



Kapeen (Suing as the legal administrator of the Estate of John Lemuta Naiguran (Deceased) v Asanyo & 2 others (Environment & Land Case E007 of 2022) [2023] KEELC 22243 (KLR) (1 December 2023) (Judgment)

Neutral citation: [2023] KEELC 22243 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE E007 OF 2022
EM WASHE, J
DECEMBER 1, 2023**

BETWEEN

VINCENT KANTET KAPEEN (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF JOHN LEMUTA NAIGURAN (DECEASED)) PLAINTIFF

AND

GEOFFREY MAKANA ASANYO 1ST DEFENDANT

INTONA INVESTMENT LIMITED 2ND DEFENDANT

THE DISTRICT LAND REGISTRAR, TRANSMARA 3RD DEFENDANT

JUDGMENT

A. Pleadings

1. The Plaintiff herein through the Amended Plaint dated 6th October 2020 (herein referred as “the Amended Plaint”) is seeking for the following Orders against the Defendants herein:-
 - a. A declaration that John Lemuta Naiguran (Deceased) is the lawful owner of a portion of land measuring 240 acres to be excised from L.R.No.Narok/Transmara/Intona/5.
 - b. A declaration that the registration of the 1st Defendant as the proprietor of all that parcel of land known as L.R.No.Narok/Transmara/Intona/5 measuring 400 acres was fraudulently acquired hence null and void.
 - c. A declaration that the registration of the 2nd Defendant as the proprietor of all that parcel of land L.R.No.Narok/Transmara/Intona/5 measuring 400 acres was irregular and/or illegal and the subsequent transfer and registration of the 2nd Defendant as the proprietor of the entire suit is null and void.



- d. An order for rectification of the register directing that registration of the suit land in favour of the 1st Defendant and subsequently in favour of the 2nd Defendant be cancelled as it was obtained or made by fraud and the cancellation be substituted by registering the estate of the deceased as a co-proprietor of the suit land at the Defendants expense.
 - e. An order compelling the 1st and 2nd Defendants to surrender the original certificate of title of all that parcel of land L.R.No.Narok/Transmara/Intona/5 measuring 400 acres to the 3rd Defendant for cancellation and reissuance of new titles in favour of the estate of John Lemuta Naugiran (Deceased) and the 1st Defendant reflecting their ownership of the suit property.
 - f. An order or permanent injunction restraining the Defendants by themselves, their servants, agents, employees and/or any other person claiming under them from charging, entering, leasing out, renting out, occupying, interfering, alienating, selling, further developing and/ or in any way adversely dealing with the deceased's portion of land measuring 240 acres to be excised from L.R.No.Narok/Transmara/Intona/5 through the Defendants' consent to be evicted therefrom.
 - g. Costs of the suit.
 - h. Such other and further relief that the Honourable Court may deem fit and just to grant.
2. Together with the Amended Plaint dated, the Plaintiff also filed witness statements and Lists of Documents as well as the documents therein in support of the Plaintiff's case.
 3. Upon service of the Amended Plaint dated, the 1st and 2nd Defendants filed their Defence on the 9th of November 2020.
 4. The 1st and 2nd Defendants in their Statement of Defence dated 9th of November 2020 (herein referred as "the 1st and 2nd Defence") sought to have the Amended Plaint dismissed with costs.
 5. The 1st and 2nd Defendant prepared and filed various witness statements as well as a bundle of documents which were then used at the hearing.
 6. The 3rd Defendant also opposed the Amended Plaint by filing a Statement of Defence dated 30th September 2022 (herein referred to as "the 3rd Defendant's Defence")
 7. The 3rd Defendant's Defence similarly sought to have the Amended Plaint dismissed with costs.
 8. The Plaintiff upon receipt of the 1st and 2nd Defendants' Defence dated filed a Reply to the 1st and 2nd Statement of Defence.
 9. The hearing of the matter began on the 2/11/2022 after numerous interlocutory applications.

B. Plaintiff's Case & Evidence.

10. The Plaintiff known as Vincent Kanteet Kapeen was sworn in as PW1.
11. PW 1 confirmed that he had prepared and executed a witness statement dated 6/10/2020 which he adopted as his evidence in chief.
12. PW 1 also relied on the List of Documents dated 6/10/2020 which he sought to produce as his exhibits in support of the case.
13. PW 1 produced the following documents as exhibits in support of the Plaintiff's case;-
 - i. Exhibit 1- Copy of Letter of Administration Interstate dated 3rd March 2011.



- ii) Exhibit 1- Copy of Letter of Authority to Plead dated 1st July 2020.
- iii) Exhibit 3- Copy of letter dated 25th of March 1992 from Messrs Wangui Kimani Advocate to Agricultural Finance Corporation.
- iv) Exhibit 4- Copy of Agreement For Sale dated 25th of March 1992 between Stanley Lemoiyo Nkoimo and Geoffrey Asanyo and John Naiguran over a portion of 400 acres from the property known as L.R.No.Transmara/Intona/3.
- v) Exhibit 5- Copy of the Letter dated 18th May 1992.
- vi) Exhibit 6- Copy of Letter dated 27th of May 1992 from National Bank of Kenya to Johh Lemuya Ole Naiguran.
- vii) Exhibit 7 – Copy of an Acknowledgement Note dated 14th June 1992 from Messrs Wangui Kimani, Advocate copied to Geoffrey Makana Asanyo & Stanley Lemoiyo Nkoimo.
- viii) Exhibit 8- Copy of an acknowledgement note dated 21st July 1992 from Messrs Wangui Kimani, Advocate copied to Geoffrey Makana Asanyo & Stanley Lemoiyo Nkoimo.
- ix) Exhibit 9- Copy of an Application for Consent to Transfer L.R.No.Narok/Transmara/Intona/5.
- x) Exhibit 10- Copy of the Consent to Transfer of L.R.No.Narok/Transmara/Intona/5 dated 4/12/1993.
- xi) Exhibit 11- Copy of a letter dated 18th April 1993 from Messrs Wangui Kimani, Advocate to Stanley Lemoiyo Nkoimo.
- xii) Exhibit 12- Copy of letter dated 28th April 1993 from Messrs Wangui Kimani, Advocate to the Land Registrar, Narok Land Registry.
- xiii) Exhibit 13- Copy of the registered Transfer Form in relation to L.R.No.Narok/Transmara/Intona/5 dated 5th May 1993.
- xiv) Exhibit 14- Copy of the Title Deed of L.R.No.Transmara/Intona/5 in favour of the 1st Defendant issued on the 5th of May 1993.
- xv) Exhibit 15- Copy of an Official Search of L.R.No.Transmara/Intona/5 dated 10th March 2016.
- xvi) Exhibit 16- Copy of an official search of L.R.No.Transmara/Intona/5 dated 27th April 2016.
- xvii) Exhibit 17- Copy of an official search of L.R.No.Transmara/Intona/5 dated 26th February 2019.
- xviii) Exhibit 18 – Copy of a forensic document examination report by Global Forensic Security Services dared 2017-10-12.
- xix) Exhibit 19- Copy of CR 12 of the company known as Intona Investments Limited issued on the 23/10/2019.
- xx) Exhibit 20- Copy of various Court documents relating to the suit known as Narok ELC CASE NO. 23 OF 2017, Nakuru Civil Appeal No. 5 Of 2019 And Civil Application No. 73 Of 2017.

14. PW 1 after producing the exhibits hereinabove proceeded to inform that Honourable Court that according to the Agreement For sale dated 25/03/1992 (Exhibit 4), the property purchased was a total of 400 acres.



15. PW 1 stated that according to the Agreement for Sale dated 25/03/1992 (Exhibit 4), the Purchasers were two persons namely Geoffrey Makano Asanyo and John Lemuta Naiguran.
16. PW 1 indicated that the 400 acres were to sub-divided into two portions of 240 Acres belonging to John Lemuta Naiguran and 180 Acres belonging to Geoffrey Makana Asanyo.
17. According to PW 1, the total purchase price of the 400 Acres was KShs 2,000,000/-.
18. PW 1 testified that the 1st Defendant was to pay a sum of KShs 800,000/- while the Plaintiff's deceased father was to pay a sum of KShs 1,200,000/-.
19. PW 1 informed the Honourable Court that after the Agreement for Sale, his late father took possession of 240 Acres by fencing it off and keeping livestock therein.
20. Unfortunately, the Plaintiff's deceased father did not get a title to the portion he occupied because the 1st Defendant transferred the entire 400 acres into his name alone.
21. PW 1 stated the 1st Defendant's actions of transferring the entire 400 acres into his name was discovered after the demise of his father in the year 2008.
22. PW 1 referred to Exhibits 15 and 16 as the documents which made them discover the 1st Defendant's fraudulent and unlawful acts against his demised father.
23. PW 1 therefore concluded his testimony in chief by asking the Honourable Court to ensure justice is served by granting the prayers sought in the Amended Plaint.
24. On cross-examination by the 1st and 2nd Defendants, PW 1 indicated he does not reside on the suit property but a short distance from there.
25. PW 1 reiterated that according to Exhibit 4, his deceased father was to pay a sum of KShs 1.2 Million.
26. According to PW 1, the total amount paid by his demised father was KShs 200,000/-, Kshs 750,000/- and Kshs 50,000/- making a total of KShs 1,000,000/-.
27. PW 1 indicated that the sum of KShs 50,000/- provided in Exhibit 4 was paid by his deceased father and should therefore apportioned in favour of his father.
28. PW 1 further stated that after the execution of Exhibit 4, his deceased father took possession of 240 acres by putting up structures and erecting structures including a fence.
29. PW 1 stated that the 240 acres were in line with his deceased father's contribution of the purchase price in Exhibit 4.
30. PW 1 nevertheless admitted that the evidence produced before the Honourable Court only amounted to Kshs 1,000,000/=.
31. PW 1 reiterated that his deceased father took possession of the 240 acres and he confirmed that there was evidence by way of pictures to prove occupation thereof.
32. PW 1 testified that the two payments done by his deceased father were done by was of cheques and he had produced the evidence before the Honourable Court.
33. PW 1 was referred to Exhibit 8 which he stated that the letter did not have an addressee or identified the mode of payment.
34. PW 1 admitted that the alleged fraudulent transfer of the suit property to the 1st Defendant was discovered at least 2 years before the demise of his late father.



35. However, the family of the late John Naiguran began the Court process about 3 years after his demise which was in the year 2009.
36. PW 1 stated that a caution was placed on the suit property by the family of John Lemuta Naiguran although no copy of the said caution was produced during the testimony.
37. PW 1 testified that at the time his father passed away, he had been in occupation of the 240 acres within the suit property for approximately 15 years.
38. PW 1 confirmed that upon the demise of his father, succession proceedings were instituted wherein he was appointed as one of the administrators.
39. PW 1 informed the Honourable Court that his father passed away without writing a will.
40. PW 1 however could not remember if the portion of 240 acres within the suit property was part of the assets outlined in the Succession proceedings.
41. PW 1 stated that after the discovery of the fraudulent and illegal transfer of the suit property through the official search in 2016, a complaint was made against the Advocate who was acting in the transaction.
42. PW 1 informed the Honourable Court that the complaint was not done by him but his elder brother.
43. PW 1 nevertheless admitted that they did not sue the advocate in this suit.
44. PW 1 was again referred to Exhibit 4 which he confirmed that the Vendor was Stanley Nkoimo while the purchasers were the 1st Defendant and his late father John Lemuta Naiguran.
45. PW 1 reiterated that at the time the 1st Defendant's fraudulent and unlawful actions were discovered, his deceased father was in poor health.
46. PW 1 however could not ascertain if his deceased father had complained to the seller or not.
47. PW 1 was then referred to Exhibit 13 which was the Transfer Form.
48. PW 1 confirmed that the property being transferred was L.R.No.Narok/Transmara/Intona/5 which is the suit property in this suit.
49. PW 1 stated that according to the Transfer Form, the Vendor was Starnley Nkoimo and the consideration was Kshs 2 Million.
50. PW 1 confirmed that the Transfer Form was in favour of the 1st Defendant only.
51. PW 1 indicated that the Transfer Form shows that the Vendor received a sum of KShs 2 Million as required.
52. PW 1 also confirmed that the Transfer Form dated 28/04/1993 was executed by the Vendor Stanley Nkoimo and the 1st Defendant.
53. PW 1 insisted that the Plaintiff and his family were in occupation of the 240 acres within the suit property even as this suit was going on.
54. On cross-examination by the 3rd Defendant, PW 1 stated that he sued the 3rd Defendant because his office was used to transfer the suit property without taking recognition of his deceased father.
55. PW 1 however indicated that he had not made any complaint to any government body to investigate the alleged fraudulent actions.



56. PW 1 indicated that after discovering the fraudulent transfer of the entire suit property into the 1st Defendant's name, they approached the 1st Defendant to amicably resolve the matter but he declined to rectify the illegality.
57. On re-examination, PW 1 stated that his identification has never been in dispute in this suit.
58. On being referred to Exhibit 3, PW 1 stated that Paragraph 3 did not show who paid the said amount.
59. However, PW 1 stated that the portions to be paid by the two purchasers were provided in Exhibit 3.
60. PW 1 informed the Honourable Court that the 1st Defendant was to pay KShs 850,000/- while his deceased father was to pay KShs 1,200,000/-.
61. PW 1 referring to Exhibit 7 reiterated that the letter under reference confirmed the payment of KShs 200,000/-.
62. PW 1 stated that his deceased father took possession of his 240 acres way back in 1993 and even fenced the same.
63. PW 1 indicated that when his deceased father took possession, the 1st Defendant did not make any objection or complaint thereof.
64. PW 1 being referred to Exhibit 13 confirmed that the suit property was transferred to the 1st Defendant alone.
65. However, according to Exhibit 13, it did not state that the entire purchase price of KShs 2 Million had been paid by the 1st Defendant alone.
66. PW 1 on being referred to Exhibits 7 & 8 stated that the two letters were not addressed to anyone in particular but were copied to the 1st Defendant and his late father John Lemuta Naiguran.
67. PW 1 informed the Honourable Court that the suit property was not included in the assets of his later father John Lemuta Naiguran at the succession stage because it was in the name of the 1st Defendant.
68. PW 1 confirmed that the fraud and/or illegal transfer of the suit property was discovered about 1 or 2 years before his father passed away.
69. According to PW 1, the first search which confirmed the fraudulent and/or illegal transfer by the 1st Defendant was the one contained in Exhibit 15.
70. In conclusion, PW 1 stated that they sued the 3rd Defendant because they are the ones that effected the fraudulent and/or unlawful transfer in favour of the 1st Defendant.
71. The Second Plaintiff's witness was Martin Esakina Papa (PW 2).
72. PW 2 introduced himself as an experienced document examiner with 24 years of experience.
73. PW 2 stated that he was the director of Global Forensic Security Services which provided private forensic document examination to the general public.
74. PW 2 further stated that he was a trainer in forensic examination accredited by the National Industrial Training Authority.
75. PW 2 informed the Honourable Court that he was in Court to produce and testified about the Forensic Document Examination Report dated 2017-10-12 based on the instructions of J.maritim & Company,advocates.



76. According to PW 2, the instructions from J.maritim & Company,advocates were to examine the signature of Messrs Wangui Kimani, Advocate appearing on the letter dated 21/07/1992 (Exhibit 7), on the letter dated 01/07/1992 (Exhibit 8), on the Agreement for Sale dated 18/05/1992 (Exhibit 3) against a number of sample signatures of Messrs Wangui Kimani,advocate.
77. PW 2 upon examining the said signatures on Exhibit 7,8 and 3 as compared with the sample signatures concluded that Exhibit 7, 8 and 3 were signed by Messrs Wangui Kimani, Advocate.
78. PW 2 informed the Honourable Court that the methodology used in handwriting examination included the examination of the stokes, the individual characteristics and the size proportions, the speed of the pen and pen emphasises.
79. Further to that, PW 2 stated that other facts include environment factors including conditions of writing instruments, conditions of writing materials and the supporting surface and the position of writing.
80. Similarly, the document examiner will consider whether the document is a primary document or a copy of the said original.
81. PW 1 confirmed that the documents used in the investigations were photocopies obtained from Court proceedings at Narok Law Court.
82. As regards the Forensic Report presented by the 1st and 2nd Defendants dated 27/06/2017, PW 2 did not agree that the documents he used for his examination were electronically manipulated.
83. PW 2 indicated that the signatures obtained at Narok Law Court were duly certified to be the true signatures of Messrs Wangui Kimani, Advocate although he did not know where and under what circumstances the same had been procured.
84. Nevertheless, PW 2 reiterated that the specimen signatures were of the same person upon examination.
85. PW 2 further confirmed that the 1st and 2nd Defendant's Forensic Report dated 27/06/2017 was prepared using an advanced machine known as VSC 600 which provides better visibility of the characters and manner in which handwritings are done.
86. PW 2 stated that he does not have access to such a machine but instead uses a magnifying glass and microscope.
87. Nevertheless, PW 2 was of the view that both the methodology he used and the one used by the 1st and 2nd Defendant should produce the correct results.
88. PW 2 indicated that he did not find any elements of electronic manipulation or transfer of any signatures as alleged.
89. PW 2 informed the Court that for one to prove electronic manipulation or transfer, one has to produce the original document and compare the same with the one which its alleged to have been pasted.
90. PW 2 stated that usually, the characteristics and the frame usually vary.
91. Consequently, if one is comparing the signatures from a photocopy, then you cannot detect any elements of cut and paste.
92. On cross-examination by the 1st and 2nd Defendant, PW 2 stated that he is a retired Chief Inspector of Police.
93. PW 2 stated that his retirement was voluntary.



94. PW 2 indicated that he trained at the Criminal Investigation Department training school in the year 1997.
95. PW 2 stated that his organisation had a forensic laboratory within its offices.
96. PW 2 confirmed that as a private document examiner, he would be paid for the examination and determination of documents he is presented with.
97. Referring to the Plaintiff's Exhibit 18, PW 2 confirmed that the Forensic Report was prepared for another suit known as High Court Case No. 23 OF 2017.
98. PW 2 indicated that he did not testify in the previous case known as High Court Case No. 23 OF 2017 and was not even aware it was withdrawn.
99. PW 2 confirmed to the Court that he did not have instructions to prepare and/or file any forensic report in this particular suit.
100. PW 2 however stated that the copies supplied to him for examination were clear for undertaking the assignment.
101. Referring to the Plaintiff's Exhibit 18, PW 2 confirmed that the signatures of Messrs Wangui Kimani, Advocate were copies and therefore have limitations.
102. PW 2 admitted that in the Plaintiff's Exhibit 18, he was of the view that it was important to compare the said copies with the originals.
103. Nevertheless, he was unable to secure original signatures from Messrs Wangui Kimani, Advocate.
104. PW 2 stated that during the preparation of the Plaintiff's Exhibit 18, he was aware that another report by the Director of Criminal Investigations office had been prepared and dated 27/06/2017.
105. PW 2 indicated that the signatures marked as C1-C6 were the same specimen signatures which he had used in his subsequent report produced as Plaintiff Exhibit 18.
106. PW 2 informed the Court that he had no problem using the said specimen signature during his examination.
107. PW 2 reiterated that the specimen signatures marked as B1-B2 had also be certified by Narok Law Court.
108. However, the specimen signature C1- C6 were not certified by the Narok Law Court.
109. PW 2 stated that the comment moderate was used because he used photocopy documents.
110. PW 2 indicated that he did not disclose the type of equipment he used in preparing the Plaintiff's exhibit 18.
111. PW 2 confirmed that the VSC 6000 was the only machine in Kenya and located at the Directorate of Criminal Investigations offices.
112. PW 2 clarified that the VSC 6000 machine was an imaging machine.
113. PW 2 reiterated that he did not find any evidence of computer manipulation.
114. PW 2 however stated that his main instructions did not include looking for computer manipulation but only to confirm if the signatures were authored by one and the same person.
115. The 3rd Defendant did not have any questions for PW 2.



116. On Re-examination, PW 2 confirmed that he is a trained document examiner and has the relevant certifications.
117. PW 2 reiterated that he was instructed to prepare a forensic report in the proceedings known as Narok High Court Case No. 23 OF 2017.
118. PW 2 stated that the property in dispute between Narok High Court Case No. 23 OF 2017 and the present suit were one and the same.
119. PW 2 confirmed to the Court that the use of photocopies in the examination of the signatures caused limitations but had no doubt that the signatures under examination were of one and the same person.
120. PW 2 informed the Court that in forensic examination, the use of photocopies was acceptable as long as they were clear.
121. However, if an examiner used original documents, the outcome would be conclusion and not moderate.
122. PW 2 stated that he was capable and qualified to prepare independent forensic reports in his own private capacity.
123. PW 2 reiterated that both the Directorate of Criminal Investigations and himself used the same signature specimens known as C1- C6 in their examination.
124. PW 2 concluded his evidence with the view that there were no electronic manipulations as alleged by the report authored by the Directorate of Criminal Investigations.
125. The Plaintiff's third witness was Moses Tompo Ole Koya (PW3).
126. PW 3 informed the Court that he resides in Ole Sentu within Transmara Sub-County.
127. PW 3 stated that he had prepared and filed a Witness Statement dated 6/12/2022 of which he adopted the same as his evidence in chief.
128. PW 3 confirmed that the Late John Lemuta Naiguran was a person well known to him.
129. According to PW 3, the suit property was purchased by both the Plaintiff and the 1st Defendant from Stanley Nkoimo.
130. PW 3 stated that the vendor Stanley Nkoimo had procured a facility of about Kenya Shillings 1 Million from the Agricultural Finance Corporation in the year 1992.
131. Unfortunately, the Vendor Stanley Nkoimo was unable to pay the loan and decided to sale off a portion of the suit property.
132. It is on this background that the Vendor Stanley Nkoimo approached the Plaintiff to purchase a portion of the suit property.
133. However, PW 3 informed the Court that the Plaintiff could not purchase the portion of 400 acres offered by the Vendor Stanley Nkoimo due to the high amount of consideration.
134. PW 3 then stated that the Plaintiff decided to approach the 1st Defendant to do a joint purchase of the 400 acres.
135. PW 3 recollected that the purchase price was KShs 5,000/- per acre totally to KShs 2,000,000/- for the entire 400 acres.



136. PW 3 informed the Court that upon being informed of the proposed joint purchase, the 1st Defendant accepted the same and the firm of Messrs Wangui Kimani, Advocate was assigned to handle the transaction.
137. According to PW 3, the mutual advocate Messrs Wangui Kimani was tasked to inform the Chargee Agricultural Finance Corporation not to auction the Vendor's property as a buyer had been secured to clear the said debt.
138. PW 3 stated this was done through the letter which was produced as Plaintiff's Exhibit 3 dated 25/03/1992.
139. Thereafter, PW 3 testified that an Agreement For Sale was duly prepared between the Stanley Nkoimo as the Vendor and the Plaintiff together with the 1st Defendant as the purchasers which was produced as Plaintiff's Exhibit 4.
140. According to PW 3, the entire KShs 2,000,000/- was paid to the Vendor Stanley Nkoimo who also settled the loan to Agricultural Finance Corporation amounting to KShs 1,000,000/-.
141. PW 3 indicated that after the loan was cleared, a surveyor was instructed to sub-divide the original property known as Narok/Transmara/Intona/3 into two portions and place the necessary beacons.
142. Based on this understanding, the Vendor Stanley Nkoimo applied and procured a Land Control Board consent for the sub-division of the property known as L.R.No.Narok/Transmara/Intona/3 in the joint names of the Plaintiff and the 1st Defendant.
143. PW 3 referred to the Plaintiff's Exhibit 9 and 10 produced before the Court.
144. However, PW 3 was not sure whether the title deed of the sub-divided portion of 400 was jointly registered in the names of the Plaintiff deceased father and the 1st Defendant.
145. PW 3 nevertheless stated that the Plaintiff deceased father took possession of a portion of the suit property and even built a home.
146. PW 3 indicated that at the time of his demise, the Plaintiff deceased father was in occupation of a portion of the suit property which occupation is still ongoing through his sons Vincent and Lekison.
147. PW 3 informed the Court that he resides on the portion that remained with the Vendor Stanley Nkoimo.
148. PW 3 stated that due the contribution to the said transaction, he was paid a sum of KShs 150,000/- by the Plaintiff.
149. PW 3 confirmed that the suit property should be registered in the name of the Plaintiff deceased father and the 1st Defendant and the advocates actions of registering the 1st Defendant alone on the title was unjustified.
150. PW 3 finalised his evidence in chief by stating that the Plaintiff had a right to be a joint owner of the suit property.
151. On cross-examination by the 1st and 2nd Defendant, PW 3 stated that he was the selling agent of the original property known as L.R.No.Narok/Transmara/Intona/3.
152. However, PW 3 did not have any letter or document to confirm that he was an agent of the property known as L.R.No.Narok/Transmara/Intona/3.



153. PW 3 stated that he was not aware of how much was paid to the Agricultural Finance of Kenya but was sure the outstanding amount was KShs 1,000,000/-.
154. PW 3 reiterated that Messrs Wangui Kimani, Advocate wrote to Agricultural Finance Corporation through the Plaintiff's Exhibit 3 to stop the planned sale of the property known as L.R.No.Narok/Transmara/Intona/3.
155. PW 3 confirmed that the Agreement For Sale produced as Plaintiff's Exhibit 4 is what was signed by all parties.
156. According to PW 3, the 1st Defendant was to pay a sum of Kenya Shillings 850,000/- while the Plaintiff deceased father was to pay a sum of Kenya Shillings 1,200,000/-.
157. However, PW 3 stated that the payments made by the Plaintiff deceased father amounted to only KShs 950,000/- as the proof adduced in Court.
158. PW 3 indicated that the original property known as L.R.No.Narok/Transmara/Intona/3 was to be sub-divided into two portions after the sub-division was approved by the Land Control Board.
159. PW 3 informed the Court that the Plaintiff deceased father was entitled to 200 acres while the 1st Defendant was to get a similar acreage.
160. Referring to Plaintiff's Exhibit 10, PW 3 confirmed that this was the consent to sub-divide the original property known as L.R.No.Narok/Transmara/Intona/5.
161. PW 3 reiterated that after the sub-division of the original property known as L.R.No.Narok/Transmara/Intona/3, the Plaintiff deceased father took possession on a portion of the suit property.
162. However, later on, the Plaintiff deceased father came to discover that the 1st Defendant had registered the entire suit property in his name.
163. PW 3 informed the Court that the deceased Plaintiff's family members have been on the suit property for over the last 15 years.
164. On being referred to the Plaintiff's List of Assets, PW 3 confirmed that the suit property was never declared as an asset in the succession proceedings.
165. PW 3 confirmed that he was familiar with Angelina Nkoimo who is the wife of the Late Stanley Nkoimo.
166. PW 3 being referred to the 1st and 2nd Defendants' List of Documents and in particular the document dated 08/12/2022, he confirmed that his agency fees was KShs 300,000/-.
167. PW 3 stated that it was the Plaintiff who had informed him that a sum of KShs 750,000/- had been paid from National Bank of Kenya to Messrs Wangui Kimani, Advocate.
168. On cross-examination by the 3rd Defendant, PW 3 informed the Court that the Plaintiff was a friend and a neighbour.
169. PW 3 informed the Court that what he did not agree with was the action of the 3rd Defendant registering the suit property in the name of the 1st Defendant only.
170. PW 3 denied knowledge of any manner of collusion between the 1st and 3rd Defendant but reiterated that it was wrong for the 3rd Defendant to register and issue a title in name of the 1st Defendant alone.



171. On re-examination, PW 3 was of the view that both the Plaintiff and the 1st Defendant were to get 200 acres each.
172. However, PW 3 indicated that the Plaintiff's Exhibit 4 showed that the Plaintiff was to get a total of 240 acres.
173. PW 3 confirmed that the Plaintiff was to pay a sum of Kenya Shillings 1,200,000/- while the 1st Defendant paid 850,000/-.
174. According to the Plaintiff's Exhibit 4, the sum of KShs 50,000/- was paid on execution of the Agreement for Sale together with an extra KShs 10,000/- jointly paid as legal fees.
175. PW 3 denied any allegation that the Vendor was not paid and in fact stated that it was only after full payment that a consent to sub-divide and transfer was procured.
176. PW 3 recollected that the Plaintiff deceased father passed away in the year 2008.
177. PW 3 reiterated that he relies on his witness statement and stated that he voluntarily agreed to be the Plaintiff's witness to seek justice.
178. After the closure of PW 3 evidence, the Plaintiff closed his case and the matter proceeded for the Defence case.

C. Defence Case & Evidence.

179. The first Defence witness was Geoffrey Makana Asanyo (DW1).
180. DW 1 introduced himself as a businessman dealing in real estate.
181. DW 1 confirmed to the Court that he had prepared a witness statement dated 26/01/2022 which he sought to fully rely upon as his evidence in chief.
182. In addition to the witness statement, DW 1 also produced the following documents in support of his defence;-
 - a. Defence Exhibit 1- Copy of the Title Deed of the property known as L.R.No.Narok/Transmara/Intona/5 in the name of the 1st Defendant.
 - b. Defence Exhibit 2- Copy of the Title Deed of the property known as L.R.No.Narok/Transmara/Intona/5 in the name of the 2nd Defendant.
 - c. Defence Exhibit 3- Copy of the Agreement for Sale dated 25/03/1992.
 - d. Defence Exhibit 4- Copy of a supplementary affidavit of Messrs Wangui Kimani, Advocate dated 13/02/2017.
 - e. Defence Exhibit 5- Copy of a Forensic Document Examination from the Directorate of Criminal Investigations office dated 27/06/2017.
 - f. Defence Exhibit 6- Copy of a Letter dated 28/04/1993 from Messrs Wangui Kiminai to the Land Registrar, Transmara.
 - g. Defence Exhibit 7- Copy of Transfer Form of L.R.No.Narok/Transmara/Intona/5 from the Plaintiff to the 1st Defendant dated 28/04/1993.
 - h. Defence Exhibit 8- Copy of the Land Control Board Consent of L.R.No.Narok/Transmara/5 dated 03/02/1993.



- i. Defence Exhibit 9- A copy of the Grant of Letters of Administration of the Plaintiff dated 03/03/2011.
 - j. Defence Exhibit 10- Copy of an Affidavit in support of the Grant of Administration dated 07/09/2009.
 - k. Defence Exhibit 11- Copy of a letter from Messrs Wangui Kimani to the Managing Director of Agricultural Finance Corporation dated 25/03/1992.
 - l. Defence Exhibit 12- Copy of the Application of the Land Control Board consent to sub-divide L.R.No.Narok/Transmara/Intona/3.
 - m. Defence Exhibit 13- Copy of a consent to sub-divide the property known as L.R.No.Narok/Transmara/Intona/3 dated 20/02/1992.
 - n. Defence Exhibit 14- Copy of the consent to transfer the property known as L.R.No.Narok/Transmara/Intona/5 dated 03/02/1993.
 - o. Defence Exhibit 15- Copy of the Charge Documents in favour of the Plaintiff dated 07/07/1993.
 - p. Defence Exhibit 16- Copy of the Discharge of Charge dated 18/01/2001 in favour of the Plaintiff.
 - q. Defence Exhibit 17- Copy of a letter dated 24/01/2011 from the 1st Defendant to one Angeline Nkoimo.
 - r. Defence Exhibit 18- Copy of Transfer Form dated 29/05/2018 regarding L.R.No.Narok/Transmara/Intona/5 2from the 1st Defendant to the 2nd Defendant.
 - s. Defence Exhibit 19- Copy of the Green Card of the property known as L.R.No.Narok/Transmara/Intona/3.
 - t. Defence Exhibit 20- Copy of the Green Card of the property known as L.R.No.Narok/Transmara/Intona/5.
 - u. Defence Exhibit 21- Copy of a mutation of the property known as LR.NO.Narok/Transmara/Intona/3 dated 27/02/1993.
 - v. Defence Exhibit 22- Copy of a Ruling in the proceedings known as ELC CASE NO. 23 OF 2017 between the Plaintiff and the 1st Defendant dated 03/03/2017.
183. DW 1 informed the Court that the suit property was not fraudulently acquired as alleged by the Plaintiff.
184. DW 1 stated that the Plaintiff deceased together with the PW 3 had approached him to purchase the entire suit property.
185. DW 1 confirmed that he accepted the offer to purchase the entire property of 400 acres and they visited the offices of Messrs Wangui Kimani, Advocate to facilitate the transaction.
186. Messrs Wangui Kimani, Advocate then proceeded to prepare the said Agreement for Sale which was executed on the 25/03/1992.
187. However, during the preparation of the Agreement for Sale dated 25/03/1992, the Plaintiff expressed an interest also to participate in the acquisition of the suit property.



188. However, the Plaintiff did not have funds and offered another title deed which would be liquidated and pay the sum of KShs 1,200,000/- in the Agreement For Sale dated 25/03/1992.
189. On the other hand, the DW 1 was to pay a total sum of KShs 800,000/- plus the legal fees thereof.
190. DW 1 therefore confirmed that the sum of KShs 10,000/- legal fees was therefore paid by him.
191. DW 1 recollected that the title of LR.NO.Narok/Transmara/Intona/3 was duly procured from the Agricultural Finance Corporation on the basis of an undertaking produced as Plaintiff Exhibit 11.
192. Thereafter, the property known as LR.NO.Narok/Transmara/Intona/3 was sub-divided into L.R.No.Narok/Transmara/Intona/5 and LR.NO.Narok/Transmara/Intona/6.
193. Unfortunately, after the creation of LR.NO.Narok/Transmara/Intona/5, the Plaintiff was not able to raise the required amount of KShs 1,200,000/-.
194. As a result of the Plaintiff's inability to raise KShs 1,200,000/-, DW 1 raised and settled the entire amount with the Vendor.
195. DW 1 stated that the Plaintiff was very aware of this position and that is the reason the suit property was transferred to his name alone.
196. DW 1 informed the Court that a sum of KShs 1,200,000/- was paid to the Vendor Stanley Nkoimo while KShs 850,000/- paid to the Agricultural Finance Corporation.
197. DW 1 referred to the Defence Exhibit 7 which was the transfer Form dated 03/02/1993 of the suit property from the Vendor to the Plaintiff and the 1st Defendant.
198. DW 1 further referred to the Application to the Land Control Board for the transfer of the suit property from the Vendor to the deceased Plaintiff and the 1st Defendant dated 03/02/1993.
199. DW 1 informed the Court that the presence of the deceased Plaintiff was simply for convenience due to the fact that he was one of the members of the Land Control Board.
200. However, after obtaining the Land Control Board consent to transfer the suit property, Messrs Wangui Kimani, Advocate wrote to the Land Registrar, Transmara through Defence Exhibit 6 for the removal of the deceased Plaintiff from the registration documents.
201. DW 1 referred to Defence Exhibit 7 which was the Transfer Form dated 28/04/1993 and confirmed that the entire purchase price of KShs 2,000,000/- was duly received by the Vendor.
202. Similarly, the Stamp duty on the transfer was duly paid on the 04/05/1993.
203. DW 1 confirmed that upon compliance with all requirements, the title to the suit property was issued to him.
204. On the issue of possession, DW 1 testified that the deceased Plaintiff did not take possession of any portion of the suit property.
205. DW 1 informed the Court that the deceased Plaintiff resided about 6 kilometres at a place called Olosmus.
206. DW 1 stated that upon securing the title to the suit property, DW 1 charged the property to Kenya Commercial Bank.
207. DW 1 insisted that there was no dispute between the Plaintiff (prior to his demise) and the 1st Defendant.



208. DW 1 referred to Defence Exhibit 9 and observed that the suit property was never listed as an asset of the demised Plaintiff in their declaration in the Letters of Administrations.
209. DW 1 stated that in the earlier proceedings, the Plaintiff's family could not prove their payment and the interlocutory application was dismissed hence the withdrawal of the suit.
210. On cross-examination by the Plaintiff, DW 1 confirmed that the Agreement For Sale dated 25/05/1992 (Plaintiff Exhibit 4) was for a portion of 400 acres hived off from LR.NO.Narok/Transmara/Intona/3.
211. DW 1 further stated that the Agreement For Sale dated 25/05/1992 (Plaintiff's Exhibit 4) was executed by the deceased Plaintiff and the 1st Defendant as joint purchasers.
212. DW 1 described the deceased Plaintiff as a good friend and one who was well learned.
213. DW 1 informed the Court that prior to the offer for purchase, he did not know the vendor Stanley Nkoimo or PW 3.
214. DW 1 stated that it was the deceased Plaintiff that introduced him to the Vendor Stanley Nkoimo who was the owner of the property LR.NO.Narok/Transmara/Intona/3.
215. DW 1 confirmed that the portion to be purchased was 400 acres at a price of KShs 2,000,000/-.
216. DW 1 testified that he was to pay a sum of KShs 800,000/- plus KShs 50,000/- for the legal fees.
217. On the other hand, the Plaintiff was to pay a sum of KShs 1,200,000/-.
218. Nevertheless, the sum of KShs 50,000/- was not expressly provided in Plaintiff Exhibit 4 as it was his sole duty to settle the same.
219. DW 1 admitted that he did not have any receipts and/or acknowledgement of how he settled the legal fees of KShs 50,000/-.
220. However, DW 1 informed the Court that the Agreement for Sale dated 25/03/1992 obligating him to pay KShs 800,000/- was rescinded and he ended up paying the entire KShs 2,000,000/- for the suit property.
221. DW 1 stated that there was a rescission Agreement but he had not produced the same before the Court.
222. DW 1 on being referred to the Plaintiff's Exhibit 4 confirmed that it did not have any clauses dealing with breach.
223. DW 1 confirmed that the amount of KShs 50,000/- paid at the time of execution was to be held by Messrs Wangui Kimani, Advocate as a stake holder.
224. However, DW 1 stated that he did not have any document or proof to show that he was the one that paid the said amount.
225. Similarly, DW 1 on being referred to Plaintiff Exhibit 4 confirmed that the Legal Fees amounting of KShs 10,000/- was to be shared equally between the two purchasers.
226. On the date of executing Plaintiff Exhibit 4, the Vendor Stanley Nkoimo acknowledged receipt of KShs 10,000/- although there is no proof that it was paid by him.
227. DW 1 reiterated that the original title known as LR.NO.Narok/Transmara/Intona/3 was at that time being held by Agricultural Finance Corporation.



228. DW 1 disclosed to the Court that after execution of the Plaintiff Exhibit 4, he approached Agricultural Finance Corporation and negotiated the Vendor's Stanley Nkoimo liability from KShs 1,500,000/- to KShs 880,000/-.
229. DW 1 thereafter confirmed settlement of KShs 880,000/- to Agricultural Finance Corporation but did not have any records of payment or receipts of the said payment.
230. DW 1 informed the Court that the Plaintiff's inability to pay the sum of KShs 1,200,000/- was not done in writing but expressed to Messrs Wangui Kimani, Advocate and the 1st Defendant orally only.
231. DW 1 stated that the Land Control Boards procured in the year 1993 were through the efforts of the deceased Plaintiff and the Vendor Stanley Nkoimo.
232. DW 1 on being referred to Plaintiff's Exhibits 8 to 15 admitted that the purchasers were the deceased Plaintiff and the 1st Defendant jointly.
233. The Plaintiff's Exhibits 8- 15 dealt with the transaction of sub-division, creation and transfer of LR.NO.Narok/Transmara/Intona/5.
234. In Applications for sub-division and transfer of LR.No.Narok/Transmara/Intona/5 both the Plaintiff and 1st Defendants had executed the said documents.
235. DW 1 denied knowledge of any claim for non-payment by the family of the Vendor Stanley Nkoimo.
236. DW 1 on being referred to Defence Exhibit 6 confirmed that it was Messrs Wangui Kimani, Advocate who requested that the suit property be registered in the name of the 1st Defendant alone.
237. DW 1 stated that there was no reason outlined in the Defence Exhibit 6 giving a basis for the removal of the deceased Plaintiff as an owner of the suit property.
238. DW 1 reconfirmed that the Land Control Board consent to transfer the suit property was issued on the 04/02/1993 in both the names of the deceased Plaintiff and the 1st Defendant.
239. DW 1 unfortunately could not remember the date when the Plaintiff expressed his inability to settle the sum of KShs 1,200,000/-.
240. DW 1 informed the Court that he was not familiar with the procedure of revoking an already issued Land Control Board Consent.
241. According to DW 1, the Defence Exhibit 6 was sufficient and legally allowed to rectify the Land Control Board consent to transfer issued on the 04/02/1993.
242. DW 1 confirmed to the Court that it was upon receipt of the Defence Exhibit 6 by the 3rd Defendant that the suit property was transferred to the name of the 1st Defendant alone.
243. DW 1 on being referred to Defence Exhibit 7 stated that the Transfer Form of the suit property was prepared and witnessed by Messrs Wangui Kimani, Advocate who was the 1st Defendant's personal lawyer.
244. DW 1 informed the Court that there was no Land Control Board consent to transfer that was issued in the name of the 1st Defendant alone by the Vendor Stanley Nkoimo.
245. DW 1 testified that all government duties were duly paid including the Stamp Duty although he did not have the stamp duty payment receipts before Court.



246. DW 1 reiterated that the Title to the suit property (Defence Exhibit 1) was issued in the name of the 1st Defendant on the 05/05/1993.
247. Later on, DW 1 transferred the same to the 2nd Defendant which is the 1st Defendants company as contained in Defence Exhibit 19 on 29/06/2018.
248. DW 1 stated that the 2nd Defendant was incorporated on 26/06/2008 as contained in Defence Exhibit 2 which was three (3) days prior to the transfer from the 1st Defendant.
249. DW 1 on being referred to the Transfer Form (Defence Exhibit 18) stated that he did not pay stamp duty because he was granted an exemption.
250. DW 1 informed the Court that the exemption to pay stamp duty was contained in a Gazette Notice No. 92 but from the face of the Transfer Form could not confirm what it said.
251. DW 1 also could not provide any receipts for the Registration Fees of the Transfer Form from the 1st Defendant to the 2nd Defendant.
252. DW 1 testified that the Transfer Form (Defence Exhibit 18) was drawn and witnessed by Messrs Wangui Kimani, Advocate.
253. DW 1 referred to Defence Exhibit 20 as a copy of the Green Card to the suit property.
254. According to Defence Exhibit 20, DW 1 stated that there was a caution entry which had been registered by the Vinceet Kantet on behalf of the family of the deceased Plaintiff.
255. The Caution was based on purchaser's interest over the suit property but the same was later removed by the 3rd Defendant.
256. DW 1 could not however explain how the caution was removed or present any documents of how the same was vacated.
257. After the cancellation of the caution by Vinceet Kanteet, another son of the deceased Plaintiff known as LEKISHAN LEMUTA registered a second caution still claiming purchaser's interest.
258. However, this second Caution by LEKISHA LEMUTA was also removed but DW 1 could not explain the manner or what documents were used to have the same vacated.
259. DW 1 confirmed that even with the existence of the cautions on the Green Card to the suit property, transfers were still registered by the 3rd Defendant.
260. DW 1 informed the Court that he took possession of the suit property in the year 1993 through fencing of the land and putting up structures for the workers.
261. In addition to the foregoing, DW 1 also stated that he had requested the widow of the Vendor known as Angelino Nkoimo to oversee his occupation on the suit property.
262. DW 1 stated that upon demise of the Plaintiff, the suit property was never declared as one of his assets by the administrators of the estate.
263. On being referred to Plaintiff Exhibit 6, DW 1 confirmed that the said letter was for a facility of KShs 200,000/- in favour of the deceased Plaintiff and was security by a log book of Motor Vehicle Registration No. KAA 016 G.
264. However, DW 1 denied that the funds amounting to KShs 200,000/- were to pay for the purchase price of the suit property and instead were working capital for the deceased Plaintiff.



265. DW 1 denied receipt of the funds amounting to KShs 200,000/- by the deceased Plaintiff and made claim that the Plaintiff's Exhibit 7 was actually a forgery.
266. DW 1 also informed the Court that he did not have any evidence to prove that the deceased Plaintiff was a member of the Land Control Board that approved the transfer of the suit property.
267. DW 1 admitted that throughout the transaction of the suit property, there was no letter that had been issued to the deceased Plaintiff informing him that the title would be registered in the name of the 1st Defendant alone.
268. On being referred to Defence Exhibit 15, DW 1 confirmed that the Charge included the suit property and other properties.
269. DW 1 stated before the Court that PW 3 was never a purchaser of the suit property at any given time.
270. However, on being referred to Defence Exhibit 3, DW 1 admitted that there was a third purchaser whose name was deleted but could not remember who it was.
271. DW 1 informed the Court that the third name deleted appeared on the payment schedule and execution part.
272. In reference to Kilgoris Miscellaneous Application No.2 OF 2022, the parties were the Plaintiff's family and the 1st Defendant.
273. DW 1 testified that this proceeding involved the beaconing of the suit property which the deceased Plaintiff's family wanted to participate but were not necessary parties as they did not have any ownership rights.
274. As regards Narok Elc Case No. 23 OF 2017, the suit was withdrawn before its was heard on merit and/or any judgement pronounced.
275. DW 1 therefore reiterated that in his opinion, the transaction of the suit property was not fraudulent and there was no collusion with the 3rd Defendant as alleged.
276. As regards possession, DW 1 insisted that the suit property had been in his possession since 1993.
277. As regards cross-examination by the 3rd Defendant, there was no question raised.
278. In re-examination, DW 3 reiterated that the suit property had been in his possession since 1993.
279. In reference to Kilgoris Miscellaneous Application No.2 Of 2022, DW 1 stated that the Plaintiff's family was not involved because it was for fixing of the boundary beacons only.
280. DW 1 informed the Court that all the neighbours to the suit property were present during the fixing of the boundary to the suit property.
281. DW 1 reiterated that during the creation of the Charge over the suit property, the bank officers and/or valuers visited the suit property and a valuation done.
282. As regards Plaintiff's Exhibit 7, DW 1 denied that the funds amounting to KShs 200,000/- from National Bank of Kenya were utilised for part payment of the purchase price.
283. DW 1 insisted that the purpose of the facility advanced to the deceased Plaintiff was working capital and not payment of purchase price.



284. DW 1 referring to Defence Exhibit 9 stated that according to the Letters of Administration filed by the Estate of the deceased Plaintiff, the suit property was not listed as an asset which is the correct position.
285. Consequently therefore, the deceased Plaintiff had not filed any claim on the suit property as late as 2011.
286. As regards Defence Exhibit 17, DW 1 confirmed that he authored the said letter as the lawful owner of the suit property authorising the widow of Stanley Nkoimo to help in ensuring that no person trespassed on the same.
287. DW 1 also referred to Defence Exhibit 3 and clarified that the purchasers in the Plaintiff's Exhibit 4 were only the deceased Plaintiff and the 1st Defendant but not PW 3 as alleged.
288. DW 1 further stated that from the face of Defence Exhibit 7, the stamp duty had been affixed thereto which is a confirmation that stamp duty had been duly received and duly registered by the 3rd Defendant.
289. DW 1 informed the Court that the transfer of the suit property required the Land Control Board Consent which was indeed obtained.
290. DW 1 referring to Defence Exhibit 14 confirmed it was executed by the Vendor Stanley Nkoimo and the 1st Defendant.
291. DW 1 indicated that the Vendor's signature appeared on the right while the 1st Defendant's signature appeared on the left.
292. DW 1 stated that the date of the Application for the Land Control Board consent preceded the consent issued on the 14/02/1993.
293. DW 1 informed the Court that this transaction of acquiring the suit property was undertaken by Messrs Wangui Kimani, Advocate who was acting for the Vendor and both Purchasers.
294. According to DW 1 recollection, the Vendor Stanley Nkoimo passed away in 1996 and at the time of his demise, there was no claim of none payment.
295. DW 1 testified that the Vendor's family has never demanded any payment of purchase price from the deceased Plaintiff family.
296. On being referred to Defence Exhibit 3, DW 1 reiterated that the legal fees was KShs 10,000/- which was settled by him.
297. DW 1 further insisted that the deceased Plaintiff voluntarily withdraw from the Agreement for Sale dated 25/03/1993 which required him to pay a sum of KShs 1,200,000/- but could not rise the same.
298. According to DW 1, if the deceased Plaintiff made the said payment, the Advocate would have acknowledged receipt and returned his title.
299. DW 1 stated that he was the only person who raised the sum of KShs 2,000,000/- for the entire purchase price.
300. However, DW 1 did not have any proof of how the KShs 2,000,000/- were duly paid by him to the Vendor.
301. In closing his testimony before the Court, DW 1 was of the opinion that the title issued to the 1st Defendant was genuine and had even used it to secure a financial facility from Kenya Commercial Bank.



302. The Defence Second witness was Advocate Wangui Catherine Kimani (DW2)
303. DW 2 introduced herself an advocate of the High Court of Kenyan having been admitted to the bar in the year 1978.
304. DW 2 confirmed preparing and filing the witness statement dated 20/06/2022 which she adopted as her evidence in chief.
305. DW 2 informed the Court that she would rely fully on the exhibits produced by DW 1 some of which she had authored during the transaction regarding the suit property.
306. DW 2 stated that in the year 1993, the deceased Plaintiff and the 1st Defendant jointly purchased a piece of land through an Agreement for Sale dated 25/03/1992 (Plaintiff Exhibit 4).
307. DW 3 confirmed that the Agreement For Sale dated 25/03/1992 (Plaintiff Exhibit 4) was executed by three parties namely the Vendor Stanley Nkoimo, the deceased Plaintiff and the 1st Defendant.
308. The consideration in the Agreement For Sale dated 25/03/1992 (Plaintiff Exhibit 4) was sum of KShs 2,000,000/- which the 1st Defendant was to pay a sum of KShs 800,000/- in cash.
309. On the other hand, the deceased Plaintiff was to pay a sum of KShs 1,200,000/-.
310. However, the deceased Plaintiff did not have the funds and requested to deposit a title deed which would be held by the Advocate until he secured his portion of KShs 1,200,000/-.
311. DW 2 confirmed that she was the person who inserted the words “title worthy KShs 1,200,000/- “using a pen.
312. Thereafter, DW 2 issued an undertaking to Agricultural Finance Corporation to settle the outstanding liability to the Vendor and the title to LR.No.Narok/Transmara/Intona/3 was released to her.
313. According to DW 2, the payment of KShs 50,000/- referred in Clause 3 of the Agreement For Sale dated 25/03/1992 (Plaintiff’s Exhibit 4) was paid by the 1st Defendant because the deceased Plaintiff did not have any money and this is how the sum of KShs 850,000/- was arrived at.
314. DW 2 confirmed that the undertaking prepared and issued to Agricultural Finance Corporation is what was produced as Defence Exhibit 11.
315. After acceptance of Defence Exhibit 11, Agricultural Finance Corporation released the title to L.R.No.Narok/Transmara/Intona/3 to DW 2.
316. DW 2 also confirmed that the outstanding liability to the Vendor by Agricultural Finance Corporation was renegotiated from KShs 1,500,000/- to KShs 880,000/-.
317. DW 2 stated that after receipt of the title to LR.No.Narok/Transmara/Intona/3, it is the Vendor that undertook the sub-division as indicated in Defence Exhibit 12 dated 14/01/1992.
318. DW 2 testified that the Consent to sub-divide L.R.No.Narok/Transmara/Intona/3 from the Land Control Board was dated 20/02/1992.
319. DW 2 informed the Court that both Defence Exhibit 12 and 13 have been certified by the offices of the 3rd Defence.
320. After the sub-division of L.R.No.Narok/Transmara/Intona/3, the title known as LR.NO.Narok/Transmara/Intona/5 was issued and delivered back to her office for transfer.



321. However, by the time the title to the suit property was brought to DW 2 office, the deceased Plaintiff had not paid his portion of KShs 1,200,000/- as agreed.
322. DW 2 informed the Court that a meeting was convened between the two purchasers and the Plaintiff voluntarily withdrew from the Agreement for Sale dated 25/03/1992.
323. Upon withdrawal of the deceased Plaintiff, DW 2 prepared the Letter dated 28/04/1993 (Defence Exhibit 6) for the 3rd Defendant to register the transfer with only the name of the 1st Defendant.
324. Unfortunately, by the time the deceased Plaintiff was withdrawing from the Agreement For Sale dated 25/03/1992, the Land Control Board Consent to transfer had already been procured on the 04/02/1993 which has been produced as Defence Exhibit 8.
325. DW 2 stated that the Transfer Form of the suit property was executed on the 28/04/1993 produced as Defence Exhibit 7 and registered on 05/05/1993.
326. DW 2 reiterated that the Transfer Form to the suit property was executed only by the Vendor and the 1st Defendant as the deceased Plaintiff had already withdrawn.
327. According to the Transfer Form dated 28/04/1993 (Defence Exhibit 7), the Vendor acknowledged receipt of the entire purchase price of KShs 2,000,000/-.
328. DW 2 informed the Court that the intent of writing the Defence Exhibit 6 was to explain to the 3rd Defendant why the deceased Plaintiff should not be registered as a joint owner of the suit property.
329. This is why the Defence Exhibit No.1 was issued to the 1st Defendant only on the 05/05/1993.
330. DW 2 was then referred to Plaintiff's Exhibit 7 and 8.
331. DW 2 denied that she was the author of the Plaintiff's Exhibit 7.
332. DW 2 informed the Court that when writing figures, her practice was to write amounts as "KSHS 250,000/-" and not "KSHS 250,000".
333. DW 2 also referred to the manner in which the figures in the Plaintiff's Exhibit 4 were written and confirmed them to be in the same manner that was contained in the Plaintiff's Exhibit 7.
334. DW 2 also doubted the signature that appeared in the Plaintiff's Exhibit 7.
335. DW 2 also denied the font in the Plaintiff's Exhibit 7 to be the one used in her office.
336. As regards the Plaintiff's Exhibit 8, DW 2 denied being the author of the said letter.
337. DW 2 again stated that the figures in the letter were written as KSHS 750,000 and not as KSHS 750,000/- which is her practice.
338. Similarly, the Plaintiff's Exhibit 8 did not show the manner in which the funds were paid to her firm.
339. DW 2 informed the Court that her practice is always to acknowledge the manner in which payments are done.
340. DW 2 stated that the Plaintiff's Exhibit 8 was procured as a certified copy in another suit which had been filed in Narok.
341. According to DW 2, the person to certify the said Plaintiff's Exhibit 8 if it was genuine was her office.
342. DW 2 denied being the author of the Plaintiff's Exhibits 7 and 8 which were obtained in the Narok suit.



343. DW 2 testified that from the figures contained in the Plaintiff's exhibits 7 and 8, the total amount was KShs 950,000/- and not the required KShs 1,200,000/-.
344. DW 2 informed the Court that she was surprised by the Plaintiff's claim over the suit property because it was the deceased Plaintiff together with the Vendor that facilitated the registration of the Transfer in favour of the 1st Defendant.
345. DW 2 stated that after the registration of the suit property in the name of the 1st Defendants, neither the Vendor or the deceased Plaintiff ever visited her offices again.
346. DW 2 admitted that at one time, the family of the deceased Plaintiff filed a complaint with the Advocates Complaints Commission but the same was never prosecuted to its logical conclusion.
347. DW 2 indicated that the deceased Plaintiff had not joined her as a Defendant in this suit for any wrong doing.
348. DW 2 stated that if the deceased Plaintiff had any claim in relation to the transaction, then he should pursue the same against the Vendor.
349. DW 2 informed the Court that there was no claim between the Plaintiff and the 1st Defendant and there was no claim lodged against the Vendor's family.
350. DW 2 insisted that the Vendor is the one that transfers a purchased property to the purchaser.
351. On cross-examination, the 3rd Defendant did not have any question for DW 2.
352. On cross-examination by the Plaintiff, DW 2 reiterated that she would rely upon her witness statement dated 20/06/2022 as her evidence in chief.
353. DW 2 admitted to be the one who prepared the Agreement For Sale dated 25/03/1992 (Plaintiff's Exhibit 4).
354. Under Clause 3 in the Plaintiff's Exhibit 4, the name that was deleted by hand was that of PW 3.
355. DW 2 explained that the reason why PW 3 was deleted is based on a misunderstanding that he was one of the Purchasers.
356. However, this misunderstanding was corrected before execution of the Plaintiff's Exhibit 4 and PW 3 name removed.
357. DW 2 nevertheless admitted that she did not countersign on the deleted portions of the Plaintiff's Exhibit 4.
358. As regards the purchaser price, DW 2 reiterated that the purchase price was KShs 2,000,000/-.
359. At the time of execution of the Plaintiff's Exhibit 4, the 1st Defendant paid a sum of KShs 50,000/- but there is no documentary evidence produced in Court to confirm the same.
360. DW 2 stated that at the time of executing the Plaintiff's Exhibit 4, the mother title was encumbered by Agricultural Finance Corporation.
361. However, Clause 8 of the Plaintiff's Exhibit 4 did not describe the said title to have any encumbrance.
362. DW 2 informed the Court that the payment of Kshs 2,000,000/- would be done by the deceased Plaintiff paying KShs 1,200,000/- and the 1st Defendant paying KShs 850,000/-.
363. The figure of KShs 850,000/- to be paid by the 1st Defendant was inserted by a handwriting by DW 2.



364. DW 2 explained that the reason why the figure of KShs 850,000/- was inserted by a handwriting is because the Plaintiff's Exhibit 4 had already been executed.
365. The next clause in the Plaintiff's Exhibit 4 was the one dealing with legal fees which were agreed at KShs 10,000/-.
366. DW 2 testified that the 1st Defendant was the one that paid the full legal fees of KShs 10,000/- although there was no receipt to confirm the payment was done by the 1st Defendant.
367. DW 2 stated that the sum of KShs 50,000/- paid on execution of the Plaintiff Exhibit 4 was held by her office as a stakeholder although there was no express provision to that effect.
368. DW 2 admitted that there has never been an addendum to the Plaintiff's Exhibit 4 because all the handwritten insertions were done in the presence of the deceased Plaintiff and the 1st Defendant.
369. DW 2 informed the Court that the main reason there was no clause for her to hold funds as a stakeholder was because the Vendor collected the KShs 50,000/- immediately upon execution of the Plaintiff's Exhibit 4.
370. DW 2 confirmed that the completion period provided in the Plaintiff's Exhibit 4 was 31/07/1992.
371. DW 2 was then referred to Paragraph 4 of her statement and it confirmed that none of the purchasers had cleared the purchase price.
372. DW 2 further stated that in the same paragraph, the deceased Plaintiff expressed his inability to raise the amount required.
373. DW 2 insisted that this communication was done verbally by the deceased Plaintiff alone.
374. DW 2 informed the Court that she did not find it necessary to prepare any document for the deceased Plaintiff to waive rights over the suit property.
375. DW 2 testified that she was the one that informed the 1st Defendant and the Vendor of the deceased Plaintiff's decision again verbally.
376. DW 2 stated that at the time the deceased Plaintiff communicated his inability to raise his funds, the Defence Exhibit 12 and 13 had already been procured.
377. On being referred to Plaintiff's Exhibit 9 and 10, DW 2 confirmed that the purchasers of the suit property were the deceased Plaintiff and the 1st Defendant.
378. DW 2 testified that the Plaintiff's Exhibit 12 was addressed to the 3rd Defendant and the gist of its contents was to have the name of the deceased husband removed from the ownership of the suit property.
379. DW 2 nevertheless admitted that she was not the one that served and/or delivered the Plaintiff's Exhibit 12 to the 3rd Defendant's office.
380. DW 2 informed the Court that she did not give any reason as to why the deceased Plaintiff was being removed from the ownership of the suit property in the Plaintiff's Exhibit 12 or on whose instructions the letter had been written.
381. Similarly, the Plaintiff Exhibit 12 was never copied neither to the deceased Plaintiff or the 1st Defendant.
382. DW 2 confirmed to be familiar with the [Land Control Act](#) but was not aware that a Consent can be revoked.



383. DW 2 was then referred to Section 8(2) of the [Land Control Act](#) but her view was that this section did not apply in this transaction because there was no dispute between the parties.
384. DW 2 stated that the [Land Control Act](#) did not have any specific provisions on how to remove a person who had been included in a Consent or how to revoke the same.
385. DW 2 confirmed that she was aware Section 10 of the [Land Control Act](#) dealt with issues of Appeals before the Land Control Board.
386. DW 2 testified that upon service of the Plaintiff's Exhibit 12 on the 3rd Defendant, there was no response thereof save that she was given the title to the suit property in the name of the 1st Defendant.
387. On being referred to the Plaintiff's Exhibit 13, DW 2 confirmed that it was a Transfer Form in favour of the 1st Defendant although the same had been inserted by hand.
388. DW 2 denied knowledge of who had inserted the name of the 1st Defendant in Plaintiff's Exhibit 13.
389. DW 2 reminded the Court that at the time of preparation of Plaintiff's Exhibit 13, the law did not require a photographs and/or copies of the Identification Card to be affixed thereto.
390. DW 2 reiterated that there was no consent to transfer the suit property that was issued in the name of the 1st Defendant alone.
391. As appertains the stamp duty, DW 2 stated that the same was paid by the 1st Defendant directly.
392. DW 2 admitted that her role in this transaction was restricted to only preparation and witnessing of the documents but she did not participate in the actual presentation and/or registration of the same.
393. DW 2 further admitted to be the person who prepared and witnessed the transaction documents between the 1st Defendant and the 2nd Defendant.
394. DW 2 informed the Court that at the time of preparing and witnessing the transfer documents between the 1st Defendant and the 2nd Defendant, she was not aware of any cautions on the title to the suit property.
395. On being referred to Defence Exhibit 20, DW 2 confirmed that entry No.8 was a caution registered on 10/03/2016 by the deceased Plaintiff's family seeking purchaser's interest.
396. DW 2 stated that from Defence Exhibit 20, there was no entry vacating and/or lifting the said Caution registered on the 10/03/2016.
397. DW 2 explained that cautions can be removed by the person who lodged them, the Court or the relevant Land Registrar but in this case, she would not explain who removed the said caution.
398. On being referred to Defence Exhibit 18, DW 2 stated that the 1st Defendant was transferring the suit property to the 2nd Defendant.
399. However, there was no seal of the 2nd Defendant on Defence Exhibit 18 to verify the signatures of the directors thereof.
400. DW 2 informed the Court that he had the relevant Resolution from the 2nd Defendant to purchase and transfer the suit property from the 1st Defendant but no documentary evidence has been produced before the Court.



401. DW 2 similarly did not have knowledge of the documents the 2nd Defendant used to apply for the exemption of stamp duty relating to the Transfer Form between the 1st Defendant and the 2nd Defendant.
402. On referring to the Plaintiff's Exhibit 7 and 8, DW 2 doubted the authenticity of both letters.
403. DW 2 denied that the signature on both letters were done by her.
404. Further to that, DW 2 stated that whenever her letters were copied to other persons, the same would have an acknowledgement from the said people.
405. DW 2 stated that when she became aware of the Plaintiff's Exhibits 7 and 8, she made a complaint at Kilimani Police Station although she did not have any Occurrence Book Number with her.
406. DW 2 confirmed to the Court that investigations were actually undertaken but there were no criminal charges preferred against the deceased Plaintiff.
407. DW 2 was also referred to the Plaintiff's Exhibit 11 which she admitted that it was a confirmation letter that the full purchase price had been settled.
408. According to the Plaintiff's Exhibit 11, the Vendor was further requested to come and execute the Transfer Form in favour of the deceased Plaintiff and the 1st Defendant.
409. DW 2 informed the Court that the Plaintiff's Exhibit 11 was copied to both the deceased Plaintiff as well as the 1st Defendant.
410. DW 2 explained that although the deceased Plaintiff had withdrawn from the transaction orally, his name was not removed from the transactional documents until the Vendor and the 1st Defendant consented to it.
411. According to DW 2, the confirmation by both the Vendor and the 1st Defendant to remove the name of the deceased Plaintiff was given around 18/04/1993.
412. DW 2 stated that the letter dated 18/04/1993 was authored after the 1st Defendant paid his last instalment.
413. DW 2 clarified to the Court that the letter dated 18/04/1993 was copied to the deceased Plaintiff so that he would avail his part of the purchase price worth KShs 1,200,000/- or agree to withdraw from the transaction.
414. On being referred to the Plaintiff's Exhibit 3, DW 2 admitted that the name which was deleted was that of PW 3.
415. DW 2 confirmed that she was the author of Plaintiff's Exhibit 3.
416. DW 2 stated that it was not strange to admit some of the Plaintiff's exhibits and deny others.
417. DW 2 nevertheless stated that she did not have a full account of the manner in which the 1st Defendant had paid the entire purchase price of KShs 2,000,000/- on his own but relied on the fact that the Transfer Form done by the Vendor confirmed payment of the same by the 1st Defendant.
418. DW 2 further confirmed that there was never any addendum executed amending the terms of the original Agreement For Sale dated 25/03/1992 (Plaintiff Exhibit 4).
419. DW 2 informed the Court that indeed the family of the deceased Plaintiff filed a Complaint against DW 2 but she was not aware of the outcome from the said complaint.



420. DW 2 denied any wrong doing or professional negligence during the transaction relating to the suit property and insisted that the issue before the Court was squarely between the deceased Plaintiff's family and the 1st Defendant.
421. DW 2 stated the Agreement For Sale dated 25/03/1992 (Plaintiff Exhibit 4) was amended orally or verbally.
422. DW 2 further testified that the Agreement for Sale dated 25/03/1992 (Plaintiff Exhibit 4) did not contain any provisions regarding breach by any party.
423. In any event, DW 2 was of the view that the deceased Plaintiff decision to withdraw from the Agreement For Sale dated 25/03/1992 (Plaintiff's Exhibit 4) was voluntary and not by operation of any breach.
424. On re-examination, DW 2 stated that PW 3 whose name was deleted had never filed any claim in regards to the suit property.
425. DW 2 informed the Court that indeed, there was a consideration to be received from PW 3 whose name was deleted.
426. DW 2 referred to Clause 8 in the Plaintiff's Exhibit 8 and indicated that the portion which was to be hived off the original title and transferred to the deceased Plaintiff and the 1st Defendant was to be free of any encumbrance.
427. DW 2 further confirmed that the signature of the Vendor inserted next to the value of KShs 10,000/- confirmed receipt of the same by the Vendor.
428. DW 2 stated that there was no legal requirement to prepare an addendum to an Agreement if there are any amendments to the original.
429. DW 2 informed the Court that under Clause 5 in the Plaintiff's Exhibit 4, both purchasers were to have paid their portions of the purchase price by 31/07/1992.
430. DW 2 confirmed that the Plaintiff's Exhibits 7 and 8 dated 12/06/1992 and 21/09/1992 were before the completion date of 31/07/1992.
431. DW 2 indicated that the payments contained in the Plaintiff's Exhibits 7 and 8 added up to a sum of KShs 950,000/-.
432. On being referred to Defence Exhibit 12, DW 2 stated that this was a Consent to Sub-divide the original property as required by the [Land Control Act](#).
433. DW 2 confirmed that the Application for sub-division of the mother title was dated on 14/01/1992 and the subsequent consent issued on the 20/02/1992.
434. DW 2 stated that the letter contained in the Plaintiff's Exhibit 12 was addressed to the 3rd Defendant and should not be construed to mean an application for revocation of the Land Control Board consent.
435. DW 2 denied any knowledge of an appeal by the deceased Plaintiff lodged at the Land Control Board.
436. As regards Plaintiff's Exhibit 13, DW 2 admitted that the Transfer Form had a variation in the names of the 1st Defendant but it was not rejected during the registration.
437. DW 2 insisted that the stamp duty for the Transfer Form was duly paid and the affixed stamps acknowledge payment of the stamp duty.



438. DW 2 stated that in the year 2018, the suit property was not encumbered and she was not aware of any caution.
439. DW 2 further stated that prior to 2018, there was no legal requirement that a company seal had to be affixed in witness of the directors' signatures.
440. DW 2 nevertheless confirmed that indeed the 2nd Defendant's director signed the Transfer Form from the 1st Defendant to the 2nd Defendant.
441. As regards the Plaintiff's Exhibit 11, DW 2 stated that this letter should not be construed to mean that the deceased Plaintiff had paid any money.
442. DW 2 reiterated that indeed the Plaintiff's Exhibit 13 shows that the Vendor received the full purchase price as provided in the Plaintiff's Exhibit 4.
443. DW 2 concluded her testimony by stating that if any portion of the Purchase Price had not been paid, then the Vendor would have raised issues and claimed remedies against the purchasers thereof.
444. The Defence third witness was MUCHIRA NGEGE of Service No. 2300060 (DW 3).
445. DW 3 introduced himself a senior police officer who is also a document examiner with 16 years' experience.
446. DW 3 informed the Court that he had trained as a document examiner in various institutions including Ribat University in Khartoum Sudan and at the Directorate of Criminal Investigations Training School.
447. DW 3 stated that one of his core duties is to examine documents that were in dispute.
448. DW 3 testified that on the 19/06/2017, he received a number of exhibits from one Police Constable MARK NJOEI of Service Number 113255 stationed at the offices of the Directorate of Criminal Investigations Offices in Kilimani.
449. The documents handed over to DW 3 were as follows;-
Exhibit A.- Letter dated 21/07/1992 which was a certified copy from Narok Law Court.
Exhibit B- Letter dated 01/07/1992 containing a known signature of DW 2.
Exhibit C1-6- original specimen signatures of DW 2.
450. The instructions were to ascertain if the signature appearing of Exhibit A was made by the same author with the signatures appearing of Exhibit B and Exhibits C1-6.
451. DW 3 confirmed that an examination was duly undertaken on the 27/06/2017 and made the following conclusions; -
- a. The signature appearing of Exhibit A and the specimen signatures on Exhibit C1-6 were made by one and the same person.
 - b. The signature in question appearing on Exhibit A as compared to the signature appearing on Exhibit B were similar in all aspects.
 - c. The similarity between the signatures of Exhibit A and Exhibit B included the diameter length which is unusual.
 - d. Further to that, the fonts in Exhibit A and Exhibit B were different.



- e. Lastly, the prints on the letter head found in Exhibit A and Exhibit B were different.
452. In conclusion therefore, DW 3 was of the view that the signature appearing of Exhibit 1 was a superimposition of the signature appearing on Exhibit 2.
453. DW 3 explained that human beings were not machines and can not reproduce the same signature every time they affixed their signatures.
454. DW 3 stated that even the specimen signatures contained in Exhibit C1-6 varied every time DW 2 appended it.
455. Consequently therefore, DW 3 was of the considered opinion that the signature appearing on Exhibit A was a digital manipulation of the signature appearing on Exhibit B although both signatures were of one and the same person.
456. As regards the Plaintiff's Exhibit 18, DW 3 stated that the methods used by PW 2 could not expose digital manipulation contained in the Exhibit A and Exhibit B.
457. On cross-examination by the Plaintiff, DW 3 informed the Court that he is currently stationed in Tana River.
458. DW 3 informed that he attended Court on the invitation of the 1st Defendant and not court summons by the Court.
459. DW 3 stated that his document examination was done based on instructions from the Directorate of Criminal Investigations Kilimani Office although he could not confirm who the complainant was.
460. DW 3 testified that the complaint had been recorded as O.B NO. 55/12/05/2017 although he did not have the actual Occurrence Book.
461. DW 3 denied that he was a private examiner or investigator and most times, his attendance in Court was based on court summons.
462. DW 3 also stated that he did not have any police file in Court and admitted that his appearance in this suit was not proper under the law.
463. DW 3 confirmed that Exhibit A was the letter which was under dispute and Exhibit B was the letter which was genuine.
464. The contents in Exhibit B were to the effect that DW 2 had received a cheque of KShs 300,000/- from Kenya Commercial Bank Bank from Kwanza Motors Limited which was a part payment for the purchase price of the suit property.
465. DW 3 confirmed that Exhibit B had been signed by DW 2.
466. DW 3 further confirmed that the signature in Exhibit A which was acknowledging a sum of KShs 750,000/- had the signature of DW 2.
467. DW 3 stated that both the signatures on Exhibit A and Exhibit B can be concluded to have been signed by one and the same person.
468. DW 3 indicated that all the documents presented for examination were copies and no originals were availed by the DW 2.



469. DW 3 informed the Court that the Investigating Officer was Police Constable Mark Njoi of Service No. 113255 although the Exhibits had been collected on 17/05/2017 by Police Constable Owino and Mark.
470. DW 3 testified that in the Exhibit Memo Form, there was no date showing when they were procured and similarly, there was no signature of the Investigating Officer.
471. DW 3 clarified that a document examiner would be in a better position to examine a forgery if the originals are availed.
472. DW 3 stated Exhibit A availed for examination was a certified copy by the Narok Law Court which meant that the original could have been within the original file held in Narok Law Court.
473. Nevertheless, DW 3 informed the Court that by practice, they use what has been availed to them by the Investigating Officers.
474. DW 3 admitted that both the Plaintiff's Exhibit 18 and his Report came to the same conclusion that the signatures are of one and the same person save that in Defence Exhibit 5, there is a finding of electronic manipulation of the signature contained in Exhibit A.
475. DW 3 however did not give details of the machine or manner in which the electronic manipulation was done.
476. On re-examination, DW 3 clarified that he had been summoned to attend Court.
477. DW 3 informed the Court that he was not familiar with the 2nd Defendant.
478. DW 3 stated that he was not concerned with the contents of Exhibit A and Exhibit B during his examination exercise.
479. DW 3 confirmed that his mandate was only restricted to the prints and signatures on Exhibit A and Exhibit B.
480. DW 3 reiterated that the signatures of Exhibit A and Exhibit B were from one and the same person.
481. DW 3 was of the view that a photocopy of a document can not change the font style.
482. DW 3 explained that he had to do superimposition to confirm the length and size of the signatures.
483. DW 3 concluded his testimony by stating that at no time can one signature have the same signature or size.
484. The 1st and 2nd Defendant at the end of DW 3 testifying closed their case.
485. The 3rd Defendant informed the Court that they would not call any witnesses or produce any documents and therefore closed their case.
486. The Court file of the proceedings known as Narok ELC CASE NO. 23 OF 2017 was then produced before the Court on the 15/06/2023 by the Honourable Deputy Registrar, Narok ELC on request of the Plaintiff and now forms part of the proceedings.
487. The parties were then directed to file their submissions and based on this direction, the Plaintiff filed his submissions on 30th June 2023 and a further submission on 26th July 2023 while the 1st and 2nd Defendants filed theirs on 24th July 2023.



D. Issues & Determination.

488. The Honourable Court has taken time to peruse the pleadings, the witness testimonies, the documentary evidence produced and the submissions by the parties and in its considered opinion, the issues for determination are as follows; -

Issue No. 1- Is The Plaintiff's Cause Of Action Against The 1st And 2nd Defendants Title Is Time Barred?

Issue No. 2- Based On The Agreement For Sale Dated 25th March 1992, Did The Deceased Plaintiff Contribute To The Purchase Price Of The Suit Property?

Issue No. 3- Was The Deceased Plaintiff Entitled To Be Jointly Registered As One Of The Owners Of The Suit Property?

Issue No. 4- Is The Deceased Plaintiff Entitled To The Prayers Sought In The Amended Plaint Dated 6th October 2020?

Issue No.5- Who Bears The Costs Of The Amended Plaint Dated 6th Of October 2020?

489. The Honourable Court having duly identified the above issues for determination, the same will now proceed to be considered and duly determined as hereinbelow.

Issue No. 1- Is The Plaintiff's Cause Of Action Against The 1st And 2nd Defendants Title Time Barred?

490. The first issue for determination is that of jurisdiction which has been raised by the 1st and 2nd Defendant in their submissions dated 20th July 2023.

491. An issue of jurisdiction in any proceeding is one that has to be determined first before any facts and/or issues can be considered by a Court of law.

492. In the case of Owners Of Motor Vessel "lillian S"-versus- Caltex Oil (kenya) Ltd (1989), the following observation was made as relates to jurisdiction; -

"Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given."

493. Based on the above understanding about the issue of jurisdiction, the issue before the Honourable is whether the Plaintiff's cause of action in the Amended Plaint is time barred and therefore devoid of jurisdiction to be heard and determined.

494. The 1st and 2nd Defendant in their submissions dated 20th of July 2023 have pleaded that the Plaintiff's cause of action in the Amended Plaint is time barred by virtue of Section 7 of the [*Limitation of Actions Act*](#) and therefore this Honourable Court has no jurisdiction to determine the issues therein.

495. The 1st and 2nd Defendant in their submissions dated 20th of July 2023 state that the time within which the Plaintiff was to institute any legal proceedings against the 1st Defendant in regards to the suit property began on the 5th of May 1993.



496. According to the 1st and 2nd Defendant, the deceased Plaintiff was fully aware of the 1st Defendant's registration as the legitimate owner of the suit property from 5th May 1993 when the first title deed was issued.
497. The 1st and 2nd Defendant further submitted that the Plaintiff passed away in the year 2008 without challenging the 1st Defendant's registration of the suit property and therefore the Twelve (12) years period provided under Section 7 of the [Limitation of Actions Act](#) has since passed.
498. In essence therefore, the Plaintiff's claim herein has since been extinguished and this Honourable Court has no jurisdiction to hear and determine the cause of action before it.
499. The 1st and 2nd Defendant further relied on the testimony of PW 1 during cross-examination that the deceased Plaintiff had informed him about the fraudulent registration of the suit property in the name of the 1st Defendant alone and with his exclusion about 2 years prior to his death.
500. Lastly, the 1st and 2nd Defendants also relied on the pleadings known as Narok ELC CASE NO. 23 OF 2016 which was withdrawn after an application for injunction filed by one of the administrators was dismissed.
501. The Plaintiff on the other hand denied the allegation that the cause of action against the 1st and 2nd Defendants was time barred.
502. The Plaintiff relied on the contents of Paragraph 13,15, 16 and 17 of the Amended Plaint which allege the act of fraud on the part of the 1st Defendant during the registration of the suit property from the Vendor.
503. The Plaintiff is of the view that the date to be used in computing time for purposes of Section 7 of the [Limitation of Actions Act](#) should be the year 2016 when the first official search dated 27th April 2016 was procured by the Plaintiff's estate.
504. The Plaintiff further stated that the deceased father was not aware of the fraudulent registration of the transfer in favour of the 1st Defendant before his demise and this act was discovered after the succession proceedings had been initiated.
505. The Plaintiff further submitted that the 1st and 2nd Defendants can not raise the issue of jurisdiction at this point in time because the same had because jurisdiction had been admitted in the Defence and further, the preliminary objection which was subsequently raised on the issue of time limitation was withdrawn.
506. In essence therefore, the 1st and 2nd Defendants waived their right to plead limitation of time against the cause of action before the Honourable Court.
507. In the case of Joseph Muthee Kamau & Another-versus- David Mwangi Gichure & Another (2013) eKLR, the Court made the following finding on jurisdiction-

“We hold that jurisdiction cannot be conferred at the time of delivery of judgment. Jurisdiction does not operate retroactively. Jurisdiction must exist at the time of filing suit or latest at the commencement of hearing.”



508. In another case of Equity Bank Limited-versus- Bruce Mutie Mutuku T/a Diana Tour Travel (2016) eKLR, the Court pronounced itself as follows;-

“It is settled that parties cannot, even by their consent confer jurisdiction on a court where no such jurisdiction exists. It is so fundamental that where it lacks parties cannot even seek refuge under the O2 principle or the overriding objective under the Civil Procedure Act, the Appellate Jurisdiction Act or even Article 159 of the Constitution to remedy the same.”

509. The interpretation of the two cited authorities is that every Court must satisfy itself as to the issue of jurisdiction before it embarks to determine the issues before it whether the parties have consented to jurisdiction or one part has waived its right to raise the issue.

510. In essence therefore, the issue of jurisdiction can not be swept under the carpet even if the 1st and 2nd Defendant withdrawn the Preliminary Objection raising the same and proceeded with the hearing to its conclusion thereof.

511. The Honourable Court’s considered view is that the issue of jurisdiction is one that must be discussed and a determination made.

512. The first argument to be canvassed is that advanced by the 1st and 2nd Defendant who submit that the date for purposes of computing time should be the year 1993.

513. It is indeed not denied by the parties herein that the title to the suit property was issued on the 5th of May 1993 in favour of the 1st Defendant.

514. In other words, the 1st and 2nd Defendant are of the considered view that time began running from the date of issuance of the title to the suit property which is 5th May 1993.

515. In essence therefore, any cause of action by the Plaintiff would become time barred from 5th of May 2005.

516. The 1st and 2nd Defendant further argued that the deceased Plaintiff passed away in the year 2008 and all this time, the 1st Defendant’s title had not been challenged in any way.

517. The 1st and 2nd Defendant informed the Honourable Court that the decision by the estate of the Plaintiff to leave out the suit property in the list of assets provided in the Nakuru Succession No. 1494 Of 2009 dated 7th September 2009 can only mean that the deceased Plaintiff was aware of the 1st Defendant’s registration and had no claim to the same.

518. Further to the above submission, the 1st and 2nd Defendant have sought refuge in the determination the proceedings known as Angeline Nkoimo (suing As The Legal Administrator Of The Estate Of The Late Stanley Nkoimo-versus- Geoffrey Makana Asanyo & 4 Others (2022) unreported where the Court held as follows;-

“I have asked myself when the operation of limitation comes into play in such a situation. I have considered paragraphs 14-16 of the Plaintiff’s Plaint as well as the copy of the Green Card in regard to the suit land and the same are clear that the alleged fraud was committed on the 13th of January 2004 when the 1st Defendant was registered as the proprietor of the suit land. The cause of action against the 1st Defendant therefore arose on the 13th of January 2004.”



519. The 1st and 2nd Defendant despite highlighting this proceeding did not make any submissions on the interlink with the present case.
520. Be as it may, this Honourable Court's understanding is that the cause of action which was under determination was between the Legal Administrator of the Estate of Stanley Nkoimo and the 1st Defendant where the Learned Judge ascertained the cause of action to have arisen on the 13th of January 2004.
521. The Plaintiff on the other hand begin their opposition to the above 1st and 2nd Defendant's submission by stating that the cause of action in the Amended Plaint is one based on fraud.
522. The Plaintiff have relied on the provisions of Section 26 of the *Limitation of Actions Act* which expressly provides as follows:-
- “Where, in the case of an action for which a period of limitation is prescribed, either:
- (a) the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or
 - (b) the right of action is concealed by the fraud of any such person as aforesaid; or
 - (c) the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it:”
523. The interpretation of Section 26 of the *Limitation of Actions Act* by this Honourable Court is that where a litigant has alleged fraud as the cause of action against another party, the date of computation of time under Section 7 of the *Limitation of Actions Act* will only begin when the alleged fraudulent acts were discovered and not when the title under attack was issued.
524. Consequently therefore, the 1st and 2nd Defendants' submission that the date for purposes of computing time under Section 7 of the *Limitation of Actions Act* should be 5th May 1993 when the title of the suit property was issued to the 1st Defendant will not hold water in view of particulars of fraud raised in the Amended Plaint and the provisions of Section 26 of the *Limitation of Actions Act*.
525. The next question therefore is what is the correct date of which this Honourable Court can apply for purposes of computing time and evaluating whether the Plaintiff's cause of action is time barred or not and resolve the issue of jurisdiction?
526. The Plaintiff is of the view that the date for computing time in regards to Section 7 of the *Limitation of Actions Act* should be 27th of April 2016 when the first official search was procured confirming the 1st Defendant's fraudulent actions.
527. While the Plaintiff's reliance of the Official Search dated 27th of April 2016 would be an ideal date for computing time under Section 7 of the *Limitation of Actions Act*, the question in the mind of the Honourable Court is whether this is the correct date to be applied?
528. The 1st and 2nd Defendants are of the view that the deceased Plaintiff was fully aware of the fact that the suit property had been registered in favour of the 1st Defendant on the 5th of May 1993 but the estate of the deceased Plaintiff have disagreed with this position and instead claim to have discovered the fraud through an official search dated 27th of April 2016.



529. First and foremost, for the 1st and 2nd Defendant to pursue this Honourable Court that the deceased Plaintiff was aware of their registration, then the burden of proof was on their shoulders as provided under Section 107 of the Evidence Act, Cap 80 to satisfy this Honourable Court of the deceased Plaintiff's knowledge.
530. So far, the 1st and 2nd Defendants have not shown any documentary evidence or called any witness to collaborate the allegation that indeed the deceased Plaintiff was aware that the suit property was registered in the name of the 1st Defendant from 5th May 1993.
531. The 1st and 2nd Defendants have however referred to the Plaintiff's testimony during cross-examination that the Plaintiff deceased father discussed the issue of the fraudulent registration of the suit property in the name of the 1st Defendant at least 2 years before his demise.
532. If this Honourable Court is to apply the 1st and 2nd Defendant's argument that the date for the discovery of the fraud was to be about two (2) years prior to the demise of the Plaintiff's father in 2008, then the date would now move to the year 2006.
533. However, a perusal of the Plaint dated 7th December 2016 in the proceedings known as Narok ELC CASE NO.23 OF 2017 whose cause of action is similar as that in the present suit, both Plaintiffs who were the legal administrators of the late John Lemuta Naiguran have pleaded that discovery was done in the year 2016.
534. In other words, while the pleadings in both Narok ELC CASE NO.23 OF 2017 and the present suit give the date of discovery of the fraud to be in the year 2016 which is at variance with the testimony of PW 3 during cross-examination.
535. An issue therefore arises on how the Court should handle the evidence of a witness during trial which is at variance with the pleadings filed by the same person.
536. In the case of Independent Electoral & Boundaries Commission & Another -versus- Stephen Mutinda Mule & 3 Others (2014) eKLR which relied on the decision of Adetoun Oladeji (nig)-versus- Nigeria Breweries Plc SC/91/2002, the Court of Appeal made the following finding: -
- “It is settled law that it is not for the courts to make a case of its own or to formulate its own from the evidence before it and thereafter proceed to give a decision based upon its own postulation quite separate from the case the parties made before it.....
- It is settled law that parties are bound by their pleadings.....the court below was in error when it raised the issue contrary to the pleadings of the parties.’
- Adereji, JSC in the same case expressed himself thus on the importance and place of pleadings: -
- “it is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.....
- The Supreme Court as well added its voice on the legal position in a ruling in Raila Amolo Odinga & Another vs. IEBC & 2 others (2017) eKLR.
537. With the guidance of the above determination by the Kenyan Court of Appeal, this Honourable Court can not rely on the testimony of PW 3 to the effect that his deceased father had disclosed to him about the fraudulent acts of the 1st Defendant at least two years before his death.



538. This Honourable Court which is bound by decisions of the Kenyan Court of Appeal as well as the Supreme Court of Kenya has no option but to treat such an averment as a no issue and must disregard the same.
539. The end result therefore is that the submissions that the date from when the computation of time should start running cannot be said to be before the demise of the deceased Plaintiff in the year 2008.
540. In conclusion therefore, this Honourable Court is of the considered view that based on the pleadings and evidence before it, the date upon which time should be computed for purposes of Section 7 of the Limitation of Actions Act should be the year 2016 as contained in the official search dated 10th March 2016.
541. The net effect is that this suit was indeed filed within the prescribed time provided in law which is Twelve (12) years from the date of the discovery of the fraud and this Honourable Court has jurisdiction to hear and determine the issues raised therein.

Issue No. 2- Based On The Agreement For Sale Dated 25th March 1992, Did The Deceased Plaintiff Contribute To The Purchase Price Of The Suit Property?

542. The issue for determination is whether or not the deceased Plaintiff contributed to the purchase price provided in the Agreement for Sale dated 25th March 1992.
543. The Agreement For Sale dated 25th of March 1992 has not be disputed by any party or witness who testified in this proceeding.
544. All the parties and the witnesses confirmed that one of the terms in the Agreement for Sale dated 25th of March 1992 was that the deceased Plaintiff would contribute a sum of KShs 1,200,000/- which would be equivalent to 240 acres of the suit property.
545. The Plaintiff's case is that the sum of KShs 1,200,000/- expected from his deceased father was indeed paid in full and took possession of a portion of land within the suit property.
546. Unfortunately, without any justifiable reason and/or consent of his deceased father, the 1st Defendant with the assistance of the 3rd Defendant effected the Transfer of the suit property without his deceased father name.
547. The Plaintiff is of the view that the 1st Defendant's actions of unilaterally and without any justification removing the name of his deceased father after making his contribution amounted to acts of fraud and therefore the registration of the suit property should be in the joint names of the deceased father and the 1st Defendant.
548. The 1st Defendant on the other hand disputed the Plaintiff's deceased father's contribution in toto.
549. The 1st Defendant's position was that the Plaintiff's deceased father was unable to raise any funds as expected and in fact based on the evidence of DW 2 had elected to withdraw from the entire Agreement For Sale dated 25th March 1992.
550. Consequently therefore, the Plaintiff's deceased father did not have any proprietary interest in the suit property and can not be registered as one of the owners of the suit property.
551. Section 107 (1) and (2) of the Evidence Act, Cap 80 provides as follows:-
1. Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.



2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
552. The Plaintiff in proving his case began by producing the Agreement For Sale dated 25th March 1992 (Plaintiff Exhibit 4).
553. The significance of Plaintiff Exhibit 4 is to confirm the fact that the Plaintiff’s deceased father was indeed one of the purchasers of the suit property.
554. As stated earlier, this fact has also been admitted by the 1st Defendant together with DW 2 who was the Advocate of the transaction.
555. Secondly, the Plaintiff’s Exhibit 4 also spells out the amount of purchase price to be paid by the purchasers as well as their expected contributions on the same.
556. The Plaintiff’s Exhibit 4 provided for a purchase price of KShs 2,000,000/- which was to be contributed by the Plaintiff’s deceased father paying KShs 1,200,000/- which the 1st Defendant was to pay KShs 800,000/-.
557. This fact about the purchase price and the contribution by the purchasers therein has been admitted by all the parties and witnesses.
558. The Plaintiff in proving that his deceased father made his contribution to the purchase price has produced a letter dated 1st July 1992 (Plaintiff Exhibit 7) and the letter dated 21st July 1992 (Plaintiff Exhibit 8).
559. The Plaintiff’s Exhibit 7 is a letter dated 1st July 1992 from the offices of DW 2 confirming receipt of KShs 200,000/- while the Plaintiff’s Exhibit 8 which is the letter dated 21st July 1992 from the offices of DW 2 confirms payment of KShs 750,000/-.
560. The Plaintiff further claims that the sum of KShs 50,000/- which was the deposit on the Agreement For Sale dated 25th of March 1992 was paid by his deceased father on the date of execution.
561. The 1st Defendant has disputed the two exhibits in whole and in particular the payments of KShs 200,000/- as well as KShs 750,000/- provided therein.
562. The 1st Defendant’s claim is that the Plaintiff’s exhibits 7 and 8 are forged letters whose contents should be disregarded as confirmation for the payments indicated therein.
563. The 1st Defendant’s testimony regarding the Plaintiff’s Exhibit 7 and 8 was corroborated by DW 2 who was the advocate in the transaction and DW 3 who was a document examiner from the Directorate of Criminal Investigations.
564. DW 2 testified and informed the Honourable Court that she was the advocate in the transaction relating to the suit property.
565. DW 2 stated that the Plaintiff’s Exhibit 7 and 8 were not letters which emanated from her office because the manner in which the figures were written was contrary to the practice of how she wrote figures in her establishment.
566. DW 2 further stated that the fonts and the layout of the letterheads in the Plaintiff’s Exhibit 7 and 8 were different from the genuine ones that she used at this particular time.



567. The DW 2 informed the Honourable Court that based on these two forged documents produced as Plaintiff's Exhibits 7 and 8, a Complaint was lodged at Kilimani Police Station and recorded as OB.NO.55/12/2017.
568. For purposes of carrying out investigations on Plaintiff's Exhibit 7 and 8, DW 2 also provided a letter dated 1st July 1992 and her specimen signatures for comparison.
569. DW 3 who is a document examiner from the Directorate of Criminal Investigations conducted examinations and produced a Expert Report dated 27th of June 2017 which was marked as Defence Exhibit 5.
570. The observation by DW 3 was to the effect that the signatures on the Plaintiff's Exhibit 7 and 8 were one and same with those appearing on the letter dated 1st July 1992.
571. DW 3 conclusion was that a person can not execute two documents and produce the same signature in character and size hence the signatures appearing on the Plaintiff's Exhibit 7 and 8 were electronical transferred and/or electronically manipulated and placed on the two letters marked as Plaintiff's Exhibit 7 and 8.
572. The Plaintiff in response to the allegations of forgery by the 1st Defendant also commissioned a private document examiner trading in the name of Global Forensic Security Services who using the same documents undertook a second examination of the documents in issue after securing the same from the earlier file known as Narok ELC CASE NO.23 OF 2017.
573. The Plaintiff's witness identified as PW 2 at the end of the examination concluded that the signatures appearing of the Plaintiff's Exhibit 7 and 8 were of one and the same person and thereafter produced a Forensic Document Examination Report dated 12/10/2017.
574. The Honourable Court has gone through the Plaintiff's Exhibit 18 and well as the Defence Exhibit 5 and the conclusions in both exhibits are that the signatures of the Plaintiff's Exhibit 7 and 8 are similar to that on the letter dated 1st July 1992 and the specimen signatures provided by DW 2.
575. The only issue of divergence in the two expert reports is that the report produced as Defence Exhibit 5 has a conclusion that the signatures were electronically imposed and/or transferred onto the letters produced as Plaintiff's Exhibit 7 and 8.
576. The main reason that DW 3 applied in arriving on this conclusion was that the signatures appearing on the Plaintiff's Exhibit 7 and 8 were similar in all aspects and therefore can not be humanly possible for one to reproduce the same signature twice on different documents.
577. On examination of the fonts and the design of the letterheads contained in the Plaintiff's Exhibit 7 & 8 compared to the letter dated 1st July 1993 were different meaning that the documents produced by the Plaintiff had been printed by a different machine from that which printed the letter dated 1st July 1992.
578. Beginning with the issue of electronic manipulation and or transferring of signatures, this Honourable Court is of the considered view that such an act can indeed happen in this age of electronic use and digital creation of documents.
579. However, DW 3 had an obligation to identify the particulars of the similarities which he discovered and relied upon to draw his conclusion.
580. For example, the Honourable Court expected DW 3 to give further and better particulars in the differences in the fonts, the width of the signatures, the space between letters and even the probably the similarity of the dimensions of the signatures which are said to have been electronically manipulated.



581. Unfortunately, DW 3 Document Examination results were silent of these particulars and the conclusion that the signatures of Plaintiff's Exhibit 7 and 8 are electronically manipulated is not based on any scientific evidence thereof.
582. Be as it may, even if the Plaintiff's Exhibit 7 and 8 were to be forged just for argument purposes, this allegation can not lift the burden from the 1st Defendant to prove the manner in which the sum of KShs 2,000,000/- was paid to the Vendor without the Plaintiff's deceased father's contribution.
583. The 1st Defendant and DW 2 have not provided any account of the manner in which the purchase price of KShs 2,000,000/- was paid to the Vendor.
584. Both the 1st Defendant and DW 2 who was the advocate in the transaction simply purported to rely on the Transfer which was produced as Defence Exhibit 5 to confirm payment of the full KShs 2,000,000/-.
585. It is the Transfer Form produced as Defence Exhibit 5 that is being challenged as to be fraudulent as it did not consider the Plaintiff's deceased father's contribution.
586. The Honourable Court is of the view that the figure indicated on the Transfer Form produced as Defence Exhibit 5 simply confirmed the value of the property and not the parties or the manner in which each party contributed towards it.
587. DW 2 in her letter dated 18/05/1992 (produced as Plaintiff Exhibit 5) addressed to the Plaintiff's deceased father wrote as follows:-

“Mr. John Naiguran

PO.BOX 425

Narok

Dear Sir,

RE: Sale Of L.R.No.Transmara/Intona/3

Enclosed herewith please find a copy of Agreement For Sale of the above property duly Signed and stamped for your retention.”

588. The plain and simple interpretation of this letter produced as Plaintiff Exhibit 5 is that John Naiguran was one of the purchasers in the said Agreement For Sale and had not defaulted in terms of meeting his financial obligations thereof.
589. In another letter dated 18/04/1993 which was produced as Plaintiff's Exhibit 11 , DW 2 wrote to the Vendor stating as follows:-

“RE: Transmara/Intona/3

The above matter refers. The last payment of the purchase price for the Sale Agreement dated 25th March 1992 has been duly received. Consequently, kindly present yourself at our offices at your earliest convenience for the purposes of executing transfer documents in favour of the purchasers of the above-mentioned property.

cc. Purchasers.pleadings

590. Once again, in this letter by DW 2 is calling the Vendor to execute the Transfer Documents in favour of the purchasers.



591. The use of the word “Purchasers” both in the body of the letter dated 18/04/1993 as well as the area showing who was copied confirms that there was more than one purchaser to be recorded in the Transfer documents.
592. If as late as 18/04/1993 DW 2 was still referring to two purchasers in her own letters, at what point then did the Plaintiff’s deceased father withdraw from the Agreement For Sale.
593. Both the 1st Defendant and DW 2 have not alleged any forgery to these two letters produced as Plaintiff’s Exhibit 5 or Exhibit 11 and therefore the contents of this letters can be relied upon by this Honourable Court.
594. In essence therefore, looking at the facts and evidence produced during the hearing, this Honourable Court is of the view that the allegations made by the 1st Defendant and DW 2 to the effect that the Plaintiff’s Exhibit 7 and 8 were forged are not tenable and the same are hereby dismissed.
595. Similarly, the allegation that the Plaintiff’s deceased father orally withdraw from the Agreement For Sale for being unable to pay his portion of the Purchase Price has no basis as no such evidence has been tabled before this Honourable Court.
596. Consequently therefore, the Plaintiff herein has satisfactorily proved that his deceased father contributed of at least KShs 950,000/- as provided in the Plaintiff’s Exhibit 7 and 8 towards the purchase of the suit property.

Issue No. 3- Was The Deceased Plaintiff Entitled To Be Jointly Registered As One Of The Owners Of The Suit Property?

597. The next issue for determination is whether the Plaintiff’s deceased father was entitled to be registered as co-owner of the suit property.
598. In the issue hereinabove, this Honourable Court decided that the Plaintiff’s deceased father contributed of at least KShs 950,000/- based on the Plaintiff’s Exhibits 7 and 8.
599. There is a sum of KShs 50,000/- which was paid on the execution date of the Agreement For Sale.
600. This particular amount of KShs 50,000/- is claimed to be paid by the Plaintiff’s deceased father and the 1st Defendant.
601. However, none of them has produced any evidence to prove that the same was paid by one person.
602. Keeping in mind that this Agreement For Sale was executed by both purchasers on the same date, it is only fair and logical that the figure of KShs 50,000/- be shared equally between the purchasers because it was paid but none can prove that he paid the whole of it alone and neither does the Agreement For Sale give particulars of who paid it.
603. The Plaintiff’s position is that his deceased father was involved in the procurement of the completion documents including the sub-division of the original L.R.No.Narok/Transmara/Intona/3.
604. Further to that, the Plaintiff also produced the Consent to Transfer dated 3/02/1993 which was in favour of both the 1st Defendant and the Plaintiff’s Deceased father.
605. These completion documents produced as Plaintiff’s Exhibits 9 and 10 are critical in determining this issue.
606. The reason why these documents are important is the fact that they were the documents which were bespeaking of the Transfer Form which was to be executed by the two purchasers.



607. The Plaintiff's Exhibits 9 and 10 were never objected by the 1st Defendant and/or DW 2 or their validity challenged.
608. In both these documents, the Plaintiff's deceased father was named as co-owner of the suit property.
609. The 1st Defendant and DW 2 explanation to the inclusion of the Plaintiff's deceased father's name was that he was assisting in the procurement these documents from various offices including the Land Control Board.
610. However, the Plaintiff Exhibit 11 which is a letter dated 18/04/1993 counter's this explanation.
611. The letter dated 18/04/1993 which was after the procurement of the Plaintiff's Exhibits 9 and 10 was addressed to the Vendor and read as follows; -

“RE: Transmara/Intona/3

The above matter refers. The last payment of the purchase price for the Sale Agreement dated 25th March 1992 has been duly received. Consequently, kindly present yourself at our offices at your earliest convenience for the purposes of executing transfer documents in favour of the purchasers of the above-mentioned property.

cc. Purchasers.pleadings

612. The highlighted parts of this letter refer to purchasers and not a purchaser.
613. The purchasers from the Agreement For Sale dated 25th of March 1992 were the Plaintiff's deceased father and the 1st Defendant.
614. The point of separation according to the documents between the Purchasers is actually the letter dated 28th of April 1993 which was directed to the Land Registrar, Narok Land Department which was produced as Plaintiff Exhibit 12.
615. In this letter dated 28th of April 1993 and produced as Plaintiff's Exhibit 12, DW 2 wrote as follows;-

“RE: Transfer Of Narok/Transmara/Intona/5

I write to inform you that the above parcel of land is transferred to Geoffrey Makana Asanyo alone and not jointly to Geoffrey Makana Asanyo and John Lemuta Naiguran as indicated in the letter of consent.”

616. The interpretation of this letter dated 28th of April 1993 was that the Plaintiff's deceased father should not be registered as a joint owner of the suit property with the 1st Defendant.
617. The reasons as to why the Plaintiff's deceased father's interests were not to be registered were not outlined in the said letter.
618. Further to that, this letter dated 28th of April 1993 was directing the District Registrar, Narok Land Department to register the suit property in the name of the 1st Defendant while disregarding all the completion documents like the Consent to Transfer secured in the name of the Plaintiff's deceased father and the 1st Defendant.
619. What this Honourable Court is at a loss is which documents apart from the Transfer Form did the 1st Defendant produce to procure the Title in his own name?



620. The 1st Defendant and DW 2 failed to defend the manner in which the suit property was transferred in the name of the 1st Defendant alone without the an Amendment to the Agreement For Sale dated 25th of March 1992 and a rectification of the Land Control Board Consent to transfer the suit property to the name of the 1st Defendant alone.
621. In the case of Dina Management Limited-versus- County Government Of Mombasa & 5 Others, the Supreme Court of Kenya stated as follows;-
- “Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title can not be held as indefeasible.”
622. Based on this holding by the Supreme Court and the facts before this Honourable Court, the 1st Defendant’s actions of writing a letter to the District Registrar, Narok Land Registry directing him/her to register the Transfer Form the name of the 1st Defendant alone and excluding the Plaintiff’s deceased father’s name was unlawful, fraudulent and contrary to the registration process of the suit property.
623. In other words, the suit property should have been registered jointly the names of the Plaintiff’s deceased father and the 1st Defendant as contained in the Agreement For Sale dated 25th March 1992, the Consent to Sub-Divide the property known as L.R.No.Narok/Transmara/Intona/3 and the Consent To Transfer the property known as L.R.No.Narok/Transmara/Intona/5.

Issue No. 4- Is The Deceased Plaintiff Entitled To The Prayers Sought In The Amended Plaint Dated 6th October 2020?

624. The Honourable Court having considered the three issues above and made determinations in favour of the Plaintiff herein, then the reliefs sought in the Plaint filed on the 6th October 2020 should be granted as prayed.

Issue No.5- Who Bears The Costs Of The Amended Plaint Dated 6th Of October 2020?

625. On the issue of costs, the same usually follow the event unless otherwise stated.

Conclusion.

626. In conclusion therefore, this Honourable Court hereby makes the following orders in determination of the Amended Plaint dated 6th October 2020;-
- A. A Declaration Be And Is Hereby Made That John Lemuta Naiguran (deceased) Is The Lawful Owner Of A Portion Of Land Equivalent To A Sum Of Kshs 975,000/- On The Property Known As L.r.no.narok/transmara/intona/5.
 - B. A Declaration Be And Is Hereby Made That The Registration Of The 1st Defendant As The Sole Owner Of The Property Known As L.r.no.narok/transmara/intona/5 Measuring 400 Acres Is Fraudulent And Unlawful.
 - C. A Declaration Be And Is Hereby Made That The Subsequent Transfer Of The Entire Property Known As L.r.no.narok/transmara/intona/5 To The 2nd Defendant By The 1st Defendant Is Irregular, Null & Void.



- D. A Declaration That The Property Known As L.r.no.narok/transmara/intona/5 Measuring Approximately 400 Acres Be Registered In The Joint Names Of The Estate Of John Lemuta Naiguran & Geoffrey Makana Asanyo.
- E. An Order Directing The Sub-county Land Registrar, Transmara West, East & South Be And Is Hereby Issued To Rectify The Register & Title Deed Of The Property Known As L.r.no.narok/transmara/intona/5 Issued On 05.05.1993 To Be In The Joint Names Of The Estate Of John Lemuta Naiguran & Geoffrey Makana Asanyo.
- F. The Costs Of This Suit Shall Be Borne By The 1st Defendant Herein.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 1ST DECEMBER 2023.

EMMANUEL.M.WASHE

JUDGE

In The Presence Of:

Advocate For The Plaintiff: Ms. Mkira

Advocate For The Defendants: Mr. Muiruri

