



REPUBLIC OF KENYA



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**Mandala v Oketch & 3 others; National Housing Corporation (Third party) (Environment & Land Case 259 of 2009) [2023] KEELC 20793 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20793 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 259 OF 2009  
LC KOMINGOI, J  
OCTOBER 12, 2023**

**BETWEEN**

**ALFRED KISAKA MANDALA ..... PLAINTIFF**

**AND**

**FREDRICK O. OKETCH ..... 1<sup>ST</sup> DEFENDANT**

**JESSE M. GITAUD T/A GALLANT AUCTIONEER ..... 2<sup>ND</sup> DEFENDANT**

**FREDRICK OKETCH (SUED IN HIS CAPACITY AS THE  
ADMINISTRATOR OF THE ESTATE OF DISMAS OKUNGU AKETCH-  
DECEASED) ..... 3<sup>RD</sup> DEFENDANT**

**PHILIP KIPKORIR SAMBU (SUED IN HIS CAPACITY AS THE  
ADMINISTRATOR OF THE ESTATE OF ANNE CHEMUTAI SAMBU -  
DECEASED) ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**NATIONAL HOUSING CORPORATION ..... THIRD PARTY**

**JUDGMENT**

1. By a Plaint dated 3<sup>rd</sup> June, 2009 amended on the same date and further amended on 10<sup>th</sup> July, 2012 the plaintiff seeks judgement against the defendants jointly and severally as for;
  - a. A declaration that the Plaintiff having performed his contractual obligations under the Agreement for sale dated 10<sup>th</sup> July, 1990 is by law entitled to a formal transfer of the suit property into his name.
  - b. A declaration that the sake and or transfer of the title of L.R NO.62/272 to Anne Chemutai Sambu, was and still is null and void.



- c. An order directing the Registrar of Lands to recall, revoke, cancel and or nullify the certificate of title issued in favour of Anne Chemutai Sambu, the 4<sup>th</sup> Defendant.
  - d. An order of specific performance directing the 3<sup>rd</sup> Defendant as the administrator of the vendors estate to execute all such instrument as are necessary to transfer the suit property to the Plaintiff or to the Plaintiffs nominee within thirty (30) days of this order or decree failing which the Deputy Registrar of this honourable court do execute and seal all such documents.
  - e. An order of permanent injunction restraining the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants whether by themselves, their agents or servants or otherwise however whether jointly or severally from interfering with the Plaintiffs quiet possession and peaceful enjoyment of the suit premises.
  - f. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants do pay the Plaintiff general and aggravated damages for the unlawful attachment and eviction
  - g. Costs of this suit and interest on No.4 above at court rates.
  - h. Any other relief that this honourable court may be pleased to grant.
2. The Plaintiff's case is that he bought un-expired leasehold interest for NAIROBI/BLOCK/62/272, house No.29L, situated in Ayany Estate, Nairobi from Dismas Okungu and Margaret Aketch (both deceased) for value consideration of Ksh.200,000/= in an agreement dated 10<sup>th</sup> July,1990.Both parties were represented by Cheloti, Etole and Kokonya advocates, now referred as Cheloti & Etole Advocates. He also paid an outstanding loan, land rent, rates and insurance for the property amounting Ksh.58,859.85/= to the property developer, National Housing Corporation (NHC).He alleges that despite undertaking substantial development and improvements on the suit property which he still occupies, the title is yet to be transferred to him. This due to the demise of Dismas Okungu and Margaret Aketch, the vendors herein.
  3. The Plaintiff states that on 16<sup>th</sup> May,2009, the 2<sup>nd</sup> Defendant while acting on instructions of the 1<sup>st</sup> Defendant broke into the property, took away his household goods and forcefully evicted him. The 2<sup>nd</sup> Defendant also levied distress for rent amounting to Ksh.1.5 Million allegedly owed by the Plaintiff to the 1<sup>st</sup> Defendant. The Plaintiff asserts that such actions were illegal, wrong and malicious for the reason that he is a bonafide purchaser for value and registered owner of the suit property. He pleads that the property does not belong to the estate of the deceased neither was the 1<sup>st</sup> Defendant, who was not even the administrator of the estate of the deceased have any authority. According to the Plaintiff, the 2<sup>nd</sup> Defendant acted without any court order neither was there any proclamation or 14 days statutory notice. He also evicted the Plaintiff notwithstanding the fact that he was not instructed to do so.
  4. It is the Plaintiff's case that he re-entered into the suit premises pursuant to orders issued by this court on 18<sup>th</sup> September, 2009. He further pleads that when the 1<sup>st</sup> Defendant filed a Chamber Summons dated 18<sup>th</sup> May, 2010, he found out that letters of administration over the estate of Dismas Okungu Aketch had already been obtained. According to the confirmed grant, the suit property was to be distributed equally among the heirs being Fredrick Ooko Aketch, Philip Otieno Aketch and James Odhiambo Aketch. The Plaintiff states that he filed an application seeking that the grant be revoked.
  5. It is further pleaded that the Plaintiff discovered through letters by the 4<sup>th</sup> Defendant's counsel dated 10<sup>th</sup> and 25<sup>th</sup> January, 2012 addressed to him that the property had been sold to the 4<sup>th</sup> Defendant who threatened to evict him. It is the Plaintiff's case that the purported sale was illegally and fraudulently undertaken because the 1<sup>st</sup> and 3<sup>rd</sup> Defendants did not have the legal capacity to sell or transfer the



property. They were also aware that this court issued an order on 18<sup>th</sup> September, 2009 prohibiting any dealings in the suit property until this case is heard and determined.

6. Even though the plaintiff acknowledges that he sued the 1<sup>st</sup> Defendant in CMCC 3195 of 2009, he states that the said suit was withdrawn.

#### **The 1<sup>st</sup> Defendant's case**

7. On 1<sup>st</sup> December, 2009, the 1<sup>st</sup> Defendant filed a statement of defence dated the same date seeking that the Plaintiff suit be dismissed with costs. He alleges that the disputed property belonged to his deceased parents during their life and upon their estate after their death. According to him, Plaintiff was only a tenant. He alleges M/S G.E.O Oluoch & Company Advocates was his parents' counsel during their lifetime and not M/s Cheloti, Etole & Kokonya Advocates as alleged by the Plaintiff.
8. According to the 1<sup>st</sup> Defendant, his parents never sold the suit property to the Plaintiff neither did they receive Ksh.200,000/= .In addition, the Plaintiff recovered Ksh.58,859/= paid to the National Housing Corporation by reducing rent due to his parents and which amount he still claimed was been recovered when he filed this suit. The contract is proof that the Plaintiff was a tenant. The improvement she undertook on the property were for his own convenience as a tenant and cannot confer ownership of the property to him.
9. The 1<sup>st</sup> Defendant admits that he instructed the 2<sup>nd</sup> Defendant to levy distress for rent arrears because the Plaintiff never responded to his various written demand letters. This was done to forestall further losses to the estate. He maintains that the distress was lawfully done as proclamation was done, notice given and breaking-in orders obtained. He maintains that the Plaintiff was never evicted from the suit property. Instead, he moved out a week after the distress for rent was complete. This prompted the 1<sup>st</sup> Defendant to look for another tenant.
10. It is further contended that considering the Plaintiff is yet to pay costs in CMCC No.3195 of 2009 despite several demands. The 1<sup>st</sup> Defendant alleges that he shall apply that these proceeding be stayed until such monies are paid. He also adds that the Plaintiff's claim is defective, statutory time-barred and unsustainable since it is based on contract entered into in 1990 and filed without leave. According to him, the Plaintiff claim can only lie against the estate of the deceased and not an individual beneficiary.

#### **The 2<sup>nd</sup> Defendant's case**

11. The 2<sup>nd</sup> Defendant filed a defence dated 1<sup>st</sup> December, 2009 on the same date denying the Plaintiff allegations and prays that the claim against it be dismissed with costs. It is admitted that they duly proclaimed goods for distress against the Plaintiff upon receiving instructions from the 1<sup>st</sup> Defendant. In addition, a breaking order obtained on 5/05/2009 allowed them to access the premises, attach the Plaintiffs items and sell them as required by law. They deny ever evicting the Plaintiff from the suit property premises.

#### **The 3<sup>rd</sup> Defendant's case**

12. Through a statement of defence and counterclaim dated 17<sup>th</sup> April, 2015, the 3<sup>rd</sup> Defendant alleges that his parents never sold the suit property to the Plaintiff. Upon the death of his father, he jointly collected rent with his mother from the Plaintiff. It is his case that Plaintiff reneged his rent obligation when his mother passed away. This necessitated his eviction from the suit property due to rent arrears. Further, it is only National Housing Corporation who could sanction transfer of the property to the Plaintiff once he produced sufficient proof.



13. The 3<sup>rd</sup> Defendant asserts that it was within his right to demand rent from the Plaintiff who took advantage of their state of being orphans status and refused to make payment. If indeed the Plaintiff was the legal owner of the suit property, National Housing Corporation would have signed a sale agreement and assigned the property to him. It is further pleaded that they lawfully and legally procured letters of administration in respect of their father's estate whose grant upon being confirmed allowed distribution of the suit property to the rightful heirs. Considering succession proceedings were never objected to by the Plaintiff, the sale of the suit property to Anne Sambu was not in violation of the orders issued on 18<sup>th</sup> September, 2009.
14. According to the 3<sup>rd</sup> Defendant, the orders did not stop him as the administrator of the estate of Dismas Okungu from selling the property neither did it confer any legal ownership upon the Plaintiff. He pleads that when the orders were issued, he was not even the administrator of the estate. He contends that the confirmed grant henceforth conferred rights upon them to deal with the property in any manner including selling it. The Plaintiff's claim against them should for these reasons be dismissed with costs.

#### **The 4<sup>th</sup> Defendant's case**

15. The 4<sup>th</sup> Defendant disputes the Plaintiff allegation in a defence and counterclaim dated 22<sup>nd</sup> September, 2014 and filed on 23<sup>rd</sup> September, 2014. It is contended that the Plaintiff failed to involve NHC in the alleged sale yet he knew it owned the property. He also never signed any deed of assignment with them to prove whether the outstanding loan was fully paid. The Plaintiff's allegations that the title was never transferred to him between 1990-2009 because the vendors died is an afterthought.
16. It is asserted that the 4<sup>th</sup> Defendant duly purchased the suit property from the 3<sup>rd</sup> Defendant and that payment of the entire the full purchase price was duly acknowledged. A deed of assignment dated 16<sup>th</sup> May, 2011 between National Housing Corporation and the 3<sup>rd</sup> and 4<sup>th</sup> Defendant conferred her proprietary rights. She was also issued with a valid certificate of lease after obtaining consent from National Housing Corporation, 3<sup>rd</sup> Defendant and commissioner of land when she paid the requisite land rents, rates and stamp duty. Due diligence also proved that the 3<sup>rd</sup> Defendant had legal capacity to sell the property. It is alleged that the court order neither existed at National Housing Corporation nor in the lands office. This is because it was never served. The Plaintiff is as a result not entitled to any prayers sought because he slept on his rights.
17. It is pleaded that the 4<sup>th</sup> Defendant is not only an innocent purchaser for value but also the legal owner of the property. The property has already been distributed upon her heirs after her demise. Through the counterclaim, the 4<sup>th</sup> Defendant seeks for the following reliefs;
  - a. That the Plaintiffs suit be dismissed with costs to the 4<sup>th</sup> Defendant.
  - b. A declaration that the 4<sup>th</sup> Defendant being the registered owner is therefore the legal owner of the suit property
  - c. A mandatory injunction directing the Plaintiff to unconditionally deliver up vacant possession of LR. NO. NAIROBI/BLOCK/62/272, otherwise known as House No.29L situated in Nairobi's Ayany Estate Kibera to the 4<sup>th</sup> Defendant.
  - d. An order of permanent injunction restraining the Plaintiff whether by himself, his agents or servants otherwise howsoever from interfering with the 4<sup>th</sup> Defendants quite possession and peaceful enjoyment of the suit property.
  - e. Costs of the counterclaim



- f. Any other relief this court may deem fit and just to grant.

### **The 3<sup>rd</sup> Party's case**

18. The 3<sup>rd</sup> Party denies the allegation against it in a Statement of Defence dated 2<sup>nd</sup> April, 2019 filed on 14<sup>th</sup> April, 2019. It alleges that after developing the suit property, it sold it to Dismas Okungu and Margaret Okungu in 1980 on a tenant-purchase terms. Although they cleared their loan repayment on 10<sup>th</sup> June, 1991, the title was never processed nor issued to them. Further, the 3<sup>rd</sup> Defendant, being the administrator of the estates Dismas Okungu and Margaret Okungu, estate assigned the interest of the suit property over to the 4<sup>th</sup> Defendant through a deed of assignment dated 16<sup>th</sup> May, 2011. It is the 3<sup>rd</sup> Party's case that it was not involved in ownership nor purported sale of the property between the Plaintiff and the Defendants. This is because it never sold the property to the Plaintiff nor the 4<sup>th</sup> Defendant. For this reasons, the Plaintiff claim against it must be dismissed with costs because no reasonable cause of action has been disclosed.

### **Reply to the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants defence**

19. The Plaintiff reiterated the averments of his plaint while responding to the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants defence in a reply dated 8<sup>th</sup> October, 2014 and 19<sup>th</sup> January, 2010 filed on 9<sup>th</sup> October, 2014 and 19<sup>th</sup> January, 2010 respectively. According to the Plaintiff, any transaction entered in respect of the suit property was void and could not confer any benefit upon the 4<sup>th</sup> Defendant. This is because there was already a court order inhibiting any further dealings on the suit property. In addition, the 3<sup>rd</sup> Defendant did not have any legal capacity to deal with the suit property. The Plaintiff maintains that he was unlawfully evicted from the suit property. He further asserts that his claim is not time barred under Limitation Actions Act.

### **Evidence of the Plaintiff.**

20. PW1, Francis Etole, an advocate and partner in the Law firm of Etole Cheloti & Company Advocates stated that he met the Plaintiff in 1990 when he visited his office. He admitted that he acted for both the Plaintiff (buyer) and Dismas Okungu and Margaret Aketch (sellers) in the sale of the suit property in an agreement dated 10/7/1990. It was his evidence that the purchase price of Ksh.200,000/= was fully paid. He produced receipts dated 12/9/1989 and 6/7/1990 confirming that the Plaintiff paid legal fee of Ksh.10,000/= and a deposit of Ksh.90,000/=. A receipt showing payment of outstanding loan of Ksh.56,859.85/= to National Housing Corporation after execution of the Agreement were also produced. He explained that bearing in mind the full loan was settled by 1/10/1990, the Plaintiff might have been issued with the suit property title deed as he never came back to his office. It was his evidence that he countersigned alterations made on the sale agreement in 1990 after Dismas Okungu came back with his wife to his office. According to correspondences between the Law firm and National Housing Corporation produced in court, the full purchase price was paid by the buyer who also cleared the loan. In 1991, the seller requested that transfer of the property be effected upon the buyer. PW1 also produced the agreement for sale as part of his evidence to refute the 1<sup>st</sup> Defendant assertions that it never existed.
21. During cross examination, he reiterated that he acted for both the vendor and the purchaser in the agreement. Even though he would not recall the total monies paid, he acknowledged that Ksh.90,000/= and Ksh.56,895.85 was paid. Despite stating that the remaining balance was paid in cash, he did not have any supporting documents to prove the seller acknowledged the said monies. He was of the view that the transaction had been completed. PW1 informed court that even though the Plaintiff still



- possesses the property, its title is yet to be transferred to him. Likewise, the Plaintiff never paid rent to the deceased's children. He added that the agreement was signed in his presence by all the parties and that the seller was paid the purchase price in cash. It was his testimony that the Plaintiff made a follow-up with National Housing Corporation to be issued with the title deed. He also stated that he was aware National Housing Corporation was giving loans to sellers, who are beneficial owners of the suit premises to purchase it.
22. During re-examination, he informed court he never received any complaint from the seller that he never paid the entire purchase price. Therefore failure to take action by the buyer did not invalidate the contract. He acknowledged that National Housing Corporation was not a party to the Sale Agreement.
  23. PW2, Alfred Kisaka Mandila stated that he bought the suit property from Dismas Okungu Aketch for a consideration of Ksh.200, 000/=. He produced a letter addressed to their counsel informing them to pay Dismas the purchase price. Kshs.56, 859.85/= was also paid to National Housing Corporation was based on the receipts produced. National Housing Corporation also notified of the sale by Dismas. He further stated that the 1<sup>st</sup> Defendant instructed the 2<sup>nd</sup> Defendant to levy distress for rent on allegation that he was a tenant on his parent's premises. However, PW2 could not explain how the alleged Ksh.1.5 Million rent arrears came about. He maintained that he was not a tenant but the owner of the suit property. He produced photographic evidence to proof that auctioneers assisted by the police evicted him from the suit property. This according to him was done without any eviction orders. Through his own admission, he testified that he regained occupation of the suit property pursuant to orders issued by this court. He further stated that in 2012, the 4<sup>th</sup> Defendant demanded possession of the suit property on allegation that she bought it from the 1<sup>st</sup> Defendant through a sale agreement dated 3/8/2009. PW2 stated that the 1<sup>st</sup> Defendant did not serve him with the letters of administration of his father's estate nor the confirmed grant. The grant was however revoked when PW2 filed an application dated 27/11/2014. PW2 added in 2006, he put up a perimeter wall on the suit property after constructing an extended bedroom in the suit premises. His prayer to this court is that he should be granted back his house and awarded cost of this suit and interest.
  24. While being cross examined, PW2 reiterated that he bought the suit property from Dismas Okungu and his wife through a sale agreement dated 10/7/1990 for a consideration of Ksh.200,000/= .Ksh.110,000/= was paid to M/S Cheloti, Etole & Kokonya Advocates together with conveyance fee of Ksh.10,000/=. He further added that he stopped paying Mrs. Okungu Ksh.1200/= rent when he purchased the property. In 2008, he sought to regularize the transfer of title to his name. He only paid the property rates once. It was PW2 evidence that Dismas Okungu informed him he got the purchase price monies in 1991.
  25. Despite acknowledging that the sale agreement was signed by Dismas Okungu and Margaret Aketch, he stated that he could not recall if Margaret signed the Agreement. It was his case that the 1<sup>st</sup> Defendant never gave him any reasons for the eviction from the property. According his testimony, he never challenged 1<sup>st</sup> Defendant demands to pay rent as he was the owner of suit property.
  26. Even though he admitted that he never forwarded the executed agreement to National Housing Corporation, he indicated that they were aware of his interest on the property. This was because their counsel had notified them. He denied existence of leasehold interest over the suit property. He did not have any documents to prove the children of the deceased were aware of the sale agreement. He could also not recall whether the court order dated 6/10/2009 was served upon National Housing Corporation or registered with the land registry. He also never understood why National Housing Corporation never contacted him when it proceeded to facilitate disposal of the suit property with the 1<sup>st</sup> and 4<sup>th</sup> Defendant. According to his testimony, 4<sup>th</sup> Defendant also knew he was the owner of the



property and he occupied when she purchased it. PW2 denies ever sleeping on his rights. He further informed court that he has not paid the suit property rates since 1991.

27. His testimony on re-examination was that at the time the sale agreement was executed, Ksh.110, 000/= had already been deposited with M/S Cheloti, Etole & Co. Advocates who represented them in the transaction.

### **Evidence of the Defendants**

28. DW1, Fredrick Ooko Aketch the 1<sup>st</sup> defendant, stated that the Plaintiff was his late fathers' tenant. He further stated that upon his father's demise in 1991 and during his mother's lifetime, the Plaintiff paid rent amounting to Ksh.2000/= per month. Following his mother's demise, he was paid rent in cash or through his account at Equity Bank although it was done in instalments. This made him to instruct auctioneers to levy distress for rent. When the Plaintiff ran away during distress, he took possession of the suit premises, renovated it and found another tenant. DW1 acknowledged that this court issued orders allowing the Plaintiff to enter the suit property. He added that his application for grant of letters of administration over his father's estate whose grant was later confirmed on 9/2/2010 was never objected to. As a result, he sold the suit property to Anne Chemutai Sambu. This is because the confirmed grant stipulated that the property was to be shared equally among the beneficiaries. Issuance of the title deed to Anne Chemutai Sambu was facilitated by National Housing Corporation who had it at the time. He maintained that when he did the transaction he was not aware that the Plaintiff was claiming ownership of the property. He upheld the view that the house belonged to his father and not the Plaintiff. He denied ever dealing with the suit property fraudulently. He was of the view that the orders issued on 18/09/2009 were based on the fact that he had not obtained letters of administration in respect of his father's estate.
29. His testimony during cross examination was that he was five (5) years old when his father passed away in 21/8/1991. During this time, he did not know his father's advocate. He could not recall when the Plaintiff become his father's tenant. He did not have any supporting documents to prove M/S GEO Oluoch Advocates acted for his parents. Even though he stated that the Plaintiff paid him rent in cash or through his account at Equity Bank, he never knew the purpose of such monies. The Plaintiff was also not issued with receipts upon making payments. He admitted that he instructed the 2<sup>nd</sup> Defendant to levy distress for rent as Plaintiff had rent arrears of Ksh.1.5 million. He also never obtained eviction orders against the Plaintiff who ran away when he was distressed.
30. The court was informed that the Plaintiff re-entered the suit premises when this court granted him orders. Despite recognizing that this court made the order on 6/10/2009, he alleged that the orders were given because he was not the administrator of his father's estate. He therefor never violated it when he signed the deed of assignment dated 16/5/2011.
31. DW1 informed court that at the time the grant to his father estate was confirmed, he was aware of the Plaintiff's claim. He however did not serve him with application for confirmation of the said grant. He alleged that he disclosed existence of court orders stopping any dealings on the suit property to the court. He stated that even though the grant was revoked, no appeal has ever been lodged against the said revocation. DW1 denied ever designing any scheme to defraud the Plaintiff by insisting that the house was available for disposal.
32. It was his testimony that when he sold the suit property to Anne Chemutai Sambu through a sale agreement dated 3/8/2009 at a consideration of Ksh.2.5 million whose monies he acknowledged, he never concealed the Plaintiff was claiming the suit property. He also never told National Housing Corporation there was an order prohibiting any dealings in respect of the suit property. He confirmed



- that Anne Chemutai was issued with Certificate of Title after execution of the deed of assignment dated 16/5/2011. He maintained that when he conducted due diligence at National Housing Corporation, he never found anything indicating the suit property was being claimed by someone else.
33. During re-examination, he confirmed that on 3/8/2009, he sold the suit property to Anne Chemutai Sambu in his capacity as the administrator of his father's estate. When the sale was being undertaken, no prohibitory orders existed against the suit property. Similarly, National Housing Corporation never raised any issue with the transaction. According to him, the Plaintiff wanted to take away the suit property from them when he failed to pay rent.
  34. DW2, Philip Kipkorir Sambu, husband and administrator of the estate of Anne Chemutai Sambu, stated that the suit property was listed for distribution in a grant confirmed on 1/2/2014. His wife learnt about the suit property through an agent who introduced her to Fredrick Ooko Aketch. At this time, Fredrick had already obtained letters of administration in respect of his late father's estate. National Housing Corporation had also informed them that the property was free from any encumbrances. She then executed a sale agreement for a consideration of Ksh.2.5 million with the 1<sup>st</sup> Defendant. A deed of assignment dated 16/5/2011 was also signed between them and National Housing Corporation. She was subsequently issued with an allotment letter after paying Ksh.16, 865/= .DW2 urges this court to dismiss the Plaintiff claim with costs and declare Anne Chemutai Sambu, owner of the suit property for the reasons that a Certificate of Title has already been issued to her.
  35. DW2's evidence during cross examination was that at the time Anne Chemutai purchased the suit property, she never knew about the Plaintiff's claim. In addition, Fredrick (1<sup>st</sup> defendant) had the capacity to dispose of the property as he wished because he had already obtained grant of letters of Administration. Despite admitting that Fredrick did not inform them of any orders restricting dealings in the suit property, he maintained that the transaction was not based on non-disclosure. They learnt about the order when the transaction was completed. DW2 stated that he was not aware that the grant in respect of the estate of Dismas Okungu had been revoked. The revocation was done after title had already been issued to Anne Chemutai. The court was also told that at the time Anne Chemutai bought the suit property, she did not know who was in occupation. Their then counsel Kangethe, Waitere & Co. Advocates did not make any inquiries about the sale from National Housing Corporation. It was his evidence that they visited National Housing Corporation together with his wife and established that if it was owned by Dismas Okungu as informed by Fredrick Ooko Aketch to whom the full purchase price was paid.
  36. During re-examination, he stated that Ann Chemutai's decision to purchase the suit property was based on Fredrick Aketch's letters of administration and confirmation from National Housing Corporation. As at the time of the purchase, the property was free from any encumbrances. They were also never served with any order for bidding any dealings while undertaking the sale the transaction.
  37. DW3 James Mburu Gitau an auctioneer practising by the name Gallant Worldwide Auctioneers stated that the suit against him should be dismissed because he was instructed to levy distress for rent and not to evict the Plaintiff. While being cross-examined, he confirmed that was instructed by Fredrick Ooko Aketch to recover Ksh. 1.5 Million. The Plaintiff did not object to the proclamation given he signed the inventory. Similarly, he did not object when the items were removed and sold. It was his testimony that he did not know the monthly rent or how long it had accumulated. He stated was also not allowed to attach clothes and personal belongings. When he was showed photograph displaying bucket, mattress and plates, he maintained that he neither proclaimed nor took them away. He responded that he did not know how the undated photos were taken. His view was that they might have been taken by police officers who accompanied him to break into the premises. It was his testimony that he never evicted the



Plaintiff. He did not when he went back to the suit premises. He maintained that he legally discharged his duties.

38. DW4, Pamela Atieno Ombok, Legal Assistant based at National Housing Corporation, stated that the 4<sup>th</sup> Defendant made inquiries from National Housing Corporation about the ownership of the property. She further stated that a deed of Agreement signed by the parties ought to have been given to National Housing Corporation Managing Director to facilitate execution of transfer. The deed was accordingly availed to them. They were however not served with any order barring any dealings on the suit property.
39. She informed court during cross-examination that Alfred Kisaka Mandila paid the outstanding loan of Ksh.56,859.85/=. Within three months after making the payment, National Housing Corporation was also notified that the suit property premises had been sold to Alfred Kisaka Mandila. The Plaintiff also requested that transfer be effected in favour upon to him. However, nobody notified them, not even Dismus Okungu Aketch whether the sale had been finalized. However, National Housing Corporation was aware that Dismus had passed on. DW4 reiterated that they were never served with any court order restraining any dealings on the suit property. She confirmed that National Housing Corporation authorised change of title from the deceased, their beneficiaries and finally to the 4<sup>th</sup> Defendant. She maintained that National Housing Corporation was involved in the transaction between Fredrick Aketch Ooko and Anne Chemutai and other beneficiaries. In addition, Alfred Kisaka Mandila never informed them whether he had any interest on the suit property. DW4 maintained that Ann Chemutai Sambu is the owner of the suit property and that National Housing Corporation facilitated issuance of title to her from the Ministry of Lands. She took the view that nothing prevented National Housing Corporation from transferring the property to any person including Anne Sambu. This was because there existed a duly executed deed of assignment dated 16/5/2011. She indicated that even although National Housing Corporation received monies from Alfred K. Mandila, the statement was in the name of the account holder and house owner.
40. Her testimony on re-examination was that National Housing Corporation was only involved in the sale agreement between Anne Sambu and Fredrick Aketch and not any other transaction. This was confirmed by the deed of assignment which they received.
41. At the close of the oral testimonies parties tendered final written submissions

### **The Plaintiff's Submissions**

42. The Plaintiff counsel filed submission dated 14<sup>th</sup> October,2023 and 7<sup>th</sup> February,2023 raising the following issues for determination
  - a. Whether or not the Plaintiff had purchased the suit property from Dismas Okungu and Margaret Aketch (now deceased) and the consequences thereof.
  - b. Whether the suit property formed part of the estate of Dismas Okungu(deceased)
  - c. Whether the subsequent sale of the suit property to Anne Chemutai Sambu(deceased) was lawful
  - d. Whether the 1<sup>st</sup> and 3<sup>rd</sup> Defendants rightfully levied distress for rent against the Plaintiff?
  - e. Whether the consideration was paid?
  - f. Whether the Plaintiff is entitled to prayers sought?



43. It is submitted that collaborative evidence of PW1 and PW2 showed that Cheloti, Etole & Kokonya Advocates acted for both the Plaintiff and the deceased in the purchase of the suit property sale agreement dated 10<sup>th</sup> July, 1990. Out of Ksh.200,000/= being the consideration price, Ksh.56,859.85/= was paid to NHC while the balance was paid to through the advocate. The vendor also informed the third party through a letter dated 16<sup>th</sup> January, 1991 of the intended sale. They were requested to transfer the house to the Plaintiff once the sale was finalized. It is submitted that that effective 16<sup>th</sup> January, 1991 Dismus Okungu was the nominal owner while Magaret Aketch was also the nominal owner of the property after the death of her husband.
44. According to the Plaintiff counsel, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants illegally and fraudulently sold the suit property to Ann Chemutai Sambu(deceased) even though they knew the Plaintiff claimed it. This court had also issued a temporary order on 18<sup>th</sup> September, 2009 restraining the 1<sup>st</sup> Defendant or his agents from neither dealing with the suit property nor interfering with the Plaintiff peaceful enjoyment until this suit is heard and determined. The implication of this is that the sale agreement dated 3<sup>rd</sup> August, 2009 between the 3<sup>rd</sup> Defendant and Ann Chemutai Sambu and the deed of assignment dated 16<sup>th</sup> May, 2011 is void.

#### **The 1<sup>st</sup> and 3<sup>rd</sup> Defendants Submissions.**

45. They are dated 13<sup>th</sup> January 2023. They raise two issues for determination;
- i. Whether the 3<sup>rd</sup> Defendant could validly sell the suit property to the 4<sup>th</sup> defendant.
  - ii. Whether the plaintiff had any rights to the suit property.
46. Counsel submitted that the 3<sup>rd</sup> defendant instructed the 2<sup>nd</sup> defendant to levy distress of rent amounting to Kshs.1.5million herein 5<sup>th</sup> May 2009, the 2<sup>nd</sup> defendant obtained a breaking order in CMCC Misc. Application 589 of 2009 and moved into the suit premises to levy distress.
47. It is further submitted that the only reason the court issued the orders of 18<sup>th</sup> September 2009 is because the 1<sup>st</sup> Defendant had not taken out letters of Administration for the estate of his parents. After the grant was issued the 1<sup>st</sup> defendant had capacity to deal with the property as an administration of his fathers estate.
48. Counsel also submitted that by 16<sup>th</sup> November 1991 the sale had not been finalised. That there is no evidence of the purchase price paid or acknowledged by the late Dismas Okungu Aketch. It is also submitted that the periodic payments made by the plaintiff to the 1<sup>st</sup> defendant was rent.
49. It is also submitted that there was no explanation why the plaintiff never asked the NHC to process a title for him for eighteen (18) years. That the letter to NHC to process the title only surfaced after the 1<sup>st</sup> defendant issued a notice to the plaintiff to vacate the suit premises.
50. Counsel submitted that after confirmation of grant, the 3<sup>rd</sup> defendant had a right to transfer and could validly transfer the suit property to Anne Chemuitai Sambu.
51. The delay by the plaintiff to obtain title is not explained and has been caught up by the doctrine of Limitation. She has put forward the case of Mtana Lewa Vs. Kahindi Nyala Mwangundi (2015) eKLR.
52. He prays that the plaintiffs claim be dismissed with costs and judgement forthwith defendant as per the counter claim.



### **The 2<sup>nd</sup> Defendant's submissions.**

53. According to the Plaintiff counsel, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants illegally and fraudulently sold the suit property to Ann Chemutai Sambu(deceased) even though they knew the Plaintiff claimed it. This court had also issued a temporary order on 18<sup>th</sup> September, 2009 restraining the 1<sup>st</sup> Defendant or his agents from neither dealing with the suit property nor interfering with the Plaintiff peaceful enjoyment until this suit is heard and determined. The implication of this is that the sale agreement dated 3<sup>rd</sup> August, 2009 between the 3<sup>rd</sup> Defendant and Ann Chemutai Sambu and the deed of assignment dated 16<sup>th</sup> May, 2011 is void.

### **The 4<sup>th</sup> Defendant's Submissions.**

54. They are dated 16<sup>th</sup> January,2023 were filed in support of the 4<sup>th</sup> Defendant case raised the following issues for determination
- a. Whether the Plaintiff had purchased the suit property from Dismus Okungu and Margaret Aketch (now deceased)
  - b. Whether the subsequent sale of the property to the 4<sup>th</sup> Defendant was valid?
55. Counsel for the 4<sup>th</sup> Defendant argues that the Plaintiff never purchased the property from Dismus Okungu and Margaret Aketch who originally bought it from National Housing Corporation on tenant purchase basis. He disputes PW1 and PW1 testimony that consideration of Ksh.200, 000/= was ever paid because no documents were produced to support this allegation. It was submitted that it is only Ksh.146,859.85/= comprising of legal fee, deposit, and outstanding loan that was paid. In addition, the Plaintiff never demonstrated whether he obtained a loan from Savings and Loan Kenya Limited to finance payment of the said consideration as stipulated in the agreement.
56. The court is invited to expunge from its record the sale agreement dated 10<sup>th</sup> July, 1990 n grounds that its signatures were forged. It is asserted that National Housing Corporation only did recognize the Plaintiff documents and payment of Ksh.56,859.85/= .It is thereof suspicious that in 2009, the Plaintiff claimed he bought the suit property in 1990 yet PW1 and PW2 would not explain why he delayed in process his file documents nor forward a copy of the sale agreement to 3<sup>rd</sup> Party. Additionally, the 3<sup>rd</sup> Party was never involved in the purported sale agreement.
57. According to the 4<sup>th</sup> Defendant counsel, the suit property rightfully belonged to Dismus Okungu estate and was therefore capable of being administered and disposed as it was a free property. Anne Chemutai Sambu therefor legally acquired the property through a sale agreement after conducting due diligence. The 4<sup>th</sup> Defendant counsel deny existence of any court order prohibiting any dealing with the suit property as at the time it was sold and transferred. It is maintained that the 4<sup>th</sup> Defendant is an innocent purchaser who was even assisted by 3<sup>rd</sup> Party to secure a valid title.
58. Section 93 of the [Law of Succession Act](#) is put forward to argue that the 4<sup>th</sup> Defendant proprietary rights over the suit property are protected because when the grant was issued, the title had already been transferred by the 1<sup>st</sup> and 3<sup>rd</sup> Defendant. It is further argued that the 4<sup>th</sup> Defendant was not fraudulently involved in acquisition of the suit property. This is because the 3<sup>rd</sup> Party produced documentary evidence to proof she is the legal owner of the suit property.
59. The court is beseeched to protect the 4<sup>th</sup> Defendant proprietary rights by declaring her the absolute owner of the suit property. Further, the Plaintiff should be directed to grant vacant possession forthwith to the 4<sup>th</sup> Defendant. The implication of this is that the Plaintiff claim ought to be dismissed



entirely with cost to the 4<sup>th</sup> Defendant. In the alternative, it is submitted that the 3<sup>rd</sup> Party should shoulder any liability arising from the Plaintiff claim against the Defendant.

### **The 3<sup>rd</sup> Party's Submissions.**

60. Through submission dated 9<sup>th</sup> November, 2022 filed on 21<sup>st</sup> February, 2022, counsel for the 3<sup>rd</sup> Party maintains that it legally discharged their mandate. It is their submission, it joined these proceedings so as to offer credible and uncontroverted evidence in respect of the suit property.

### **Analysis And Determination.**

61. I have considered the pleadings the evidence on record, the written submissions and the authorities cited. The issues for determination are:
- a. Whether the Plaintiff had purchased the suit property from Dismas Okungu and Margaret Aketch (now deceased) and the consequences thereof.
  - b. Whether the suit property formed part of the estate of Dismas Okungu(deceased)
  - c. Whether the subsequent sale of the property to the 4<sup>th</sup> Defendant was lawful and valid? If so, is the 4<sup>th</sup> defendant entitled to the prayers in the counter claim?
  - d. Whether the 2<sup>nd</sup> Defendant rightfully levied distress for rent against the Plaintiff?
  - e. Who should bear costs of the suit?
62. It is not in dispute that Dismas Okungu bought the suit property from National Housing Corporation on tenant basis. On 10<sup>th</sup> July,1990, Dismas Okungu and his wife Margaret Aketch sold their suit land leasehold interest to the Plaintiff for value consideration of Ksh.200,000/=. Clause 9 of the Agreement which was drawn by M/S Cheloti, Etole & Kokonya Advocates who represented both parties provided as follows
- “ 3. The purchase price is Ksh.200, 000/= of which the sum of Ksh.110, 000/= has been paid to M/S Cheloti, Etole & Kokonya Advocates as stakeholders”
63. M/S Cheloti, Etole & Kokonya Advocates issued the Plaintiff with receipts dated 12/9/1989,16/7/1990 and 23/1/1991 in respect of conveyance, professional fee and deposit amounting to Ksh.10,000/=, Ksh.3,000/= and 90,000/=respectively. The Plaintiff similarly informed the firm through a letter dated 19/1/1991 to pay Dismas Aketch Okungu Ksh.200,000/= which had been transferred to it. On their part, the vendors informed National Housing Corporation through a letter dated 16/1/1991 that it ought to transfer the property documents to the Plaintiff if requested once sale was finalized.
64. Through a letter dated 10/12/2008, National Housing Corporation was reminded to effect the transfer by M/S Cheloti, Etole & Kokonya because the Plaintiff had not only paid the outstanding loan but also completed his obligations as a buyer. They were also informed that the Plaintiff had been in possession of the property since 1990. DW4 admitted that National Housing Corporation acknowledged information requesting transfer be effected. According to her testimony, National Housing Corporation never effected transfer of the suit property title to the Plaintiff. By her own admission, she disclosed that the Plaintiff fully paid the deceased outstanding loan of Ksh.56,859.85/= owed by NHC. The Plaintiff has collaborated this evidence by producing before this court a letter dated 7/10/2008 showing that the loan was fully paid.



65. It should be noted that disputes relating to the ownership of the suit property between the Plaintiff and the Defendants commenced when the 1<sup>st</sup> Defendant's parents passed away. I say so because of the following factual reasons. On 4/12/2008, the 1<sup>st</sup> Defendant issued the Plaintiff with a notice to vacate on allegation that he never paid rent for fifteen (15) years from the time his parents died. His then counsel, Kaling & Co. Advocates also communicated to the Plaintiff through a letter dated 31/12/2008 that the notice to vacate was scheduled to expire. The letter further stated that the deceased children intended to dispose the suit property.
66. I agree with the plaintiff's submission that from 16<sup>th</sup> January 1991 Dismas Okungu Aketch and Margaret Aketch ceased to be owners of the suit property. It was now owned by the plaintiff. That fact that the plaintiff took long to ask the National Housing Corporation to effect transfer in his favour did not divest him of his proprietary rights interest over it. The plaintiff was an actual possession until the 1<sup>st</sup> – 3<sup>rd</sup> defendants evicted him.
67. I find that the plaintiff purchased the suit property from Dismas Okungu Aketch and Margaret Aketch.
68. From the foregoing, it means the suit property did not form part of the estate of the Dismas Okungu Aketch (Deceased). It was not available to be administered as such. The evidence of PW1 and PW2 confirm so.
69. This court notes that Lady Justice R.N Nambuye delivered a well-reasoned ruling on 18<sup>th</sup> September, 2009 relating to evictions and distress for rent. She noted that the 1<sup>st</sup> Defendant did not have the capacity to direct that the Plaintiff be evicted nor distressed for rent. This was because he had not obtained letters of administrator over his parent's estate which he claimed he was acting on behalf. Although the court directed him to first obtain the letters, it also ordered that the Plaintiff ought to be restored back to the suit premises. It furthered directed the 1<sup>st</sup> Defendant to unconditionally give the Plaintiff vacant possession of the suit property until this suit is heard and determine. The 1<sup>st</sup> Defendant was also barred from disposing the property until this suit is heard and determined.
70. On 14/07/2009, the 1<sup>st</sup> Defendant was issued with letters of administration in respect of his father's estate in Nairobi High Court Succession Cause No.628 of 2009. According to the confirmed grant issued on 9/02/2010, the suit property was to be shared equally among Fredrick Ooko Aketch, Philip Otieno Aketch and James Odhiambo Aketch. Subsequently, the 1<sup>st</sup> Defendant, duly executed a sale agreements between the estate and Anne Chemutai Sambu over the suit property on 3/07/2009 for a consideration of Ksh.2, 500,000/=.
71. It is not in doubt that title of the suit property has already been transferred to Anne Chemutai. DW4 disclosed that National Housing Corporation recognised Anne Chemutai as the absolute proprietor according to assignment dated 16/05/2011 between them and the 1<sup>st</sup> and 3<sup>rd</sup> Defendants. She also stated that they facilitated issuance of title deed to Ann Chemutai Sambu. In support of the 3<sup>rd</sup> Party's evidence, she produced letter dated 2/06/2011, requesting commissioner of lands to facilitate a transfer of title to Ann Chemutai Sambu for the reasons that she had paid her loan. She was also issued with a certificate of lease and duly executed 99 year lease dated 13/12/2011.
72. It is not in disputed that the 3<sup>rd</sup> defendant disposed of the suit property to the Ann Chemutai Sambu during the pendency of this suit against the doctrine of his lis pendens. Further there was an order barring the 3<sup>rd</sup> defendant from disposing the suit property pending the hearing and determination of this suit.



The Court of Appeal in *Naftali Ruthi Kinyua Vs. Patrick Thuita Gachure & Another* (s015) eKLR stated thus;

“It is a doctrine common to the courts both of law and equity, and ests, as I apprehend, upon this jurisdiction that it would plaintiff be impossible that any action or suit could be brought to a successful determination, if alienation pendent lite were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant’s alienating before the judgement or decree, and would be driven to commence his proceedings de nove subject again to defeat by the same course of proceeding”.

Similarly in *Re Estate of Solomon Muchiri Macharia* (2016) eKLR Mativo J (as he then was) stated thus”

“The doctrine of lis pendens was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court in which a dispute on rights or interest in immovable property is pending by private dealings which may remove the subject matter of litigation from the ambit of the court’s power to decide a pending dispute or frustrate its decree”.

73. I agree with the plaintiffs submissions that the fraudulent transfer done by the 1st and 3<sup>rd</sup> defendants to the 4<sup>th</sup> defendant pendete lite is subservient to the decision of this court.
74. The 3<sup>rd</sup> Party denied any wrongdoing in facilitating transfer of title and insists that they duly and legally discharged their mandate. It is their case that they were neither served with any court order prohibiting any dealings in the suit property nor were they aware it even existed. Despite its firm stand, the 3<sup>rd</sup> party admitted the 1<sup>st</sup> Defendant’s parents notified them of the intended sale of the suit property to the Plaintiff. They also acknowledge that it is the Plaintiff who paid the outstanding loan owed to them.
75. I find that the sale of the suit property by the 1<sup>st</sup> and 3<sup>rd</sup> defendants to Anne Chemutai Sambu was fraudulently done as they were fully aware of the plaintiffs claim. This was done to defeat the plaintiff’s claim.
76. Having stated so I find that the 4<sup>th</sup> defendant is not entitled to the prayers sought in the counter claim.
77. It is not in dispute that the 1<sup>st</sup> Defendant instructed the 2<sup>nd</sup> Defendant to levy distress for rent amounting to Ksh.1.5 Million from the Plaintiff. Acting on the 1<sup>st</sup> Defendant instructions, he obtained break-in orders to remove proclaimed goods in Nairobi Chief Magistrate’s Court Milimani Commercial Courts Misc Application No. 589 of 2009. The order also stipulated that the exercise would be supervised by the officer commanding Kilimani police station. Although DW3 confirmed that he legally distressed for rent and even produced an inventory of items removed from the premises to support his case, he denied ever evicting the Plaintiff from the suit premises. DW3 also testified that if at all there was any eviction undertaken, it was done by some else and not him. The 1<sup>st</sup> Defendant too denies ever evicting the Plaintiff and alleges that the Plaintiff voluntary left the premises. As a result, the 1<sup>st</sup> Defendant looked for a tenant to occupy the house. He however acknowledges that the Plaintiff repossessed the property pursuant to orders issued by this court.
78. I find that the 1<sup>st</sup> and 3<sup>rd</sup> defendants were not entitled to levy distress for rent nor have the plaintiff evicted from the suit property. The plaintiff produced exhibits p8 a-c to demonstrate that he and his family were evicted and their personal household goods thrown out. However the 2<sup>nd</sup> defendant, told the court that upon being instructed to levy distress he obtained orders in CMCC Application No.589 of 2009 . I find that the instructions he carried out were not illegal. I decline to award any damages as the plaintiff’s claim can only lay against the 1<sup>st</sup> and 3<sup>rd</sup> defendants.



79. The court holds the view that the 1<sup>st</sup> defendant secretly sold the suit property to the 3<sup>rd</sup> Defendant in order to defeat the Plaintiff's claim. He also unjustifiably enriched himself when he obtained KShs.2.5 million from the Anne Chemutai Sambu. This is because he never served the Plaintiff with the application for confirmation of grant. Anne Chemutai Sambu was also never informed that the Plaintiff had filed this suit claiming ownership of the suit property. An order existed preventing any dealings with respect to the suit property. At the time they signed the deed of assignment with National Housing Corporation, he also never disclosed existence of such orders.
80. While revoking the grant issued on 9/02/2010 through a judgment delivered on 27/11/2014 in Nairobi High Court Succession Cause No. 628 of 2009, A.O Muchelule J, then stated as follows;
- “In ELC 259 of 2009, there was a legitimate claim against the estate of the deceased over the suit property. Both the Respondent and his counsel were aware of the claim. It was fraudulent on the part of the respondent to transfer the suit property to another party when the suit was pending, a suit in which restraining orders had issued against such dealings.”
81. Section 80 of the *Land Act* empowers this court to order rectification of a register by directing that any registration be cancelled or amended if it is satisfied that it was obtained, made or omitted by fraud or mistake. It is therefore prudent that the 4<sup>th</sup> Defendant title be cancelled. In addition, the title of the suit property ought to be registered in Plaintiff names. This is because he had proved his claim that he duly and legally purchased the suit property.
82. From the pleadings, it is clear that Anne Chemutai Sambu the 4<sup>th</sup> Defendant herein acted in good faith when she purchased the property. I say so because, documents placed before this court clearly shows that she conducted due diligence before making a decision to purchase the property. It is only fair that her estate ought to be restored back to its original status before the disposition of the suit property occurred. The only person who shall bear such responsibility of restoring the 4<sup>th</sup> Defendant to her status quo is the 1<sup>st</sup> Defendant and not the 3<sup>rd</sup> Defendant. This is because were it not for his actions of evicting the plaintiff and subsequently disposing the suit property despite existence of order prohibiting its disposing which he was well aware of, the Plaintiff would not have filed this suit. Accordingly he ought to refund the 4<sup>th</sup> Defendant the purchase price amounting to Ksh.2.5 Million. Such monies should be refunded with interest at court rates from the date he executed the sale agreement with Anne Chemutai Sambu.
83. The conclusion are that the plaintiff has proved his case as against the defendants on a balance of probabilities. I find that he is entitled to the reliefs sought in the plaint.
84. Accordingly judgment is entered for the plaintiff as follows;
- a. That a declaration that the Plaintiff having performed his contractual obligations under the Agreement for sale dated 10<sup>th</sup> July, 1990 is by law entitled to a formal transfer of the suit property LR NO.62/272 into his name.
  - b. That a declaration is hereby issued that the sale and or transfer of the title of L.R NO.62/272 to Anne Chemutai Sambu, is null and void.
  - c. That an order is hereby issued directing the Chief Land Registrar to recall, revoke, cancel and or nullify the certificate of title issued in favour of Anne Chemutai Sambu, the 4<sup>th</sup> Defendant for LR NO.62/272 within sixty (60) days from the date of this Judgment.
  - d. That an order of specific performance is hereby issued directing the 3<sup>rd</sup> Defendant as the administrator of the vendors estate to execute all such instrument as are necessary to transfer



the suit property LR. NO. 62/272 to the Plaintiff or to the Plaintiffs nominee within sixty (60) days of this order or decree failing which the Deputy Registrar of this honourable court do execute and seal all such documents.

- e. That an order is hereby issued ordering and directing the 1<sup>st</sup> Defendant to refund Ksh.2.5 Million to the 4<sup>th</sup> Defendant with interest at court rates from the date of execution of the sale agreement dated 3<sup>rd</sup> August, 2009.
- f. That costs of the suit be borne by the 1<sup>st</sup> and 3<sup>rd</sup> defendants.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 12<sup>TH</sup> DAY OF OCTOBER 2023.**

**L. KOMINGOI**

**JUDGE.**

In the presence of :

N/A for the Plaintiff.

N/A for the 1<sup>st</sup>, 3<sup>rd</sup> Defendants.

Mrs. Kalinga for the 2<sup>nd</sup> Defendant.

Mrs. Manyarkiy for the 4<sup>th</sup> Defendant.

N/A for the Third Party.

