



**Kipeen v Adan & 2 others (Environment & Land Case
722 of 2017) [2025] KEELC 3701 (KLR) (5 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3701 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 722 OF 2017
LC KOMINGOI, J
MAY 5, 2025**

BETWEEN

NEENKA ENE KIPEEN PLAINTIFF

AND

FATUMA ADAN 1ST DEFENDANT

LAND REGISTRAR, KAJIADO 2ND DEFENDANT

HON. ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

1. By the Plaint dated 24th March 2016 (first filed in ELC Nairobi then transferred to this Court), the Plaintiff claims parcel Kajiado/Olchoro Onyore/1XX2 measuring 4.047 hectares belonged to her late husband Parsendeiye Ole Kipeen Kurenda and the same was transferred to her sometime in the year 1991. On the 7th October 2014, the Plaintiff transferred the suit property to her sons Michael Saruni Kipeen and John Rakita Ole Kipeen. On 12th February 2015 the land was subdivided into parcels Kajiado/Olchoro Onyore/17XX5 to 17XX8. It was at this point the 1st Defendant claimed that the land belonged to her on the basis that she purchased it from the late Parsendeiye Ole Kipeen Kurenda vide a sale agreement entered on 25th March 1984 for the sale of ten (10) acres of his parcel of land within Olchoro Onyore scheme for Kshs. 34,000.
2. Upon inquiry the Plaintiff discovered that the title to the suit property was issued to her late husband on 4th August 1987 and the same was transferred to the 1st Defendant on the same date. It is her case that her late husband was first issued with title to property Kajiado/Olchoro Onyore/1XX0 on 4th August 1987 and the same was subdivided to parcels Kajiado/Olchoro Onyore/1XX2 (suit property), 1XX3 and 1XX4. Therefore, the alleged sale and transfer to the 1st Defendant was fraudulent since the 1st Defendant had never been on the suit property until it was subdivided by her sons and sold off. It is



also her case that the 1st Defendant reported this matter to the police and a meeting was held to resolve the dispute at the District Land Registrar's Office on 6th October 2015.

3. The particulars of fraud and illegality against the 1st and 2nd Defendants were:
 - i. That the 1st Defendant illegally and unlawfully caused the original Green Card of parcel Kajiado/Olchoro Onyore/1XX2 to be replaced with a fake one depicting her as the registered owner.
 - ii. The 1st Defendant falsified Parsendeiye's signature and caused the suit property to be illegally transferred to her.
 - iii. The finger print mark on the seller's Identification card was significantly different from the one in the alleged sale agreement;
 - iv. The title deed in possession of the 1st Defendant showed that the actual measurement of the suit property was 12 acres, yet the 1st Defendant claimed to have purchased 10 acres for Kshs. 34,000 yet the Green card shows that the consideration was Kshs. 100,000.
 - v. There were two titles relating to the suit property issued on the same day to two different people- one to the late Parsendeiye and another one to the 1st Defendant.
 - vi. There was no proof of transfer such as consent from the Land Control Board or executed transfer forms.
4. She therefore sought for:
 - a. A declaration that the Plaintiff was the absolute registered owner of all that parcel of land known as Kajiado/Olchoro Onyore/1XX2 measuring approximately 12 acres or thereabouts, with indefeasible rights, title and interest.
 - b. A permanent injunction restraining the 1st, 2nd and 3rd Defendants themselves, their agents and/or servants from trespassing, evicting, wasting and or in any other way interfering with the Plaintiff's absolute title as was then.
 - c. An order to lift the restriction placed on parcels of land Kajiado/Olchoro Onyore/17XX5, 17XX6, 17XX7 and 17XX8 by the 2nd Defendants.
 - d. An order for annulment or revocation of the Certificates of Titles in possession of the 1st Defendant for having been obtained illegally, irregularly and thus null and void.
 - e. Costs of the suit and interest on (a) and (b) above.
5. The 1st Defendant in her Statement of Defence and Counter claim contested the Plaintiff's claim on the grounds that she was the registered owner of parcel Kajiado/Olchoro Onyore/1XX2 measuring 4.047 hectares or approximately ten (10) acres having purchased it from the late Parsendeiye Ole Kipeen Kurenda. The sale agreement dated 25 March 1994 confirms that the consideration was Kshs. 34,000. She stated that the subdivision and consequent titles Kajiado/Olchoro Onyore/17XX5 to 17XX8 were acquired illegally and fraudulently. Upon this discovery, she made a report to the police and the Deputy County Commissioner, a restriction was placed on the titles and criminal charges preferred against the Plaintiff. She went on to state that there was evidence of how the suit property was registered in her favour. However, there was no evidence to support the Plaintiff's claim. It is her case that she was issued with a title to the property on 4th August 1987 and she has never disposed of it and the fact that she was not in occupation did not divest her of her proprietary rights. She admitted that on 6th October



2015 there was a dispute resolution meeting which showed that the Plaintiff's documents had been obtained fraudulently and illegally. She prays that the Plaintiff suit be dismissed.

6. The particulars of fraud against the Plaintiff are given as follows;
 - i. Fraudulently obtaining Land Control Board's consent using a forged title and going on to subdivide the property into parcels Kajiado/Olchoro Onyore/17XX5 to 17XX8.
 - ii. Knowingly making false representation and carrying on with illegal transfers, subdivisions, and sale of the property using forged documents.
 - iii. Making unlawful alterations on the title deed, transfer documents and registry records.
 - iv. Presenting illegal and forged documents for registration.
 - v. Selling the property without the 1st Defendant's consent or authority.

7. She claimed that the Plaintiff had trespassed on her suit property and placed beacons on it and she was therefore entitled to damages. The Plaintiff had also obtained registration of the suit property and cost subdivision of the same hence she was entitled to rectification and orders of injunction. She therefore sought:
 - a. An injunction restraining the Plaintiff, her servants, workmen and agents from entering on and/or from erecting or causing to be erected thereon any structures, or from in any way interfering with the 1st defendant's use and enjoyment of the said property.
 - b. A permanent injunction restraining the Plaintiff and the 2nd Defendant and their agents, servants and/or successors, assigns in the title if any from trespassing, constructing thereon, selling, disposing, transferring or dealing in any matter whatsoever with the 1st defendants land Parcel No. Kajiado/Olchoro-Onyore/ 1XX2 now subdivided through use of forged title deed as L.R. No. Kajiado/Olchoro-Onyore/ 17XX5, 17XX6, 17XX7 and 17XX8 situate in Kajiado County.
 - c. A Declaration that the 1st defendant is still the owner of all that land Parcel No. Kajiado/Olchoro-Onyore/ 1XX2 now subdivided through use of forged title deed as L.R. No. Kajiado/Olchoro-Onyore/ 17XX5, 17XX6, 17XX7 and 17178 situate in Kajiado County.
 - d. A declaration that the transfer of the 1st defendant's property known as land parcel No. Kajiado/Olchoro-Onyore/ 1XX2 to the plaintiff was fraudulent, unlawful and null and void.
 - e. A Declaration that the sub-divisions of the 1st defendant property known as Land Parcel No. Kajiado/Olchoro-Onyore/ 1XX2 through use of forged title deed to L.R. No. Kajiado/Olchoro-Onyore/ 17XX5, 17XX6, 17XX7, and 17XX8 and the transfer of such sub-divisions to the Plaintiff and third parties of the suit land registered were fraudulent, unlawful, null and void.
 - f. An order that the land registrar Kajiado to cancel all the entries relating to the transfer of ownership of Land Parcel No. Kajiado/Olchoro-Onyore/ 1XX2 to the plaintiff.
 - g. An order that the land registrar Kajiado do cancel all the entries relating to the sub-division of Land Parcel No. Kajiado/Olchoro-Onyore 1XX2 to L.R. No. Kajiado/Olchoro-Onyore/ 17XX5, 17XX6, 17XX7, and 17XX8 issued on 12th February 2015 in the names of Michael



Saruni Kipeen and John Rakita Ole Kipeen registered in the register of Land Reference Number Kajiado/Olchoro-Onyore/ 1XX2.

- h. An Order do issue to the land registrar Kajiado to cancel all the entries relating to transfer of the said sub-division L.R. No. Kajiado/Olchoro-Onyore/17XX5.
 - i. An order for the rectification of the register compelling the Registrar to restore the 1st defendant as the rightful freehold proprietor of the suit property.
 - j. In the alternative, an order for compensation for current market value of the part suit property L.R. No. Kajiado/Olchoro-Onyore/ 17XX5 illegally sold by the Plaintiff.
 - k. General damages on account of trespass and fraud to be assessed by the Court.
 - l. Costs of this suit.
 - m. Any other relief the court deems fit to grant.
8. The 2nd Defendant and 3rd Defendants statement of defence was not in the Court file. They also did not participate in the hearing of the suit.
9. The Plaintiff in her Response to the 1st Defendant's Defence and Counterclaim stated that she had been the registered owner of the suit property from 1991 until 2014 when she transferred it to her sons who subdivided it to parcels 17XX5 to 17XX8. She added that the suit property was legally her because she even took a loan facility with it as the security and no issues of fraud or illegality were ever raised. And if there was any fraudulent activity, then the same was orchestrated by the 1st Defendant who as per the record was issued a title on the same day as Parsendeiye for Kshs. 100,000.
10. The Plaintiff also questioned the sale agreement on the grounds that there were no records of the transaction such as transfer form and letter of consent from the Land Control Board. The Plaintiff also claimed that her late husband's Identity Card No. 6115XX0/X9 on the sale agreement did not tally with the copy in her possession. She thus sought for dismissal of the 1st Defendant's counterclaim.

Evidence of the Plaintiff.

11. PW1, Neenka Ene Kipeen the Plaintiff, stated that she was a farmer and resident of Oltiani. She adopted her witness statement dated 30th March 2016 as her evidence in chief and produced her bundle of documents which was marked as P. Exhibit 1 to 7. She stated that suit property Kajiado/Olchoro Onyore/1XX2 was a gift to her from her late husband and this was done before the elders and the Chief. She put a thumbprint on some documents she had been given and she also took possession of the land.
12. During cross-examination she confirmed that she could not recall the year she was given the suit. She stated that the elders who were witnesses have passed on but she had produced evidence of the said meeting. She stated that she had gone blind and could not tell if the document which she put her thumbprint was in court but at the time when she put a thumbprint on it, she could see. After about three months she was then given the title deed in her name in the presence of the elders. She stated that she produced the title in court. She also stated that she was neither involved in the process of registration of title nor did she make any payments. Her husband handled the whole transfer. She later subdivided the suit property among her children. She went on to state that she was aware of all the parcels of land owned by her husband and one of the parcels was in Oltiani. She also stated that she resides on the suit property although she also visits Oltiani. She maintained that the suit property was not sold to anyone.



13. She confirmed that she was once sued by Fatuma (the 1st Defendant) where she testified and produced her documents. She added that the land belonged to her because she even secured a loan facility from the Agricultural Finance Corporation to buy cattle. She stated that it was probably her husband who picked the said title from Agricultural Finance Corporation.
14. On further cross examination she stated that she was a member of Olchoro Onyore group ranch by dint of being Ole Kipeen's wife, who was a member. And when her husband was given his portion of land and a title, he gifted her part of the land.
15. On re-examination she reaffirmed that the suit property was not sold to the 1st Defendant because her husband gave it to her and processed a title in her name.
16. PW2 Michael Saruni Kipeen, stated that he was a businessman and a resident of Olchoro Onyore. He adopted his witness statement filed on 30th March 2016 as his evidence in chief.
17. On cross examination, he stated that he was residing on the land adjacent to the suit property and was utilising parcel 1XX2 as a grazing ground for his cattle. He stated that parcel 1XX2 was given to his mother by their father although he did not have evidence to prove this because he was young. His mother would then give them title to the said land and they carried out subdivisions. They appeared before the Land Control Board together with their mother as per the documents produced and upon surrender of the original title, the land was transferred to him and his brother. They later subdivided the land into four portions namely 17XX5, 17XX6, 17XX7 and 17XX8 and titles issued in 2015. One parcel has since been sold. He went on to state that the 1st Defendant reported the matter to the Land District Registrar and they were summoned for a meeting but he did not attend. He however got to know that the Land Registrar had made a decision.
18. On re-examination he re-affirmed that the Plaintiff gave them parcel 1872 which they subdivided.
19. Mr. Ochieng', for the Plaintiff, objected to the 1st Defendant's list of documents dated 25th October 2023 which was filed without leave of Court. Ms. Moturi for the 1st Defendant acknowledged that the same had been filed without leave but that she intended to seek leave. Mr. Ochieng' sought that the said document be expunged from record. The said document was a Judgement dated 26th November 2020 in Ngong' Chief Magistrates Court Criminal Case No. 73 of 2017- Republic vs Neenka Ene Ole Kipeen. This Court considered the submissions and granted the 1st Defendant leave to file the same with corresponding leave to the Plaintiff to re-open her case and file further documents if need be.
20. The Plaintiff opted not to re-open her case.

Evidence of the Defendants.

21. DW1 Hibac Ahmed Said, the Administrator of the 1st Defendant adopted her witness statement dated 25th October 2023 together with the bundles of documents which were marked as D. Exhibit 1 to 19. She urged the Court to grant the prayers in her counterclaim.
22. On cross examination she stated that the late Fatuma Adan was her aunt and that she purchased the suit property on 25th March 1983 for Kshs. 34,000 as per the sale agreement. The said agreement was witnessed by other parties who have since passed on. She confirmed that the sale agreement did not indicate the parcel number. She also stated that she was not aware whether stamp duty was payable back then. She confirmed that she had the original title deed of the suit property which she produced in Court as an exhibit. She stated that the title deed showed that the suit property was sold for Kshs. 100,000 which was a valuation from the Ministry of Lands. She also did not produce a copy of the transfer, or minutes of the meeting of the Land Control Board, although a copy of the consent was in



- the file. She stated that original was taken by the Director of Criminal Investigations for investigations. She confirmed that the consent was issued in 1987 and a search carried out in 2005 and 2008, confirmed that the registered owner of the land was Fatuma Adan.
23. She confirmed that the Plaintiff was acquitted of the criminal charge.
 24. On re-examination she pointed out the transaction took place between 1984 and 1987 and that the consideration stated on the register was entered by the Land Registrar. She reiterated that the copies of the search showed that Fatuma was the owner of the property having bought it from Ole Kipeen.
 25. At the close of the oral testimonies, parties tendered final written submissions.

Submissions of the Plaintiff.

26. On whether there was a valid contract, counsel submitted that the sale agreement was void because it made no reference to a particular parcel of land. Additionally, the Identification card number on the sale agreement 611XX60/X9 was different from the identification card held by Parsendeiye which had been produced as evidence. And the thumbprint on the sale agreement had been distorted by a stamp and the ones on the acknowledgement documents were not Parsendeiye's. Counsel also submitted that the purchase price on the sale agreement of Kshs. 34,000 was different from the purchase price indicated on the title deed which was Kshs. 100,000 which DW1 said was the Land Registrar's own remark. However, the undated Land Control Board consent also showed that the purchase price was Kshs. 100,000. The sale agreement therefore was invalid and the 1st Defendant only wanted to unjustly enrich herself.
27. On whether the 1st defendant was an innocent purchaser for value, counsel submitted that it was not in dispute the land initially belonged to the Plaintiff's husband. However, the 1st Defendant had not shown that her root title was legally acquired, citing inconsistencies in the purchase price from different documents. Reference was made to *Dina Management Ltd vs County Government of Mombasa & 5 others* [2021] eKLR, *Hebert L. Martin & 2 others vs Margaret J. Kamar & 5 others* [2016] eKLR, *Samuel Kamere vs Lands Registrar* [2015] eKLR and *Munyu Maina vs Hiram Gathiha Maina*. Counsel also submitted that the sale agreement was entered in 1984 while the consent was received in 1987 contrary to Section 8 of the *Land Control Act*. It was also pointed out that minutes of the LCB meeting were not produced, no evidence of transfer was provided, there was no proof of payment and there was no proof of due diligence undertaken. The Land Registrar's report was also questioned on grounds that the Land Registrar was never called as a witness to testify into the legality of the transaction. Counsel also submitted that the Plaintiff was acquitted of all the criminal charges against her for the offence of obtaining registration by false pretence in *Ngong Chief Magistrate's Court Criminal Case No. 73 of 2017* and by the High Court in *Republic vs Kipeen* [2023] KEELC 26382 (KLR). Additionally, the Land Registrar in criminal case no. 73 of 2017 failed to produce requisite documents such as consent letter, couldn't ascertain whether stamp duty was paid, did not see the transfer form to Fatuma, meant that the title held by her was not procedurally acquired contrary to Section 26 of the *Land Registration Act*.
28. On whether the 1st Defendant has proved the allegations of fraud against the Plaintiff as per her Counterclaim, counsel submitted that the 1st Defendant had not established her case as per Section 107 and 109 of the *Evidence Act* because she had not proved her allegation of fraud as per the required threshold as held in *Vijay Morjaria vs Nansingh Madhusingh Darbar & another* [2000] eKLR, *Evans Otieno Nyakwana vs Cleophas Bwana Ongaro* [2015] eKLR and *Kinyanjui Kamau vs George Kamau Njoroge* [2015] eKLR. Counsel pointed out that if the purchase price of the suit property was Kshs. 34,000, the acknowledgement receipts produced by the 1st Defendant amounted to Kshs. 43,000. He



questioned how it was possible to pay more than what had been agreed upon without explanation. And that the property being sold had not been indicated on the sale agreement, nor was any of the alleged witnesses of the agreement called to testify.

29. On whether the Plaintiff was entitled to the orders sought, counsel submitted that a permanent injunction is a remedy granted on merit citing *Green Square Ltd and Sheladia Associates & 2 others [2024] KEELC 3350 (KLR)* and *Kenya Power and Lighting Co. Ltd vs Sheriff Molan Habib*. Therefore, the Plaintiff having proved her entitlement to the suit property was entitled to the permanent injunctive relief sought together with costs.

Submissions of the 1st Defendant

30. Counsel for the 1st Defendant submitted on the following issues for determination:
31. Whether there was fraudulent acquisition and/or transfer of the suit property by the Plaintiff, counsel submitted that DW1 testified how the suit property was acquired by the late Fatuma from the Plaintiff's husband. On 4th August 1987, she was issued with a title to the suit property and remained in possession until the Plaintiff trespassed on it. Therefore, the allegation that it was given to the Plaintiff by her husband was false as there cannot exist two titles to the same property. Counsel submitted that the Plaintiff had proved how she acquired the property including producing a sale agreement, acknowledgement of payments, application for consent and eventual issuance of title. Counsel questioned the Plaintiff's allegation that she was gifted the land before council of elders meeting while none of the said elders was called to testify and there was no evidence of how the transfer took place. Counsel also submitted that the Plaintiff acknowledged that her husband sold some of his properties and that her sons were in possession of the property but on cross examination, PW2 who is one of the sons allegedly residing on the suit property said that he did not reside thereon but on the adjacent land. Counsel also submitted that the Plaintiff's title showed that the land initially belonged to Parsendeiye, which was then transferred to Fatuma and the fourth entry was from Fatuma to Neenka. This entry was contested on the grounds that the 1st Defendant had never sold the property to anyone and she was still in possession of the original title. Therefore, the Plaintiff's allegation had not been proven on the required threshold as per Sections 107, 108 and 110 of the *Evidence Act* and as held in *Kinyanjui Kamau vs George Kamau (supra)*. Counsel also submitted that the documents alleged to have been forged were never presented for forensic examination to prove the allegation. Adding that the search certificates for 2005 and 2008 were evidence that the property still belonged to the 1st Defendant. Counsel went on to submit that the Plaintiff confirmed that she was unaware of the property's acreage, documents used to transfer the property to herself, neither the year the property was given to her only pointed to the irregularity of the transfer. And that in Criminal case number 73 of 2017 where the Plaintiff was the accused, as much as she was acquitted, the Court found that fraud had been perpetrated. Therefore, there was circumstantial evidence tying the Plaintiff to the fraud committed citing *Ahamad Abolfathi Mohammed & another vs republic [2018] eKLR*.
32. On the issue of the discrepancy between the purchase price and the price indicated on the title, counsel explained that the sale was undertaken in 1984 but the title issued in 1987. And as land appreciates in value, the entry made by the Registrar was done in assessment of fees payable which was done in cash pursuant to Rule 10(3) of the Registered *Land Act* (repealed). Counsel also submitted that the transfer documents presented to the Land Registrar were destroyed after the lapse of six years as per Section 112 of the registered *Land Act* (repealed).
33. On who is the rightful proprietor of the suit land, Counsel submitted that the 1st Defendant had presented evidence of her proprietorship and her title was protected under Section 26 of the *Land Registration Act*. Pointing out that in 1991, the Plaintiff's husband had already relinquished



proprietorship of the suit property to the 1st defendant and there is no way he could have passed ownership of a property that was no longer his.

34. On whether the 1st Defendant was entitled to the prayers in the counterclaim, counsel submitted that having proved that the transfer to the Plaintiff was illegal and thus void, the subsequent transfer of the suit property to her sons and subdivision was equally void and the title impeachable as held in *Elijah Makeri Nyangwara vs Stephen Mungai njuguna & another* (2012) eKLR and *Alice Chemutai Too vs Nickson Kipkurui Korir & 2 others* [2015] eKLR. Therefore, the Plaintiff's suit should be dismissed and the 1st Defendant counterclaim be allowed together with costs.

Analysis and Determination.

35. I have considered the pleadings, evidence on record, the written submissions, and authorities cited. I find that the issues for determination are:

- i. Who is the legal and lawful owner of property Kajiado/Olchoro Onyore/1XX2;
- ii. Has the allegation of fraud been established?
- iii. Whether the Plaintiff is entitled to the reliefs of injunction orders and cancellation of title for LR No. Kajiado/Olchoro Onyore/1XX2 in the name of the 1st Defendant;
- iv. Whether the 1st Defendant has proved her case and is entitled to the prayers sought in the Counter Claim;
- v. Who should bear costs of the suit?

36. The Court is faced with two parties each waving title to the suit property with claims that their title is the absolute indefeasible title as per Section 26 of the *Land Registration Act*. It has been held time and again that it is procedurally incorrect for one parcel of land to have two titles. Kiage J.A in *Gathundu (As Administrator of the Estate of the Late Thumbi Kariuki) & 3 others v Registrar & 7 others (Civil Appeal E505 & E519 of 2020)* (Consolidated) [2024] KECA 668 (KLR) had this to say on the issue of competing titles:

“Once upon a time, the holding of a title deed, that treasured document that declared the person named therein as the indisputable owner of the landed property, was a ticket to peace and proprietary security. That it was before a vile mix of greed, rapacity and fraud on one hand and corruption mischief, and tampering of records on the other, increasingly rendered many a title deed worthless papers the holding of which, without more, provided neither certitude nor assurance of safety as courts have had to step in to decipher and determine which among two contending instruments of title is genuine and efficacious. The puzzle of competing title deeds over the same property on the ground in contemporaneous existence is now becoming a contest not of dualities of claims, but, as this case shows, one of multiple contestations, each backed by a title deed.”

37. This Court therefore has a duty to establish which of the two titles is the legitimate one. The first issue for determination is, who is the legal and lawful owner of property Kajiado/Olchoro Onyore/1XX2?

38. The Plaintiff's claim to the suit property begins in 1991 when her husband the late Parsendeiye Ole Kipeen Kurenda gifted her the property in the presence of the elders and the chief. She stated that she was asked to thumbprint on some documents by her husband and since she is not literate, she could not tell what documents they were. However, after about three months, she received title to the suit property in her name. She could not call the said elders as witnesses since they had



passed on. It is her case that she was in possession of the suit property until sometime in 2013 when she transferred the same to her sons Michael and John who then subdivided it into parcels; Kajiado/Olchoro Onyore/17XX5 to Kajiado/Olchoro Onyore/17XX8. It is also her case that the 1st Defendant- Fatuma Adan has never been in possession of the suit property. They only got to know of her upon the subdivision of the suit. The suit property was therefore legally hers as per the title deed issued on 10th September 1991.

39. The green card produced by the Plaintiff shows the history of the said title as follows:

The Green card was opened on 15th May 1987. The first entry dated 15th May 1987 was in favour of Olchoro Onyore for parcel 1X3.

Parcel 1X3 was subdivided giving rise to parcel 1XX0 which was registered on 4th August 1987 in favour of the late Parsendeiye Ole Kipeen Kurenda.

Parcel 1XX0 was closed on the same day on subdivision giving rise to parcels 1XX2, 1XX3 and 1XX4. Parcel 1XX2 being the property in this dispute.

On the same 4th August 1987 parcel 1XX2 was registered in favour of Fatuma Adan (the 1st Defendant) for a consideration of Kshs. 100,000 and title issued.

On 10th September 1991, parcel 1XX2 was then registered in favour of Neenka Ene Ole Kipeen (the Plaintiff) for a consideration of Kshs. 200,000.

40. On the encumbrances section part C of the green card, it goes on to show that a charge on behalf of Agricultural Finance Corporation was registered against the suit property on 16th October 1991 and the charge discharged on 30th September 1992. It is therefore on record that once the Plaintiff acquired title to the suit property, she went on to transact with it, transfer it to her sons who later subdivided it into four portions.

41. The 1st Defendant on her part claims that that she bought the suit property from Parsendeiye Ole Kipeen. The sale agreement does not indicate the exact parcel number. However, once the seller was issued with a title to parcel Kajiado/Olchoro Onyore/1XX0, it was subdivided into four parcels. The suit property was registered in favour of the 1st defendant and title issued in 1987. The history has already been outlined in the preceding paragraphs and I shall not belabour the same.

42. The 1st Defendant claims that since 1987, she has never sold it or transferred it to anyone else. And the certificate of search issued in 2005 supports this position. However, according to the green card on record, the suit property was transferred to the Plaintiff in 1991 for a consideration of Kshs. 200,000. If the 1st Defendant never sold it, how then did it pass to the Plaintiff?

43. The sale agreement dated 25th March 1984 is for the sale of 10 acres of land to the 1st Defendant. The description of the land being sold was not indicated on the agreement. However, this does not invalidate the agreement because it is on record that prior to 1987, the land was held and registered under Olchoro Onyore group ranch. It was common practice, that when the land was held under the Group ranches, individual members would still get into sale agreements for some portions of land awaiting subdivision and registration. It was not until 1987 when parcel 1X3 was subdivided by the Group Ranch, giving rise to parcel 1XX0 which was registered in Parsendeiye's name and which was then subdivided into four parcels. The suit property is one of them.

44. The sale agreement was also executed and attested as shown on the last page. The Plaintiff however contested her late husband's thumbprint but no evidence was produced to demonstrate that the thumbprint was not his. The Plaintiff also contested the identification card number 18XXX72/



- X4 indicated on the sale agreement and on the green card stating that Parsendeiye's identification card number was 61XX160. No report was produced to substantiate the claim of invalidity of these documents. However, while the Court is not an authority on matters of Registration of persons, this Court takes cognisance that the identification card number 6115160 produced in evidence was issued on 4th May 1996 which was many years after the sale agreement.
45. From the foregoing, I find that there was a valid sale agreement entered between Parsendeiye Ole Kipeen and Fatuma Adan in 1984 as per Section 3(3) of the [Law of Contract Act](#) which provide that:
- (3) No suit shall be brought upon a contract for the disposition of an interest in land unless-
- (a) the contract upon which the suit is founded –
- (i) is in writing;
- (ii) is signed by all the parties thereto; and
- (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party...
46. The next issue for consideration therefore is whether the transfer and registration of the suit property in 1991 to the Plaintiff is supported by any evidence.
47. The Plaintiff stated that her late husband effected transfer of the suit property in her favour. She was later issued with a title. No documents were produced to support this transfer. Additionally, in the report by the District Land Registrar dated 6th October 2015, it observed that the transfer of the suit property from one Parsendeiye to the 1st Defendant was clear, but the transfer from Parsendeiye to the Plaintiff or from the 1st Defendant to the Plaintiff was unsupported by evidence. While, Counsel for the Plaintiff submitted that it was imperative for the Land Registrar to be called as a witness by the 1st defendant to substantiate the report, both parties acknowledged that there was a dispute resolution meeting held at the Kajiado Land Registrar sometime in 2015.
48. It is important to note that the transfer of the property from the 1st Defendant to the Plaintiff in 1991 is questionable. The next issue for determination is therefore whether the allegation of fraud by the 1st Defendant against the Plaintiff had been established.
49. It appears all the Plaintiff did was to thumbprint on some documents given to her by her husband and a title was issued in her name. It is on record that the 1st Defendant reported the fraud to the Director of Criminal Investigations and the Plaintiff was charged with a criminal case being Ngong' Criminal case No. 73 of 2017; Republic vs Neenka Ene Ole Kipeen. The charge was that of obtaining registration of land by false pretence contrary to Section 320 of the [Penal Code](#). The Trial Magistrate acquitted the Plaintiff herein on grounds that the allegation of fraud against her was not proved beyond reasonable doubt. This was appealed in Republic v Kipeen (Criminal Appeal E009 of 2020) [2023] KEHC 26382 (KLR) and it was similarly dismissed for lack of merit.
50. Counsel for the 1st defendant submitted that as much as the Plaintiff was acquitted, there was evidence of fraud. He put forward the case of Ahamad Abolfathi Mohammed & another vs republic [2018] eKLR where it was held that circumstantial evidence is very often the best evidence.
51. It is not in dispute that the allegation of fraud has already been determined in the Criminal case both at the Lower Court and at the High Court on Appeal and the Plaintiff was found not guilty. This Court therefore finds that the question of fraud against the Plaintiff has already been determined and settled and the Plaintiff was not found guilty of any fraud regarding the transfer of suit property.



52. However, having found that there is no evidence to support the transfer of suit property to the Plaintiff in 1991, means that the 1st Defendant is the registered owner of Kajiado/Olchoro Onyore/1XX2. She is however not entitled to the claim of damages since the allegation of fraud against the Plaintiff was not proved.
53. The learned Magistrate in her Judgement dated 26th November 2020 in SPM at Ngong’ Criminal case No. 73 of 2017 between Republic vs Neenka Ene Ole Kipeen which was upheld by the High Court observed thus:
- “ ... the subsequent documents executed in relation to the said transaction, it is evident that the accused person did not participate in the same. No evidence was adduced by prosecution to show that she was aware of the transaction. There is therefore a possibility that her late husband left her in the dark and sold the land to the complainant. It would therefore not be surprising to her that her husband asked her to thumb print documents and later on gave her the title deed to the land. The accused is an elderly person and she said that she does not know how to read. It means that there is a high possibility that she did not understand the documents she thumb printed on.
- She stated that the title deed she was given was taken by the government. Documents which were executed transferring the land to the accused person must have been presented to the Land registry, and before issuing a title deed upon transfer of land, the person transferring the land must be known. The prosecution’s case is however silent on who transferred the land to the accused, considering that the complainant denied having done so. No transfer documents in relation to the said transaction were presented before the Court. There is also no evidence to show that the accused forged documents or in any other manner acted dishonestly in order to have the land registered in her name. The investigating officer ought to have gone to the root of the matter to find out the person or the people who were behind the said fraudulent transaction and not to present the accused before the Court as a scapegoat... Clearly, the accused was only charged because she was the beneficiary of the said fraudulent transfer...”
54. The requirement for spousal consent, was not in the Registered *Land Act* (Cap.300 Laws of Kenya). The seller, Parsendeiye Ole Kipeen Kurenda was the owner of the suit property which he sold to the 1st Defendant and a title deed issued in her name.
55. The standard of proof in civil cases is on a balance of probabilities. The 1st Defendant has proved that she has a title in her name issued on 4th August 1987. She is still in possession of the original title. She did not part with possession of the suit property.
56. In conclusion, I find that the Plaintiff has failed to prove her case against the Defendants on a balance of probabilities. The Plaintiff suit is hereby dismissed with costs.
57. In essence, the 1st Defendant’s counterclaim succeeds and I enter judgement in her favour as against the Plaintiff.
58. Accordingly, Judgement is entered for the 1st Defendant as follows:
- a. That a declaration is hereby issued that Fatuma Adan is still the owner of all that parcel of land known as Kajiado/Olchoro-Onyore/1XX2 now subdivided into parcels Kajiado/Olchoro-Onyore/17XX5, 17XX6, 17XX7, 17XX8.



- b. That the subdivision of Kajiado/Olchoro Onyore/1872 into parcels Kajiado/Olchoro-Onyore/ 17XX5, 17XX6, 17XX7, and 17XX8 and the subsequent transfer of such subdivisions to third parties is null and void.
- c. That the Land Registrar Kajiado is hereby ordered to cancel all the entries relating to the transfer and ownership of Land Parcel No. Kajiado/Olchoro-Onyore/ 1XX2 to the plaintiff and all other subsequent subdivisions and transfers within sixty (60) days from the date of this Judgement.
- d. That the Land Registrar Kajiado is hereby ordered to rectify the Register to restore Fatuma Adan as the rightful owner of Kajiado/Olchoro Onyore/1XX2 within sixty (60) days from the date of this Judgement.
- e. That the 1st Defendant shall have costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 5TH DAY OF MAY 2025.

L.KOMINGOI

JUDGE

