



**Kilongu alias Ipite Ole Kiloku (Chairman) & 2 others v Sanoe (Chairman) & 10 others
(Environment & Land Case 39 of 2020) [2024] KEELC 7011 (KLR) (16 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 7011 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 39 OF 2020**

**A OMBWAYO, J
OCTOBER 16, 2024**

BETWEEN

**IPITIET OLE KILONGU ALIAS IPITE OLE KILOKU
(CHAIRMAN) 1ST PLAINTIFF**

**LENKONKO OLE NKAMPAA (SECRETARY) & ANOTHER & ANOTHER &
ANOTHER 2ND PLAINTIFF**

AND

**LEKISHON OLE RAKITA SANOE (CHAIRMAN) & 10 OTHERS & 10 OTHERS
& 10 OTHERS DEFENDANT**

JUDGMENT

1. The Plaintiffs filed a Plaint dated June 23, 2020 where they prayed for judgment against the Defendants and sought the following orders:
 - a. The court do issue a declaration that the Plaintiffs are beneficiaries of Land Parcels Maela/Ndabibi Block 5/ 2253 and 3073 and entitled to their respective portions of land from these lands after due sub-division.
 - b. The court do issue rectification of the Register in respect of land parcel Maela/Ndabibi Block 5/2253 and 3073 and cancellation of the issued title deeds.
 - c. The court do issue orders to have the Title Deeds to land parcel Maela/Ndabibi Block 5/2253 and 3073 be issued to the 17 Defendants vide H.C.C 89 of 1996 to hold in trust of themselves and all the beneficiaries who include the Plaintiffs.
 - d. Orders of temporary injunction be issued restraining the Defendants, their servants or agents or any other person acting on their behalf from interfering, alienating, harassing, evicting, subdividing, registering any subdivision, or doing any other act that may affect the Plaintiffs or



the portions they occupy or that may affect the status of land parcels Maella/Ndabibi Block 5/2253 and 3073 until this case is heard and determined or until further orders of the court.

- e. General damages.
 - f. Cost of the suit and interest thereof at court rates.
 - g. Any other relief that this Honourable court may deem fit to grant.
2. Ipitieti Ole Kilongu testified as PW1 with Silvia Sembeo being an interpreter. PW1 testified that he is from the Maasai community and he lives in a town known as Naivasha. He testified that he filed a statement on 24th June, 2020 and attached to it to the plaint filed on 27th June, 2020 which was adopted as his evidence in chief on behalf to Maasai community occupying two parcels of land known as Narok/Maiella/5622/1380 and 8398/2.
 3. PW1 testified that the seventeen defendants filed a counter-claim which succeeded and they were given 2,581 acres. He testified that in L.R No. 2662 they were given 1626 acres and L.R No. Narok/Maiella1380. PW1 testified that Ngati farmers were ordered to transfer the land to the Plaintiff on behalf of members. He testified that Ngati farmers filed a case in court being Nakuru C.A. CA No. 64 of 2004 at the Court of Appeal.
 4. PW1 further testified that it is their complaint is that the 1st – 6th Defendants registered the land in the name of the four of them in equal shares. He testified that this is land No. Narok Maiella 1380-registered as Maella/Ndabibi/Block 5/2253 . PW1 produced a letter dated 26th May, 2020 as PEX15; letter to Director of Surveyor as PEX 16; Letter to County surveyor as PEX 17; Notices to the Attorney General as PEX 18; Letter dated 4th June, 2020 as PEX 19; Letter to the 2nd defendant as PEX 20. PW1 further produced PEX 21, 22, 23 and 24.
 5. Upon cross-examination by Mr. Mashieti holding brief for Mr. Karanja, PW1 stated that they did not take any step to execute the judgment. He stated that they tried to change title and after the appeal the jurisdiction of court came up again.
 6. Upon cross-examination by Ms. Shirika, PW1 stated that they have sued the Chief Land Registrar for fraud and he has documents to prove fraud. PW1 stated that the decree was presented before the Land Registrar. He stated that the others in the case cannot be ascertained. PW1 stated that he relied on his statement. He stated that the Land Registrar is to blame. PW1 was not subjected to re- examination
 7. Lemondoi Ole Rakita Sanoe testified as PW2 in Maasai language. He testified that he filed two witness statements dated 24th June, 2020 and 14th December, 2022 which the court adopted as part of his evidence in chief. PW2 testified that they are in possession of the land together with other people. He further testified that before 1996 members, had the portion of land occupied and they have changes on the ground. He testified that the Maasai community were given 3000 acres. He further testified that strangers came to live on the land. PW2 testified that since the year 2000 some people were evicted.
 8. Upon cross-examination by Mr. Masheti, PW2 stated that he lives at Naivasha in the village at Ngoyoyo farm. He further stated that he lives on Maella Ndabibi block 5/2253. Upon cross- examination by Ms. Shirika. PW2 stated that together with two other people, they presented the decree to the Land Registrar and he does not remember the year. On re-examination, PW2 testified that Ngunyugu Farm is the farm number 1380. He testified that the former 2262 was known as Narasha.
 9. Karino Ole Nakuro testified as PW3. He testified that his statement is on record and he was part of the seventeen members of case no 89 of 1996. PW3 testified that they have filed documents of the record of appeal and produced it as PEX 25. PW3 also produced a letter as PEX 26.



10. Upon cross-examination by Mr. Karanja, PW3 stated that he was one of the defendant in case No 89 of 1996 and they were together with the plaintiffs. He stated that their advocate was Mr. Konosi and they won the case. PW3 stated that the parcel of land was divided into two. PW3 stated that they were given more than 4,000 acres. PW3 stated that an appeal was lodged but then it was dismissed. PW3 stated that they have come to court because they won the appeal. PW3 stated that Ole Lindo acquired the land and they were supposed to share the land among seventeen people and he is among them.
11. PW3 stated that the defendants were to share and he agreed that the seventeen people were many. He stated that he cannot remember them and the seventeen people are in the decree of case number 89 of 1996. He stated that their names have not changed. PW3 stated that there was an order that the defendants be registered as trustees. PW3 stated that he is not satisfied because Ole Linti (the 1st Defendant) took other people instead of the seventeen in the case. PW3 stated that the decree mentions three thousand people. PW3 stated that he knows Kisen Ole Malof and Sentemu Ole. PW3 stated that he does not remember the judgment by Wiliam Ouko and he has never executed the decree.
12. Upon cross examination by Ms. Shirika, PW3 stated that he has sued the Land Registrar because of Ole Linti. He stated that the Land Registrar gave an illegal title and he has looked at the documents. He stated that they all are illegal documents and the titles were illegal because the land belonged to the Plaintiffs. He stated that the Land belonged to the community.
13. Upon re-examination by Mr. Konosi, PW3 stated that he was informed about the judgment.
14. Rufus Mbitho Mwangi testified as DW1. He testified that he is a Land Registrar in Naivasha. He testified that he knows the subject matter and they do not have a parcel file for Maella Ndabibi block 5/3073.
15. DW1 testified that he does not also have the parcel file Maella Ndabibi block5/ 2253. It was his testimony that from the records, the land was not surveyed. He testified that the Director of Surveys has not approved the R.I.M hence the map cannot be registered. DW1 was shown PEX 4 and he testified that he cannot confirm the authenticity of title no 3073 because the RIM has not been registered. DW1 testified that they have no records for the title deeds No 3073 and 2253. Upon cross-examination by Mr. Karanja, DW1 stated that the titles do not appear in their records. He stated that the titles do not exist hence they cannot be cancelled. DW1 stated that they are not aware of any case and they are not involved in any fraud. DW1 informed the court that there was a committee looking at the matter and they registered their recommendation. DW1 stated that the land was not subdivided. DW1 stated that there are people living in the land and parcel number LR 2662/2 gave rise to 3073. He stated that LR 1381 gave rise to 2255. He stated that case number HCCC No. 89 of 1996 sought adverse possession. DW1 stated that the technical report talks of implementation of judgment in the case. DW1 stated that the land was awarded to the Maasai Community by way of adverse possession. DW1 stated that the map is yet to be supplied by the Director of surveys.
16. Upon cross-examination by Mr. Konosi, DW1 stated that his defence does not state that the titles do not exist. DW1 stated that he is familiar with the witness signature and the slip is familiar. DW1 did not confirm the authenticity. DW1 also stated that he is familiar with the certificate of official search. DW1 further stated that he cannot confirm that the green card originated from one office.
17. DW1 stated that there is a certificate of official search and the land has been subdivided. He stated that there are maps with the surveyor and they have not seen a map. He stated that it could have been forged. He stated that he does not have records for the titles. DW1 stated that he has not heard of any current case and he is not aware that a person by the name Wacuka testified in a criminal case. DW1 was not subjected to re-examination.



18. The Plaintiff filed submissions dated 8th April, 2024 and identified the following issues for determination:
 - a. Whether the Plaintiffs are the beneficiaries of the land parcel Maela/Ndabibi Block 5/2253 and 3073?
 - b. Whether registration of the titles for the land by the Defendants was done fraudulently through misrepresentation of facts?
 - c. Who should bear the Costs of this Suit?
19. On the first issue, the Plaintiffs submitted that the two parcels of land herein were obtained as a result of the outcome of Nakuru H.C.C.C No 89 of 1996 and also the decision of Nakuru Court of Appeal No 64 of 2004. The Plaintiffs submitted that in Nakuru H.C.C.C No 89 of 1996 some of the Plaintiffs herein were among the seventeen Defendants and their counterclaim was successful and they were awarded the two parcels of land collectively with other three thousand members.
20. The Plaintiffs submitted that the import of the above mentioned decisions is that the Plaintiffs and the other members of the Maasai community who were represented therein were to be registered as the beneficiaries of the parcels of land which land was to be divided amongst themselves in equal portions.
21. The Plaintiffs submitted that the 1st to 6th Defendants have not disputed the averments made by the Plaintiff and the evidence of the Plaintiffs is uncontroverted. The Plaintiffs submitted that the Defendants never filed any defence despite them being granted several opportunities to do so. The Plaintiffs submitted that DW1 who testified on behalf of the 8th to 10th Defendants stated in his testimony that the beneficiaries of the suit parcels of land are the Defendants in HCCC No 89 of 1996 who are members of the Maasai community.
22. The Plaintiffs submitted that some of the Plaintiffs herein were part of the Defendants in the said matter hence beneficiaries of the suit parcels of land. The Plaintiffs submitted that they are the beneficial owners of all those parcel of land known as Maela Ndabibi Block 5/2253 and 3073 and the respective portions out of the subdivisions arising from the said parcels.
23. On the second issue, the Plaintiffs relied on Section 26 (1) of the *Land Registration Act* and the cases of *Munyu Maina vs Hiram Gathiba Maina, Civil Appeal No 239 of 2009*, David Peterson Kiengo & 2 others vs Kariuki Thuo [2012] eKLR, Alice Chemutai Too vs Nickson Kipkurui Korir & 2 others [2015] eKLR. The Plaintiffs submitted that they have pleaded and enumerated fraudulent acts of the Defendants in the plaint. They submitted that since the suit parcels of land were for the benefit of the larger Maasai community, the seventeen Defendants were to hold the parcels of land as trustees so as to facilitate the registration of the parcels of land to the beneficiaries.
24. The Plaintiffs submitted that the 1st to 6th Defendants fraudulently caused the title deed for Maela/ Ndabibi Block 5/3073 to be registered in their names in equal shares as the proprietors. They submitted that this is against the decisions that had been rendered by the court in H.C.C.C 89 of 1996 where the seventeen Defendants were declared to be owners of the suit land on behalf of the members of the Maasai community. The Plaintiffs submitted that the titles for the suit parcels of land herein were fraudulently procured and should be cancelled.
25. On the third issue, the Plaintiffs relied on Section 27 (1) of the *Civil Procedure Act* and the cases of Republic v Rosemary Wairimu Munene (Ex parte Applicant) v Ihururu Dairy Farmers Co-operative Society Ltd Judicial Review Application No 6 of 2004 and Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others [2014] eKLR. The Plaintiffs submitted that their suit should be allowed as prayed with costs awarded to them.



26. The 1st to 6th Defendants prayed that the Plaintiffs suit against them be dismissed with costs. They submitted that the Honourable Court in its judgment ordered that the subject matter of the award in Nakuru HCCC No 89 of 1996 (Ngai Farmers Co-operative Society Ltd vs CLLR John Ledid & others) which was portions of land parcels Narok/Maella Estate No 1380, 2662 and 8398/2 now Maella/Ndabibi Block 5/2253 be given to the 601 people who were being represented by the seventeen Defendants in the said suit.
27. They further submitted that after the Honourable Court issued the decree, the parties who were awarded the suit property in Nakuru HCCC No 89 of 1996 which was upheld in Nakuru Civil Appeal No 64 of 2004 went ahead and called for a meeting on 30th January, 2015 in which the Plaintiffs, the 1st to 6th Defendants and other community members attended and agreed that the 1st to 6th Defendants would hold the suit property in trust on behalf of the 601 members.
28. The 1st to 6th Defendants submitted that from the decision of the said meeting, the 1st to 6th Defendants went ahead and registered the suit property and from this action, the decree was executed. They submitted that at no point since the decree was issued did the Plaintiffs herein raise any question or concern.
29. They submitted that the Plaintiffs and the 1st to 6th Defendants are currently in occupation of the suit property utilizing their shares as they wish. They also submitted that the Plaintiffs have against the rule of law instituted the current suit in which they are directing the Honourable Court to issue fresh directions on a matter that has already been heard and determined in Nakuru H.C.C.C 89 of 1996 and Nakuru Civil Appeal No 64 of 2004 and the decree which was already issued has been executed. The 1st to 6th Defendants relied on Section 34 (1) of the *Civil Procedure Act* and the cases of *Charles Ngare Karaya vs Florence Muthoni & Sarah Njoki Munge t/a Sanjomu Auctioneers Nakuru H.C.C.C No 28 of 2017*, *James W. I Munyo & 3 others vs Karanja Mbugua & Co Advocates and Another Nakuru H.C.C.C No 357 of 2012* and Esther Njeri Mwangi (Suing as the administrator of the Estate of Mwangi Muhoro) vs Arthur Wambugu Nakuru E.L C No 22 of 2023.
30. The 1st to 6th Defendants submitted that that the Plaintiff's allegations that they are planning to subdivide the suit property which belongs to the community have not been proved at any point during the hearing or through the proceedings that were filed. They submitted that the Plaintiffs allegations are baseless and are seeking to smear the Defendants are baseless and are seeking to smear the Defendants reputation. Counsel relied on the cases of Charterhouse Bank Limited (under statutory management) vs Frank Kamau [2016] eKLR and Mbuthia Macharia vs Annah Mutua Ndwiga & another [2017] eKLR. The 1st to 6th Defendants asked the court to consider their defence and dismiss the Plaintiff's suit with costs.
31. The 7th to 11th Defendants filed submissions dated 26th June, 2024 and identified the following issues for determination:
 - i. Whether the Plaintiff has proved fraud on the part of the 7th to 11th Defendants?
 - ii. Who should pay for the costs of the suit?
32. On the first issue, they relied on Section 109 of the *Evidence Act* and the case of Arthi Highway Developers Limited v West End Butchery Limited & amp; 6 others [2015] eKLR. They submitted that no fraud has been proved as against the 7th to 11th Defendants. They submitted that if the properties were registered in the names of some of the Defendants, it is only the transferors and transferees who knew of the decree in Nakuru H.C.C.C 89 of 1996. They submitted that if there is any fraud, then the transferors are definitely part of it.



33. On the second issue, the 7th to 11th Defendants relied on Section 27 of the *Civil Procedure Act* and submitted that the suit against the 7th to 11th Defendants be dismissed with costs.

Analysis and Determination

34. I have carefully considered the pleadings, evidence on record and rival submissions and do find that in the Plaintiff filed in court, the Plaintiffs aver that they filed this suit on behalf of all members of Naranka Self Help Group who are all beneficiaries of Land Parcel Maela/Ndabibi Blocks 5/3073 measuring 2581 acres (approximately 1028 Hectares). The 4th, 5th and 6th Plaintiffs aver that they filed this suit on their behalf and on behalf of all members of Enaibor-Ajjik Ngatet 1380 Self Help Group who are beneficiaries of land Maela/Ndabibi Block 5/2253 measuring 1626 acres (approximately 658.6 Hectares).
35. The Plaintiffs aver that the land parcels Maela/Ndabibi Block 5/3073 and Maela/Ndabibi Block 5/2253 which were the subject matter of the award Nakuru H.C.C.C 89 OF 1996 and Nakuru Civil App No 64 of 2004 where the seventeen defendants represented the interests of three thousand Maasai people who included the Plaintiffs herein.
36. It is the Plaintiff's case that in the decision given in the Nakuru H.C.C.C 89 of 1996, the Court ordered portions of land parcels Narok/Maiella Estate NO 1380, 2662 and 8398/2 to be given to the Defendants in the said case who represented the Plaintiffs herein.
37. It is the Plaintiffs case that from Land Parcel Narok/Maiella Estate 1380, the Defendants in Nakuru H.C.C.C 89 OF 1996 who are the Plaintiffs herein, were to get 1626 acres (Approximately 658.6 Hectares) which became Land Parcels No. Maiella/ Ndabibi Block 5/2253 which is generally known as Ngunyumu land.
38. It is also the Plaintiff's case that from Land Parcel Narok/Maiella Estate 2662, the Defendants in Nakuru H.C.C.C 89 of 1996 who are the Plaintiffs herein were to get 2581 acres (approximately 1028 Hectares) which became Land Parcel No. Maela/Ndabibi Block 5/3073 generally known as Narasha/ Nkaampani Land.
39. This court notes that from the judgment dated 12th May, 2000 in Nakuru H.C.C.C 89 OF 1996, the court found that the Plaintiffs claim fails and the Defendants counterclaim succeeds and allowed it. The subsequent appeal being Nakuru Civil App No 64 of 2004 was dismissed with costs to the Respondent.
40. In order to determine the issue, it is important to establish what orders were sought in the counterclaim filed in Nakuru H.C.C.C 89 of 1996. The following orders were sought in the counterclaim:
- a. The Plaintiffs case be dismissed with costs
 - b. A declaration that the Defendants have acquired title to the 2581 acres on L.R No. Narok/ Maiella Estate No. 2662 and 1626 acres on LR No. Narok Maiella Estate 1380 which they are in occupation by adverse possession and/or prescription.
 - c. A permanent injunction restraining the plaintiff either by itself, its agents, servants or otherwise howsoever from evicting the defendants from the 2581 acres they are occupying in L.R No Narok/ Maiella Estate 2662 and 1626 acres on L.R No. Narok/Maiella Estate No 1380.
 - d. An order directing the plaintiff to transfer 2581 acres of L.R no Narok/Maiella Estate 2662 and 1626 acres on L.R No. Narok/Maiella Estate 1380.



- e. Costs of this counterclaim.
 - f. any other or such further relief as this Honourable Court may deem fit to grant.
41. The Plaintiff in Nakuru H.C.C.C 89 OF 1996 lists the parties as Ng'ati Farmers Co-operative Society Limited Vs Cllr John Ledidi, Kelesi Ole Pushati, Kariwo Ole Nakoru, Ndoyoo Ole Kamasia, Lemei Ole Punyua, Ipite Ole Kiloku, Pushati Ole Kipashi, Masii Ole Sirial, Chief Hassan, John K. Ole Siriai, Cheringot Ole Siriai, Lemon Ole Punyua, Kosev Ole Maloi, Namesi Ole Mosheshi, Ole Nkuku, Madero and Moshoga Ole Kashikwa.
42. The parties in consideration based on the judgment in Civil Appeal No 64 of 2004 was 17 respondents and 3,000 other people referred to as the Maasai. Pursuant to the above analysis vis a vis the Plaintiff filed in this case the court finds that only the 1st Plaintiff has proved to be a beneficiary of the land parcel Maela/Ndabibi Block 5/2253 and 3073. The subject land is to be held in trust by the 17 defendants on behalf of 3000 other people. The 2nd, 3rd, 4th, 5th and 6th Plaintiffs have proved that they are beneficiaries as contemplated by Civil Appeal No 64 of 2004.
43. Moreover, it is the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants case that the Honourable Court in its judgment ordered that the subject matter of the award in Nakuru HCCC No 89 of 1996 (Ngai Farmers Co-operative Society Ltd vs CLLR John Ledid & others) which was portions of land parcels Narok/Maella Estate No 1380, 2662 and 8398/2 now Maella/Ndabibi Block 5/2253 be given to the 601 people who were being represented by the seventeen Defendants in the said suit.
44. It is also their case that after the Honourable Court issued the decree, the parties who were awarded the suit property in Nakuru HCCC No 89 of 1996 which was upheld in Nakuru Civil Appeal No 64 of 2004 went ahead and called for a meeting on 30th January, 2015 in which the Plaintiffs, the 1st to 6th Defendants and other community members attended and agreed that the 1st to 6th Defendants would hold the suit property in trust on behalf of the 601 members. It is the 1st to 6th Defendants case that from the decision of the said meeting, they went ahead and registered the suit property and from this action, the decree was executed.
45. The Plaintiffs on the other hand in the Plaintiff filed in court on 24th June, 2020 aver that the actions of all Defendants in causing the Registration of Land Parcels Maela/Ndabibi Block 5/2253 and Maela/Ndabibi Block 5/3073 in the names of the 1st to 4th Defendants and 1st to 6th Defendants respectively was unlawful, illegal, fraudulently and an abuse of judgments of the High Court and Court of Appeal.
46. The Plaintiffs list the particulars of unlawfulness, illegality and fraud as:
- a. Registering the 2nd to 4th Defendants as Registered proprietors to Land Parcel Maela/Ndabibi Block 5/2253 and 2nd to 6th Defendants as Registered proprietors of Land Parcel Maela/Ndabibi Block 5/3073 who were not parties to Nakuru H.C.C.C 89 of 1996.
 - b. That the Registration of Land Parcels No Maela/Ndabibi Block 5/2253 in the names of the 1st – 4th Defendant and Land Parcels Maela/Ndabibi Block 5/3073 in the names of the 1st to 6th Defendant in equal shares was a total circumvention of the decision of the Court in Nakuru H.C.C.C 89 OF 1996 and the Court of Appeal 64 of 2004.
 - c. That the Registration of Land Parcels Maela/Ndabibi Block 5/2253 in the names of the 1st to 6th Defendants all in equal shares was fraudulent and illegal in that this denied the Plaintiffs and other 525 Maasai beneficiaries.



- d. That the 7th and 8th Defendants ignored the decision of the Courts in Nakuru H.C.C.C 89 of 1996 and Nakuru Court of Appeal No 64 of 2004 by Registering the Lands in some persons who were not parties.
 - e. That the 7th and 8th Defendants failed to register the fact that Land Parcels Meala/Ndabibi Block 5/2253 and Maela/ndabibi Block 5/3073 was to be Registered in the names of the seventeen defendants as ordered in H.C.C.C 89 of 1996 to hold in trust for themselves and some other three thousand Maasai Beneficiaries who include the Plaintiffs herein.
 - f. That the Acts of the 1st to 8th Defendants which was illegal and has caused immediate threats to the Plaintiffs and other beneficiaries of being evicted from Land Parcels Maela/Ndabibi Block 5/2253 and Maela/Ndabibi Block 5/3073.
 - g. The 8th and 9th Defendant issued to the 1st to 6th Defendant a fake Title Deed which is not registered in the name of NAIVASHA Sub- County Land Registrar.
47. Based on the submissions of the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants dated 3rd June, 2024 and filed in court on 10th June 2024, they went ahead and called for a meeting on 30th January, 2015 in which the Plaintiffs, the 1st to 6th Defendants and other community members attended and agreed that the 1st to 6th Defendants would hold the suit property in trust on behalf of the 601 members.
48. 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.”
49. In the case of Koinange & 13 others vs Charles Karuga Koinange 1986 KLR the court held that: “When fraud is alleged by the Plaintiffs the onus is on the Plaintiffs to discharge the burden of proof.
50. Allegations of fraud must be strictly proved, although the standard of proof may not be so heavy as to require proof beyond a reasonable doubt, something more than a balance of probabilities is required.”
51. The 1st to 6th Defendants have not availed any minutes showing that a meeting was held on 30th January, 2015 showing that they would hold the suit property in trust on behalf of 601 members. This court finds that the Plaintiffs have proved to the required standard that the 1st to 6th Defendants fraudulently transferred the titles to the suit lands.
52. In the case of Party of Independent Candidate of Kenya & another v Mutula Kilonzo & 2 others [2013] eKLR it was stated thus;
53. It is clear from the authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is a matter in which the trial Judge is given discretion.
-But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could come to the conclusion arrived at. In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.”
54. The upshot of the forgoing is that the Plaintiffs suit succeeds and I issue the following orders:
- a. A declaration is hereby issued that the 1st Plaintiff is a beneficiary of Land Parcels Maela/ Ndabibi Block 5/ 2253 and 3073.



- b. It is hereby ordered the Register in respect of land parcel Maela/Ndabibi Block 5/2253 and 3073 be rectified and the issued title deeds be cancelled.
- c. It is hereby ordered that the Title Deeds to land parcel Maela/Ndabibi Block 5/2253 and 3073 be issued to the 17 Defendants vide H.C.C.C 89 of 1996 to hold in trust of themselves and all the beneficiaries.
- d. Cost of the suit and interest thereof at court rates are awarded to the Plaintiffs against the 1st to 6th Defenants.

It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED ELECTRONICALLY ON THE 16th DAY OF OCTOBER, 2024.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

