



Rotich v Rono (Sued as the legal representative of the Estate of Andrew Kipngeno Rono) & another (Environment & Land Case 20 of 2020) [2024] KEELC 4008 (KLR) (2 May 2024) (Judgment)

Neutral citation: [2024] KEELC 4008 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 20 OF 2020**

LA OMOLLO, J

MAY 2, 2024

BETWEEN

PHILIP ROTICH PLAINTIFF

AND

ELIZABETH CHEPTANUI RONO (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ANDREW KIPNGENO RONO) 1ST DEFENDANT

SAMUEL KIPKEMOI TOO (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ANDREW KIPNGENO RONO) 2ND DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit vide a Complaint dated 5th March, 2020.
2. In the Complaint, he avers that he is the registered owner of all that parcel of land known as Nakuru/Saino Settlement Scheme/64 and he has the original title thereto.
3. He further avers that the Defendants' late father Andrew Kipngeno Rono fraudulently and unlawfully obtained another title for the same parcel of land claiming that the Plaintiff had sold the land to him which is false.
4. The Plaintiff lists the particulars of fraud as:
 - a. Obtaining title deed using forged agreement, transfer documents.
 - b. Obtaining registration over a land whose green-card is not available.
 - c. Purporting to buy land which had no search certificate.
 - d. Purporting to obtain title without obtaining the Land Control Board's consent.



- e. Forging documents and the Plaintiff's signature.
 - f. Purporting to transfer land without surrendering the original title deed which is still in the Plaintiff's possession.
5. He further avers that his case is that the Defendants filed Nakuru High Court ELC case No. 214 of 2016 against one Edward Kiprono Ruto and Solomon Yegon which case was decided in their favour but misled the court that the Plaintiff had sold the land to their deceased father but failed to disclose this to the Plaintiff herein.
 6. He avers that the Defendants are not in possession of the land but it is currently occupied by the Plaintiff through his authorized agents.
 7. He avers that it is his case that the title held by the estate of the late Andrew Kiprono Rono is null and void in law and cannot override his title which he has and which is earlier in time as he has never sold the land as alleged.
 8. The Plaintiff prays for judgement against the Defendants for:
 - a. A declaration that the title held by Andrew Kipngeno Rono for L.R Nakuru/Saino Settlement Scheme/64 is a forged title fraudulently obtained and it be cancelled. (Amended orally in court on 23rd March, 2022 by counsel for the Plaintiff with the agreement by counsel for the Defendant)
 - b. A permanent injunction restraining the defendants by themselves, servants and/or agents from entering into or interfering with the plaintiff's title and possession of all that parcel of land known as Nakuru/Saino Settlement Scheme/64.
 - c. Costs of suit.
 9. The Defendants filed their statement of defence on 9th October, 2020. The 1st Defendant states that her late husband Andrew Kipngeno Rono was the registered owner of that Parcel of Land known as Nakuru/Saino Settlement Scheme/64 and that the land was sold to them by the Plaintiff herein (sic).
 10. The 1st Defendant states that the Plaintiff surrendered to her late husband the original title deed and transferred the said Land to him. The 1st Defendant states that her late husband proceeded to process his Title Deed in his name and they were having temporary structures on the said Land and shortly after the purchase her husband became sick and died and they took him for burial at Londian.
 11. The Defendants state that when they came back , they found that one Edward Kiprono Ruto had settled on the said Land claiming that his son Solomon Yegon had purchased the same for him and he personally made an agreement with the Plaintiff herein on 24th November, 2015.
 12. The Defendants state that the said purchaser claimed to have processed the transfer and a copy of a Title Deed dated 23rd November, 2012 in his name and this dispute was handled by the Land Registrar. They add that the said Edward Kiprono Ruto tried to forge letters from Lands office to say he is the rightful owner but the Land Officer said that this was a forgery.
 13. The 1st Defendant states that the said Edward Kiprono Ruto had illegally occupied the said Land when they went to bury her husband and refused to move out and they went to court and filed Nakuru ELC No 214/2016 and the said case already been decided and a judgment was pronounced on 13th June, 2019 (sic).



14. The Defendants state that a decree has already been extracted and it is out for execution and every case must come to a finality. The 1st Defendant states that the court found out that her husband purchased the said land and cancelled the purported Title Deed of the Defendants therein and declared that her husband's Title Deed is the genuine Title Deed and ordered the Land Registrar to construct the Register and Green Card to that effect.
15. The Defendants' state that the said Edward Kiprono Ruto purported to appeal but later withdrew the same accepted to vacate the Land and was given three (3) months to vacate which was ending on 25th October, 2019.
16. The Defendants' state that on 25th September, 2019, the Plaintiff herein Philip Rotich filed a notice of motion wanting to be enjoined in the said Suit Nakuru ELC No 214/2016 and he was heard and the court dismissed his application.
17. The Defendants further state that the Plaintiff filed this case purporting that he has never sold his Land to any of the people claiming his Land i.e Andrew Kingeno Rono or Edward Kiprono Ruto and purported that he has been in occupation of the Land and he still occupies the same to date through his agents which the defendants state are false allegations.
18. The Defendants state that the Plaintiff does not stay on the said Land and the Plaintiff says that they have been harassing his employees which the Defendants state means his employees are the defendants in Nakuru ELC 214/2016 who were claiming that they have purchased the Land from him.
19. The 1st Defendant states that it is totally unbelievable that the Plaintiff did not know about Nakuru ELC No 214/2016 as he is claiming yet he stays within a radius of 5 kilometers of disputed Land and they were in occupation of the Land and it was taken over when they went to Londiani for burial of her late husband.
20. The Defendants state that this suit is just a connivance between the Plaintiff and the Defendants in Nakuru ELC 124/2016 to defeat justice and deny the 1st Defendant the fruits of the said judgement and the Plaintiff herein had never been in occupation either directly or indirectly and hence there will be no reason to restrain the 1st Defendant from occupying the said Land.
21. The Defendants state that up-to-date, it is the Defendants in Nakuru ELC 214/2016 who are on the Land and they have tried to evict them and they have refused and they have even written to the police to assist thereto without any success.
22. The Defendants prayed that the Plaintiff's suit be dismissed. They also sought the following orders from the court:
 - a. Court to find that the Plaintiff had sold the Land Nakuru/Saino Settlement Scheme/64 to the deceased husband of the 1st Defendant.
 - b. Court to find that the transfer was properly done and the title Deed in the name of the deceased husband of the 1st Defendant is genuine and should be maintained and if there is any Title Deed existing in regard to Nakuru/Saino Settlement Scheme/64 to be declared null and void and to be cancelled.
 - c. The 1st Defendant to be declared the rightful legal owner of Nakuru/Saino Settlement Scheme/64 in her capacity as the administrator of the estate of the deceased husband as found in Nakuru H.C ELC No 214/2016 and uphold all the orders given therein.
 - d. Costs of this suit and interest.



- e. Any other relief this Honourable court may deem fit to grant.

Factual Background.

23. The hearing of the suit commenced on 23rd March, 2022 in the presence of counsel for the Plaintiff and the Defendants.
24. It is important to note that before the trial commenced, Counsel for the Plaintiff made an oral application to amend the prayers in the plaint and the same was allowed by consent. The amendment was in respect to the reference/ number relating to the suit parcel. i.e. L.R Nakuru/Saino Settlement Scheme/64

Plaintiff's Evidence.

25. The first witness to testify in support of the Plaintiff's case is one Philip Rotich; hereinafter referred to as PW1. It is his evidence that he lives in Kuresoi and he is a teacher.
26. He stated that he has a statement filed in court on 5th March, 2020. He prayed that the court adopts his statement as part of his evidence, which prayer the court acceded to.
27. He testified that the land in dispute is his and that he has the title deed for it adding that it is Nakuru/Saino Settlement Scheme/64. It was marked and produced as Exhibit P1.
28. He went on to testify that he has never sold the parcel to anyone and added that there is a case No. Nakuru ELC No 214 of 2016 between Elizabeth Cheptanui Rono and Samuel Kipkemoi Too vs Edward Ruto and Solomon Yegon. He stated that he was not a party to that suit. PW1 produced a judgment entered in ELC 214 of 2016 as Exhibit P2. He also produced a ruling delivered in the case of ELC 214 of 2016 as Exhibit P3.
29. It is PW1's testimony that the suit parcel is his and there is a list that was used to allocate title. He testified that it is a list of the members of Saino Settlement and his name appears at No 64 and he produced it as Exhibit P4.
30. He stated that he was not in occupation of the suit parcel added that he was living in Bomet and his brother was the caretaker of it. He gave his brother's name as Augustine Bosibei.
31. He testified that the person in occupation of the suit land is Elizabeth Cheptanui. He went on to narrate that his brother told him that there were certain people fighting over his parcel and he later learnt that the people were Elizabeth and Yegon both of whom were parties in the suit ELC 241 of 2016.
32. He stated that he wants the court to find that the Defendants are not owners and the court to further order that they be evicted. He also prayed for costs of the suit.
33. In his witness statement filed on 5th March, 2020, he states that he is the owner of all that parcel of land known as Nakuru/Saino Settlement Scheme/64 the same having been allocated to him by the settlement fund trustees.
34. He states that he obtained title to the suit parcel on 12th October, 2005 and that he still has the original title document. explains that he has not been in occupation of the suit land because he was working in Bomet as a teacher and that during that period, he allowed neighbours to continue using the suit land in his absence.



35. He states that sometimes in June, 2019, he was informed that a case had been filed in court by the estate of one Andrew Kipng'eno Rono who were claiming that he had sold his land to him in the year 2006 and he was informed that they had a title deed to the land. He states that they had sued one Edward Kiprono Ruto whose defence was that he had sold the same parcel of land to him in the year 2012 and he (Edward Kiprono Ruto) also had an original title deed in his name.
36. He states that he instructed his advocates and the said advocate perused the court file and found indeed, the High Court had ruled in favour of the defendants herein and ordered that the land belongs to the late Andrew. He states that his Advocates duly filed an application seeking to reverse these orders but the court directed via a ruling delivered on 27th February, 2020 that his remedy lies in filing suit against the estate of Andrew to challenge their title if he did not sell the land to them.
37. He states that he has never sold his land to anybody and adds that he has never wrote the agreement allegedly produced by the defendants herein (sic). He also states that he has never attended any Land Control Board for the sale of the suit land as the law requires. He states that his signatures and documents must have been forged or fraudulently obtained and adds that he still holds the original title deed which he obtained in the year 2005 and he has never lost the same.
38. He states that the land is currently in possession of himself through his agents who have never been evicted from it. He states that he would like the court to order that the title held by the estate of the late Andrew Kipngeno Rono in his name be cancelled having been unlawfully and fraudulently obtained and he would also like the said estate to be stopped from interfering with his title and possession of land and costs of the suit.
39. Upon cross examination by counsel for the Defendants, he stated that he lives on another parcel and it is 10 kilometers away from the suit parcel. He confirmed that he is a teacher and that he started teaching in 1995. He confirmed that he was at the time of his testimony teaching at Korabariet Primary School.
40. He stated that in the year 2006, he was a teacher at Cheptomoriok Primary School and added that it is 15 kilometers away from the suit parcel. PW1 confirmed that he has never lived on the suit parcel and alleged that it is his brother who has been living on it.
41. In regard to the 2014 case, PW1 stated that he knew about it in 2019 and added that he does not know Andrew Kipngeno Ruto (deceased) and he also doesn't not know Samuel Too.
42. PW1 was referred to an agreement dated 3rd March, 2006 and stated that he never signed the agreement and never sold his parcel of land and added that the signature is a forgery.
43. He confirmed that he lives in Kuresoi and further confirmed that all the schools he has taught in are in Kuresoi. He stated that in the year 2006, he was living in Kuresoi and the parcel he lives in and the suit parcel are both in Kuresoi.
44. PW1 stated that he had been to the parcel prior to the court order and added that he knew about the dispute in 2019. He stated that he does not know Yegon, one of the parties in ELC case No 214 of 2016 and added that he has never sold the suit parcel to Yegon Salomon or Edward Ruto. He confirmed that his brother is a witness in this case.
45. On re-examination. PW1 testified that he does not know of the agreement dated 3rd March, 2006. He testified that he was not present during the execution of the agreement and added that the title deed has never left his custody.
46. He ended by stating that the parties to the suit ELC number 214 of 2016 never called him to testify in the case.



47. The second person to testify in support of the Plaintiff's case is Lilian Chepng'etich; herein after referred to as PW2. She stated that she lives in Okolgei. She stated that she wrote a statement dated 9th December, 2021 and prayed that the she adopted is as part of her evidence, which prayer the court acceded to.
48. She testified that Philip Rotich is her husband and they have been married for 30 years. She testified that the suit parcel to them and added that they left her brother in law to take care of it.
49. It was PW2's testimony that they never sold the parcel to anyone and stated that some people went to court claiming that her husband sold the parcel to them. She stated that had her husband sold the land, she would have known.
50. PW2 testified that anyone claiming that her husband sold the parcel to them is not telling the truth.
51. In her witness statement dated 9th December, 2021 she states that she is the wife of Philip Rotich the owner of parcel No Nakuru/Saino Settlement Scheme/ 64 and states that her husband never sold the said parcel of land and if he did, which she vehemently disputes, she would have been made aware of the same.
52. Upon cross-examination, PW2 confirmed that she lives in Okolgei in Kuresoi. She also confirmed that they have never lived on the parcel and they moved to Okolgei in 2019. She stated that before 2019, they lived in Bomet.
53. PW2 stated that she is the one who moved to Kuresoi in 2019 and added that her husband moved earlier because of work. She stated that he never sold the land and added that he always informs her of what he does.
54. She confirmed that in Bomet, they have land which is ancestral and she just knew that he got land and does not know when it was issued.
55. The third person to testify in support of the Plaintiff's case is one Augustine Kibet; herein after referred to as PW3. He testified that he lives in Okelgei and he knows the Plaintiff who is his older brother.
56. He testified that he wrote a statement dated 21st July, 2021 and prayed that it be adopted it as part of his evidence, which prayer the court acceded to. He testified that his brother never informed him that he sold the suit parcel to anyone.
57. It was his testimony that he went to the suit parcel in 2019 and found two people confronting each other. He testified that he called his brother, informed him and he was surprised by this news. He stated that the two people then filed a suit.
58. In his witness statement filed on 4th November, 2021, he states that he is a brother to Philip Rotich, who is the owner of all that parcel of land known as Nakuru/Saino Settlement Scheme/64.
59. It is his statement that one morning in 2019 as he was going about his business around the area in which the said parcel is located, he found two individuals engaged in a confrontation regarding the said parcel each of them alleging that his brother, Philip Rotich, had sold the parcel to them.
60. He states that knowing very well that his brother had never sold the said parcel, he immediately called to inform his brother of the said altercation after which he found out what was going on.
61. He states that from the inquiries that he found out that there was an ongoing legal dispute in respect of his parcel to which he sought to be enjoined as an interested party. He states that it was later decided that he should pursue an individual claim instead of coming in as an interested party.



62. Upon cross examination, PW3 confirmed that he lives in Okelgei in Kuresoi and that the suit parcel is about 20 kilometers from where he lives. He stated that on a certain day, he was going about his business and found two people engaged in a confrontation with regard to the parcel.
63. He stated that his brother would have told him about the sale of the land and his brother did not buy the land and it was given to him by the community. He confirmed that in 2019, it was not under cultivation.
64. PW3 stated that he did not see any building/houses and he would not know if someone said there were buildings. He stated that his brother lived in Bomet in 2019 and he was a teacher. It was also his statement that he lives in Kuresoi and that he moved to Kuresoi in the year 2020.
65. PW3 stated that his brother did not know about any dispute over the parcel of land until 2019 when he informed him.
66. Upon re-examination, PW3 testified that in 2019 when he visited the suit parcel, it was not under cultivation.
67. The fourth person to testify in support of the Plaintiff's case was one David Sigei; herein after referred to as PW4. He stated that he lives in Kiptoror and that he is not in employment. He stated that he went to the lawyers and wrote his statement and confirmed that the statement shown to him has his signature on it and is dated 9th December, 2021. He prayed that the same be adopted as part of his evidence in chief which prayer the court aced to.
68. PW4 testified that he knows Philip Rotich who is the Plaintiff and added that he was given land at Saino Settlement Scheme. He stated that he is an elder at Saino settlement scheme and added that he did not hear that Philip sold the suit parcel to anyone.
69. He testified that whenever a person wants to sell his land, he must call the elders and stated that he has never been called as a witness for the reason of a land sale by Philip Rotich.
70. Upon cross-examination, PW4 confirmed that he is an elder at Saino and he does not know the 1st Defendant. He stated, however, that he knows where the suit parcel is and added that he lives very close to the suit land. He also testified that there is a path that passes near the suit land.
71. He confirmed that there is a house on the suit land and stated that it was put up approximately six months ago. He reiterated that whenever a person wants to sell, he must tell the elders and it is not possible to sell without informing the elders.
72. PW4 stated that if a person sells without informing the elders, the sale would not be valid and the children of the seller also have to be informed. He stated that he knows the Plaintiff and added that he lives near him but not on the suit parcel.
73. He stated that they gave him the land in 2005 and he did not live on it. He stated that he left it in the care of his brother. He confirmed that Philip is a teacher and he teaches at a school at the scheme.
74. PW4 stated that the Plaintiff has taught in different schools within the scheme and previously, he was in Bomet and he then came to Kiptoror sub-location and he has been teaching in Baraboriet Primary School for 5 years.

Defendants' Evidence.

75. The first witness to testify in support of the Defendants' case is one Elizabeth Cheptanui Rono; herein after referred to as DW1.



76. She stated that she is the 1st Defendant in this matter and that she has a statement dated 8th October, 2020. She prayed that the same be adopted as part of her evidence which prayer the court acceded to.
77. She testified that she knows Andrew Kipngeno Reno. she explained that he is her deceased husband. She went on to state that she obtained grant of letters of administration ad litem and produced it as Exhibit D1.
78. She went on to testify that her husband bought land from Philip Rotich and that they entered into a sale agreement. She stated that she had the agreement adding that it is dated 3rd March, 2006. It was marked and produced as Exhibit D2.
79. DW1 testified that after the sale, her husband was given the original title by the Plaintiff which title was in in the Plaintiff's name. She testified that subsequently, they got the suit land registered in her husband's name and stated that she has a copy of the title deed. It was marked and produced it as Exhibit D3.
80. She testified that when they instituted a suit against Edward Kiprono Ruto and that the suit is ELC 214 of 2016. She explained that and they sued Ruto because they were both claiming the suit parcel. She went on to testify that she has the judgment delivered in the said suit. It was marked and produced as Exhibit D4.
81. DW1 testified that the court decreed that she takes occupation of the land and she produced the decree as Exhibit D5. She testified that her brother in law is in occupation of the suit parcel and his name is Samuel Too. She stated that she wants the court to help her get the land.
82. In her witness statement filed on 9th October, 2020, DW1 states that she is the widow of the late Andrew Kipngeno Rono who died on 11th April, 2011. She states that her late husband is the legal owner of land parcel NAKURU/SONA SETTLEMENT SCHEME/64 measuring 1.6 hectares.
83. She states that her husband bought the land in 2006 from Philip Rotich and they have been in occupation of the said parcel until her husband passed on after which they moved to their rural farm at Londiani.
84. She states that sometime in 2014, they came back to the said parcel, they found that Edward Kiprono and Solomon Yegon had occupied their land and were claiming ownership. She states that they reported the matter to the police post where they were both asked to avail their title deeds.
85. It is her statement that at the police station, the Defendants surprisingly brought a title deed issued after the death of her husband and a letter addressed to the area chief purporting that the land belongs to them. She states that she filed a case Nakuru ELC No 214/2016 and was decided in her favour.
86. DW1 states that she was surprised that the Plaintiff herein went to court claiming that he never sold the said land to her late husband and yet he all along knew the case was in court. She states that this is collusion with the defendants in Nakuru ELC No 214/2016 to take her land.
87. In her statement, DW1 asks the court to find the Plaintiff had sold this land to her late husband as per the documents produced and that the court finds that the suit land now belongs to her as the administrator of the estate of her deceased husband.
88. Upon cross-examination, DW1 stated that she was not present during the sale agreement between her husband and Philip Rotich. She stated that she was not present when they were negotiating and she only knows about the land when her husband showed her the title.



89. She confirmed that she was also shown the agreement and she does not remember the year when the agreement and title deed were shown to her.
90. She stated that it is true that she does not know when the agreement was made and how much was paid. She stated before her husband died, they were living on the suit parcel.
91. DW1 further stated that after her husband died, he was buried in Londiani. She stated that Londiani and Saino settlement scheme are different places and she does not know the distance in kilometers but stated that it costs about 500 shillings to travel from Londiani to the Saino.
92. It was DW1's statement that her husband was not buried in Saino because the family decided that he is buried in Londiani. She confirmed that she is a member of the family and she contributed in the making of that decision.
93. DW1 stated that when her husband was unwell, they moved out and went to Londiani and they moved because that is where they were getting help. She confirmed that when her husband got ill and he died, they were not living in Saino. She stated that her brother-in-law, the co-defendant (Samuel Too), was living on the land.
94. DW1 also confirmed that they sued Edward Kiprono Ruto in ELC 214 of 2016 and she stated that Edward Kiprono Ruto was in occupation and they sought orders for his eviction. She also stated that she does not remember the year that Edward Kiprono Ruto took occupation of the suit land.
95. The court sought clarification from DW1 on a number of issues. The first one was when husband passed away and she answered that he passed in 2011. She stated that she lives in Londiani and that is where her husband is buried. She stated that after the judgment in ELC 214 of 2016, it is her brother in law (the co-defendant) who lives on the suit parcel.
96. The second issue for clarification was on the person living on the suit land in the year 2011. DW1 answered that it was Samuel Too, her brother in law.
97. The court also sought clarification on whether Samuel Too moved out of the land between 2011 and 2016 and DW1 answered that he never moved out of the parcel of land. The court further sought clarification on the circumstances in 2016 that caused DW1 to file the suit in 2016 and she answered that Edward started construction on the suit land.
98. The court then sought clarification on where Samuel (the 2nd Defendant and her brother-in-law) was living when Edward commenced construction and she answered that Samuel was living on his parcel of land that is not too far from the suit land and she added that the 2nd Defendant was helping them take care of the suit parcel.
99. Upon re-examination, DW1 stated that before her husband died, they lived in Saino and while he was still unwell, they moved to Londiani.
100. She testified that her brother in law was taking care of the suit land and he brought a report that Edward had started construction on the suit land and that is when she filed the suit of 2016.
101. The second person to testify in support of the Defendants' case was one Samuel Kipkemoi Too; herein after referred to as DW2. He stated that he lives in Kuresoi and he is a teacher. He stated that he wrote a statement on 8th October, 2020 and prayed that the same be adopted as part of his evidence, which prayer the court acceded to.
102. He testified that he is a Defendant in this matter and he knows Andrew Kipngeno and he is his brother. He stated that Elizabeth Rono is the wife of his deceased brother.



103. He further testified that the dispute pertains to land situated at Saino settlement Plot No 64. He went on to testify that Elizabeth and himself have a grant issued to them and it has been produced as Exhibit D1.
104. DW2 was referred to Exhibit D2 and testified that it is a sale agreement dated 3rd March 2006 and it is between Andrew Kipngeno Rono and Philip Rotich. He testified that it is for Plot No 64 Saino scheme.
105. It was also his testimony that the seller is Philip Rotich selling to Andrew Rono and the purchase price is Ksh 100,000/= and on the date of execution, he paid Ksh 80,000/=. He testified that the agreement was witnessed by 4 people and he is one of them. He also testified that as a witness to the agreement, his testimony is that he was present when Philip Rotich sold the suit parcel to Andrew Rono.
106. He testified that the remaining Ksh 20,000/= was paid on 21st April, 2006 and also confirmed that the agreement is signed. He testified that Philip's testimony that he never sold the land is false. He reiterated that Philip sold the land.
107. DW2 testified that after the sale, his brother took occupation in 2006 and added that he lives about 300 meters from the suit land. He testified that subsequently, his brother fell ill and they took him to Londiani for treatment as there was a better hospital in Londiani.
108. His testimony was that their ancestral home is in Londiani and he was buried in Londiani. He testified that after the funeral, they came to Saino scheme and found that certain people had trespassed onto the suit parcel. He gave their names as Edward Ruto and Solomon Yegon.
109. DW2 went on to state testify that he asked them why they were on the land and they said that they were owners having purchased from Philip Rotich. He also testified that together with Elizabeth, they went to the police station and later they instituted a suit No 214 of 2016 at ELC Nakuru. He referred to Exhibit D4 which is a judgment.
110. He testified that the court decided that the suit parcel belongs to Andrew Kipngeno Rono and there were two titles and the court cancelled Edward's title. He confirmed that they got a decree in the suit and stated that it had been produced as Exhibit D5.
111. DW2 testified that at the time of the judgment. Edward was in occupation and they evicted him. He testified that they have built on the land and Elizabeth is farming on the land. He also testified that they also went to the ministry of lands and confirmed that the records relating to the suit property were in the name of Edward Rono. It was his testimony that he has a letter from the Ministry of lands dated 29th September, 2014 which he produced as Exhibit D6.
112. He went on to testify that they reported the matter to the police and stated that they had another dated 24th November, 2014 which stated that the land belongs to Edward Kiprono Ruto. The said latter was marked and produced as Exhibit D7.
113. He testified that Philip gave Andrew the original title which was surrendered to Lands office so that Andrew would have a title issued in his name. he stated that the copy of Philips title document shows that the title deed was issued on 12th October, 2005. He produced it as Exhibit D8.
114. He testified that he knows Philip Rotich and added that he was present in court and was wearing a jacket. He testified that he is a teacher at Korabariet primary at Saino settlement scheme and added that he teaches their children.



115. He testified that the school is 3 kilometers from Plot No 64 and also stated that Phillip has been teaching at Korabanet for over a year as at the time of his testimony. He testified that he was previously a teacher at Cheptomane primary which is also within the Saino settlement and it is 3.5 kilometers from the suit parcel.
116. He testified that Philip says that he did not know about the suit ELC No. 214 of 2016 but his statement is false. He reiterated that the Plaintiff knew about the suit because the land is not far from the school and it can be seen from the school. He testified that they have been on the land from 2006 to 2011 and they came back in 2014 to find Edward saying it had been sold to him by the Plaintiff.
117. He testified that the Plaintiff now claims that he neither sold the land to Edward or the deceased.
118. In his witness statement filed on 9th October, 2020, he states that the land parcel belongs to his late brother Andrew Kipng'eno A. Rono who died on 11th April, 2011. He states that his late brother bought the land from the Plaintiff through agreement dated 3rd March, 2016 and was issued with a title deed on 7th July, 2006. He states that his brother left behind a family and that the 1st Defendant is his wife
119. He states that his brother was in occupation of the land from the time he acquired it until the time of his death when the family moved to their rural home. He states that before the deceased started falling ill, he moved to the land and they were staying with him.
120. He states that sometime in 2014, he came to check on the land and surprisingly, he found that Edward K Ruto and Solomon Yegon were in occupation and upon asking them on whose authority they were staying there, they claimed to be the owners of the land and had purchased from Philip Rotich. He states that he reported the matter at Kuresoi Police Station and they were both asked to avail their copies of the title deed.
121. He states that they subsequently filed case No Nakuru ELC No 214 of 2016 against the said Edward Ruto and Solomon Yegon and the court found that his late brother had indeed bought the said land from Philip Rotich and evicted them.
122. He states that it is surprising that Philip Rotich is claiming that he never sold this land to his late brother and that he has never known about the other case whereas he stays within the proximity of the said land and he is a teacher at a school next to the said land.
123. He urged the court to find that the Plaintiff sold the land to his late brother and that the said land belongs to his late brothers.
124. Upon cross-examination, DW2 stated that he has been living in Saino settlement scheme since the year 2005 and before Andrew bought the land he was living in Londiani which is ancestral land.
125. He stated that the Londiani parcel is ancestral land and he was occupying 5 acres of it. He stated that he built a home and started farming. It was his statement that he was the one who informed his deceased brother about the land at Saino settlement.
126. It was his statement that he knew the fact of Philip selling from one of the witness in the agreement produced as Exhibit D2 and gives his name as Geoffrey Chepchilat who is deceased. He stated that he does not remember when he died.
127. He stated that and after learning about the sale, he called his brother who negotiated with the Plaintiff



128. It was DW2's statement that he was present during the negotiations and this happened in Kuresoi at a hotel. He stated that he does not remember the name of the hotel and he also does not remember the date.
129. He confirmed that the agreement is typed and he explained that they bought it from a bookshop. He stated that there are parts filled in long hand and stated that the original was produced in Nakuru ELC No.214 of 2016. He stated that there were six people present and the writing was by one James Chomba and he is the first witness to the agreement.
130. He stated that he does not remember if copies of the original were made and he does not remember if Philip Rotich kept a copy. He stated that it is not true that when the agreement was made, he was in Bomet and that he did not sign it.
131. He stated that it is true that Ksh 80,000/= was paid and it was in cash and there was no other payment made on that day. He stated that the agreement mentions payment of a sum of Ksh 500 and he does not know what it was for. He stated that he does not remember who paid it and what it was for.
132. DW2 stated that there was a balance of Ksh 20,000 to be paid and it does not mention the balance and when it was to be paid. He stated that during negotiations, it was mentioned that he would bring the balance when he got it.
133. It was his statement that the agreement shows that balance was paid on 21st April, 2006 and it has been signed by two people, Philip Rotich and Andrew and he was not present. He stated that it seems that other witnesses were also not present.
134. He stated that it is true that he would not know if the balance was paid and only the deceased and Philip would know. He stated that on the reverse, the words seller and buyer are written. He stated that on the part of the buyer, he can read the name Andrew Rono and the seller has put a signature.
135. He stated that the writing belongs to James Chomba and he was Andrew's witness. He stated that Geoffrey Chepchilat was Phillip Rotich's witness and he was brought by Phillip.
136. He stated that Geoffrey Chepchilat is deceased and he was not related to Philip and Samuel K. Too was Andrews' witness. He stated that Francis Maridany was a witness but he does not know who he was witnessing for. He stated that the original title was in the name of Philip Rotich and Philip Rotich had it. He stated that he gave the original title on receipt of Ksh 80,000/=.
137. He stated that the agreement does not say that the original title has been surrendered. He stated that the original title was given to Andrew (the deceased). He stated that he does not remember seeing transfer forms, identification cards or photograph on the date the agreement was drawn.
138. It was his statement that he never attended the Land Control Board and he does not know if the deceased and the Plaintiff attended the Land Control Board. On suit No 214 of 2016, he stated that they did not sue Philip Rotich and Edward told them that Philip Rotich sold the land to him.
139. He stated that he did not think it necessary to sue him and also confirmed that he did not call him as a witness as he did not think it necessary. He stated that the judgment did not mention Philip Rotich's title.
140. DW2 was referred to Exhibit D6 and stated that the owner is Edward Kiprono Ruto and he bought it from Philip Rotich. He stated that after purchase, his deceased brother took occupation and he lived on the suit parcel with his wife and children and this was in 2006.



141. He stated that he fell ill in 2011 and they took him to Londiani and there is his son who remained on the parcel and his name is Charles.
142. He stated that he came back to Saino settlement but the deceased and his wife remained in Londiani and he came back after three months and found Edward Ruto. He stated that he had built a wooden house and he was living with his family.
143. DW2 stated that the deceased's son was forcefully evicted and his house demolished and he reported to the police station. He stated that it is not true that he has given false evidence. He stated that it is not true that they effected transfer without the original title.
144. Upon re-examination, DW2 testified that the agreement is not a forgery and it has not been reported anywhere. He testified that Ksh 500/= is collecting fees and he does not know who it was paid to but it is not the purchase price. He testified that the agreement says the purchase price is Ksh 100,000/= and that Ksh 80,000/= was paid and it does not say anything else.
145. He testified that the agreement is a standard draft agreement leaving spaces to be filled and directing the parties on the information to input therein. He stated that the persons who appeared as witnesses, Andrew came with James Chomba and Samuel Too. He testified that Philip brought Geoffrey Chepchilat as a witness. He confirmed that Philip (The Plaintiff) was not a party to the suit ELC 214 of 2016 and added that it was between Edward Ruto and the deceased Andrew.
146. DW2 testified that the deceased was issued with a title in 2006 and there was no need to bring Philip into the matter. It was his testimony that about the Land Control Board, the title cannot be given without consents. He stated that the deceased got a title and he was not involved in attending the Land Control Board.
147. He reiterated that he was present during the negotiations and they agreed. He testified that the original title was surrendered to the deceased on payment of Ksh 80,000/= and the transfer could not be effected without Philip signing.
148. The third person to testify in support of the Defendants' case is James Musonik Chumba herein after referred to as DW3. He testified that he is a farmer and a part time lecturer at Kisii University. He stated that he knows Andrew Kipngeno Rono being deceased and he was his neighbour.
149. DW3 testified that he knows about the dispute and he referred to the sale agreement produced as Exhibit D2. He stated that this is a sale agreement between Andrew Rono (buyer) and Philip Rotich (seller). He stated that the agreement is dated 3rd March, 2006.
150. He testified that the land is Nakuru/ Saino settlement scheme No 64 and Ksh 80,000/= was paid in his presence and the purchase price was Ksh 100,000/=. He testified that he signed the agreement and he is a witness and it bears his signature and telephone numbers. He stated that they were a total of four witnesses.
151. DW3 testified that he knows that the land is in Kibara and it is less than 500 meters from his farm. He testified that the agreement was entered into in the year 2006 and the buyer took occupation and left after sometime. He testified that the wife still comes to the land and there are certain people on the ground. He testified that he gave his evidence in another dispute between Solomon Yegon and the Rono family (Andrew Kipngeno Rono). He testified that the dispute was that Yegon claimed to have bought land from Philip Rotich and took occupation.



152. It was his testimony that he knows that at some point both the Yegon family and Rono family were on the land and he does not know how the case ended. He testified that Philip Rotich sold land to Andrew Rono and he witnessed the agreement. He testified that Rono took occupation and he has never seen Rotich on the land for over sixteen years.
153. He stated that it is not true that Philip does not know about Andrew or his occupation because he lives in the same area and teaches in the same area. He testified that it is not too far from the farm.
154. Upon cross-examination, DW3 stated that he knows Philip Rotich and he confirmed that he is in court and identified him as a man seated at the back wearing a brown jacket. He stated that he looked like that person sitting at the back. He referred to Exhibit D2 and stated that the agreement was entered into in March 2006 and in 2006 he had just taken occupation of his wife's farm at Kibara village.
155. He stated that his land is less than 500 meters from the suit parcel and there are three people in between. He stated that in respect to parcel number 64, he does not remember who was living on it. He stated that he does not know whether or not there was someone living on it.
156. He informed the court that he does not know where Philip Rotich was living and he was present when the agreement was entered into. He stated that he did not participate in the negotiations and his role was to witness the signing of the agreement and he also witnessed other people sign it and he also wrote it.
157. DW3 stated that it is true that the agreement is both typed and written and he filed the empty spaces. He stated that he does not know who typed it and it was brought by Geoffrey Chepchilat and he has signed as a witness. He also stated that he bought it from a photocopy shop.
158. He stated that Ksh 80,000/= was paid by Andrew Rono to Rotich and this payment was made on the spot. He stated that he only witnessed payment of Ksh 80,000/= and there was Ksh 400 paid to the witnesses. He testified that he did not see any other money.
159. DW3 stated that the agreement has a payment of Ksh 500 and he is mistaken and it was 500 paid to all the witnesses and they shared the amount. He stated that there was a balance of Ksh 20,000/= to be paid and he does not know when it was to be paid.
160. He stated that he only participated in the things appearing on the front page of the agreement. He stated that there are certain writings at the back of the agreement and he did not write them and he does not know about them.
161. It was his statement that on the date of the agreement, he saw a title deed and the seller gave the buyer the title deed and it was the original. He stated that he only remembers the title deed. He stated that he does not remember the transfer form or application to the Land Control Board.
162. DW3 stated that the agreement does not state that the title deed had been handed over and he did not indicate it. He stated that the agreement was written at one of the hotels in Kuresoi center. He stated that the agreement was written in the presence of Mr. Rotich and it is not true that the Rotich who was at the signing was an imposter.
163. He stated that he did not know Mr. Rotich before the signing of the agreement and he met him for the first time during the signing of the agreement. He stated that Rotich was introduced to him by Chepchilat alongside the buyer and before this, he did not know them.
164. He stated that after the sale, Andrew took occupation and he saw him in 2008. He stated that at some point, he also left the land and he remembers that he was sickly. He stated that Philip Rotich teaches



at Cheptononok Primary which is about 5 kilometers from the suit land and he does not know where he lives.

165. DW3 stated that at present, he does not know where he is teaching but stayed at Chepronok for a long time and he would not be surprised to hear that he retired and it has been a long time. He stated that he testified in another matter between Mr. Rono and Solomon Yegon who was his primary school mathematics teacher. He referred to Exhibit D4 which is a judgment in ELC 214 of 2016. He stated that it is true that Philip Rotich was not a party to this case.
166. Upon re-examination. DW3 testified that he is confirming that Philip Rotich was in court and he identified him as the gentlemen seated at the back wearing a brown or green jacket. The court summoned the gentleman wearing a brown/green jacket and asked him what is his name and he answered his name is Philip Rotich.
167. He reiterated that he has never seen Philip Rotich on the suit land Number 64 from the time it was sold. He stated that Andrew was living on the land and he was sickly and from that time he did not see him again.
168. On the writings appearing at the back of the agreement, DW3 read them out and they are as follows:

“I have received Ksh 20,000 being my remaining balance on this date 21st April, 2006 Ksh 20,000/=.”

DW3 confirmed that he is the one who filled the form apart from signatures.

169. He reiterated that he prior to the writing and execution of the agreement, he did not know the buyer or seller. He explained that only Chepchilat was known to him and that it is the said Chepchilat who introduced the buyer and seller to him. He testified that he knew Chepchilat because he was a committee member of the settlement scheme during allocation of land.
170. He further reiterated that it is Philip Rotich who was present and signed the agreement. DW3 identified him as the person sitting in court wearing a brown/green jacket. He stated that it is not an imposter who signed the sale agreement.

Issues for Determination.

171. The Plaintiff filed his submissions on 19th October, 2023.
172. He identifies the following issues for determination:
 - a. What is the effect of judgment and ruling in NKR HC ELC 214 of 2016?
 - b. Between the two titles, which should be upheld?
173. The Plaintiff submits that the parties herein have relied on the judgment and ruling in Nakuru HC ELC 214 of 2016 in the current suit. He submits that the case was between the Defendants herein and one Edward Kiprono Ruto and Salomon Yegon. He submits that the Plaintiff in this case was not a party in the suit.
174. He submits that the title deed he holds was also not in issue in the case and so it cannot be cancelled on the strength of the judgment and decree in the said suit.
175. The Plaintiff further submits that by an application dated 25th September, 2019, he applied to be enjoined in the said suit as an interested party as he is the owner of the same. He submits that he applied



- for setting aside the proceedings and judgment therein and requested to be granted a chance to file pleadings and the case heard afresh.
176. The Plaintiff submits that the High Court, in refusing the application stated: “The Applicant’s cause of action, if any, in my view is separate and distinct and perhaps could not have been conveniently tried in the present proceedings. The applicant, if he so desires should bring a fresh suit to ventilate his claims against either the plaintiffs or defendant jointly and/or severally as he may please.”
 177. He submits that following that ruling, to which no Appeal was preferred, the Plaintiff filed this suit, from the finding by the Judge, cannot bind the Plaintiff in this one or affect his title and this can only be ventilated in this suit.
 178. The Plaintiff submits that in his judgment in the earlier suit, Justice Munyao Sila made, among others, the following order: “(i) That as between the title produced by the Plaintiff and the title produced by the 1st Defendant over the land parcel Nakuru/Saino Settlement Scheme/64, it is holding of this court that it is the title produced by the Plaintiffs that bears the name of Andrew Kipngeno A. Rono which is the more authentic title.”
 179. The Plaintiff also submits that he also stated on page 10 of the said judgment that: “The main if not sole issue is which of the two titles presented in this case is the genuine title? Is it that in the name of the deceased or is it the one in the name of the 1st Defendant? Both persons claim that they purchased the suit land from the previous owner, one Philip Rotich. There is no dispute that Philip Rotich was the original allottee of the suit land. I am completely unable to tell how Philip Rotich sold the suit land to two people as he was never called as a witness by either the plaintiffs of (sic) defendants and I was not informed of his whereabouts.”
 180. The Plaintiff submits that from the above observation, the Learned Judge also wondered why neither of the parties in that suit was willing (sic) to call Philip Rotich, the Plaintiff herein, as its witness yet they alleged that they bought the land from him and this was also put to the defence in this case where nobody could explain why the Plaintiff was not called by them as a witness in their case.
 181. He submits that it is his case that this court has the jurisdiction to make a finding as between the title held by him and that in the names of the husband to the 1st Defendant as far as authenticity of each is concerned. He submits that the decision in earlier case cannot stop this court from doing so.
 182. The Plaintiff submits that the scenario before this court is a case where there are two titles in respect of the same property and both titles have been challenged and it is the duty of each party to give a clear trace of its title from inception and showing a clear picture of all the process followed from its inception to issuance.
 183. He submits that his title started from the list of Allottees of Saino Settlement which was produced as an exhibit and it shows his name in the list as number 64. He submits that the plot is also Nakuru/Saino Settlement Scheme 64 and he testified that it is from this list that his title was issued. He submits that this evidence was also supported by his witness who is a committee member of the scheme which committee was issuing the titles.
 184. He submits that indeed Justice Munyao Sila so found in his judgment in NKR HC ELC 214 OF 2016 at page 10 thereof he states: “There is no dispute that Philip Rotich was the Original Allottee of the Land.”
 185. The Plaintiff submits that the title deed he produced has on Part A- property section which shows the title is on the Registry Map Sheet No 2 and Part B shows the 1st entry which is marked 2 to be Philip Rotich. He submits that the second entry marked 3 shows issuance of the title to him. He submits that



- as he testified, he has never sold the land to anybody as shown there being no other entry for any other person on that section.
186. He submits that the Defendant on the other hand has not produced even a green card to show how his title was obtained. He submits that it's root cannot be traced without a break in the chain and there is no origin. He submits that a look at the title itself and it has no registry map sheet number.
 187. The Plaintiff submits that it is his case that his title has a good foundation and passed properly to him and the Defendants thus cannot stand as a challenge to it and the court should so find, order cancellation of the Defendants' title and grant the prayers sought on the plaint.
 188. The Defendants' filed their submissions on 22nd November, 2023. They submit that the suit ELC No 214 of 2016 was between the Defendants and another third party. They submit that the Defendants Were Plaintiffs in the said case and the third party were defendants (sic) and both were claiming ownership of the suit property herein by purchase and both had original title deeds. They submit that both had agreements purported to have been signed by the Plaintiff.
 189. They submit that the said case was initiated at Molo Court by the Defendants' herein and it was later transferred to Nakuru Law Courts in the year 2015.
 190. They submit that the genesis of the said case was that the husband of the 1st Defendant had purchased this land from the Plaintiff herein and put him in possession and he paid fully and processed his title deed but when the said husband died, he was taken to his original home in Londiani and then the said third party moved in and took possession of the suit property, when the defendants returned to the property, it was already occupied by the said third party and hence they had to file a case to evict them.
 191. The Defendants' further submit that after the case was heard, the Nakuru ELC Court decided that the land had been purchased by the husband of the 1st Defendant and ordered the eviction of the third party from the said land and occupation to be given to the Defendants' herein.
 192. They submit that the court found out that the agreements produced by the Defendants' were genuine that the Plaintiff herein had sold the land to the deceased husband of the 1st Defendant herein and that the agreement for the said third party was not genuine and hence their title deed was cancelled and the one issued to the husband of the 1st defendant herein was upheld.
 193. The Defendants' urge the court to look at the evidence given in Nakuru ELC No 214 of 2016 and also look at the judgment.
 194. They also urge the court to look at the evidence of the land registrar therein and he clearly upheld the title deed of the deceased husband of the 1st Defendant as the genuine one. They submit that even to date the original title deed is in court and has not been released to the 1st Defendant.
 195. The Defendants' also submit that the Plaintiff herein was not a party to the said suit. They submit that he had already transferred the said land to the Defendants herein. They submit that there was another 3rd party claiming ownership by purchase also and having a title deed hence it was not necessary to include the Plaintiff herein and at most he was just to be called as a witness but he was not called.
 196. They submit that then after the judgment in the said case and especially after the said Court found in favour of the Defendants' herein, then the Plaintiff herein resurfaced under a certificate of urgency and wanted to be included in the said suit. They submit that court said that it was too late and may be he was to file a fresh suit, that's how this suit was instituted. They submit that they had evicted the 3rd party, took occupation and they are in occupation to date.



197. The Defendants' submit that in respect of the plaintiff's case herein, his evidence is that he had never sold this land to any person whatsoever, whether the Defendants herein nor the other party in ELC 214 of 2016. They further submit that the Plaintiff is saying that the agreement produced by the Defendants herein is a forgery and he never signed it and he is not a party to the same.
198. The Defendants' submit that the question which arises is why the Plaintiff herein says that he never knew about the existence of ELC 214 of 2016 and yet he rushed to court after judgement was delivered when the Defendants herein were evicting the other party to the suit No. 214 of 2016.
199. The Defendants' submit that they produced an agreement for the purchase which was done on 3rd March, 2006 immediately the deceased purchased the same. They submit that they took possession and processed the title deed and had been in occupation except when they temporarily went to Londiani to bury the deceased in the year 2011 and they later took occupation from the 3rd party who were purporting to have bought from the Plaintiff.
200. They submit that it is questionable that from the year 2006 up to 2019 when judgment was delivered in ELC 214 of 2016 that the Plaintiff never knew about the people staying on his land and about people having a dispute in court over the said land both alleging that he had sold the land to them.
201. The Defendants' submit that in his statement dated 5th March, 2020, the Plaintiff says he has not been in occupation since he acquired the land and that he was working in Bomet as a teacher and that he allowed a neighbour to continue using the same in his absence.
202. The Defendants' submit that in 2019 the Plaintiff was informed about the case ELC 214/2016 and stated that he had never sold the suit land and he had never written any agreement and that his signature and documents were forged.
203. They submit that during cross examination, he said he stays at Kuresoi where the land is but not on the said land. They submit that he says that his brother is the one using the land and also in his statement he had said that the land was in his possession through his agents who have never been evicted. They submit that in cross examination, he accepted it was the 1st Defendant who was in occupation.
204. The Defendants submit that there are glaring contradictions and it is his agents who have been in occupation since when he was allocated the land; ignoring the fact that there have been different people in occupation who had even gone to court claiming he had sold land to both of them and the Court pronounced itself on the same.
205. The Defendants' also submit that the only logical conclusion is that the Plaintiff is running away from the evidence that he had sold the said land to the deceased and put him in occupation and that is why he is saying he never knew about the said case. They urge the court to find that he was aware of the case and the reason why he filed this case is that he was not happy with the outcome of 214 of 2016 and his people were defendants in 214 of 2016 and when they failed, he decided to come to court and on their behalf and he will surrender the land to them after the judgment in this suit.
206. With regard to the sale agreement, the Defendants submit that DW3; James Mosonik Chumba, was categorical and very clear on matters pertaining to the agreement. They submit that he said that he was only a witness to the same but he was the one who filled the said agreement as the Plaintiff and the deceased husband and other witness were telling him to fill it and hence he wrote the said agreement on behalf of the parties therein.
207. They submit that he said clearly that the Plaintiff was given Ksh 80,000/= in their presence and the Plaintiff signed the said agreement and submit that his evidence was extremely honest. They submit



that he said that he never witnessed when the deceased gave the Plaintiff the balance of Ksh 20,000/= and this is true because it is only the Plaintiff and the deceased who signed when the Plaintiff received the Ksh 20,000/= from the deceased.

208. The Defendants submit that there was and there has never been no report of forgery by the Plaintiff herein and that the Plaintiff is simply hoping to evade obligations arising from the said agreement which he duly executed and is witnessed.
209. The Defendants' urge the court be persuaded to conclude that the Plaintiff indeed sold the said land to the deceased and uphold the said agreement as reflecting the desires of the Plaintiff and the deceased.
210. They also submit that the said witness positively identified the Plaintiff in Court and he confirmed that he is the one who sold the land to the deceased and he is the one who signed the agreement. The Defendants urge the court to consider the evidence of DW3 who said he did not have any interest in the land and he was not related to the deceased and the Defendants.
211. They submit that in regard to the title deeds held by the Plaintiff and the Defendants', they urge the court to find that the title deed held by the Defendants is genuine. They further urge the court to be guided by the fact that there was another title deed held by a third party. They also urge the Court to find that it is only the land registrar who can determine which title deed is genuine and also find that it was the duty of the Plaintiff to call the land registrar as a witness.
212. The Defendants urge the court to find that the last position at lands office is as explained by the land registrar in 214 of 2016 when he testified that the Defendants title deed was genuine and also stated that there were no records in regard to the suit land and added that they were supposed to reconstruct the register.
213. The Defendants' refer the court to the judgment and decree in 214 of 2016 and urge the court to find that indeed the Plaintiff had sold this land to the deceased and as such it belongs to the Defendants and uphold the Defendants' title deed as it was upheld in 214 of 2016 and dismiss the Plaintiff's case with costs.

Analysis And Determination.

214. After hearing evidence in this matter, interrogation documents and reading the rival submissions filed by the parties herein, my view is that following issue arises for determination;
 - a. The Legal effect of the Judgment and Ruling delivered in Nakuru ELC No. 214 of 2016.
 - b. Whether the Plaintiff is entitled to orders sought in the Plaint dated 5th March, 2020.
 - c. Whether the Plaintiff sold the suit land to Andrew Kipngeno Rono (deceased).
 - d. What is the fate of the title held by the Plaintiff?
 - e. Who should bear the cost of this suit?

A. The Legal effect of the Judgment and Ruling in Nakuru ELC No. 214 of 2016
215. The ruling and Judgment in Nakuru ELC No. 214 of 2016 has featured prominently in this suit. The judgement and ruling have been produced as Exhibit P2 and Exhibit P3 respectively.
216. While the subject matter of the said suit is similar to this one, the parties are different. This suit was between the Defendants herein and another party. The court found in favour of the Defendants herein and that other party was evicted from the suit parcel.



217. After the court delivered its judgment, the Plaintiff herein filed an application to set aside the judgment in Nakuru ELC No. 214 of 2016. The court declined to grant the said orders and observed at Paragraph 11 as follows;

“The Applicant’s cause of action, if any, in my view is separate and distinct and perhaps could not have been conveniently tried in the present proceedings. The applicant, if he so desires should bring a fresh suit to ventilate his claims against either the plaintiffs or defendant jointly and/or severally as he may please.”

218. This suit is separate and apart from Nakuru ELC No. 214 of 2016 in many respects, ranging from the parties to the questions for determination. I shall continue to treat these two suits as separate and having no bearing on each other save for where I am persuaded by a finding made by the judge on a question of law.

219. Having cleared this question, I shall now interrogate this suit on its own merits.

B. Whether the Plaintiff is entitled to the orders sought in the Plaintiff dated 5th March, 2020.

220. The Plaintiff in summary seeks the following orders:

- a. A declaration that the title held by Andrew Kipngeno Rono for L.R Nakuru/Saino Settlement Scheme/64 is a forged, fraudulently obtained and should therefore be cancelled.
- b. An order of permanent injunction restraining the Defendants from entering into or interfering with the plaintiff’s title and possession of all that parcel of land known as Nakuru/Saino Settlement Scheme/64.

221. The Plaintiff alleges fraud on the part of Defendants. He states that the Defendants late husband and father one Andrew Kipngeno Rono fraudulently and unlawfully obtained another title for the same parcel of land claiming that the Plaintiff had sold the land to him which is false.

222. The Plaintiff has, in his plaint, particularized fraud on the part of the deceased (Andrew Kipngeno Rono). The Plaintiff lists the particulars of fraud are as follows:

- a. Obtaining title deed using forged agreement, transfer documents.
- b. Obtaining registration over a land whose green-card is not available.
- c. Purporting to buy land which had no search certificate.
- d. Purporting to obtain title without obtaining the Land Control Board’s consent.
- e. Forging documents and the Plaintiff’s signature.
- f. Purporting to transfer land without surrendering the original title deed which is still in the Plaintiff’s possession.

223. It is trite law that he who alleges must prove. This is set out in section 107 of the *evidence Act*. It is as follows:

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on existence of facts which he asserts must prove those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.



224. Fraud has been defined in Black's Law Dictionary 11th Edition as;
- “A knowing misrepresentation or knowing concealment of material facts made to induce another to act to his or her detriment.”
225. It is an established principle of law that a claim based on fraud must be specifically pleaded and strictly proved. The Court of Appeal in the decision of *Vijay Morjaria v Nansingh, Madhusingh Darbar & another* [2000] eKLR held thus;
- “It is well established that fraud must be specifically pleaded and the particulars of fraud alleged must be stated on the face of the pleading. The act alleged to be fraudulent must of course be set out and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved and it is not allowable to leave fraud to be inferred from the facts.”
226. The Plaintiff further denies having sold the suit land to Andrew Kipngeno Rono (deceased). It is his case that he had always been and still is the registered owner of all that parcel of land known as Nakuru/Saino Settlement Scheme/64 and that he has the original title thereto. He therefore seeks a declaration that the title held by Andrew Kipngeno Rono for L.R Nakuru/Saino Settlement Scheme/64 is a forged, fraudulently obtained and should therefore be cancelled.
227. Essentially, the Plaintiff prays that the court finds that he still is the registered owner of the suit land and that he did not sell the suit parcel to Andrew Kipngeno Rono (deceased) whose estate is represented by the Defendants.
228. In support of his claim the Plaintiff produced a title deed as Exhibit P1, Judgment for ELC 214 of 2016 as Exhibit P2, Ruling dated 27th February, 2020 P3, and a list of members of Saino Settlement Scheme as Exhibit P4. Exhibit P4 comprises of a list of allottees. It is a one-page document bearing names and numbers.
229. I must also state that the fact that the suit land was previously registered in the name of the Plaintiff is not disputed.
230. The burden of proof where fraud is alleged is higher than a balance of probabilities but lower than that of beyond reasonable doubt. I find that the Plaintiff has failed to discharge this burden on the question of fraud. His claim of fraud has not been proved. I am unable to find in his favour on this question.

C. Whether the Plaintiff sold the suit land to Andrew Kipngeno Rono (deceased).

231. In answering issue (B) above I may have glazed over this question but I believe it is deserving on an analysis on its own.
232. The Defendants' case is that the Plaintiff sold the suit parcel to Andrew Kipngeno Rono (deceased) whose estate they represent. It is their evidence that the Plaintiff surrendered the original title deed to Andrew Kipngeno Rono (deceased) upon execution of the sale agreement and that the suit land was subsequently transferred to Andrew Kipngeno Rono (deceased) and the said Andrew Kipngeno Rono (deceased) holds a title deed to the suit property.
233. The Defendants produced a sale agreement (Exhibit D2.) dated 3rd March, 2006 in support of their case.



234. The Defendants also called 3 witnesses. DW3's testimony is particularly relevant to the extent that he was a witness to the sale agreement as between the Plaintiff and Andrew Kipngeno Rono (deceased).
235. DW3's evidence is also that the sale agreement was filled out by him and he also signed it as a witness. His further evidence is that the Plaintiff was present during the execution of the sale agreement and received Kshs. 80,000 from Andrew Kipngeno Rono (deceased) as part of the purchase price.
236. DW3's evidence is that prior to the execution and witnessing of the sale agreement, he did not know either the Plaintiff or Andrew Kipngeno Rono (deceased). DW3 was able to identify the Plaintiff who was in court while he gave his testimony. The court summoned the person picked out by DW3 and he confirmed that he was indeed the Plaintiff in this suit.
237. The Plaintiff in his particulars of Fraud as set out in the plaint avers that Andrew Kipngeno Rono (deceased) obtained the title deed using a forged agreement. However, DW3's evidence as regards the presence of the Plaintiff at the execution of the sale agreement, the fact that he received consideration for the sale of the suit parcel and the fact that he surrendered the Original title to Andrew Kipngeno Rono (deceased) remains uncontroverted. In my view, this averment by the Plaintiff has been countered and cannot hold.
238. Further the Plaintiff and his witnesses confirmed that he (the plaintiff) has never been in occupation of the suit land from the time that it was allocated to him. Evidence also points to the fact that the plaintiff taught at schools within the vicinity of the suit land from the time that he sold it to Andrew Kipngeno Rono (deceased) and never complained about their occupation.
239. My view is that it is more probable than not, that the Plaintiff sold the suit parcel to the defendants and I so find.
240. I note that the defendants did not file a counterclaim but in their written statement of defence pray for certain orders. They are as follows
- a. Court to find that the Plaintiff had sold the Land Nakuru/Saino Settlement Scheme/64 to the deceased husband of the 1st Defendant.
 - b. Court to find that the transfer was properly done and the title Deed in the name of the deceased husband of the 1st Defendant is genuine and should be maintained and if there is any Title Deed existing in regard to Nakuru/Saino Settlement Scheme/64 to be declared null and void and to be cancelled.
 - c. The 1st Defendant to be declared the rightful legal owner of Nakuru/Saino Settlement Scheme/64 in her capacity as the administrator of the estate of the deceased husband as found in Nakuru H.C ELC NO 214/2016 and uphold all the orders given therein.
 - d. Costs of this suit and interest.
 - e. Any other relief this Honourable court may deem fit to grant.
241. I am unable to grant any such orders on the strength of a written statement of defence.

D. What is the fate of the title held by the Plaintiff.

242. The defendants produced a copy of the title deed relating to the suit land as Exhibit D3. The same is in the name of Andrew Kipngeno Rono (deceased). They explained that the original was produced in Nakuru ELC No. 214 of 2016 and has not been returned to them. I have confirmed the fact of its



production from perusing of the said judgment. The plaintiff has also produced a title to the suit parcel and it is in his name.

It is Exhibit P1.

243. As stated in preceding paragraphs, the fact that the Plaintiff was previously registered as a proprietor of the suit land is not in dispute. It is therefore not surprising or perplexing that he has a title deed in his name. The question is how he continues to have an original title deed of the suit property? What documents the deceased used to have the suit parcel registered in his name which registration culminated to him being issued with a title deed.
244. Evidence tendered by the defence is that after the sale of the suit land, the Plaintiff surrendered the original title to Andrew Kipngeno Rono (deceased).
245. This court is not a document examiner and I cannot tell whether the title that has been tendered in evidence by the Plaintiff is the original one. The Plaintiff ought to have called an expert witness to speak to the authenticity of the title held by him and another to explain what documents were used to register the title to the suit land in the name of Andrew Kipngeno Rono (deceased). Had been this done, nothing would have been easier to make a finding on the fate of the title held by the Plaintiff.
246. This suit was filed by the Plaintiff, the burden of proof was an upon him, he has failed to discharge that burden.

E. Who should bear the cost of this suit.

247. The general rule is that costs shall follow the event in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21) A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise.

Disposition.

248. In the result, I find that the Plaintiff's claim fails. The suit is hereby dismissed with cots to the Defendants.
249. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 2ND DAY OF MAY, 2024.

L. A. OMOLLO

JUDGE

In the presence of: -

No appearance for the Plaintiff.

No appearance for the Defendants.

Court Assistant; Mr. Joseph Makori.

