



M'Itwamwari (Suing as the legal representative of Maria Kanario M'Itwamwari (Deceased)) v Igoki Mutethia Farmers Cooperative Society & 2 others (Environment & Land Case 5 of 1990) [2022] KEELC 3716 (KLR) (4 May 2022) (Ruling)

Neutral citation: [2022] KEELC 3716 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 5 OF 1990**

CK NZILI, J

MAY 4, 2022

BETWEEN

**ALEX M'ITWAMWARI PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE OF MARIA KANARIO
M'ITWAMWARI (DECEASED)**

AND

**IGOKI MUTETHIA FARMERS COOPERATIVE SOCIETY 1ST DEFENDANT
JENIFFER KANARIO (SUED AS LEGAL REPRESENTATIVE OF JAPHET
KARUMA (DECEASED 2ND DEFENDANT
ZIPPORAH MUCHIOKI 3RD DEFENDANT**

RULING

A. Introduction

1. Following an application dated April 6, 2017 and by consent of parties on October 31, 2017, CMCC No 103/2009 and No 603/2010 herein after the 2nd and 3rd file were consolidated with ELC No 5 of 1990 herein the lead file. Parties were ordered to comply with Order 11 Civil Procedure Rules.
2. By a further order dated November 9, 2021 leave was granted to the plaintiff in the lead file to make the necessary amendments to reflect the parties and cases consolidated on October 31, 2017. Parties were also given leave to make any amendments on file additional documents, list of issues and statements within 14 days.
3. Pursuant to those directions, the plaintiff in the lead file filed on November 23, 2021 a consolidated paginated bundle with 101 pages. Similarly, Cornelius Muthuri the defendant in the 2nd file filed a paginated bundle dated October 29, 2018.



B. The lead file

4. By a plaint dated January 11, 1990 Maria Kanario M⁷Twamwari herein after the deceased sued Igoki Mutethia Farmers' co-operative Society Limited, Japhet Karuma and Zipporah Machiuka herein after the 1st, 2nd and 3rd defendants alleging she was a shareholder of the 1st defendant having purchased five shares over the Mutethia farm in Timau area, Parcel No 128 herein after the suit land measuring five acres, paid to the Settlement Fund Trustees all loans and fees to facilitate the issuance of title in her favour and subsequently took vacant possession.
5. It was averred by an agreement dated June 6, 1998 the deceased plaintiff sold the aforesaid plot to Max Joint Purchasers, herein after the defendants in 2nd file presented themselves before the first defendant but refused or neglected to effect the transfer alleging that deceased had allegedly previously sold her four acres of land to the 3rd defendant herein and the plaintiff in the 2nd file and was only left with one acre.
6. It was averred in January 1990, the 1st and 2nd defendants in collusion and under instigation of the 3rd defendant unlawfully resolved or decided that the 3rd defendant was a joint owner with the deceased regarding four acres of land allegedly sold to the 3rd defendant by the deceased and proceeded to enter the name of the third defendant in its register whose effect was to facilitate the submission of the 3rd defendant's name to the Commissioner of lands or District Land Registrar Meru for issuance of a title deed for the four acres allegedly sold to the 3rd defendant by the deceased.
7. It was averred the aforesaid sale was void and null for lack of land control board consent, was illegal and mistaken. The deceased prayed for the invalidation of the sale and the transfer; declaration that she was a genuine owner, general damages and injunction restraining the 3rd defendant from being issued with any title deed, over her property
8. In a defence dated January 30, 1990, the first defendant averred at annual general meeting held at Kiorome chief's camp the deceased acknowledged to its committee members that she had sold four acres being part of Plot No 128 to the 3rd defendant and directed it to effect the transfer in their records under her names and the 3rd defendant as proprietors in common whereby the 3rd defendant was entitled to four acres and her entitlement to one acre thereof hence they effected the changes, subsequent to which it could not honour the sale agreement dated June 6, 1989 between the deceased and the first defendants in the 2nd file.
9. Further, the 1st defendant averred that the *Land Control Act* did not apply to parcels of land administered by the Settlement Fund Trustees but nevertheless denied any loss, damage and prejudice to the deceased.
10. The 2nd defendant averred the transaction complained about was done by the 1st defendant at the deceased request knowledge, consent and without any fraud as alleged or at all.
11. The 3rd defendant averred in 1987, she bought four acres of land from the deceased and paid Kshs 60,000/= subsequent to which a transfer was effected by the 1st defendant by being registered under the joint names of the herself and the deceased.
12. The 3rd defendant averred the sale agreement dated 6.6.1989 between the deceased and the defendants in the 2nd file was entered into fraudulently in order to defeat her right to the four acres of land. Further, the 3rd defendant denied any fraud or illegality, conspiracy with anybody and insisted she bought the suit property from the deceased after she was introduced to her by her son the 2nd defendant and paid full consideration of Kshs 60,000/=.



C. The 2nd file

13. Zipporah Inombabu Isaiah by a plaint dated February 24, 2009 herein after the 3rd defendant in the lead file sued the defendants as owner of Land Registration No. Kirimara/Kithithina/Block 1/152 herein after a subdivision of the plot no 128 for illegal entry, occupation, trespass, erection of some semi-permanent dwellings and cultivation on her land. She sought for eviction orders from her land, general damages for loss of user and mesne profits. In a defence dated June 18, 2009, defendant's averred a suit No HCC 336 of 1991 was pending where the plaintiff was an interested party. They denied that she was a registered owner of the suit and since it had been obtained during the original allottee's demise (the deceased), without her consent, in a fraudulent manner, out of conspiracy and ignorance of their interests, given they had lived on the suit land since 1989 undeterred hence were justified under adverse possession.
14. Further, the defendants denied the plaintiff was entitled to any damages since she had never been on the land or made developments thereon. Lastly, the defendants averred they were entitled to land both as purchasers and on account of adverse possession. By way of a counterclaim, the defendants averred the plaintiff had fraudulently obtained the title sought for its cancellation and reversion to its initial Land Registration No Igoki/Mutethia/128.

D. The 3rd file

15. Mugwika M'Twamwari the legal representative of the deceased in the lead file, alongside the defendants in the 2nd file who had been sold the suit land by the deceased sued the defendant who is also the 3rd defendant in the lead file and the plaintiff in the 2nd file, claiming that the defendant had allegedly fraudulently subdivided the deceased Land Registration No Kirimara/Kithithina1/128 into Parcels No Kirimara/Kithithina/Block 1/562 without the consent of the family of the deceased and while there were pending land cases, they have been in occupation and developed the suit land since 1989.
16. Further, the plaintiffs averred that on November 10, 2009 the defendant illegally and wrongfully trespassed into the suit land, put beacons, demarcated some area with an intention of evicting the 2nd, 3rd and 4th plaintiffs.
17. The plaintiffs prayed for the surrender of the title deed for cancellation and a permanent injunction restraining, alienating, disposing and or interfering with the suit land.
18. In a defence dated January 6, 2011 the defendant denied any fraud but insisted the plaintiffs purchased a different parcel of land if at all they purchased any land and not the suit property herein.
19. The defendant avers he was an innocent purchaser for value without notice in good faith, became legally registered after conducting due diligence on the title documents and lastly denied the court had any jurisdiction to entertain the suit.

E. Evidence

20. PW1 representing the estate of the deceased adopted his witness statements dated July 12, 2011, December 13, 2014 respectively and these statements of Desderio Njeru Benson who passed on April 18, 2021, dated July 12, 2011 and March 1, 2012. He produced documents in the list of documents dated November 23, 2021 contained in the paginated bundle at page 43-59.
21. PW 1 produced a copy of the balloting card for plot No 128 issued by the 1st defendant, a sale agreement. Acknowledgment receipt, correspondence with lawyers, death certificate of the deceased, green card dated February 15, 2020, search certificate for LR No 562, title deed thereof, land control



- board consent letter dated October 29, 2009 and search certificate dated January 29, 2010 indicating the defendant the 3rd file as the owner.
22. Similarly, the PW 1 produced the witnesses state for Desderio Njeru as P Exh17 (a) & (b) and grants for the deceased plaintiff and Desderio Njeru as P Exhs 18-20 respectively.
 23. In cross examination by the 3rd defendant Pw 1 admitted that there used to be HCC No 336 A of 1991 and insisted that through he discovered the land had been illegally allegedly sold to the 3rd defendant, the deceased did not report the alleged fraud to the police.
 24. PW 1 told the court that from the green card, it appeared the subdivisions occurred on December 1, 2004 when Parcel No 128 was divided into Parcel Nos 561 & 562 at the time the owner while this suit was active before court. In his view, the subdivisions were done by the 3rd defendant without the consent or notifications to the deceased family.
 25. Further, the PW 1 told the court the minutes at DO Offices Timau were not reflecting her mother's name. Asked about the sale agreements and the minutes at the District Officer's office, PW1 said there were inconsistencies as to the size of land the 3rd defendant was purchasing and whether her mother was present at the meeting given her name was missing in the list. As regards the plaintiff in CMC No 603/2010, PW1 confirmed he was his elder brother who passed o while P Exhs 5-7 were complaint letters from his deceased mother's lawyers opposing the sale cross-examined by the 1st defendants representative one Michael Mugambi, PW 1 denied that her mother wrote any letter to the 1st defendant's board members authorizing the alleged sale but could not tell which officials were in the office at the time.
 26. DW2 Michael Mugambi, told the court that he was previously a director with the 1st defendant from 1981 up to 1989. He confirmed that the deceased Maria Kanario was a shareholder to the 1st defendant and owner of land in Timau area namely plot No 128. He said he was not at the meeting when the land allegedly sold to the 3rd defendant was approved at the annual general meeting. In his view, the procedure obtained then was that one would write a letter to the board chairman seeking to sell his shares for an approval from the 1st defendant to transfer his shares to the purchaser. He confirmed one Japhet Karuma the 2nd defendant was a onetime chairman of the board between 1989 and 1992. After the letter was written, DW1 stated that a meeting would be convened to approve the sale and transfer of shares. He insisted that there was no meeting in 1987 in which the said chairman the 2nd defendant brought a letter written by the deceased authorizing the alleged sale and transfer. He indicated the deceased's children came to his site office after her death enquiring if he was aware of the alleged sale and transfer.
 27. Asked by Mr Kimaita advocate over his role, DW 1 confirmed he used to be both a manager and a director of the 1st defendant who would file returns with the District Cooperative Officer Meru but could not remember the last annual general meeting held by the 1st defendant. He told the court after sharing the assets, the 1st defendant was liquidated in 1988 but the directors were left to handle members issues and that those that they could not handle were referred to District Cooperative Officer. He admitted there was indication in the defendants bundle at pages 42-49 that an attempt to arbitrate the matter came up and a determination made though he was not privy to the meeting. He however agreed that the defence by the 1st defendant dated July 30, 1990 seemed to indicate they were aware of the sale but denied it.
 28. Posed with some questions by the court, DW1 testified that the Ministry of Cooperatives Development was the one in charge of the liquidation but could not recall the name of the exact officers at the time who would be the custodian of all the minutes, title deeds and instruments relating to the file. He stated



ordinarily, there would be a transfer form duly signed by the parties, thereafter the register of members of the 1st defendant would be crossed and counter signed.

29. DW2 adopted her witness statements dated October 10, 2021 testifying in support of her defence as the 3rd defendant in the lead file, as the plaintiff in the 3rd file and a witness, she produced her list of documents dated December 6, 2011 namely a copy of title deed for Land Registration no Kirimara/Kithithina Block 1/562 issued on December 29, 2005, land control board consent application form dated October 29, 2009, a receipt no 1457948, copy of the transfer dated November 5, 2009, and a copy of title deed issued on November 12, 2009 as P Exhs 1-6 respectively.
30. Further DW2 produced a supplementary list of documents dated October 10, 2011 which included an extract of register in Meru HCCC No 336 A of 1991, produced as D Exh 7 (a) & (b), a copy of transfer of LR No Kirimara/Kithithina Block 1/128 dated August 21, 1992, KRA revenue stamp duty payment serial No 5153368 dated November 12, 2009, a copy of minutes for the arbitration meeting held on January 9, 1990, copy of chamber summons dated January 11, 1990 by the deceased Maria Kanario an official search for Land Registration No Kirimara/Kithithina/Block 1/562 dated May 13, 2009 as D Exh 8-12 respectively.
31. In cross examination by the plaintiff, DW2 confirmed meeting the deceased Maria Kanario on October 24, 1987 after she was notified of the intended sale by 2nd defendant, alleged to have been her son. Dw 3 confirmed she possessed no sale agreement though she knew its importance. As regards P Exh1, Dw 2 said the deceased did not sign it because she had given her son the 2nd defendant, the authority to transact on her behalf, which authority DW2 did not produce before court. DW 2 insisted that they discussed with the deceased and eventually a sale agreement was written and though at paragraph 2 thereof the receiver of the money was someone else even though there was no indication that the 2nd defendant was receiving the money for and on behalf of the seller – the deceased Maria Kanario. DW2 insisted the deceased was present and received the money from the 2nd defendant though her signature or thump print was missing. She denied any collusion since the deceased had given her son the 2nd defendant power, and authority to transact on her behalf.
32. DW2 however admitted that she did not have the transfer form or authority to transfer the said shares to her. As regards the title deed, DW2 admitted the courts had issued an order stopping the processing the same in her favour. DW 2 told the court she followed up at the Nairobi land registry and was referred back to Meru land registry where she was issued with a letter to take to the legal representative for the estate of the deceased one Alex Romano. DW 2 testified that one Kithinji Mugwika informed her that the legal representative had allegedly disappeared. Further DW2 testified that eventually took another letter to the area chief to help trace Alex Romano and notify him to attend the land registrar's office. He nevertheless failed to attend and the land was transferred to her without the presence, consent or approval of the said legal representative or the deceased. DW 2 testified she obtained a land control board consent to subdivide and transfer the land to her. She did not however produce any such copies before the court. She admitted that at the time of the transfer, this suit was still ongoing. She however in 2004 subdivided the suit land notwithstanding the said pendency of the suit. In her view, DW2 told the court she had thought the case was over at the time, after the money was allegedly refunded in HCA No 336 of 1991.
33. As regards possession, DW2 told the court she bought the land for she wanted to live there and that in 1988, she wanted to start cultivating it in 1989, only to find someone else had allegedly cultivated the whole land. She reported to the area chief. Further, DW2 stated that while awaiting for the rains, the deceased resold the land to defendant in the 2nd file and threatened her. She stated she did not secure an injunction since the area chief had assured her that; he would handle the issue matter. To her, the



said people have been there since 1990 after Hon Justice Oguk gave an order for the maintenance of a status quo.

34. As regards the arbitration minutes, DW2 insisted that the deceased was present though was mistakenly indicated as Lucy together with her son PW 1. She said this was the day that she discovered 2nd defendant was not the deceased's own son but a nephew. Further, DW2 stated the deceased was clear she had not given the 2nd defendant any authority to transact on her shares and particularly over any land as indicated in P Exh5. Additionally, DW2 insisted that she registered together with the deceased's regulations only required since the 1st defendant was a title deed to be in five acres though. She did not produce any minutes or requirements from the 1st defendant to that effect. In her view the 2nd defendant wrote to her indicating that the deceased was selling the suit land. Similarly, DW2 said one Alex Romano received the Kshs 60,000/= even though he signed nowhere acknowledging the same following which her names were put in the register of owners and or shareholders by 2nd defendant together with other officials of the 1st defendant.
35. As regards the presence of one Kiumbe at the arbitration meeting, DW2 admitted that he was her witness who even cashed the cheque allegedly paid to the deceased. On the issue of the sale to the defendant in the 3rd file, that DW2 admitted she had sold the land to him without disclosing that there were pending cases since she was not duty bound to do so. In any event according to her, she knew of her entitlement to four acres, out of the suit land.
36. DW2 told the court she took the defendant in the 3rd file to the suit land, told him she owned four acres and eventually they attended the land control board for a consent. DW 2 insisted a dispute only arose in 1989 after the deceased allegedly brought on board other purchasers. She admitted P. Exh.6 was seeking for a compensation after the new purchasers came on board. She denied any interference with the land register while there was a pending court order following the non-appearance of the legal representative of the deceased even though the land registrar was aware that the transferor was deceased.
37. DW3, the defendant in the third file adopted his witness statement dated October 10, 2011 stating he had bought a portion of the suit land from the 3rd defendant in the lead file before a lawyer, visited the land, viewed it but found no one. He however did not seek to know who had planted some crops on it. DW 3 said that the pending cases were not disclosed to him at the time of sale though it would have been better if such disclosure was made by DW 2.
38. He stated he had not taken possession of the land since that time and could not seek for a refund, since the 3rd defendant assured him that the cases were straight forward. DW3 confirmed he had done an official search which established that the title deed was clean. DW3 said he was stopped at the time he tried to take vacant possession by the defendant in the 2nd file.

F. Written Submissions

39. The plaintiff by submission dated March 8, 2022 submitted that the claim was that the deceased plot no 128 was fraudulently subdivided and transferred to the 3rd defendant. It was that submitted the 2nd defendant purporting to be the deceased son and the chairman/secretary of the 1st defendant purported to sell and or remove the deceased name as the sole owner in the register and proceeded to insert the 3rd defendant as a co-owner.
40. It was submitted the only person(s) the deceased sold the land to on June 6, 1989 were the defendants in the 2nd file following which she went to transfer to them the land only to be told by the 1st defendant that she had allegedly sold the land to the 3rd defendant. Subsequent the deceased sent protest letters and moved to court for the cancellation or invalidation of the changes.



41. It was submitted that the purported handwritten sale agreement dated October 24, 1987 held by the 3rd defendant was invalid, lacked any indication if the deceased was the one selling the land or that she had allegedly received any monies from the 3rd defendant. It was therefore submitted, the receiver of the cash and the seller of the four acres was the 2nd defendant and that going by the 3rd defendant testimony in court that they had met severally. It would be inconceivable for the 3rd defendant undertake the transaction over the suit land without a valid sale agreement with the deceased and opt for a third party allegedly in presence of the deceased.
42. The plaintiff submitted such as scenario was clear and indicative that the 1st, 2nd and 3rd defendants were committing and committed fraud with a view of depriving the deceased of her land as an elderly lady hence the reason the 3rd defendant never visited the land or took vacant possession, thereafter.
43. The plaintiff submitted that in spite of lack of a letter from the deceased to the 1st defendant authorizing it to replace her name from the register and put that of the 3rd defendant alongside her and, since it was not in dispute that the 2nd defendant was an official of the 1st defendant, it was possible for the 2nd defendant to assist with the removal of the deceased name in favour of the 3rd defendant without a formal transfer by the deceased. Norm was expected to have countersigned the register indicating an acknowledgment of the sale or any transfer to that effect. This was confirmed by DW1 who was clear that the 1st defendant had not received such request on notification from the deceased, about the sale and transfer of her land to the 3rd defendant.
44. It was submitted that after the 3rd defendant was cornered she changed her story saying she gave the money to the deceased through her alleged son Alex Mwitimi yet initially she had said the 2nd defendant was selling the land on her behalf which by itself was a contradiction given that the deceased was allegedly complaining to her that her children Alex inclusive had disappeared from her home.
45. The plaintiff submitted the arbitration proceedings in which the deceased did not attend indicated the 3rd defendant bought 5 acres yet the sale agreement talked of 4 acres.
46. Given the foregoing the plaintiff submitted that in law one cannot sell what does not belong to him. So, the 3rd defendant could not possibly sell to the 3rd defendant without the consent or authorization from the deceased, in absence of which the defendants were privy, party and active in committing a fraud which the 3rd defendant and perpetuated by it trying to transfer the land to herself and acquire a title deed while the deceased was dead, and a court order was subsisting.
47. Additionally, it was submitted that DW 2 sold the land to the defendant in the 3rd file while the 1st & 2nd files were pending one of which had been brought by herself while they were registered in common with the deceased who was dead with effect from 1996.
48. In a classic case of fraud, it was submitted the 3rd defendant somehow managed to subdivide the land without any grant, consent of the land control board and transfer from signed duly by her co-proprietor. Further, the 3rd defendant was able to get an approved application for land control board and consent on October 29, 1998 the same day before a sale agreement with the defendant Cornelius Muthuri in the 3rd file. It was submitted that in the 3rd file. The only logical conclusion was that Cornelius, gave her a condition to first obtain the consent to prove the land was hers so she could sell it to him.
49. It was submitted that the deceased passed on June 4, 1996, the green card showed that the suit land was subdivided into two portions on December 1, 2004, the beneficiary being the 3rd defendant Land Registration No 562 measuring 5 acres. DW 2 was however unable to explain before the court how



- she managed to do this since a land register could not effect such changes without a full grant from the court which is a clear demonstration that the 3rd defendant was and remains a fraudster per excellence who purported to buy the land from a 3rd party and not the owner, the owner files a case but dies before it could be heard; despite pendency of this suit and an order, where the 3rd defendant is a party, somehow she managed to subdivide the land and transfer to herself and promptly purported to sell the land to the defendant in the 3rd file hence flaunting all the rules of procedure on sale and transfer of land.
50. The plaintiff submitted there was no valid sale between the 3rd defendant and the defendant in the 3rd file since no agreement was produced as per Section 3 (3) Law of Contract Act. Reliance was placed on Samuel Odhiambo Oludhe & 2 others vs Jubilee Jumbo Hardware Ltd & another ELC No 417/2015, Evanson Wambugu Gachugi vs Simon Wainaina Gatwiki & 2 others CA No 5 of 2014, and Daudi Ledama Morintat vs Mary Christine Karie & 2 others [2017] eKLR.
 51. Regarding the issue that the defendant in 2nd file were ordered to receive Kshs 125,000/= in Meru HCCA 336A/1991, it was submitted that no evidence was brought to that effect by the 3rd defendant and therefore it could not affect the plaintiff's right to pursue this claim hence the reason the three filed the 2nd file and produced the sale agreement dated June 6, 1989 plus an acknowledgment receipt dated June 26, 1986 and in which the 3rd defendant purported to evict them in the said court file in 2009 while knowing this lead file was pending.
 52. The plaintiff submitted the court should find the said defendants in the 2nd file bona fide, for value without notice and permanently injunct the 3rd defendant and the defendant in the 3rd file from interfering with the suit land, dismiss CMCC No 103 of 2009 and allow the counterclaim.
 53. In sum, the plaintiff prayed that this suit be allowed with costs.
 54. 3rd defendant in this file who was also the plaintiff in the 2nd file and a defendant in the 3rd file, filed written submissions dated April 8, 2022.
 55. The first point taken was on the production and reliance on the documents produced during the trial following a consent of parties for the same to be admitted without calling the makers.
 56. It was submitted that under Sections 34 & 35 of the Evidence Act, and as regard the arbitration minutes by the district officer Timau of January 9, 1990, the issue as to whether the same were signed or not and if the deceased attended or not, which came up during the hearing goes to the substance of the formal proof of the document.
 57. The 3rd defendant urged the court to find that the said document as falling under Section 34(1) and (2) of the Evidence Act meaning the said minutes should be taken as judicial proceedings where attendees are not required to sign. In essence, the court was asked to find and recognize their presence as enough proof of such presence of the deceased in the said meeting.
 58. As regards the failure to produce a certified copy of the original minutes now christened 'proceedings', the 3rd defendant urged the court to find the answer in Sections 68 (1) (a) (ii), (vi) and 69 of the Evidence Act since the original was possessed by a maker out of reach of the court. It was submitted the said proceedings fall under on Section 34 (1) (a) & (b) and Section 35 (2) (b) of the Evidence Act in which case the witnesses in those proceedings one of which was the 3rd defendant had met the threshold, since some were dead or could not be found without inordinate delay.
 59. As regards DW1 the 3rd defendant submitted it came as a shock when he showed up purporting to give evidence on behalf of a supposedly defunct entity through liquidation and contrary to the 1st defendant's defence.



60. It was also submitted that, DW1 was not a member of the society, an employee, an insolvency practitioner or a person who was in charge of the liquidation at the time. He could not remember several issues hence his evidence should not be relied upon.
61. Coming to the issues for the courts determination, the 3rd defendant submitted the issues for determination are whether the deceased committed any fraud by selling the suit property to the plaintiffs; if Zipporah Isaiah was the rightful owner of LR 128, if Title No's 561 & 52 are indefeasible; if Cornelius Muthuri was the rightful owner of and bonafide purchaser for value and lastly whether the continual occupation by the plaintiffs in the 3rd file over the suit land was fraudulent after they were compensated.
62. On the first issue it was submitted that the plaintiff was accusing the 3rd defendant for fraud yet the deceased was the one guilty of fraud. The 3rd defendant submitted the arbitration proceedings place the deceased at the meeting, in her affidavit sworn on January 11, 1999 she admitted attending the meeting on January 9, 1990 hence any evidence to the contrary by the plaintiff herein was misleading to the court.
63. It was further submitted that fraud refers to a false representation of an existing fact with intention for the other party to act on it who thereafter suffers damage. Reliance was placed on *Gichinga Kibutha vs Caroline Nduku (2018)eKLR*. On whether the 3rd defendant was the rightful owner of Parcel No 128, it was submitted a joint title for 4 acres and 1 acre in the name of the deceased and the 3rd defendant was validly issued following which there was subdivision to LR No 561 and LR No 562. The 3rd defendant submits the injunction order was made on January 25, 1990 as per pages 20-21 of the plaintiff's bundle of documents, the consent over consolidation entered on March 16, 1993 and entry on the green card made on August 23, 2001 issuing a joint title, which was after the injunction order had lapsed following the consent orders hence her title was indefeasible as per Section 26 of the *Land Registration Act*, and that no fraud has been proved other than mere unsubstantiated allegations.
64. As regards illegalities, unprocedureness or acquisition of the title to land through corrupt scheme the 3rd defendant submitted she had never been charged with fraud, nor illegality, undue procedure or corrupt scheme. She submitted that there had been no proof at all of the same including the illegalities over the title, issued on December 29, 2005, land control board consent dated October 29, 2009, transfer to the title by Cornelius Muthuri, as to whether Cornelius Muthuri is the rightful owner of or a bonafide purchaser for value for Land Registration No 562, it was submitted that he undertook due diligence and established that the title was clean going by the certificate of official search dated March 13, 2009 (D Exh12) with no inhibition caution or restrictions.
65. As regards the occupation by the plaintiffs in the 3rd file, the 3rd defendant submitted the same was illegal given they were refunded the purchase price but were creating an impression that they were not paid, took advantage of the stagnation of the case hence prayed for eviction orders, affirmation of her tile deed by dismissing Meru suit especially given neither the plaintiff in the lead file nor the plaintiffs in the 2nd file had bothered to explain the consent in HCCC No 336 A of 1991 that ordered for a refund of the purchase price as regards the sale agreement between the deceased Maria Kanario and them.

G. Issues for determination

66. The court has gone through the pleadings, evidence and written submissions by the respective parties. The issues commending themselves for my determination are: -
 - i. If deceased Maria Kanario sold and transferred her four acres of land to the 3rd defendant



- ii. Whether the land control board was applicable to the transaction
 - iii. If the transfer of four acres of land and the subsequent registration of Land Registration Number 128 in the joint names of the deceased and the 3rd defendant was procedural, lawful and valid.
 - iv. If the entry of the 3rd defendant's name in the register by the 1st defendant and subsequent issuance of title deed under her name was lawful.
 - v. If the sale agreement between the deceased and the plaintiff in CMCC No 603 of 2010 was valid,
 - vi. If the 2nd, 3rd and 4th defendants in 603 of 2010 were refunded their purchase price following the consent judgment entered in Meru HCCC no. 338 of 1991.
 - vii. If the continued occupation of the 2nd, 3rd and 4th plaintiffs in 603 of 1990 on Parcel No 561 is justified.
 - viii. If the 3rd defendant in Meru CMCC No 603 of 2010 is a bonafide and innocent purchaser for value from the 3rd defendant in Meru ELCA No 5 of 1990.
 - ix. If the subdivisions of Land Registration No 1/128 into Parcels No Kirimara/Kithithina Block 1/562 and 561 were regular, valid and lawful.
 - x. If the title deed for Land Registration Number 128 and the subsequent subdivisions and transfers ought to be cancelled, invalidated and or revoked.
 - xi. What is the order as to costs.
67. It is not in dispute that the deceased was a member of the 1st defendant as per P Exh1. The 3rd defendant Zipporah Muchioki Isaiah averred the deceased sold to her and transferred her four parcels of land based on a sale agreement produced as P Exh2, made on October 24, 1987 and the subsequent ratification through P Exh10 said to be minutes for the arbitration meeting held on January 9, 1991 at the district officer's office meeting in Timau.
68. In support of this averment, DW2 produced D. Exh10 and a copy of chamber summons and supporting affidavit dated January 11, 1990 by the deceased.
69. In cross examination by the plaintiff, DW2 admitted it was the 2nd defendant Japhet Karuma, the alleged son of the deceased who had told her that the deceased was disposing of the land after the initial land she intended to purchase became unavailable. She insisted they wrote a sale agreement which the deceased disowned at paragraph 44 of the plaintiff's bundle since she had not signed any such agreement or offered her land for sale to the DW 2.
70. DW2 told the court the deceased had given her son Japhet Karuma the 2nd defendant authority to sell off her land. She also told the court she talked and or discussed with the deceased about the transaction and eventually she gave out the money to the seller as per P Exh2. She admitted that the sale agreement did not indicate whoever took the money did it for and on behalf of the deceased. DW 2 insisted that the deceased received the money she gave for the land from 2nd defendant though she did not thumb stamp or sign anywhere acknowledging receipt of the purchase price.
71. DW2 produced no transfer form or authority from the late Maria Kanario authorizing her to transfer the shares held by the 1st defendant to herself following the alleged sale agreement. DW2 also admitted there was an order issued on January 24, 1990 at page 20 of the plaintiff's bundle which had stopped



- any title deed from being processed or being issued over the suit land. However, DW2 insisted that she did not know there was such an order stopping her from being issued with a title deed since her lawyers on record had not told her about it.
72. Further, DW2 admitted she went to the Nairobi land registry where she was told the files had been returned to Meru Land Registry. Eventually, DW2 testified she visited the Meru land registry and was given a letter to take to Alex Romano, the legal representative of the deceased but upon visiting the deceased home she met one Kithinji Mugwika who told her that Alex Romano had allegedly disappeared from home.
 73. DW2 told the court upon coming back to deceased's the land registrar directed her to the area chief with a letter to trace Alex Romano and inform him to attend the land registry Meru.
 74. DW2 admitted the land was never in the name of the legal representative and upon failing to show up the suit land was transferred to her in absence of the deceased or her legal representative. DW2 told the court she obtained a land control board consent for both the subdivision and transfer. She however did not avail any such documents before the court.
 75. DW2 admitted at the time this was happening this suit was still. DW2 told the court she eventually subdivided the suitland in 2004 despite the pendency of the suit land notwithstanding the deceased was seeking a declaration that the alleged sale to the 3rd defendant was invalid. DW 2 said she was of the view then that once the refund of the money to the plaintiffs in CMCC 603 of 2010, the cases were over. However, at page 92 of the plaintiff's bundle, the court record shows this suit had been deconsolidated and was to proceed on merits.
 76. It is trite law that three essential elements of offer, acceptance and consideration must be in place for a valid contract to exist. See *Halsbury's Laws of England Vol 22 5th Edition* paragraph 308.
 77. Section 3 (3) of the *Law of Contract Act* provides that no suit shall be brought upon a contract for disposition of land or interest thereto unless the same is in writing, signed by all the parties, and the signature of each party is attested by a witness who was present at the signing. This law took effect on June 2003. Prior to this, written evidence by way of memorandum would not save a non-compliant contract.
 78. After 2003, the doctrine of part performance was abolished. The net effect of the amendment was that a contract which did not meet formal requirement set out under Section 3 (3) of the *Law of Contract Act* was a nullity ab initio. See *Leo Investment Ltd vs Estuarine Estate Ltd (2017) eKLR*.
 79. In this suit, it is not in dispute that P Exh1 was not signed by the deceased and that she disowned it all through starting from the chamber summons dated January 11, 1990 and her supporting affidavit sworn on January 11, 1990 herein following which the court granted an injunction dated February 12, 1990.
 80. In the DW2's replying affidavit to the chamber summons sworn on January 23, 1990 she confirmed she gave the money to 2nd defendant and insisted she had dwelt with the deceased and the sale had been endorsed at the arbitration meeting.
 81. In the said affidavits the 3rd defendant however admitted that as at March 1989, she had not been handed over vacant possession. She also admitted knowledge of another sale agreement dated 06.06.1989 with the plaintiffs in the 2nd file.
 82. In her defence dated January 23, 1990, the 3rd defendant stated the 1st defendant had transferred the land to her by registering Plot No 128 in the joint names of the (deceased) and her. It is notable that



- on January 16, 1990 the court granted an order stopping the 1st defendant from submitting the 3rd defendant's names regarding Plot No 128 for the processing of the title deed until the suit was heard and determined.
83. The second limb of the order also stopped the Commissioner for Lands and the District Land Registrar Meru from registering the 3rd defendant as a proprietor or co-proprietor of the said Plot No 128 or from issuing any title deeds in respect thereof until the suit was finally heard and determined or until further orders of the court.
 84. In the replying affidavit sworn on January 23, 1990, the 3rd defendant at paragraph 13 was categorical that if the order dated January 12, 1990 was allowed to stand, she was going to suffer irreparable damages.
 85. In the defence dated February 12, 1990, the 2nd defendant pleaded that the transaction complained about by the deceased was done at her request in full knowledge and was done honestly and without any fraud.
 86. The Law of Contract as at 1989 provided that there must be in existence or a memorandum or note thereof in writing and duly signed by the party to be charged or some other person thereto by him lawfully authorized. In this suit the deceased did not sign P Exh2. She also disowned it under oath. She also disowned the 2nd defendant as her authorized agent or son.
 87. In *Kukul enterprises development Ltd vs Tafazzal H Maloo & 3 others [1993] eKLR*, the Court of Appeal pronounced itself on a similar dispute where only one party had signed an agreement, Muli JA held that the intended agreement was inoperative and unenforceable for lack of execution by the appellant. Kwach JA held an agreement not signed by the appellants or any one authorized by the appellant to sign and where the party had not taken possession of the massionette was an unconcluded agreement both in fact and in law.
 88. In *Leo Investment Ltd Supra Eboso J*, informed by *Kukul Properties dicta* held, it would be against the principles of statutory interpretation to hold that a suit seeking to enforce an unsigned contract for the disposition of an interest in land would be tenable within the existing statutory framework and jurisprudence. The court held that such a suit was a nullity ab initio so long as it sought to enforce an unsigned contract.
 89. The 2nd defendant who is alleged to have witnessed and or had been authorized to undertake the agreement on behalf of the deceased did not testify before this court. He did not sign any affidavit to counter the sworn affidavits by the deceased during her lifetime. His defence therefore stands as mere allegations in absence of evidence in its support to the extent that the sale agreement was done at the request of the deceased and with her full knowledge in an honest manner and without any fraud.
 90. The sale agreement did not specifically state it was with regard to Plot No 128 and or a part of Plot No 128 measuring four acres or there about. It did not define who the owner of the land was at the time of the sale.
 91. Evidence was tendered by PW1 which is consistently repeated is all the deceased affidavits that the 2nd defendant was never her son. So, if the 2nd defendant was never a son to the deceased, the land said to be belonging to the 2nd defendant, Japhet Karuma mother's land and described as Mrs Maria Kanario was by itself a misrepresentation. If at all the deceased, seller was present at the time of the sale agreement and was handed over the monies as alleged by DW2 there was no good reason given why the sale agreement was not written under her name as the vendor of the suit land. Similarly, if the monies



- were handed over to her as DW2 wants this court to believe, nothing would have been easier than to tell the deceased to acknowledge receipt of the purchase price through a note or a memorandum.
92. As regards the signatures it is quite evident the entry shows the 2nd defendant as the receiver of the cash and the seller of the four acres whereas the drawer of the draft was Judah Kiombe. The witness to the sale agreement was not called to corroborate the testimony by the 3rd defendant. The person who should have brought that witness was the 3rd defendant.
 93. The court cannot rewrite a contract. Parties are bound by what they signed. The court cannot rely on parole evidence in interpreting a contract which is in clear terms and conditions. The alleged buyers are described as Godfrey S Muchioka and Zipporah Muchioka. The 2nd buyer was not called to testify if at all he was also the buyer going by the sale agreement. It is also not clear why his name was omitted in the transfer.
 94. Coming to the issue of the transfer of the land from the deceased to the 3rd defendant, the 1st defendant at paragraph 4 of the defence dated January 30, 1990 averred on June 9, 1988 in an annual general meeting at Kiorone chiefs camp the deceased told and acknowledged before the committee members that she had sold her four acres to the 3rd defendant and directed that the sale agreement be given effect by amending the records to have her and the 3rd defendant as proprietors in common at the ratio of 1 acres and 4 acres respectively.
 95. Unfortunately, the 1st defendant did not file or produce any such minutes, entries, resolutions, land control form consent, transfer forms and register of members to confirm the veracity, authenticity, legality and completeness as of those transfers particularly duly signed by the Settlement Fund Officers and the Land Control Board Members. See [*Mwangi Kinyua vs Waweru Kinyanjui and 4 others \(1993\) eKLR*](#).
 96. The 1st defendant and by extension 3rd defendant did not produce before this court any records to show that the regulations and guiding principles regarding the sale and transfer of shares to land were followed in this instance and returns thereof filed with the District Cooperatives Officer as well as at the lands registry Meru following the changes to the register of members and owners of the suit land.
 97. Section 42 of the [*Cooperative Societies Act*](#) provides that any alienation of any immovable property upon obtaining the members resolution the authorized officials shall prepare proper documents to be executed by the chairperson, vice chairperson, honorary secretary, treasurer and thereafter the same would be ratified by a Cooperative Officer within its jurisdiction.
 98. In this suit the defendants produced nothing to show they ever complied with the said law in effecting the above changes to the deceased parcel of land. The suit land was by all intents and means agricultural land which required a land control board consent. The 3rd defendant has pleaded that the suit land was not governed by the Land Control Board Act Cap 302, yet she states she sought and obtained the consent for subdivisions and transfer. It cannot therefore be true that a land control board consent was not required when she alleged got registered as a joint owner with the deceased. My answer to issue numbers 1 and 2 are therefore that there was no valid sale agreement and transfer between the deceased and the 3rd defendant hence the changes to the register to include the 3rd defendant as a co-owner of Plot No 128 by the 1st defendant was irregular, invalid, unprocedural and unlawful. See [*Margaret Muthoni Wanyee vs Mukenia Co-operative society Ltd \(2018\) eKLR*](#).
 99. As regards the 3rd issue the court record indicates an injunction was issued initially on January 12, 1990. Subsequently on January 16, 1990 the order was confirmed the defendants and directed at the Commissioner For Land and the District Land Registrar refraining them from issuing any title deeds until the matter was heard and determined or until a further order was issued by the court.



100. DW2 has testified that she obtained a subdivision and transfer from the deceased while she was dead and without the involvement of the legal representative. DW2 also alleged that she was not aware of any pending order against the issuance of the title deed and for that matter stopping any transaction over the suit land. Unfortunately, the 3rd defendant was all aware of the order going by her own sworn replying affidavit alluded above. It cannot therefore be true that her lawyers never notified her of the same.
101. There is no evidence before this court showing that 3rd defendant sought and obtained a review of the said orders if at all she felt aggrieved by them. The 3rd defendant knew the sale and registration by the 1st defendant over Plot No 128 was disputed and formed the core of the suit herein. The fact that the suits were consolidated did not mean the orders in the respective files and in particular this suit stood discharged. The 3rd defendant knew there was a binding order against her, the defendants and the district land registrar and the commissioner of lands but still went behind it and caused and or obtained a title deed to the land after which she now filed the 2nd file. The order consolidating this suit with HCC 336 A/91 was made on February 11, 1992 long after the order dated January 16, 1990 was issued. Later, on March 25, 1992 parties were ordered to amend their pleadings and March 15, 1993 a consent judgment was entered in HCC No 336 A of 1991 and deconsolidation of this suit made. The 3rd defendant was never a party to HCC A 336 of 1991. The fact that there was a consent judgment entered with the deceased did not mean the claim by the plaintiff against her in this suit then deconsolidated had been withdrawn and or settled in order to give her a legal right to proceed with the subdivisions and transfers in 2004. The deceased passed on in April 1996 and Alex Romano M'Twamwari was appointed the legal representative on November 19, 1996 in HCC Probate and Administration Cause No 237 B of 2003 and thereafter became a plaintiff in this suit on September 22, 2003.
102. In the ruling by William Ouko J as he then was now Supreme Court Judge, on April 28, 2008, the court pointed out that an application dated August 15, 1996, the 3rd defendant had sought that Alex Romano M'Twamwari be appointed the deceased legal representative since she had counterclaimed against the deceased in this suit following which Etyang J allowed the application.
103. Now looking at the copy of the records, the first entry shows the suit land was initially in the name of the Government of Republic of Kenya. Entry no 2 shows on May 23, 2001 it changed to the deceased Maria Kanario Mutuamwari and Zipporah Inombaabu Isaiah the 3rd defendant. A title deed was also issued on August 23, 2005.
104. The 3rd defendant knew the deceased was no more by August 15, 1996 since she filed through her lawyers an application dated August 15, 1996 where she deposed an affidavit on August 22, 1996 confirming knowledge of the same. Out of the application, Alex Romano was appointed a legal representative for purposes of continuing with the suit but not to transfer to her any land. Going by the court's record, it cannot be true and it would be unbelievable of DW2's evidence that she was allegedly told by one Kithinji that the said Alex Romano had allegedly disappeared from home.
105. It is therefore the 3rd defendant who deliberately sought for and obtained a limited grant not to proceed with the suit before this court but to have the document facilitate her with effecting the subdivisions and transfers of the suit land. The 3rd defendant in her affidavit sworn on August 22, 1996 told the court she needed the appointment of the said Alex Romano as a legal representative since she had a counter claim against the deceased's estate. She specifically mentioned the 2nd defendant as the source of the information.



106. In this suit there has been no counter claim brought by the 3rd defendant. As to the question of the arbitration minutes the record shows on October 18, 1994 parties by consent agreed to refer the dispute for arbitration of the district officer Timau by each party procuring two elders and an award to be filed before the court within 90 days. The Deputy Registrar made a follow up letter dated October 18, 1994 to the District Officer Timau. The defendants have submitted that the court should under Section 34 and 35 of the Evidence Act find the minutes by the District Officer Timau falling under exceptions in Sections 34 (1) & (2) of the Evidence Act who after the court order had authority to take evidence on oath, consider the issues and make a determination. Counsel for the defendants urged the court to find the minutes falling under the term proceedings as per Section 34 (2) of the Evidence Act where attendees were required to sign attendance sheet.
107. In other words, the defendants urged the court to find that the deceased attended the meeting. Further the defendants urged the court to accept the minutes notwithstanding that they were not certified in line with Section 68(1) (a) (ii) and Section 69 of the Evidence Act. Section 67 of the Evidence Act which requires that documents must be proved by primary evidence except when the original was a public document under Section 79 or was certified under section 79 (1) (a) (ii) of the Act, or for documents forming part of a public officer legislation or judicial proceedings all which are termed as public documents.
108. In this suit the record shows parties by consent agreed to refer the dispute for arbitration before the District Officer Timau who was to file any award therefrom before the court within ninety (90) days.
109. There is no evidence if any such award was ever brought before the court by the parties for its adoption or consideration. There has no basis laid by the defendants why the original document was not filed and or produced before court, by the maker of the said document both in his private or official capacity.
110. PW1 has denied that his late mother attended the said meeting and where the resolutions were made was as per the alleged content. DW2 insisted that PW 1 was present and her late mother admitted that she had allegedly sold the land to her.
111. In my view the authenticity, veracity and correctness of the said minutes has been in question. The court cannot overlook the effect of the obvious and express provisions of the law. The District Officer was not conducting any judicial proceedings. There was no evidence taken on oath. There was no independent party to the meeting who was called to produce the document as a true official record of what transpired therein. The 3rd defendant did not disclose what attempts she made to procure or trace the original document or access the maker. Therefore, I find the minutes not falling within the exceptions as provided under Section 68 (2) of the Evidence Act guided by the reasoning in Dickson Ngugi Ngugi vs Morrison Njenga Waweru (1979) eKLR. As regards issues numbers 4, 5 and 6 the 2nd, 3rd and 4th plaintiffs in the 3rd file did not lead any evidence in support of their suit. The pleadings remain unsubstantiated in line with Section 107 of the Evidence Act, except what PW 1 testified on his part in support of that claim.
112. In Trust Bank Ltd vs Paramount Universal Bank Ltd and 2 others Nairobi Milimani HCC's No 1243 of 2001, the court held, where a party fails to call evidence in support of its case, that party's pleadings remain mere statements of fact. Additionally, other than the mere allegation by DW3 that a consent judgment was entered and that the 2nd, 3rd & 4th defendants in 3rd file were to be paid Kshs 125,000/=, I find no material to deny or confirm any payments were ever made. See Peter Ngugi Kigira vs Fredrick Nganga Kigira (2021) eKLR.
113. On issue numbers (vi), (vii) and (viii) the court having established there were pending orders against any transaction over Plot No 128 until the final determination of the suit; that there was no confirmed



grant issued over the deceased estate; that the 3rd defendant went ahead despite the pending suits to subdivide and transfer to herself the suit parcel and subsequently sell and transfer the suit parcel to the defendant. In the 3rd file and there being no documentary evidence of the initial land control board consent for both the subdivision and transfers including minutes from the land control board meeting, my findings are that whatever the 3rd defendant did flew against the law, was unprocedural, irregular, null and void.

114. The 3rd defendant did not call any evidence from the land control board, the land registrar or the area chief to substantiate her pleadings that she was lawfully registered, sold and transferred the suit land. Similarly there was no confirmed grant in which the 3rd defendant would have relied upon to subdivide and transfer the land, belonging to a deceased person.
115. *In Re Estate of M'Mbwiria M'Mairanyi (2019) eKLR*, the court held that any transfer of an estate property would be set aside if it was shown that the transferor had not been lawfully issued with a grant or that the purchaser was not an innocent purchaser for value without notice.
116. In *Jane Gachoki Gathecha vs Priscilla Nyawira Gitungu & another (2008) eKLR*, the court held, that under Section 93 (1) the *Law of Succession Act*, a thief acquires no right or interest which was transferable in stolen property since such a transaction would be void ab initio and the property was traceable.
117. Section 45 of the *Law of Succession Act* criminalizes the intermeddling with the estate of a deceased person. *In the matter of Estate of Veronica Njoki Wakagoto (deceased) (2013) eKLR*, the court held that the property of a dead person could not be lawfully dealt with by anybody unless such person was authorized to do so by law and any person who acts to the contrary handles the estate without authority hence was guilty of intermeddling.
118. The 3rd defendant took the path of intermeddling with the suit land when she knew the deceased was dead and that there was a pending suit challenging the alleged sale and transfer of the deceased land. The court record shows the 3rd defendant took a step further and unilaterally sought for a letter of administration, falsely telling the court it was for purposes of furthering this suit. Instead, the 3rd defendant went ahead to represent the same document before the land registrar on the pretext that the said legal representative could not be found. The 3rd defendant eventually succeeded after the said legal representative failed to attend the land registrar's offices.
119. Even assuming the 3rd defendant procured the subdivisions and transfers procedurally, she has not brought before this court, any evidence that her conduct and action was regular, above board and lawful. In order for a land registrar to effect a transfer of a deceased person's land, he must be satisfied that certain documents have been properly executed and produced by the parties concerned. These documents include LR No 19 which is transfer by transmission, LR No 7, transfer by personal representatives to the beneficiaries, P & A 41, Letters of Administration and P & A 54, certificate of confirmation of grant.
120. Further, to enable a conveyance from one person to another there must be, RL – 1 which must be signed by the transferor attested and certified by an advocate. It must also have be accompanied by copies of PIN, coloured pass port size photos signed by both parties and dated. Further there must be an application for the land control board and a letter of consent. All these were documents which the 3rd defendant should have produced before this court for the court to make a finding that her paper trail to the title was lawful, procedural and valid.



121. In *Elijah Makeri Nyangwara vs Stephen Mungai Njuguna & another (2013) eKLR*, the court held for Section 26 (1) (b) of *Land Registration Act* to be operative, the title of an innocent person was impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme.
122. Having found that the deceased had not sold and transferred the suit land to the 3rd defendant as at her death on April 1996; that there was a pending order stopping any transactions over plot No 128 with effect from January 12, 1990, that as at 2001, there was no confirmed grant to any person capable of transferring and or subdividing the suit land to the 3rd defendant even after the deceased passed on, it follows that the title of the 3rd defendant obtained in 2004 and the subsequent subdivisions and transfers thereto were obtained illegally, unprocedurally, and contrary to the existing court orders.
123. I find no evidence going by *Katende vs Haridar & Company Limited (2008) 2 EA 173* that the defendant in the 3rd file was party to any illegalities aforesaid hence is an innocent purchaser. In the premises, the prayers in the lead file are allowed save for general damages which were not proved, while the prayers in the 2nd and the 3rd files are dismissed.
124. Costs in any event to the plaintiff in the lead file to be paid by the 3rd defendant in the lead file for all the suits.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 4TH DAY OF MAY, 2022

In presence of:

Plaintiffs

Karanja for Ngera Mrs. For plaintiff

HON. C.K. NZILI

ELC JUDGE

