



REPUBLIC OF KENYA



Njoroge & 2 others v Lesaloi & 5 others (Environment & Land Case 743 of 2017) [2022] KEELC 14675 (KLR) (2 November 2022) (Judgment)

Neutral citation: [2022] KEELC 14675 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 743 OF 2017
MN GICHERU, J
NOVEMBER 2, 2022
(FORMELY NAIROBI ELC CASE NO. 514 OF 2013)**

BETWEEN

**MOSES CLEMENT MUHIA NJOROGE 1ST PLAINTIFF
JACINTA NYAMBURA MBURU 2ND PLAINTIFF
JAMES NDUNGU KINYANJUI 3RD PLAINTIFF**

AND

**JANE WAITHERA LESALOI 1ST DEFENDANT
JOSEPH GATHAGU KAGIKA 2ND DEFENDANT
ANDRIAN MURITHI 3RD DEFENDANT
JOHN GITAU KIOI 4TH DEFENDANT
DISTRICT LAND SURVEYOR, KAJIADO 5TH DEFENDANT
DISTRICT LAND REGISTRAR, KAJIADO 6TH DEFENDANT**

JUDGMENT

1. Moses Clement Muhia Njoroge, Jacinta Nyambura Mburu and James Ndung'u Kinyanjui referred to as the first, second and third Defendants respectively seek the following reliefs against Jane Waithira Lesaloi, Joseph Gathagu Kagika, Andrian Muriithi, John Gitau Kioi, The District Land Surveyor, Kajiado and The District Land Registrar, Kajiado referred to as the first, second, third, fourth, fifth and sixth Defendants respectively in this judgment.



- i. A declaration that the Plaintiffs are the bonafide registered owners of absolute free hold titles in all those three parcels of land otherwise known as Ngong/Ngong/59355, 59372 and 59356 and that the Defendants' actions are illegal and unlawful.
- ii. An eviction order do issue against the Defendants and any other person in that behalf residing on all those four parcels without lawful permission form the Plaintiffs and the eviction be supervised and effected through the officer commanding Ngong Police Station.
- iii. An order of permanent injunction be issued restraining the 1st, 2nd, 3rd, 4th and 7th Defendants from entering, occupying, digging trenches, demolishing perimeter boundaries, constructing, destroying crops, disposing, offering for sale, selling or otherwise committing any form of waste upon and/or dealing with all those four title deeds.
- iv. An order of permanent injunction be issued restraining the 6th Defendant from entering upon, surveying, resurveying, mutating or otherwise dealing prejudicially with all those four parcels of land.
- v. An order of permanent injunction be issued restraining the 6th Defendant from effecting any alterations, cancellations or in any other manner dealing with the registers of titles in respect of all those four parcels of land referred to above.
- vi. Damages for trespass and loss of user.
- vii. Any other relief and/or direction that this court deems fit and expedient.

This is as per the amended plaint dated October 31, 2015.

2. The Plaintiffs' case is as follows. They are the registered owners of the three parcels which are as follows.

First Plaintiff – LR 59355.

Second Plaintiff – LR 59372.

Third Plaintiff – LR 59356.

They all purchased the suit parcels from the first Defendant and they were issued with title deeds on March 8, 2013 for the first and second Defendants and March 20, 2013 for the third Defendant.

They all complied with conveyancing procedures of recording agreements for sale of land, obtaining the consent of the relevant Land Control Board and execution of the transfer forms.

3. Early in the month of April 2013, the second, third and fourth Defendants invaded the suit premises. They demolished the perimeter fence of barbed wire, destroyed maize and bean crops and dug trenches on the land. They threatened the Plaintiffs with violence.

When the Plaintiffs enquired from the first Defendant why this was happening, they learnt that the suit parcels were the subject of litigation in Tribunal Case No 10/2009, 77/2010 and 78 of 2010 at Kajiado Law Courts.

There was further litigation in High Court Miscellaneous Case No 14/2011 at Machakos. It is then that the Plaintiffs filed this suit to recover their land that they had lawfully bought.

4. In support of their case, the Plaintiffs filed the following evidence.
 - i. Witness statement by the three Plaintiffs.
 - ii. Copies of Plaintiff's identity cards.



- iii. Copy of mutation form for LR Ngong/Ngong/48197.
 - iv. Copy of title deed for LR 48197.
 - v. Copy of Sale Agreement between the first Plaintiff and the first Defendant dated August 17, 2021.
 - vi. Copy of mutation form for LR Ngong/Ngong/48197 which gave rise to the suit parcels.
 - vii. Copy of title deed for LR 59355.
 - viii. Copy of certificate of official search for LR No 59355 dated July 1, 2013 showing the first Plaintiff as the proprietor of the same.
 - ix. 3 photographs showing LR 59355 and developments thereon.
 - x. Copy of letter dated March 22, 2013 talking of site visit to implement court orders dated January 24, 2011 and November 30, 2010. The letter is by the District Surveyor Kajiado.
 - xi. Copy of decree in Land Disputes Tribunal Case No 77 of 2010 at Kajiado in favour of the third Defendant who as to get 2 acres of land from the 14 acres that the first Defendant inherited from Job Kango.
 - xii. Copy of decree in Land Disputes Tribunal case No 10 of 2009, in favour of the second Defendant who was also to get 2 acres to be carved from LR Ngong/Ngong/48197.
 - xiii. Copy of decree in Land Disputes Tribunal Case No 78 of 2010 in favour of the fourth Defendant who was to get 1 acre from the 14 acres that the first Defendant inherited from Job Kango.
 - xiv. Copy of letter dated January 15, 2009 forwarding the award from the Land Disputes Tribunal to the Senior Resident Magistrates Court.
 - xv. Copy of award of the Land Disputes Tribunal Ngong in Tribunal Case No 041/07/08 dated January 15, 2009.
 - xvi. Copy of order dated March 15, 2014 issued in this case.
 - xvii. Copy of order in Miscellaneous Civil Application No 14 of 2011 at Machakos dated February 4, 2011.
 - xviii. Copy of affidavit of service dated April 1, 2014 proving service of the order dated March 15, 2014 on the second, third and fourth Defendants.
 - xix. Copy of letter dated August 9, 2015 written by the Plaintiffs to police headquarters complaining about the failure by the Officer in Charge Police Department Kajiado North, to evict the second, third and fourth Defendants from the suit land.
 - xx. Similar documents by the second and third Plaintiffs.
5. The first Defendant through her counsel on record filed a written statement of defence dated April 6, 2017, in which she denied the claim by the second, third and fourth Defendants that they own any part of LR Ngong/Ngong/8801. She raised the following legal issues against her Co- Defendants.
- Firstly, LR 8801 did not belong to her deceased husband Job Lesaloi Kango. It belonged to her father in law Joseph Leminjor Kango.



Secondly, the second Defendant and his wife Regina W Kagika were ordered by the tribunal to desist from interfering with the first Defendant's land.

Thirdly, the decision of the tribunal was not signed by the chairman who has H Sekanto but by one J Silanke.

Fourthly, the agreement between the second Defendant and Job Lesaloi Ole Kango does not mention the land parcel number that the second Defendant was buying. The same applies to the third and fourth Defendants.

Fifthly, Job Lesaloi Ole Kango did not have capacity to enter into any sale agreement over LR 8801 because he was not the registered owner. The land belonged to his father Joseph Ole Kango who did not donate any power of attorney to his son. In any case LR 8801 did not exist on August 10, 1987.

Sixthly, the second, third and fourth Defendants did not regularize their sale agreements by obtaining consents from the Land Control Board and registration of their parcels in the lifetime of the late Joseph Ole Kango who outlived his son Job Kango by about ten years.

Seventhly, the beneficiaries of the estate of the late Joseph Kango participated in Nairobi High Court Succession Case No 2756 of 2007 and the three Defendants did not take.

They cannot therefore be heard to say that they had an interest in the land they claim which was part of the estate of the deceased.

Eighthly, the first Defendant procedurally subdivided LR 8801 into LR 48196 and 48197 and later to other parcels. The Lower Court orders for a resurvey had then been stayed by the High Court at Machakos.

Ninthly, the second, third and fourth Defendants filed Nairobi ELC 1481 of 2013 against Moses Clement Mutua Njoroge and 6 others which is against the same parties and relates to the same subject matter.

Finally, the first Defendant sold parcels numbers 59355, 59372 and 59356 to the Plaintiffs and since the sales, she has never trespassed upon their land.

6. In support of her case, the first Defendant field the following evidence.
 - i. Her witness statement dated April 6, 2017.
 - ii. Copy of agreement for sale dated September 6, 1989 between Job Lesaloi Ole Kango and Joseph Julius Gathagu Kagika and Regina Wangari Kagika for 2 acres of land to be excised from LR Ngong/Ngong/8801.
 - iii. Copy of certificate of confirmation of grant issued in Succession Cause No 2756 of 2007 (Nairobi) in the estate of Joseph Kango.
 - iv. Copies of certificate of death of Joseph Kango and Job Kango.
 - v. Copy of Title Deed for LR 8801 dated January 25, 1988 in the name of Joseph Leminjor Ole Kango.
 - vi. Copy of title deed for LR 8801 dated February 17, 2010 in the name of the first Defendant.
 - vii. Tribunal award dated December 18, 2008.
 - viii. Copy of letter dated January 15, 2009 by Ngong Land Disputes Tribunal to Senior Resident Magistrate Kajiado.



- ix. Copy of award in Tribunal Case No 041/07/08 dated January 15, 2009.
 - x. Copy of application for development permission dated July 1, 2010 and duly approved by the County Council of Olkejuado.
 - xi. Copy of application for consent to subdivide LR 48197 which is undated.
 - xii. Other documents.
7. The second Defendant through counsel on record filed a defence and counter claim dated January 22, 2018 in which he denies that the Plaintiffs are duly registered as the proprietors of the parcels numbers 59355, 59372 and 59356 averring that the same were obtained fraudulently and unlawfully.

He particularizes the illegalities as follows.

- i. Failure to survey the land or the ground prior to giving the numbers.
- ii. Ignoring the decrees of the Magistrates Court at Kajiado.
- iii. Ignoring the second Defendant's existing proprietary interest claim and actual occupation of the suit land prior to the issuance of the title deeds.
- iv. Failure to pay the stamp duty.

In addition to the above, the second Defendant makes the following averments.

Firstly, the Plaintiffs have never taken actual possession of the suit premises.

Secondly, he has been in possession of the two (2) acres since 1984 having bought the same from Job Lesaloi Kango which is confirmed by a sale agreement dated September 6, 1989.

Thirdly, there is a valid decree obtained in Tribunal Case No 10 of 2009 which has never been set aside.

Fourthly, the 6th Defendant has no jurisdiction in the locality where the suit land is situated.

Fifthly, the first Defendant agreed on July 19, 2015 to transfer 2 acres to Joseph Gathagu Kagika and two acres to Adrian Muriithi but later changed her mind.

Sixthly, the Plaintiffs are trespassers and they should be permanently restrained from the land occupied by the second Defendant.

Seventhly, the decree in Case No 10 of 2019 should take precedence over any other having been issued by a court of competent jurisdiction.

For the above reasons, he prays, in the counterclaim for the following orders.

- a. That a declaration be issued to the effect that title numbers Ngong/Ngong/59355, 59356 and 59572 are irregular and should be cancelled.
 - b. An order that the decree issued in Tribunal Case No 10 of 2009 be implemented.
 - c. Costs of the suit and counterclaim.
 - d. Interest on (c) above.
 - e. Any other relief.
8. In support of his case, the second Defendant filed the following evidence.
- i. Witness statement dated January 22, 2018.



- ii. Copy of sale agreement dated September 6, 1989.
- iii. Copy of letter dated August 15, 2008 written by Sane Advocate to the chairman of Kajiado District Land Tribunal saying that the parties to the agreement for sale of land dated September 6, 1989 signed in his presence and the vendor received the full purchase price.
- iv. Copy of green card for LR 59357 dated March 20, 2015.
- v. Copies of green card for parcels numbers 59348, 59340, 59355, 59356 and 59372.
- vi. Copy of court order in Tribunal Case No 10 of 2009 Kajiado dated August 23, 2013.
- vii. Copy of application for registration of the Court order in respect of parcel numbers Ngong/Ngong/59340, 59341, 59343, 59345, 59346, 59348, 59349 and 59351.
- viii. Copy of receipt No 3244752.
- ix. Copies of register for LR Ngong/Ngong/59340, 59341, 59343, 59345, 59346, 59348, 59349 and 59351 dated 22/12/2014.
- x. Copies of letters written by chief Olkeri sub location, District Officer Ngong dated May 30, 2008, July 9, 2008, September 5, 2008 and September 8, 2008 all recognizing that the second Defendant purchased part of LR 8801 and warning the first Defendant from developing it.
- xi. Copy of letter forwarding the award in TC 041/07/08 to Senior Resident Magistrate Court Kajiado and dated December 18, 2008.
- xii. Copy of award dated December 18, 2008 in Tribunal Case No 041/12/2008 in Tribunal Case No 041/07/08 awarding the second Defendant 2 acres to be carved out of LR 8801.
- xiii. Copy of decree in Tribunal Case No 10 of 2009.
- xiv. Copy of application for consent of Land Control Board dated January 3, 2011 for LR 48197.
- xv. Copy of letter of consent dated January 23, 2011.
- xvi. Copy of receipt dated January 12, 2011.
- xvii. Copy of letter dated January 12, 2011 written by District Surveyor Kajiado saying that the Court Order in (xiii) above would be implemented on February 9, 2011.
- xviii. Copy of order issued in Miscellaneous Application No 14 of 2011 at Machakos staying the decree in Tribunal Case No 10 of 2009 for 21 days. The order is dated February 4, 2011.
- xix. Copy of mutation for LR 48197 approved by the Land Registrar on February 25, 2013.
- xx. Copy of court order dated June 23, 2014 in this case.
- xxi. Copy of letter dated June 10, 2013.
- xxii. Copy of mutation form for Ngong/Ngong/8801 dated January 5, 2010.
- xxiii. Copies of letters dated March 22, 2013 and April 28, 2013 on the implementation of the court orders dated January 24, 2011 and November 30, 2010.
- xxiv. Copy of ruling dated August 16, 2013 issued in Case No 10 of 2009 in favour of the second Defendant.
- xxv. Copy of ruling in this case dated February 20, 2015.



- xxvi. Copy of order dated August 23, 2013 issued in Tribunal Case No 10 of 2009.
 - xxvii. Copy of letter dated April 23, 2015 written by the second and third Defendants to the OCPD Kajiado North complaining of forged court orders and government documents.
 - xxviii. Copy of letter dated July 19, 2015 in which the first Defendants says that she will transfer land that the second and third Defendants bought from her husband Job Kango.
9. The third Defendant and fourth Defendants filed their written statement of defence dated January 23, 2017 through their counsel on record and raised the following issues.
- Firstly, it is averred that the 6th Defendant has no jurisdiction as the land in question is situated in Ngong and not Kajiado.
- Secondly, no proper survey was carried out prior to the issuance of title deeds to the Plaintiffs and whole registration was a sham.
- Thirdly, the first Defendant did not obtain the necessary consent of the Land Control Board before subdividing LR Ngong/Ngong/48197.
- Fourthly, the title deeds issued to the Plaintiffs were so issued when there was an order of the court dated November 16, 2011 forbidding any dealings with the land. There was also a caution placed by the two Defendants.
- Fifthly, the first and third Plaintiffs are not innocent purchasers for value because they bought land that was already occupied by the two Defendants.
- Sixthly, several particulars of fraud are pleaded by the two Defendants as having been committed by the Plaintiffs. They include;
- a. Causing the subdivisions to take place knowing that the 3rd and 4th Defendants had decrees issued by a competent court and that there were valid restrictions in force.
 - b. Undertaking subdivisions when the one initiated by the 3rd and 4th Defendants was on course.
 - c. Issuing numbers which did not exist and without the consent of the Land Control Board.
 - d. Many others.
10. In support of their case, the 3rd and 4th witnesses filed 3 statements by themselves and another one by Joseph Lemaiyan Losaloi all of which are dated January 23, 2018. In addition to the statements the two Defendants filed a total of 32 documents most of which are similar to the ones filed by the second Defendant. I will therefore not enumerate them as this would be mere repetition.
11. The 5th and 6th Defendants filed a written statement of defence dated April 25, 2019. In the said defence, they generally deny the Plaintiffs claim and aver at paragraph 6 that they could not implement the court order in Tribunal Case No 77 of 2010 because LR No 48197 was no longer in existence after having been subdivided into parcel numbers 59340 and 59353.
- The Defendants also deny causing the Plaintiff any loss or damage. They pray for the dismissal of the Plaintiffs case as against them.
- In support of their case, they filed a witness statement by Kebaso W Maengwe, District Surveyor Kajiado in which he says that he could not implement the court orders because of a court order in Machakos High Court which stopped him from implementing them.
- He concludes by saying that he is waiting for orders from this court so that he can comply.



12. At the trial on 26th and April 27, 2022, the three Plaintiffs, the first, third, the fourth Defendants and one Joseph Lemaiyan Lesaloi testified. They were then cross examined by the counsel present.
- The evidence of the second Defendant was admitted with the rider that it was not subjected to cross –examination.
13. Counsel for the parties filed written submissions as follows.
- 5th and 6th Defendants, June 13, 2022.
- Fourth Defendant, July 15, 2022.
- Third Defendant, August 3, 2022.
- Second Defendant, August 25, 2022.
- Plaintiffs, September 22, 2022.
- First Defendant, October 21, 2022.
- A brief summary shows that the Plaintiffs and the first Defendant support the status quo while all the other parties including the Attorney General want the title deeds issued to the Plaintiffs canceled for having been issued unlawfully.
14. I wish to enumerate all the issues raised and deal with each one of them separately.
- The Plaintiffs issues are as follows.
- i. Are the Plaintiffs the valid and legitimate title holders of title numbers Ngong/Ngong/59355, 59372 and 59356?
 - ii. Do the second, 3rd and 4th Defendants bear any legitimate claim against the Plaintiffs in respect to suit parcels?
 - iii. Is there any lawful and legal justification for the second, third and fourth Defendants acts of the trespass on the suit parcels?
15. The first Defendant’s issues are as follows.
- i. Whether the original legal owner of LR Ngong/Ngong/8801 was Joseph Lemenjor Kango?
 - ii. Whether Job Lesaloi Kango had a power of attorney donated by Joseph Lemenjor Kango (deceased) to sell, transfer, subdivide or transact in relation to LR Ngong/Ngong/8801.
 - iii. Whether the second, third and fourth Defendants have a legitimate and justifiable claim against the first Defendant.
 - iv. Whether the first Defendant had the right to subdivide LR Ngong/Ngong/8801.
 - v. Whether the sale agreements between the second, third and fourth Defendants and Job Lesaloi Ole Kango are valid.
16. The second Defendant’s issues are as follows.
- i. Whether the court should adopt the order and resultant decree dated October 25, 2010 as amended via the order dated and issued on November 30, 2010.
 - ii. Whether the Plaintiffs were bona fide purchasers for value and should be protected as such.
 - iii. Who should bear the costs of this suit.



17. The third Defendant's issues are as follows.
 - i. Whether the Plaintiffs' prayers should be granted.
 - ii. Whether the decree issued in Land Tribunal Application No 77 of 2010 is valid and enforceable.
 - iii. Who should bear the costs of this application.
18. The fourth Defendants issues are as follows.
 - i. Whether the subdivision and transfer giving rise to titles in possession of the Plaintiffs were unlawful, fraudulent and/or irregular and void ab initio.
 - ii. Whether the decree issued in Land Tribunal Application No 78 of 2010 is valid and enforceable.
 - iii. Whether the Plaintiffs are entitled to the prayers sought.
19. The issues raised by the fifth and sixth Defendants are as follows.
 - i. Whether the Plaintiffs are entitled to the prayers sought.
 - ii. Who should bear the costs of the suit.

20. I have carefully considered all the evidence adduced by all the parties in this case including the witness statements, the documents and the oral testimony in open court at the trial.

I have also considered the submissions by learned counsel for the parties, the issues raised therein and the case law cited.

I have borne in mind the burden on the Plaintiffs to prove their claim on a balance of probabilities. The second, third and fourth Defendants have a similar burden as regards their counter claims.

Before I consider the issues, I wish to make a fundamental finding in this case. I find that the second, third and fourth Defendants are in occupation of the parcels of land that they claim. In this regard, I believed their evidence which I found consistent and credible. This evidence was corroborated by the pictures that I saw including the structures, fence and crops.

The Plaintiffs' own prayers at paragraphs 20(2) of the plaint dated April 30, 2013 and 20(2) of the amended plaint dated October 31, 2015 are further proof that the said Defendants were in possession at the time of filing the suit.

The prayer is for an order of eviction.

From the above, I am satisfied that they occupied the suit land as soon as they purchased it. In the case of the second Defendant, I believe and find that he occupied his before the date of the agreement. His evidence is that he occupied his land in 1984.

The evidence by the three Defendants on occupation was not controverted by any credible evidence from the Plaintiffs or the first Defendant. It was also not shaken in cross-examination.

Coming to the issues, I make the following findings.

On the first of the Plaintiffs' issues, I find that the Plaintiffs are not valid and legitimate title holders of the three suit parcels.

There are many reasons for this.



Firstly, when the Plaintiffs purported to buy the suit land, the second, third and fourth Defendants were already in occupation. That is why the Plaintiffs wanted the occupants evicted.

Under Section 28(b) of the [Land Registration Act](#), it is provided as follows.

Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for time being subsist and affect the same, without being noted on the register-

(b) trusts including customary trusts'.

The Registered Land Act (Cap 300) now repealed had a similar provision in Section 30(g) where it provided as follows.

Section 30 (g).

Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without being noted on the register-

g. The rights of a person in possession or actual occupation of land to which he is entitled in right only of such possession or occupation, save where inquiry is made of such person and the rights are not disclosed'.

According to Concise Oxford English Dictionary override has the following meanings.

- i. Use ones authority to reject or cancel.
- ii. Interrupt the action of.
- iii. Be more important than.
- iv. Overlap.
- v. Travel and move over.

My understanding of this is that the rights of a person in possession of land are more superior to those of a person with a title deed even if the rights of the person in possession or actual occupation are not noted in the register.

In this case the rights of the second, third and fourth Defendants are superior to those of the Plaintiffs.

In the case of [Isaack M'Inanga Kiebia and Isaya Theuri M' Lintari and Isack Ntongai M' Lintari, Supreme of Kenya Petition No 10 of 2015](#), it was held inter alia at paragraph 58 'it is now clear that customary trusts, are overriding interests. These trusts, being overriding interests, are not required to be noted in the register'.

The facts in this case are similar to the facts of the above case. The Respondents had only possession and no title yet their possession was found to be superior to the title deeds held by the Appellant.

Secondly, the three Defendants enjoy an order that has never been set aside. This is order made in Tribunal Case No 10 of 2009 and the other one made in Case No 77 of 2010.

The best the first Defendant did was to stay the said orders for 21 days. The order dated February 4, 2011 in Miscellaneous Application No 14 of 2011 at the High Court of Kenya at Machakos said at



paragraph 4, ' that the said Notice of Motion to be filed as provided for in the rules. Order 53, Rule 3(1) of the [Civil Procedure Rules](#) provides as follows.

Where leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application shall be made within 21 days by Notice of Motion to the High Court'.

Neither the Plaintiffs nor the first Defendant have adduced any evidence to prove that they filed the substantive motion within 21 days as required by law. This means that the stay lasted until February 25, 2011. The stay then lapsed. The Plaintiffs' title deeds having been obtained in 2013, were so obtained contrary to orders of the tribunal.

On the second of the Plaintiffs' issues, I find that the second, third and fourth Defendants have legitimate claims against the Plaintiffs because they enjoy overriding interests under Section 28 (b) of the [Land Registration Act](#).

On the third of the Plaintiffs issues, I find that the three Defendants did not trespass on the suit land for the reasons already given.

Regarding the first Defendant's issues, I find that the original legal owner of LR 8801 was indeed Joseph Lemenjor Ole Kango.

On the second issue, I find that Job Lesaloi Ole Kango did not have any power of attorney donated by Joseph Leminjor Ole Kango to deal with LR 8801 in any way.

On the third issue, I find that the second, third and fourth Defendants have a legitimate and justifiable claim against the first Defendant for two reasons.

Firstly, the first Defendant did not inherit LR No 8801 from Joseph Lemenjor Ole Kango in her own right but because she was the widow of Job Lesaloi Ole Kango who was a son of Joseph Lemenjor Ole Kango.

Unfortunately, Job Lesaloi Ole Kango died about ten years before his father Joseph Lemenjor Ole Kango. Had Job Lesaloi outlived his father, he would have been the beneficiary of the estate of this father. The first Defendant would have had no such right.

Secondly, the three Defendants enjoy overriding interests under Section 28(b) of the [Land Registration Act](#). Those rights were created by Job Lesaloi Ole Kango when he took money from the three Defendants and when he allowed them to occupy the suit parcels.

On the fourth issue, I find that the first Defendant did not have any right to subdivide LR 8801. She had been forbidden by a court order issued pursuant to the order of the tribunal.

On the fifth issue, I find that the sale agreements between the three Defendants are valid because they were confirmed by Sane Advocate as having been made in his presence.

In addition to the above, they were validated by the decision of the tribunal.

When it comes to the second Defendant's issues, I find that this court should uphold the orders of the Tribunal giving the second, third and fourth Defendants land.

On the second issue, I find tht the Plaintiffs are not bona fide purchasers for value and they should not be protected.

I will decide on costs at the end of this judgment.

In deciding on the third Defendant's issues. I find that the Plaintiffs should not be granted the prayers sought for the reasons already given.



On the second issue, I find that the decree in Tribunal Case Number 77 of 2010 is valid and enforceable as it has never been set aside by a superior court.

On the fourth Defendant's first issue, I find that the subdivision and transfer giving rise to the titles in possession of the Plaintiffs are unlawful, fraudulent, irregular and void ab initio for having been issued in breach of a lawful court order.

On the second issue, I find that the decree issued in Tribunal Case No 78 of 2010 is valid and enforceable because it has never been set aside by a superior court.

On the third issue, I find that the Plaintiffs are not entitled to the orders sought.

The issues raised by the fifth and sixth Defendants have already been dealt with in deciding on the issues raised by the other parties.

Before I make the final orders as to costs, I have one more finding to make.

It has been held in case of *Willy Kimutai Kitilit –versus-Michael Kibet Civil Appeal No 51 of 2015* by the court of Appeal sitting in Eldoret that a party in possession of land with the authority of the owner is entitled to such land by operation of the doctrines of constructive trust and proprietary estoppel.

The court went further and held as follows.

'There is another stronger reason for applying the doctrines of constructive trust and proprietary estoppel to the *Land Control Act*. By Article 10 (2) (b) of the *Constitution* of Kenya, equity is one of the national values that binds the courts in interpreting any law (Article 10 (1) (b)). Further

Thus it follows that the equitable doctrines of constructive trust and proprietary estoppel are applicable to and supersede the *Land Control Act* where a transaction relating to an interest in land is void and unenforceable for lack of consent of the Land Control Board'.

What this means is that for the second, third and fourth Defendants to be declared as lawful owners of the land that they claim, the consent of the Land Control Board is not necessary.

In this case, I find that the second, third and fourth Defendants are entitled to the land that they occupy and which they bought from Job Lesaloi Ole Kango by virtue of the doctrines of constructive trust and proprietary estoppel in addition to the court orders issued in the three cases mentioned above.

Throughout this case, the first Defendant has accepted that she sold land to the Plaintiffs. Though the Plaintiffs have not asked for a refund of the purchase price, there is a general prayer which is number 8. It says 'Any other relief that the court deems fit and expedient'.

Under that prayer, I will enter judgment for the Plaintiffs against the first Defendant only for the refund of the purchase price with interest at court rates from the date which the purchase price was paid to the first Defendant until the date of refund in full.

Otherwise, I dismiss the Plaintiffs' suit as against the rest of the Defendants.

Secondly, I enter judgment for the second, third and fourth Defendants as per their counterclaims against the Plaintiffs and the first Defendant.

On costs, I condemn the first Defendant to pay all the costs to all the other parties in the suit and in the counterclaim because she is the sole cause of this litigation.

Order accordingly.



DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 2ND DAY OF NOVEMBER,
2022.

M.N. GICHERU

JUDGE

