



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC PETITION NO. 30 OF 2013**

**ARTHUR KAMAU KARIUKI.....PETITIONER**

**VERSUS**

**CHIEF LAND REGISTRAR.....1<sup>ST</sup> RESPONDENT**

**NATIONAL LAND COMMISSION.....2<sup>ND</sup> RESPONDENT**

**SETTLEMENT FUND TRUSTEES.....3<sup>RD</sup> RESPONDENT**

**DIRECTOR OF SURVEY.....4<sup>TH</sup> RESPONDENT**

**PRIME WAYS COMPNAY LTD.....5<sup>TH</sup> RESPONDENT**

**LALY FARM LTD.....6<sup>TH</sup> RESPONDENT**

**AGRICULTURAL DEVELOPMENT CORPORATION....INTERESTED PARTY**

**JUDGMENT**

***(Petitioner holding a title issued under the Registration of Titles (RTA), Act and claiming that the State has illegally prepared a parallel title under the Registered Land Act (RLA) which title was subsequently transferred to the 6<sup>th</sup> then 5<sup>th</sup> respondents; argument of the respondents being that the land was under a settlement scheme; evidence showing that the land was originally owned by Agricultural Development Corporation (ADC) ; part of ADC land being transferred to the Settlement Fund Trustees (SFT); clear that the land that was transferred to the SFT did not include the suit properties; the SFT or the Government could not therefore allot the suit properties; ADC being the only entity which could deal with the suit properties; ADC transferring the suit properties to the petitioners; clear that it is the petitioner who holds good title to the suit properties; title of the 5<sup>th</sup> and 6<sup>th</sup> respondents not properly acquired and the same is nullified)***

1. This suit was commenced by way of a Constitutional Petition which was filed on 13 August 2013 and amended on 27 August 2013. The petitioner claims to be the owner of two land parcels described as LR No. 20591/50 and LR No. 20591/51 registered under the regime of the Registered Titles Act, Chapter 281, Laws of Kenya (now repealed). The two parcels of land measure 7.663 Ha and 15.67 Ha respectively and are said to be delineated in Deed plan numbers 219958 and 219957. The petitioner has averred that he acquired these two parcels of land from Agricultural Development Corporation (ADC), who are listed in this matter as interested party, at a consideration of Kshs.1,160,000/= , and through a transfer instrument dated 24 September 2012 and registered on 25 October 2012, the two parcels of land were transferred to the petitioner. The petitioner contends that these two parcels of land are now also identified as Nakuru/Moi Ndabi Settlement Scheme/1267 and 1322, which are titles issued under the regime of the Registered Land Act (now repealed). The two titles were issued through the Settlement Fund Trustees (SFT), by virtue of allegedly being in a settlement scheme. The petitioner contends that the Settlement Scheme land was comprised in the former land parcel LR No.20591/57, and delineated in Deed Plan No. 225137, which is a fixed boundary, and that the SFT, when subdividing the land for issuance of several titles under general boundary, strayed and encroached into LR Nos. 20591/50 & 51, and that the titles Nakuru Moi Ndabi Settlement Scheme/1267 and 1322, therefore actually fall within LR Nos.20591/50 & 51. The titles Nakuru Moi Ndabi Settlement Scheme/1267 and 1322 are currently registered in the name of the 5<sup>th</sup> respondent. The petitioner pleads that the respondents altered the survey marks in the deed plans to these two parcels and purported to create a parallel survey plan under the Registered Land Act (RLA) regime leading to a fraudulent and unconstitutional deprivation of his property. In his suit, he has inter alia sought orders that he be declared the lawful proprietor of LR Nos. 20591/50 & 51, an order of certiorari to quash the titles Nakuru Moi Ndabi Settlement Scheme/1267 and 1322, and an order that the 5<sup>th</sup> respondent do vacate the said parcels of land.

2. The interested party filed an affidavit sworn by Anthony Ademba, its legal manager, which basically supports the position of the petitioner. He deposed inter alia that ADC was the original owner of the land registered as LR No. 20591/11 measuring 9,696 Ha issued under the regime of the Registered Titles Act (RTA) (repealed). It is deposed that the SFT acquired 3,944 Ha of this land through a transfer that was registered on 26 October 1999, and ADC retained the remainder. Out of the remainder, LR Nos. 20591/50 & 51 were allocated to the petitioner. It is thus contended that the SFT fraudulently prepared a subdivision scheme that extended beyond the actual area purchased from ADC thus encroaching into the land of the petitioner and creating a parallel register. It is deposed that ADC did not know of this parallel register.

3. The SFT filed a replying affidavit sworn by Mr. James Wachira, the District Land Adjudication & Settlement Officer based in Naivasha town, within Nakuru County, where the suit properties are situated. He has deposed inter alia that the SFT purchased 3,944 Ha, comprised in LR No. 20591/57 which was later converted to the RLA regime and that survey was done in 1995. He has deposed that the SFT allocated to Benjamin Tuikong and to Wilson K. Kipkoti, the land parcels Nakuru/Moi Ndabi SS/1267 and 1322 and they were later transferred to Lally Farm Limited, the 6<sup>th</sup> respondent and subsequently to the 5<sup>th</sup> respondent. It is averred that a resurvey was done in the year 1998 by surveyor O.M Wainaina which led to indicate that the parcels on the ground were still under the RTA regime which was erroneous and misleading. It is deposed that the transfer by ADC of the same properties to the petitioner in the year 2012 amounted to double allocation. He has stated that their records show the 5<sup>th</sup> respondent as the first owner with title issued on 12 March 2009. He has deposed that the title of the petitioner was issued after a resurvey of the suit properties and that ADC and the Director of Surveys should take blame for the double allocation.

4. In a rejoinder filed by Mr. Ademba, he has deposed that the narrative that there was an RLA register in the year 1995 is false. He gave a history of the land as follows : That ADC owned land measuring 12,467 Ha comprised in LR No. 20591. This title was subdivided into several portions which were transferred to other persons and ADC retained 12,202 Ha under the title LR No. 20591/5. This land was subsequently subdivided into other portions which were again sold off to other parties and ADC retained LR No. 20591/9 measuring 11,953 Ha. This land was further subdivided and one resulting title was LR No.9696 and it is this land which was subdivided to produce the titles LR Nos. 20591/50 & 51. He has deposed that the Registry Index Map purportedly created in 1995 did not have a title to back it since SFT acquired its interest in the year 1999. He has further deposed that SFT had no proprietary interest capable of being transferred to the 5<sup>th</sup> respondent and that all the RLA entries are a nullity.

5. For the Director of Surveys, sued as the 4<sup>th</sup> respondent, a replying affidavit sworn by Priscilla Njeri Wango, was filed. She deposed that instructions to survey the suit properties originated from the Provincial Surveyor with names of beneficiaries which led to subdivision and allocation. She mentioned Moi Ndabi Settlement Scheme was created through a survey of 1995 and this led to the creation of a Registered Index Map (RIM) bearing 7 sheets. She has deposed that the land Moi Ndabi SS/1267 is in Sheet 3 whereas Moi Ndabi/SS/1322 traverses both Sheets 2 and 3. She mentioned a survey plan F/R No. 259/65 created on 7 September 1995 for LR 19184/3 and that this survey plan contained the suit properties as Moi Ndabi/1267 and 1322 among others.

6. Mr. Wilson Cherop, swore a rejoinder affidavit, where he deposed inter alia that ADC used to own LR No. 19184/2 measuring 10371 Ha which it surrendered in exchange for a new grant I.R 65248 measuring 12,476 Ha, which led to issue of the RTA title LR No. 20591 as the new mother title. It was later subdivided leading to LR No. 20591/5 from where the two RTA titles of the petitioner emanated from. He has averred that LR No. 19184/3 is a different property measuring 59.69 Ha which was sold by ADC to Ngetunye Company Limited in the year 1994. He has contended that survey plan FR No. 259/65 is unregistered.

7. In reply to the petition, the 5<sup>th</sup> respondent, Primeways Company Limited, through an affidavit sworn by John Kinyanjui, inter alia gave a history of how it became to be the registered proprietor of the suit land. Mr. Kinyanjui deposed that the law firm of Kinyanjui Njuguna & Company Advocates (which I presume he is partner), provided some services to Standard Assurance Company Limited and was owed the sum of Kshs. 22,029,153/=. To settle part of this debt, one Mr. Wilson Kipkoti, a director of Standard Assurance Company Limited, and also a director of Lally Farm Limited, the 6<sup>th</sup> respondent, offered the titles Nakuru Moi Ndabi Settlement Scheme/1267 and 1322, valued at Kshs. 3,000,000/= and transferred the two titles to the firm of Kinyanjui Njuguna & Company Advocates. The said firm then surrendered its interest in the two titles to the 5<sup>th</sup> respondent. It is pleaded that the 5<sup>th</sup> respondent occupied the land through a caretaker and developed it. It is contended that the petitioner did not do any due diligence when purchasing the land and that the purchase price allegedly paid by the petitioner is below the market price thus not for value. It is further pleaded that the petitioner seeks to annul a map published in 1995 more than 18 years later, and the titles sought to be annulled were issued on 26 October 1999, which offends the Limitation of Actions Act, Cap 22, Laws of Kenya. He has also questioned how the transfer of the petitioner dated 24 September 2012 was endorsed on the mother title on 1 August 2011. He has also argued that the RTA mother title, which produced the two titles held by the petitioner, was issued in 1999, three years after survey of the area had already been done. He believes that the titles held by the 5<sup>th</sup> respondent are genuine and has asked that the petition be dismissed with punitive costs.

8. Mr. Wilson Kipkoti, swore an affidavit on behalf of the 6<sup>th</sup> respondent. He deposed inter alia that the suit properties were demarcated way back and a map published in 1995. He has deposed that surveys were carried out in August 1998, and April 1999, and titles issued to the 6<sup>th</sup> respondent. He however claims that the transfer to the 5<sup>th</sup> respondent was fraudulent because the RLA titles in the name of the 6<sup>th</sup> respondent were only deposited as security to M/s Kinyanjui Njuguna & Company Advocates which led to the 6<sup>th</sup> respondent filing the suit Nakuru HCCC No. 129 of 2010 for nullification of the title of the 5<sup>th</sup> respondent. He thus wishes to have the titles of the 5<sup>th</sup> respondent cancelled and the name of the 6<sup>th</sup> respondent re-entered in the register.

9. There were also further affidavits sworn by Mr. Gilbert Oketch Ayoo, for the petitioner, the petitioner himself, a rejoinder affidavit by Mr. Kariuki for the 5<sup>th</sup> respondent, and further affidavits by Ms. Wango for the 3<sup>rd</sup> respondent, which I have gone through, but I see no need of elaborating what is said therein, for much of the same was stated in oral evidence of which I will give a synopsis. It is owing to the conflicting depositions of surveyors that I felt the need to have the experts explain themselves through oral evidence which they duly did.

10. The first witness was Mr. Wilson Kibet Cherop a surveyor from ADC. He did state that the original parcel of land was acquired by ADC in the year 1957 and this was LR No. 20591. He mentioned that this land was subsequently subdivided into several portions, one being LR No. 20591/11 which measured 9,696 Ha. It is from this land that SFT acquired 3,944 Ha which was identified as LR No. 20591/57 and

which was transferred to SFT on 26 October 1999. It is also from LR No. 20591/11 that LR Nos. 20591/50 & 51 were carved out and transferred to the petitioner on 25 October 2012. He stated that there was no conversion by ADC in the year 1995 from the RTA to the RLA land registration regime. Cross-examined, he acknowledged not having the sale agreement between SFT and ADC, or the Deed Plan of the land transferred to SFT. He was also referred to the survey plans F/R No. 360/177 (dated 7 May 1999) which is said to be for the SFT land LR No. 20591/57 and the F/R No. 259/65 (dated 7 September 1995) for LR No. 19184/3 mentioned in Ms. Wango's affidavit and he pointed out that they are different though they bear similar coordinates. He could identify the 7 sheets of the RIM bearing the year 1995, and said to comprise the SFT land, as being similar to the survey plan in F/R No. 259/65 but he asserted that this is not what ADC transferred to the SFT. He stood his ground that what ADC transferred to SFT is what is contained in the survey plan F/R No. 360/177. He identified LR No. 20591/50 as being similar to the land comprised in the title Nakuru/Moi Ndabi SS/1322 and the ground in LR No. 20591/51 as being closely similar to the ground in the title Nakuru/Moi Ndabi SS/1267. He was cross-examined on a letter written by Mr. A.K Cherwon, the Director of Land Adjudication & Settlement which letter is not clear on the date, but seems to be a 1999 letter, stating various allottees including Mr. Thomas Kiprop (allottee to LR No.20591/49), Benjamin Tuigong (allottee to LR No. 20591/50); W.K. Kipkoti (allottee to LR No. 20591/51); T. Kirui (allottee to LR No. 20591/52); ADC as allottee of LR No. 20591/53; Alfred Kimisoi (allottee to LR No. 20591/54) and a Dr. Musau (as allottee to LR No. 20591/55) but he was not aware of such allotments. These names were also in a list, annexed to the affidavit of Ms. Wango, and said to be the list of allottees of Ndabibi Scheme, prepared by I.K Chelang'a , the Provincial Commissioner. Benjamin Tuikong is shown as allottee of the Plot No. 1322 (8.2 Ha) and W.K Kipkoti as allottee of Plot No. 1267 (16.0 Ha). Apparently, T.K Kirui (alias Thomas Kiprop and alias Thomas Kirui) was the Provincial Surveyor and he appears to have been charged with abuse of office through a charge sheet that was put to the witness.

11. The second witness was Mr. Gilbert Akech Oyoo, a licenced land surveyor and the proprietor of Gappy Licenced Land Surveyors, who was instructed by the petitioner to do a report which he duly did. He testified that according to the records, ADC transferred to SFT the land LR No. 20591/57, measuring 3,944 Ha which was converted into general boundaries which encroached into LR Nos. 20591/50 & 51. He stated that LR Nos. 20591/50 & 51 were subdivisions of LR No. 20591/11. He believed that the renumbering of LR Nos. 20591/50 & 51 into Moi Ndabi SS/1322 and 1267 was erroneous. He testified that the Deed Plans for LR No. 20591/50 & 51 were processed by the Director of Surveys on 24 September 1998 and verified on 22 April 2013 (through survey plan F/R No. 285/1 which created the parcels LR No. 20591/48 to 55). He explained that verification is a process where the Land Registry takes back the Deed Plan to the Director of Survey for authentication before registration is done. He testified that LR No. 20591/57 was a product of a survey plan F/R 360/177 which was completed in April 1999 and submitted to the Director of Surveys on 27 May 1999. He found the RIM to be unusual for not indicating the original land parcel subdivided into the smaller land parcels. He refuted the claim in Ms. Wango's affidavit that the SFT land was 4,033.01 Ha from LR No. 19184/3. He revealed the records for LR No. 19184/3 showing that it measures 59.69 Ha contained in Deed Plan No. 184017 and was transferred to Mgetunye Company Limited. It was created through F/R No. 247/56 and was later subdivided. He reiterated that SFT land is LR No. 20591/57 measuring 3,944 Ha. He faulted the survey plan F/R No. 259/65 in Ms. Wango's affidavit, which is for LR No. 19184 for an area of 4,033.81 Ha. He observed that the Green Cards to the two titles held by the 5<sup>th</sup> respondent were opened on 10 February 2002 contrary to the claim that titles were created in 1995. He was cross-examined on the verification of the deed plan which came after the title held by the petitioner and he mentioned that sometimes, titles are issued before registration. He was also referred to the area list which seems to have been prepared on 30 October 1995 which included the parcels No. 1267 and 1322. He did point out that the survey plan F/R No 259/65 was neither dated nor authenticated.

12. The third witness was Priscilla Njeri Wango, who is a land surveyor working with the Director of Surveys. Her evidence was that the land parcels Nakuru Moi Ndabi SS/1267 and 1322 are contained in the Registry Index Map (RIM) of Moi Ndabi Settlement Scheme. She stated that the survey was done and published by the Director of Surveys in October 1995 and 7 sheets were created. She stated that the RIM was accompanied by an area list and that the two titles of the 5<sup>th</sup> respondent are in the area list. She acknowledged the survey F/R No. 285/1 done on 31 August 1998 by O.N. Wainaina but she stated that they have no records of it save for a scanned computer copy and she was thus not able to tell why this survey was done. She believed that it should have been cross-referenced in the RIM since the RIM was prepared in 1995 before the said survey of 1998. She added that F/R 259/65 was a perimeter survey to describe the extent of Moi Ndabi Settlement Scheme and that the area is 4,033.81 Ha. She mentioned that the two parcels in issue are within this perimeter survey. She pointed out that the survey plan F/R No. 285/1 cross-references this survey plan F/R No. 259/65 and the surveyor must have seen it before preparing the survey plan. She asserted that Moi Ndabi Settlement Scheme originated from LR No. 19184/3. She was questioned on why F/R No. 259/65 produced is not authenticated and she stated that what was provided was a redrawn copy. She mentioned that the RIMs were published in October 1995 and the area list is dated 30 October 1995. She believed that the proper titles are those held by the 5<sup>th</sup> respondent. Cross-examined, she insisted that the acreage of LR No. 19184/3 was 4,033.81 Ha and that this is the acreage that SFT acquired. She did acknowledge that the perimeter survey refers to LR No. 19184/3. She did not have any record of how the SFT land was converted from RTA to RLA. She stated that the suit properties were already in the RIM in 1995 and therefore ADC could not transfer the same land to the petitioner in the following years. She however acknowledged irregularities in the acreages and the title numbers which she was not at a loss to explain.

13. The next witness was Mr. James Wachira, the Settlement Officer in charge of Naivasha Sub-County. He did state that SFT acquired land from ADC between 1994 and 1995. He mentioned that Plot No. 1267 was allocated to Wilson K. Kipkoti and plot No. 1322 to Benjamin Tuikong and titles issued on 10 May 2004. He stated that beneficiaries were identified by the Provincial Administration and the two persons were in the list of beneficiaries. Cross-examined, he stated that SFT acquired 3,944 acres only and this was comprised in LR No. 20591/57. He did acknowledge that the RIM that was prepared in 1995 also included LR Nos. 20591/50 & 51. He testified that Wilson Kipkoti and Benjamin Tuikong were included in a "confidential list" of allottees, also referred to as "environmentally friendly list." He stated that Mr. Kipkoti and Mr. Tuikong got their land from ADC and not SFT. He stated that the area list included people who benefited from SFT allocation and also some from without. He did not have any allotment letters nor transfers from the SFT to Mr. Kipkoti or Mr. Tuikong, and did not have any records showing that the two paid any money to the SFT. He did however state that title was transferred to them in the year 2004. He stated that settlement of people was done before 1999 but had no evidence of this.

14. With the above evidence, counsel filed their written submissions which I have taken note of. I do observe that in his submissions, Mr. Kinyanjui, learned counsel for the 5<sup>th</sup> respondent dealt at length with the argument that this suit ought not to have been commenced by way of a constitutional petition, but in my view, this is water under the bridge, for the court first seized with the matter (Waithaka J) did make a ruling on a preliminary objection that raised the same issue and her view was that the suit is properly presented before the court. I do not have jurisdiction to sit on appeal on the issue and will therefore not make any findings on these arguments. There was also raised the issue that the suit is defective for seeking judicial review orders, but again, I do note that this was among the grounds in the preliminary objection

and a ruling was made to the effect that the said orders can be sought in a constitutional petition. Again, I have no jurisdiction to revisit that ruling. The same goes for the argument that the suit is *res judicata* which was also part of the decision in the ruling of 3 October 2014. There was also the argument that the suit is statute barred, but I see no issue in this argument, for the petitioner and interested party have stated that they were never aware of the title that the 5<sup>th</sup> respondent held. I in fact take note of the fact that it is through letters dated 6 September 2012 that ADC wrote to the occupants of what they considered to be LR Nos. 20591/50 & 51 asking them to vacate, and I have no evidence that the petitioner and ADC were ever aware of any titles issued in the names of the 5<sup>th</sup> respondents or their predecessor in title, prior to writing the said letters. Waithaka J, in her ruling also partly addressed this issue and referred to Section 26 of the Limitation of Actions Act, Cap 22, Laws of Kenya, and dismissed the argument that the suit is time barred.

15. Turning now to the evidence, it is not disputed, and it is in fact common ground, that the two parcels of land in issue initially comprised of land owned by ADC. The evidence that ADC first owned the land parcel LR No. 20591 is not disputed. This land was subdivided several times resulting into subdivisions described in distinct registration numbers. There is really no serious contention that one key subdivision is LR No. 19184/2, which after surrender, was given the number LR No. 20591/5. This land was subdivided further and one of the resultant subdivisions was LR No. 20591/11. My analysis of the evidence leads me to the conclusion that it is from this land, LR No. 20591/11 that SFT acquired 3,944 Ha, which land was identified as LR No. 20591/57. 16. I do not think that there can be any other conclusion apart from this, for this is apparent from the mother title to LR No. 20591/11. Entry No. 12 thereto indicates “*transfer to Settlement Fund Trustees, Area 3944 Ha, LR No. 20591/57...*”. I have no other evidence of any additional land having been acquired by the SFT, and indeed this was confirmed by Mr. Wachira, the Settlement Officer.

17. The respondents, especially the 3<sup>rd</sup> respondent, through Ms. Wango, tried to press the argument that SFT acquired land that measured 4,033 Ha, from LR No. 19184/3 but this is an argument that has absolutely no basis. First, SFT never acquired land that was more than 3,944 Ha. Secondly, SFT never acquired the land LR No. 19184/3, which land the title shows is owned by Mgetunye Limited, and measures only 59.69 Ha. It cannot therefore be that the Director of Surveys can claim that the Ndabibi Settlement Scheme emanated from LR No. 19184/3. It follows that the survey plan F/R No. 259/65 is an erroneous survey, and if it is this survey that carved out the Ndabibi Settlement Scheme, then we have a serious problem which may continue manifesting itself in future. I however have my doubts as to the veracity of this survey plan F/R No. 259/65 for I have no evidence that this is an authentic map. It is blank on the columns of approval, authentication, tracing and comparison. I have nothing that would inform me that this is a genuine and approved survey plan. But if it is from here that the RIMs said to comprise Ndabibi Settlement Scheme came from, then, as I have said, there are potential conflicts in store, for the land purported to be surveyed measures 4,033.81 Ha, which is not the 3,944 Ha, that SFT acquired for the Settlement Scheme. I have no idea where the extra acreages will come from.

18. It is not clear to me when the SFT acquired the land LR No. 20591/57 from ADC, for I have not been shown any documents of the transaction between ADC and SFT. However, it is apparent from the title that SFT became registered as proprietor of the land LR No. 20591/57 on 26 October 1999. It is probable that there was a ground survey prior to 1999, and a scheme on how to settle persons, already prepared. But it can only be from 1999 that a proper survey plan could be done and registered, for prior to that, the land was registered under ADC. Indeed, no title could be issued prior to 1999 as SFT were not the registered owners.

19. Turning now to the rival titles issued under the RTA and the RLA, the evidence does show that LR Nos. 20591/50 & 51, were not carved out of the land that was purchased by the SFT, but were parcels of land carved out of LR No. 20591/11, the same land from where SFT acquired the land LR No. 20591/57, but certainly distinct from the said land. I am persuaded that the subdivision was done through survey plan F/R No. 281/5 which was a survey aimed at creating seven parcels of land identified as LR Nos. 20591/49 to 55, thus encompassing LR Nos. 20591/50 & 51. These parcels were all owned by ADC and thus it was for ADC to transfer them to whomever it wished. I have seen documents where Benjamin Tuikong and Wilson Kipkoti are alleged to have been allotted LR Nos. 20591/50 and 51 respectively. This includes the letter by Mr. A.K Cherwon, whose date is not clear but seems to have the year “1999”. Mr. Tuikong and Mr. Kipkoti are also in the area list as owners of Plots Nos. 1322 and 1267 respectively and we now know that LR Nos. 20591/50 & 51 refer to the same land as that contained in the titles Nakuru/Moi Ndabi Settlement Scheme/1322 and 1267. The problem with this allotment is that the Government could not allocate these two parcels of land because they were still owned by ADC. For the Government to properly allocate them, the Government first needed to acquire the said parcels of land from ADC, and it is after such acquisition that the Government could distribute the land to third parties. These letters of allocation and the area list of the suit properties to Benjamin Tuikong and Wilson Kipkoti are irregular for the Government could not “grab” ADC land and distribute it as it wished. The land was all this time owned by ADC, and ADC were the only persons who could allocate the land. It will be observed that Mr. Wachira, when cross-examined, had the thought that Mr. Tuikong and Mr. Kipkoti, did not get these parcels of land from SFT but from ADC. ADC themselves have stated that they have never allocated these parcels of land to Mr. Tuikong and Mr. Kipkoti, and indeed, I have no evidence of any direct allocation of the suit parcels of land by ADC to Mr. Tuikong and Mr. Kipkoti. The two do not pretend that they got their parcels of land from ADC, and indeed, in his affidavit, Mr. Kipkoti did not state that he got his title from ADC.

20. The green card that has been displayed by the respondents shows that SFT was the first registered proprietor on 10 February 2002, for the titles Nakuru/Moi Ndabi/1267 and 1322. These are RLA titles. However, SFT could not be said to have held any good title, for all this time the same land was still held under the RTA titles, LR Nos. 20591/50 & 51, in the name of ADC. ADC then transferred its interest to the petitioner in the year 2012, and the petitioner is now the registered proprietor of the said parcels of land. The RLA titles were not created because ADC converted their RTA titles, but were separate conversions either by the SFT or other Government agency, or by Mr. Tuikong and Mr. Kipkoti directly. The RLA titles, by any stretch of imagination, cannot be said to be good titles. The petitioner thus has a point when he states that the Government improperly alienated this land and has thus interfered with his right to own property. Not being good titles, the petitioner is also entitled to the orders that the register bearing the titles Nakuru/Moi Ndabi/1267 & 1322 be quashed and/or be cancelled and I do proceed to grant the said order. Having no good title, the 5<sup>th</sup> respondent, or any person claiming under him, cannot be entitled to possession and occupation of this land, and the petitioner is entitled to the order that the 5<sup>th</sup> and/or 6<sup>th</sup> respondents do cease possession of the two parcels of land. I do give the 5<sup>th</sup> and/or 6<sup>th</sup> respondents 30 days to give vacant possession of the suit properties, and if this is not done, the petitioner is at liberty to apply for an order of eviction.

21. I have been made aware of the case Naivasha Criminal Case No. 1553 of 2015 where Thomas Kiprop Kirui is charged with abuse of office based on the survey of LR No. 20591/11. I have heard in these proceedings that Mr. Kirui was the then Provincial Surveyor, and that he was in charge of survey of ADC land. I have my own thoughts about how Mr. Kirui conducted himself, for within these proceedings, I

have seen that he is beneficiary of at least four parcels of land being LR No. 20591/25 measuring 20.13 Ha; LR No. 20591/28 measuring 20.49 Ha; LR Nos. 20591/49 measuring 25.07 Ha; and LR No. 20591/52 measuring 24.1 Ha. Whether or not he is found guilty, and whether or not the survey and transfers to himself are found to have been improper, does not change the fact that SFT could not have title to anything beyond LR No. 20591/57. I have already demonstrated that the titles of Benjamin Tuikong and Wilson Kipkoti, did not emanate from the land LR No. 20591/57 and there is no evidence of ADC having allotted to them any land and the outcome of the criminal trial is immaterial. Whichever way, SFT could not get title to LR No. 20591/50 & 51 and could not convert them into the regime of the RLA and issue titles based on this conversion. The presence of the criminal case therefore does not help the 5<sup>th</sup> and/or 6<sup>th</sup> respondents. The only persons who are capable of challenging the title of the petitioner is ADC.

From the foregoing, I make the following orders :-

**(a) That it is hereby declared that the titles Nakuru/Moi Ndabi Settlement Scheme/1267 and 1322 are invalid titles and the same are hereby nullified.**

**(b) That the Chief Land Registrar and the District Land Registrar are hereby directed to expunge the register of the titles Nakuru/Moi Ndabi Settlement Scheme/1267 and 1322.**

**(c) That the valid title to the ground where the titles Nakuru/Moi Ndabi Settlement Schem/1267 and 1322 relate to is LR No. 20591/50 and LR No. 20591/51 held by the petitioner.**

**(d) That the 5<sup>th</sup> and/or 6<sup>th</sup> respondents are hereby directed to give vacant possession of the ground relating to LR No. 20591/50 and LR No. 20591/51, within 30 days from today and if this is not done the petitioner is at liberty to apply for an eviction order.**

**(e) That petitioner will have the costs of this suit which will be shouldered by the Attorney General on behalf of the State. I make no orders as to costs for or against the other parties.**

22. Judgment accordingly.

**Dated, signed and delivered in open court at Nakuru this 1<sup>st</sup> day of October 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Mr. Munene present for the petitioner, and holding for Mr. Odhiambo for interested party (ADC).

No appearance on the part of the State Law Office for 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents.

No appearance for National Land Commission-2<sup>nd</sup> respondent.

Ms. Odhiambo holding brief for Mr. Kinyanjui for 5<sup>th</sup> respondent.

Ms. Cheruto holding brief for Ms. Mureithi for 6<sup>th</sup> respondent.

Court Assistants: Nancy Bor/Alfred Cherono.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**