



REPUBLIC OF KENYA



**Muindi & 70 others v Kenyuco Housing Cooperative Society Limited &
15 others; Odera & another (Interested Parties) (Environment & Land
Case 165 of 2018) [2024] KEELC 3417 (KLR) (8 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3417 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 165 OF 2018**

MN GICHERU, J

APRIL 8, 2024

BETWEEN

PETER MWINZI MUINDI 1ST PLAINTIFF
PETER MWAURA MUNG'ARA 2ND PLAINTIFF
DOROTHY W. MWAURA 3RD PLAINTIFF
NDUNGU MWAURA KARANJA 4TH PLAINTIFF
LENNAH NDETHYA KITETU 5TH PLAINTIFF
DENNIS MULI MUTINDA 6TH PLAINTIFF
GILBERT ODUOR OSOLLO 7TH PLAINTIFF
JAMES GICHOBI KIMOTHO 8TH PLAINTIFF
FELISTAS WANGECHI GICHOHI 9TH PLAINTIFF
PRISCA ATIENO OGWAYO 10TH PLAINTIFF
NICHOLAS KARUME WEKE 11TH PLAINTIFF
SUSSY MEGON OGWAYO 12TH PLAINTIFF
ROSE MUENI KISIVE 13TH PLAINTIFF
CHARLES KARIUKI GITONGA 14TH PLAINTIFF
LILLIAN KARIMI MUGAMBI 15TH PLAINTIFF
JOHN CHEGE MBUGUA 16TH PLAINTIFF
SUSAN MUKII MATEE 17TH PLAINTIFF
RAHA MWAMBELA JILO 18TH PLAINTIFF



PAULINE HABADE JILO	19 TH PLAINTIFF
MARY MANDOYA SAGARA	20 TH PLAINTIFF
WILSON NGUNJE KARIITHI	21 ST PLAINTIFF
ALFELT MUMBO ABIO	22 ND PLAINTIFF
JENNIFER WANJIKU MAINA	23 RD PLAINTIFF
PETER MUTURI KIMANI	24 TH PLAINTIFF
NAFTALI MAINA WANDETO	25 TH PLAINTIFF
IN THE ESTATE OF PETER MACHARIA WILLIAM	26 TH PLAINTIFF
JOYCE KINYA	27 TH PLAINTIFF
JOHN LEPILANYASUNYA	28 TH PLAINTIFF
LATIF HASSAN ALI SIDI	29 TH PLAINTIFF
CATHERINE SIDI	30 TH PLAINTIFF
ROSE MUENI MUTUA	31 ST PLAINTIFF
ESTHER JELIMO KOTUT	32 ND PLAINTIFF
RAHAB WANJIKU NGUMBA	33 RD PLAINTIFF
ALBERT IRUNGU MUREITHI	34 TH PLAINTIFF
JAMES KINYUA NGUMBA	35 TH PLAINTIFF
JULIA KAMAU	36 TH PLAINTIFF
ESTATE OF MORRIS KABIRU NGUMBA	37 TH PLAINTIFF
ROSELYNE WAIRIMU NGUMBA	38 TH PLAINTIFF
IN THE STATE OF MAURICE TITUS NYAREGA	39 TH PLAINTIFF
HELLEN MISITA NYAREGA	40 TH PLAINTIFF
JANE NJERI NGUMBA	41 ST PLAINTIFF
PHILIP ALINYO OKOMBO	42 ND PLAINTIFF
DANIEL NJUGUNA	43 RD PLAINTIFF
FRANKLINE NDII	44 TH PLAINTIFF
JOEL GAD MUKOYA WAKALA	45 TH PLAINTIFF
IN THE ESTATE OF WILSON KARANJA KIMAMA	46 TH PLAINTIFF
JAMES KARIUKI KABIRU	47 TH PLAINTIFF
HELLEN NDOWANO KINCHELLAH	48 TH PLAINTIFF
JOSEPH THUITA	49 TH PLAINTIFF
JOYCE ADISA INGAIZA	50 TH PLAINTIFF



ALICE WAIRIMU MBURU	51 ST PLAINTIFF
MARGARET GATHONI MATU	52 ND PLAINTIFF
MARY NJERI PETER	53 RD PLAINTIFF
JAMES KIBATHI GITUANJA	54 TH PLAINTIFF
TERESISA WAMBUI GITUANJA	55 TH PLAINTIFF
JOSEPH MUSITA OTIN	56 TH PLAINTIFF
DANIEL MASUMBUO MANGI	57 TH PLAINTIFF
TEREZA MCHA MADOKA	58 TH PLAINTIFF
MARY KATHOMI RIUNGU	59 TH PLAINTIFF
ROSE MARIE OMITA	60 TH PLAINTIFF
HELLEN OLUOCH	61 ST PLAINTIFF
GEORGE KIBUKU MAINA	62 ND PLAINTIFF
EDDIE KAUNJA	63 RD PLAINTIFF
BENARD NJOROGE KABIRU	64 TH PLAINTIFF
MWAKAI KIKONDE SIO	65 TH PLAINTIFF
RICHARD KOSKE	66 TH PLAINTIFF
FRED OKENG'O	67 TH PLAINTIFF
JOYCE GACHERE PERE	68 TH PLAINTIFF
MICHAEL NG'ETICH	69 TH PLAINTIFF
MICHAEL NG'ETICH	70 TH PLAINTIFF
SYNERGY PROPERTIES	71 ST PLAINTIFF

AND

KENYUCO HOUSING COOPERATIVE SOCIETY LIMITED ...	1 ST DEFENDANT
THE DISTRICT AND REGISTRAR, KAJIADO	2 ND DEFENDANT
THE DISTRICT LAND SURVEYOR, KAJIADO	3 RD DEFENDANT
JOHN KANYUI MWANIKI	4 TH DEFENDANT
WYCLIFFE W FWAMBAH	5 TH DEFENDANT
NANCY GATHIRIMU	6 TH DEFENDANT
JOSEPH M WANG'OMBE	7 TH DEFENDANT
DUNCAN MUTUA	8 TH DEFENDANT
JACOB MUNENE	9 TH DEFENDANT
CAESAR WARUTERE	10 TH DEFENDANT



BERNARD MWANGI 11TH DEFENDANT
CEPHAS KAMANDE MWAURA T/A GEOTOPS SURVEYORS 12TH
DEFENDANT
MARY WANJIKU MBUGUA 13TH DEFENDANT
BERNARD KABUTU 14TH DEFENDANT
JOHN MACHARIA 15TH DEFENDANT
THE ATTORNEY GENERAL 16TH DEFENDANT

AND

ALPHONCE OTIENO ODERA INTERESTED PARTY
MATILDA KATHEU WAMBUA INTERESTED PARTY

JUDGMENT

1. The seventy one (71) plaintiffs seek the following reliefs against the sixteen (16) defendants and the two (2) interested parties.
 1. A declaration that the purported resurvey, re-subdivision and rectification of title No Kajiado/Kaputiei- North/3034 was fraudulent, unlawful, null and void *ab initio* in so far as such resurvey, rectification and creation affect LR Kajiado/Kaputiei-3517 to 3888.
 2. A declaration that the creation of LR No Kajiado/Kaputiei North 3889 to 3893, 19588 to 15993, 20103 to 20104, 22400 to 22405 and 23401 to 23473 out of title No 3034 was fraudulent, unlawful, null and void *ab initio* in so far as the resurvey, rectification and creation affect LR 3517 to 3888.
 3. A declaration that the opening of new registers for title deeds mentioned in paragraph 2 above and all the procedural steps leading thereto is null and void.
 4. A declaration that the transfers of the new title deeds in paragraphs 2 and 3 above by the second defendant to the first defendant is null and void.
 5. An order that the registers and the title deeds issued for the new title deeds mentioned in paragraphs 2, 3 and 4 above be cancelled forthwith.
 6. A declaration that the plaintiffs are entitled to ownership and exclusive use, occupation and vacant possession of LR 3517-3888 based on the dimension specified in the title deeds issued in 1997, to the exclusion of the defendants or any person claiming through any of them.
 7. An order of permanent injunction restraining the 1st, 2nd, 3rd and 12th defendants whether by themselves or through their agents and or servants from carrying out any alterations on the boundaries, beacons or in any way trespassing on or otherwise interfering with the plaintiffs' quiet enjoyment of parcels 3517 to 3888.
 8. An order of permanent injunction restraining the defendants jointly and severally by themselves, their servants or agents and others claiming through them from entering, remaining upon, using, dealing with or otherwise transacting upon title Numbers. 3517-3888.



9. An order of permanent injunction restraining the 2nd defendant from registering any mutations, survey plans and or rectifications resulting from any excisions, boundary adjustments, relocations involving the aforesaid parcels of land and the access roads against LR 3517 TO 3888.
10. An order compelling the 2nd and 3rd defendants to forthwith reinstate the Registry Index Map (RIM), survey map, green cards for LR 3517-3888 at their cost.
11. An order compelling the 2nd and 3rd defendants to reinstate the original beacons installed in 1997 in respect of LR 3517-3888 at their cost.
12. General and exemplary damages in addition to the other prayers 1-11.
13. Costs and interest of this suit.
14. Any other alternative relief that this court may deem apt to grant. This is as per the amended plaint dated 19/5/2017.

2. The plaintiffs' case is as follows. Around the year 1993, some of the plaintiffs formed the first defendant Kenyuko Housing Cooperative Society Limited. One of the reasons for forming the first defendant was for purchase of land for distribution to the members and also for sale of the purchased land to non members. The first defendant with the agreement of the members purchased LR Kajiado/Kaputiei-North/3034 which measured 40.47 hectares. This land which we shall call the original suit land, was registered in the name of the first defendant.

3. Between the years 1994 and 1997, the plaintiffs decided to subdivide the original suit land into 372 plots of the following sizes.

Plot Size in Acres Number of Plots

1/8 3

1/4 368

5 1

The members instructed the first defendant to implement their decision and the first defendant complied accordingly.

4. Upon the subdivision of the original suit land into 372 plots, the original title was closed on 21/2/1997. The new plots were transferred to the members and the purchasers as follows.

Plaintiff Plot No

1st 3797, 3798, 3802 and 3803.

2nd and 3rd 3795, 3796, 3800 and 3801.

4th 3807, 3808, 3812 and 3813.

5th 3887 and 3888.

6th 3865 and 3870.

7th 3735

8th and 9th 3739

10th 3815



11th and 12th 3866
13th 3832
14th 3276
15th 3593, 3594, 3601 and 3602
16th 3763 and 3764
17th 3745
18th 3810
19th 3740
Plaintiff Plot Number
20th 3728, 3729, 3733 and 3734
21st 3629, 3630, 3635 and 3636
22nd 3786, 3790 and 3791
23rd 3787, 3788, 3792 and 3793
24th 3885 and 3886
25th 3536 and 3537
26th 3758 and 3579
27th 3553 and 3554
28th 3528 – 3535, 3857 and 3862
29th 3834 and 3839
30th 3834 and 3839
31st 3768, 3769, 3773, 3774
Plaintiff Plot Number
32nd 361-3620 and 3625-6
33rd 3847, 3852 and 3853
34th no plot number
35th 3700 and 3699
36th no plot number
37th 3845-6 and 3850-1
39th 3681
40th 3682 – 3
41st 3704 – 5
42nd 3681
43rd 3519 – 20



44th 3521 -2 and 3524-5
45th 3775 – 3777 and 3780 – 82
46th 3848
47th 3585
49th no number
50th 3662
51st 3680
52nd 3751 – 2
53rd 3756 and 3761
54th 3755 and 3760
Plaintiff Plot No
55th 3757 and 3762
56th 3710
57th 3804
58th 3821 – 2
59th 3585
60th 3743 and 3738
61st 3744
62nd 3817
63rd 3884
64th 3584 – 5
65th 3649 – 60 and 3828 – 3
66th 3830
67th 3818, 3527, 3526 and 3523
68th 3771
69th 3558, 3539 – 41, 3545-48 and 3549
70th 3775 – 77

5. Plot numbers Kajiado/Kaputiei-3889 and 3894 were created by the 2nd and 3rd defendants and they did not feature in the survey plan. They were entered in the green card and now feature in the new map created in 2006 and their creation and inclusion in the map is fraudulent. According to the plaintiffs, the only genuine plots are numbers 3517 to 3888. The rest are fraudulently created.
6. The plaintiffs have pleaded many particulars of fraud committed by defendants. They include the following.



- i. Using a letter of consent Reference No 195432 originally issued in respect of LR 3032 to resurvey and restructure LR 3034.
 - ii. Creating 93 new titles without the consent or knowledge of the plaintiffs yet, these creations reduce the size of the plaintiffs' land parcels and those of other persons who are not parties to the suit.
 - iii. Purporting to sell some of the unlawfully created parcels secretly.
 - iv. Unlawfully re-opening a closed non-existent title register of the original suit land.
 - v. Denying the plaintiffs access to public documents like mutation forms and survey plans.
 - vi. Reducing and blocking the access roads to the plaintiffs.
 - vii. Many other instances of fraud.
7. In support of their case, the plaintiffs filed the following evidence.
- a. Witness statements by Wilson Ochola Osoro, Michael Ngetich, Jeniffer Wanjiku Maina, Joel Gad Mukoya Wakala, Henry Nyabuto Nyandwaki, Mwakai Kikonde Sio, Chris Maranga and Peter Mwinzi Muindi.
 - b. Copy of authority to appear, plead and execute on behalf of other plaintiffs.
 - c. Copies of title deeds.
 - d. Copy of certificate of confirmation of grant in the estate of Elizabeth Wacuka Ngure.
 - e. Copy of letter dated 14/8/2018 from the 1st defendant's central management committee to the 16th defendant.
 - f. Copies of title deed for LR 3787, 3788, 3792 and 3793 in the name of Jeniffer Wanjiku Maina.
 - g. Copy of title deed No 3680 in the name of Alice Wairimu Mburu.
 - h. Copies of title deeds for LR 3751 and 3752 in the name of Margaret Gathoni Matu.
 - i. Copies of title deeds for LR 3756 and 3761 in the name of Mary Njeri Peter.
 - j. Copies of title deed for LR 3755 and 3760 in the name of James Kibathi Gituanja.
 - k. Copies of title deed for LR 3757 and 3762 in the name of Teresia Wambui Gituanja.
 - l. Copies of their identity cards.
 - m. Copies of title deeds for LR 3593, 3594, 3601 and 3602 in the name of Lillian Karimi Mugambi.

8. The first defendant in its written statement of defence dated 28/7/2020 avers as follows.

Firstly, it was resolved by the members of the 1st defendant at the annual general meeting of 13/5/2005 that the suit property be restructured and resurveyed.

Secondly, any payments made unlawfully or before the consent of the Land Control Board was granted were unauthorized, outside the intent of the resolutions and done in bad faith by the then office bearers.

Thirdly, the purpose of the resurvey was not to create new plots or reduce the size of the existing land but to replace beacons which were missing.



Fourthly, any acts purporting to reopen the original title to the suit land was without authority of the members of the first defendant and is therefore ultra-vires and in bad faith.

Finally, the 1st defendant prays that the suit against it be dismissed with costs.

9. In support of the case, the first defendant filed the following evidence.
 - a. Witness statement by Daniel Mwangome.
 - b. Minutes of the AGM dated 22/6/2019.
 - c. Copy of the society's by laws.
 - d. Copy of title deed and green card for LR 3034.
 - e. Copies of payment receipts confirming society members' deposit of funds for the re-beaconing exercise.
 - f. Copy of minutes of the AGM held on 17/11/2006.
 - g. Copy of minutes of the AGM held on 15/6/2007.
 - h. Copy of letter to the Land Control Board dated 31/5/2006.
 - i. Copy of letter dated 24/5/2006 from Geotop Kenya Limited addressed to chairman of the society.
 - j. Copy of letter dated 30/3/2007 addressed to Cephas Mwaura and signed by the society's officials.
 - k. Copy of handing over report dated 11/11/2004.
 - l. Witness statement by David Kiganda.
 - m. Copies of society by laws for 1995 and 2006.
10. The 2nd, 3rd and 16th defendants in a written statement of defence dated 1/10/2018 aver as follows.

Firstly, LR No 3034 was registered in the name of the 1st defendant and the title closed on subdivision in 1997 and new numbers issued which are 3517 – 3894.

Secondly, by a letter dated 2/9/2005, the officials of the 1st defendant applied for the consent of the Land Control Board for the resurvey and restructuring of the land which consent was given on 8/2/2006 and a certificate of compliance issued on 11/5/2006.

Thirdly, the three defendants reasonably believed that all the members of the 1st defendant had consented to the resurvey and the restructuring.

Finally, the defendants pray that the suit be dismissed against them.
11. In support of their case, the 2nd, 3rd and 16th defendants filed the following evidence.
 - a. Copies of green card for land parcels 3034, 3517, 3518, 3520, 3521 and 3524.
 - b. Payment receipt No 0696865 dated 19/5/2006.
 - c. Copy of mutation form for resurvey of LR 3034.
 - d. Copy of letter of consent of the land control board for the resurvey of LR 3034.



- e. Copy of application for the consent of Land Control Board for the resurvey of LR 3034.
 - f. Copy of certificate of compliance dated 11/5/2006.
 - g. Copies of green card for LR 23414, 23425, 23426, 23432, 23433, 23443, 23464, 23470, 23471 and 23472.
12. The 4th defendant through counsel on record filed a written statement dated 30/8/2017 in which he avers as follows. He did not commit any fraud, create a new map, trespass on the plaintiffs' land or do any of the things he is accused of by the plaintiffs. He therefore prays for dismissal of the plaintiffs' suit against him with costs.
13. The 9th and 12th defendants through counsel on record filed a written statement of defence dated 10/2/2020 in which they state as follows.
- Firstly, the 12th defendant was issued with a copy of the mother title by the 1st defendant and proceeded to Kajiado Lands Office where there was neither a mutation form nor a registered map.
- Secondly, on reporting to the 1st defendant the absence of a mutation form or a registered map, the 1st defendant provided a draft copy of a sketch upon which an actual map was processed from the Kajiado Lands Office.
- Thirdly, he proceeded to the ground for re-establishment of the beacons using the map after resurvey and made sure every title deed had a parcel of land as the initial sketch was faulty, defective and erroneous.
- Fourthly, the re-establishment of the beacons was meant to accommodate all the members equally with each member getting 0.07 hectares. He is not aware that he created an extra 93 parcels in the process of the re-establishment of the boundaries. He prays that the suit against him be dismissed with costs.
14. In support of their case, the 9th and 12th defendants filed the following evidence.
- a. Witness statement by Cephass Kamande Mwaura dated 10/2/2020.
 - b. Copy of ID Card No 2003709 dated 24/7/2014.
 - c. Copy of certificate of incorporation of Geo-Top Kenya Limited dated 16/4/1996.
 - d. Copy of the Registry Index Map.
15. The 10th and 11th defendants in their written statement of defence dated 12/10/2021 aver as follows.
- Firstly, it was the members of the 1st defendant who complained that they were unable to trace beacons in the suit property and requested the society to engage a professional survey to assist in the re-establishment of the beacons.
- Secondly, the members of the society agreed to make payments of Kshs. 2000/- to finance the exercise.
- Thirdly, each parcel of land got a title deed as the initial sketch was faulty, defective and erroneous. They deny all the averments by the plaintiffs and the 1st defendant and pray that the suit against them be dismissed with costs.
16. In support of their case the 10th and 11th defendants filed the following evidence.
- a. Witness statements by the 10th defendant dated 16/2/2022.
 - b. Copies of letters dated 24/1/1997, 24/3/2004, 11/1/2007 and 8/6/2011.



- c. Copy of minutes dated 8/1/2016.
 - d. Witness statement by the 11th defendant
17. The interested parties filed an amended defence dated 27/6/2018 in which they aver as follows.
- Firstly, they say that they do not have notice of the parcels claimed by the plaintiffs.
- Secondly, between 12/10/2006 and 29/11/2006, they innocently purchased LR 23431 from Multi Pen Investments Company Limited and they were issued with a title deed by the 2nd defendant.
- Thirdly, before purchasing they conducted an official search and the 2nd defendant confirmed that the registered owner was the seller.
- Fourthly, when they were served with a court order by the 15th plaintiff, they were developing their plot. The ownership of the seller was further confirmed by a copy of the green card issued by the 2nd defendant on 19/2/2008.
- Finally, they call for the dismissal of the plaintiffs' suit with costs.
18. In addition to the above defence, the interested parties issued a notice by a defendant claiming against a co-defendant dated 27/6/2018 to the second to 16th defendants to the effect that in the event that the plaintiffs' case succeeds, then the 15 defendants shall be liable for any loss suffered by the interested parties. The 16th defendant issued a similar notice against the 1st defendant. The said notice is dated 1/10/2018.
19. At the trial which lasted from 13/10/2021 to 11/5/2023 four witnesses testified on behalf of the plaintiffs' while eight (8) testified on the part of the defendants. The first interested party also testified. They all adopted their witness statements or affidavits after which they also adopted their documents as exhibits after which they were subjected to cross-examination by the adverse parties' counsel.
20. Counsel for the parties filed written submissions on 31/8/2023, 25/10/2023, 2/11/2023, 6/12/2023 and 29/1/2024 respectively.
- The issues that arise in the submissions are as follows.
- a. Whether the plaintiffs have proved fraud against each of the defendants.
 - b. Whether all the defendants have trespassed on the suit property.
 - c. Whether the claims by some of the defendants against the defendants have been proved.
 - d. Whether fraud has been pleaded and proved to the required standard.
 - e. Whether the 1st defendant and its officials acted ultra-vires their mandate.
 - f. Whether the mother file for the suit land could be re-opened for resurvey and rectification after closure and whether the 1st defendant had good title to pass.
 - g. Whether the 93 plots should be cancelled and the original subdivisions upheld.
 - h. Whether damages should be awarded to the plaintiffs.
21. I have carefully considered all the evidence adduced by all the parties including the witness statements, documents and testimony at the trial. I have also considered the submissions by learned counsel for the parties including the issues raised and the law cited. I find that the issues as identified by all the parties and summarised above will determine the dispute.



22. On the first issue, I find that though fraud was at first hatched by the 5th, 6th, 7th, 8th, 9th and 10th defendants, the 2nd, 3rd and 16th defendants cannot escape blame for allowing and condoning reparation without following the procedure laid out in Section 23 of the *Land Registration Act* and Section 26 of the *Registered Land Act* (Cap 300) now repealed. They provide as follows.

“Subject to Section 15 and the authentication of the cadastral map, on the application of the proprietors of contiguous parcels who are desirous of changing the layout of their parcels, and with the consent in writing of all persons in whose names any right or interest in the parcels is registered and of any cautioner, the Registrar may

- a. Cancel the registers relating to those parcels and prepare registers in accordance with the new edition of the cadastral map; or
 - b. Refuse to effect the reparation if the Registrar considers that the purposed reparation involves substantial changes of ownership, which should be effected by transfers without invoking this section, in which case, the Registrar shall direct the proprietors accordingly”.
2. “Upon reparation, the new parcels shall vest in the persons in whose names they are registered”.

My understanding of Sections 15 and 23 of the *Land Registration Act* is that since the plaintiffs had been registered proprietors of their respective parcels, reparation should not have happened without the consent of each one of them in writing as required in Sub-section 23(1) of the Act. The second and third defendants cannot say that they were not aware of the requirements of this law. Neither can the 12th defendant feign ignorance of the law of reparation.

Secondly, my understanding of the law of reparation is that a person can only reparcel what is registered in their names. This means that since the access roads were no longer in the names of the plaintiffs, they were not available for reparation. This is something that the 2nd, 3rd and 12th defendants knew or ought to have known. They cannot therefore escape liability for fraud.

23. From the evidence adduced by the plaintiffs, it is not clear to me which of the defendants has encroached on which parcel but from the evidence of the second interested party it is obvious that she is a trespasser on the original 372 parcels. Again from the evidence of John Mukhoya Wakala (PW4) it is obvious that there is a trespasser on his land. Generally speaking, all the plaintiffs’ land parcels have been trespassed upon by all the defendants because reduction in the registered size is trespass.

24. On the issue of whether the claims by some of the defendants against their co-defendants have been proved, I find that the 2nd, 3rd and 16th defendants have not proved any liability on the part of the 1st defendant because of the finding of liability against them in paragraph 23 above. As for the interested parties, I find that they would ordinarily be entitled to judgment in their favour against the defendants. Unfortunately in their notice against the co-defendants dated 27/6/2018, the nature of their claim against the co-defendant is not disclosed. They have not said how much land they bought from which party and how much they paid for it. They have also not disclosed what loss they have suffered as a result of the loss of the land. Their pleadings are scanty on the key ingredients of such a claim.

25. Regarding the pleading and proving of fraud, it is without doubt that paragraph 30 of the amended plaint dated 19th May 2017 has more than twenty (20) particulars of fraud against the 5th to 12th and the 2nd to 3rd defendants. As for proof of fraud to the required standard, I find that there is sufficient proof of fraud on the part of the defendants as outlined in paragraph 23 above. Furthermore, there



is sufficient evidence to prove that what the plaintiffs desired was the refixing of the beacons. That is what they voted for at the Annual General Meeting. What they got was something different. They got reduced parcels sizes, blockage of the public access roads and total chaos in the layout of their land. All this was done without their Knowledge and approval contrary to Sections 15 and 23 of the Land Registration Act or Section 26 of the Registered Land Act.

26. The first defendant has distanced itself from the actions of its six officials, i.e. the 5th, 6th, 7th, 8th, 9th and 10th defendants. As per the finding in paragraph 22 of this judgment the officials of the first defendant acted ultra-vires their mandate. Had they not so acted, this suit would not have been filed against them and the plaintiffs would not be having title deeds for parcels whose size is less than the registered area. They would have surrendered those title deeds during the reparcelling exercise as per the procedure.

Finally, on this issue, there is difference between resurvey and reparcellation. Resurvey entails refixing of boundaries by establishing the beacons. Reparcellation entails amalgamation of contiguous parcels and then changing the layout of the parcel. This is what the 5th to 10th defendants hatched and were aided by the 2nd and 3rd defendants. It was ultra-vires their mandate.

27. The finding in paragraph (26) above covers issues (g) and (h) in paragraph (20) of this judgment. For the avoidance of doubt, the mother title for LR 3034 could not be reopened for resurvey and rectification without the consent of all registered owners and in this case, no such consent was given.

Secondly, the 1st defendant did not pass a good title. In the same vein the 93 plots created out of the illegal exercise ought to be cancelled and the original 372 subdivisions upheld.

28. On damages awardable to the plaintiffs it is not doubted that the plaintiffs have suffered damages for the 17 or 20 years that the case has been pending in court. However, in their pleadings and evidence, the plaintiffs have not been deliberate in stating what damage they have suffered. None of the witness statements has anything to show how things might have been had the unauthorized reparcellation not taken place. For that reason, I find that claim is contrived as it is to be found more in the submissions than in the pleadings and the evidence.

29. For the above stated reasons, I find that the plaintiffs have proved their claim against the defendants jointly and severally. Consequently, I enter judgment for the plaintiffs against the defendants except the 1st defendant as prayed for in paragraph 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 13 of the amended plaint dated 19/5/2017 which is inclusive of costs and interest.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 8TH DAY OF APRIL 2024.

M.N. GICHERU

JUDGE

