



**Lasoi (Suing as the administrator of the Estate of Solomon Kipkorir Arap Lasoi)
 & 2 others v Cheruiyot & 10 others (Environment & Land Case 472 of 2016 &
 54 of 2020 (Consolidated)) [2024] KEELC 6651 (KLR) (11 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6651 (KLR)

**REPUBLIC OF KENYA
 IN THE ENVIRONMENT AND LAND COURT AT NAKURU
 ENVIRONMENT & LAND CASE 472 OF 2016 & 54 OF 2020 (CONSOLIDATED)
 MAO ODENY, J
 OCTOBER 11, 2024**

BETWEEN

**DIANA LEE LASOI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF
 SOLOMON KIPKORIR ARAP LASOI) 1ST PLAINTIFF
 LEA CHERONO SHABANGI 2ND PLAINTIFF**

AND

**JOHN KIPTOO CHERUIYOT 1ST DEFENDANT
 PETER K CHERUIYOT 2ND DEFENDANT
 COLLINS K CHEPKWONY 3RD DEFENDANT
 JANE CHEPKORIR BARBARET 4TH DEFENDANT
 CAREN CHEPKIRUI MUTAI 5TH DEFENDANT
 CAROLINE CHEBET 6TH DEFENDANT
 SAMWEL KIPNGETICH KITUR BETT 7TH DEFENDANT
 THE COUNTY LANDS REGISTRAR NAKURU COUNTY 8TH DEFENDANT**

**AS CONSOLIDATED WITH
 ENVIRONMENT & LAND CASE 54 OF 2020**

BETWEEN

**CAROLINE CHEBET PLAINTIFF
 AND
 DIANA LEE LASOI 1ST DEFENDANT**



LEA CHERONO SHABANGI 2ND DEFENDANT

LEONARD KIPNGETICH CHELULE 3RD DEFENDANT

JUDGMENT

1. By a Further amended Plaintiff dated 26th April 2023 the Plaintiff herein sued the defendants in ELC Case No. 472 of 2016, seeking the following orders:
 - a. An injunction against the defendants from advertising or selling the property known as Title Number Nakuru / Olenguruone/Cheptuech/269.
 - b. An eviction order made against the 3rd to the 7th Defendants from the suit property.
 - c. Order to the 2nd and 3rd Defendants to release the original title that they are holding for the plaintiffs or in the alternative the 8th Defendant be ordered to issue a permanent replacement on the same.
 - d. Order to the 8th Defendant to cancel the title deed issued to the 4th, 5th, 6th and 7th Defendants or in the alternative an order that their purported title is a forgery and is of no proprietary interest over the suit property.
 - e. Order to the 1st defendant to render an account of all his dealings under the power of attorney granted to him by the 1st plaintiff.
 - f. General damages for trespass over Land Title No. Nakuru/ Olenguruone/ Cheptuech/269 against the 2nd to the 7th Defendants.
 - g. Punitive and exemplary damages against the 1st to the 7th Defendants for fraudulent activities over the suit property.
 - h. Compensatory damages against the 2nd and 3rd Defendants for funds illegally paid to them for acting illegally as estate agents without the requisite License to act as such.
 - i. Costs of this suit.
 - j. Interest on (f), (g), (h) and (i) above.
 - k. Such further orders as may be expedient in the interest of justice.
2. In Nakuru ELCC 54 of 2020 formerly CMELC NO. 106 of 2018, the plaintiff therein Caroline Chebet who is the 6th Defendant in ELCC NO. 472 of 2016 prayed for judgment against the Defendants jointly and severally for the following reliefs:
 - a. A permanent order of injunction restraining the Defendants by themselves, their agents, their servants and other persons acting at their behest from invading, entering, or in any other way interfering with the said Plaintiff's parcel of land known as Nakuru/Olenguruone/ Cheptuech/269.
 - b. Costs of this suit be borne by the Defendants jointly and severally.
3. The 1st and 2nd Defendants in Nakuru ELCC 54 of 2020 formerly CMELC NO 106 of 2018, filed a counterclaim dated 11th April, 2023 seeking the following orders:



- a. A permanent injunction restraining the Plaintiff/Defendant in the counterclaim, her employees, servants and agents from interfering, alienating, trespassing or in any way dealing with the property known as Nakuru/Olenguruone/Cheptuech/269 situate in Olenguruone.
- b. Loss of use and rental income at Ksh 144,000/= per annum from the year 2016 to the date of delivery of judgment.
- c. General Damages for Trespass from the year 2016 to the date of Judgment.
- d. Exemplary and Punitive Damages for Fraud and Perjury.
- e. Costs.
- f. Interest at court rates on b, c, d and e and d above.

Plaintiffs Case

4. PW1 Diana Lasoi adopted her witness statement dated 10th September 2020 and stated that she is a widow and administrator of the Estate of the late Solomon Kipkorir Arap Soi. She produced the list of documents dated 9th March 2021 and a confirmed grant of letters of administration dated 1st March, 1996. It was her evidence that the suit title LR. No. Olenguruone Cheptuech 269 belongs to the late husband and was listed as one of the property of the deceased in the grant.
5. PW1 stated that the original title deed was handed over to the 1st Defendant, a land agent whom she has sued for surrender of the title. She further stated that the 1st defendant had surrendered the title to the 2nd and 3rd Defendants who had entered into an agreement which she produced as Pex no. 4 and a letter to the 1st Defendant dated 6th October, 2015 demanding commission of Kshs. 5,825,000/= which is 10% of the purported purchase price of the suit land.
6. It was PW1's testimony that sometime in the year 2012, the 1st Defendant managed to subdivide the property in Ngata and procured a buyer for the property but neither disclosed the transactions that he managed to complete nor the full amount that he had obtained from the sale of the property and only remitted some of the funds.
7. PW1 further stated that this case was triggered by a letter dated 6th October 2015 from the Firm of J.A Simiyu and Company Advocates demanding for an amount of Ksh 5,825,000/- on behalf of the 2nd and 3rd Defendants where it indicated that they had acted as estate agents on behalf of the 1st Defendant which demand letter stated that the property had been sold for an amount of Ksh 68,250,000/-,
8. PW1 also testified that the demand letter indicated that as security for the payment of the said amount of Ksh 6,825,000/-, the 1st Defendant had entered into an agreement dated the 8th September 2015 where he deposited the original title to Land Title Number Nakuru/ Olenguruone/ Cheptuech/269 to the 2nd and 3rd Defendants and that the Defendants would sell suit land and recover their money.
9. PW1 stated that she requested for the title but the 1st defendant was evasive. It was her evidence that she was later informed by her caretaker that the 2nd and 3rd Defendants had invaded the property and gone with a surveyor with the intent to subdivide the property prompting her to file the current case for an injunction stopping the defendants from interfering with the suit land. That the court granted the order which was confirmed pending the hearing and determination of this case,
10. Upon cross-examination by Mr. Karanja Mbugua, PW1 stated that the 1st Defendant would help her dispose off some land but not the suit land. PW1 stated that she did not give him a blanket power and that the same was a Specific Power of Attorney to sell some plots on her behalf upon her advice.



11. PW1 stated that she received proceeds from a purchase in respect of a property in Ngata and that by the time the 1st Defendant sold the suit property she had gone back to the United States. PW1 informed the court that she transmitted the documents to the 1st Defendant to have them changed to her name and she does not have any copy of the power of attorney.
12. It was PW1's evidence that the Power of Attorney did not entitle the 1st Defendant to engage anyone to market the property and that she did not know that the 2nd and 3rd Defendants were engaged to find buyers for the properties. Further, that she did not authorize the 1st Defendant to seek buyers in writing but orally. PW1 also stated that the fact that the 1st defendant had an original title did not give him powers to sell and transfer the land.
13. On further cross-examination by Mr. Karanja, PW1 stated that she never authorized the 1st Defendant to sign the transfers hence the 2nd- 7th Defendants have a fake titles as the same were acquired illegally without a land control board consent and her signature.
14. Upon cross examination by Mr. Weche, PW1 stated that all the properties belonged to her late husband of which she is an administrator vide Grant for Letters of Administration. PW1 stated that they have various power of attorney for specific properties and that she was present during the transactions except for the suit property. She stated that she received 34 million Kenya shillings for the Ngata property; she met the buyer, and signed the transfer documents. PW1 stated that they have never received any money for the sale of the suit property.
15. Upon re-examination by Mr. Chelule, PW1 testified that she did not execute any transfer in respect of the suit property but did so in respect of the Ngata property L.R No 13287/130 (IR NO 40236) where she received a cheque for Kenya Shillings 34.2 million.
16. It was her testimony that the Ngata property is not the one in dispute in this case and that the defendants committed fraud as they transferred the suit property without her signature and that the beneficiaries in the grant did not benefit from the proceeds and that they had consented to the same going to her. Further, that she never appeared before the Land Control Board for consent to transfer.
17. PW2 Collins Liyayi Alila a Land Registrar Nakuru County produced a certified copy of parcel register and green card for Nakuru /Olenguruone/ Cheptuech/ 269 and stated that entry number one was opened on 2nd March, 1978 and registered in the name of Solomon Arap Lasoi with an area measuring 14.0 Hectares on map sheet number ten.
18. He testified that entry number two dated 13th July, 1978 a land certificate was issued with a note dated 2nd December, 1983, and a charge entry number one containing an agreement in terms of section 70.
19. PW2 testified that part C of the encumbrance section dated 2nd February, 1983 has a charge dated 26th July, 1983 to Kenya Commercial Finance Company Limited for Ksh 380,000/= . Entry number two dated 2nd December 1983 there is a charge which reserves the right to tack and consolidate further advances.
20. He stated that there was a discharge of charge dated 13th March, 1990 on entry No. three which is a discharge of charge of entry number one. PW2 testified that there is a government caveat in respect of the suit in the larger Mau complex subject to Case No 006 of 2012 in the African Court of Human and Peoples Rights.
21. PW2 testified that the title is in the names of 4th, 5th, 6th and 7th Defendants dated 7th November, 2016 in entries number two and three respectively but cannot be traced in his copy of the green card. He



- testified that on the green card, entry number two is dated 13th July, 1978 issuing land certificate to Solomon Kipkorir Lasoi and that in comparison, the entries do not match.
22. It was PW2's evidence that there is no entry of the title dated 7th November, 2016 in the green card and when referred to page 114 of the Defendant's list of documents and he testified that it is a photocopy of transfer forms in respect to the suit land which indicated that the 1st Defendant was transferring the land to the 4th, 5th, 6th and 7th Defendants. He further stated that the copy of the transfer is neither dated, nor registered, and further that there is no receiving stamp upon presentation at the Lands Office and there is no franking stamp.
 23. PW2 testified that there was a caveat on the whole of the Mau complex and there were no transactions that could be registered with the government caveat on the Mau complex. It was PW2's evidence that at the time the purported title was issued on 7th November, 2016, the caveat had not been lifted and is not aware whether there was a one-month period lifting the caveat in 2016. He further stated that a title cannot be issued without making the necessary entries in the green card as the process of registration has to be followed. PW2 produced the certified copy of the green card as PEX No 10 and the letter dated 11th March, 2020 as PEXh No 11.
 24. Upon cross-examination by Mr. Karanja, PW2 stated that he does not know whether the Land Registrar had promised to enter the entries in the green card. He stated that the entries are on the encumbrance section and the document is certified and confirmed that the suit parcel is in the Mau complex as per the RIM. He stated that there was no partial lifting of the caveat and the records of the caveat can be traced.

Defendants' Case

25. DW1 Collins Kipngeno Chepkwony the 3rd defendant adopted his witness statement dated 8th November 2022 and stated that he met the 1st Defendant a distant relative in 2012 while he was working in Nakuru. He stated that the 1st defendant informed him that he had been given parcels of land by the Plaintiff to dispose off and that he had twenty-one titles.
26. DW1 testified that the titles were in the name of Solomon Lasoi and only one was in the name of the Plaintiff who was the administrator. He also stated that the 1st Defendant had unregistered power of attorney and they went to the Land office where it was registered at the Central Registry Nairobi.
27. DW1 testified that the 1st Defendant engaged him to look for buyers and he got the 2nd Defendant of which the 1st Defendant is the only one who did the transactions including money being paid to him. DW1 stated that the 1st Defendant promised to pay some money for sourcing buyers, entered into an agreement and handed over the suit land to them to sell and recover their money.
28. It was DW1's testimony that they asked the 1st Defendant to facilitate the transfer of the land to the buyers and that they got the 6th Defendant who was not able to raise the full purchase price but bought the land with her team who paid Kshs 10.8 Million for 36 acres of which the 1st defendant executed the documents. DW1 produced the list of documents dated 8th November, 2022 as DEX No 1 to 38 and stated that the 6th Defendant is the only one in occupation of the suit land.
29. Upon cross-examination by Mr. Chelule, DW1 stated that he is not a registered estate agent and the debt that they wanted to settle is for expenses that they had incurred in the Ngata parcel on behalf of the 1st Defendant. He also stated that the 1st Defendant had promised to pay them a small token of appreciation.



30. It was his testimony that they executed an agreement dated 11th October, 2012, got buyers but neither signed any agreements nor received any purchase price. DW1 was referred to a demand letter dated 6th October 2015 on page 75 of the Defendant's bundle and stated that they did not sue the 1st Defendant as he responded positively and settled the matter.
31. Upon re-examination by Mr. Karanja, DW1 testified that he was instructed to pay survey fees by the 1st Defendant and that there is an acknowledgment by the Surveyor at page 33, and that the surveyor has no claim against them. He also stated that he is not an estate agent.
32. DW2 Caroline Chebet adopted her witness statement dated 8th November, 2022 as part of her evidence in chief and stated that she is the owner of title to Olunguruone Cheptuech/ 269 together with the 4th, 5th and 7th Defendants. She testified that she was issued with a title on 7th November, 2016 and the 1st and 3rd Defendants sold the land to her while the sellers in the agreement were the 2nd and 3rd Defendants.
33. DW2 testified that she knows the 1st Defendant as her neighbor and knew that he was the one taking care of the land and that she also knows that the owner of the land was Solomon Lasoi and the wife as they used to come to the land after Solomon Lasoi died.
34. DW2 testified that they met with the 1st Defendant who informed her that he was selling the land but she could not buy it because it was too big. DW2 further stated that she was shown the power of attorney and the original title and that they went to Olunguruone with the surveyor, the 1st Defendant and the 3rd Defendant and saw the land.
35. It was DW2's evidence that they entered into a sale agreement, which was drafted at Simiyu & Company Advocates in Nakuru whereby they paid Kshs. 10.8 million DW2 further testified that they saw the photographs and PIN numbers for the 1st Plaintiff and the 1st Defendant told them that he would follow up the transfer.
36. DW2 also stated that the seller gave them an agreement to show that he had mandate to sell the land and that the 1st Defendant and the 3rd Defendant called her to pick the title from Simiyu & Company Advocate's office.
37. DW2 testified that there was a national caveat during the time when they got a title but there was a time when there was a partial lift of the caveat vide a gazette notice and it was reflected on the green card. DW2 testified that he was told that the original title in Solomon Lasoi's name was surrendered to the Land Registry.
38. It was DW2's testimony that they were in peaceful possession of the land until May, 2018 when goons invaded the land and that Mr. Chelule came with a court order and brought someone to utilize the 10 acres. DW2 testified that they are innocent buyers and urged the court to dismiss the plaintiff's case with costs.
39. Upon cross-examination by Mr. Chelule, DW2 stated that she bought the suit land for Ksh 10.8 million and that the money was paid to the 3rd defendant and that they took possession of the suit land in 2016 together with the 2nd Defendant.
40. DW2 stated that the 1st Defendant cut down mature cypress trees, sold cows and left but that she does not know the monetary value of the cypress trees. DW2 stated that they took possession before the title was issued and the 1st Defendant was the one who signed the transfer documents which was not dated as the same was to be dated upon registration.



41. DW2 admitted that she has not produced a copy of a registered transfer form and further that the title deed was not entered into the green card due to the caveat. DW2 stated that they applied for a search in 2020 but they were not given any feedback and that she heard the testimony of the Land Registrar who stated that they were not registered as owners of the land.
42. It was DW2's evidence that that Mr. Chelule came with a temporary order of injunction dated 13th September, 2018 barring the Defendants from interfering with the suit land. DW2 stated that they also had their own order dated 11th November, 2016 and that they were never served. It was her testimony that she did not appear before the Land Control Board but went to Molo with the 1st and 3rd Defendants. Further, she stated that she does not remember who chaired the meeting.
43. DW2 stated that she is not aware that the Land Board Meeting was last done in 2008 before the caveat was issued in Olenguruone area and that she has not produced a gazette notice that lifted the caveat. She stated that she was present when the Land Registrar testified that he only knew about the lifting of the caveat vide a gazette notice in 2023.
44. DW2 stated that the original title was in Solomon Lasoi's name who is deceased and he died around 1995 or 1998. DW2 stated that the title was transferred from Solomon Lasoi's name to their names and that there was no transfer to the 1st Plaintiff who was the administrator before it was transferred to them. DW2 informed the court that she has been grazing cattle, planted maize and potatoes and have harvested since 2017 to date.
45. Upon re-examination by Mr. Karanja, DW2 testified that she has explained why her title was not reflected in the green card and that the Land Registrar advised them that the same would be entered after the lifting of the caveat. DW2 testified that she attempted to carry out a search but she was not able due to the caveat. She testified that the Land registrar did not disown her title and that Mr. Chelule was one of the people who stormed the land and the Plaintiffs are not in occupation of the land.

Plaintiffs Submissions

46. Counsel for the Plaintiff filed submissions and identified the following issues for determination:
 - a. Whether the Agency Agreement entered into by the 1st to 3rd Defendants is an illegal agreement?
 - b. Whether the agreement entered into between the 1st, 2nd and 3rd Defendants on the 21st October 2015 has power to bind the 1st Plaintiff?
 - c. Whether the 4th to the 7th Defendants have a valid title over the suit property?
 - d. Whether the Plaintiffs are entitled to prayers sought?
47. On the first issue, counsel submitted that the basis of the 2nd and 3rd Defendant's claim over the suit property is an agreement dated 11th October, 2012 in which they state in paragraph 2 that they are 'Mandate holders is a position to procure buyers for the said property offered for sale. Counsel submitted that the Defendants from the said agreement were to be paid a commission equivalent to 10% of the purchase price for which they had successfully procured.
48. Counsel submitted that the Defendants further entered into an agreement dated 8th September, 2015 in which they agreed to set-off the debt from the agency agreement using the title to Nakuru/Olenguruone/Cheptuech/269. It was counsel's submission that the agreement was illegal, null and void and unenforceable as it was based on a purported estate agency with parties who are not registered to practice as estate agents. Further that the fact that the said parties had already been paid Ksh



- 1,000,000/=, a figure which is itself above the scale provided by the law as commission for the sale that they were claiming.
49. Counsel relied on Section 2 and 18 of the *Estate Agents Act* Cap 5 33 and the cases of *Mapis Investment (K) Limited v Kenya Railways Corporation* [2006] eKLR, *Mike Munga Mbuvi vs Kenya Airways Limited* [2017] eKLR and *Macfoy vs United Africa Co Ltd* (1961) 3 AII ER 1169.
 50. On the second issue, counsel submitted that the agreement dated 21st October 2015 which the 2nd and 3rd Defendants relied on as granting them power to sell the Plaintiffs property has no legal effect given that the consideration of the said agreement is based on an illegality that rendered the agreement null and void ab initio, and the 1st Defendant was acting beyond his powers granted by the Plaintiff. Counsel relied on the case of *Regional Institute of Business Management vs Ondong (Civil Appeal 420 of 2019)* [2023] KEHC 23228 (KLR).
 51. On the third issue, counsel submitted that the Plaintiffs have in their pleadings and testimony averred that title deed allegedly held by the 4th to the 7th Defendants is either a forgery or was obtained through forgery since the 1st Plaintiff neither executed any transfer in favour of the said Defendants nor did she appear before the Land Control Board that authorized any transfer in favour of the 4th to 7th Defendants.
 52. Counsel relied on Section 37, 40 and 43 (2) of the *Land Registration Act* and submitted that a transfer is to take immediate effect and not upon a future happening or event. Counsel submitted that a claim by the Defendants that the same was to be registered once the caveat was lifted is null and neither be effected by the Land Registrar nor can the Defendants rely on such promise and relied on the case of *Alberta Mae Gacci vs Attorney General & 4 Others* (2006) eKLR.
 53. Mr. Chelule submitted that the 5th Defendant in her plaint filed in ELC 54 of 2020 states that she is to be treated as an innocent purchaser of value, a situation that she does not qualify for the following reasons: her and the other purported registered owners are not registered as owners of the suit property and are guilty of forgery and uttering a false document and that there is no evidence that they paid any duty or that the transfer was at all ever registered in their favour. Counsel relied on the case of *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura vs Attorney General & 4 Others* [2017] eKLR.
 54. On the fourth issue, counsel submitted that the Plaintiffs have proved their case to the required standard and hence entitled to the prayers sought, namely damages for trespass, the property being agricultural and measuring 34 acres, punitive and exemplary damages on account of fraud committed by the Defendants and relied on the cases of *Duncan Nderitu Ndegwa vs KP& LC Limited & Another* (2013) eKLR, *Philip Ayaya Aluchio v Crispinus Ngayo* [2014] eKLR, *Rhoda S Kiilu v Jiangxi Water and Hydropower Construction Kenya Limited* [2019] eKLR and *Stelco Properties Limited & another v Njugi Ventures Limited & another* [2021] eKLR.

2nd To 7th Defendant's Submissions

55. Counsel for the 2nd to 7th Defendants filed submissions dated 9th September, 2024 and relied on the cases of *Mayfair Holdings Ltd vs Ahmed* [1990] eKLR and *Suraj Lamp & Industries Pvt. Ltd vs State of Haryana & Another* (In the Supreme Court of India Civil Appellate jurisdiction Special leave Petition (c) No 13917 of 2009).
56. Counsel urged the court to find that the Plaintiffs have not established their case to the required standards. Counsel further submitted that the Plaintiffs have not sought any declaration that the title



in the names of the 4th, 5th, 6th and 7th Defendants is null and void and the court cannot grant reliefs not sought by the parties.

57. Counsel submitted that the Defendants in Nakuru C.M.C ELC No 106 of 2018 Caroline Chebet vs Diana L. Lasoi & Leah Cherono Shabangi & Leonard Kipngetich Chelule which was consolidated with this matter did not give any evidence of denial to the averments and to the prayers sought. Counsel urged the court to enter judgment in favour of the Plaintiff (Caroline Chebet) together with costs.

Analysis And Determination

58. The issues for determination that flow from the pleadings and the evidence are as follows:
- a. Whether the 1st defendant had a valid power of attorney from the 1st Plaintiff
 - b. Whether the 1st 2nd and 3rd defendants had authority to sell the suit land to the 4th to the 7th Defendants.
 - c. Whether the 4th to 7th defendants have a valid title over the suit property
 - d. Who is the rightful owner of the suit parcel of land.
 - e. Whether the plaintiffs are entitled to the orders sought and whether the defendants have proved their counterclaim.
59. It is the Plaintiffs case that the 1st Plaintiff donated a power of attorney to the 1st Defendant to transact on her behalf in the management of the Estate of the Deceased while she was in the United States of America. It is also their case that sometime in 2012, the 1st Defendant (without informing the plaintiff) allegedly contracted the services of the 2nd and 3rd Defendants to act as estate agents and source for purchasers for the sale of parcel of land known as L.R No. 13287/130 (title no. 4921, 40236/29) situated at North Njoro Town (Ngata area).
60. From the evidence on record it is clear that the Plaintiff donated a power of attorney to the 1st defendant to sell some properties on her behalf. The plaintiff had granted several specific power of attorneys in respect of sale of her properties on her behalf to the 1st defendant. There are two power of attorneys, a special and limited which are relevant to this case are dated 11th December 2004 and 23rd May 2012 registered on 2nd May 2005 and 5th June 2012 respectively.
61. The Power of Attorney dated 23rd May 2012 was a limited power of Attorney specific for the sale of Land Reference Number IR NO. 49212. The terms and the mandate of the attorney were stipulated in the agreement and it specifically required the donor to ratify actions of the donee.
62. The 2nd Power of Attorney that is in respect of the suit land dated 11th December 2004 was a Specific Power of Attorney donated to the 1st defendant in respect of r land parcel No. Nakuru/Olenguruone/Cheptuech/269. The specific power of attorney listed the following as the powers granted to the 1st Defendant by the 1st Plaintiff:
- a. Represent me in any legal proceedings whatsoever in respect of Nakuru/Olenguruone/Cheptuech/269.
 - b. Do all necessary acts as required for the sale of the said property to a willing buyer and ensure that all the relevant documentation is done on my behalf to facilitate proper and legal transfer of title to the purchaser of the said property.



- c. To enter into a sale agreement on my behalf in his own official names and capacity, to enter and execute all the relevant consent documents for sale, to execute the transfer documents and transmission documents on my behalf.
- d. To ensure that all the relevant and necessary documentation are effected, to sign on my behalf the transmission documents, to effect changes on the land title from Solomon Kipkorir Lasoi to any intended purchaser, change the names in favour of the New Purchaser under the contracted sale agreement.
63. According to Black's Law Dictionary, an instrument titled: a "Power of Attorney" is defined to mean:
"An instrument granting someone authority to act as an agent or attorney-in-fact for the grantor. 2. The authority so granted; specify the legal ability to produce a change in legal relations by doing whatever acts are authorized."
64. A Power of Attorney is an instrument conferring authority by deed. The person conferring the authority is termed the donor of the power, and the recipient of the authority, the donee (see Halsbury's Law of England, 4th Edition Vol. 1, para 730, page 438.)
65. The Plaintiff informed the court that she revoked the power of Attorney granted to the 1st defendant due to lack of giving accounts and surrender of the original title but she did not tender any evidence when the same was done and whether the revocation was registered at the Lands office. Was it done before the sale of the suit property or after and if so what was the legal effect of such revocation.
66. In the case of CCB v MIB & another [2014] eKLR the court held as follows on the issue of revocation of a power of attorney:
"Having found that the power of attorney was not irrevocable, the revocation of the same which was registered on the 11/1/2012 was valid. The registration was done pursuant to provisions of the Registration of Titles Act Cap 281 (now repealed/section 51 of the aforesaid Act states:
"A power of attorney may be revoked by an instrument of revocation in form N in the first schedule, and after the registration of revocation of the power the registrar shall not give effect to any transfer or other instrument signed pursuant to that power". In the present case the documents which had been executed pursuant to the power of attorney had not been registered. The registration of the revocation therefore effectively stopped the registrar from effecting any document signed pursuant to the revoked power. There is an argument by Mr K'opere that even if the registration of the revocation of the power of attorney is valid, it could not act retrospectively. This argument is without basis. The section is very clear that no instrument signed pursuant to the revoked power can be given effect. This includes the transfer, which had not been registered. The revocation brought all documents, which had been signed pursuant to the power of attorney to a halt. It cannot therefore be argued that the revocation having been registered on 11/1/2012 it could not affect what had already been done before that date."



67. It should also be noted that the donee must always act in good faith to protect the interest of the Donor who is the principal. Halsbury's Laws of England Vol 1 4th edition states as follows with regard to authority of agents:

“In the absence of express directions the agent may exercise his discretion so as to act in the best manner possible for the principal. An agent whose instructions are in ambiguous terms is justified if he acts in good faith and places reasonable construction on his authority; but where the limits imposed are definite he has no right to exercise his discretion”

68. The specific power of attorney gave instructions on what the 1st defendant was to do with the property. Was the 1st defendant justified in engaging the services of the 2nd and 3rd defendants as agents to source for buyers. Was he justified in entering into an agreement for the sale of the property to recover their commission without the knowledge or ratification by the donor who is the 1st plaintiff.

69. The main issue is whether the 1st defendant acted in good faith in the interest of the principal who is the 1st plaintiff. Why did he not inform the plaintiff that he had given the suit land as security for payment of commission to the 2nd and 3rd defendants, why did he enter into an agreement for sale with the 2nd and 3rd defendant to sell the suit land to cover their commission. Was the plaintiff aware of the commission and how much had the 1st defendant sold the suit properties to attract the said commission. Why did he not render accounts for the sale of the property?

70. The plaintiff stated that the 1st defendant acted beyond the mandate in the power of attorney and failed to disclose the dealings with the 2nd and 3rd defendants, and sold the suit plot. It is not disputed that the plaintiff donated a power of attorney to the 1st defendant for the sale of LR No. 49212 which is situate in Ngata. It is also not in dispute that the plaintiff received Kshs 34.2 Million from the sale of a plot in Ngata. The dispute is on the sale of the suit plot Nakuru/Olenguruone/ Cheptuech/269 by the 2nd and 3rd defendants who sold the suit plot to recover their commission without her knowledge.

71. From the definition of the power of attorney and what the plaintiff had specifically donated to be done on her behalf, it follows that the 1st defendant acted beyond his powers and without mandate therefore the entry into an arrangement with the 2nd and 3rd defendant to sell the suit land to recover their commission was illegal, null and void. The 1st defendant had no power to offer the suit land as commission fees for the 2nd and 3rd defendants as his action was tainted with illegality from the onset. Did he seek permission from the plaintiff to sell the land as commission to the 3rd parties whom the plaintiff had not contracted.

72. In the case of Scott vs Brown Doering, McNab & Co. (3) [1992] 2 QB 724 at page 728 the court held that:

“No court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is duly brought to the notice of the court, and if the person invoking the aid of the court is himself implicated in the illegality. It matters not whether the defendant has pleaded the illegality or whether he has not, if the evidence adduced by the plaintiff proves the illegality the court ought not to assist him”.

73. Further even if the 1st defendant had authority to transact and sell the suit property, the 2nd and 3rd defendant who purported to be agents, were not registered estate agents as per section 18 of the [Estate Agents Act](#) Cap 533. Transactions in land are very sensitive issues, which must be done by recognized personnel and institutions. There is a lot of fraud in land dealings and people must be protected from



- unscrupulous individuals who cannot be held accountable by professional bodies that they belong or ascribe to. The 3rd defendant also confirmed that they are neither estate agents nor have licenses to work as such.
74. If the 1st defendant did not act ultra vires in dealing with a property by offering the property as a commission to the 2nd and 3rd defendants, it would be within his mandate to engage with others, enter into contracts, sign the offer letters, attend the land Board to enable transfer of the land. The plaintiff was also required to ratify the 1st defendant's actions.
75. I therefore find that the 1st defendant acted ultra vires in engaging the 2nd and 3rd defendants to sell the suit land to recover their commission without authority from the plaintiff. The 1st defendant also did not account for the monies received from the sale of the suit property which is an issue in this case. It follows that any transactions that emanated from such sale were null and void.
76. It should also be noted that this property is situate within the Mau complex where the government had placed a caveat stopping any dealings in the area. This explains why the 4th 5th and 7th defendants' titles were never entered in the green card. The Land Registrar confirmed that the transfer forms were neither dated nor registered in the green card. These purported transfers were done during the pendency of the caveat.
77. The defendant stated that the Land Registrar had promised to enter the details in the green card but the same was never done. She also stated that she tried to carry out a search but was not able due to the caveat. She stated that the caveat was partially lifted in 2016 but did not produce any evidence of such lift. The Land Registrar told the court that he was not aware of any such lift in 2016 and the only one he is aware of in the one that was done 2023.
78. A Land Registrar has no power to promise a party to register entries in a green card later. Registration process must be followed and must be transparent and predictable. The land office is an institution, which has procedures for registration, which must be adhered to.
79. It is also suspect how the property, which was in the deceased Solomon Lasoi's name, was, transferred directly to the defendants without transmission to the administrator
80. The Plaintiff sought for an order of injunction against the defendants from advertising or selling the property known as Title Number Nakuru / Olenguruone/Cheptuech/269, eviction of the 3rd to the 7th Defendants from the suit property, release of original title, alternatively the 8th Defendant be ordered to issue a permanent replacement on the same, cancellation of the title deed issued to the 4th 5th, 6th and 7th Defendants, an order that the 1st defendant renders account of all his dealings under the power of attorney granted to him by the 1st plaintiff, general damages for trespass over Land Title No. Nakuru/ Olenguruone/ Cheptuech/269 against the 2nd to the 7th Defendants, punitive and exemplary damages against the 1st to the 7th Defendants for fraudulent activities over the suit property, costs and interest.
81. The court found that the plaintiff donated a power of attorney to the 1st defendant to act on her behalf, but however the 1st defendant acted beyond his mandate in allowing the 2nd and 3rd to sell the suit property to recover their commission. This makes the defendant liable for his actions, which were ultra vires.
82. Both the plaintiff Diana Lasoi for and the 6th defendant Caroline Chebet had claimed loss of use of the suit land. The 6th Defendant informed the Court during the hearing that she has been grazing cattle, planted maize and potatoes which she has been harvesting since 2017 to date and potatoes once or twice a year. She stated that the milk is for their personal use and that the Plaintiffs are not in occupation of the land. This confirms that she has not lost anything as she has been utilizing the land which was



- acquired unprocedurally. The plaintiff did not tender any evidence to prove loss of use of the land therefore that claim fails.
83. In the case of *Anne Wambui Nderitu vs Joseph Kiprono Rapkoi & Another* [2005] IEA 334, the Court of Appeal held as follows:
- “As a general proposition under Section 107(1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act”.
84. 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.”
85. The Court of Appeal in the decision of *Vijay Morjaria Vs 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.”
86. The transactions that resulted from the 1st defendant ultra vires act with the 2nd and 3rd defendant selling the suit land to recover their commission were tainted with illegality. Further the transactions were done during the pendency of a moratorium on the Mau Complex and there was no evidence that there was a partial lift as the defendants would like the court to believe. There was no valid land control board consent as the last LCB was conducted in 2008 then the caveat was put in place. The transfer forms were neither dated nor registered, no entries were place in the green card, the entries in the green card still in the deceased Solomon Lasoi’s name.
87. The court cannot validate illegal transactions, which are not reflected in the registry. The court therefore finds that an order of cancellation of the titles that emanated from the irregular transactions by the 1st 2nd and 3rd defendants.
88. The defendants who hold the title can retrace their steps and seek remedy from the people who sold and received their purchase price for the suit land. The court therefore make the following specific orders in respect to ELC NO. 472 of 2016:
- a. An injunction is hereby issued against the defendants from advertising or selling the property known as Title NakuruOlenguruone/Cheptuech/269.
 - b. The 3rd to the 7th Defendants to give vacant possession of the suit land within 45 days’ failure to which eviction to issue.
 - c. An order is hereby issued for the cancellation of the titles held by the 4th, 5th, 6th, 7th defendants and the 2nd and 3rd Defendants to release the original title to the plaintiff.
 - d. Order is hereby issued to the 1st defendant to render an account of all his dealings under the power of attorney granted to him by the 1st plaintiff.



e. Costs of this suit.

89. The Plaintiff Caroline Chebet's suit in NAKURU ELCC 54 of 2020 formerly CMELC NO 106 of 2018, is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 11TH DAY OF OCTOBER 2024.

M. A. ODENY

JUDGE

