



**Nguramuk v Kilekwang (Environment and Land Case E027 of 2023)
[2025] KEELC 4624 (KLR) (17 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4624 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E027 OF 2023**

**CK NZILI, J
JUNE 17, 2025**

BETWEEN

LIMANGURA NGURAMUK PLAINTIFF

AND

JOSEPH KILEKWANG DEFENDANT

JUDGMENT

1. Before the court is a plaint dated 5/6/2023 in which the plaintiff seeks:
 - (a) A declaration be issued that given the decision of 30/102018 in ELC Kitale Appeal No. 3 of 2018, it deprived the defendant land comprised of Parcel No. West Pokot/Chepareria/2370, which was registered under his name under the award of the Rift Valley Provincial Appeal Committee.
 - (b) Declaration that according to the aforesaid decision, the subdivision of land Parcel No. West Pokot/Chepareria/2370 be reversed and the two titles cancelled.
 - (c) An order for rectification of the register for land Parcel No. West Pokot/Chepareria/94 be made so that the said register be reopened to restore the registration of that parcel or restoration of the same under his name.
 - (d) Preservation of land Parcel No. West Pokot/Chepareria/2370 pending hearing of the suit.
2. The plaintiff pleaded that he was the registered sole owner of Title No. West Pokot/Chepareria/94 measuring 9.14 Ha, to which the defendant, a brother, in 2007 had lodged a claim at Chepareria Land Disputes Tribunal demanding part of it, which complaint was dismissed, and later was adopted as a court award in Kitale Chief Magistrates Land Case No. 65 of 2008. Aggrieved by the award, the plaintiff avers that the defendant filed an appeal to the Rift Valley Provincial Appeals Committee, who



- ordered that his parcel be shared equally. Later he says that the decision was adopted as a decree in Kitale Chief Magistrates Land Case No. 12 of 2010.
3. Again, the plaintiff averred that he preferred an appeal in Kitale HCCA No. 30 of 2000, later registered as Kitale ELC Appeal No. 3 of 2018, which allowed his appeal on 30/10/2018, quashing the Provincial Appeals Committee decision and dismissed the defendant's appeal. While awaiting the outcome of his appeal, the plaintiff avers that the defendant caused the subdivision of the suit land, was issued with a title deed on 18/9/2019, and continued to occupy the land, hence depriving him of his rights to own the land.
 4. The plaintiff averred that in Kapenguria PMC Land Case No. E010 of 2021, the defendant had sought declaration orders as an owner of the portion hived off, and an injunction in which suit is pending. The plaintiff avers that he had filed an application in Kitale CMC Land Case No. 12 of 2010, but the court declined jurisdiction.
 5. The defendant opposed the suit through a statement of defense and counterclaim dated 19/6/2023. He averred that the plaintiff is the first-born son of the late Nguramuk Kilekwana who had two wives and had three parcels of land, part of it the suit land, which is family and ancestral. The defendant averred that the three parcels of land are situated in Monoo, Motpo-soo, and Totum.
 6. In the case of Monoo, the defendant averred that it was shared as West Pokot/Chepareria/100 for the plaintiff, West Pokot/Chepareria/102 for the defendant, and West Pokot/Chepareria/103 for Losiwanyang Nguramuk. As regard Motpo-soo, the defendant averred that it was shared as West Pokot/Chepareria/2068, for the plaintiff, West Pokot/Chepareria/2070 for the defendant, and West Pokot/Chepareria/2069 for Losiwanyang Nguramuk. Regarding Totum, the defendant averred that it was shared as West Pokot/Chepareria/94 for the plaintiff and West Pokot/Chepareria/96 for Losiwanyang Nguramuk.
 7. Coming to West Pokot/Chepareria/94, the defendant averred that the plaintiff acquired West Pokot/Chepareria/2369, while he acquired West Pokot/Chepareria/2370. The defendant averred that his late father intended that all his sons from the two houses share the three parcels of land at Monoo and Motpo-soo, equally.
 8. Unfortunately, the defendant averred that the plaintiff secretly registered Parcel No. West Pokot/Chepareria/94, hence the objection leading to the alluded litigation in the plaint and in particular, the decree dated 13/8/2012, which led to the subdivision and creation of his Parcel No. West Pokot/Chepareria/2370. While the defendant admits the quashing of the appeal in ELC Appeal No. 3 of 2018, the defendant averred that it was his legitimate expectation that the plaintiff would share Parcel No. West Pokot/Chepareria/94 equally, because the same is ancestral/family land, otherwise the restoration of the parcels to their original status would defeat customary rights attached to the suit land, based on the principle of equity, proportionality and justice, given that he had owned the land for over 20 years.
 9. The defendant acknowledged that there was a pending case, Kapenguria SPM E010 of 2021 with interim orders. He also admitted that the plaintiff had filed an application dated 24/5/2021 in Kitale CM Land Case No. 12 of 2000, which was dismissed by a ruling dated 8/9/2021.
 10. By way of a counterclaim, the defendant averred that he held customary rights that were applied during the subdivision of Parcel No. West Pokot/Chepareria/94 into two parcels, hence its restoration would defeat the said customary trust right based on the principles of equity, proportionality, and justice. The defendant averred that he had a legitimate expectation that the plaintiff would share the initial parcel



into two portions, otherwise, at the time of registration of the parcel and its resultant subdivision, it was family ancestral land.

11. The defendant as plaintiff in the counterclaim prayed for:
 - (a) Declaration that before and at the time of the registration of the initial Parcel No. West Pokot/Chepareria/94 and to subdivision into two, it was ancestral/family land.
 - (b) Declaration that the decree in ELC Appeal No. 3 of 2018, did not defeat the customary trust created in the suit property.
 - (c) Declaration that he is entitled to Parcel No. West Pokot/Chepareria/2369.
 - (d) Permanent injunction.
12. By a reply to the defense and defense to the counterclaim, the plaintiff averred their late father passed on in 1959, while they were growing and were raised by their mother and uncles, who also subdivided the land at Totum into three portions and bought an extra land to settle one of the sons, from one Alupot Longwaran.
13. The plaintiff averred that the defendant sold part of the land bought from Alupot Longwaran, leaving a portion under his name Title No. West Pokot/Chepareria/121, which he later transferred to his son Benson Pkiach Nguramuk, but later subdivided it and sold a portion No. 2291 to a third party. The plaintiff therefore denied that there was an intention to create a trust as alleged or at all, otherwise the reversal and the restoration of the subdivision and registration of the suit parcels of land had been invalidated by the court.
14. Further, the plaintiff averred that the alleged injunction at the lower court was obtained and extended *exparte*. Equally, the plaintiff averred that the alleged legitimate expectation has absolutely no legal basis, especially because the defendant was given alternative land to specifically compensate his son who did not get a portion of Totum's land. The counterclaim was termed as misconceived and devoid of merits.
15. During the application for interim orders of injunction, Stephen Yarakore the chief of the Yualateka location testified as PW1. He confirmed that there was a subdivision of the Title No. West Pokot/Chepareria/2369 and 2370 among the two brothers, initially and currently occupied by the plaintiff. PW1 said that the defendant had never occupied the land, for he has another parcel, way from the suit land. PW1 said that the suit land has a well-defined boundary currently used for cultivation and keeping livestock.
16. In cross-examination, PW1 said that the plaintiff has also another parcel of land, but the suit land was fully fenced off. Out of this evidence, the record shows that an order of status quo was issued pending hearing, on 30/10/2022.
17. So at the trial, Limangura Nguriamuk testified as PW1. He relied on his witness statements dated 5/6/2023 and 7/11/2023 as his evidence in chief. Briefly, he told the court that he became the registered owner of Title No. West Pokot/Chepareria/94 on 1/7/1998 measuring 9.14 Ha, and the defendant filed a complaint with Chepareria Land Disputes Tribunal which was dismissed as per the award adopted in Kitale CM Land Case No. 63 of 2009. PW1 said after an appeal to the Rift Valley Provincial Appeal Committee by the defendant, the land was to be subdivided equally as per decree in Kitale CM Land Case No. 12 of 2010. PW1 said that he appealed in Kitale HCCA No. 30 of 2010 which decision quashed the Rift Valley Provincial Appeal award on 30/10/2018.



18. PW1 said that before his appeal could be determined, the defendant sought the implementation of the decree in his favour, hence the land was subdivided into numbers 2369 and 2370, depriving him of his rights accrued from the appeal.
19. PW1 said that the defendant has also filed Kapenguria PM Land Case No. EO10 of 2021. He also said that he filed an application in Kitale CMC Land Case No. 12 of 2010, where the court delivered judgment. PW1 relied on an official search certificate dated 28/4/2004, proceedings in the land disputes tribunal case, proceedings in the Provincial Appeals Committee, decree dated 8/7/2010, judgment in the High Court Appeal decree dated 30/10/2018, title deed dated 18/9/2021, application dated 21/5/2021, extract of title for West Pokot/Chepareria/121 certified on 1/8/2023 and green cards for Title Nos. West Pokot/Chepareria/2290, 2291 as P. Exhibit No. 1, 2, 3, 4, 5, 6, 7, 8, 9(a), (b) and (c). He urged the counterclaim to be dismissed.
20. In cross-examination, PW1 told the court that his late father had many parcels of land and only three were left for his family. PW1 said that his father had two wives and three sons. As to the land at Totum. PW1 admitted that it was subdivided into two portions. He denied holding the Suitland in trust for the defendant since the defendant was compensated with land at Pkatieny. PW1 insisted that the suit was not about inherited land. PW1 said that the family set down and bought land elsewhere which the defendant opted to take up which was approximately 20 acres, but sold a portion, leaving a balance as per P. Exhibit 9(c), after the subdivision going by P. Exhibit No. 9(b). Further, PW1 said that the defendant had lost in the tribunal cases and hence could not claim any right or interest over Parcel No. 94.
21. Lokoroy Kilekwang testified as PW2. Relying on a witness statement dated 7/11/2023 as his evidence in chief, PW2 a nephew of the parties, associated himself with the evidence of PW1. He confirmed that the defendant was assisted to acquire land elsewhere as per P. Exhibit 9(a) and (b). PW2 said that he was among those who contributed cows for the acquisition of the land for the defendant where he still resides to date.
22. Joseph Kilekwang testified as DW1. He relied on a witness statement dated 20/11/2023 as his evidence in chief. He told the court that the plaintiff was the firstborn brother and that his father had two wives. DW1 told the court that the father had parcels of land in Monoo, Motpo-soo, and Totum. DW1 said that the land at Monoo was shared into Parcel Nos. 100, 102, and 103 among the plaintiff, himself, and Losiwanyang Nguramuk. As to Motpo-soo land, DW1 said that it was shared into Parcel Nos. 2068, 2070, and 2069, in favor of the plaintiff, himself, and Losiwanyang Nguramuk. As to Totum land, DW1 said that Losiwanyang Nguramuk acquired Parcel No. 96 while the plaintiff secretly registered it under his name, hence the Land Disputes Tribunal case.
23. According to DW1, the plaintiff in registering Parcel No. 94 went against customary trust right as directed and intended by his late father to share the lands among the two houses and between his sons. DW1 confirmed that there was litigation up to the High Court and also one pending in Kapenguria Law Courts. DW1 reiterated the contents of his defense and counterclaim and urged the court to grant the reliefs sought in the counterclaim in line with the principles of equity, proportionality, and justice. DW1 relied on a certificate of official searches dated 15/6/2023, D. Exhibit No. 1(a) and (b), official search for Parcel No. 103 as D. Exhibit No 1(c), official search certificate for Parcel Nos. West Pokot/Chepareria/2068, 2069, and 2070 as D. Exhibit No. 2(a), (b), and (c), green card for West Pokot/Chepareria/96 as D. Exhibit No. (3), green card for West Pokot/Chepareria/2369 and 2370 as D. Exhibit No. 4(a) and (b), subdivided from parcel No. 94, copy of Land Disputes Tribunal decision dated 6/8/2007, proceedings and judgment dated 4/5/2010, decree dated 8/7/2010 as D. Exhibit No. 5, 6 and 7. DW1 told the court that after obtaining D. Exhibit No. 7, he visited Parcel No. 94 with land



- surveyors who subdivided and fixed the beacons as per a surveyor's letter dated 13/8/2012, produced as D. Exhibit No. 8, with no objection or caution registered by the plaintiff.
24. Subsequently, DW1 said that the plaintiff uprooted the beacons, hence he filed a suit at Kapenguria Law Courts that is pending, but obtained interim order as per D. Exhibit No. 9 and 10. DW1 said that he filed a statement of defense dated 24/5/2021 as per D. Exhibit No. 11. Equally, DW1 relied on a ruling dated 18/9/2021 at the Kapenguria Law Courts as D. Exhibit No 12. Further, DW1 relied on a copy of the title deed and an official search and green card for Parcel No. 2370 as D. Exhibit No. 13(a), (b), and (c) and photograph as D. Exhibit No. 14. He urged the court to allow his defense and counterclaim dated 19/6/2023, on a declaration of customary trust and permanent injunction.
 25. In cross-examination, DW2 told the court that he was aware of the chief's visit to the land and his testimony before this court. He termed the same as misleading. Equally, he said that he was not aware that the court had issued any orders of maintenance of status quo on 28/9/2023, pending the hearing of the suit. DW1 admitted that his photos had no date or indication of where they were taken. DW1 said that in the Land Disputes Tribunal suit, he was seeking a share of suit land No. 94. DW1 said that he was not aware of the outcome of D. Exhibit No. 5 in 2018. Equally, DW1 said that he did not file an appeal to the Court of Appeal against the 2018 decision. DW1 said however that D. Exhibit No. 4(b) was registered on 19/9/2019 almost a year after his LDT appeal had been dismissed on 30/10/2018.
 26. DW1 said that D. Exhibit No. 12 shows that the court declined to reverse the entries. DW1 said that PW2 was his uncle but denied that he was involved in acquiring Parcel No. 121 from Alupot Lokwarau which according to D. Exhibit No. 9(c), was his land that he bought though he had no sale agreement before court. He admitted subdividing and selling a portion to Jackson. The court observed that DW1 was arrogant and evading to answer questions from the plaintiff's counsel. DW1 insisted that the chief misled the court in the issuance of status quo orders in 2023. DW1 insisted that he was not aware of the outcome in P. Exhibit No. 5.
 27. Stephen Jelareng testified as DW2. He relied on a witness statement dated 20/11/2023 as his evidence in chief. He associated himself with the evidence of DW2. He could not remember when the parties in the suit shared the parcel of land belonging to their late father. Similarly, DW2 confirmed that the uncles of the parties, including the PW2 were involved in the sharing of the land parcel belonging to the late father, among his two wives and children. DW2 confirmed that Parcel No. 121 was bought from Alupot Lukwarau where the defendant went to live alongside his mother.
 28. Samson Moroto testified as DW3. He relied on a witness statement dated 20/11/2023. DW3 associated his testimony with that of DW1 and DW2. As a village elder since 1987, DW3 told the court that the parties were also his in-laws, hence very well known to him.
 29. The plaintiff relied on written submissions dated 19/4/2025, isolating five issues for the court's declaration. It is submitted that the subdivision of Parcel No. 94 and registration of two resultant parcels of land on 18/9/2019 was based on a decree already quashed by this court a year earlier. The plaintiff submitted that the effect of allowing the appeal and quashing the appealed lower court decree on 30/10/2018 as per P. Exhibit No. 5 was to restore the parties to the position that they were in before the appeal was preferred, which in effect affirmed the decree of Chepareria Land Disputes Tribunal. Reliance is placed on Eunice Mugure Muchori & Others -vs- Peter Macharia Kitale ELC Case No. 34 of 1998.
 30. More so, the plaintiff submitted that there is no evidence to sustain the claim of customary trust, since their father died while the children were growing, he had three parcels of land, and it was the uncles including PW2 who shared the three parcels among the three sons except the Totum land, which was shared between the plaintiff and his stepbrother and another parcel bought from Alupot Longwaran



to settle the defendant as per D. Exhibit No. 9(a) and (b) and P. Exhibit No. 9(a), (b) and (c). The plaintiff submitted that the defendant had no evidence that he solely bought Parcel No. 121.

31. In this case, the plaintiff submitted that the existence or otherwise of a trust has not been sustained with credible evidence. Lastly, the plaintiff submitted that the issue of legitimate expectation, because of the alternative land availed, does not arise.
32. The defendant relies on written submission dated 23/4/2025 and framed three issues for determination. On Parcel No. 94 was family or ancestral land, the defendant submitted that upon subdivision it results into Parcel Nos. 2369 and 2370. That their late father intended that all his sons would share the three parcels at Monoo and Motpo-Soo and the plaintiff cannot claim the entire parcel. Again, the defendant submitted that, before registration the suit land was family land, the parties are one family who ought to share equally since the plaintiff does not claim that he had bought it.
33. Regarding, whether the appeal quashing the award of the Provincial Land Appeal Committee defeated the customary trust, the defendant submitted that, prior to registration of the suit land, there was an overriding interest and trust that were not registered in the titles register. Reliance was placed on *Isaack M'inanga Kiebia -vs- Isaaya Theuri M'lintari & another* [2018] KESC 22 (KLR), where the court cited with approval *Kiarie -vs- Kinuthia* (2012) eKLR.
34. In addition, the defendant submitted that it was his legitimate expectation that the plaintiff would share the suit land equally since it is family land. He urged the court to find that the plaintiff has failed to prove his case on a balance of probability and therefore, allow the defence and counterclaim.
35. The issues calling for determination are:
 1. If the subdivision of Title No. West Pokot/Chepareria/94 into parcels West Pokot/Chepareria/2369 and 2370 and issuance of titles to the defendant dated 18/9/2019 was against the decree dated 30/10/2018 by this court in Kitale ELC No. 3 of 2018, following a judgment dated 3/10/2018.
 2. If the said subdivision, transfer, and registration ought to be declared illegal and invalid, and the title be reversed to the plaintiff.
 3. If the defendant was privy to or aware of the outcome of the appeal at the time of the subdivision, transfer, and registration occurred.
 4. If the court should cancel the two titles.
 5. If the invalidation, reversal, and cancellation of the titles issued after the decision of this court in 2018 would defeat any accrued or existing customary trust rights against the defendant.
 6. If the defendant has proved the existence of any customary trust and legitimate expectation before and at the time of registration of title for West Pokot/Chepareria/94 and subdivision into Parcel Nos. West Pokot/Chepareria/2369 and 2370.
 7. If the defendant has a valid counterclaim.
 8. If the judgment dated 30/10/2018 and its resultant decree had the effect of defeating the alleged customary trust rights in favor of the defendant.
- (9) What is the order of costs?
36. It is trite law that parties are bound by their pleadings and issues for court determination arise from the pleadings. In this suit what the plaintiff pleaded is a cause of action arising out of subdivision,



registration, and issuance of title deed in Title No. West Pokot/Chepareria/94 into two portions namely, West Pokot/Chepareria/2369 and 2370, the latter in favor of the defendant based on an invalid decree of the lower court following the quashing of the proceeding, judgment and an award by this court on 30/10/2018, for the Land Disputes Tribunal and the Provincial Land Dispute Appeals Committee had no jurisdiction to deal with titled land which had a title deed with effect from 1/7/1998.

37. In his defense and counterclaim, the defendant while admitting that there was litigation triggered by his Land Disputes Tribunal complaint, avers that the decree was implemented via surveyor's letter dated 13/8/2012 and the subdivisions effected. He did not plead or produce documentary evidence that the land was subdivided, Land Control Board consent application lodged, consent issued, and the transfers made before 30/10/2018.
38. When a land title is under challenge, the law is that every paper trail towards acquisition of the resultant title becomes key. See Hubert L. Martin & 2 others -vs- Margaret J Kamar & 5 others (2016) eKLR.
39. Further, the defendant avers that he had a legitimate expectation that the plaintiff would share equally the land because being ancestral or family land, customary land trust rights as overriding rights in favor of him existed, which could not be defeated by a decree or judgment of this court, hence urges the court to validate the subdivision and the registration.
40. There is no dispute that the court decree issued on 30/10/2019 superseded the previous one that was appealed against. A copy of the records availed before this court shows that the register for Parcel No. 2370 was opened on 20/12/2019. Further entries numbers 1, 2, and 3 show that the Executive Officer, Kitale Law Courts on behalf of the plaintiff herein signed Entry No. 1, whereas the defendant signed for Entry Nos. 2 and 3, by collecting the title deed for Title No. West Pokot/Chepareria/2370.
41. Coming to a copy of records for Title No. West Pokot/Chepareria/2369, the date of opening of the register is not indicated. Entry No. 1 is dated 20/12/2018 and signed by the Executive Officer of the court on behalf of the plaintiff herein. There is no indication if the title deed was issued to the plaintiff.
42. All this information was attached to the affidavit in reply sworn by the defendant on 19/6/2023, where he attached the copy of the records for Parcel Nos. 2369 and 2370 as annexures marked JK-3, 4(a) and (b), now produced as D. Exhibit No 4(a) and (b). A party who has said one thing on oath is estopped in law from reneging on the earlier statement. At paragraph 16 of the defense and counterclaim dated 19/6/2023, the defendant's averments that the decree was implemented on 13/8/2012 leading to the subdivision into the two parcels of land and the creation of Parcel Nos. 2369 and 2370 are both misleading and mischievous.
43. If the statement were to be taken to be true, one would wonder then why the entry for the subdivision and the registration was only effected on 20/12/2018, which obviously was after the judgment of this court on 30/10/2018. Further, it defeats logic also why the title deed to the defendant would be issued on 18/9/2019. A nullity is a nullity. A party who processes the registration of title through a fake decree cannot be heard to move to court to sanction such illegality and to get the protection of the court. The defendant has testified that he was not aware of the outcome of the appeal of 30/10/2018. In essence, he is saying that he was innocently registered as the owner.
44. The defendant used the Executive Officer of the court to effect the subdivisions and sign the transfer forms on behalf of the plaintiff. There is no evidence that the defendant followed the legal or formal procedures of subdivision and transfer. He has not availed the paper trail towards the acquisition of his title deed, yet the plaintiff's suit questions the entire chain of events coming after the decree in his favor had been quashed and set aside by this court where the defendant fully participated in the appeal.



45. In *Wambui -vs- Mwangi & Others* (Civil Appeal No. 465 of 2019 [2021] KECA 144 [KLR] (19th November 2021) (Judgment), fraud was defined as misrepresentation of the truth or concealment of a material facts to induce another to act to his detriment. The court said that it cannot sanction a transfer of land acquired through deceit, forgery, or fraud, or a decree founded on fraud crafted by a party, to form a proper basis for transferring property. The court said that in law a contrived decree is null and void and any subsequent transaction premised on such a purported decree amounts to nothing, is null and void, and has no legal consequence.
46. This court has keenly looked into the circumstances leading to the subdivision, registration, and issuance of title to the defendant. There was no such court decree in existence after 30/10/2018 for the defendant to rely upon in the subdivision, transfer, and registration as owner of Title No. West Pokot/Chepareria/2370, out of Title No. West Pokot/Chepareria/94.
47. This court cannot be made an instrument of enforcing obligations alleged to arise out of a non-existent decree. Where an act is a nullity, every proceeding founded on it is also in law a nullity. See *Association of Member Episcopal Conference in Eastern Africa (AMECEA) -vs- Alfred Romani (T/A Romani Architects) & 3 Others* [2002] eKLR.
48. Therefore, the entries made on the title register for Parcel No. West Pokot/Chepareria/94, the resultant opening of the register for Parcel Nos. West Pokot/Chepareria/2369 and 2370 as well as the resultant registration and issuance of the title deeds for the same are all nullities, ab initio, invalid, and inconsequential. See *Lawrence P. Mukiri Muigai -vs- Attorney General & Others* [2017] eKLR, *Arthi Highway Developers Limited -vs- West End Butchery Limited & 6 others* [2015] eKLR, *Macfoy -vs- United African Co. Ltd* [1961] 3 ALLER 1169, and *Chemney Investment Ltd -vs- Attorney General & Others* [2018] eKLR.
49. No rights therefore, could accrue to the defendant based on a contrived decree to confer any title or proprietary rights which he could enforce even through a court case in Kapenguria Law Courts to obtain interim orders pending declaratory orders to sanction an illegally obtained title to land. See *Kenya Airways Limited -vs- Satwant Singh Flora* [2013] KECA 545 (KLR) and *Mapis Investment (K) Ltd -vs- Kenya Railways Corporation* [2005] KECA 358 (KLR).
50. Article 40(6) of *the Constitution* does not provide cover for an illegally obtained title as held in *Alice Chemutai Too -vs- Nickson Kipkurui Korir & Others* [2015] eKLR. Sections 79(2) and 80 of the *Land Registration Act* allow the Land Registrar to rectify a register especially where a party such as the defendant acquired a legal and valid title deceitfully from a legally registered innocent plaintiff. Legitimate expectation to benefit from wrongdoing is what the defendant is asking this court to interpret in his counterclaim and defense. Surely a party who uses deceitful means to acquire a title deed in flagrant disregard of a valid court decree cannot come to the same court and stare the court in its face and say “I have stolen a title but only because I thought you were wrong, in the first instance. Therefore, determine if I am holding overriding interests to the initial Parcel No. 94 and proceed to declare me entitled to a half share of the land.”
51. The above notwithstanding, the defendant asks the court to declare that he is entitled to the land on account of trust. Has the defendant met the elements of customary trust as set out in *Kiebia -vs- M’Linturi* (supra)? Customary trust is a concept of intergenerational equity, where land is held by one generation for the benefit of succeeding generations as held in *Mbui Mukangu -vs- Gerald Mutwiri Mbui* C.A No. 281 of 2001.



52. The legal burden to establish the existence of customary trust is one the one asserting the right that a family member holds the property in trust for the family. See *Alice Wairimu Macharia -vs- Kirigo Philip Macharia* [2019] eKLR. The defendant has to establish that:
- (1) The land before registration was for the family, clan, or group.
 - (2) He belongs to such family, clan, or group.
 - (3) He could have been entitled to registration as owner or other beneficiary but for some intervening circumstances.
 - (4) The claim is against a proprietor who is a member of the family, clan, or group.
53. The defendant has satisfied ingredients numbers 1, 2, and 4. He has, however, failed to disclose the overwhelming evidence tendered by the plaintiff that he was compensated with a large portion as per D. Exhibit No. 9(a) and (b). The plaintiff has tendered evidence that the defendant was assisted in acquiring land from Alupot Longwaran as a result of which he relocated and moved from the land together with his mother. The Land Disputes Tribunal decision in 2007 observed that the defendant had been out of the land for 30 years. The defendant does not deny the existence of Parcel No. 121. He, however, says that he solely acquired it. Evidence of a sale agreement and the means of acquiring it, if not as a compensation share of the suit land which was small has not been tendered.
54. Even after the plaintiff through a reply to the defense and defense to the counterclaim as per paragraphs 5, 6, and 7, issues were raised that the defendant voluntarily requested to be settled in another portion which had been collectively bought to cater for him, the defendant did not respond to the statement of defense and or call independent witnesses to sustain his claim that for purposes of equity, proportionality and justice, he needs a share Parcel No. 94.
55. Incidentally, registers for Title Nos. West Pokot/Chepareria/94, 96, 100, 102, 103, 2068, 2069, and 2070, were all opened almost at the same time. These facts are confirmed by D. Exhibit No. 4(c), 3, 1(a), (c), 2(a) and (c). The defendant has not availed material to show the history of parcel No. 94 before it was opened in 1998. His claim for a share was first raised before the Chepareria LDT in 2006. P. Exhibit No. ((a), (b), and (c) show that the register for Parcel No. 121 was opened on the same day as the other parcels of land belonging to the plaintiff and his siblings.
56. The acreage for parcel No. 121 is indicated as 4.34 Ha. It is almost of the same range of acreage with respect to the others' siblings parcels. Therefore, I am inclined to believe the explanation given by the plaintiff and his witnesses that the defendant's counterclaim based on customary trust rights is an afterthought, lacks merits, and is aimed at helping the defendant to unjustly benefit twice from the estate of the late father.
57. Evidence of PW2 who both parties agree was key and knowledgeable over the land and in the sharing out of the parcels of land belonging to his late brother has not been challenged or discredited by either the defendant or his witnesses. The defendant did not raise his objection in 2006 based on customary trust rights, proportionality, equity, and justice, before the Land Dispute Tribunal all the way to the appeal before this court. Even if the court were to apply the doctrine of proportionality, equity, and justice still going by the evidence of PW1 and PW2 as well as documentary evidence by both parties showing how the parcels of land were shared by the uncles among the deceased's children, the decision in my view was reasonable, appropriate, legitimate and balanced all the interest of the beneficiaries.
58. The defendant is not attacking the decision makers, who were his uncles in 1998, who subdivided the land on account of malice, revenge, or undue influence by the plaintiff. Legitimate expectation, however strong it might be, cannot prevail against actions flying against *the Constitution*. The uncles,



in my view, were very fair, in sharing the three parcels of land. They went to an extent of even calling upon the other siblings and the clan members to contribute towards the acquisition of Parcel No. 121 to enable the defendant to get a larger share instead of a smaller share if Parcel Nos. 94 and 96 were to be shared among three brothers.

59. It was not the plaintiff who made the decision but the uncles. He cannot therefore be accused of renegeing on a promise. In *Republic -vs- Attorney General & Another; Exparte Waswa & Others* [2005] 1KLR 280, the court held that the principle of legitimate expectation to a hearing should not be confined only to a party's advantage or benefit, but should also extend to future promise or benefit yet to be enjoyed. The court said that decision-makers should demonstrate predictability, and certainty in their dealings so that the affected parties can plan their affairs, lives, and business with some measure of regularity, predictability, certainty, and confidence.
60. In *Republic -vs- Devon County Council ;Exparte P. Baker* [1955] 1 ALLER, the court observed that expectation arises not because the claimant asserts any specific right to a benefit, but rather because his interest in it is one that the law holds protected by the requirement of procedural fairness. In this suit, there is no evidence that the defendant objected to the fairness of sharing the parcels of land generally and in particular, the Totum land in 1998 or immediately thereafter, before his uncles. He waited until 7 years later. It is the defendant who voluntarily chose to move out of the land in Totum, for greener pastures and land which was even larger in size than the rest of his siblings. Therefore, he cannot turn around as indicated by the plaintiff and PW2 to renege on his word, deeds and seek to reclaim the right that he voluntarily ceded in exchange.
61. The upshot is, I find the defense and counterclaim which lack titular heading, incompetent, lacking merits an afterthought, and unsubstantiated. The plaintiff's claim is allowed in the following terms:
- (a) A declaration be and is hereby issued that the decision of 30/10/2018 in ELC Kitale Appeal No. 3 of 2018, deprived the defendant any portion of land comprised of Parcel No. West Pokot/Chepareria/94.
 - (b) Declaration that the subdivision of Parcel No. West Pokot/Chepareria/2370, out of West Pokot/Chepareria/94, based on a purported decree already reversed by this court on appeal, was unlawful and the titles issued thereto be and are hereby canceled and the entries thereto reversed.
 - (c) An order is hereby made for the cancellation of the registers for land Parcel Nos. West Pokot/Chepareria/2369 and 2370 is hereby granted for the land to revert to the original land Parcel No. West Pokot/Chepareria/94 in the name of the plaintiff.
62. Costs to the plaintiff.
63. Orders accordingly.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 17TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Ndarwa for the plaintiff

Chebii for Lowasikou for the defendant present

HON. C.K. NZILI



JUDGE, ELC KITALE.

judgment: KITALE ELC NO. E027 OF 2023 - D.O.D- 17/6/2025	0
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