



Ibrahim & 8 others v Laptia & another (Environment & Land Case 53 of 2021) [2023] KEELC 18732 (KLR) (11 July 2023) (Judgment)

Neutral citation: [2023] KEELC 18732 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 53 OF 2021**

**FO NYAGAKA, J
JULY 11, 2023**

BETWEEN

**CHEPARAWASI IBRAHIM 1ST PLAINTIFF
EUNICE CHEPKOKOKOR IBRAHIM 2ND PLAINTIFF
CHIRSTINE IBRAHIM 3RD PLAINTIFF
MARGARET KEKE 4TH PLAINTIFF
MONICAH SOMPOL 5TH PLAINTIFF
MARY CHEYECH 6TH PLAINTIFF
RODAH CHEPATEL 7TH PLAINTIFF
GLDAYS KURKOR 8TH PLAINTIFF
SOPHIA CHEROP 9TH PLAINTIFF**

AND

**CHRISTOPHER LAPTIA 1ST DEFENDANT
JULIUS R. CHEMERII 2ND DEFENDANT**

JUDGMENT

1. Sometimes disputes brought before courts are strange but some mirror the deep pain many a people go through in the current debased and depraved society that aptly fits (for those who believe in the Bible teachings) that which was foretold by prophets of old, Jesus Himself. For He said, in Mathew 10: 21 that “...children shall rise up against their parents, and cause them to be put to death”. While the outpouring of the heart by the 1st Plaintiff (PW1) at the end of her re-examination will not form the basis of determining the dispute herein (see below at paragraphs 47 to 49, it is by no means a true



reflection of how low some of humankind has sunk in ungratefulness. Strange! What becomes of the sons and daughters of men that they can turn against one another, and worse against a parent - a being who brought them into this world and took care of them when they were infants and very vulnerable - is painful unresolved mystery of true selfishness.

2. The English saying, show me your friends and I will know your character and also that birds of a feather flock together are all-time enduring truths in virtually all instances. The 1st and 2nd Defendants in this case seem to have developed a special bond that makes them defend each other's actions very passionately even in the face of clear evidence to the contrary. That notwithstanding, it is worth noting that another English saying, "make hay while the sun shines", is also as equally true as the previous two. As the record bears, from as 07/07/2022 this Court made conscious efforts to have the parties herein settle this matter amicably as a family. It even sent the same for mediation and after that failed it tried to talk to the parties to see the sense of even using Alternative Justice Systems but the 1st Defendant would hear none of it. The Court was left with no option but to decide the matter based on pleadings, evidence and the law.
3. That said, by a Plaint dated 05/11/2021, the Plaintiffs brought this suit on the same date, against the 1st Defendant who was a biological son to the 1st Plaintiff and sibling to the rest of the Plaintiffs, and the 2nd Defendant who was alleged to have bought three (3) acres of part of one of the suit lands from the 1st Defendant. They prayed for:
 - a. A declaration that although the 1st Defendant was registered as the sole proprietor of the lands comprised in title No. West Pokot/Tapach/156 and West Pokot/Chebon/324 which has now been subdivided into parcel Nos. West Pokot/Chebon/1381 and 1382, he was so registered in trust for the Plaintiffs and himself.
 - b. A declaration that the sale of the land now comprised in parcel No. West Pokot/Chebon/1382 by the 1st Defendant to the 2nd Defendant was fraudulent and the title issued to the 2nd Defendant be cancelled, and the 2nd Defendant ordered to move out of the said parcel of land and in default he be evicted.
 - c. An order that upon the cancellation of the title for parcel No. West Pokot/Chebon/1382, the registers for parcel Nos. West Pokot/Chebon/1381 and 1382 be rectified and the land comprised in the two parcels restored to parcel No. West Pokot/Chebon/324.
 - d. An order be made terminating the trust in regard to parcel Nos. West Pokot/Tapach/156 and West Pokot/Chebon/324 or the resultant subdivisions and an order be made that the lands that were held in trust be equally shared/ subdivided among the Plaintiffs and the 1st Defendant.
 - e. An order be made that the 1st Defendant does execute all such documents as would facilitate the subdivision of the lands held in trust and transfer the individual parcels to the beneficiaries and in default the Deputy Registrar of this court be authorized to execute all the requisite documents.
 - f. ...Spent.
 - g. That the Defendants be ordered to pay the costs of the suit to the Plaintiffs.
 - h. Any other order/relief that this Honourable court may deem fit to grant.
4. In their Plaint the Plaintiffs pleaded that the 1st Plaintiff was the wife of the late Kwaloi Sompol alias Ibrahim Lokwaloi Sompol who was born in 1905 and died on 04/08/1998. Further, the 1st Plaintiff



got married to the Kwaloï Sompol about 1960 as a 3rd wife. The marriage was blessed with nine (9) children of who were the 2nd to 9th Plaintiffs and the 1st Defendant.

5. The late Kwaloï Sompol had several pieces of land in Chebon Location where he settled his wives and children. They averred further that when the 1st Plaintiff got married to Kwaloï Sompol, she was settled on the land measuring 29.81 hectares (76.63 acres) which, after the husband's death, got registered as West Pokot/Chebon/324 (hereinafter referred to as parcel No. 324) and all her nine children were born thereon.
6. It was their claim that the late Kwaloï Sompol owned another parcel of land measuring 11.56 hectares (28.55 acres) which he availed to the use of the 1st Plaintiff and which after his death became registered as parcel No. West Pokot/Tapach/156 (hereinafter referred to as parcel No. 156). It was the Plaintiffs' further claim that Kwaloï Sompol settled his members of the 1st and 2nd families on other parcels of land, and only the 1st Plaintiff and her children were settled on the two parcels of land in issue herein, being, parcel Nos. 324 and 156.
7. They pleaded that the 1st Defendant was born in 1963 while the 2nd to 9th Plaintiffs were born in 1969, 1972, 1976 (which was the same year of birth as twins for the 3rd and 4th Plaintiffs), 1979, 1980, 1983 and 1985 respectively.
8. The Plaintiffs pleaded further that in 2002 when demarcation of the area was done, the 1st Defendant, without consulting the Plaintiffs, enlisted himself as the owner of the two parcels of land in issue and got himself registered as the sole owner thereof in 2015 and obtained titles thereto in 2016. They claimed that although the 1st Defendant was registered as sole owner of the two parcels of land Nos. 324 and 156, he did so in trust for the Plaintiffs. They gave the particulars of trust as,
 - a. The two parcels of land belonged to the 1st Defendant's father and the said defendant was born on parcel No. West Pokot/Chebon/324.
 - b. All the Plaintiffs were beneficial owners of the land.
 - c. The 1st Defendant occupies the land and lives therein while the Plaintiffs 2-9 lived thereon until they got married and they still visit their mother who lives on it.
 - d. The 2nd-9th Plaintiffs are entitled to share their fathers' lands.
9. The Plaintiffs pleaded further that on or about 2020 the 1st Defendant sold three (3) acres of part of land parcel No. 324 and upon subdividing it, he transferred the portion now comprised in land parcel No. West Pokot/Chebon/1382 (hereinafter referred to as parcel No. 1382), measuring approximately 1.21 Hectares, to the 2nd Defendant and retained in his sole name the rest of 28.6 hectares (70.642 acres), being parcel No. West Pokot/Chebon/1381 (hereinafter referred to as parcel No. 1381).
10. It was the Plaintiffs' case that the sale of the three (3) acres by the 1st Defendant to the 2nd Defendant was fraudulent and the sale should be cancelled and the 2nd Defendant be ordered to move out of the land failing which he be forcefully evicted. They gave the particulars of fraud on the part of the 1st Defendant and the 2nd Defendant respectively.
11. On the part of the 1st Defendant:
 - a. Selling part of the land he is holding in trust for the family of Kwaloï Sompol.
 - b. Failing to disclose to the buyer that he, the 1st Defendant, was only a trustee.
 - c. Selling the land without informing or involving the Plaintiffs.



- d. Subdividing the land comprised in parcel No. West Pokot/Chebon/324 without involving or informing the Plaintiffs.
12. On the part of the 2nd Defendant:
 - a. Failing to undertake due diligence and discover that the 1st Defendant was holding the land in trust for the family of Kwaloi Sompol
 - b. Failing to consult the 1st Plaintiff who lives on the land.
 13. The Plaintiffs pleaded that they had placed a caution on the two parcels of land, namely, Nos. 1381 and 1382 and restricted them yet the Defendants were minded about removing them. They averred that the trust in relation to the Plaintiff in the parcels be terminated and the Court directs that the parcels of land be shared equally as between the Plaintiffs and the 1st Defendant and titles be issued to all. They prayed for judgment to be entered as per the reliefs sought.
 14. By a Defence dated 6/05/2022 and filed on 09/05/2022 the Defendants denied the Plaintiffs' claim. They admitted the descriptive parts of the Plaint and the fact that there had been a marriage between the 1st Plaintiff and the late Kwaloi Sombol alias Ibrahim Lokwaloi Sompol as was pleaded in paragraphs 3 and 4 of the Plaint. They denied paragraphs 5, 6, 7, 8 and 9 of the Plaint. The paragraphs were to the effect that late Kwaloi Sompol had several pieces of land in Chebon Location where he settled his wives and children, when the 1st Plaintiff got married to Kwaloi Sompol, she was settled on the land measuring 29.81 hectares (76.63 acres) and she bore all her nine children on it and it got registered as parcel No. 324, and the late Kwaloi Sompol owned another parcel of land measuring 11.56 hectares (28.55 acres) which he availed to the use of the 1st Plaintiff and family and after his death it became registered as parcel No. 156, and Kwaloi Sompol settled only the children of the 1st Plaintiff and her were settled on the two parcels of land in issue, and that the 1st Defendant was born in 1963 while the 2nd to 9th Plaintiffs were born in 1969, 1972, 1976 (which was the same year of birth as twins for the 3rd and 4th Plaintiffs), 1979, 1980, 1983 and 1985 respectively.
 15. The Defendants pleaded that the late Lokwaloi Sombur (sic) had land in Muino where he settled the Plaintiff as her matrimonial home. That the 1st Plaintiff had been in occupation of the land in Muino and not parcel No. 324 and that the 2nd-9th Plaintiffs were born in Muino. The 1st Defendant only took the 1st Plaintiff from Muino to parcel No. 324 on a temporary basis when insecurity arose in there and she was old and of frail health.
 16. The 1st Defendant averred that the 2nd to 9th Plaintiffs were all married and had their matrimonial homes where they occupied and had never resided on parcel No. 324. The 1st Defendant had three wives of whom, the 1st who had 11 children was residing on land parcel No. 1381, the 2nd who had 10 children also in occupation of the same parcel while the 3rd wife with 9 children was resident on parcel No. 156.
 17. The 1st Defendant averred that sometime in 2002 demarcation of land within Chebon area took place and the suit lands were demarcated to him by the Land Committee (sic) namely, Lotukee Pulian, Asekou Yotomuk (Deceased) and Francis Lopariwo. Further, that in 2015 when titles to the two parcels of land were issued the Plaintiffs never raised an issue regarding the registration of the 1st Defendant as proprietor.
 18. The 1st Defendant denied that he was registered as proprietor of the two parcels of land in trust for the family. He denied further the particulars of trust pleaded since land parcel Nos. 1381 and 156 were never held in trust for the family.



19. It was the 1st Defendants further claim that he sold two (2) acres of the land to Ngoris Pilat to cater for the fees for his son and the 9th Plaintiff, Sophia Cherop and the Plaintiffs were aware of the sale and enjoyed the proceeds thereof hence had come to court without clean hands. He averred further that the 1st Defendant having been unemployed had to sell part of land parcel No. 324 to raise fees for his children.
20. On his part the 2nd Defendant pleaded that he was an innocent purchaser without notice who had done due diligence by applying for an official search. Therefore, he acquired the title without fraud. Again, that the 1st Defendant sold three (3) acres to one Samuel Loshatukei Kokarumon who in turn sold it to the 2nd Defendant hence the sale agreement was valid. He denied the filing of cautions on the two parcels of land, Nos. 1381 and 1382. He averred that being the proprietor of the parcels of land he was entitled to quiet possession thereof. He denied being registered in trust for the family and the court could not terminate that which that never existed.
21. The Defendants denied receipt of demand to sue but admitted there being no suit pending between the parties. However, they denied liability. They averred that the Plaintiffs were not entitled to the reliefs sought and the 1st Plaintiff had a matrimonial home in Muino while the 2nd to 9th Plaintiffs were all married.
22. On 09/06/2022 the Plaintiffs filed a Reply to Defence dated 6/06/2022 in which they responded to paragraphs of the 4, 5, 6, 7, 8 and 18 of the Defence by reiterating the contents of the Plaint, particularly paragraphs 4, 5, 6, 7 and 9 and emphasized the fact that the 1st Plaintiff has never had a matrimonial home in Mwino (sic) nor were any of her children born in Muino (sic). They pleaded that the 2nd to 9th undertook their primary education in schools in Sina Sublocation in Chebon while living on the land which later got registered as West Pokot/Chebon/324.
23. In response to the Defendants' averment that the two parcels of land were demarcated to him by the Land Committee the Plaintiffs pleaded that the 1st Defendant was the only son of the 1st Plaintiff and her late husband who died on 04/08/1998 and the 1st Defendant was only registered as owner of the parcels of land on behalf of the family of his late father who owned the parcels. They averred that the parcels of land never belonged to the 1st Defendants, and the Plaintiffs have a beneficial interest in the two parcels of land as the wife and children of the late Kwalo Sompol. The Plaintiffs averred further that they were not party to the sales of the land by the 1st Defendant nor were they were not informed of the sale. They denied being beneficiaries of the proceeds of the sale and that they only learnt of the sale through the entry of the 2nd Defendant onto the land. They reiterated the contents of the Plaint.

Evidence

24. After the close of pleadings, the 1st Plaintiff testified as PW1 on her own behalf and that of the other Plaintiffs. She stated that on 05/11/2021 she wrote a witness statement which she adopted as evidence in-chief.
25. In the statement she stated that she was a wife of the late Kwalo Sombol who died on 04/08/1998. She got married to him as the 3rd wife about 1960 and was blessed with nine children who were the 1st Defendant and the 2nd to 9th Plaintiffs. The late Kwalo cleared several parcels of land in Chebon and settled his wives and their children on them.
26. She stated that when she got married to him he settled her on the parcel of land which later came to be registered as parcel No. 324 which measured approximately 29.81 Ha (76.63 acres) and all her children were born and raised therein. She stated further that the late Kwalo had another parcel of



- land which he availed for her use and her family and the said parcel got to be registered as parcel No. 156. It measured 11.56 Ha (28.55 acres). The late Kwaloi settle the 1st and 2nd houses in other parcels of land and only the family of the 1st Plaintiff on the two parcels in issue in the instant suit.
27. She stated the 1st Defendant was born in 1963 while the 2nd to 9th were born in 1969, 1972, 1976 (which year of birth was for the 3rd and 4th who were twins), 1979, 1980, 1983 and 1985 respectively and they all went to local schools for their primary education.
 28. When demarcation took place in 2002 well after her husband died, the 1st Defendant, without consulting her or the rest, enlisted himself as the owner of the two parcels of the land availed by the husband for her family as stated before. The registration took place in 2015 and titles thereto obtained in 2016. The said parcels of land were thus registered in the 1st Defendant's name in trust for the Plaintiffs as wife and daughters of the late Kwaloi and that the particulars of trust were pleaded.
 29. She stated that the 1st Defendant had taken the two parcels of land as his own sole property and sold three acres being part of land parcel No. West Pokot/Chebon/324 and subdivided the land into parcel No. 1381 of which he retained in his name and 1382 in the name of the 2nd Defendant. She stated further that the transfer of parcel No. 1382 to the 2nd Defendant by the 1st Defendant was fraudulent and the sale process should be reversed, the title thereof be cancelled and parcel No. 324 be restored. She stated that she had pleaded the particulars of fraud in paragraph 13 of the Plaint. She stated that as a widow of the late Kwaloi Sompol she was entitled to a share of his land and her daughters, being the 2nd to 9th Plaintiffs, too. She urged the prayers in the plaint.
 30. In her oral testimony PW1 testified that the 2nd to 9th Plaintiffs together with the 1st Defendant were her biological children. She repeated the statement that when she was married to her late husband, Ibrahim, he placed her on the suit land, namely, West Pokot/Chebon/324, where they all were residing on at the time of the suit. By the time her husband died titles to the land "had not come out." When the titles were issued, the came out in the name of her son.
 31. Her testimony was that the husband had three wives of whom the each was given their respective shares of land. For her she was given the suit land, namely parcel No. 324, and another one, namely, West Pokot/Tapach/156. After the death of her husband the son registered himself as the owner.
 32. Her further testimony was that the 2nd Defendant was a buyer of a portion of the suit land which her son sold to him without her knowledge. She stated that the two parcels of land were demarcated by her later husband and by the time he died the two were his estate. She was supposed to be the owner together with all her children. She testified that she only permitted her son to be registered as owner in trust for all of them as the mother and all her children. However, the son had since turned against them hence the dispute, and she wanted the land subdivided among all her children.
 33. She relied on a copy of her Identity Card as P. Exhibit 1 and a copy of the late husband's identity card as P. Exhibit 1(b) and the green card (extract of title) for land parcel No. West Pokot/Chebon/324 as P. Exhibit 2(a). She testified that land parcel No. 324 had since been subdivided into parcel Nos. West Pokot/Chebon/1381 and 1382. She produced green cards for the two parcels as P. Exhibit 2(b) and (c) respectively. She produced the green card for West Pokot/Tapach/156 as P. Exhibit 2(d).
 34. She adduced oral evidence about her matrimonial home with her husband. She stated that he was buried on the suit land and his grave was on the land which was finally registered in the 1st Defendant's name after the subdivision, which land was parcel No. 1381. She produced two photographs of the matrimonial home as P. Exhibit 3(a) and (b). She accused both Defendants of stealing her land.



35. She testified that she registered cautions on the parcels of land the 1st Defendant registered himself as owner. She produced as P. Exhibit 4 the caution over land parcel No. West Pokot/Chebon/1381. She stated that the 1st Defendant applied to remove the caution. She produced as P. Exhibit 5(a) the Notice of Intention to remove the caution and P. Exhibit 5(b) her objection to the removal of the caution. She also produced as P. Exhibit 6 the restriction placed on the land registered in the name of the 2nd Defendant.
36. PW1 produced as P. Exhibit 7(a)-(h) copies of the identity cards of Monicah (5th Plaintiff), Mary (6th), Rodah (7th), Eunice (2nd) and Margaret (4th). She produced her husband's death certificate as P. Exhibit 8, the Kenya Certificate of Primary Education (KCPE) and school leaving certificates of Eunice, Cheyech (Mary), Cheptal (Rodah) and Sophia as P. Exhibit 9(a) - (g) and the birth certificates of Eunice, Rodah and Sophia as P. Exhibit 10 (a) - (c). She prayed for the reliefs in the Plaint.
37. Upon cross-examination she stated that Christopher (the 1st Defendant) was her first-born son and Eunice her 2nd born daughter. She stated that the 1st Defendant had three wives and many children besides grandchildren. She testified that the 1st Defendant schooled for a short while, to her disappointment because he was a lazy or slow mind.
38. She stated that Eunice was a married teacher who had four children, Christine was also a married teacher with three children. Monicah did not go to school since she had a slow mind. She was not married but had two children. Mary the 3rd born daughter was married went to school and was working in a job PW1 did not know. Gladys who was the 2nd last born was married and had two children but she "did not have a good brain" and was not employed. Sophia a school teacher was married and had two children.
39. She stated that the son had many children who referred to her as "Gogo" (grandmother in their tongue) but she could not tell their number. She stated that Christopher did not pay fees for his sisters but rather it was their father (her husband) who paid fees for all of them. Upon being referred to P. Exhibit 9(g) she stated that she knew Sophia completed her education but she could not tell the year. Referred to P. Exhibit 8 she stated that she knew her husband died in 1998. She stated that although Sophia went to school after the death of her husband, she (PW1) was the one who paid her fees from the sale of cattle left back by her late husband. PW1 stated that she was the one who used to care for the cattle after the death of her husband.
40. She testified that she stayed with the 1st Defendant until he married and had children. Further, that the 1st Defendant only moved onto the other end of the suit parcel of land but it was not divided.
41. On being asked about the distance between Chebon and Cheporowo, she stated that Chebon was far to the north of Cheporowo where they all resided and although it was a walking distance she could no longer walk that far because of old age and would rather use a motorcycle. She stated that Sina sublocation was farther north than Chebon from their home.
42. She repeated that all her children were born in Cheporowo and her son only took over the land in Chebon which her late husband had demarcated for himself. She stated that her late husband demarcated the land in Chebon when she had born some of her children on it. She stated that she did not count how many children she had born by then because she did not anticipate any problem.
43. She denied that Christopher (1st Defendant) demarcated the land for himself. She stated that she could not tell the age of her husband by the time demarcation took place. She stated that in the Pokot culture she was "cheminingwo" meaning the third wife. Further, that the other wives resided nearby but each



had their parcels of land which did not border hers. She could not tell when parcel No. 324 was registered in the son's name. She denied knowledge of a parcel of land in Muino.

44. PW1 stated further in cross-examination that the P. Exhibit 2(a) to (d), the green cards did not show anywhere that the parcels were registered in trust for the children. She stated she did not agree to the son selling the land and that if he wished to he should have first agreed with his sisters to subdivide the same. She stated that the 1st Defendant should have registered the land in trust for the family since the land was not his. She stated that she registered the caution on the parcels of land because the 1st Defendant knew she was his mother and he stole the land by registering himself as owner. She testified that the 1st Defendant did not inform her that he intended to register the land in his own name. She stated that after the death of her husband she took over the role of the father of the home and the 1st Defendant should have first sought her permission to be registered as sole owner.
45. Upon being cross-examined about the alleged Muino residence she stated that they had never before resided in Muino. She repeated that all her marital life she occupied the suit land and that was where she bore all her children. She (in tears and threatening to unleash a curse) stated that the son wanted to cause problems and that it was a sin for him to claim he demarcated the land for himself. She stated that the land was hers and God knew it all.
46. In Re-examination she stated that she had never resided in Muino area and she did not know such a place. Her testimony was that all the years she lived with her husband he never owned any land in Muino. Further, that she bore the 1st Defendant on the land where she resided to the date of the suit and she bore all other 8 children thereon in that home. The other wives had their parcels of land, one in Tapach and the others on Chebon. She repeated that demarcation of the parcels was done by her husband and not her son.
47. She demystified the fact that West Pokot was a district when she obtained her identity card, Kapenguiria a Division, Chebon a Location and the sublocation was still Chebon while Cheporowo was a village where she lived in. She denied being informed by the 1st Defendant that he was going to register the land in his own name. At one time she asked why the 2nd Defendant decided to take her land and he said he bought it.
48. At this stage of evidence PW1 broke down and decided to pour her heart out as against the son (and she wanted it recorded). She lamented how he had sold all her cattle and other properties, how he had caused her to now go and live in the bushes and that her heart was bleeding in agony. She pleaded with the Court to assist her in this issue caused by her own son whom she bore. She dared the son to state where, as old as she was, he wanted her to go to when he sold all her animals and property.
49. She, in tears, asked the son how wanted her to live now that he had disrespected her as his mother. She stated how one day the 1st Defendant called her to where he was and she obliged. On reaching, he angrily and while shaking ordered her, "mum sit down" and she feared for her life. She wanted to strip naked so that she would make him understand that she was his mother by him seeing her nakedness but she kept calm. She stated that at her age of 81 years she wanted to leave it there.
50. She also recalled how she used to live with the 1st Defendant's children as her grandchildren but one day he went and took all of them away leaving her in solitude, and at that time she was sickly. She resided for one week without any help. She stated that he wanted the 2nd Defendant to leave from her land.
51. That marked the close of the Plaintiffs' case.



52. The 1st Defendant testified as DW1. He stated that he hailed from Sina Sublocation of West Pokot County. He knew he had been sued by his mother but did not know why. He adopted his written witness statement as his evidence in-chief.
53. In his statement dated 06/05/2022 he stated that there was no dispute that he was the registered owner of land parcel Nos. 324 and 156 as a first registration. He stated further that land parcel No. 1381 which was formerly parcel No. 156 (sic) was demarcated to him by the Land Committee, namely, Lotukee Pulian, Asekou Yotomuk and Francis Lopariwo in 2002 and after that titles were issued to him.
54. He stated that since 2015 when titles were issued to him the Plaintiffs had never raised complaints over the registration of the two parcels of land in his name. Further, that the late Lokwaloi Sombur (sic) had a parcel of land in Muino where his sisters were born and that was where his mother had been in occupation and used it as her matrimonial home. He stated that the claim by the 1st Plaintiff that the 2nd to 9th Plaintiffs were born and raised on parcel No. 1381 formerly parcel No. 324 was false.
55. His stated further that all his sisters were all married and had their matrimonial homes and therefore they had never been in occupation of parcel No. West Pokot/Chebon/1381 formerly West Pokot/Chebon/324. He then stated that he has three wives, of whom the 1st had 11 children who were in occupation of West Pokot/Chebon/1381, the 2nd who had 10 children was also in occupation of the land while the 3rd who had 9 children occupied parcel No. West Pokot/Tapach/156.
56. He stated that he only took his aging ailing mother in 1990 to live with him on the parcel No. 1381 due to insecurity and unconducive weather in Muino area. Further that he had sold his cows to raise fees for his sisters and after that he was forced to sell 2 acres being part of parcel No. 324 to one Ngoris Pilat to cater for the fees for his son and 9th Plaintiff and the Plaintiffs never raised an issue about it.
57. He stated further that in 2019 he sold again part of land parcel No. 324 to Samwel Loshatukei Kakurumon to raise fees for his children, and the said Samwel Loshatukei Kakurumon sold the land to the 2nd Defendant (sic). He stated that he had since transferred parcel No. 1382 measuring 3 acres to the 2nd Defendant sometime in the year 2020. He denied that he held the land parcel No. 1381 in trust for the Plaintiffs. He stated that he did not require any consent from the Plaintiffs to sell his parcels of land being in issue and that parcel No. 156 was not family land but his. He stated that parcel Nos. 1381 and 156 were his by first registration and he was therefore entitled to enjoy quiet possession thereof to the exclusion of the Plaintiffs who had their own family land elsewhere.
58. When he testified orally, he started by stating that the evidence by his mother, the 1st Plaintiff, that land parcel Nos. 1381 and 156 were not his was not correct. He produced as D. Exhibit 1 (a) and (b) the title deeds for parcels Nos. 1381 and 1382 and D. Exhibit 1(c) the title deed for parcel No. 156. He stated that he had lived on land parcel No. 1381 with his wives Stella Chepkaren who had 9 children and Monicah Cheromoi Christopher who had 11 children, for over 23 years. On parcel No. 156 was living his other wife Chemagal Christopher who had 10 children.
59. He stated that his mother came from Muino to stay with him on land parcel No. 1381 because there were clashes there. He named the land registration in Muino as parcel No. 495. He accommodated her by building for her a house and a store.
60. He testified that when he went to register the land his mother knew of it and it was anointed by the church. His mother and him lived on the parcel of land up 2022 when his sister, Sophia, took away his mother after the sisters brought an issue. He followed up about his mother being taken away but the mother said he did not have money to feed her. He then sold his sheep for Kshs. 10,000/= and gave her but the mother took the money and never came back to stay with him. He called her in vain, called



Sophia who said the mother wished to stay with her. When he called Margaret, she said told him to let her stay with Sophia.

61. He sold part of the land and paid school fees for his sisters. He sold all his cows for fees. He paid fees for Gladys but she quit school and got married. He followed her to the home she was married in and the people there almost killed him.
62. His testimony was that he sold the land to Samwel Ngoris and Samwel sold it to Julius Chemerii the 2nd Defendant. He stated that he did not require anyone's consent to sell. He produced a copy of the agreement dated 16/10/2019 (between him and Samwel) as D. Exhibit 2(a). He stated that it was after that that Samwel sold the land on 19/05/2020 to Julius. He produced a copy of the agreement as D. Exhibit 2(b). He stated that he was the one who took part in the demarcation of the land.
63. In cross-examination, he admitted that he was born in 1963 and his identity card number was 8320281. It showed he was born in Kapenguria. He contended that contrary to that he was born in Muino in Pokot Central sub-county whose offices were in Sigor. Further, that from Sigor to Chebon was a distance of fifteen (15) kilometres. He stated that Chebon was in Pokot South whose headquarters was Kabichbich. He admitted that his identity card read Kaporowo sublocation.
64. He stated that he did not go to school but was only a cattle herder. He admitted that his mother was Cheparwasi Ibrahim (the 1st Plaintiff) and all the other Plaintiffs were his sisters.
65. He admitted that Sina Primary School was only 3 kilometres away from the suit land, and Chemolo Primary School was within 2 kilometres of the suit land. He admitted that all his sisters studied in the two primary schools. He also admitted that his father had three wives, with his mother being the 3rd one. He stated that the first two wives lived within Chebon, and the original land parcel No. 324 was situate in Chebon. He testified that his father did not have land in Chebon but all of it was in Muino.
66. About the first and second families of his late father, he testified that all the children of the first wife who was deceased were living in Chebon while for the second one they were in Parua Location. Parcel No. 156 was in Tapach while No. 324 was in Sina Location. He stated that both Tapach and Chebon were in Tapach Division.
67. He admitted that the sisters resided in parcel No. 1381. He said the land for the first wife of the later father was adjacent to the one he said was his. He testified that his step mothers were buried in Parua and Chebon respectively.
68. He stated that since the time he was born his father resided in Muino. But Muino was not in any of the three locations he mentioned but in Sigor in Weiwei Location.
69. His evidence was that when his father died in 1998 demarcation had not taken place. It took place in 2002. He stated that it was being made in favour of persons who were alive only. He did not know if the children of the other families registered themselves as owners of their father's lands. He admitted that his father was buried on parcel No. West Pokot/Chebon/324 where his mother resided on. He admitted that all his sister learnt in schools near the parcel of land and these were Sina and Chemolo primary schools.
70. His evidence was that when he went for registration he was with his mother and he informed her that he was doing so. She permitted the lands to be registered in his name. His sisters also discussed it with him and they agreed that the land be registered in his name as the only son. But he stated that it was not registered in trust for them. He said he sold another parcel of land registered as parcel No. 1294 but that was before demarcation took place.



71. He obtained his title for parcel No. 324 in 2016 and for parcel No. 156 on 29/02/2016. When he sold the land to Samwel he first went to his mother and informed her and that was in 2019. He later changed his testimony to state that when he sold part of the parcel, he did not include his mother as a witness. He stated that the buyer, Samwel, hailed from Pusol sublocation. He, DW1, could not tell whether Samwel knew his mother and late father. But he introduced the buyer to his mother when he was selling the land. He bought it and fenced but did not build on it.
72. His further evidence was that when Samwel sold the land to Julius Chemerii, he informed him (DW1). After that Julius took possession and built on it and that was when his mother, PW1, registered a caution on the land.
73. In re-examination, he stated that he was issued with his identity card in 1977 and on 07/06/1996 he was registered in Kapenguria. His evidence was that even though the first and second step mothers were given land near Chebon all their parcels of family land were in Muino.
74. His stated that all his sisters used to live with him. He stated that when his father and mother moved to his place (the suit land) they moved with Eunice. She started learning at where he resided. He testified that if his mother had issues when he was being registered, she should have come out them to say the land was hers.
75. Upon the Court clarifying from the witness about the sisters' education DW1 stated that they all went to school in Saina and Chemolo primary schools, and that her follower who was born in 1964 started schooling at an early age or when young. His parents moved from Muino in 1987 and that Muino was about 50 kilometres away. He then said he sold to Samwel 3 acres of land and the title reflected the same acreage.
76. The 2nd Defendant testified as DW2. His evidence was that he was a farmer who hailed from Kaporowo in Sina Location of South Pokot. He bought land from Samwel Loshatukei Kakurumon on 19/05/2020. It was 3 acres and he paid for it a sum of Kshs. 1,050,000/=. Before buying it, he conducted a search and it showed it belonged to Christopher Laptia. Before then the land did not have a caution registered against it.
77. Christopher Laptia and him went to the Land Control Board. Samwel Loshatukei did not go to the land control board. The land was not registered in the name of Samwel Loshatukei.
78. After the consent of the Board, he was issued with a title deed. He took possession of the land by fencing it and building on it. He was surprised to be sued yet there was no problem. He stated that there was someone else by name Solomon Morris who had bought 2 acres being part of the land and his title was No. 1294 yet he had not been sued.
79. He testified that he followed all procedures before being issued with title. He produced as D. Exhibit 2(b) the agreement of sale they entered into and D. Exhibit 1(c) the title to the land he bought. He adopted the witness statement he wrote on 06/05/2022.
80. In it he stated he was a resident of Kaporowo where he worked as a farmer. He stated that land parcel No. West Pokot/Chebon/324 was initially purchased by one Samwel Loshatukei Kakurumon in the year 2019 and he (the 2nd Defendant) prepared the agreement of sale. At the time of the purchase there was no dispute by the Plaintiffs when Kakurumon took possession of the land. That in 2020 the said Samwel L. Kakurumon approached his with a view to selling the part of parcel No. West Pokot/Chebon/324 to him which he had earlier bought from the 1st Defendant. On 19/05/2020 he and Kakurumon entered into a sale agreement for the purchase of three (3) acres at a sum of Kshs. 1,050,000/=.



81. After that he (2nd Defendant) approached the 1st Defendant to effect transfer in his favour. Subsequently, land parcel No. 324 was subdivided into parcel Nos. 1381 and 1382, with the latter being his portion. He stated that he had since been living peacefully on the parcel No. West Pokot/Chebon/1382 without any dispute from the Plaintiffs. He stated that before purchasing the portion, he conducted a search which should that the 1st Defendant was the registered owner of the land.
82. That after he bought the land, he went further and met the 1st Plaintiff and informed her that he had purchased land which she informed him that she did not have a problem with the sale. He stated that for that reason he was a bona fide purchaser of parcel No. 1382 measuring 3 acres hence entitled to it, having done due diligence before purchasing it. He stated that the title deed for parcel No. 1382 was issued to him following due process and it should not be cancelled. He stated that he had no alternative land and would be rendered homeless and destitute if he was evicted.
83. Upon cross-examination, DW2 stated that he was born in 1973 and the parcel of land he bought was situate in Kaporowo village and that before he did so he was residing with his parents nearby, about 500 meters away. He stated that he knew the husband of PW1 who was the father of the other Plaintiffs. He knew him as a friend of his father.
84. DW2 testified further that he studied in Samach Primary school up to class for before moving to Kapchemoke Primary school from class 5 to 8. His admitted that Sina primary school was in Sina sublocation and was neighbouring to Kapchemoke.
85. He admitted further that the late Lokwaloi Sompol was the husband of the 1st Plaintiff and the 1st Plaintiff's home was on the parcel of land in question. By the time of death of Mzee Sompol he (DW2) had completed Fourth Form in 1993. He knew where the late was buried but did not attend the burial. It was on the parcel of land which was then registered in the name of the 1st Defendant and the 1st Plaintiff was residing on the land all along, including in 2002 and to the time of testimony.
86. He stated that demarcation took place in 2002. By that time Mzee Sompol had died, four years earlier. The 1st Defendant was the only son of the family. DW2 did not know how the land got registered in the name of the 1st Defendant.
87. He admitted that ever since his childhood he knew the 2nd to 9th Plaintiffs as neighbours. They all studied in Sina and Chemoro Primary schools.
88. DW2 admitted that he obtained his title on 09/07/2020 after entering into an agreement to buy it on 19/05/2020. The parcel was a subdivision of parcel No. 324 which gave rise to parcel No. 1381 registered in the name of Christopher (1st Defendant) and 1382 in DW2's name. The register for parcel No. 324 was closed on 12/06/2020 when the new titles numbers were issued.
89. His evidence was that by the time Samwel Loshatukei sold to him the land he had not gotten the title to it. The land cost Kshs. 350,000/= per acre giving a total of Kshs. 1,050,000/=. He admitted that when they entered into the agreement the 1st Plaintiff was not present. The sisters of the 1st Defendant too were absent. Thereafter DW2 brought the surveyors to the ground to survey it. That was between 19/05/2020 and 16/07/2020.
90. He admitted that none of the Plaintiffs were present when he and the 1st Defendant attended the land control Board for consent. He also admitted that he built on the parcel of land in 2021 and 2022 but he began residing on it in 2022 yet the suit was instituted in 2021. He was the 3rd buyer of the land.
91. He stated that he did not know that the children of the 1st Plaintiff had an interest in the land. He did not seek permission from the 1st Plaintiff. He built on it when the suit was already pending in Court.



92. In re-examination DW2 stated that demarcation took place in 2002 and there was an announcement on its start. When he bought the land from Samwel he started building on it. He did not buy it directly from Christopher Laptia. He then stated that he did not need to ask the mother to the 1st Defendant about the purchase from the 1st Defendant because the transaction was between himself, Samwel and the 1st Defendant. Lastly, he testified that he was a neighbour to Solomon Morris who had bought a section of the land earlier.
93. Upon the court clarifying from the witness about his neighbours he stated that ever since he was bought, he found the 1st Plaintiff and her children residing on the suit land.
94. That marked the close of the Defence case.

Submissions

95. The Plaintiffs opened their written submissions by stating that the instant suit was a contest between a mother (1st plaintiff) and her eight (8) daughters (2nd to 9th Plaintiffs) on the one part, and her son (1st Defendant and who was a brother to the 2nd to 9th Plaintiffs and the 2nd Defendant, a land purchaser from the 1st defendant, on the other part. They went on to summarize the pleadings and the evidence of the parties, as given above: this court will not reproduce the summary once again. They then set six (6) issues for determination, being:
 - a. Who cleared the suit lands for settlement and when?
 - b. Whether the 1st Plaintiff was married in Mwino and bore and raised all her nine 9 children there.
 - c. Whether the 1st Defendant was registered as owner of parcel Nos. 324 and 156 in trust for the Plaintiffs.
 - d. Whether, in subdividing Parcel No. 324 and creating Parcel Nos. 1381 and 1382, and selling and transferring Parcel No. 1382 to the 2nd Defendant the 1st Defendant breached the trust.
 - e. Whether the trust should be terminated.
 - f. What the appropriate orders should be.
96. They submitted that under Sections 107 and 108 of the *Evidence Act*, he who alleges bears the burden to prove his allegations with credible evidence.
97. Regarding the first issue, they submitted that the 1st Plaintiff testified that she married as the 3rd wife her late husband during or about 1960, was put in the suit land which the husband had cleared before marrying her and established her matrimonial home wherein she remained in occupation to that date. It later got registered as parcel No. 324. The 1st and 2nd wives were also settled in the neighbourhood by the time the 1st Plaintiff got married and each was settled in her own piece of land. After their death, their children were occupying the lands their mothers left to them.
98. They then submitted that the 1st Defendant had not contended that the 1st and 2nd wives of his father were settled in Mwino. It was therefore clear that the 1st Plaintiff's husband settled all his wives in Sina sub location, Parua and Tapach, not far from each other, and that the suit parcels were cleared by the late Lokwaloi Sampol, the husband to the 1st Plaintiff and father to the 1st defendant.
99. About the second issue on whether the 1st Plaintiff was married in Mwino and all the children born and raised there they submitted that the Plaintiff testified that she bore the 1st Defendant and the daughters



- in the land that subsequently got registered as parcel No. 324, and the evidence was not at all shaken under cross examination.
100. They submitted that the 1st Defendant who had the evidential burden to prove the allegation that her mother was married in Mwino never called any evidence (independent) such as persons who lived in Mwino or provide photographs of her matrimonial home there to prove the allegation.
 101. They then submitted that the evidence of DW2, born in 1973, who was an independent witness was that his father's land was about 500 meters away from Parcel No. 324. He knew all the children of the 1st Plaintiff and her husband and that they studied in the local primary schools, being, Sina and Chemolo. Also, that his evidence was that by 1993 when he completed form 4 and 1998 when the Plaintiff's husband died, he was still at home and that ever since he was born, he found mama Cheparwasi (1st Plaintiff) and her children on the suit land.
 102. They also relied on the 2nd to 9th Plaintiffs' school leaving certificates and K.C.P.E certificates besides identity cards produced in that behalf to prove the fact that the said Plaintiffs were born and raised in the area where the suit land, parcel No. 324, was situate. They summed it that the 1st Defendant's contention that all the children of the 1st plaintiff were born and raised in Mwino was a clear lie.
 103. In regard to the third issue about whether the suit lands were registered in trust for the Plaintiffs, they submitted that since the two parcels had been cleared and settled upon by the 1st Defendant's father well before the said 1st Defendant was born, and by the time the father died in 1998, titles deeds had not been issued, and issuing of titles undertaken in 2002 four years after the father's death, the registration was done in trust for the Plaintiffs.
 104. They submitted that the 1st Defendant's own evidence was that the demarcation committee was only registering the names of a person that was alive. They summed it by the time demarcation was done no grant of letters of administration was obtained in regard to the estate of Lokwaloi Sampol, the 1st Plaintiff's husband, and being the only son of the late Sampol, he was registered on behalf of the family, all the children of Lokwaloi Sampol and the Plaintiffs had a beneficial interest in the land.
 105. They submitted that Section 28 of the *Land Registration Act* 2012 to the effect that unless the contrary is expressed in the Register, all registered land shall be subject to overriding interests as for the time being subsist and affect the same, without being noted in the register, including customary trusts. They argued that although the register did not note the trust in favour of the Plaintiffs, the 1st Defendant's registration, was still subject to the trust in the Plaintiffs favour. They relied on the cases *Kedipa v Chepkokwo* (Environment & Land Case 59 of 2017) [2023] KEELC 16905 (KLR) (24 April 2023) (Judgment) and *David Kamunya Kingori & Another v Wambui Nderitu & 4 Others* [2020] eKLR and *Geoffrey Mbugua Dedan & 2 Others v Joseph Mbugua Dedan Gachumi & Another* [2014] eKLR.
 106. About the fourth issue, being whether in subdividing and selling part of land parcel No. 324 the 1st Defendant breached the trust in favour of the Plaintiffs, they submitted that contrary to the 1st Defendant's claim that the Plaintiffs had no interest in parcel No. 324 and that he did not need the consent of his mother (1st Plaintiff) or his sisters (2nd - 9th Plaintiffs) in selling the land to sell it, since he knew that the land belonged to his father he needed to get the consent of the Plaintiffs. Instead, they were not parties to the sale agreements and nor were they informed when the sale transaction was taken to the land control board.
 107. As for the 2nd Defendant he knew that the land belonged to the 1st Defendant's father and that the 1st Plaintiff (1st defendant's mother) who lived on the land he purchased and all the other Plaintiffs but he did not consult them. He entered into the land and constructed a home when the case was



- already in court and he deliberately disobeyed the order issued by this court on 08/11/2021 on the status quo being maintained. The subdivision of Parcel No. 324, sale and transfer of Parcel No. 1382 to the 2nd Defendant was unprocedural and irregular and under Section 26 of the [Land Registration Act](#), the subdivision should be declared illegal and the titles cancelled so that the land reverts to Parcel No. 324. They relied on the case of [Charles Moberai & 3 Others v Joseph Mwita Mogena & Another](#) [2016] eKLR.
108. Regarding whether the trust in favour of the Plaintiffs in regard to Parcel Nos. 324 and 156 should terminate, they submitted that it was in the best interest of justice that the trust should terminate and an order that each of the suit parcels be subdivided into ten equal portions, so that the nine Plaintiffs and the 1st Defendant obtain titles for their respective portions. They argued that the 1st Defendant should be ordered to subdivide the two parcels into ten equal portions each and transfer the respective portions to the Plaintiffs and himself, in default the Deputy Registrar be authorized to execute all the requisite documents to facilitate the subdivision and transfer of the two parcels of the respective portions to each of the Plaintiffs and the 1st defendant. They relied on the case of [Jason Gitimu Wangara v Martin Munene Wangara & Others](#) [2013] eKLR.
109. They submitted that they had proved their case on a balance of probabilities.
110. On their part, the Defendants began their submissions with a summary of the case, the pleadings of the parties. They submitted that the Defendants were the owners of the parcels of land No. West Pokot/Chebon/1381 and 1382. They submitted that the 1st Defendant was the only son of the 1st Plaintiff. They submitted that the 1st Defendant's father owned some parcels of land of which one was in Muino and the 1st Plaintiff was living on it but due to insecurity and local fights in the area in addition to harsh weather conditions it became unsuitable for the aging mother to continue living there. The 1st Defendant therefore invited her to his parcel of land, No. West Pokot/Chebon/324.
111. They submitted further that the 1st Defendant took the responsibility of educating the 2nd to 9th Plaintiffs following the death of their father in 1990. Due to that he sold his livestock and parcels of land, including a sale of 2 acres of his land to one Ngoris Pilat and the Plaintiffs never raised objection to that. In 2019 he sold part of the land to one Samuel L. Kakurumon to raise fees for his children and later the said Kakurumon sold the land to the 2nd Defendant, and the 1st Defendant had since transferred the land to the 2nd Defendant.
112. The 1st Defendant submitted that he was the owner of the parcels of land and that the same did not belong to his family. He set four issues for determination by the Court, and I will summarize them sequentially, as follows:
- a. Whether the 1st Defendant was the registered owner of land parcels West Pokot/Chebon/324 and West Pokot/Tapach/156.
113. On this issue he submitted that he was indeed the owner. He stated that his mother married the late Ibrahim Lokwaloi Sampol and settled in Muino area which was their matrimonial home. He stated that he was a biological son of the 1st Plaintiff, and that the 2nd to 9th Plaintiffs were born and raised in Muino area and that they had never occupied land parcel No. West Pokot/Chebon/324. The 1st Defendant submitted that he only took his mother from Muino area to come and reside with him on land parcel No. West Pokot/Chebon/324 as submitted earlier.
114. The 1st Defendant submitted that the 2nd to 9th Plaintiffs are all married and have their matrimonial homes. His view was that the 2nd to 9th Plaintiffs had no claim over the property in respect of maintenance or otherwise. He relied on the case of [Samuel Kamere v. Lands Registrar, Kajiado](#), Civil



Appeal No. 28 of 2005 (2015) eKLR. He submitted that having obtained the ownership of the lands after buying the same and it was duly registered in his name, he lawfully possessed the and obtained it. He relied on the case of *Charles Kaathe Kiarie & 2 others v. Administrators of the Estate of John Wallace Marathe (deceased) & 5 Others* (2013) eKLR. In it the court held that the presumption of indefeasibility of title under the torrens system could only be rebutted if there was proof of fraud or misrepresentation by the buyer. He relied on Sections 24 and 25 of the *Land Registration Act*. He submitted that the Plaintiffs did not prove any interests in the land or that the 1st Defendant obtained the title by fraud, misrepresentation or importunity.

Whether the 1st Defendant held both suit parcels of land in trust for the Plaintiffs

115. The 1st Defendant submitted that it was not true at all that the two parcels of land were held by him in trust for the family/all the Plaintiffs. He relied on the case of *Isack Kieba M'Inanga v. Isaaya Theuri & Another*, SCoK No. 10 of 2015. In the decision the Supreme Court gave elements that would be used to determine whether land was registered in trust for a someone claiming as such as a member of a family, clan or group.
116. He submitted that the Plaintiffs had not supplied any evidence to prove intention to create a customary trust or the existence of such with respect to the parcel in issue. He submitted that the Plaintiffs did not give further details of the suit parcels or any evidence of fraud. He relied on the case of *Dominic Otieno Ogonyo & 2 Others v. Helida Akoth Walori* (2022) eKLR. The decision was in respect of pleading of particulars of fraud and it held that the claimants had not pleaded the same but rather averred that the land was held in trust for them. He also relied on the case of *Peter Ndungu Njenga V Sophia Watiri Ndungu* [2000] eKLR in which the court was of the view that it would not imply a trust save for giving effect the intention of parties and that must be determined clearly before implying the trust.
117. Further, he relied on the case of *Juletabi African Adventures Limited & another v. Christopher Michael Lockey* (2017) eKLR which held that the onus lay on the party relying on the existence of trust to prove it through evidence and that the law never implies and the court never presumes a trust but only in cases of necessity.
118. The Defendants argued that that Plaintiffs had not given any explanation why the 1st Plaintiff was not registered to hold the property in trust for the family including the 1st Defendant, given that the 1st Plaintiff was an adult of sound mind and wife of the late Kwamoi Sampol who was alleged to be the initial proprietor of the suit lands. The 1st Defendant then submitted that if the Plaintiffs' allegation was anything to go by, he should be the first in priority to hold the property in trust for the family but since the claim was false, misconceived and in bad faith. He summed it that the Plaintiffs had not proved customary trust in respect of the suit property.

Whether the Plaintiffs have any claim in respect of land parcel Nos. West Pokot/Chebon/324 and West Pokot/Tapach/156

119. The Defendants relied on Section 27 of the *Land Registration Act* for reason that the 1st Defendant had demonstrated that he was the registered proprietor of the parcels of land in issue to state that the certificates of title should be taken to be prima facie evidence that the person named thereon is the absolute and indefeasible owner thereof. They submitted that the Plaintiffs had not given any evidence on the existence of a trust over the suit parcels and the 1st Defendant retained an indefeasible title thereto hence was at liberty to sell the same to the 2nd Defendant. They relied on the case of *Mary Njambi Gitbegi v. Christine Wamui Mwaura* (2022) eKLR which gives conditions under which a trust can be implied.



d. Who to bear costs

120. The Defendants submitted that the suit be dismissed and the Plaintiffs be ordered to bear the costs.

Issues, Analysis And Determination

121. I have considered the claim, the pleadings herein, both statutory and case law on the issues in contention, the evidence adduced and the submissions of the rival parties. I am of the view that the following are the issues that lie for me for determination.

- a. Whether the 1st Plaintiff's husband cleared land parcel Nos. 324 and 156 and settled thereon before demarcation.
 - b. Whether the registration of land parcel Nos. 324 and 156 as first registration is beyond cancellation.
 - c. Whether the registration of land parcels No. 324 and 156 in the name of the 1st Defendant was in trust for the Plaintiffs.
 - d. Whether the 2nd Defendant was an innocent purchaser for value, and without notice, of land parcel No. 1382 or a participant in a fraudulent scheme.
 - e. Whether the title deeds for land parcel Nos. 1381 and 1382 should be cancelled and title to parcel No. 324 reverts.
 - f. Whether the trust, if any, in respect of the suit lands should terminate and the parcels be divided equally among the Plaintiffs and the 1st Defendant
 - g. Who to bear the costs of the suit.
122. As I begin the analysis of this matter, it is worthy of note that the deceased husband to the 1st Plaintiff, and who was the father to 2nd to 9th Plaintiffs and the 1st Defendant was referred to by many names by the parties herein in their pleadings and evidence. These were Kwalo Sompol, Kwalo Sompol alias Ibrahim Lokwalo Sompol, Lokwalo Sombur, Kwamo Sampil and Lokwalo Sompol.
123. However, for the purposes of this determination, this Honourable Court shall adopt the name Lokwalo Sompol as indicated in his identification document, a copy of his identity card which was produced and marked as P. Exhibit 1(b), as the proper name of the said husband and father to the family having a tug of war.
124. This Court is of the view that a determination of who first settled on and claimed ownership of land parcel Nos. 324 and 156 before demarcation would settle a number of other issues subsequent to this. This is because the contention herein is between two sets of parties, the first one being family contending on whether the suit lands were registered in one in trust for them all and the other being an alleged buyer caught in between the contention of the family.

Whether the 1st Plaintiff's husband cleared land parcel Nos. 324 and 156 and settled thereon before demarcation

125. In regard to the ownership of the two parcels of land in issue, the 1st Plaintiff and others brought this suit as mother and sisters respectively of the 1st Defendant against him claiming that him being the registered owner of the parcels was so registered in trust for them all as a family. It was not disputed that the 1st Plaintiff was the 3rd wife of the late Lokwalo Sompol and the 2nd to 9th Plaintiffs and the 1st Defendant were daughters and an only son of the marriage between the two parents. It was not in



- dispute also that the late Lokwaloi Sompol, said to have been born in 1905, died on 04/08/1998 and that he settled his first and second wives in other parcels of land other than the suit lands herein.
126. In support of the Plaintiffs' pleading that the late Kwaloi Sompol cleared several pieces of land in Chebon Location where he settled his wives and children, including the 1st Plaintiff, PW1 testified that she was the 3rd wife of the late Sompol who died on 04/08/1998. The late Kwaloi cleared several parcels of land in Chebon and settled his wives and their children on them. When she got married to him, he settled her on the parcel of land which was later registered as parcel No. 324 and all her children were born and raised thereon.
127. Further, the Sompol had another parcel of land he availed for her use and her family. It got to registered as parcel No. 156. She stated that when he died, he was buried on the parcel of land which became No. 1381 after parcel No. 324 was subdivided. She produced as P. Exhibit 3(a) and (b) photographs of her matrimonial home on the parcel of land. On cross-examination she repeated the fact of having been placed on the land which was finally registered as parcel No. 324. She denied ever residing in Muino.
128. On his part, to support his Defence that the late Lokwaloi Sombur (sic) had land in Muino where he settled the 1st Plaintiff as her matrimonial home and the 2nd-9th Plaintiffs were born and raised thereon, the 1st Defendant testified that the late Lokwaloi Sombur (sic) had a parcel of land in Muino where his sisters were born and that was where his mother had been in occupation and used it as her matrimonial home.
129. DW2 testified that he knew the 1st Plaintiff as the wife of the late Sompol and the 2nd to 9th Plaintiffs and 1st Defendant were her children. He stated further that since his childhood the 1st Plaintiff and the 2nd to 9th Defendants lived on the land which became parcel No. 324.
130. It is noteworthy that the 1st Defendant did not give evidence as to where else apart from on land parcel No. 324 that he was born. Further, he did not produce evidence to show that indeed the 1st Plaintiff's family-owned land in Muino. He only mentioned of parcel No. 495 whose details of ownership he did not give. There was no independent evidence to show that indeed the family-owned land in Muino. Again, the 1st Defendant could not explain why, if at all the family-owned land in Muino, all the late wives of the late Sompol were buried in Chebon and Sina and all their children lived in the two locations. He did not dispute the fact that his late father was buried on the parcel of land No. 324 which after subdivision became No. 1381. In addition to that he did not adduce any evidence as to why his late father was buried on the parcel of land and not in Muino the matrimonial home he alleged to have been for his father and mother or elsewhere.
131. Moreover, the 1st Defendant failed to explain how and when, if at all true as he alleged, he got to move from their alleged matrimonial home in Muino settle on the two suit parcels of land and when he cleared them for settlement before demarcation if it was not for reason of having been born and brought up on them. All these unexplained facts lead this Court to find that the 1st Defendant lied to the Court the acquisition of and settlement on the two parcels of land and there being another one in Muino. Since DW2 testified that he was born and found the 1st Plaintiff and her children on the land which became parcel No. 1381 I find that the two parcels of land were cleared by the late Sompol who placed the 1st Plaintiff and her children, including the 1st Defendant on them.
- (b) Whether the registration of land parcel Nos. 324 and 156 as first registration is beyond cancellation



132. PW1 testified that the late Kwaloi cleared several parcels of land and settled his wives and their children on them. Two of the parcels (which this Court has found above were cleared by the late Kwaloi Sompol, namely, parcel Nos. 324 and 156) were finally registered in.
133. The name of the 1st Defendant. That was when demarcation took place in 2002, well after her husband died. The 1st Defendant enlisted himself as the owner of the two parcels of the land and obtained titles thereto as a first registration. DW1 also, on his part, stated in his written adopted witness statement that his ownership of the two parcels of land was a first registration. He repeated in his statement that by virtue of the ownership of the parcels being first registrations, he was entitled to quiet possession thereof.
134. PW1 produced as P. Exhibit 2(a) the green card or extract of title for land parcel No. 324 and P. Exhibit 2(d) the extract of title for parcel No. 156. An analysis of P. Exhibit 2(a) shows that parcel No. 324 measuring 29.81 Ha. whose register was opened on 24/08/2015 was first registered on 24/08/2015 in the name of Christopher Laptia of Identity Card No. 8320281. The title was closed on 12/06/2020 when titles deeds for parcel Nos. 1381 and 1382 were issued. P. Exhibit 2(d) measuring 11.56 Ha. whose register was opened on 25/08/2015 was registered first in the name of Christopher Laptia on the same date and title thereto issued on 29/02/2016.
135. The evidence of DW1, the 1st Defendant, was that he was the registered owner of title parcel. Nos. 156, and 1381 which was a subdivision of parcel No. 324. He produced as 1st D. Exhibit 1 (a) the original title deed for parcels Nos. 1381 and 1st D. Exhibit 1(c) the original title deed for parcel No. 156.
136. On the one hand, the Plaintiffs prayed and submitted in favour of the reversal of the subdivision of land parcel No. 324 and termination of the trust alleged to be in favour of the family by way of registration of the Plaintiff as owner the parcel of land and No. 156. On the other, the 1st Defendant testified against the reliefs sought. He testified that his ownership of the parcels was first registration, as summarized above, hence his ownership is unchallengeable and he be let to quietly enjoy possession thereof and other activities subsequent thereto.
137. What is clear from the 1st Defendant's evidence is that he is of the view that by virtue of his registration being first registration the titles are immune from cancellation. The starting point of analysing this position of the 1st Defendant is an examination of how alienation of land under the [Land Adjudication Act](#), Chapter 284 Laws of Kenya, takes place. Under the Act, when land is alienated for the first time, the process starts as demarcation. After the demarcation is completed, in terms of Section 27 of the, subject to the finalization of appeals under Section 29, the Director of Land Adjudication sends to the Chief Land Registrar the final record together with the list of appeals. Under Section 28 of the Act the Chief Land Registrar then causes registrations in accordance with the register and the final determination of any appeal on any land.
138. In terms of 1st D. Exhibit 2(a) and (d), it appears that the registrations on the two parcels of land were made on 24/08/2015 and 24/08/2015 respectively, when the registers for the parcels were opened. The 1st Defendant adduced evidence that none of the Plaintiffs raised objections to him being registered as owner. He submitted that for that reason they had no basis to challenge and cause the cancellation of the titles he held on the two parcels of land.
139. It is not in dispute that the registration of the parcel Nos. 324 and 156 in the name of the 1st Defendant was indeed first registration. The 1st Defendant armed himself with the Defence of first registration, mistakenly picking it from the previous land regime, the Registered [Land Act](#) (repealed) in which Section 143 (1) gave the exception of first registration to the rectification of the register by cancellation or amendment: the injustice that provision caused to be meted on many souls in this country by virtue



of unscrupulous individuals and con artists remains untold. Thankfully, the light came after the new constitutional dispensation.

140. Thus, from the content of 1st D. Exhibit 2(a) and (d) the registration of the parcels of land in issue herein occurred in 2015, under the *Land Registration Act* which, by virtue of Section 106(1) repealed the Registered *Land Act*. Under the (new) Act, the point about whether first registration can be impeached or not has now been clarified. This was sufficiently and aptly clarified and addressed in the Supreme Court Case of *Dina Management Limited Vs County Government of Mombasa* Petition 8(E010) of 2021 wherein the Court opined that:

“Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible. The first allocation having been irregularly obtained, H.E. Daniel Arap Moi had no valid legal interest which he could pass to Bawazir & Co. (1993) Ltd, who in turn could pass to the appellant. Article 40 of *the Constitution* entitles every person to the right to property, subject to the limitations set out therein. Article 40(6) limits the rights as not extending them to any property that has been found to have been unlawfully acquired. Having found that the 1st registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter cannot therefore be protected under Article 40 of *the Constitution*. The root of the title having been challenged, as we already noted above the appellant could not benefit from the doctrine of bona fide purchaser. We therefore agree with the appellate court that the appellant’s title is not protected under Article 40 of *the Constitution* and the land automatically vests to the 1st respondent pursuant to Article 62(2) of *the Constitution*. We hasten to add that, the suit property, by its very nature being a beach property, was always bound to be attractive and lucrative. The appellant ought to have been more cautious in undertaking its due diligence.

141. By virtue of Section 80(1) ownership of land by first registration does immortalize certain actions which our values as a country do and must always abhor. These are fraud and where a registered owner who has benefited from a registration by mistake would want to take advantage of the mistake to deprive an owner as of right from being registered as such. The Section provides:

(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”

142. The 1st Defendant submitted on this point that the Plaintiffs had not adduced evidence to show that he obtained the titles in respect of the suit lands by fraud, misrepresentation or importunity. He relied on Section 24 and 25 of the *Act*.

143. With due respect the two terms “misrepresentation” and “importunity” have not been used by the statute in regard to the exceptions to there being no rectification of title obtained by first registration. The two terms cannot be synonyms of “mistake”. They do not come anywhere close in meaning to the term.

144. The evidence before me shows that the two parcels of land were always occupied and used by the family of the 1st Plaintiff who bore the 1st Defendant and all the other Plaintiffs on parcel No. 324 and brought them up thereon. Therefore, when the 1st Defendant got himself registered as an owner to the exclusion and information of the Plaintiffs and held and continues to hold himself as the sole owner thereof to their exclusion leads this Court to hold that he so registered himself by fraud. Again, the 1st Defendant admitted in cross-examination that the Land Committee registered him as the living member of the



late Lokwaloi Sompol when demarcation took place. This was to the exclusion of the Plaintiff and the 2nd to 9th Plaintiffs. Clearly this was a mistake committed by the said Land Committee. Thus, on that account the titles can and must be rectified accordingly to reflect the said position.

(c) Whether the registration of land parcels No. 324 and 156 in the name of the 1st Defendant was in trust for the Plaintiffs

145. I have stated above, and it is not in dispute, that the 1st Plaintiff is the mother to, while the 2nd to 9th Plaintiffs are siblings of, the 1st Defendant. It is not disputed that he got registered as sole proprietor of the suit lands. The 2nd to 9th Plaintiffs claimed through PW1 that they were born and raised on the parcels of land as their home while the 1st Plaintiff claimed that she bore all, including the 1st Defendant, and raised them up thereon. She even adduced the evidence of parcel No. 324 (now 1381 after subdivision) housing her matrimonial home and her husband's and the children's father's grave. The latter fact was not denied by the 1st Defendant. It was confirmed by the 2nd Defendant too.
146. Further, apart from the births of the children whose years were given by her as 1963 (1st Defendant), 1969, 1972, 1976 (which year of birth was for the 3rd and 4th who were twins), 1979, 1980, 1983 and 1985 for the 2nd to 9th plaintiffs respectively, PW1 produced evidence showing that all the children went through primary school education which demonstrated that they did so in Sina and Chemolo primary schools which were said to be within the primal distance of parcel No. 324 compared with the alleged Muino land whose existence was never proved which was said to be fifty kilometres from the parcel No. 324. She produced as P. Exhibit 7(a)-(h) copies of the identity cards of Monicah (5th Plaintiff), Mary (6th), Rodah (7th), Eunice (2nd) and Margaret (4th), the Kenya Certificate of Primary Education (KCPE) and school leaving certificates of Eunice, Cheyech (Mary), Cheptal (Rodah) and Sophia as P. Exhibit 9(a) - (g) and the birth certificates of Eunice, Rodah and Sophia as P. Exhibit 10 (a) - (c). Again, PW1 testified that the 2nd Plaintiff was the follower of the 1st Defendant by birth. Moreover, the 1st Defendant admitted that the two primary schools were 3 and 2 kilometres away respectively from the said parcel of land.
147. In regard to the registration of the parcels in trust for the family, PW1 stated further in cross-examination that P. Exhibit 2(a) - (d) did not show anywhere that the registration was in trust for the children but stated that the 1st Defendant should have registered them in trust for the family since he knew the land was not his. The 1st Defendant did not inform PW1 as the 'father' of the home after her husband's death about the registrations.
148. On his part, the 1st Defendant testified that he hailed from Sina Sublocation of West Pokot County. That it was not disputed he was the registered owner of land parcel Nos. 324 and 156, as a first registration, and titles thereto issued to him in 2015. He testified that he was polygamous with three wives who had 11, 10 and 9 children respectively.
149. In cross-examination, he admitted his identity card read that he hailed from Kaporowo sublocation, the same one that PW1 stated she lived in. He admitted that all his sisters studied in the two primary schools. He admitted that his sisters were resident on parcel No. 1381. Further, he admitted that his late father was buried on parcel No. 324 and his mother resided on it. He admitted that all his sister schooled at Sina and Chemolo primary schools.
150. Submitting on the issue the Plaintiffs submitted that since the two parcels had been cleared and settled upon by the late Sompol well before the 1st Defendant was born and the father died in 1998 before titles deeds were issued, the registration was done in trust for the Plaintiffs. They also submitted that since by the time of demarcation no grant of letters of administration to the estate of Sompol were



obtained, the 1st Defendant being the only son of the late Sompol was registered as owner on behalf of the family. They argued that Section 28 of the *Land Registration Act* 2012 provided for customary trusts such as the one they sought. They relied on *Kedipa v Chepkokwo* (Environment & Land Case 59 of 2017) [2023] KEELC 16905 (KLR) (24 April 2023) (Judgment) and *David Kamunya Kingori & Another v Wambui Nderitu & 4 Others* [2020] eKLR and *Geoffrey Mbugua Dedan & 2 Others v Joseph Mbugua Dedan Gachumi & Another* [2014] eKLR.

151. On his part, the 1st Defendant submitted that it was not true that the two parcels of land were held by him in trust for the family or the Plaintiffs. He relied on the case of *Isack Kieba M'Inanga v. Isaaya Theuri & Another*, SCoK No. 10 of 2015 which gave elements for determining whether land was registered in trust for a someone claiming as such as a member of a family, clan or group.
152. He submitted further that the Plaintiffs had not supplied any evidence to prove intention to create a customary trust or the existence of such. That the Plaintiffs did not give further details of the suit parcels or any evidence of fraud. He relied on the case of *Dominic Otieno Ogonyo & 2 Others v. Helida Akoth Walori* [2022] eKLR, on pleading particulars of fraud. Also, he relied *Peter Ndungu Njenga V Sophia Watiri Ndungu* [2000] eKLR wherein the court held that it would not imply a trust save for giving effect the intention of parties determined clearly before implying it. Further, he relied on the case of *Juletabi African Adventures Limited & another v. Christopher Michael Lockey* (2017) eKLR which held that the onus lay on the party relying on the existence of trust to prove it.
153. The Defendants argued that the Plaintiffs had not given any explanation why the 1st Plaintiff was not registered to hold the property in trust for the family including the 1st Defendant, given she was an adult of sound mind and wife of the late Kwamoi Sampol (sic) who was alleged to be the initial proprietor of the suit lands. The 1st Defendant then submitted that if the Plaintiffs' allegation was anything to go by, he should be the first in priority to hold the property in trust for the family but the claim was false, misconceived and in bad faith.
154. In the case of *Isack M'inanga Kiebia v Isaaya Theuri M'lintari & Another* [2018] eKLR the Supreme Court of Kenya listed five simple elements of a customary trust. The Court expressed itself as follows on the issue of customary trust rights:

(52) Flowing from this analysis, we now declare that a customary trust, as long as the same can be proved to subsist, upon a first registration, is one of the trusts to which a registered proprietor, is subject under the proviso to section 28 of the Registered *Land Act*. Under this legal regime, (now repealed), the content of such a trust can take several forms. For example, it may emerge through evidence, that part of the land, now registered, was always reserved for family or clan uses, such as burials, and other traditional rites. It could also be that other parts of the land, depending on the specific group or family setting, were reserved for various future uses, such as construction of houses and other amenities by youths graduating into manhood. The categories of a customary trust are therefore not closed. It is for the Court to make a determination on the basis of evidence, as to which category of such a trust subsists as to bind the registered proprietor.”

“Each case has to be determined on its own merits and quality of evidence. It is not every claim of a right to land that will qualify as a customary trust. In this regard, we agree with the High Court in *Kiarie v. Kinuthia*, that what is essential is the nature of the holding of the land and intention of the parties. If the said holding is for the benefit of other members of the family, then a customary trust would be presumed to have been created in favour of such other members, whether or not they are in possession or actual occupation of the land. Some of the elements that would qualify a claimant as a trustee are:



1. The land in question was before registration, family, clan or group land.
2. The claimant belongs to such family, clan, or group.
3. The relationship of the claimant to such family, clan or group is not so remote or tenuous as to make his/her claim idle or adventurous.
4. The claimant could have been entitled to be registered as an owner or other beneficiary of the land but for some intervening circumstances.
5. The claim is directed against the registered proprietor who is a member of the family, clan or group.”

155. Similarly, the Court of Appeal *Juletabi African Adventure Limited & another v Christopher Michael Lockley* [2017] eKLR determined the issue of customary trust by aptly holding that:

“It is settled that the onus lies on a party relying on the existence of a trust to prove it through evidence. That is because: -

“The law never implies, the Court never presumes, a trust, but in case of absolute necessity. The Courts will not imply a trust save in order to give effect to the intentions of the parties. The intention of the parties to create a trust must be clearly determined before a trust will be implied.”

156. This Court finds that contrary to the submissions by the Defendants about the Plaintiffs’ failure to prove a Customary trust, they proved it as follows. First, the parcels of land were cleared by the late Lokwaloi Sompol who settled the 1st Plaintiff as his 3rd wife on them. Second, PW1 bore and raised all her children including the 1st Defendant on parcel No. 324. Third, the late Sompol was buried on the parcel of land next to where the 1st Plaintiff had her matrimonial home, which if it was not the late Sompol’s matrimonial home the 1st Defendant would have objected to.
157. Moreover, the 1st Defendant did not bring evidence to the contrary that his father was buried on parcel No. 324. He did not give an explanation as to why if at all the parcel was not his late Father’s then why was he buried there. I reject his evidence which was a lie that the mother lived in Muino and he moved her from there to parcel No. 324 due to ill health, insecurity and aging.
158. Fourth, PW1 adduced uncontroverted evidence that all the 2nd to 9th Plaintiffs went through their primary level education in either Sina or Chemolo primary schools. These were schools that were within two- or three-kilometres distance of the parcel No. 324 where it was testified that they were born and brought up. This was in contrast with lack of or no evidence at all that the said Plaintiffs schooled in their elementary level in schools in Muino area which was said to be approximately fifty (50) kilometres away. If indeed they grew up in Muino, they should have schooled in institutions in that area and not in Chebon.
159. Again, if indeed DW1 paid for them school fees, it is inconceivable that he did so in schools in Chebon yet they were resident in Muino. To me, humbly, I find that the 1st Defendant’s evidence on the alleged fact of him paying fees for the sisters was nothing but sheer conjecture and a figment of imagination. It is inconceivable that a boy born 6 years earlier than the follower, 9 and 13 would pay for their primary school education unless they began schooling late in life: perhaps the others born later than those immediate followers. However, other than his mere unsubstantiated oral testimony on that fact, DW1 did not show that he paid fees for his siblings unlike the testimony of the mother.



160. Even assuming that DW1 would have paid fees for any of his siblings that would not entitle him to disinherit any of them of the property that was due to them as a birthright. That said, it is my finding that the Plaintiffs adduced enough evidence to show and convince this court on a balance of probabilities that by reason of the 1st Defendant being the only son of the 3rd wife of the late Lokwaloi Sompol, although the title deeds were not indicated as such, he was duly registered as the owner of the two parcels of land but in trust for the 3rd family of the said late father. This is further because even from his own evidence in cross-examination, he admitted that the Land Committee registered him as the surviving son of the late Lokwaloi Sompol. To this end, this Honourable Court agrees with the submissions of the Plaintiffs that it ought to be guided by the persuasive decision of *Kedipa v Chepkokwo* (Environment & Land Case 59 of 2017) [2023] KEELC 16905 (KLR) (24 April 2023) (Judgment); where it found that where the Plaintiff was registered as the owner of land in relation to a parcel which formed the estate of the Deceased, he would be so registered in trust for the family and not as a sole beneficiary.
161. Additionally, the Plaintiffs relied on the case of *Geoffrey Mbugua Dedan & 2 Others v Joseph Mbugua Dedan Gachumi & Another* [2014] eKLR wherein the Court found customary trust to exist as an overriding interest under the Kikuyu Customary Law. I agree with the holding of Geoffrey (Supra) and also find herein that the 1st Defendant having been registered as the surviving son of the late Lokwaloi Sompol over parcel of lands that the family used before his death and even after his death, it was so registered as customary trust which is an overriding interest.
162. To this end, I find that there was a customary trust created in the eyes of the law and I hold so.
- (d) Whether the 2nd Defendant was an innocent purchaser for value, and without notice, of land parcel No. 1382 or a participant in a fraudulent scheme
163. That the 2nd Defendant was an innocent purchaser for value without notice? Far from it. Julius Chemerii was an ‘interesting’ man who was not an innocent purchaser for value but an intimate participant or perhaps the chief architect of a fraudulent corruption scheme to acquire and dispose of land as will be demonstrated here below, and that is to be gathered from an analysis of his own evidence. But first, the definition of a bona fide purchaser.
164. *Bryan A. Garner (2019) in Black’s Law Dictionary, 11th Edition, Thompson Reuters, St. Paul MN, p. 1491* defines a “bona fide purchaser” as:
- “Someone who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller’s title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”
165. In *Katende v. Haridar & Company Limited* [2008] 2 E.A.173 the Court in Uganda held that: -
- “For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly.”
166. The Court went on in the *Katende case* (supra) to hold that:
- “For a purchaser to successfully rely on the bona fide doctrine, (he) must prove that:
- a. he holds a certificate of title;



- b. he purchased the property in good faith;
- c. he had no knowledge of the fraud;
- d. he purchased for valuable consideration;
- e. the vendors had apparent valid title;
- f. he purchased without notice of any fraud;
- g. he was not party to any fraud.

A bona fide purchaser of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner.”

167. On the same issue, the Court of Appeal in *Samuel Kamere v Lands Registrar, Kajiado* Civil Appeal No. 28 of 2005 [2015] eKLR stated as follows:

“...in order to be considered a bona fide purchaser for value, they must prove; that they acquired a valid and legal title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property...”

168. In the instant case, the 2nd Defendant testified that he was a neighbour to the Plaintiffs and 1st Defendant from his birth. He knew the late Lokwaloi Sompol and his family and that they resided on the parcel of land part of which he bought, for Kshs. 1,050,000/=, and was registered in his name as parcel No. 1382. He testified further that he was the one who actually prepared the agreement between the 1st Defendant and Samwel Kakuruman. That by the time he bought the land he confirmed by search that it was registered in the name of Christopher Laptia. As result he claimed to have innocently bought the land for value. He submitted as much while the Plaintiffs disputed it.
169. The 1st Defendant’s testimony was that he sold the land to Samwel Ngoris and the Samwel sold it to Julius Chemerii on 19/05/2020 a copy of which latter agreement he produced as D. Exhibit 2(b). He stated that he did not require anyone’s consent to sell. He produced as D. Exhibit 2(a) a copy of the agreement dated 16/10/2019 between him and Samwel.
170. On his part, Julius Chemerii testified that bought 3 acres of and from Samwel Loshatukei Kakurumon on 19/05/2020 by paying for it a sum of Kshs. 1,050,000/=. That before buying it he conducted a search and it showed it belonged to Christopher Laptia and it was free of any caution registered against it. Then Christopher took him to the Land Control Board for consent but Samwel Loshatukei did not since the land was not registered in the name of Samwel Loshatukei. It was then he was issued with a title deed and took possession of the land by fencing it and building on it. He feigned no problem about that.
171. He testified that he was victim of an unknown complaint because someone else by name Solomon Morris had bought 2 acres of the land and issued a title deed as No. 1294 yet he had not been sued. He also relied on D. Exhibit 2(b) and D. Exhibit 1(c), the title to the land.
172. He stated that land parcel No. West Pokot/Chebon/324 was initially purchased by one Samwel Loshatukei Kakurumon in the year 2019 and he (the 2nd Defendant) prepared the agreement of sale. At that time there was no dispute by the Plaintiffs when Kakurumon took possession of the land. Then in 2020 Mr. Kakurumon approached him with a view to selling the part of parcel No. 324 to him and he did, on 19/05/2020 by buying from him three (3) acres at a sum of Kshs. 1,050,000/=. Then



- he approached the 1st Defendant to effect transfer in his favour and that is how he was registered as proprietor of parcel No. 1382.
173. To him, subsequent to that, he had been living peacefully on the parcel No. 1382. Further that after he bought the land, he met the 1st Plaintiff and informed her he had purchased the land and she informed him that she did not have a problem with the sale. He stated that he followed due process in acquiring the title.
174. On cross-examination he admitted that when he entered into the agreement of sale of the land the 1st Plaintiff and her daughters were not present and neither were they at the land control Board when consent was granted to transfer. He also admitted that he built on the parcel of land in 2021 and 2022 and began residing on it in 2022 yet the suit was instituted in 2021. He claimed he did not have any land elsewhere hence he should not be evicted.
175. This Court has carefully and deeply reflected on the parties' evidence herein on this issue. Since the 2nd Defendant knew that Plaintiff was the wife of the late Lokwaloi Sompol and the mother of the other Plaintiffs and 1st Defendant since he was born and started recognizing issues of life and appreciating who his neighbours were, he ought to have known and he knew that the parcel of land was family land and not the 1st Defendant's private property. Therefore, it was not enough for him to carry out an official search to confirm whose land it was before he could purchase part thereof. In any event there was no evidence if such a search having been conducted as none was produced.
176. The 2nd Defendant ought to have gone further to inquire from the family whether they had any objections to sale of part of the family land. He did not. His evidence that he informed the mother (1st Plaintiff) after having bought the land is shaky and immaterial. She denied ever having been approached by him about the sale of her land "as the 'father' of the home." In any event if indeed the 1st Defendant's evidence was anything to go by, he knew well that the land belonged to the Plaintiffs and 1st Defendant as a family and not the 1st Defendant's alone. That explains why, if indeed it was true that, he went back to the 1st Plaintiff to inform her about the already done sale and she (allegedly) gave blessings to it.
177. If the land was the 1st Defendant's, the 2nd Defendant had not business going back to anyone to confirm the sale. Also, if the 1st Defendant knew that the land was indeed his, he needed not to go back to his mother to seek her permission to sell part of it, as he testified in cross-examination first before changing the testimony to deny that fact again.
178. I have carefully examined the agreements produced as D. Exhibit 2(a) and D. Exhibit 2(b). First, the Court noted the 2nd Defendant stated in his written witness statement, adopted as his evidence, that he was the one who prepared or made the agreement marked as D. Exhibit 2(a) which was entered into on 16/10/2019. The agreement was for the sale of 2 acres at a sum of Kshs. 600,000/=.
179. The agreement was about an alleged sale of 2 acres between Christopher Laptia and Stella Chepokarin. Christopher on the one hand and one Samwel Loshatukei Kokarumon on the other. It was witnessed by eight (8) people, including the 2nd Defendant as the last one. Strangely, the Assistant Chief of Sina Sublocation, one Jackson Klongor, purported to witness the agreement on 30/10/2019, fourteen days later.
180. At paragraph 1 which reads "The seller hereby sells and the buyer buys the said piece of plot (land) at duration of Kshs..." the amount of money indicated for the sale was Kshs. 400,000/- in figures and whose narrative was given as "Four Hundred and Twenty Thousand" Thus the figures and narrative differed.



181. Strangely and without any explanation or additional narrative, there is, in the space where Kshs. 400,000/= appears, in front of the figure Kshs.400,000/= and an addition of Kshs. 30,000/= (but the digit “3” seems to be overwritten on another number and there is no countersigning to it or witnessing). At paragraph 1 (a) the agreement reads that the seller acknowledged receipt of Kshs. 600,000/= (six hundred thousand only) at the time of execution. Paragraph 1(b) indicates that Kshs. 100,000/= was to be paid but no date was indicated.
182. On the top of the agreement were the following “(asterisk) 01/01/2020 Addition of one hectare (1) worth Kshs. 300,000/= to make TOTAL of three (3) hectares. Money paid Kshs.900,000/=, only. He brings (sic) on 15/01/2020.” This was purportedly witnessed by the said Assistant Chief of Sina Sublocation.
183. The above agreement is laden with a lot of suspicious writings and or figures and differences which can only point to fraud and nothing less. First, assuming that there was indeed an agreement reached for the sale of 2 acres on 16/10/2019, it was for a sum which was unclear because first it was indicated that the purchase price was Kshs. 400,000/=. It was changed mysteriously to read 400,000/= + 30,000/=. The figures do not correspond with the narration of “Four hundred thousand” after that. Secondly, if this was the purchase price, how it shoots up to be seven hundred thousand which is broken down in the paragraphs 1(a) as Kshs.600,000/= and a balance of Kshs.100,000/= in paragraph 2, does not make sense.
184. Further, if Kshs. 600,000/= was paid at the time of execution of the agreement, then it was a totally at variance with the purchase price and it seems the latter figures than the Kshs.400,000/= was an inflation to show some scheme of buying the land. Worse was the purport of the Sub-Chief to witness signatures or facts and events he did not witness on the date they occurred. As I have stated above the said Sub-Chief attested the agreement on 30/10/2019. That was 14 days after the agreement was made. Or if he purported to witness the further payment of Kshs. 100,000/= there is nothing to indicate so or an acknowledgement of the same so that it would be witnessed by the said area chief.
185. Again, how one Stella Chepoakrin Christopher becomes a vendor when she is neither registered as owner nor her capacity stated thereon is another puzzle. The said ‘vendor’ was part of the scheme to defraud the Plaintiff’s land.
186. What is more disturbing is that there was a write up purporting to be made on 01/01/2020. It was purported to be an additional agreement over the sale of one “hectare” at a sum of Kshs. 300,000/=. That sale purported to make the total size of land bought by Samwel Loshatukei from Christopher Laptia to be three (3) hectares yet initially the said Samwel was said to have bought only two (2) as the rest of the body of the agreement reads. First, this narrative of an additional hectare is a mere write up. It is not an agreement. It was not signed by both the vendor and the purchaser. Even assuming that the write up was an agreement, it would have meant that the said Losatukei Kokamuron bought three (3) hectares which translates to seven decimal four one three (7.413) acres. Again, none of their signatures was ever attested as the Law of Contract requires. Section 3(3) of the Act provides that:

“No suit shall be brought upon a contract for the disposition of an interest in land unless-

- (a) the contract upon which the suit is founded-
 - (i) is in writing;
 - (ii) is signed by all the parties thereto; and



(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:”

187. The narration only stated that “He bring on 15/01/2020” Whatever that means is a mystery. Where he “bring” and to whom he does it is as mysterious as Black holes in the Universe. Additionally, assuming that the 2 acres of land initially alleged to be bought by the said Samwel Loshatukei were properly purchased then the transaction became void after 6 months in terms of Section 8(1) of the [Land Control Act](#), Chapter 302 of the Laws of Kenya. The provision is to the effect that,

“An application for consent in respect of a controlled transaction shall be made in the prescribed form to the appropriate land control board within six months of the making of the agreement for the controlled transaction by any party thereto:

Provided that the High Court may, notwithstanding that the period of six months may have expired, extend that period where it considers that there is sufficient reason so to do, upon such conditions, if any, as it may think fit.”

188. To my mind, it is clear that when the agreement purportedly made on 16/10/2019 was made, it became void after the expiry of six (6) months thereof and that was by 16/04/2020. Therefore, whatever the said Samwel purported to sell to the 2nd Defendant in terms of 2 acres of the three (3) whose agreement they entered into on 19/05/2020 did not amount to an interest in land but hot air (as a similar expression used elsewhere by the Supreme Court of Kenya).

189. Furthermore, in depositions of land, there is no capacity of a vendor as a beneficial owner. It is either the seller owns the land or has a duly registered power of attorney or other lawful authority to sell or he does not have any hence cannot sell. Moreover, the drafter of the said agreement did not indicate how the said Samwel Loshatukei became a beneficial owner of the whole parcel No. 324 as to attach it to the land parcel in issue in this case: how sad for parties to enter into such an agreement!

190. I find it even more puzzling because the parcel of land that the said Julius R. Chemerii purported to buy was not land parcel No. West Pokot/Chebon/324 but Chebon/Chebon/324. Perhaps the seller must be a beneficial owner of such a parcel of land but it could certainly not be one of the two parcels of land that this Court has found to have been registered in the 1st Defendant’s name in trust for the Plaintiffs and the 1st Defendant. The one he bought may be existing elsewhere and only Mr. Samwel Loshatukei knows where it is situated. Therefore, for the 1st Defendant and the 2nd Defendant to purport to state that it is the same parcel of land as parcel No. 324 it is far from the truth. Perhaps that is what his lawyers who drafted the agreement intended but them it is not the one. The parcel sold and bought as between the Loshatukei and Julius Chemerii cannot be the suit land No. 324.

191. Thus, armed with a foreign agreement over land which was not parcel No. 324 both the 1st and 2nd Defendants presented themselves to the board in absence of the 1st Plaintiff’s family and procured a consent by which they transferred to 3 acres of part of land parcel No. 324 to the 2nd Defendant as land parcel No. 1382. There was no evidence of the consent of the board to subdivide and the other to transfer provided.

192. Furthermore, a cursory examination of the copies of the green cards produced and marked as P. Exhibit 2 (b) and P. Exhibit 2(d) for parcel of land No. West Pokot/Chebon/ 1381 and West Pokot/ Tapach/156 respectively, provides additional evidence pointing to the ongoing perpetration of fraud between the 1st and the 2nd Defendants or carelessness on the part of the Land Registrar’s office or officer who issued the title deeds thereto. This is evident since title deeds presented by the 1st Defendant D.



Exhibit 1(a) and D. Exhibit 1(c) differ from the details of entries indicated in the green cards. The title deeds read as West Pokot/Chebon/Chebon/1381 and Tapach/Tapach/156 respectively which details are very different from those in the green cards. Essentially the title deed documents do not refer to the correct title deeds that should have been issued in accordance with the registers.

193. Shamefully, but without a wink in his eyes, was that despite the fact that this Court issued an order of status quo regarding the suit lands, the 2nd Defendant moved onto and started occupying the house he completed during the pendency of this suit. After that he moved to inform the Court in his testimony that he has no other place to go other than being on the parcel of land as though he came from Mars yet he testified that all his life before moving onto parcel No. 1382 he was with his parents in the neighbouring parcel of land.
194. Clearly, the above actions of the 1st and 2nd Defendants and one Stella Chepokarin Christopher and the purported agreement are nothing but sheer fraud. I have stated much to show that the Plaintiffs have proved that the 2nd Defendant was neither an innocent purchaser for value nor one innocent of the fraud that occurred in the process of sale of part of and subdivision, and transfer of parcel Nos. 324 and 1382 respectively.
- (e) Whether the title deeds for land parcel Nos. 1381 and 1382 should be cancelled and title to parcel No. 324 reverts.
195. What is left of this Court to determine as it comes to the tail of this judgment is whether the titles deeds for parcel Nos. West Pokot/Chebon/1381 and West Pokot/Chebon/1382 should be cancelled. I will not take much time on and analysis of the issue. All this Court can say is that given the discussion and findings in the immediate previous issue about the 2nd Defendant not being an innocent purchaser and that there was fraud in the transactions leading to the subdivision of parcel No. 324 to parcel Nos. 1381 and 1382, the said resultant titles cannot be left to stand. They must be cancelled forthwith.
196. In the case of *Funzi Development Ltd & Others v County Council of Kwale*, Mombasa Civil Appeal No.252 of 2005 [2014] eKLR the Court of Appeal, which decision this Court affirms, stated that:
- “...a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility of title sanction an illegality or gives its seal of approval to an illegal or irregularly obtained title.”
- (f) Whether the trust, if any, in respect of the suit lands should terminate and the parcels be divided equally among the Plaintiffs and the 1st Defendant.
197. One of the reliefs the Plaintiffs sought was an order be made terminating the trust in regard to parcel Nos. West Pokot/Tapach/156 and West Pokot/Chebon/324. Another one was that there be an order that the lands held in trust be equally shared and/or subdivided among the Plaintiffs and the 1st Defendant. The other one which, in this Court’s humble view was dependent on the previous ones was that the 1st Defendant be ordered to execute all such documents as would facilitate the subdivision of the lands held in trust and transfer the individual parcels to the beneficiaries, in default the Deputy Registrar of this Court to execute all the requisite documents. I have considered deeply the relief sought.
198. If I understood the Plaintiffs well, it was their evidence that the two parcels of land, as were demarcated by the late Lokwaloi Sompol, belonged to the family of the 1st Plaintiff. They formed part of the estate of the late Sompol. They were only registered in the name of the 1st Defendant because he was the



only son of the late Lokwaloi Sompol but that the registration was supposed to be in trust for him, his siblings and their mother. Granted that the position was that one, as I have found it to be, then the two parcels of land can only form part of the estate of the late Sompol but which property had been specifically given to the 3rd family - the family of the Cheparwasi Ibrahim.

199. The reliefs sought raise an interesting question: is this Court therefore distributing the estate of the late Lokwaloi Sompol in respect of that family to the beneficiaries if it proceeds to terminate the trust and direct that the two parcels of land be subdivided equally among the ten (10) persons being the first family's household members or shared between all the Plaintiffs and the 1st Defendant?
200. The Plaintiffs in their submission relied upon the case of David Kamunya Kingori & Another v Wambui Nderitu & 4 Others [2020] eKLR, wherein the court found a trust in favour of the Plaintiffs and Defendants; terminated the trust; cancelled the titles which had been issued subsequent to the illegal allocation and ordered that the title be rectified. It did not direct on the manner of the sharing of the estate or titles it had ordered restored and therefore replying on the said authority to persuade this Court to direct that the two parcels of lands which constitute the estate of Lokwaloi Sompol would be misleading as to do so would cause this Court to arrogate itself jurisdiction it doesn't have.
201. Flowing from the above, the Court is of the humble view that if it proceeds to grant the reliefs sought herein it would have arrogated itself jurisdiction that it does not have. Distribution of property of a deceased person is the preserve of the courts which deal with matters of probate and administration, commonly known as succession. It can only be the preserve of either the High Court or the subordinate Court exercising jurisdiction as appropriate. It is for that reason that I respectively decline to grant the reliefs sought as (d) and (e) in the Plaint.

Disposition And Final Orders

202. The 1st Defendant tried to woo this Court into sympathizing with his situation of being a polygamous man with 30 children. It is painful and unfortunate that after this judgment the 1st Defendant's three families (wives and children) must live to the reality that they must be 'squeezed' into living on portions of land that are infinitely small compared to what they have been used to and promised by their husband and father. But this should sound as a warning to children or dependants who, upon seeing or knowing the massive or sizeable properties their parents own, live leisurely and large on them and plan on how to utilize them after their parents have 'gone' out of this world, by, including marrying and raising large families on those properties rather than working hard and smart to acquire their own. Humans were not born to be lazy and just quit school to marry, be fruitful and sire to fill the world, without knowing and living by the consequences thereof.
203. Consequently, this Court therefore enters judgment for the Plaintiffs against the Defendants jointly and severally as follows:
 - a. A declaration be and is hereby issued that the 1st Defendant is registered as the sole proprietor of the lands comprised in title No. West Pokot/Tapach/156, and West Pokot/Chebon/324 which has now been subdivided into parcel Nos. West Pokot/Chebon/1381 and 1382, in trust for the Plaintiffs and himself.
 - b. A declaration be and is hereby issued that the sale of the parcel of land comprised in West Pokot/Chebon/1382 by the 1st Defendant to the 2nd Defendant was fraudulent and the title issued to the 2nd Defendant be cancelled forthwith.



- c. The 2nd Defendant illegally occupies the portion of land comprised in parcel No. West Pokot/Chebon/1382 (now cancelled) and is hereby ordered to move out of the said parcel of land within the next thirty (30) days, in default he be evicted.
- d. An order be and is hereby issued that the subdivision of land parcel No. West Pokot/324 into parcel Nos. West Pokot/Chebon/1381 and 1382 was fraudulent hence title number West Pokot/Chebon/1381 too, whose title deed was issued as West Pokot/Chebon/Chebon/1381, be and is hereby cancelled and the register be rectified to restore the original land parcel No. West Pokot/Chebon/324.
- e. An order be and is hereby issued that the registers in respect of land parcel Nos. West Pokot/Chebon/324 and West Pokot/Tapach/156 be rectified to read, the 1st Plaintiff and the 1st Defendant, being Cheparwasi Ibrahim and Christopher Laptia as trustees of the Estate of the late Lokwaloi Sompol in respect of family of Cheparwasi Ibrahim.
- f. An order be and is hereby issued that the title issued to the 1st Defendant as Tapach/Tapach/156 be and is hereby cancelled forthwith.
- g. An order of inhibition be and is hereby issued and be registered in respect of parcel Nos. West Pokot/Tapach/156 and West Pokot/Chebon/324 to protect the interests of all the Plaintiffs and the 1st Defendant until the succession on the Estate of the late Lokwaloi Sompol comprised in the two parcels is finalized.
- h. The Plaintiffs shall have the costs of the suit.

204. Orders accordingly.

**JUDGMENT DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS
11TH DAY OF JULY, 2023.**

HON. DR. IUR FRED NYAGAKA

JUDGE, ELC KITALE

