed to discharge the burden of proof imposed on him on his claim of fraud against the 1st and 2nd Defendants. He relied on several provisions and authorities including Section 26 (1) of the [Land Registration Act](#), Section



107 of the [Evidence Act](#) and the decisions in *Helen Wangari Wangechi v Carumer Muthini Gathua* [2005] eKLR and *Kinyanjui Kamau v George Kamau* [2015] eKLR.

46. The 1st Defendant argued that the register for Matanya Company which the Plaintiff relied on which the 3rd Defendant produced was challenged on cross examination and that on his part he proved his ownership by the allotment letter issued by Matanya Estate Limited prior to the one by the Plaintiff. Further, he contended that the plot number assigned to the Plaintiff in Gazette Notice of 1/3/1983 was different from the one shown in the clearance certificate. He submitted that the Plaintiff did not produce receipts for his share in the company and that the ones produced were not the required ones. He contended that the changes on his ballot which he produced before court were not challenged by the Plaintiff.
47. With regards to the Plaintiff's submission that the Defendants ought to have joined a third party to this suit under Order 1 Rule 15 (i), the 1st Defendant submitted that third party proceedings only become necessary when a Defendant claims liability from a third party. He maintained that the Plaintiff should have joined the company as a defendant to challenge the approval and endorsement on his ballot and the other documents which the company issued to him.
48. The 3rd Defendant filed submissions on 18/10/2022 which addressed the issue of whether there was fraud on the part of the 2nd Defendant and who should pay costs if any of the suit. It was submitted that the Plaintiff failed to prove the allegations of fraud he made against the 2nd Defendant. Further, that the 2nd Defendant only discharged its statutory duties and that no evidence of collusion with the 1st Defendant was adduced. Further, that the 2nd Defendant was not to blame for the confusion caused by the alleged exchange of parcel number 152 with parcel number 873.
49. The 3rd Defendant relied on Sections 107, 109 and 112 of the [Evidence Act](#) and submitted that allegations of fraud must be proved to a standard higher than a balance of probabilities and relied on [Gladys Wanjiru Ngacha v Treresia Chepsaat & 4 Others](#) [2013] eKLR in which the Court of Appeal cited the cases of *R.G. Patel v Lalji Makani* and *Mutsonga v Nyati* (1984) KLR 425 and dismissed the appeal for failure to prove fraud.
50. On the court's discretionary power to determine costs, the 3rd Defendant adverted to Section 27 [Civil Procedure Act](#) and submitted that the Plaintiff did not deserve costs since he failed to prove his case and prayed that it should be dismissed with costs.
51. Having considered the pleadings and evidence tendered by the parties, the main issues for determination are who between the Plaintiff and the 1st Defendant has a better title to the suit property and whether the Plaintiff is entitled to the orders sought in the plaint. The Plaintiff seeks an order of rectification of the register and for his name to be put on the register in place of the 1st Defendant's name. His case is based on fraud and he claims there was collusion between the 1st Defendant and the 2nd Defendant. The court agrees with the Defendants' submissions that fraud must not only be specifically pleaded and proved, it must be proved to a standard higher than on a balance of probabilities.
52. In [Alice Chemutai Too v Nickson Kipkurui Korir & 2 others](#) [2015] eKLR Justice Sila Munyao held that the protection for titles could be removed and that a title can be impeached where it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, unprocedurally, or through a corrupt scheme. Further, he stated that where a person intends to indict a title on the ground that the title has been acquired illegally, unprocedurally, or through a corrupt scheme, it was not necessary for one to demonstrate that the title holder was guilty of any immoral conduct on his part. The Judge went on to add that the heavy import of Section 26 (1) (b) of the [Land Registration Act](#) was to remove protection from an innocent purchaser or innocent title



holder which means that the title of an innocent person is impeachable if it was obtained illegally, unprocedurally or through a corrupt scheme.

53. The court issued summons on 7/3/2017 for the Land Registrar and the directors of Matanya Estates Company to attend court and produce the register containing the members allocated the suit property. The parties did not pursue the summons and the evidence of the directors of Matanya Estate was never given to shed light on whether Karicho Waweru had ballot number 152.
54. The Gazette notice dated 31/3/1983 which the Plaintiff produced has both the names of the Plaintiff and the 1st Defendant as allottees of plots in Matanya Centre Phase III. The plot numbers reflected against their names are 61 and 679 respectively, which confirms that both of them were members of Matanya Estates Holdings and that they were entitled to land in Matanya Centre Phase III. The Plaintiff explained that the initial subdivision was done away with when the Rift Valley Provincial Commissioner directed that the survey would be undertaken afresh by the Provincial Surveyor. Karicho Waweru's name is not in the Gazette notice which lends credence to the fact that he was not a member of the Company and did not have ballot number 152.
55. The Plaintiff's witness gave a detailed chronology of how the Plaintiff balloted for parcel number 152 and his attempts to obtain a title deed for his land. He mentioned the disputes over the Matanya plots and the verification of the owners which was undertaken by the directors of Matanya Company and the provincial administration. The 1st Defendant's evidence was that his wife got ballot number 873 in 1983 and was shown the land and left it under the care of Eunice Wamucii Kagiri who had already settled in Matanya. He was informed by the caretaker's son in May 1990 that Karicho Waweru had settled on his land and buried his wife on his land. This proves that Karicho Waweru went to settle on the 1st Defendant's land after he had balloted for it and been shown the land.
56. The clearance certificate dated 25/7/1990 which the 1st Defendant tendered in evidence was issued by the Company around the time when Karicho Waweru buried his wife on the 1st Defendant's land and the 1st Defendant complained about this. The meetings held on 4th, 19th and 29th July 1990 to resolve this culminated in the D.O endorsing ballot number 152 on the 1st Defendant's ballot after crossing out 873 without any evidence being tendered to show that Karicho Waweru had ballot number 152 or that he owned the land depicted by that ballot, which he purported to swap with the 1st Defendant.
57. The root of this dispute is the confusion occasioned by Karicho Waweru who is said to have swapped land with the 1st Defendant after he buried his wife on the 1st Defendant's land. Karicho Waweru explained that the Chief allowed him to do so. That would run contrary to the manner in which land was acquired from the Company. No evidence was tendered to show that the Chief had power to authorise Karicho Waweru to bury his wife on the 1st Defendant's land even if the 1st Defendant had settled on that land. It is noteworthy that Karicho Waweru never produced ballot number 152 which he claimed he had and which would have justified the swap of plots with the 1st Defendant and the alteration of the 1st Defendant's ballot by the D.O to read 152. That really was the basis for the title being issued in the 1st Defendant's name.
58. There was no evidence led to prove that the D.O had power to alter the ownership of a plot by merely endorsing a new number on another person's ballot as he did for the 1st Defendant.
59. Karicho Waweru did not produce ballot number 152 to justify the swap of plots with the 1st Defendant after he buried his wife on the 1st Defendant's land. No evidence was tendered to confirm that in reality Karicho had ballot number 152 other than what was stated in the committee meetings. It was necessary to have this fact corroborated by the directors of Matanya Company before the land swap could be effected.



60. From the evidence given by the 1st Defendant's witness, George Waweru Karcho, it is evident that he did not have receipts which had been issued to his father Karicho Waweru to prove that he paid membership and survey fees for the suit property and that he was indeed issued ballot number 152 by Matanya Estate Company.
61. The court is satisfied that the 1st Defendant balloted for plot number 873 which is different from parcel 1042 represented by ballot number 152. It would not be fair to condemn him to pay costs.
62. Weighing the evidence of the Plaintiff against that tendered by the 1st Defendant, the court is satisfied that the Plaintiff has proved his claim on a balance of probabilities. The land register is to be rectified so that the Plaintiff's name is put as proprietor of the suit property in place of the 1st Defendant.
63. Each party will bear its own costs.

DELIVERED VIRTUALLY AT NANYUKI THIS 19TH DAY OF DECEMBER 2022.

KOSSY BOR

JUDGE

In the presence of:

Mr. Rubua Ngure for the Plaintiff

Ms. Stella Gakii- Court Assistant

No appearance for the Defendants

