



**Tuikong v Tuikong & 3 others (Environment & Land Case 307 of 2012)
[2023] KEELC 20686 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20686 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 307 OF 2012
LA OMOLLO, J
OCTOBER 12, 2023**

BETWEEN

BENJAMIN Y. TUIKONG PLAINTIFF

AND

ESTHER J. TUIKONG 1ST DEFENDANT

KURGET ENTERPRISES LTD 2ND DEFENDANT

KIYENG PHILIP CHUMO 3RD DEFENDANT

ISAAC ROP KIGEN 4TH DEFENDANT

JUDGMENT

Introduction

1. The Plaintiff commenced this suit vide a Complaint dated 27th January, 2012.
2. In the Complaint he avers that at all material times to this suit, he has been and is still the joint owner with the Plaintiff as husband and wife of all those parcels of land known as Kampi Ya Moto/kampi Ya Moto Block 3/100-101, 174-177 formally Nos. 77, 78, 83, 84, 103 and 104 having entrusted the 1st Defendant with money to purchase the same for value and in the name of their company M/s Sigowo Limited and as directors of the said company from their previous owner through his agent's M/s Mugai Commercial Agencies between the years 2000 and 2002.
3. He further avers that some years back he separated with the Defendant and that despite the aforesaid separation, it was mutually agreed between them that aforesaid properties shall be registered in the name of sigowo Limited and that they would remain as joint owners of the suit premises until otherwise agreed by the parties.



4. It is the Plaintiff's averment that sometimes back he received information that the suit properties had been transferred to a company and Plaintiff later learnt that the company belongs to the 1st Defendant's two (2) brothers.
5. The Plaintiff avers that he was shocked to discover wide searches of the suit properties that the Defendants had indeed illegally and fraudulently unilaterally transferred the said properties to a 3rd party known as Kurget Enterprises Ltd in the year 2009 and further that the Plaintiff's rights of ownership encompassed in the same have been extinguished.
6. The Plaintiff lists the particulars of the Defendant's fraud as:
 - a. Obtaining titles to the suit premises (sic) in her own name without the Plaintiff's consent or knowledge and misusing the trust placed on her.
 - b. Facilitating, colluding and transferring the suit premises (sic) to the 2nd Defendant without consent of the Plaintiff.
 - c. Causing the Plaintiff's registered rights in the suit premises (sic) to be illegally extinguished. Engaging in land grabbing.
7. It is the Plaintiff's averment that he promptly registered a caution against the titles to the suit properties after he failed to meet the defendants for an explanation.
8. He avers that the Defendants have failed to explain their illegal actions herein and further refused to recognize the Plaintiff rights to the suit properties despite demand.
9. The Plaintiff prays for the following orders:
 - a. A declaration that the Plaintiff is entitled to an interest in the suit premises (sic) and therefore a rightful co-owner of the suit premises (sic).
 - b. A permanent injunction against the Defendant jointly and severely restraining them from interfering with or dealing in any other manner with suit premises (sic) and order for cancellation and re- registration of the suit premises (sic) in the name of the plaintiff and the defendants as joint owners and or Sigowo Limited.
 - c. An order that the defendant do bear costs of this suit plus interest therein.
10. The Defendants filed their written statement of Defence dated 26th April, 2012. They deny all the allegations of law and or fact set out in the Plaint.
11. The 3rd and 4th Defendants state that the 2nd Defendant is a limited liability company which can sue and be sued in its own name. They also state that the Plaintiff cannot therefore purport to institute suit as against them in their own name. They also state that they are separate legal entities from the 2nd Defendant and the Plaintiff cannot sue them individually and or severally. They state that they shall raise a preliminary objection seeking to have the Plaintiff's suit as against them struck out in limine.
12. The 1st Defendant denies that she owned the parcels of land known as Kampi Ya Moto/kampi Ya Moto Block 3/100-101, 174-177 formerly Nos 77, 78, 83, 84, 103 and 104 jointly with the Plaintiff and further denies that she purchased the land from any money given to her by the Plaintiff. It is her contention that she solely purchased the land.



13. The 1st Defendant denies that she ever agreed mutually or otherwise to purchase the suit parcels of land with the 1st Defendant. She also denies that there was any agreement between her and the Plaintiff to purchase any property and register it in the name of Sigowo Limited.
14. The 1st Defendant also denies that there was any mutual agreement or otherwise to purchase or register any properties in the name of any company and/or to have any of the suit properties jointly registered in her name and that of the Plaintiff. She also denies that the suit parcels of land were ever joint properties.
15. The Defendants state that the suit parcels of land were transferred to the 2nd Defendant through a decree of court issued in ELD HCCC No 84 of 2007 and the said decree is a valid order of the court and has not been set aside.
16. The Defendants also deny that the 1st Defendant illegally and fraudulently transferred the aforesaid property to the 2nd Defendant. The Defendants further deny that the Plaintiff had any right whatsoever in the suit parcels of land.
17. The Defendants deny that they obtained titles to the suit property in breach of trust accorded to the 1st Defendant. They also deny that they facilitated and or colluded in transferring the property without authority from the Plaintiff. They further deny causing the Plaintiff's rights in the suit parcels of land to be illegally extinguished and deny engaging in land grabbing.
18. The Defendants deny that they owed any explanation to the Plaintiff on any transaction involving the suit parcels of land.
19. The 1st Defendant states that she has never been privy to the alleged understanding between her and the Plaintiff and reiterates that she purchased the suit parcels of land without any assistance from the Plaintiff.
20. The Defendants also state that the dealings in respect of the suit parcels of land were in the first instance between the 1st Defendant and one Jackson Mugo Mathai who sold the 1st Defendant the property and the Plaintiff was not a party to the agreements and cannot claim under them.
21. The Defendants deny that their actions were illegal and reiterate that the Plaintiff has no legal right recognizable in law in the said parcels of land.
22. The Defendants contend that the entity in whose favour the registration of the suit land is being sought does not exist in law and that the Plaintiff's suit is incurably bad and ought to be struck out and dismissed with costs.

Factual Background.

23. On 20th January, 2022 Counsel for the Plaintiff informed the Court that the 4th Defendant had passed on and that they needed to substitute him. Subsequently, the suit came up to confirm the fact of substitution and Counsel for the Plaintiff stated that they shall not be proceeding against the 4th Defendant.
24. Consequently, the suit against the 4th Defendant was marked as withdrawn.

Plaintiff's Evidence.

25. The first witness to testify in support of the Plaintiff's case is one Benjamin Yator Tuikong (herein after referred to as PW1). In his introduction, he stated that lives in Eldama Ravine and is the Plaintiff in this matter.



26. He stated that the 1st Defendant is his wife, he only knew of the 2nd Defendant when he filed this case in court and that the 3rd Defendant is his brother in law and brother to his wife.
27. He went on to state that he filed a witness statement dated 2nd February, 2012 and prayed that it be adopted as part of his evidence, which prayer was granted.
28. It was PW1's testimony that he has certain parcels of land known as: Kampi ya moto/ Kampi ya moto Block 3/100, 101, 174 & 175, 176 & 177 which he in the year 2000-2002.
29. He stated that they purchased the parcels with his wife (the 1st Defendant) and that the parcels were purchased under a company Sigowo Limited. He produced a memorandum of association as Exhibit P1.
30. He went on to state that they made payment through Sigowo Limited and explained that he had a bundle of receipts for payment of the purchase price. The bundle of receipts was marked for identification.
31. It was his testimony that the 1st Defendant and himself visited Muigai Commercial agencies over a period of time.
He stated that he has a sale agreement dated 17th May, 2002 between Jackson Mugo Mathai and Esther Jelagat Tuikong. It is his testimony that this agreement was entered into without his consent and added that at the time of the agreement, he was still married to the 1st Defendant and explained that they separated in the year 2004. He produced the Sale agreement as Exhibit P3.
32. It is PW1's testimony that he has a marriage certificate and stated that the 1st Defendant and himself were directors of Sigowo Limited and were married as at the time of acquisition of the suit properties. He produced the marriage certificate as Exhibit P4.
33. He testified that the suit properties were owned by Jackson Mugo Mathai and Muigai Commercial agencies was acting for him in the sale. He stated that upon purchase they took occupation.
34. PW1 testified that he separated with the 1st Defendant in the year 2004 and he learnt that the properties had been transferred from the 1st Defendant to the 2nd Defendant (Kurget Enterprises Limited) in the year 2009
35. His testimony is that he conducted a search after learning that Muigai Commercial agencies had transferred the property to the 1st Defendant. He had a search certificate for Kampi ya Moto/ Kampi ya Moto Block 3/175 which was conducted on 27th November, 2011, 21st July, 2011 and 27th March, 2011. They all show that Kurget Enterprises Limited is the proprietor. They were marked and produced as exhibit P5 (a), (b) and (c).
36. It is PW1's evidence that Muigai Commercial agencies acted as an agent for Jackson Mugo Mathai. He explained that has a letter dated 15th May, 2003 which is written by the 1st Defendant to Muigai Commercial Agencies. He went on to state that the said letter was informing Muigai commercial agencies to register parcels No. 83, 84, 103 & 104 in her name.
37. PW1 narrated that Muigai Commercial agencies made a note on the letter that they needed a memorandum of understanding between the directors of Sigowo Limited. This letter was marked for identification.



38. It is his further evidence that he visited Muigai Commercial agencies and when the Director called for the file, he realized that the suit parcels had already been transferred to the 1st Defendant despite her note that there was need for a Memorandum of Understanding.
39. He testified that he has a letter dated 5th July, 2011 addressed to the Managing Director Muigai Commercial Agencies and it makes reference to the parcels of land known as Kampi ya moto/Kampi ya moto Block 3/174. 175, 176 and 177 each 5 acres and Kampi ya moto/Kampi ya moto Block 3/100,101 of 1 acre each. He stated that the letter was to inform the Managing Director that he has an interest in the 6 parcels of land and that the parcels were purchased through Sigowo Limited and receipts issued and that subsequently receipts were issued in the 1st Defendants name. PW1 stated that the letter was asking Mugai Commercial Agencies not to effect the transfer to the 1st Defendant. This letter was produced as Exhibit P7. It is his testimony that this letter (Exhibit P7) was ignored and the parcels transferred to the 1st Defendant.
40. PW1 went on to state that he has another letter dated 20th May, 2019 written by Karanja Mbugua Advocate and that the letter makes reference to receipts issued. It is his testimony that the receipts show that the land was bought by Sigowa and receipts issued in Sigowo Limited's name and that subsequently, the 1st Defendant was issued with replacement receipts. He explained that this letter was calling for photocopies of all the replaced receipts. The letter was produced as Exhibit P8.
41. PW1 stated that he learnt that the 1st Defendant had been sued by Kurget Enterprises Limited in the High Court in Eldoret. He produced the plaint and decree as Exhibit P9 (a) &9 (b).
42. It is his testimony that Sigowo Limited was wound up in 2007 without his consent or minutes of resolution to wind up. He states that he has a letter dated 13th June, 2017 which he wrote to the registrar of companies seeking minutes of dissolution. The letter was produced as Exhibit P10.
43. He states that an advocate acting for him also wrote a letter dated 18th May, 2017 to the registrar of companies seeking certified copies of dissolution minutes. The said letter was produced as Exhibit P11.
44. It is PW1's testimony that he did not get any response from the registrar of companies. He went on to testify that he has a gazette notice of 3rd November, 2005 which shows that Sigowo Limited was dissolved. The said dissolution notice was marked and produced as Exhibit P12.
45. It is his testimony that it is upon this background that he decided to file this suit. He explained that as at the time of his testimony he was living in Eldama Ravine but while married to the 1st Defendant, they lived in Nairobi.
46. He prayed for the orders as in the plaint.
47. The Court sought clarification from the Plaintiff and he confirmed that the transfer of the suit property to the 2nd Defendant was on account of an order of the court. PW1 also explained that the 3rd and 4th Defendants are brothers of the 1st Defendant and added that the 4th Defendant is deceased. He also clarified that they are shareholders of the 2nd Defendant but had no evidence of shareholding.
48. Upon cross-examination by counsel for the 1st Defendant, he stated that he wants the court to make an order transferring the properties back to him. He stated that it is for the court to make a decision whether the 1st Defendant should get anything.
49. PW1 confirmed that the 1st Defendant is in gainful employment and she was at the time of purchase. He confirmed that Eldama Ravine is the matrimonial home. He further confirmed that he has not taken any action against Muigai Commercial agencies.



50. PW1 confirmed that that he only wrote a letter to the registrar of companies but did not sue them. He also confirmed that Sigowo Company Limited has not raised a complaint against the 1st Defendant.
51. He also confirmed that he has not shown that he spent any money towards the purchase of the suit properties.
52. PW1 stated that the bone of contention is that the receipts were originally issued to Sigowo Limited but were later reissued in the name of the 1st Defendant.
53. When referred to Exhibit P8, letter from Karanja Mbugua and Co. Advocates, PW1 stated that receipt No. 96773 & 96774 were issued in the name of the 1st Defendant.
54. When referred to the bundle of receipts marked for identification, which are receipts allegedly issued for the purchase price for the suit properties, PW1 stated that he got the receipts from Muigai Commercial Agencies. He confirmed that they were not certified. He further confirmed that they do not have a heading “Muigai Commercial Agencies.”
55. When referred to Exhibit P3, the sale agreement, he confirmed that the agreement is between Jackson Mugo Mathai and Esther Jelegat Tuikong. He explained that the agreement was made in the year 2002 and that they were still married at the time. He denied that he was no supposed to know the contents of the said agreement and added that it was the only agreement he found.
56. When referred to an agreement in the 1st Defendants list dated 20th April, 2012 which is an agreement for 17th May, 2002. He stated that paragraph 4 of the said agreement makes reference to parcels No. for 83, 84, 103 & 104. He confirmed that they were purchased for the same price. He stated the price in the agreement is 2,400,000/=.
57. PW1 confirmed that the agreement produced by him cited the purchase price as Kshs. 260,000/=. He also confirmed that both agreements do not mention Sigowo company Limited. He confirmed that there is no resolution by Sigowo to purchase land and also confirmed that Sigowo company Limited did not have a bank account and did not file any tax returns.
58. He confirmed that he did not take any steps to be joined in the Eldoret High court case or for the judgment to be set aside. PW1 further confirmed that before the suit parcels were transferred to the other Defendants, they were registered in the 1st Defendant’s name.
59. PW1 confirmed that the sale agreement is in the 1st Defendant’s name and the purchase price was paid by her. He stated that even with these facts, he did not believe that the receipts should not be in her name but in the name of Sigowo Company Limited.
60. He confirmed that he had not produced the Articles of Association of Sigowo Company Limited and also that he did not have them. He stated that the handwritten comment on the letter he wrote to Muigai commercial agencies was by the Director. He further stated that he did not know her name. He confirmed that it was an internal memo directed to the employees of Muigai commercial agencies.
61. PW1 also denied that the property was purchased by the 1st Defendant. He stated that he trusted the 1st Defendant to put the properties in both their names and that after he discovered the properties were in the 1st Defendant’s name, he came to court. He further stated that he took possession by living in them. He confirmed and the parcels were not amalgamated.
62. PW1 denied that Muigai Commercial Agencies did not respond to his letters because they believed that the properties belong to the 1st Defendant. He stated that they responded to his letter by giving him receipts.



63. PW1 stated that he had 3 homes, one in Eldama Ravine, another in Kampi ya Moto & the third one in Nairobi and also stated that he has an interest in the suit properties.
64. Upon cross-examination by counsel for the 2nd and 3rd Defendant, PW1 stated that Muigai Commercial Agencies responded to his request and gave him receipts. He confirmed that there is no letter forwarding the copies of the receipts and also confirmed that the receipts do not bear the name “Muigai Commercial Agencies”.
65. He further confirmed that none of the receipts were issued in his name and added that when he went to Karanja Mbugua Advocates, he took copies of original receipts which have been marked for identification. He further confirmed that he did not have the counterfoils for the said receipts.
66. PW1 further confirmed stated that he and the 1st Defendant paid money to Muigai Commercial Agencies as husband and wife. He stated that the first payment was cash and subsequent payments were by way of cheque. He confirmed that the cheques were from the 1st Defendant’s account and also confirmed that he was aware of the suit filed at the High court at Eldoret.
67. PW1 further confirmed that the transfer to Kurget Enterprises (the 2nd Defendant) was on account of a court decree. He also confirmed that he did not challenge the judgment of the High Court at Eldoret. He stated that he did not know that unless the decree in Eldoret is challenged this court could not issue an order.
68. He stated that Kurget Enterprises, the 1st Defendant and the 3rd – 4th Defendants are brothers and sister and that there was no need to challenge the decree.
69. On re-examination, PW1 stated that he did not institute action against the Registrar of Companies or Muigai Commercial Agencies. He stated that he only asked for receipts from Muigai Commercial Agencies.
70. PW1 reiterated that he spent his money to purchase the suit properties. When referred to Exhibit P3, he stated the sum of Ksh 260,000 was for the 2 parcels of land i.e. No 77 & No 78.
71. He stated that and that Sigowo Limited only has the certificate of incorporation and the memorandum of Association and that after its registration, him and the 1st Defendant separated. He further explained that the purchase of the suit propertied was not on account of any resolution by Sigowo Company Limited.
72. He also stated that he knew about the case in Eldoret in the year 2009 and added that he got the plaint and decree from his advocate.
73. The Plaintiff closed his case.

1st Defendant’s Evidence.

74. The 1st Defendant Esther Chelagat Tuikong testified as DW1. In her introduction she stated that she lives in Nairobi and is and is an employee of Agriculture and Food Authority.
75. She stated that she recorded a statement dated 26th April, 2012 and prayed that the said statement be adopted as part of her evidence-in-chief.
76. She further stated that she filed a list of documents dated 26th April, 2012, a supplementary list of documents dated 16th May, 2022.



77. DW1 testified that she has an agreement dated 17th May, 2002 which was entered into between Jackson Mugo Mathai and herself. She stated that this agreement is in respect of land known as Kampi ya moto/ Kampi ya moto Block 3/23. She explained that Jackson was selling and she was buying a portion of the land i.e. Parcel No 77 & 78.
78. DW1's went on to state that she bought them for Kshs. 260,000 and that they each measured 1 acre. She explained that the properties were sold to her through an agent whose name is Muigai Commercial agencies. She produced the agreement as Exhibit D1.
79. DW1 testimony is that she has another sale agreement for purchase of land and that it is between Jackson and herself. She explained that the agreement is for purchase of plots No. 83, 84, 103 & 104 still within the same block of Kampi ya Moto and that they were a total of 20 acres. She stated that the purchase price was Kshs. 2,400,000/= and that these were also sold through Muigai Commercial Agencies. The agreement was produced as Exhibit D2.
80. It was DW1's testimony that she has a copy of a cheque dated for 17th April, 2023. She went on to state that the cheque is No 002773 and it is for Kshs. 300,000/=. She explained that the cheque is drawn on Co-operative Bank of Kenya and was paid to Muigai Commercial Agencies for purchase of land. It was produced as Exhibit D3.
81. DW1 stated that she has another copy of a cheque dated 24th August, 2001, that it is for Kshs. 160,000/= and is in favour of Muigai Commercial agencies. She stated that she is the one who prepared the cheque. It was produced as Exhibit D4.
82. DW1 testified that she has a banker's cheque No 011548, dated 18th June, 2001 for Kshs. 100,000 and is drawn in favour of Muigai Commercial agencies. The same was marked and produced as Exhibit D5.
83. DW1 also produced a copy of a banker's cheque No 583001 dated 23rd February, 2002 for Kshs. 200,000. She explained that it was written in favour of Muigai Commercial Agencies for purchase of land. The same is Exhibit D6.
84. She further testified that she has a counterfoil of her cheque book and that the counter foil is in respect of a cheque dated 13th December, 2001. She explained that the payee is Muigai Commercial Agencies and that the cheque was for Kshs. 1,502,000.50/=. The same was marked and produced as Exhibit D7.
85. It was DW1's testimony that she had another counterfoil of her cheque book. She explained that the counterfoil was in respect of a cheque dated 20th November, 2001, the payee is Muigai Commercial Agencies and it is for Kshs. 200,502.80/=. The same was marked and produced as Exhibit D8.
86. DW1 stated that she has a counterfoil for a cheque dated 8th November, 2001, the said cheque was payable to Muigai Commercial agencies and that it was for Ksh.200,502.50. It was marked and produced as Exhibit D9.
87. She testified that she also has another counterfoil from her cheque book. The counterfoil is in respect of a cheque dated 10th May, 2001 and it's in favour of Muigai Commercial Agencies and it's for Ksh 448,000 and the bank charges is 402.20 and the total is 448 402.20 and reference is made to Exhibit D10.
88. She went on to state that she has another counterfoil from her cheque book. The said counterfoil was in respect of a cheque dated 23rd December, 2002 written in favour of Muigai Commercial Agencies. She explained that it was for Kshs. 52,000/=. It was marked and produced as Exhibit D11.



89. It was DW1's testimony that after purchase she was issued with title deeds in her name. she stated that has title deed for the following parcels:

- a. Kampi ya moto/Kampi ya moto Block 3/100 issued on 25th May, 2006
- b. Kampi ya moto/Kampi ya moto Block 3/101
- c. Kampi ya moto/Kampi ya moto Block 3/174
- d. Kampi ya moto/Kampi ya moto Block 3/175
- e. Kampi ya moto/Kampi ya moto Block 3/176
- f. Kampi ya moto/Kampi ya moto Block 3/177

They were marked and produced as Exhibit D12 (a)- (f)

90. DW1's testimony is that the plaintiff and herself were directors of a company known as Sigowo Limited. She went on to state that in the year 2012, she was told that the company is no longer existent. She had a gazette notice of 1st July, 2005, Notice No 8934 and explained that it is a notice of dissolution of companies. The said notice was marked and produced as Exhibit D13.

91. DW1 went on to narrate that she has a decree in respect of Eldoret High Court Civil Case No 84 of 2017. She stated that parties are Kurget Enterprises Limited and herself as the Defendant. She stated that the decree relates to parcels of Land listed therein. She stated that as a result of the decree, she surrendered the parcels. She confirmed that the Plaintiff was not a party to the suit. She produced the decree and the receipt issued for it as Exhibit D14 (a) & (b).

92. DW1 stated that she also had 4 bank statements for her account No. 041024621 held at National Bank of Kenya. She explained that the first statement is dated 30th December, 2000 and it shows that Kshs. 52,000/= was debited from her account in favour of Muigai Commercial Agencies, the second statement is for 31st May 2001 and shows that an amount of Kshs. 448,402.50/= was debited from her account in favour of Muigai Commercial Agencies, the third is for 30th November, 2001 and shows that an amount of Kshs. 400,502.50/= was debited in favour of Muigai Commercial Agencies and a fourth one dated 31st December, 2001 which shows that Kshs. 1,000.502.80 was debited in favour of Muigai Commercial Agencies. The statements were marked and produced as Exhibit D15 (a)- (d).

93. DW1 denied that they jointly bought the suit properties with the Plaintiff and also denied that the properties were owned by Sigowo Company Limited. She further denied that a resolution had been passed that Sigowo Company Limited buys the property. She stated that Sigowo Company Limited did not operate a bank account.

94. DW1 stated that the plaintiff and herself have been living apart since 1999.

95. She stated that Muigai Commercial Agencies had not lodged any complaint against her and also that Jackson Mathai has not complained against her.

96. DW1 concluded her testimony by stating that she did not owe the Plaintiff any duty in respect of sale & purchase of the suit properties. She prayed that the suit be dismissed.

97. DW1 was cross examined by counsel for the Plaintiff and confirmed that separated in 1999. She stated that she does not know whether the plaintiff knew about the purchase. She also stated that the parcels were not purchased during the pendency of the marriage. She further stated that her family members supported her in the purchase of the suit properties.



98. She stated that Kiyeng Philip Chumo is her brother and that he supported her purchase the property. She made Reference to Exhibit 9 (a) (the Plaintiff) at paragraph 3 and confirmed that it states the directors advanced the Defendant (herself) a friendly loan and the agreements must have been produced as exhibits in the Eldoret case.
99. It is her testimony that Muigai Commercial Agencies were acting as an agent of Jackson Mathai and she was paying Muigai Commercial Agencies. She further stated that she has not produced any documents of transfer but the process was followed. She stated that she was given title deed after a due process and she does not remember the transfer process as it has been a long time.
100. She examined that Sigowo Limited has 2 directors i.e. the Plaintiff and herself and that it was dissolved. She stated that she was not involved in the dissolution process. She reiterated that the suit properties were never registered under Sigowo Limited and she does not know their status because she transferred them to Kurget Enterprises Limited. She stated that she has no relationship with Kurget Enterprises.
101. Upon cross – examination by counsel for the 2nd and 3rd Defendant DW1 stated that the Plaintiff had knowledge of the case filed in Eldoret.
102. She stated that she is not familiar with the land transfer process and that there was a lawyer engaged in the sale of Block 3/323 Kampi ya moto/Kampi ya moto and she followed all the process that were required of her.
103. On re-examination, DW1 confirmed that she signed the transfer forms and added that she was not asked to bring them to court.
104. The 1st Defendant closed its case.

2nd And 3rd Defendant's Evidence.

105. Philip Kiyeng Chumo testified as DW2. In his introduction he stated that he is the 3rd Defendant in this suit, lives in Eldoret and is a lecturer at Moi University. He explained that he has been sued alongside the 1st and 2nd Defendant.
106. He confirmed that the 1st Defendant is his sister and he is one of the directors of the 2nd Defendant. He stated that the Plaintiff's case, as he understands it, is that the suit parcels were transferred to the second Defendant fraudulently. He stated that this allegation is not true.
107. DW2 explained that the transfer was as a result of a decree in Eldoret HCCC No 84 of 2007 and he does not know if the Plaintiff was aware of the suit. He stated that their interest was in the 1st Defendant.
108. He testified that the suit filed in the High Court in Eldoret concerns 6 parcels of land and out of the 6, none is registered in his name. He stated that he does not understand why he has been sued because the suit parcels are not in his name. He prayed that the suit against him and the company should be dismissed.
109. Upon cross-examination by counsel for the Plaintiff, DW2 stated that as at the time of institution of the Eldoret suit, he was a director of the 2nd Defendant. He confirmed that that the company had two directors, himself and the late Isaac Rop Kigen.
110. It is his testimony that there was an agreement (written) on the advancement of the loan to the Plaintiff and it was not produced in this case because it was not necessary. He stated that they produced the agreements in the case at the Eldoret High Court.



111. DW2 stated that the decree issued was in terms that the properties be transferred to the 2nd Defendant. He stated that after the decree was extracted, they started the transfer process.
112. Counsel for the 1st Defendant did not have any questions in cross-examination.
113. There being no questions in re-examination, the 2nd & 3rd Defendants closed their case.
114. Counsel for the Plaintiff informed the court that the 4th Defendant is deceased and intimated that he would be abandoning the suit as against him. Consequently, the suit against the 4th Defendant was marked as withdrawn.

ISSUES FOR DETERMINATION.

115. The Plaintiff filed his submissions on 17th March, 2023, the 1st Defendant filed hers on 13th April, 2023 while the 2nd and 3rd Defendant filed their submissions on 31st March, 2023.
116. He identifies a single issue for determination. That is;

Whether the Plaintiff has proved interest in the proprietorship of the Suit properties?
117. The Plaintiff submits that what is before the Court for determination is a question of declaration of rights in respect of the suit properties and that the Plaintiff claims that his proprietorship is based on the usage and utility of the Suit Parcels coupled together with the illegal actions founded by the unlawful collusive actions of the Defendants.
118. The Plaintiff submits that it is not in contention that the Plaintiff together with the Defendant jointly owned the Suit Properties under their Company known as Sigowo Limited; and upon their separation, it is unknown how the Properties were transferred to strangers and also how the Sigowo Limited was wound up without the Plaintiff's participation and knowledge.
119. The Plaintiff in his submissions reiterates that in his pleadings and in his evidence, he stated that together with the 1st Defendant they bought the Suit Properties and had them registered jointly so as to secure their joint interest in them. He submits that this was to be observed even after their separation.
120. The Plaintiff in his submission narrates how the 1st Defendant effectively defeated his rights to the suit property. The Plaintiff submits that he has proved his case to the required standards and prays that the court grants him the reliefs sought in the Plaint.
121. The Plaintiff relies on Article 40 (1) of *the Constitution* of Kenya, 2010, Section 24 (a) and 25 of the Land Registration Act, 2012 and the case of Hassan Mohammed Haji Vs Mohammed Keynan & Another (Garissa E.L.C No 24 of 2017) and submits that among the prayers that the Plaintiff is seeking is a permanent order of injunction.
122. The Plaintiff relies on the decision in Giella Vs Cassman Brown and submits that the threshold for grant of injunctions under the doctrine is that of a prima facie case with a high probability of success.
123. It is the Plaintiff's submission that from his entire case, he has intentionally and sufficiently proved how his rights were created and how the said rights were vested in Sigowo Limited. He submits that the defence has not been able to show this Honourable Court the circumstances under which those rights were defeated. He also submits that their defeat was through collusion by the Defendants.
124. The Plaintiff submits that the actions of the 1st Defendant in selling and conversion of the Suit properties without his the express consent is in clear contravention of the intentions and purposes of the Suit property being held jointly by the Plaintiff and the 1st Defendant and thus any actions thereof



- are completely invalid and unenforceable and so are any resultant actions. The Plaintiff submits that he has shown that he has a prima facie case with a probability of success and relies on the case of Mrao Limited Vs First American Bank Limited & 2 others, [2003] KLR 125.
125. The Plaintiff also submits he shall suffer and has already suffered from the illegal sale and transfer of the Suit properties by the 1st Defendant to the 2nd Defendant.
 126. The Plaintiff also submits that that he has an interest in the suit properties to the exclusion of all other parties, he submits that irreparable injury has been and continues to be occasioned to him when the suit parcels are disposed of to strangers and further submits that this has denied him of his equitable and indefeasible right to the Suit properties.
 127. The Plaintiff further submits that the balance of convenience tilts in favour of granting him an order of injunction.
 128. It is the Plaintiff's submission that during cross-examination, the 1st Defendant feigned ignorance of how the properties were transferred from Sigowo Limited and also how Sigowo Limited was dissolved. The Plaintiff submits that the 1st Defendant completely engaged in actions that amount to fraud.
 129. The Plaintiff submits that the Black's Law Dictionary, 10th Edition defines fraud as, "A knowing misrepresentation or know concealment of a material fact made to induce another to act to his or her detriment."
 130. The Plaintiff also submits that this Honourable Court is empowered under Section 80 (1) of the [Land Registration Act](#), 2012 to 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.
 131. The Plaintiff relies on Sections 107 (1), 109 & 112 of the [Evidence Act](#), 2008 and submits that he has discharged his burden.
 132. The Plaintiff further submits that a party is bound by its pleadings and that the evidence adduced in court and the purpose of pleadings is to ascertain with clarity the matters on which parties disagree and points of agreement so as to ascertain matters for determination. He submits that he has satisfied this requirement.
 133. The Plaintiff submits that he has proved his case on a balance of probabilities. He prays that the Honourable court makes a finding in his favour and make a declaration that the he is entitled to be registered as a joint owner of the suit properties.
 134. The 1st Defendant filed her submissions on 13th April, 2023. She identifies the following issues for determination:
 - a. Whether or not the Plaintiff is entitled to an interest in the suit premises?
 - b. Whether or not there are suit premises that are capable of cancellation or re-registration in the name of the Plaintiff and the Defendants as joint owners or SIGOWO LIMITED?
 - c. Who meets the costs?
 135. The 1st Defendant submits that whereas the Plaintiff's case was supported by his oral evidence and he also produced some documents in support of his case, none of the documents produced support his allegation that either him or Sigowo Limited had any ascertainable legal or lawful interest on any of



- the parcels of land. The 1st Defendant further submits that the Plaintiff was unable to demonstrate spending any money towards purchasing the suit parcels. It is her submission that he did not claim to have spent any money towards acquisition of the property.
136. She also submits that the Plaintiff did not claim that there were ever any resolutions by the Directors of Sigowo Limited to buy any parcels of land or that Sigowo Limited purchased any parcel of the suit parcels of land.
 137. The 1st Defendant submits that even though the Plaintiff confirmed to the Court that he was aware of the existence of Eldoret High Court Civil Case No 84 of 2007 between Kurget Enterprises Limited (which is the 2nd Defendant in the instant case), he did not take any action either to be joined as an interested party therein. She further submits that the Plaintiff did not in any manner whatsoever make his interest in the suit parcels known or adjudicated in that suit. She submits that the suit parcels were lawfully surrendered to the 2nd Defendant pursuant to a decree in that suit as exhibited in Exhibit D14 (a).
 138. The 1st Defendant submits that she produced several documents during her testimony and that the said documents demonstrate that she exclusively purchased the parcels of land that were later on hived off from the mother parcel of land resulting into the title Deeds bearing her name i.e. Exhibit D 12 (a)- (f).
 139. The 1st Defendant submits that she gave evidence of how the transaction in respect of acquisition of the suit parcels were carried out and that this gives a clear history of her ownership. She submits that she has done this through production of copies of sale agreements (Exhibits D1 & D2), copies of cheques which are evidence of the source of the purchase price (Exhibits D3, D4, D5 and D6) and cheque counterfoils (Exhibits D7, D8, D9, D10 & D11). She submits that she has also produced bank statement -Exhibits D15 (a)-(d)
 140. The 1st Defendant submits that while she admits that she and the Plaintiff were the sole Directors of Sigowo Limited, her evidence is that there were no resolutions by the Directors to purchase any parcels of land. She also submits that her testimony was that Sigowo Limited neither operated any bank account nor transacted any business.
 141. It is the 1st Defendant's submission that she informed the Court that Sigowo Limited was dissolved as demonstrated by the Kenya Gazette notice No. 8934 of 1st July, 2005 (Exhibit D13).
 142. The 1st Defendant also submits that as at the time the Plaintiff instituted the instant suit, the parcels of land were no longer owned by her and that she has no control over any of them. She submits that a vigilant Plaintiff should have been aware of the Eldoret case and would have joined that suit and that failure to do so means that he knew that he would not have been able to prove any interest over suit parcels of land.
 143. The 1st Defendant also submits that it is not in dispute that the decree in respect to the Eldoret matter subsists and was never challenged by way of an appeal. She submits that the High Court in Eldoret being a Court of concurrent jurisdiction with this Honourable Court and that any invitation to interfere with a judgment of that court would amount to asking this Honourable Court to sit on an appeal without any jurisdiction known to law.
 144. She submits, therefore, that the registration of the parcels of land cannot be cancelled and or re-registered in any way favorable to the Plaintiff. The Defendant relies on Section 107 (1) of the [Evidence Act](#) Chapter 80 Laws of Kenya and submits that the Plaintiff has failed to discharge the burden of proof which lies on him.



145. The 1st Defendant relies on the case of Independent Electoral and Boundaries Commission and Another and Stephen Mutinda Mule and Others (2014) eKLR and submits that the Plaintiff gives the impression through the body of his Plaint that the parcels of land were supposed to be registered in the name of Sigowo Limited while in the relief clause he seeks for re-registration of the suit property either in his name or in the name of Sigowo Limited with apparent lack of certainty.
146. The 1st Defendant submits that the Plaintiff has failed to prove his case on a balance of probabilities and urge to this Honourable Court to dismiss the suit with costs.
147. The 2nd and 3rd Defendants filed their submissions on 31st March, 2023. They identify the following issues for determination:
- a. Who purchased the suit properties?
 - b. Was the transfer of the suit properties to and registration of the 2nd Defendant as the proprietor thereof proper, or fraudulent and irregular?
 - c. Is the suit against the 3rd and 4th Defendants legally sustainable?
148. The 2nd and 3rd Defendants submit that according to the Plaintiff he purchased the suit property jointly with the 1st Defendant with an understanding that they would be registered in the name of their company, Sigowo Limited.
149. They submit that according to the Plaintiff, the purchase of the suit parcels was between the year 2000 and the year 2002 but the Plaintiff did not tender any evidence in support of this allegation and that the evidence adduced before the court does not support his position.
150. The 2nd and 3rd Defendants submit that the Plaintiff testified that they went to the offices of Muigai Commercial Agencies, the vendor's agents, together with the 1st Defendant during the purchase process between the years 2000 and 2002. They submit that the Plaintiff's letter dated 5th July, 2011, produced as his Exhibit 7, tells a different story. They submit that the opening paragraph thereof states as follows:
- “I am writing to inform you that I am an interested party in the part of land owned by the late mayor which has been demarcated and sold to other parties.”
- The 2nd and 3rd Defendant submit a person who had been an integral part of the purchase process in the years 2000 to 2002 would not need to introduce himself to the vendor's agent in the year 2011.
151. They also submit that the Plaintiff did not produce the purchase receipts he claimed had been issued in the name of Sigowo Limited and that he took no action against the vendor's agent.
152. The 2nd and 3rd Defendant also submit that the 1st Defendant by contrast produced land sale agreements between her and the vendor and provided ample evidence of the payments she made towards the purchase price of the suit properties as well as copies of the title documents that were ultimately issued to her at the conclusion of the process. It is their submission that it is the 1st Defendant who has proved that she purchased the suit properties and not the Plaintiff.
153. The 2nd and 3rd Defendants submit that the Plaintiff's case is that the transfer of the suit properties to the 2nd Defendant was irregular and fraudulent and he could not however pinpoint what constituted the fraud. The 2nd and 3rd Defendants submit further that the Defendants pleaded and testified that the transfers were effected pursuant to the court decree issued in Eldoret HCCC No 84 of 2007.



154. The 2nd and 3rd Defendants submit that the Plaintiff in his witness statement dated 27th January, 2012 as well as in his viva voce evidence stated that he knew about the Eldoret court decree in the year 2009 and he never challenged it.
155. The 2nd and 3rd Defendants rely on Section 80 of the *Civil Procedure Act*, Chapter 21 laws of Kenya and Order 45, Rule 1 of the Civil Procedure Rules, 2010. They also rely on the case of Galot & 5 others Vs Kenya National Capital Corporation [2002] 1 KLR 778 and submit that the decree in the Eldoret suit was obtained as a result of a consent between the parties thereto and state that such a decree is only subject of appeal or review.
156. The 2nd and 3rd Defendants also rely on the case of Kenya Commercial Bank Ltd Vs Specialised Engineering Company Ltd [1982] KLR 485 in support of their submission that a decree issued pursuant to a consent judgment can be reviewed by parties to it.
157. It is also their submission that the Plaintiff had the option of challenging the Eldoret High Court decree and he chose to not do so. They submit that it is now not competent for him to ask this court to issue a decree that would effectively reverse the Eldoret High Court decree whose existence he is aware of and which he deliberately chose to not challenge.
158. The 2nd and 3rd Defendants submit that the transfer of the suit properties to the 2nd Defendant was and remains lawful, regular and proper.
159. It is their submission that the Plaintiff's case is that the transfer of the suit properties to the 2nd Defendant was fraudulent and should be reversed. They submit that he does not appear to be seeking any specific orders against the 3rd and 4th Defendants.
160. The 2nd and 3rd Defendants submit that it is a cardinal principle of company law that an incorporated company is a distinct legal entity separate from its directors and shareholders. They submit that the suit against the 3rd Defendant should thus be struck out or dismissed with costs. The suit against the 4th Defendant was withdrawn on account of his demise.
161. It is their submission that the Plaintiff's prayer for ".....re-registration of the suit premises in the name of the plaintiff and the defendants as joint owners and/or Sigowo Limited cannot be granted since the evidence on record is clear that there had never been any such registration that can be reinstated.
162. It is also their submission that the Plaintiff's own evidence is that the suit properties are registered in the name of the 2nd Defendant. It is their submission that the 2nd and 3rd Defendants submit that are grateful to the Plaintiff for succinctly setting out the rights of a registered proprietor as provided in sections 24 and 25 of the *land Registration Act*, 2012. They submit that according to Section 26 of the *Land Registration Act*, the rights of a registered proprietor are not liable to be defeated except where the registration was procured by misrepresentation or fraud to which such registered proprietor was a party.
163. It is their submission that no evidence of misrepresentation or fraud has been adduced by the Plaintiff in this case in relation to the registration of the 2nd Defendant as the proprietor of the suit properties.
164. The 2nd and 3rd Defendants also submit that the present suit has been fully heard with oral evidence being taken and the parties putting in the documents they wish to rely on. They submit that the court is no longer dealing with an application for temporary injunction at interlocutory stage and the reference by the Plaintiff, in his submissions, to the decision in Giella vs Casman Brown & Co Ltd [1973] EA 358 is misconceived.



165. The 2nd and 3rd Defendants submit that the suit against the 2nd and 3rd Defendants has not been proved and should be dismissed with costs.

Analysis And Determination.

166. After considering the pleadings, testimony and rival submissions of the Plaintiff, the 1st Defendant, the 2nd & 3rd Defendants, the following issues arise for determination:

- a. Whether the Plaintiff has proved beneficial interest the Suit properties.
- b. Whether the Plaintiff is entitled to the orders in the plaint.
- c. Who should bear costs of this suit?

A. Whether the Plaintiff has proved beneficial interest in the suit properties.

167. As a preliminary point, I wish to state that one of the advantages of incorporation is that a company is a separate legal entity. This means that a company is separate and apart from the members who comprise of it. It is not clear whether the plaintiff is claiming for the company or for himself. In any event, a company being a legal person can sue and be sued in its own name. However, Sigowo Limited in no longer in existence. It was dissolved. The 1st Defendant produced a gazette notice No. 8934 of 1st July, 2005, (Exhibit D13) which is a notice of dissolution of companies. The plaintiff claims that this dissolution was not with his consent. My view is that it is a dissolution nonetheless.

168. It is also the Plaintiff's case that he purchased the suit properties together with his wife through their company known as Sigowo Limited and that these purchases were done during the subsistence of his marriage to the 1st Defendant. No documents have been provided by the Plaintiff to prove purchase or payment of the purchase price by him or by Sigowo Limited.

169. It is further the Plaintiff's case that he separated with his wife, the 1st Defendant in 2004 and later learnt that the suit properties had been transferred, without his consent, to the 1st Defendant who subsequently transferred them to the 2nd Defendant.

170. The Plaintiff admits that after he filed the present suit, he learnt that the 1st Defendant had been sued by the 2nd Defendant in Eldoret HCCC No. 84 of 2017.

171. He also admits that the transfer of the suit properties from the 1st Defendant to the 2nd Defendant was pursuant to a decree issued in Eldoret HCCC No. 84 of 2017.

172. The 1st Defendant's case on the other hand is that she purchased the suit properties from Jackson Mugo Mathai through his agents Muigai Commercial Agencies.

173. It is also the 1st Defendant's case that she purchased the suit in the year 1999 after separating from the Plaintiff. The 1st Defendant has produced sale agreements, copies of cheques written by her, copies of counterfoils of her cheque book and her bank statements to show that she purchased the suit properties in her personal capacity, with her money and without any contribution from the Plaintiff.

174. The 1st Defendant admits that she was a director of Sigowo Limited which was dissolved according to the gazette notice of 1st July, 2005.

175. It was further the 1st Defendant's case that Kiyeng Philip Chumo (the 3rd Defendant) advanced some money to her through Kurget Enterprises Limited (the 2nd Defendant).



176. It is her evidence that when she defaulted in repaying the loan, the 2nd Defendant sued her in HCCC No. 84 of 2017 where the court in its judgment ruled in favour of the 2nd Defendant and in execution of the judgment, the suit properties were transferred to the 2nd Defendant.
177. The 3rd Defendant is a director of the 2nd Defendant. The 3rd Defendant's case is that the transfer of the suit properties from the 1st Defendant to the 2nd Defendant was in execution of the decree issued in Eldoret HCCC No. 84 of 2007. He states that he does not understand why he has been sued by the Plaintiff.
178. In the present suit, the Plaintiff is seeking that the court issues an order that he has an interest in the suit properties and declare him as a co-owner. However, he has failed to demonstrate the nexus between Sigowo Limited, himself and the suit parcels.
179. It is not disputed that the suit parcels were transferred to the 2nd Defendant by the 1st Defendant in execution of a decree issued in Eldoret HCCC No. 84 of 2007. The Plaintiff was aware that the suit in the High Court was ongoing and had been concluded. His evidence is that he got knowledge of the existence of the suit in the year 2009.
180. Given that the transfer of the suit properties from the 1st Defendant to the 2nd Defendant was as a result of the decree issued in Eldoret HCCC No. 84 of 2007, the proper forum for the Plaintiff to articulate his claims or assert his right over the suit properties would have been in the said court.
181. As at the time of the Plaintiff's testimony, the suit properties were no longer registered in the name of the 1st Defendant whom he claims they jointly purchased the suit properties with.
182. My view is that the Plaintiff should have applied to be joined to the suit i.e. Eldoret HCCC No. 84 of 2007 and subsequently applied to have the judgment set aside. These options would have given him an him an opportunity to state his claim and have it determined.
183. In Kennedy Mokuva Ongiri Vs John Nyasende Mosioma & Florence Nyamoita Nyasende [2022] eKLR it was held as follows;
- “ A Decision of the court must be respected as fundamental to any civilised and just judicial system. Judicial determinations must be final, binding and conclusive. There is injustice if a party is required to litigate afresh matters which have already been determined by the court.
- A Decision of the court, unless set aside or quashed in a manner provided for by the law, must be accepted as incontrovertibly correct.”
184. Given the fact that there is already a judgement by the High Court in Eldoret in HCCCC No. 84 of 2007 pursuant to which the suit properties were transferred to the 2nd Defendant, I am of the view that this court cannot interfere with the said decree and/or make a finding that the said transfer was irregular or fraudulent or unprocedural.
185. Looking at the totality of the evidence presented in this suit, I find that the plaintiff has failed to prove any beneficial interest in the suit parcels and further that any finding to the contrary, although not merited in the instant suit, would be in conflict with a decree already issued by a court of concurrent jurisdiction, which decree has been executed which decree has been executed.



B. Whether the plaintiff is entitled to orders in the plaint.

186. The plaintiff seeks orders of permanent injunction against the Defendants and order for cancellation of the 2nd Defendant's title and registration of the suit parcels in his name and that of the Defendants as joint owners and/or registration in the name of Sigowo Limited.
187. Sigowo Limited no longer exists. This presents practical impossibility. Issuance of an order requiring registration of the suit properties in the joint names of the Plaintiff and defendants and/or in the name of Sigowo Limited who, is not a party to this suit and has been dissolved is akin to issuing a court order in vain.
188. Further, the 1st Plaintiff failed to prove that he purchased the suit properties or made any contribution towards their purchase. The 1st Defendant on the other hand has produced a sale agreement dated 17th May, 2022 between herself and Jackson Mugo Mathai. She has also furnished this Court with evidence of payment as set out in the preceding paragraphs.
189. Importantly, the 1st Defendant has also produced copies of title deeds in respect of the suit properties as evidence that she was at some point the owner. The suit properties are now in the name of the 2nd Defendant.
190. Section 24 (a) of the [Land Registration Act](#) provides that:
- “The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto”
191. Section 26 (1) (a) of the [Land Registration Act](#) provides that;
- “The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. (Emphasis mine)
192. The 1st Defendant has demonstrated the root of her title and how she subsequently transferred it to the 2nd Defendant.
193. The Plaintiff is alleging fraud on the part of the Defendants. In *Koinange & 13 others vs Charles Karuga Koinange* 1986 KLR at page 23 the court held as follows:
- “When fraud is alleged by the Plaintiffs the onus is on the Plaintiffs to discharge the burden of proof. Allegations of fraud must be strictly proved, although the standard of proof may not be so heavy as to require proof beyond a reasonable doubt, something more than a balance of probabilities is required.”



194. In *Kinyanjui Kamau Vs George Kamau* [2015] eKLR the court dismissed the appeal as it was not demonstrated that the Appellants had proved fraud to the required degree and stated that:

“It is trite law that any allegations of fraud must be pleaded and strictly proved. see *Ndolo vs Ndolo* [2008] 1KLR (G & F) 742 wherein the court stated that “. we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove the allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely; proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases...”

195. The law provides that a proprietor’s title shall only be challenged on the ground of fraud or misrepresentation to which the person is proved to be a party or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. The Plaintiff has not led evidence to warrant cancellation of the 2nd Defendant’s title and the gravity of an order for subsequent registration of the suit parcels in the joint names of the Defendants and himself.

196. Taking into consideration my finding in (a) above and the issues set out under this heading, I find that the Plaintiff is not entitled to an order of permanent injunction against the defendants and is also not entitled to an order for cancellation of the title of the 2nd Defendant and subsequent registration of the suit parcels his name and the joint names of the Defendants.

C. Whether the Plaintiff has established a cause of action against the 3rd and 4th Defendants.

197. The Plaintiff withdrew the Suit against the 4th Defendant.

198. The 3rd Defendant is sued in his capacity as director of the 2nd Defendant. In my opening paragraphs under the heading ‘Analysis and determination’, I stated that a company can sue and be sued in its own name. One of the instances when the law may concern itself with the identity of the directors of a company is where an application to lift the veil of incorporation is made. Often, this is meant to attach personal liability to the directors for some wrongful acts. There is no evidence of such application being made.

199. In the instant suit, the Plaintiff was unable to explain why he instituted this suit against the 3rd Defendant. It is not enough to join him in this suit because he is director of the 2nd Defendant or brother of the 1st Defendant. I find that the Plaintiff has failed to establish a cause of action against the 3rd Defendant.

F. Who should bear costs of this suit?

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

Disposition.

201. In the result, I find that Plaintiff has failed to prove his claim. Consequently, the suit is hereby dismissed with costs to the Defendants.

202. It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 12TH DAY OF OCTOBER, 2023.

L. A. OMOLLO

JUDGE

IN THE PRESENCE OF:

NO APPEARANCE FOR THE PLAINTIFF.

MR OREGI FOR THE 1ST DEFENDANT.

MR OKEKE FOR THE 2ND AND 3RD DEFENDANT.

COURT ASSISTANT: MS. MONICA WANJOHI

