



REPUBLIC OF KENYA



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Togom v Sigei (On Behalf of the Estate of the Late David K. Soi) (Environment & Land Case 109 of 2019) [2025] KEELC 4062 (KLR) (27 May 2025) (Judgment)

Neutral citation: [2025] KEELC 4062 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 109 OF 2019**

**MAO ODENY, J
MAY 27, 2025**

BETWEEN

MARY CHELANGAT TOGOM PLAINTIFF

AND

**TONY KIPKOECH SIGEI (ON BEHALF OF THE ESTATE OF THE LATE DAVID
K. SOI) DEFENDANT**

JUDGMENT

1. By Plaintiff dated 8th April, 2011, later amended on 11th April, 2011 and subsequently further amended on 18th February, 2020, the Plaintiff herein sued the Defendant seeking the following orders:
 - a. An order of permanent injunction restraining the Defendant and/or his servants or agents from invading, cultivating, developing, selling, charging, alienating or interfering howsoever with the Plaintiff's quiet possession of land parcel no LR No Nakuru/Tinet Sotik Settlement Scheme/925.
 - b. That the Defendant by himself, servants or agents be restrained by a temporary injunction from invading, cultivating, developing, selling, charging, alienating or interfering with the plaintiff's quiet possession of land parcel LR No Nakuru/Tinet Sotik Settlement Scheme/925.
 - c. Mesne profits.
 - d. That this Honourable Court be pleased to direct that the Title Deed held by the Plaintiff in his name for L.R No. Nakuru/Tinet Sotik Settlement Scheme/925 be cancelled.
 - e. Costs and interest.
2. The Defendant filed a counterclaim dated 12th July, 2013 which was later amended on 25th February, 2020. The Defendant sued the Plaintiff herein seeking the following orders:



- a. A declaration the Defendant is the lawful owner of all that piece of land known as L.R No Nakuru/Tinet Sotik Settlement Scheme/925.
- b. An order cancelling the title held by the Plaintiff over all that piece of land known as L.R No Nakuru/Tinet Sotik Settlement Scheme/925.
- c. A permanent injunction restraining the plaintiff either by herself, her agents, servants or otherwise howsoever from interfering with the Defendant's peaceful and quiet possession and occupation of all that piece of land known as L.R No Nakuru/Tinet Sotik Settlement Scheme/925.
- d. Costs of this counterclaim.

Plaintiff's Case

3. PW1 Joseph Kibet Barno a husband to Mary Chelangat Togom who lives in Tinet Ikeresa constituency in Nakuru County testified that he is a farmer and an Ogiek. It was his testimony that LR No Nakuru/Tinet Sotik settlement scheme/925 within Mau area belongs to the Plaintiff who is also an Ogiek.
4. PW1 further testified that the plaintiff has an original title deed in her name bearing her address P. O Box 101 Keringet and that they have been in occupation of the suit land. It was his evidence that he contributed to the purchase of the plot from Erastus C. Maina and whereby the Plaintiff was present during the purchase. PW1 testified that they agreed to register it in the Plaintiff's name. He further stated that he has a copy of the green card which indicates at entry No. 2 dated 12th October 2005 that Erastus C. Maina was the owner before the Plaintiff purchased it.
5. It was PW1's evidence that the land belonged to Erastus C. Maina before the Plaintiff purchased it and was registered and issued with a title on 21st November, 2006. PW1 further testified that upon obtaining the title, they took possession and when they tried to develop the land, David K Soi (the Defendant) claimed that the plot belonged to him but has never shown him any title document showing that he owns the property.
6. PW1 testified that they reported the dispute to the District Commissioner (DC) Molo who wrote a letter dated 1st March 2007 to the District Officer (DO) asking him to ensure that the Defendant vacates the suit premises. That the Defendant did not vacate the suit premises despite receiving the letter, hence the referral of the dispute to the Land Disputes Tribunal.
7. It was PW1's further evidence that the Defendant was allocated plot No 121, which he sold and moved into their plot. He stated that the two plots were neighboring each other and the Defendant has no right to remain on the suit plot.
8. Upon cross-examination by Mr. Ogange, PW1 stated that they bought the plot at Ksh 500,000/= and that they sold another plot in Njoro belonging to the Plaintiff to get part of the purchase price. PW1 stated that he topped up the purchase price but did not have any documents showing that he contributed to the purchase price. PW1 stated that they had a sale agreement whereby he was a witness but did not have it in court. He stated that they took possession in 2006 and at that time there was nobody in occupation and no development.
9. PW1 further testified that he got to know the vendor, Erastus Maina, on the day of signing the agreement and that the suit land is within a Settlement Scheme. Further that besides, Erastus Maina, there are other people who are not from the Ogiek community who were allocated plots.



10. Upon re-examination by Mr. Matiri, PW1 testified that he has no claim against Erastus Maina and that ten percent of the land was reserved for people from other communities other than the Ogiek. PW1 testified that the plot was never allocated to the Defendant and he has no right to remain on the land.
11. PW2, Mary Chelangat Togom adopted her witness statement dated 8th April, 2011 as her evidence in chief and testified that Plot No Nakuru/Tinet Sotik Settlement Scheme/925 belongs to her which she purchased from Erastus Maina and was issued with a title which she produced as PEx No 1. PW2 also produced a copy of the green card with her name as entry No 4 as PEx No.2.
12. PW2 also stated that after purchase she wanted to plough the land but was chased by the Defendant who claimed ownership but did not have any ownership documents. She stated that she reported the matter to the Chief who gave her a letter dated 1st March, 2004 which referred her to the District Officer Molo.
13. PW2 testified that she has tried going back to the land but she has found it fenced by the Defendant and further that the Defendant has another parcel of land known as Plot No Nakuru Tinet Sotik Settlement Scheme/121 which is separated to by a road. It was PW2's testimony that they attended the Land Disputes Tribunal with her husband and the Tribunal decided in her favour which proceedings she produced a Pex No 4 dated 17th June, 2008 and the court marked it as PExb4. She stated that the Defendant did not vacate as was ordered by the Tribunal.
14. Upon cross-examination by Mr. Konosi, PW 2 stated that neither her husband nor her, have other parcels of land within the Settlement Scheme. PW2 informed the court that before buying the land, she used to stay at her parents' land at a place known as Kapkiemboi and that Mr. William Kireyet, a member of Keringet Committee, informed her, that the parcel of land was being sold. She further stated that the purpose of the Committee was to distribute land to the Ogiek community which her husband belonged to.
15. PW2 also stated that she inspected the land before buying it and when she visited the land, it was vacant and had a forest. It was her evidence that she misplaced the sale agreement between her and Erastus C. Maina whom she paid Kshs 500,000/ cash for the suit land. That same was witnessed by her husband, Joseph Barno and William Kiriyeet.
16. It was PW2's evidence that the committee distributed the land to everybody and not only the members of the Ogiek community and further that she knows of a Surveyor from the Kisii community who was allocated land within the scheme including, the District Officer at the time. PW2 stated that she visited the land for the first time in 2011 as her parents were sick and she was taking care of them.
17. According to PW 2, it is not true that the land was developed and had houses on it by 2005 when she was buying it. She stated that her husband filed the Tribunal appeal case and is not aware that there was an earlier decision by the Olenguruone Land Disputes Tribunal.
18. Upon re-examination by Mr. Matiri, PW2 testified that she was not a member of the Land Allocation Committee and she does not remember when the allocation was done. PW2 further stated that she does not know the terms of reference of the Committee and that she got to know how Erastus Maina acquired the land because she was interested in buying the land.
19. PW2 testified that before she bought the land, she lived in a place known as Likia and that she sold her land in order to get the purchase price of Ksh 500,000/=. PW2 testified that she does not know of any other tribunal case other than the decision of the Appeals Tribunal.



20. PW3, Raymond Gitonga the Land Registrar Nakuru a custodian of land records testified that he has a certified copy of the green card in respect of Nakuru/Tinet/Sotik Settlement Scheme/925 which shows the registered owner as Mary Chelangat Togom and that the previous owner was Erastus C. Maina which he produced as PExhb 5.
21. Upon cross-examination by Mr. Konosi, PW3 stated that normally, besides the green card, there is the history behind allocation of every parcel which he did not familiarize himself with. PW3 stated that according to the green card, the first registration was in favour of the government of Kenya but they do not have any records in their office to support the transactions in the green card. He stated that there may be a register showing how Tinet/Sotik/Settlement Scheme land was allocated and it may be available at the Settlement Office which is a different department headed by the District Land Adjudication and Settlement Officer.
22. PW3 further stated that before they register land from a Settlement Scheme, the first registered proprietor obtains a transfer of land and a discharge of charge from the Settlement Office. He stated that his experience in Nakuru is that the Mau Settlement Schemes were not formally distributed under the law. He stated that they were first set up during the KANU (Kenya African National Union) party era and he is unable to tell how the land in Tinet Sotik Settlement Scheme was allocated and does not have the records. Further that he was not aware that the Tinet/Sotik Settlement Scheme was established to settle members of the Ogiek community. He stated that he is not aware of any original register in which the names of David Soi (the Defendant) had been cancelled and replaced with the names of Erastus C Maina. He stated that he has heard of Mr. Munguti and seen documents signed by him but cannot however tell his real signature from a fake one.
23. PW3 further stated that the title deed dated 15th October, 2006 for Nakuru/Tinet/Sotik Settlement Scheme/925 issued to David K. Soi, has a seal but he cannot tell if the seal is genuine and from their office. PW3 stated that the green card produced as PExhb 5 shows that the title is in favour of Erastus C. Maina and it was issued on 12th October, 2005 and was transferred to the Plaintiff on 21st November, 2006.
24. The Land Registrar testified that he noticed that there was a discrepancy between PExhb 1, a title issued to the Plaintiff on 15th November, 2006 and PExhb 5, the green card which indicates that the title was issued on 21st November, 2006. He stated that at times, some registries make the mistake of using the actual date when they issued the title as the date of the registration as opposed to the date when the registration was done.
25. PW3 further stated that PExhb 1 does not have the Registrar's stamp as opposed to the one issued to David K. Soi on 15th November, 2006 which had a stamp and further that the signatures on the two titles are not similar. PW3 stated that the Government Printer normally prints titles and indicate at page four the green card the month when the title was printed. It was his evidence that David K. Soi's title was printed on February 2012 yet it claims to have been registered in 2006 which is an anomaly.
26. On the Plaintiff's original title, PW3 confirmed that it does not indicate the month and the year it was printed which is normal as the requirement of indicating the month and the year of printing was introduced when forgeries of titles became common.
27. PW3 informed the court that in order to determine which of the two titles is genuine, he would have to see the registration documents that led to the issuance of the titles to confirm the details of the first owner. He stated that he would have to refer to the records of the District Land Adjudication and Settlement Officer. PW3 stated that normally, prior to issuance of a title, there has to be a discharge and transfer from the settlement office. And in this case he does not know what document was used



to issue the first registration, as they do not have the documents. He however, stated that he could not tell if the title was issued through fraud or not.

28. Upon re-examination by Mr. Matiri, PW3 testified that he did not find any evidence of fraud in the issuance of the title to the Plaintiff as the entry numbers in the title match those in the green card. PW3 testified that he did not see any other green card for the land besides what he produced and further that there is no green card in the name of David K. Soi.
29. PW3 testified that David K Soi's title was allegedly issued to him in 2006 and it was printed in February, 2012 which was essentially means that it was issued before it was printed which is an anomaly. PW3 testified that it is normal for older titles not to have the month and the year when they were printed.

Defendant's Case

30. DW1 David Soi adopted his witness statement dated 12th July 2012 as his evidence and testified that he started living at Kipsiret in 1997 and that the suit plot measuring 5 acres was allocated to him which was meant for the Ogiek community.
31. It was DW1's testimony that he was given an allocation card, shown the plot, constructed a house, planted tea crops, trees and continues to occupy the same to date. He further stated that he went to the land Registry at Nakuru and was told that the title had already been issued to James Mwaura. DW1 testified that he later went to the Land Disputes Tribunal and filed a case seeking to be issued with the title to the suit land.
32. DW1 further stated that he had sued the Plaintiff as he was informed that she was claiming the same parcel of land and that the Tribunal decided that he continues staying on his plot as he awaits the issuance of a title. Further, the Plaintiff filed an Appeal but she has never occupied the suit land.
33. According to DW1, the Plaintiff had a 10-acre plot near his plot which she sold and that they had been allocated the plots at the same time. He also testified that he had been allocated plot No. 925 while his wife was allocated No. 924 which are adjacent to each other and further that his son, Dickson, was allocated plot number 121. DW1 further testified that he lodged a complaint at the Ogiek Welfare Committee that his plot had been grabbed and a letter was written to the District Commissioner.
34. DW1 testified that in the year 2006, he swore an affidavit explaining the tribulations over the plot. He asked the court to assist him get the title. DW1 produced the list of documents dated 12th July, 2013 which the court marked as DExhb 1 to 8. DW1 testified that the Tinnet plot was allocated to members of the Ogiek community only and there were no outsiders allocated the plots.
35. Upon cross-examination by Mr. Matiri, DW1 stated that he lost his eyesight in 1999 and in 2007 he could not see. Further that he does not have a title deed for his plot and that his name has never been reflected at the Land Registry as the owner of plot No 925. DW1 was referred to PExb2 and stated that it shows the plot initially belonged to the government and that the Area Chief allocated him the plot in 1997. DW1 referred to DExhb 6 and stated that he is not aware that it talks about another plot and not No. 925. DW1 confirmed that he did not check the card number to see if it had a plot number.
36. DW1 confirmed that PExhb 4 was a ruling of the Land Disputes Tribunal case and that prior to allocation of the plots, the whole land in the scheme was government forest land up to the year 2005. He stated that he was never conned and it is not true that the first allocation was done after 2005. Further that he was aware that the Allocation Committee was appointed by the government and the Plaintiff's husband was a member of that Committee.



37. DW1 stated that the Ogiek Welfare Council wrote a letter dated 7th November, 2006 that they had been allocated plot Nos. 822, 823 and 121 Tinet and that he was never informed that the Appeal Tribunal decided that the suit plot was not his. He stated that he neither received a letter from the District Commissioner nor the Area Chief asking him to vacate. It was his evidence that he does not own plot No. 121 but confirmed that the title is in his name even though it belongs to his son.
38. Upon re-examination by Mr. Konosi, DW1 testified that him, his wife and son own plot Nos. 925, 924 and 121 respectively and that he never paid anybody money to be given the plot. That the Plaintiff's husband was a counselor and was allocated the plot by the Chief and the Committee. DW1 testified that he does not know James Mwaura and but he had been told that he had taken the title to his plot.

Plaintiff's Submissions

39. Counsel for the Plaintiff filed submissions dated 8th January, 2025 and identified the following issues for determination:
- a. Whether the Plaintiff has identifiable interest in the property capable of protection by the court?
 - b. Whether the Plaintiff's case has been proven on a balance of probability?
 - c. Whether the defence and counterclaim case is proven and or compelling?
 - d. Whether there was illegality in the defendant/counterclaimants claim?
 - e. Whether the prayers sought in the plaint and the defence to counter claim are merited?
 - f. Who bears the costs in both the suit and the counterclaim?
40. Counsel relied on Sections 24 and 26 of the *Land Registration Act* and submitted that the sections deal with the legitimacy and regularity of the acquisition of title and if proven that it was acquired through fraud, misrepresentation or irregularly then the same must be impeached.
41. Mr. Biko, submitted that the Plaintiff's claim of purchase of the land, prior registration by Erastus C. Maina and transfer to her is uncontested and unimpeached by any evidence hence her claim should be allowed.
42. It was counsel's submission that the Defendant filed a counterclaim but failed to prove that the methods and process leading to its impugned acquisition of the title was regular. Counsel further submitted that the Defendant has not made any response as to why he encroached or took over forestland prior to 2005 devoid of process and urged the court to dismiss the Defendant's counterclaim and allow the Plaintiff's suit with costs.
43. Mr. Biko further submitted that the title held by the Defendant is void as its roots cannot be traced or supported by the party asserting the same and thus no rights can accrue from it. According to counsel, the Plaintiff has discharged her evidentiary burden of proof to the required threshold of a balance of probability and relied on Article 2 (6) of *the Constitution* of Kenya, Sections 50 (2) (c) and 52 (1) of the Forest Act (Cap 385 Laws of Kenya) and General comments number 7 and 14 on the Right to adequate housing under the International Covenant on Economic Social and Cultural Rights (ICESCR).
44. Counsel also relied on the cases of ELC Petition No 42 of 2013 Re; Clement Kipchirchir & 54 others vs Principal Secretary Ministry of lands and Housing, National Lands Commission, Kenya Forest Services and the Attorney General, Mombasa High Court Constitutional Petition No 22 of 2014: Re Manase Guyo & 260 others vs Kenya Forest and The Registered Trustees Kipini Wildlife and Botanical



Conservancy Trust, The Shimoni Resort vs Registrar of Titles and 5 others (2016) eKLR and Samwel D. Omwenga Angwenyi vs National Land Commission & 2 others (2019) eKLR.

45. Counsel submitted that from the cited cases the court cannot protect an irregularly acquired title devoid of the requisite process towards acquisition of forest land. Further that the defendant cannot be a bona fide allottee of land that was not available for allotment as he has not produced any evidence and the root of his title is doubtful.

Defendant's Submissions

46. Counsel for the Defendant filed submissions dated 17th February, 2025 and identified the following issues for determination:
- a. Whether the title held by the Plaintiff was fraudulently obtained?
 - b. Whether the Plaintiff's suit is merited?
 - c. Whether the Defendant is the rightful owner of the suit land?
 - d. Whether the Defendant's counterclaim is merited?
 - e. Who should bear the costs of the suit and counterclaim?
47. On the first issue, counsel submitted that the Plaintiff's mere claim and availing a title to the suit property does not warrant her to be the proprietor of the suit property. Counsel submitted that that Erastus C. Maina was not a member of the Ogiek community and that the Settlement Scheme was meant to settle the Ogiek community and as such a non-member could not qualify.
48. Mr. Konosi submitted that the husband of the Plaintiff was among the Committee members who were allocating land and as such since he could not allocate the land directly to his wife, he fraudulently allotted it to Erastus C. Maina who allegedly sold it to the Plaintiff.
49. Counsel relied on Section 26 of the *Land Act* and the cases of : Alice Chemutai Too vs Nickson Kipkurui Korir & 2 others [2015] eKLR, Republic vs Minister for Transport & Communication & 5 others Ex Parte Waa Ship Garbage Collector & 15 others Mombasa HCMCA No 617 of 2003 [2006], Dina Management Limited vs County Government of Mombasa & 5 others [2023] KESC 30 (KLR), Hubert L. Martin & 2 others vs Margaret J. Kamar & 5 others [2016] eKLR and Munyu Maina vs Hiram Gathiha Maina, Civil Appeal No 239 of 2009.
50. On the second issue, counsel submitted that the Defendant has demonstrated that the certificate of title held by Erastus C. Maina was fraudulently obtained and as such could not pass good title to the Plaintiff. Counsel relied on the case of Leonard Otieno vs Airtel Kenya Limited [2018] eKLR.
51. On the third issue, counsel relied on Article 40 of *the Constitution* of Kenya and submitted that the Defendant has shown how he came to own the land hence is legally registered proprietor of the suit property.
52. On the fourth issue, counsel submitted that the Defendant's counterclaim should be allowed as prayed with costs and the Plaintiff's suit to be dismissed and relied on Section 27 of the *Civil Procedure Act* and the case of Morgan Air Cargo Limited vs Everest Enterprises Limited [2014] eKLR.

Analysis and Determination

53. The issues for determination that arise from the pleadings are:
- a. Who is the rightful owner of the suit parcel of land



- b. Whether there was fraud in the acquisition of the suit parcel by either the Plaintiff or the Defendant.
 - c. Who bears the costs of the suit and the counterclaim?
54. This is a case where both the plaintiff and the Defendant claim to be owners of the same suit land. Each party has narrated how they acquired the suit land. The Plaintiff claimed that she acquired the suit land through purchase from one Erastus C. Maina who later transferred the same to her and was issued with a title on 15th November 2006.
 55. The Plaintiff's witness PW3 who was the Land Registrar produced a certified copy of the green card in respect of Nakuru/Tinet/Sotik Settlement Scheme/925 which indicates that the registered owner is the Plaintiff and that the previous owner was Erastus C. Maina.
 56. It is trite that a title deed should be a true reflection of the green card which is the primary document where the title derives its data. The title held by the plaintiff is a true reflection of what is contained in the green card and the evidence that was adduced by both the plaintiff and the Land Registrar who is the custodian of the land records.
 57. It should also be noted that this matter had been referred to the Land Disputes Tribunal up to the Provincial Appeals Tribunal which gave a verdict that the Plaintiff was the rightful owner of the suit land and ordered the Defendant to vacate the same but he never did so.
 58. The Defendant gave evidence that he was not aware that the Provincial Appeals Tribunal had given a verdict in favour of the Plaintiff and it is on record that he never took any action to overturn the Appeals Tribunal verdict.
 59. Similarly, the Office of the President Provincial Administration also wrote a letter dated 1st March 2007 to the District Officer Keringet confirming that the suit land belongs to the Plaintiff.
 60. The Plaintiff was able to trace the root of her title, from government allocation to Erastus C. Maina then a transfer to her through purchase. When a court is faced with a situation where two or more people are claiming the same parcel of land, then it must look at the root of the title, how it was allocated or acquired, whether there was any fraud involved or illegality.
 61. In the case of *Hebert L Martin & 2 Others v Margaret J Kamar & 5 Others* {2016} the Court held:

“A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.”
 62. The Defendant tried to impeach the plaintiff's title but fell short of the evidence required to prove that the original owner who was allocated the plot by the government was involved in any fraud. Conversely, it is the defendant's claim to have been allocated the land that was doubtful. He did not give evidence



to counter the plaintiff's evidence which was corroborated by PW3 the Land Registrar the custodian of land records. The Land Registrar confirmed that the Plaintiff's title tally's with the record on the green card.

63. The Defendant tried to bring an angle that Erastus Maina committed fraud because he was not a member of the Ogiek Community as the land was meant for the resettlement of the Ogieks but was not able to go beyond that assertion.
64. The Defendant also alleged that the Plaintiff's husband was among the Committee members who were allocating land and as such since he could not allocate the land directly to his wife thus he fraudulently allotted it to Erastus C Maina who allegedly sold it to the Plaintiff.
65. PW3 on cross examination informed the court that besides the green card, there is a history behind the allocation of every parcel. He stated that according to the green card, the first registration was in favour of the government of Kenya and that the other records in Settlement Schemes are kept by the Land Adjudication and Settlement Office. Once the settlement process is complete is when they send the documents for registration where a green card is opened. If the Defendant wanted more information on the process, then he should have called the Settlement Officer to give evidence but this was not done.
66. The Defendant on the other hand had claimed that the Committee that was appointed by the government allocated him the land. His evidence on the process did not support his assertion of fraud by the plaintiff. The Defendant admitted that the Ogiek Welfare Council wrote a letter dated 7th November, 2006 informing him that they had been allocated plot Nos. 822, 823 and 121, which indicates that he was never, allocated the suit plot which belongs to the plaintiff.
67. The Defendant also alleged that the Plaintiff acquired the suit plot fraudulently, in the case of *Kinyanjui Kamau v George Kamau Njoroge* [2015] eKLR the court reiterated that:

“It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo v Ndolo* [2008] 1 KLR (G&F) 742 wherein the Court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”

68. In a case where a party alleges fraud, it is not enough to merely list the particulars of fraud, such a party must prove that the alleged party committed or engaged in the fraud. PW3 on cross-examination informed the court that the Defendant's title was printed on February 2012 yet it claims to have been registered in 2006 which is an anomaly. The land Registrar also stated that the Defendant's name has never been entered in their records and that records held at the lands registry show that the Plaintiff is the registered proprietor.
69. In the case of *M'ikiara M'rinkanya & Another v Gilbert Kabeere M'binjiwe* {1982-1988} I KAR 196, the Court held that where there was a double allocation of land, the first allotment would prevail. That after the first allotment, there was no power to allot the same property again.
70. This is not a case of double allocation; it is a case where a rogue Defendant refuses to accept that the land does not belong to him even after the Tribunal had ordered him to vacate the land.



71. Section 80(1) of the *Land Registration Act* gives the court powers to order for rectification or cancellation of title if it is satisfied that the same was obtained by fraud or mistake. It provides as follows:

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

72. The plaintiff prayed for mesne profits but the same being a special damage, the plaintiff needed to have led evidence and proved the same. I find that it was not proved.

73. I have considered the pleadings, the evidence on record and find that the Plaintiff has proved her case on a balance of probabilities and the same is allowed. The prayer for mesne profits was not proved therefore not allowed. The court also finds that the Defendant has failed to prove his counterclaim and the same is dismissed with costs.

74. I therefore issue the following specific orders:

- a. An order of permanent injunction is hereby issued restraining the Defendant and/or his servants or agents from invading, cultivating, developing, selling, charging, alienating or interfering howsoever with the Plaintiff's quiet possession of land parcel no LR No Nakuru/Tinet Sotik Settlement Scheme/925.
- b. An order is hereby issued cancelling the title held by David K. Soi over all that piece of land known as L.R No Nakuru/Tinet Sotik Settlement Scheme/925.
- c. The Defendant's counterclaim is hereby dismissed with costs.
- d. Costs of the suit are awarded to the Plaintiff.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 27TH DAY OF MAY 2025.

M. A. ODENY

JUDGE

